RECEIVED
Oct 13 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

Marth M. Rivers, Circuit Court Judge

Appellate Case No.: 2025-002089

Barry Lanham and Obvia Gamble-Lanham,..... Appellants,

v.

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

of which Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co.: GmbH & Co. KG is the .....Respondent.

RECORD ON APPEAL
VOLUME 1 OF 2

John E. Parker
John E. Parker, Jr.
PARKER LAW GROUP, LLP
Post Office Box 487
Hampton, SC 29924
Phone: (803) 903-1781
jparker@parkerlawgroupsc.com
jayparker@parkerlawgroupsc.com
AND
Neil E. Alger
Post Office Box 2530
Ridgeland, South Carolina 29936
Phone: (843) 547-8011
nalger@parkerlawgroupsc.com
ATTORNEYS FOR APPELLANTS

Robert H. Jordan
Robert C. Osborne III
Carolina E. McCracken
PARKER POE ADAMS & BERNSTEIN LLP
850 Morrison Drive, Suite 400
Charleston, SC 29403
Phone: (843) 727-2650
robertjordan@parkerpoe.com
robertosborne@parkerpoe.com
carolinemccracken@parkerpoe.com

ATTORNEYS FOR BARRY LANHAM AND OBVIA GAMBLE-LANHAM

John E. Parker
John E. Parker, Jr.
PARKER LAW GROUP, LLP
Post Office Box 487
Hampton, SC 29924
Phone: (803) 903-1781
jparker@parkerlawgroupsc.com
jayparker@parkerlawgroupsc.com

Colin T.L. Spangler
FLOYD & SPANGLER,
ATTORNEYS AT LAW
1611 Augusta Road West
Columbia, SC 29169
Phone: (803) 739-1824
colin@spanglerlawoffice.com

AND

Neil E. Alger
Post Office Box 2530
Ridgeland, South Carolina 29936
Phone: (843) 547-8011
nalger@parkerlawgroupsc.com

ATTORNEYS FOR WUMAG TEXROLL GmbH & CO. KG f/k/a KELZENBERG + CO. GmbH & CO. KG

Robert H. Jordan
Robert C. Osborne III
Carolina E. McCracken
PARKER POE ADAMS &
BERNSTEIN LLP
850 Morrison Drive, Suite 400
Charleston, SC 29403
Phone: (843) 727-2650
robertjordan@parkerpoe.com
robertosborne@parkerpoe.com
carolinemccracken@parkerpoe.com

INDEX

VOLUME I

Orders

Order denying Defendant Kelzenberg + Co.'s ("Wumag II") motion to dismiss, filed July 21, 2022 1

Order granting motion to amend complaint, filed December 19, 2023 4

Order denying Wumag Texroll GmbH & Co. KG's ("Wumag I") motion to dismiss third-party complaint, filed March 13, 2024 8

Order granting Wumag II's motion for summary judgment, filed September 19, 2025 11

Order certifying summary judgment order and denying in part Plaintiffs' motion to alter or amend, filed September 25, 2025 17

Order granting Plaintiffs' motion to alter or amend and certifying order as final pursuant to Rule 54(b), SCRCP, filed October 9, 2025 20

Transcripts

Hearing Transcript, dated July 7, 2025 25

Pleadings

Summons and complaint, filed January 6, 2021 52

Wumag II's answer, filed August 5, 2022 58

Wumag II's amended answer to complaint and third-party complaint, filed May 2, 2023 67

Amended summons and complaint, filed February 23, 2024 79

Wumag II's answer to amended complaint and crossclaims, filed March 8, 2024 88

Wumag I's answer to Plaintiffs' amended complaint, filed March 25, 2024 102

Wumag II's amended answer and crossclaims to Plaintiffs' amended complaint, filed April 4, 2024 113

Wumag I's answer to Wumag II's crossclaims, filed April 16, 2024 127

Other Materials

Wumag II's motion to dismiss, filed March 22, 2021 145

Wumag II's memorandum in support of motion to dismiss, filed April 7, 2022 147

Ex. A: Declaration of Michael Hess 164

Ex. B: Service of Wumag II, South Carolina Secretary of State 168

Affidavit of John E. Parker, Jr., filed June 6, 2022 177

Ex. 1: Service of the summons and complaint via certified mail to the South Carolina Secretary of State 179

Ex. 2: Acceptance of service by Secretary of State on behalf of Wumag II 192

Ex. 3: Copy of the envelope containing summons and complaint from the Secretary of State to Wumag II via international registered mail 193

Ex. 4: USPS official proof of delivery 194

Plaintiffs' memorandum in opposition to Wumag II's motion to dismiss, filed July 13, 2022 195

Ex. 1: Wumag Texroll website 228

Ex. 2: U.S. Customs records 230

Ex. 3: *Mayfield* order 234

Ex. 4: South Carolina Secretary of State business name search 237

Ex. 5: Zima Corp. Secretary of State filing 238

Ex. 6: Morrison Textile Mach. Co. Secretary of State filing 240

Ex. 7: Service of Wumag II South Carolina Secretary of State 241

Wumag II's amended memorandum in support of motion to dismiss, filed July 13, 2022 242

Ex. A: Declaration of Michael Hess 258

Ex. B: Service of Wumag II, South Carolina Secretary of State 262

Wumag I's motion to dismiss third-party complaint, filed June 29, 2023 271

Plaintiffs' motion to amend complaint, filed July 17, 2023 288

Ex. A: Amended complaint 291

Wumag I's memorandum in support of its motion to dismiss third-party complaint, filed December 8, 2023 297

Wumag II's memorandum in opposition to Wumag I's motion to dismiss third-party complaint, filed December 8, 2023 306

Ex. A: Wumag II's amended answer and third-party complaint 317

Ex. B: Declaration of Michael Hess 330

Wumag I's motion to dismiss third-party complaint, filed March 19, 2024 334

Wumag II's motion for summary judgment, filed June 13, 2025 338

Plaintiffs' memorandum in opposition to motion for summary judgment, filed July 2, 2025 345

Ex. 1: Wumag Texroll website 380

Ex. 2: Spreadsheet of U.S. Customs records 382

Ex. 3: Walmsley deposition, dated May 9, 2025 384

Ex. 4: Barry Lanham deposition, dated March 25, 2025 408

Ex. 5: Michael Hess declaration 468

Ex. 6: *Mayfield* order 471

Ex. 7: South Carolina Secretary of State business name search 474

Ex. 8: Zima Corp. filing 475

Ex. 9: Morrison Textile Mach., Inc. filing 477

Ex. 10: Service of Wumag II South Carolina Secretary of State 478

Ex. 11: Aff. of Compliance 486

VOLUME II

Ex. 11: Aff. of Compliance (cont'd) 496

Wumag II's memorandum in support of motion for summary judgment, filed July 3, 2025 504

Ex. A: Order, dated July 21, 2022 526

Ex. B: Michael Hess declaration 530

Ex. C: Asset purchase agreement in German 534

Ex. D: Wumag I's answers to Plaintiffs' first interrogatories 551

Ex. E: Plate attached to machine WUMAG 2016 567

Wumag II's letter to Judge Martha M. Rivers, filed July 11, 2025 569

Ex. 1: Declaration of Dr. Nils Derksen, filed July 11, 2025 571

Ex. 2: Dr. Nils Derksen online profile 576

Ex. 3: German law with English translations 579

Plaintiffs' supplemental memorandum in further opposition to motion for summary judgment, filed July 18, 2025 596

Ex. 1: Wumag website 605

Ex. 2: Krafft-Walzen website 607

Plaintiffs' motion to alter or amend and motion to certify order, filed September 24, 2025 609

Ex. 1: July 11, 2025 Wumag II filing 616

Ex. 2: July 11, 2025 email to circuit court 643

Ex. 3: July 17, 2025 email to circuit court 644

Plaintiffs' motion to alter or amend, filed September 26, 2025 646

Notice of appeal, filed October 10, 2025..... 651

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1900005

Barry Lanham et al
PLAINTIFF(S)

Wumag Texroll Gmbh & Co. Kg
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

☐ **STAYED DUE TO BANKRUPTCY**

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

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

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

Parties convened at the Edgefield County Courthouse on July 18, 2022 on Defendant Wumag Texroll GmbH & Co. KG's Motion to Dismiss. Present at the hearing was John Parker on behalf of the Plaintiff and Robert Osborne on behalf of the Defendant.

At the hearing, defendant sought an order dismissing plaintiffs' complaint for lack of personal jurisdiction, insufficient service of process, and failure to state a claim pursuant to Rules 12(b)(2), 12(b)(5), and 12(b)(6). Plaintiff argued that the Court has personal jurisdiction over the Defendant, that service through the South Carolina Secretary of State was proper, and that the Defendant is liable under SC successor liability law.

Upon review and consideration of arguments made at the hearing, a review of memoranda prepared by the parties and the affidavits provided, the court hereby DENIES the motion at this time. After the completion of appropriate discovery, Defendant's arguments may be readdressed through Rule 56, SCRCP.

ORDER INFORMATION

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

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/21/2022 .

Alicia K. Clawson

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2022 Jul 21 11:03 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Court Reporter:

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

ELECTRONICALLY FILED - 2022 Jul 21 11:03 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Jul 21 11:03 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Edgefield Common Pleas

Case Caption: Barry Lanham , plaintiff, et al VS Wumag Texroll Gmbh & Co. Kg

Case Number: 2021CP1900005

Type: Order/Electronic Form 4

It Is So Ordered

s/ Walton J. McLeod

ELECTRONICALLY FILED - 2023 Dec 19 8:37 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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.	)	
	)	
Wumag Texroll GmbH & Co. KG,	)	
Defendant.	)	**ORDER**
	)	
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.	)	

This matter came before the Court pursuant to Rule 15, SCRCP, on Plaintiffs' Motion to Amend Complaint. Appearing and arguing at the December 11, 2023 hearing on behalf of Plaintiffs was John E. Parker, Jr. Appearing and arguing on behalf of Wumag Texroll GmbH & Co. KG, the Third-Party Defendant, was Catherine Wrenn. Plaintiffs filed their motion on July 17, 2023, seeking to add Third-Party Defendant Wumag as a Defendant to their original Complaint, which alleged causes of action for negligence, breach of warranty, and strict liability against Wumag's successor, named as Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co.: GmbH

& Co. KG in the Third-Party Complaint and Wumag Texroll GmbH & Co. KG in Plaintiffs' original Complaint.

To clarify, Plaintiffs contend that their Complaint alleges causes of action against two separate German entities, a predecessor company and a successor company. Plaintiffs allege that after Plaintiffs' injuries the successor purchased the assets of the predecessor, changed its name to the predecessor's name, and continued doing the business of the predecessor, and they now seek to add the predecessor as a Defendant through amendment of their original Complaint, which only named the successor as a Defendant. Under Rule 15, SCRCP, leave to amend is to be freely given unless it would cause prejudice to the defendant or would be obviously futile. The arguments of Plaintiffs' counsel indicate that the interests of justice would be served by allowing Plaintiffs to amend the Complaint, that no prejudice will be caused to the newly added Defendant by the amendment, and that the amendment is not futile. The Court acknowledges that the Third-Party Defendant objected to the proposed amendment, and that it reserves its right to plead defenses to and/or file motions regarding the proposed amendment.

Therefore, it is ordered that the Plaintiffs may amend their Complaint to add Third-Party Defendant Wumag as a Defendant. The Amended Complaint should indicate the party to be brought in as "Wumag Texroll GmbH & Co. KG" while the currently named Defendant will be corrected to "Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co.: GmbH & Co. KG".

IT IS SO ORDERED.

ELECTRONICALLY FILED - 2023 Dec 19 8:37 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

The Honorable Debra R. McCaslin

December 18, 2023
Lexington, South Carolina

ELECTRONICALLY FILED - 2023 Dec 19 8:37 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2023 Dec 19 8:37 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Edgefield Common Pleas

Case Caption: Barry Lanham , plaintiff, et al VS Wumag Texroll Gmbh & Co. Kg , defendant, et al

Case Number: 2021CP1900005

Type: Order/Other

So Ordered

Debra R. McCaslin

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1900005

Barry Lanham et al
PLAINTIFF(S)

Wumag Texroll Gmbh & Co. Kg et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

☐ **STAYED DUE TO BANKRUPTCY**

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

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

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

These motions came before the court on December 11, 2023.
The court was notified that Defendant's Motion to Compel was resolved by the parties.
Plaintiff's Motion to Relieve William F. Barnes III as Counsel is GRANTED.
Defendant's Motion to Dismiss Third-Party Complaint is DENIED in order to allow the parties to do additional discovery.
An Order will follow on Plaintiff's Motion to Alter/Amend.

ORDER INFORMATION

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

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/13/2024 .

Alicia K. Clawson

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2024 Mar 13 1:27 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Court Reporter:

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

ELECTRONICALLY FILED - 2024 Mar 13 1:27 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2024 Mar 13 1:27 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Edgefield Common Pleas

Case Caption: Barry Lanham , plaintiff, et al VS Wumag Texroll Gmbh & Co. Kg fka Kelzenberg + Co. GmbH & Co K , defendant, et al

Case Number: 2021CP1900005

Type: Order/Electronic Form 4

So Ordered

Debra R. McCaslin

ELECTRONICALLY FILED - 2025 Sep 19 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD	)	ELEVENTH JUDICIAL CIRCUIT
Barry Lanham and Obvia Gamble-Lanham,	)	2021-CP-19-00005
Plaintiff,	)	**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
vs.	)	
Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG, et al.,	)	
Defendant.	)	

This matter came before the Court upon motions for summary judgment filed by Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG (hereinafter "Kelzenberg-Wumag"). On June 13, 2025, Kelzenberg-Wumag filed a motion for summary judgment, arguing Kelzenberg-Wumag, as a successor corporation, did not assume or otherwise contract for the liabilities of Wumag. On July 2, 2025, Plaintiffs Barry Lanham and Obvia Gamble-Lanham (hereinafter "Lanham") filed a memorandum in opposition arguing that South Carolina should adopt the continuity of enterprise recognized under German law.

This Court declines to adopt the law proposed by Plaintiff that has yet been adopted in South Carolina and agrees Defendant Kelzenberg-Wumag is not liable to Plaintiff Lanham under current South Carolina law. Having considered the arguments presented by both sides, as discussed in more detail herein, Defendant Kelzenberg-Wumag's motion for summary judgment is GRANTED.

On January 22, 2018, Plaintiff Barry Lanham was injured while operating a laminating calendar machine (hereinafter "Machine") at his workplace in Trenton, South Carolina. The

Machine that Plaintiff alleges was defectively produced or otherwise caused the injury was designed, manufactured, sold, delivered and installed by Wumag Texroll GmbH & Co. KG (hereinafter "Wumag"). On September 1, 2019, Wumag, a German manufacturer, filed insolvency proceedings in Krefeld, Germany. On September 18, 2019, Kelzenberg + Co: GmbH & Co. KG purchased the assets of Wumag, forming the company "Kelzenberg-Wumag.". Defendant Kelzenberg-Wumag states that this agreement was expressly not a purchase of liabilities. Since the purchase, Wumag has no assets.

Defendant Kelzenberg-Wumag previously moved for dismissal on the same or similar basis and jurisdictional issues as to Kelzenberg-Wumag. This motion was denied to allow discovery as to jurisdictional issues.

Summary judgment is proper if, when viewing the evidence and inferences to be drawn therefrom in the light most favorable to the nonmoving party, there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. SCRCP, Rule 56(c); *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459 (2023).

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 has minimum contacts with the state in order to satisfy due process requirements. *Krell v. Carolina Bank*, 283 S.C. 5, 7 (1984). Under South Carolina contract law, South Carolina courts apply the substantive law of the place where the contract at issue was formed unless a valid choice-of-law clause exists that does not violate public policy. *Howell v. Covalent Chemical, LLC*, 435 S.C. 345, 351.

ELECTRONICALLY FILED - 2025 Sep 19 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Sep 19 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Under South Carolina successor law, the liabilities and debts of the corporation are not imputed to the successor corporation until (1) there was an express agreement to assume the debts, (2) there is a consolidation or merger of the two corporations, (3) the successor corporation was a mere continuation of the predecessor corporation, or (4) the transaction was entered into fraudulently with the purpose of defeating creditor's claims. *Simmons v. Mark Life Indus., Inc*., 366 S.C. 308 (2005). The continuity of enterprise theory that a successor may inherit liability from a predecessor due to the continuity of business operations, management, or ownership has been rejected and distinguished from the mere continuation exception that South Carolina courts follow. *Nationwide Mutual Insurance Company v. Eagle Window & Door, Inc*., 424 S.C. 256, 263 (2018). Under the mere continuation exception, continuity of ownership is shown through commonality of officers, directors, and shareholders. *Id.*

Under German law, a commercial business acquired under the previous business name shall be liable for the obligations of the predecessor business. Handelsgesetzbuch [HGB] [Commercial Code], § 25.[1]

In Defendant Kelzenberg-Wumag's motion, it asserts that it has no connections with the state of South Carolina for service purposes. It asserts that it has no liability in this claim as it is a separate corporation not in existence at the time of the injury with no transfer of liability. The Court finds that the ultimate determination is whether Kelzenberg-Wumag, by law or contract,

[1] Counsel referenced to an opinion from the German courts based upon its research notations due to translation issues.

ELECTRONICALLY FILED - 2025 Sep 19 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

now stands in the shoes of Wumag such that it is the successor in interest for Wumag's potential liability.[2]

If Kelzenberg-Wumag is the successor of Wumag's potential liability, then there is no jurisdictional or statute of limitation issue as it is clear Wumag conducted business within South Carolina. Furthermore, there would be evidence to survive the summary judgment request as a genuine issue of fact exists regarding liability of the manufacturer. The Court finds that this is not the case.

The Court agrees that Kelzenberg-Wumag's purchase of Wumag's assets does not meet any of the exceptions under South Carolina successor liability. There is no evidence of an express agreement for Kelzenberg-Wumag to assume all debts and liabilities of Wumag. The purchase of Wumag was not a consolidation or merger of the two corporations, but a purchase of the assets. Kelzenberg-Wumag does not share officers, directors, and shareholders. There is no evidence that the transaction was entered into fraudulently. Therefore, the Court finds no exception is met and Kelzenberg-Wumag is not responsible for Wumag's potential liability.

Plaintiff relies upon Section 25 of the German Commercial Code to argue continuity of enterprise pursuant to German law by arguing that Kelzenberg-Wumag continued ownership by operating business under the same name as Wumag.[3]

---

[2] Defendant Kelzenberg-Wumag argues partially that the case should be dismissed because Plaintiff's claims are barred by the statute of limitations due to insufficient service and lack of personal jurisdiction

[3] It appears the German court ruled that Section 25 does not apply for continuity of enterprise theory. As the German court has ruled that the insolvency proceedings do not apply continuity of enterprise and our courts have not recognized the doctrine, this Court rejects to apply the theory in this case.

IT IS SO ORDERED.

The Hon. Martha M. Rivers

Presiding Judge

September_____, 2025

[Electronic signature to follow]

ELECTRONICALLY FILED - 2025 Sep 19 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Sep 19 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Edgefield Common Pleas

Case Caption: Barry Lanham , plaintiff, et al VS Wumag Texroll Gmbh & Co. Kg fka Kelzenberg + Co. GmbH & Co K , defendant, et al

Case Number: 2021CP1900005

Type: Order/Summary Judgment

IT IS SO ORDERED.

/s/ Hon. Martha M. Rivers (2788)

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1900005

Barry Lanham et al
PLAINTIFF(S)

Wumag Texroll Gmbh & Co. Kg fka Kelzenberg + Co. GmbH & Co K et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

☐ **STAYED DUE TO BANKRUPTCY**

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

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

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

The Court denies Plaintiff's Motion to Amend filed on September 24, 2025. Having considered the arguments for some time, additional filings or hearing is not necessary. Plaintiff's request encourages the court to adopt the theory of continuity of enterprise. This court does not believe that is appropriate and continues to deny this request. The Order Granting Summary Judgment is a final judgment as to Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG. The judgment does not release Defendant Wumag Texroll Gmbh & Co. Kg., the predecessor company that manufactured the product complained of in this litigation.
IT IS SO ORDERED.

ORDER INFORMATION

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

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/25/2025 .

Alicia K. Clawson
Wumag Texroll GmbH & Co KG fka Kelzenberu +Co GmbH & Co KG

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2025 Sep 25 3:47 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Court Reporter:

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

ELECTRONICALLY FILED - 2025 Sep 25 3:47 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Sep 25 3:47 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Edgefield Common Pleas

Case Caption: Barry Lanham , plaintiff, et al VS Wumag Texroll Gmbh & Co. Kg fka Kelzenberg + Co. GmbH & Co K , defendant, et al

Case Number: 2021CP1900005

Type: Order/Electronic Form 4

IT IS SO ORDERED.

/s/ Hon. Martha M. Rivers (2788)

ELECTRONICALLY FILED - 2025 Oct 09 2:50 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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

This matter came before the me upon a motion to reconsider, alter, or amend the order dated September 25, 2025 order granting in part and denying in part Plaintiffs Barry Lanham and Obvia Gamble-Lanham's motion to alter or amend the September 19, 2025 order granting partial summary judgment. While the September 25, 2025 order provided that the decision as to Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG ("Wumag II") was final at Plaintiffs' insistence, the Court denied all other relief requested by Plaintiffs.

On their second motion to alter or amend, Plaintiffs do not ask the Court to reconsider for a second time the merits of the Court's previous decision. Instead, Plaintiffs seek clarification and an amendment of the September 25, 2025 order to specifically certify the September 19, 2025

judgment as final pursuant to Rule 54(b), SCRCP, and to provide an express determination that there is no just reason for delay of entry of final judgment as required by the Rule. To that extent, Plaintiffs' motion is granted.

The Court is mindful that when it certifies a judgment as final, "it must do so in a definite, unmistakable manner." *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).

> Where the [trial] court is persuaded that Rule 54(b) certification is appropriate, the [trial] court should state those findings on the record or in its order. The expression of clear and cogent findings of fact is crucial. In fact, numerous courts have held that where the [trial] court's Rule 54(b) certification is devoid of findings or reasoning in support thereof, the deference normally accorded such a certification is nullified.

Id. at 469, 570 S.E.2d at 201-02 (citing *Braswell Shipyards v. Beazer East*, 2 F.3d 1331, 1336 (4th Cir. 1993)). The Court finds in this case that there is no just reason for delay and directs entry of judgment as to the dismissal of all of Plaintiffs' claims against Wumag II.

The reasoning for the Court's decision that there is no just reason for delay is as follows and has not been opposed by any of the parties. First, an immediate appeal would preserve the judicial system's resources, eliminate unnecessary delay, and promote the ends of justice. Second, 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 is eventually tried and appealed on liability issues as to Wumag II or the remaining defendant. The evidence relevant to Wumag II's motion for summary judgment 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, the remaining defendant.

ELECTRONICALLY FILED - 2025 Oct 09 2:50 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Oct 09 2:50 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Third, if the orders are not certified, and the orders are not 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, depending upon the outcome of an appeal, as Wumag II is an alleged successor-in-interest, and could also potentially deprive Wumag II of the opportunity to present its own witnesses and evidence when it could be subject to res judicata principles as to liability such as issue or claim preclusion.

Lastly, Wumag I's counsel was present at the initial summary judgment hearing and acknowledged the corporation was dissolved with little to no assets from which to satisfy a judgment a judgment. Wumag II, on the other hand, is a going business concern. It is undispuated that Wumag II purchased all assets of Wumag I.

Plaintiffs' request for clarification of the Court's previous order is granted and the Court expressly determines that certification under Rule 54(b) in this instance is appropriate. Further, as previously requested by Plaintiffs, pursuant to Rule 62(h), SCRCP, the Court has wide latitude to take actions necessary to benefit the party in whose favor a judgment is entered under Rule 54(b), SCRCP. *See* Rule 62(h), SCRCP ("[T]he court . . . may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered."); *AMTRAK v. Cimarron Crossing Feeders*, No. 16-1094-JTM; No. 18-1081-JTM, 2019 U.S. Dist. LEXIS 33480, at*5 (D. Kan. March 4, 2019) (staying all proceedings pending an appeal under identical federal rule). In this instance, a stay of the action in conjunction with Rule 54(b) certification for appeal would benefit Wumag II for the reasons outlined above, including the avoidance of any prejudicial effect a trial against Wumag I could have against Wumag II during the pendency of any

forthcoming appeal. For these reasons, the remainder of the action is stayed while any appeal of the merits of the Court's September 19, 2025, and September 25, 2025 orders is pending.

IT IS SO ORDERED.

The Hon. Martha M. Rivers
Second Judicial Circuit

[Electronic Signature to Follow]

ELECTRONICALLY FILED - 2025 Oct 09 2:50 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Oct 09 2:50 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Edgefield Common Pleas

Case Caption: Barry Lanham , plaintiff, et al VS Wumag Texroll Gmbh & Co. Kg fka Kelzenberg + Co. GmbH & Co K , defendant, et al

Case Number: 2021CP1900005

Type: Order/Other

IT IS SO ORDERED.

/s/ Hon. Martha M. Rivers (2788)

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD	)	2021-CP-19-00005
	)	
	)	
	)	
	)	
	)	
BARRY LANHAM, ET AL,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
WUMAG TEXROLL GMBH & CO. KG	)	
F/K/A KELZENBERG & CO., GMBH	)	
& CO K, ET AL,	)	
DEFENDANTS.	)	
_____	)	

July 7, 2025
Edgefield, South Carolina

B E F O R E:

THE HONORABLE MARTHA M. RIVERS, JUDGE.

A P P E A R A N C E S:

JOHN ELLIOTT PARKER, ESQ.
Attorney for the Plaintiff

ROBERT CRUM OSBORNE, III, ESQ.
JOHN WOODS, ESQ.
Attorney for the Defendants

PENNY M. JOHNSON
Court Reporter III

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

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

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

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

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

THE COURT: Sure.

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

THE COURT: Thank you.

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

correct?

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

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

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

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

THE COURT: Okay.

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

had to be amputated as a result of the accident.

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

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

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

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

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

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

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

evidence.

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

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

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

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

subject to personal jurisdiction here.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Certainly.

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

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

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

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

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

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

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

MR. WOODS: It has been dissolved.

THE COURT: Thank you, sir.

Yes, sir, Mr. Parker.

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

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

THE COURT: Thank you, sir.

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Okay.

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

THE COURT: Okay.

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

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

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

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

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

MR. PARKER: Yes, Your Honor.

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

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

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

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

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

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

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

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

THE COURT: Under the continuity of enterprise, could they not exclude liability contracturally?

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

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

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

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

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

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

THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Do you have any argument for getting into

the [indiscernible] tests?

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

THE COURT: All right.

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

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

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

Thank you, Your Honor.

THE COURT: Thank you.

Yes, sir, do you have some reply?

MR. OSBORNE: Very briefly, Your Honor.

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

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

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

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

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

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

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

Any other questions on that point, Your Honor?

THE COURT: No, sir.

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

an insurance policy involved for the prior entity.

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

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

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

THE COURT: Thank you.

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

MR. OSBORNE: Thank you.

MR. PARKER: Thank you, Your Honor.

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

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

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

December 9, 2025

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	CIVIL ACTION NO.: 2021-CP-19-____
	)	
Barry Lanham and Obvia Gamble-Lanham, Plaintiffs,	)	
	)	**SUMMONS** ***(Jury Trial Demanded)***
v.	)	
	)	
Wumag Texroll GmbH & Co. KG, Defendant.	)	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, Peters, Murdaugh, Parker, Eltzroth & Detirck, P.A. at 101 Mulberry Street East, P.O. Box 457, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: _/s/William F. Barnes, III_____
William F. Barnes, III (SC Bar #78220)
John E. Parker (SC Bar #4442)
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
wbarnes@pmped.com
jparker@pmped.com
Attorneys for Plaintiffs

January 6, 2021
Hampton, South Carolina

ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	CIVIL ACTION NO.: 2021-CP-19-_____
	)	
Barry Lanham and Obvia Gamble-Lanham, Plaintiffs,	)	
	)	**COMPLAINT** ***(Jury Trial Demanded)***
v.	)	
	)	
Wumag Texroll GmbH & Co. KG, Defendant.	)	

The Plaintiffs allege:

1. The Plaintiffs, Barry Lanham and Obvia Gamble-Lanham ("Plaintiffs" or "Lanham") are residents of Edgefield County, South Carolina.

2. Obvia Gamble-Lanham is the wife of Barry Lanham.

3. The Defendant, Wumag Texroll GmbH & Co. KG (hereinafter referred to as "Wumag Texroll") is a foreign corporation organized and maintaining its principal place of business in a state other than South Carolina. Wumag Texroll is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling, importing and distributing steel industrial machines including, but not limited to, the Laminating Calender Line machine ("Subject Machine") that forms the basis of this action.

4. Venue is proper in Edgefield County pursuant to S.C. Code Ann. § 15-7-30 as it is the county where the most substantial part of the act or omission giving rise to the cause of action occurred.

5. Wumag Texroll is subject to the jurisdiction of this Court.

6. Wumag Texroll designed and manufactured a Laminating Calender Line machine, machine number 206460, that was subsequently sold, delivered, and installed at Bondex, Inc. in Trenton, South Carolina.

ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

7. After the Subject Machine was installed by Wumag Texroll, employees and/or agents of Wumag Texroll visited the Bondex plant in Trenton, SC and deactivated safety devices on the Subject Machine.

8. On January 22, 2018, Plaintiff, Barry Lanham, a Bondex, Inc. employee, was cleaning the machine when his left arm and hand was pulled into the Machine, resulting in severe and permanent damage to his left arm and hand.

FIRST CAUSE OF ACTION
(Negligence)

9. The above allegations are repeated as if quoted verbatim.

10. The injuries and damages sustained by Plaintiff are the direct and proximate result of the negligence, carelessness, recklessness, and wanton conduct of Wumag Texroll in the following particulars:

a. In designing a machine that was unsafe and unreasonably dangerous;

b. In manufacturing a machine that was unsafe and unreasonably dangerous;

c. In selling a machine that was unsafe and unreasonably dangerous;

d. In installing a machine that was unsafe and unreasonably dangerous;

e. In failing to warn the Plaintiff of the dangerous and defective condition of the machine;

f. In failing to incorporate certain safeguards on the machine that would have prevented the Plaintiff's injury;

g. In deactivating safety devices on the Subject Machine that would have prevented Plaintiff's injury;

h. In designing, manufacturing, selling, and installing a machine that could not be cleaned without endangering the person so cleaning;

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

j. In designing, manufacturing, selling, installing, and altering a machine in utter disregard of the safety of Plaintiff;

k. In failing to provide instructions about how to properly clean the machine; and

l. In such other particulars as the evidence and testimony may establish.

11. As a result of the aforementioned events, Plaintiff suffered severe and permanent injury to this left arm and hand, and other parts of his body from which he has suffered and will continue to suffer physical pain; mental anguish and emotional distress; has expended and will in the future expend monies for medical care and treatment; caused to lose the enjoyment of life; and has lost income.

12. By reason of and in consequence of the above-mentioned negligent, careless, reckless, willful, and wanton conduct of Wumag Texroll, Plaintiff has suffered the injuries, losses, and damages complained of for which Wumag Texroll is liable.

SECOND CAUSE OF ACTION
(Strict Liability pursuant to S.C. Code Ann. § 15-73-10, et seq.)

13. The above allegations are repeated as if quoted verbatim.

14. Plaintiff's injuries occurred because the Machine was designed, manufactured, and sold by Wumag Texroll in a defective condition unreasonably dangerous to the Plaintiff.

15. Wumag Texroll designed, manufactured, and sold the Machine in a defective and unreasonably dangerous condition.

16. At the time of Plaintiff's injury, the Machine was in substantially the same condition as it was when it was installed by Defendant.

17. As a direct and proximate result of the defective and unreasonably dangerous condition of Defendant's machine, Plaintiff suffered the injuries and damages complained of for which Defendant is strictly liable, pursuant to S.C. Code Ann. § 15-73-10, to Plaintiff in an amount to be ascertained by the jury at the trial of this action.

ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

THIRD CAUSE OF ACTION
(Breach of Express and Implied Warranties)

18. The above allegations are repeated as if quoted verbatim.

19. Wumag Texroll expressly and impliedly warranted that the Machine it sold was merchantable and fit for ordinary use.

20. Wumag Texroll breached express and implied warranties in that the Machine it designed, manufactured, sold, and installed and, which was used by the Plaintiff, was not merchantable and was unfit for ordinary, normal use.

21. The breach of Wumag Texroll's express and implied warranties in the sale of the Machine was the proximate cause of the damages Plaintiff sustained for which Defendant is liable.

FOURTH CAUSE OF ACTION
(Loss of Consortium)

22. The Plaintiff, Obvia Gamble-Lanham, due to the injuries sustained by her husband, has suffered the loss of his consortium, support, and care.

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

[SIGNATURE PAGE TO FOLLOW]

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: _/s/William F. Barnes, III_____
William F. Barnes, III (SC Bar #78220)
John E. Parker (SC Bar #4442)
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
wbarnes@pmped.com
jparker@pmped.com
Attorneys for Plaintiffs

January 6, 2021
Hampton, South Carolina

ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Aug 05 4:16 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiffs, vs. Wumag Texroll GmbH & Co. KG, Defendant.	IN THE COURT OF COMMON PLEAS Case No. 2021-CP-19-00005 **WUMAG TEXROLL GMBHH & CO. KG F/K/A KELZENBERG + CO. GMBH & CO. KG'S ANSWER TO COMPLAINT**

Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG ("Kelzenberg-Wumag" or "Defendant"), identified in the Complaint as Wumag Texroll GmbH & Co. KG, by and through its undersigned counsel, expressly denying each and every allegation not specifically admitted herein, hereby files its Answer to the Complaint of Plaintiffs Barry Lanham and Obvia Gamble-Lanham ("Plaintiffs").

1. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 1 of the Complaint and, therefore, denies the same and demands strict proof thereof.

2. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 2 of the Complaint and, therefore, denies the same and demands strict proof thereof.

3. Responding to the allegations of Paragraph 3 of the Complaint, Kelzenberg-Wumag admits only that it is a German business that, among other things, manufacturers industrial machines. Kelzenberg-Wumag denies the remaining allegations of Paragraph 3 of the Complaint, including the allegation that it manufactured, designed, tested, marketed, certified, supplied, sold, imported, and/or distributed the Laminating Calender Line machine that forms the basis of this action (the "Machine").

ELECTRONICALLY FILED - 2022 Aug 05 4:16 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

4. The allegations of Paragraph 4 of the Complaint constitute legal conclusions which require no response from Kelzenberg-Wumag.

5. Kelzenberg-Wumag denies the allegations of Paragraph 5 of the Complaint.

6. Kelzenberg-Wumag denies the allegations of Paragraph 6 of the Complaint.

7. Kelzenberg-Wumag denies the allegations of Paragraph 7 of the Complaint.

8. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 8 of the Complaint and, therefore, denies the same and demands strict proof thereof.

AS TO THE FIRST CAUSE OF ACTION
(Negligence)

9. Responding to the allegations of Paragraph 9 of the Complaint, Kelzenberg-Wumag realleges its responses to the preceding paragraphs as if repeated herein verbatim.

10. Kelzenberg-Wumag denies the allegations of Paragraph 10 of the Complaint, including its subparts.

11. Kelzenberg-Wumag denies the allegations of Paragraph 11 of the Complaint.

12. Kelzenberg-Wumag denies the allegations of Paragraph 12 of the Complaint.

AS TO THE SECOND CAUSE OF ACTION
(Strict Liability Pursuant to S.C. Code Ann. § 15-73-10, *et seq*.)

13. Responding to the allegations of Paragraph 13 of the Complaint, Kelzenberg-Wumag realleges its responses to the preceding paragraphs as if repeated herein verbatim.

14. Kelzenberg-Wumag denies the allegations of Paragraph 14 of the Complaint.

15. Kelzenberg-Wumag denies the allegations of Paragraph 15 of the Complaint.

16. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the remaining allegations of Paragraph 16 of the Complaint and, therefore, denies the same and demand strict proof thereof.

ELECTRONICALLY FILED - 2022 Aug 05 4:16 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

17. Kelzenberg-Wumag denies the allegations of Paragraph 17 of the Complaint.

AS TO THE THIRD CAUSE OF ACTION
(Breach of Express and Implied Warranties)

18. Responding to the allegations of Paragraph 18 of the Complaint, Kelzenberg-Wumag realleges its responses to the preceding paragraphs as if repeated herein verbatim.

19. Kelzenberg-Wumag denies the allegations of Paragraph 19 of the Complaint.

20. Kelzenberg-Wumag denies the allegations of Paragraph 20 of the Complaint.

21. Kelzenberg-Wumag denies the allegations of Paragraph 21 of the Complaint.

AS TO THE FOURTH CAUSE OF ACTION
(Loss of Consortium)

22. Responding to the allegations of Paragraph 22 of the Complaint, Kelzenberg-Wumag realleges its responses to the preceding paragraphs as if repeated herein verbatim.

23. Kelzenberg-Wumag denies the allegations of Paragraph 23 of the Complaint.

24. Responding to the WHEREFORE clause following Paragraph 23 of the Complaint, Kelzenberg-Wumag denies any and all liability to Plaintiffs and denies that Plaintiffs are entitled to damages or any other relief.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

25. Plaintiffs' Complaint should be dismissed, in whole or in part, to the extent it fails to state facts sufficient to constitute a cause of action upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

26. Plaintiffs' damages, if any exist and are proven at trial, were proximately caused by the acts or omissions of third parties over whom Kelzenberg-Wumag had no control, and not by the acts or omissions of Kelzenberg-Wumag.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

27. Plaintiffs' damages, if any exist and are proven at trial, resulted from independent, unforeseeable, superseding, and/or intervening causes unrelated to any conduct of Kelzenberg-Wumag.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

28. Plaintiffs' claims should be dismissed for lack of service of process and/or insufficient service of process.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

29. Plaintiffs' claims should be dismissed for lack of personal jurisdiction.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

30. Plaintiffs' claims are barred by the statute of limitations.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

31. Upon information and belief, any express or implied warranties were limited in duration and expired prior to Plaintiffs' alleged injuries.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

32. Plaintiffs' claims are barred or should be dismissed by virtue of the doctrine of spoliation of evidence.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

33. Plaintiffs' claims are barred, in whole or in part, by any alteration, modification, or misuse of the Machine, by Plaintiffs or any other third parties, for which Kelzenberg-Wumag cannot be held responsible.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

34. Plaintiffs' injuries and damages, if any, were due to improper use or misuse of the Machine by Barry Lanham, for which Kelzenberg-Wumag is not liable.

ELECTRONICALLY FILED - 2022 Aug 05 4:16 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Aug 05 4:16 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

35. To the extent Plaintiffs' claims or the issues raised by Plaintiffs' claims have been previously litigated, Plaintiffs' claims are barred, in whole or in part, from any recover under the doctrines of res judicata and/or collateral estoppel.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

36. Plaintiffs' claims and those of anyone they purport to represent are barred to the extent they have been released through settlement in any prior litigation.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

37. Any recovery against Kelzenberg-Wumag is barred or limited under the principles of assumption of the risk and informed consent.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

38. Any recovery against Kelzenberg-Wumag under a theory of negligence is barred because at all times relevant to this Complaint, Kelzenberg-Wumag did not owe a duty of care to Plaintiffs.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

39. Kelzenberg-Wumag pleads and incorporate all rights, defenses, limitations on damages, and other privileges contained in S.C. Code Ann. § 15-38-10 *et seq.* as if fully stated herein.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

40. Plaintiffs' claims are barred in whole or in part by the sophisticated or knowledgeable user doctrine.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

41. Plaintiffs' claims should be dismissed for failure to join necessary persons, parties and/or entities pursuant to Rule 19 of the South Carolina Rules of Civil Procedure.

ELECTRONICALLY FILED - 2022 Aug 05 4:16 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

42. Plaintiffs' claims, injuries, and damages, if any, are premised in whole or in part on the actions of parties who have not been joined in this action. Accordingly, any damages awarded to Plaintiffs should be barred or limited under the non-party fault provisions of South Carolina law.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

43. Kelzenberg-Wumag would show the Court that no act or omission of Kelzenberg-Wumag, or any agent or employee thereof, proximately caused any injuries to the Plaintiffs, which therefore bars the Plaintiffs from any recovery.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

44. Plaintiffs' claims are barred by one, or more, of the equitable doctrines of laches, waiver, estoppel, and/or unclean hands.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

45. Plaintiffs' claims are barred in whole or in part to the extent Plaintiffs failed to mitigate damages.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

46. To the extent Plaintiffs may seek punitive damages, Plaintiffs are not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

(a) the judiciary's ability to correct a punitive damage award at the appellate level only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

(b) any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

(c) to the extent an award of punitive damages is excessive, such award violates due process guarantees;

(d) the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

(e) even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and

(f) Plaintiffs' claims for punitive damages violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth and status of Kelzenberg-Wumag.

Furthermore, even if an award of punitive damages were held to be constitutional in this case, punitive damages are inappropriate in this case as Kelzenberg-Wumag engaged in no malicious, wrongful or intentional conduct upon which an award of such damages could be based.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

47. To the extent Plaintiffs may seek punitive damages, Plaintiffs' claim for punitive damages are limited by S.C. Code Ann. § 15-32-530. Further, pursuant to S.C. Code Ann. § 15-32-520, Kelzenberg-Wumag hereby request trial bifurcation on the issues of actual and punitive damages. To the extent the Court submits the question of punitive damages to the jury, the award of punitive damages, if any, is subject to the caps and limitations set forth in S.C. Code Ann. § 15-32-530, and Kelzenberg-Wumag pleads and incorporate all defenses, limitations on damages, and other privileges contained in S.C. Code Ann. §§ 15-32-520 and 15-32-530 as if fully stated herein.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

48. Plaintiffs' claims against Kelzenberg-Wumag are barred because Kelzenberg-Wumag did not assume any liabilities of Wumag Texroll GmbH & Co. KG.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

49. Kelzenberg-Wumag are not liable for any damages alleged by Plaintiffs that were pre-existing conditions.

ELECTRONICALLY FILED - 2022 Aug 05 4:16 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Aug 05 4:16 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

50. Kelzenberg-Wumag would allege and show that even if Kelzenberg-Wumag were negligent in any respect, which is denied, Plaintiffs were comparatively negligent and/or otherwise at fault, which fault exceeded any fault on the part of Kelzenberg-Wumag, which is denied, and which fault proximately caused Plaintiffs' alleged damages, if any, which are denied, so as to bar any recovery herein pursuant to the doctrine of comparative negligence. Alternatively, Plaintiffs were comparatively negligent and/or otherwise at fault in an amount equal to or less than any fault of Kelzenberg-Wumag, which is denied, which fault proximately caused Plaintiffs' alleged damages, if any, which are denied, so as to proportionally reduce any recovery herein pursuant to the doctrine of comparative negligence.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

51. At all times Kelzenberg-Wumag acted in good faith, in accordance with applicable policies and procedures and in compliance with South Carolina law.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

52. Kelzenberg-Wumag hereby gives notice that it intends to rely upon any other defenses that may become available or apparent during the discovery proceedings in this matter, hereby reserves its right to amend its Answer and to assert any such defenses, and hereby preserves each and every defense, including but not limited to the defenses set forth in the South Carolina Rules of Civil Procedure.

WHEREFORE, Kelzenberg-Wumag prays to the Court that:

1. Plaintiffs' Complaint be dismissed with prejudice;

2. Judgment be entered in favor of Kelzenberg-Wumag;

3. Plaintiffs recover nothing from Kelzenberg-Wumag;

4. The costs of this action be taxed against Plaintiffs and that Kelzenberg-Wumag recover its costs in defending this action, including, but not limited to, attorneys' fees as allowed by law; and

5. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/ Robert C. Osborne III

Robert H. Jordan (SC Bar No.: 13612)
Email: robertjordan@parkerpoe.com
Robert C. Osborne III (SC Bar No.: 101827)
Email: robertosborne@parkerpoe.com
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Post Office Box 160 (29402)
Charleston, SC 29401
Phone: (843) 727-2650
Fax: (843) 727-2680

Attorneys for Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG

August 5, 2022
Charleston, South Carolina

ELECTRONICALLY FILED - 2022 Aug 05 4:16 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiffs, vs. Wumag Texroll GmbH & Co. KG, Defendant,	IN THE COURT OF COMMON PLEAS Case No. 2021-CP-19-00005 **WUMAG TEXROLL GMBHH & CO. KG F/K/A KELZENBERG + CO. GMBH & CO. KG'S AMENDED ANSWER TO COMPLAINT AND THIRD-PARTY COMPLAINT**
Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG, Third-Party Plaintiff, vs. Wumag Texroll GmbH & Co. KG, Third-Party Defendant.	

Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG ("Kelzenberg-Wumag" or "Defendant"), identified in the Complaint as Wumag Texroll GmbH & Co. KG, by and through its undersigned counsel, expressly denying each and every allegation not specifically admitted herein and expressly reserving its objection to personal jurisdiction, hereby files its Answer to the Complaint of Plaintiffs Barry Lanham and Obvia Gamble-Lanham ("Plaintiffs").

1. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 1 of the Complaint and, therefore, denies the same and demands strict proof thereof.

2. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 2 of the Complaint and, therefore, denies the same and demands strict proof thereof.

ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

3. Responding to the allegations of Paragraph 3 of the Complaint, Kelzenberg-Wumag admits only that it is a German business that, among other things, manufactures industrial machines. Kelzenberg-Wumag denies the remaining allegations of Paragraph 3 of the Complaint, including the allegation that it manufactured, designed, tested, marketed, certified, supplied, sold, imported, and/or distributed the Laminating Calender Line machine that forms the basis of this action (the "Machine").

4. The allegations of Paragraph 4 of the Complaint constitute legal conclusions which require no response from Kelzenberg-Wumag.

5. Kelzenberg-Wumag denies the allegations of Paragraph 5 of the Complaint.

6. Kelzenberg-Wumag denies the allegations of Paragraph 6 of the Complaint.

7. Kelzenberg-Wumag denies the allegations of Paragraph 7 of the Complaint.

8. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 8 of the Complaint and, therefore, denies the same and demands strict proof thereof.

AS TO THE FIRST CAUSE OF ACTION
(Negligence)

9. Responding to the allegations of Paragraph 9 of the Complaint, Kelzenberg-Wumag realleges its responses to the preceding paragraphs as if repeated herein verbatim.

10. Kelzenberg-Wumag denies the allegations of Paragraph 10 of the Complaint, including its subparts.

11. Kelzenberg-Wumag denies the allegations of Paragraph 11 of the Complaint.

12. Kelzenberg-Wumag denies the allegations of Paragraph 12 of the Complaint.

AS TO THE SECOND CAUSE OF ACTION
(Strict Liability Pursuant to S.C. Code Ann. § 15-73-10, *et seq*.)

ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

13. Responding to the allegations of Paragraph 13 of the Complaint, Kelzenberg-Wumag realleges its responses to the preceding paragraphs as if repeated herein verbatim.

14. Kelzenberg-Wumag denies the allegations of Paragraph 14 of the Complaint.

15. Kelzenberg-Wumag denies the allegations of Paragraph 15 of the Complaint.

16. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the remaining allegations of Paragraph 16 of the Complaint and, therefore, denies the same and demand strict proof thereof.

17. Kelzenberg-Wumag denies the allegations of Paragraph 17 of the Complaint.

AS TO THE THIRD CAUSE OF ACTION
(Breach of Express and Implied Warranties)

18. Responding to the allegations of Paragraph 18 of the Complaint, Kelzenberg-Wumag realleges its responses to the preceding paragraphs as if repeated herein verbatim.

19. Kelzenberg-Wumag denies the allegations of Paragraph 19 of the Complaint.

20. Kelzenberg-Wumag denies the allegations of Paragraph 20 of the Complaint.

21. Kelzenberg-Wumag denies the allegations of Paragraph 21 of the Complaint.

AS TO THE FOURTH CAUSE OF ACTION
(Loss of Consortium)

22. Responding to the allegations of Paragraph 22 of the Complaint, Kelzenberg-Wumag realleges its responses to the preceding paragraphs as if repeated herein verbatim.

23. Kelzenberg-Wumag denies the allegations of Paragraph 23 of the Complaint.

24. Responding to the WHEREFORE clause following Paragraph 23 of the Complaint, Kelzenberg-Wumag denies any and all liability to Plaintiffs and denies that Plaintiffs are entitled to damages or any other relief.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

25. Plaintiffs' Complaint should be dismissed, in whole or in part, to the extent it fails to state facts sufficient to constitute a cause of action upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

26. Plaintiffs' damages, if any exist and are proven at trial, were proximately caused by the acts or omissions of third parties over whom Kelzenberg-Wumag had no control, and not by the acts or omissions of Kelzenberg-Wumag.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

27. Plaintiffs' damages, if any exist and are proven at trial, resulted from independent, unforeseeable, superseding, and/or intervening causes unrelated to any conduct of Kelzenberg-Wumag.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

28. Plaintiffs' claims should be dismissed for lack of service of process and/or insufficient service of process.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

29. Plaintiffs' claims should be dismissed for lack of personal jurisdiction.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

30. Plaintiffs' claims are barred by the statute of limitations.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

31. Upon information and belief, any express or implied warranties were limited in duration and expired prior to Plaintiffs' alleged injuries.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

32. Plaintiffs' claims are barred or should be dismissed by virtue of the doctrine of spoliation of evidence.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

33. Plaintiffs' claims are barred, in whole or in part, by any alteration, modification, or misuse of the Machine, by Plaintiffs or any other third parties, for which Kelzenberg-Wumag cannot be held responsible.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

34. Plaintiffs' injuries and damages, if any, were due to improper use or misuse of the Machine by Barry Lanham, for which Kelzenberg-Wumag is not liable.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

35. To the extent Plaintiffs' claims or the issues raised by Plaintiffs' claims have been previously litigated, Plaintiffs' claims are barred, in whole or in part, from any recover under the doctrines of res judicata and/or collateral estoppel.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

36. Plaintiffs' claims and those of anyone they purport to represent are barred to the extent they have been released through settlement in any prior litigation.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

37. Any recovery against Kelzenberg-Wumag is barred or limited under the principles of assumption of the risk and informed consent.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

38. Any recovery against Kelzenberg-Wumag under a theory of negligence is barred because at all times relevant to this Complaint, Kelzenberg-Wumag did not owe a duty of care to Plaintiffs.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

39. Kelzenberg-Wumag pleads and incorporate all rights, defenses, limitations on damages, and other privileges contained in S.C. Code Ann. § 15-38-10 *et seq.* as if fully stated herein.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

40. Plaintiffs' claims are barred in whole or in part by the sophisticated or knowledgeable user doctrine.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

41. Plaintiffs' claims should be dismissed for failure to join necessary persons, parties and/or entities pursuant to Rule 19 of the South Carolina Rules of Civil Procedure.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

42. Plaintiffs' claims, injuries, and damages, if any, are premised in whole or in part on the actions of parties who have not been joined in this action. Accordingly, any damages awarded to Plaintiffs should be barred or limited under the non-party fault provisions of South Carolina law.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

43. Kelzenberg-Wumag would show the Court that no act or omission of Kelzenberg-Wumag, or any agent or employee thereof, proximately caused any injuries to the Plaintiffs, which therefore bars the Plaintiffs from any recovery.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

44. Plaintiffs' claims are barred by one, or more, of the equitable doctrines of laches, waiver, estoppel, and/or unclean hands.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

45. Plaintiffs' claims are barred in whole or in part to the extent Plaintiffs failed to mitigate damages.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

46. To the extent Plaintiffs may seek punitive damages, Plaintiffs are not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

(a) the judiciary's ability to correct a punitive damage award at the appellate level only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

(b) any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

(c) to the extent an award of punitive damages is excessive, such award violates due process guarantees;

(d) the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

(e) even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and

(f) Plaintiffs' claims for punitive damages violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth and status of Kelzenberg-Wumag.

Furthermore, even if an award of punitive damages were held to be constitutional in this case, punitive damages are inappropriate in this case as Kelzenberg-Wumag engaged in no malicious, wrongful or intentional conduct upon which an award of such damages could be based.

ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

47. To the extent Plaintiffs may seek punitive damages, Plaintiffs' claim for punitive damages are limited by S.C. Code Ann. § 15-32-530. Further, pursuant to S.C. Code Ann. § 15-32-520, Kelzenberg-Wumag hereby request trial bifurcation on the issues of actual and punitive damages. To the extent the Court submits the question of punitive damages to the jury, the award of punitive damages, if any, is subject to the caps and limitations set forth in S.C. Code Ann. § 15-32-530, and Kelzenberg-Wumag pleads and incorporate all defenses, limitations on damages, and other privileges contained in S.C. Code Ann. §§ 15-32-520 and 15-32-530 as if fully stated herein.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

48. Plaintiffs' claims against Kelzenberg-Wumag are barred because Kelzenberg-Wumag did not assume any liabilities of Wumag Texroll GmbH & Co. KG.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

49. Kelzenberg-Wumag is not liable for any damages alleged by Plaintiffs that were pre-existing conditions.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

50. Kelzenberg-Wumag would allege and show that even if Kelzenberg-Wumag was negligent in any respect, which is denied, Plaintiffs were comparatively negligent and/or otherwise at fault, which fault exceeded any fault on the part of Kelzenberg-Wumag, which is denied, and which fault proximately caused Plaintiffs' alleged damages, if any, which are denied, so as to bar any recovery herein pursuant to the doctrine of comparative negligence. Alternatively, Plaintiffs were comparatively negligent and/or otherwise at fault in an amount equal to or less than any fault of Kelzenberg-Wumag, which is denied, which fault proximately caused Plaintiffs' alleged damages, if any, which are denied, so as to proportionally reduce any recovery herein pursuant to the doctrine of comparative negligence.

ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

51. At all times Kelzenberg-Wumag acted in good faith, in accordance with applicable policies and procedures and in compliance with South Carolina law.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

52. Kelzenberg-Wumag hereby gives notice that it intends to rely upon any other defenses that may become available or apparent during the discovery proceedings in this matter, hereby reserves its right to amend its Answer and to assert any such defenses, and hereby preserves each and every defense, including but not limited to the defenses set forth in the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING BY WAY OF A THIRD-PARTY COMPLAINT

53. Kelzenberg-Wumag reiterates each and every prior paragraph of this Amended Answer and Third-Party Complaint as set forth verbatim herein.

54. Notwithstanding this Third-Party Complaint, Kelzenberg-Wumag expressly reserves, and does not waive, its objections to personal jurisdiction and service.

PARTIES AND JURISDICTION

55. Kelzenberg-Wumag is a German company that, among other things, manufactures industrial machines.

56. Kelzenberg-Wumag is registered at the district court of Düren, Germany under number HRA 224 and has a principal place of business is in Düren, Germany.

57. Kelzenberg-Wumag came into existence in September 2019, eighteen months after the events giving rise to this Complaint occurred.

58. Wumag Texroll GmbH & Co. KG ("Wumag") is a German company which, during the time period relevant hereto, manufactured and sold industrial machines.

ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

59. Upon information and belief, Wumag designed, manufactured and/or sold the machine which is the subject of this action (the "Machine").

60. By virtue of Wumag designing, manufacturing and/or selling the machine which is the subject of this action, directing its products into South Carolina and purposefully availing itself of the privilege of conducting business in South Carolina, Wumag is subject to personal jurisdiction in the state.

FACTUAL BACKGROUND

61. On September 1, 2019, insolvency proceedings concerning the assets of Wumag Texroll GmbH & Co. KG ("Wumag ") commenced in the district court of Krefeld, Germany.

62. Prior to being insolvent, Wumag was registered at the district court of Krefeld, Germany under number HRA 3719.

63. On or around September 18, 2019, Kelzenberg-Wumag entered into an asset purchase agreement to purchase the assets of Wumag out of insolvency.

64. Pursuant to the asset purchase agreement, Kelzenberg-Wumag purchased certain assets of Wumag.

65. Ownership of the purchased assets was transferred from Wumag to Kelzenberg-Wumag on or around October 1, 2019.

66. Kelzenberg-Wumag neither purchased nor assumed any liabilities of Wumag.

67. Following the asset purchase, for marketing reasons, Kelzenberg-Wumag adopted the "Wumag Texroll GmbH & Co. KG" brand name.

FOR A FIRST CAUSE OF ACTION
(Indemnity)

68. Kelzenberg-Wumag reiterates each and every prior paragraph of this Amended Answer and Third-Party Complaint as set forth verbatim herein.

ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

69. The Complaint of Plaintiffs Barry Lanham and Obvia Gamble-Lanham asserts claims arising out of a workplace accident alleged to have occurred on January 22, 2018 at a Bondex, Inc. plant in Trenton, South Carolina.

70. More specifically, Plaintiffs' Complaint alleges that Plaintiff Barry Lanham was injured when his left arm and hand were pulled into the Machine, resulting in severe and permanent damage to his left arm and hand.

71. Plaintiffs' claims against Kelzenberg-Wumag are all based on the allegation that Kelzenberg-Wumag designed, manufactured, sold and/or installed the Machine.

72. However, it is undisputed that Kelzenberg-Wumag did not design, manufacture, sell and/or install the Machine.

73. In fact, Kelzenberg-Wumag did not come into existence until September 2019, 18 months after the accident and alleged injuries which are the subject of this action occurred.

74. Kelzenberg-Wumag denies the substantive allegations in Plaintiffs' Complaint and has denies any and all liability to Plaintiffs.

75. As set forth above, Kelzenberg-Wumag is without fault with respect to the claims asserted by Plaintiffs.

76. To the extent that Kelzenberg-Wumag is held liable to Plaintiffs in this action, such liability would be a direct and proximate result of the wrongful acts, omissions, negligence, recklessness, gross negligence, willful, or wanton conduct of Wumag.

77. A special relationship exists between Kelzenberg-Wumag and Wumag.

78. A right of indemnity exists in favor of Kelzenberg-Wumag because it is without fault in this matter and it has been forced to defend itself and is exposed to liability due to the alleged wrongful acts, omissions, negligence, breaches, or representations of Wumag.

ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

79. Wumag must indemnify Kelzenberg-Wumag for the amount of any judgment entered against Kelzenberg-Wumag, for any amount Kelzenberg-Wumag pays Plaintiffs in settlement of Plaintiffs' claims, and for all attorneys' fees, costs and other expenses incurred by Kelzenberg-Wumag as a result of this action.

WHEREFORE, Kelzenberg-Wumag prays to the Court that:

1. Plaintiffs' Complaint be dismissed with prejudice;
2. Judgment be entered in favor of Kelzenberg-Wumag;
3. Plaintiffs recover nothing from Kelzenberg-Wumag;
4. Judgment be entered in favor of Kelzenberg-Wumag on its claim for indemnity against Wumag;
5. Kelzenberg-Wumag is awarded its attorneys' fees and costs; and
6. For such other and further relief as the Court may deem just and proper.

s/ Robert C. Osborne III
Robert H. Jordan (SC Bar No.: 13612)
Email: robertjordan@parkerpoe.com
Robert C. Osborne III (SC Bar No.: 101827)
Email: robertosborne@parkerpoe.com
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Post Office Box 160 (29402)
Charleston, SC 29401
Phone: (843) 727-2650
Fax: (843) 727-2680

Attorneys for Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG

May 2, 2023
Charleston, South Carolina

ELECTRONICALLY FILED - 2024 Feb 23 2:18 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS IN THE COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD	CIVIL ACTION NO.: 2021-CP-19-00005
Barry Lanham and Obvia Gamble-Lanham, Plaintiffs, v. Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co.: GmbH & Co. KG and Wumag Texroll GmbH & Co. KG, Defendants.	**AMENDED SUMMONS** (***Jury Trial Demanded***)
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.	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, Parker Law Group, LLP, at 101 Mulberry Street East, P.O. Box 487, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PARKER LAW GROUP, LLP

BY: _/s/John E. Parker, Jr._____
John E. Parker
John E. Parker, Jr.
Neil E. Alger
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
jparker@parkerlawgroupsc.com
jayparker@parkerlawgroupsc.com
nalger@parkerlawgroupsc.com

Attorneys for Plaintiffs

February 23, 2024
Hampton, South Carolina

ELECTRONICALLY FILED - 2024 Feb 23 2:18 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2024 Feb 23 2:18 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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.	)	
	)	
Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co.: GmbH & Co. KG and Wumag Texroll GmbH & Co. KG,	)	**AMENDED COMPLAINT** (***Jury Trial Demanded***)
	)	
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.	)	

The Plaintiffs allege that:

1. The Plaintiffs, Barry Lanham and Obvia Gamble-Lanham ("Plaintiffs" or "Lanham") are residents of Edgefield County, South Carolina.

2. Obvia Gamble-Lanham is the wife of Barry Lanham.

3. The Defendant, Wumag Texroll GmbH & Co. KG (hereinafter referred to as "Wumag") is a foreign corporation organized and maintaining its principal place of business in a state other than South Carolina. Wumag is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling,

ELECTRONICALLY FILED - 2024 Feb 23 2:18 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

importing and distributing steel industrial machines including, but not limited to, the Laminating Calender Line machine ("Subject Machine") that forms the basis of this action.

4. The Defendant, Wumag Texroll GmbH & Co. KG f/k/a Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co.: GmbH & Co. KG ("Kelzenberg") is a foreign corporation organized and maintaining its principal place of business in a state other than South Carolina. Kelzenberg is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling, importing and distributing steel industrial machines including, but not limited to, the Laminating Calender Line machine ("Subject Machine") that forms the basis of this action. Kelzenberg is liable for the acts and omissions of Wumag under German principles of successor liability.

5. Venue is proper in Edgefield County pursuant to S.C. Code Ann. § 15-7-30 as it is the county where the most substantial part of the act or omission giving rise to the cause of action occurred.

6. Wumag and Kelzenberg are subject to the jurisdiction of this Court.

7. Wumag and Kelzenberg designed and manufactured a Laminating Calender Line machine, machine number 206460, that was subsequently sold, delivered, and installed at Bondex, Inc. in Trenton, South Carolina.

8. After the Subject Machine was installed by Wumag and Kelzenberg, employees and/or agents of Wumag and Kelzenberg visited the Bondex plant in Trenton, SC and deactivated safety devices on the Subject Machine.

9. On January 22, 2018, Plaintiff, Barry Lanham, a Bondex, Inc. employee, was cleaning the machine when his left arm and hand was pulled into the Machine, resulting in severe and permanent damage to his left arm and hand.

FIRST CAUSE OF ACTION
(Negligence)

10. The above allegations are repeated as if quoted verbatim.

11. The injuries and damages sustained by Plaintiff are the direct and proximate result of the negligence, carelessness, recklessness, and wanton conduct of Wumag and Kelzenberg in the following particulars:

a. In designing a machine that was unsafe and unreasonably dangerous;

b. In manufacturing a machine that was unsafe and unreasonably dangerous;

c. In selling a machine that was unsafe and unreasonably dangerous;

d. In installing a machine that was unsafe and unreasonably dangerous;

e. In failing to warn the Plaintiff of the dangerous and defective condition of the machine;

f. In failing to incorporate certain safeguards on the machine that would have prevented the Plaintiff's injury;

g. In deactivating safety devices on the Subject Machine that would have prevented Plaintiff's injury;

h. In designing, manufacturing, selling, and installing a machine that could not be cleaned without endangering the person so cleaning;

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

ELECTRONICALLY FILED - 2024 Feb 23 2:18 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

j. In designing, manufacturing, selling, installing, and altering a machine in utter disregard of the safety of Plaintiff;

k. In failing to provide instructions about how to properly clean the machine; and

l. In such other particulars as the evidence and testimony may establish.

12. As a result of the aforementioned events, Plaintiff suffered severe and permanent injury to his left arm and hand, and other parts of his body from which he has suffered and will continue to suffer physical pain; mental anguish and emotional distress; has expended and will in the future expend monies for medical care and treatment; caused to lose the enjoyment of life; and has lost income.

13. By reason of and in consequence of the above-mentioned negligent, careless, reckless, willful, and wanton conduct of Wumag and Kelzenberg, Plaintiff has suffered the injuries, losses, and damages complained of for which Wumag and Kelzenberg are liable.

SECOND CAUSE OF ACTION
(Strict Liability pursuant to S.C. Code Ann. § 15-73-10, et seq.)

14. The above allegations are repeated as if quoted verbatim.

15. Plaintiff's injuries occurred because the Machine was designed, manufactured, and sold by Wumag and Kelzenberg in a defective condition unreasonably dangerous to the Plaintiff.

16. Wumag and Kelzenberg designed, manufactured, and sold the Machine in a defective and unreasonably dangerous condition.

ELECTRONICALLY FILED - 2024 Feb 23 2:18 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

17. At the time of Plaintiff's injury, the Machine was in substantially the same condition as it was when it was installed by Defendants.

18. As a direct and proximate result of the defective and unreasonably dangerous condition of Defendants' machine, Plaintiff suffered the injuries and damages complained of for which Defendants are strictly liable, pursuant to S.C. Code Ann. § 15-73-10, to Plaintiff in an amount to be ascertained by the jury at the trial of this action.

THIRD CAUSE OF ACTION
(Breach of Express and Implied Warranties)

19. The above allegations are repeated as if quoted verbatim.

20. Wumag and Kelzenberg expressly and impliedly warranted that the Machine they sold was merchantable and fit for ordinary use.

21. Wumag and Kelzenberg breached express and implied warranties in that the Machine it designed, manufactured, sold, and installed and, which was used by the Plaintiff, was not merchantable and was unfit for ordinary, normal use.

22. The breach of Wumag and Kelzenberg's express and implied warranties in the sale of the Machine was the proximate cause of the damages Plaintiff sustained for which Defendants are liable.

FOURTH CAUSE OF ACTION
(Loss of Consortium)

23. The Plaintiff, Obvia Gamble-Lanham, due to the injuries sustained by her husband, has suffered the loss of his consortium, support, and care.

ELECTRONICALLY FILED - 2024 Feb 23 2:18 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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

[Signature Page to Follow]

ELECTRONICALLY FILED - 2024 Feb 23 2:18 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PARKER LAW GROUP, LLP

BY: /s/John E. Parker, Jr.
John E. Parker
John E. Parker, Jr.
Neil E. Alger
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
jparker@parkerlawgroupsc.com
jayparker@parkerlawgroupsc.com
nalger@parkerlawgroupsc.com

Attorneys for Plaintiffs

February 23, 2024
Hampton, South Carolina

ELECTRONICALLY FILED - 2024 Feb 23 2:18 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2024 Mar 08 4:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiffs, vs. Wumag Texroll GmbH & Co. KG, Defendant,	IN THE COURT OF COMMON PLEAS Case No. 2021-CP-19-00005 **WUMAG TEXROLL GMBHH & CO. KG F/K/A KELZENBERG + CO. GMBH & CO. KG'S ANSWER TO AMENDED COMPLAINT AND CROSSCLAIMS**
Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG, Third-Party Plaintiff, vs. Wumag Texroll GmbH & Co. KG, Third-Party Defendant.	

Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG ("Kelzenberg-Wumag" or "Defendant"), identified in the Complaint as Wumag Texroll GmbH & Co. KG, by and through its undersigned counsel, expressly denying each and every allegation not specifically admitted herein and expressly reserving its objection to personal jurisdiction, hereby files its Answer to the Complaint of Plaintiffs Barry Lanham and Obvia Gamble-Lanham ("Plaintiffs").

1. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 1 and, therefore, denies the same and demands strict proof thereof.

2. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 2 and, therefore, denies the same and demands strict proof thereof.

3. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 3 and, therefore, denies the same and demands strict proof thereof.

ELECTRONICALLY FILED - 2024 Mar 08 4:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

4. Responding to the allegations of Paragraph 4, Kelzenberg-Wumag admits only that it is a German business that, among other things, manufactures industrial machines. Kelzenberg-Wumag denies the remaining allegations of Paragraph 4 and specifically denies that it manufactured, designed, tested, marketed, certified, supplied, sold, imported, and/or distributed the Laminating Calender Line machine that forms the basis of this action (the "Machine").

5. The allegations of Paragraph 5 Complaint constitute legal conclusions which require no response from Kelzenberg-Wumag.

6. Kelzenberg-Wumag denies the allegations of Paragraph 6.

7. Kelzenberg-Wumag denies the allegations of Paragraph 7 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 7 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

8. Kelzenberg-Wumag denies the allegations of Paragraph 8 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 8 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

9. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 9 of the Complaint and, therefore, denies the same and demands strict proof thereof.

AS TO THE FIRST CAUSE OF ACTION
(Negligence)

10. Responding to the allegations of Paragraph 10 of the Complaint, Kelzenberg-Wumag realleges its responses to the preceding paragraphs as if repeated herein verbatim.

11. Kelzenberg-Wumag denies the allegations of Paragraph 11 of the Complaint, including its subparts.

ELECTRONICALLY FILED - 2024 Mar 08 4:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

12. Kelzenberg-Wumag denies the allegations of Paragraph 12 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 12 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

13. Kelzenberg-Wumag denies the allegations of Paragraph 13 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 13 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

AS TO THE SECOND CAUSE OF ACTION
(Strict Liability Pursuant to S.C. Code Ann. § 15-73-10, *et seq*.)

14. Responding to the allegations of Paragraph 14 of the Complaint, Kelzenberg-Wumag realleges its responses to the preceding paragraphs as if repeated herein verbatim.

15. Kelzenberg-Wumag denies the allegations of Paragraph 15 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 15 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

16. Kelzenberg-Wumag denies the allegations of Paragraph 16 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 16 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

17. Kelzenberg-Wumag denies the allegations of Paragraph 17 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 17 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

ELECTRONICALLY FILED - 2024 Mar 08 4:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

18. Kelzenberg-Wumag denies the allegations of Paragraph 18 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 18 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

AS TO THE THIRD CAUSE OF ACTION
(Breach of Express and Implied Warranties)

19. Responding to the allegations of Paragraph 19 of the Complaint, Kelzenberg-Wumag realleges its responses to the preceding paragraphs as if repeated herein verbatim.

20. Kelzenberg-Wumag denies the allegations of Paragraph 20 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 20 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

21. Kelzenberg-Wumag denies the allegations of Paragraph 21 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 21 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

22. Kelzenberg-Wumag denies the allegations of Paragraph 22 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 22 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

AS TO THE FOURTH CAUSE OF ACTION
(Loss of Consortium)

23. Kelzenberg-Wumag denies the allegations of Paragraph 23 of the Complaint.

ELECTRONICALLY FILED - 2024 Mar 08 4:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

24. Responding to the WHEREFORE clause following Paragraph 23 of the Complaint, Kelzenberg-Wumag denies any and all liability to Plaintiffs and denies that Plaintiffs are entitled to damages or any other relief.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

25. Plaintiffs' Complaint should be dismissed, in whole or in part, to the extent it fails to state facts sufficient to constitute a cause of action upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

26. Plaintiffs' damages, if any exist and are proven at trial, were proximately caused by the acts or omissions of third parties over whom Kelzenberg-Wumag had no control, and not by the acts or omissions of Kelzenberg-Wumag.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

27. Plaintiffs' damages, if any exist and are proven at trial, resulted from independent, unforeseeable, superseding, and/or intervening causes unrelated to any conduct of Kelzenberg-Wumag.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

28. Plaintiffs' claims should be dismissed for lack of service of process and/or insufficient service of process.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

29. Plaintiffs' claims should be dismissed for lack of personal jurisdiction.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

30. Plaintiffs' claims are barred by the statute of limitations.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

ELECTRONICALLY FILED - 2024 Mar 08 4:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

31. Upon information and belief, any express or implied warranties were limited in duration and expired prior to Plaintiffs' alleged injuries.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

32. Plaintiffs' claims are barred or should be dismissed by virtue of the doctrine of spoliation of evidence.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

33. Plaintiffs' claims are barred, in whole or in part, by any alteration, modification, or misuse of the Machine, by Plaintiffs or any other third parties, for which Kelzenberg-Wumag cannot be held responsible.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

34. Plaintiffs' injuries and damages, if any, were due to improper use or misuse of the Machine by Barry Lanham, for which Kelzenberg-Wumag is not liable.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

35. To the extent Plaintiffs' claims or the issues raised by Plaintiffs' claims have been previously litigated, Plaintiffs' claims are barred, in whole or in part, from any recovery under the doctrines of res judicata and/or collateral estoppel.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

36. Plaintiffs' claims and those of anyone they purport to represent are barred to the extent they have been released through settlement in any prior litigation.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

37. Any recovery against Kelzenberg-Wumag is barred or limited under the principles of assumption of the risk and informed consent.

ELECTRONICALLY FILED - 2024 Mar 08 4:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

38. Any recovery against Kelzenberg-Wumag under a theory of negligence is barred because at all times relevant to this Complaint, Kelzenberg-Wumag did not owe a duty of care to Plaintiffs.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

39. Kelzenberg-Wumag pleads and incorporate all rights, defenses, limitations on damages, and other privileges contained in S.C. Code Ann. § 15-38-10 *et seq.* as if fully stated herein.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

40. Plaintiffs' claims are barred in whole or in part by the sophisticated or knowledgeable user doctrine.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

41. Plaintiffs' claims should be dismissed for failure to join necessary persons, parties and/or entities pursuant to Rule 19 of the South Carolina Rules of Civil Procedure.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

42. Plaintiffs' claims, injuries, and damages, if any, are premised in whole or in part on the actions of parties who have not been joined in this action. Accordingly, any damages awarded to Plaintiffs should be barred or limited under the non-party fault provisions of South Carolina law.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

43. Kelzenberg-Wumag would show the Court that no act or omission of Kelzenberg-Wumag, or any agent or employee thereof, proximately caused any injuries to the Plaintiffs, which therefore bars the Plaintiffs from any recovery.

ELECTRONICALLY FILED - 2024 Mar 08 4:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

44. Plaintiffs' claims are barred by one, or more, of the equitable doctrines of laches, waiver, estoppel, and/or unclean hands.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

45. Plaintiffs' claims are barred in whole or in part to the extent Plaintiffs failed to mitigate damages.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

46. To the extent Plaintiffs may seek punitive damages, Plaintiffs are not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

(a) the judiciary's ability to correct a punitive damage award at the appellate level only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

(b) any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

(c) to the extent an award of punitive damages is excessive, such award violates due process guarantees;

(d) the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

(e) even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and

(f) Plaintiffs' claims for punitive damages violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth and status of Kelzenberg-Wumag.

Furthermore, even if an award of punitive damages were held to be constitutional in this case, punitive damages are inappropriate in this case as Kelzenberg-Wumag engaged in no malicious, wrongful or intentional conduct upon which an award of such damages could be based.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

47. To the extent Plaintiffs may seek punitive damages, Plaintiffs' claim for punitive damages are limited by S.C. Code Ann. § 15-32-530. Further, pursuant to S.C. Code Ann. § 15-32-520, Kelzenberg-Wumag hereby request trial bifurcation on the issues of actual and punitive damages. To the extent the Court submits the question of punitive damages to the jury, the award of punitive damages, if any, is subject to the caps and limitations set forth in S.C. Code Ann. § 15-32-530, and Kelzenberg-Wumag pleads and incorporate all defenses, limitations on damages, and other privileges contained in S.C. Code Ann. §§ 15-32-520 and 15-32-530 as if fully stated herein.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

48. Plaintiffs' claims against Kelzenberg-Wumag are barred because Kelzenberg-Wumag did not assume any liabilities of Wumag.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

49. Kelzenberg-Wumag is not liable for any damages alleged by Plaintiffs that were pre-existing conditions.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

50. Kelzenberg-Wumag would allege and show that even if Kelzenberg-Wumag was negligent in any respect, which is denied, Plaintiffs were comparatively negligent and/or otherwise at fault, which fault exceeded any fault on the part of Kelzenberg-Wumag, which is denied, and which fault proximately caused Plaintiffs' alleged damages, if any, which are denied, so as to bar any recovery herein pursuant to the doctrine of comparative negligence. Alternatively, Plaintiffs were comparatively negligent and/or otherwise at fault in an amount equal to or less than any fault of Kelzenberg-Wumag, which is denied, which fault proximately caused Plaintiffs' alleged

ELECTRONICALLY FILED - 2024 Mar 08 4:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2024 Mar 08 4:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

damages, if any, which are denied, so as to proportionally reduce any recovery herein pursuant to the doctrine of comparative negligence.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

51. At all times Kelzenberg-Wumag acted in good faith, in accordance with applicable policies and procedures and in compliance with South Carolina law.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

52. Kelzenberg-Wumag hereby gives notice that it intends to rely upon any other defenses that may become available or apparent during the discovery proceedings in this matter, hereby reserves its right to amend its Answer and to assert any such defenses, and hereby preserves each and every defense, including but not limited to the defenses set forth in the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING BY WAY OF A CROSSCLAIM

53. Kelzenberg-Wumag reiterates each and every prior paragraph of this Amended Answer and Third-Party Complaint as set forth verbatim herein.

54. Notwithstanding this Third-Party Complaint, Kelzenberg-Wumag expressly reserves, and does not waive, its objections to personal jurisdiction and service.

PARTIES AND JURISDICTION

55. Kelzenberg-Wumag is a German company that, among other things, manufactures industrial machines.

56. Kelzenberg-Wumag is registered at the district court of Düren, Germany under number HRA 224 and has a principal place of business is in Düren, Germany.

57. Kelzenberg-Wumag came into existence in September 2019, eighteen months after the events giving rise to this Complaint occurred.

ELECTRONICALLY FILED - 2024 Mar 08 4:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

58. Wumag Texroll GmbH & Co. KG ("Wumag") is a German company which, during the time period relevant hereto, manufactured and sold industrial machines.

59. Wumag designed, manufactured and/or sold the machine which is the subject of this action (the "Machine").

60. Upon information and belief, Wumag sent employees and/or its agents to Bondex's facility to install and maintain the Machine.

61. Upon information and belief, Wumag directly communicated with Bondex employees located in South Carolina regarding the Machine.

62. By virtue of Wumag designing, manufacturing and/or selling the machine which is the subject of this action, directing its products into South Carolina, maintaining the Machine and communicating with Bondex, Wumag purposefully availed itself of the privilege of conducting business in South Carolina and is subject to personal jurisdiction in the state.

FACTUAL BACKGROUND

63. On September 1, 2019, insolvency proceedings concerning the assets of Wumag Texroll GmbH & Co. KG ("Wumag ") commenced in the district court of Krefeld, Germany.

64. Prior to being insolvent, Wumag was registered at the district court of Krefeld, Germany under number HRA 3719.

65. On or around September 18, 2019, Kelzenberg-Wumag entered into an asset purchase agreement to purchase the assets of Wumag out of insolvency.

66. Pursuant to the asset purchase agreement, Kelzenberg-Wumag purchased certain assets of Wumag.

67. Ownership of the purchased assets was transferred from Wumag to Kelzenberg-Wumag on or around October 1, 2019.

68. Kelzenberg-Wumag neither purchased nor assumed any liabilities of Wumag.

ELECTRONICALLY FILED - 2024 Mar 08 4:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

69. Following the asset purchase, for marketing reasons, Kelzenberg-Wumag adopted the "Wumag Texroll GmbH & Co. KG" brand name.

FOR A FIRST CAUSE OF ACTION
(Indemnity)

70. Kelzenberg-Wumag reiterates each and every prior paragraph of this Amended Answer and Third-Party Complaint as set forth verbatim herein.

71. The Complaint of Plaintiffs Barry Lanham and Obvia Gamble-Lanham asserts claims arising out of a workplace accident alleged to have occurred on January 22, 2018 at a Bondex, Inc. plant in Trenton, South Carolina.

72. More specifically, Plaintiffs' Complaint alleges that Plaintiff Barry Lanham was injured when his left arm and hand were pulled into the Machine, resulting in severe and permanent damage to his left arm and hand.

73. Plaintiffs' claims against Kelzenberg-Wumag are all based on the allegation that Kelzenberg-Wumag designed, manufactured, sold and/or installed the Machine.

74. It is undisputed that Kelzenberg-Wumag did not design, manufacture, sell and/or install the Machine.

75. In fact, Kelzenberg-Wumag did not come into existence until September 2019, 18 months after the accident and alleged injuries which are the subject of this action occurred.

76. Wumag designed, manufactured, sold and/or installed the Machine, and therefore, Kelzenberg-Wumag denies the substantive allegations in Plaintiffs' Complaint and has denies any and all liability to Plaintiffs.

77. As set forth above, Kelzenberg-Wumag is without fault with respect to the claims asserted by Plaintiffs.

78. To the extent that Kelzenberg-Wumag is held liable to Plaintiffs in this action, such liability would be a direct and proximate result of the wrongful acts, omissions, negligence, recklessness, gross negligence, willful, or wanton conduct of Wumag.

79. A special relationship exists between Kelzenberg-Wumag and Wumag by virtue of Kelzenberg-Wumag purchasing the assets, but not assuming any liabilities, of Wumag.

80. A right of indemnity exists in favor of Kelzenberg-Wumag because it is without fault in this matter and it has been forced to defend itself and is exposed to liability due to the alleged wrongful acts, omissions, negligence, breaches, or representations of Wumag.

81. Wumag must indemnify Kelzenberg-Wumag for the amount of any judgment entered against Kelzenberg-Wumag, for any amount Kelzenberg-Wumag pays Plaintiffs in settlement of Plaintiffs' claims, and for all attorneys' fees, costs and other expenses incurred by Kelzenberg-Wumag as a result of this action.

WHEREFORE, Kelzenberg-Wumag prays to the Court that:

1. Plaintiffs' Complaint be dismissed with prejudice;
2. Judgment be entered in favor of Kelzenberg-Wumag;
3. Plaintiffs recover nothing from Kelzenberg-Wumag;
4. Judgment be entered in favor of Kelzenberg-Wumag on its claim for indemnity against Wumag;
5. Kelzenberg-Wumag is awarded its attorneys' fees and costs; and
6. For such other and further relief as the Court may deem just and proper.

ELECTRONICALLY FILED - 2024 Mar 08 4:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2024 Mar 08 4:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

s/ Robert C. Osborne III
Robert H. Jordan (SC Bar No.: 13612)
Email: robertjordan@parkerpoe.com
Robert C. Osborne III (SC Bar No.: 101827)
Email: robertosborne@parkerpoe.com
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Post Office Box 160 (29402)
Charleston, SC 29401
Phone: (843) 727-2650
Fax: (843) 727-2680

Attorneys for Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG

March 8, 2024
Charleston, South Carolina

ELECTRONICALLY FILED - 2024 Mar 25 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

IN THE STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiffs, v. 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.	IN THE COURT OF COMMON PLEAS No: 2021-CP-19-00005 **Answer to Amended Complaint** **(Jury Trial Requested)**

Defendant/Third-Party Defendant Wumag Texroll GmbH & Co. KG ("**Wumag**"), for its Answer to the Amended Complaint ("**the Complaint**") of Plaintiffs Barry Lanham and Obvia Gamble-Lanham ("**Plaintiffs**"), states and alleges the following in response to the numbered paragraphs of the Complaint. Every allegation not specifically admitted in this Answer is expressly denied.

1. Wumag is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Complaint and therefore denies them.

ELECTRONICALLY FILED - 2024 Mar 25 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

2. Wumag is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Complaint and therefore denies them.

3. With regard to the allegations in Paragraph 3 of the Complaint, Wumag admits that it is a German company that used to be in the machinery business. However, Wumag no longer operates and it is a party to a pending insolvency proceeding in Germany (which has been pending since September 2019) ("**the Insolvency**"). Wumag denies any remaining allegations in Paragraph 3 of the Complaint.

4. The allegations in Paragraph 4 of the Complaint are not addressed to Wumag and/or assert legal conclusions; thus, no response is necessary. However, to the extent a response is required, Wumag admits that Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co.: GmbH & Co. KG ("**Kelzenberg-Wumag**") is a foreign corporation; that Kelzenberg-Wumag entered into an asset purchase agreement with Wumag as part of the Insolvency and subsequently adopted the "Wumag Texroll GmbH & Co. KG" brand name; and that Kelzenberg-Wumag is engaged in the machinery business. However, Wumag denies any remaining allegations in Paragraph 4 of the Complaint.

5. The allegations in Paragraph 5 of the Complaint assert a legal conclusion to which no response is necessary. However, to the extent a response is required, Wumag denies the allegations in Paragraph 5 of the Complaint and notes its objection to this Court's personal jurisdiction over it.[1]

6. Wumag denies the allegations in Paragraph 6 of the Complaint.

[1] Wumag previously filed a motion to dismiss Kelzenberg-Wumag's Third-Party Complaint against it on the basis of this Court's lack of personal jurisdiction over it.

ELECTRONICALLY FILED - 2024 Mar 25 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

7. With regard to the allegations in Paragraph 7 of the Complaint, Wumag admits that it sold a laminating calendar to Bondex Inc. in 2016. However, it denies any remaining allegations in Paragraph 7 of the Complaint.

8. Wumag denies the allegations in Paragraph 8 of the Complaint.

9. Wumag is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Complaint and therefore denies them.

FIRST CAUSE OF ACTION
(*Negligence)*

10. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

11. Wumag denies the allegations in Paragraph 11 of the Complaint (including its sub-paragraphs (a)-(l).

12. Wumag denies the allegations in Paragraph 12 of the Complaint.

13. Wumag denies the allegations in Paragraph 13 of the Complaint.

SECOND CAUSE OF ACTION
(*Strict Liability pursuant to S.C. Code Ann. § 15-73-10, et. seq.*)

14. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

15. Wumag denies the allegations in Paragraph 15 of the Complaint.

16. Wumag denies the allegations in Paragraph 16 of the Complaint.

17. Wumag denies the allegations in Paragraph 17 of the Complaint.

18. Wumag denies the allegations in Paragraph 18 of the Complaint.

ELECTRONICALLY FILED - 2024 Mar 25 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

THIRD CAUSE OF ACTION
(*Breach of Express and Implied Warranties)*

19. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

20. Wumag denies the allegations in Paragraph 20 of the Complaint.

21. Wumag denies the allegations in Paragraph 21 of the Complaint.

22. Wumag denies the allegations in Paragraph 22 of the Complaint.

FOURTH CAUSE OF ACTION
(*Loss of Consortium*)

23. Wumag denies the allegations in Paragraph 23 of the Complaint.

PLAINTIFFS' PRAYER FOR RELIEF

24. Wumag denies that Plaintiffs are entitled to any of the relief prayed for in the Complaint against it.

FOR A FIRST AFFIRMATIVE DEFENSE:
(Failure to State a Claim)

25. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

26. The Complaint fails to state facts upon which a claim for relief may be granted against Wumag. Therefore, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Court should dismiss Plaintiffs' claims against Wumag.

FOR A SECOND AFFIRMATIVE DEFENSE:
(Statute of Limitations)

27. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

ELECTRONICALLY FILED - 2024 Mar 25 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

28. Plaintiffs' claims against Wumag may be barred by the applicable statute of limitations.

FOR A THIRD AFFIRMATIVE DEFENSE:
(Lack of Personal Jurisdiction)

29. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

30. This Court should dismiss the Complaint as it lacks personal jurisdiction over Wumag.

FOR A FOURTH AFFIRMATIVE DEFENSE:
(Comparative Negligence)

31. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

32. Plaintiffs' claims may be barred in whole or in part by Plaintiffs' own comparative negligence, the acts of which may be revealed during discovery conducted in this case or at trial.

FOR A FIFTH AFFIRMATIVE DEFENSE:
(Assumption of the Risk)

33. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

34. Plaintiffs' claims may be barred in whole or in part because Plaintiffs knowingly and voluntarily encountered risks that may be revealed during discovery and the danger of which she appreciated and understood.

FOR A SIXTH AFFIRMATIVE DEFENSE:
(Superseding Negligence / Negligence of a Third Party)

35. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

ELECTRONICALLY FILED - 2024 Mar 25 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

36. Plaintiffs' claims against Wumag are barred for the reason that the alleged damages were caused by an intervening and/or superseding cause or negligence of third parties over whom Wumag had no control and with respect to whom they had no legal responsibility or liability.

FOR A SEVENTH AFFIRMATIVE DEFENSE:
(Failure to Mitigate Damages)

37. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

38. Plaintiffs' claims may be barred or limited by a failure to mitigate the alleged damages.

FOR AN EIGHTH AFFIRMATIVE DEFENSE:
(Lack of Proximate Cause)

39. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

40. Plaintiffs cannot establish that any alleged wrongdoing by Wumag was the proximate cause of the alleged injuries.

FOR A NINTH AFFIRMATIVE DEFENSE:
(Modification/Misuse)

41. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

42. Plaintiffs' claims may be barred, in whole or in part, by any alteration, modification, or misuse of the machine in question by Plaintiffs or any other third parties, for which Wumag cannot be held responsible.

ELECTRONICALLY FILED - 2024 Mar 25 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

FOR A TENTH AFFIRMATIVE DEFENSE:
(Waiver, Laches, Estoppel, Unclean Hands)

43. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

44. Plaintiffs' claims may be barred in whole or in part by the doctrines of waiver, laches, estoppel, and/or unclean hands.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE:
(Spoliation)

45. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

46. Plaintiffs' claims are barred by the doctrine of spoliation of evidence.

FOR A TWELFTH AFFIRMATIVE DEFENSE:
(Set Off)

47. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

48. To the extent Plaintiffs settles and releases any third party for liability, then any alleged liability of Wumag must be reduced and/or set off by the amount stipulated in the release. See S.C. Code Ann. § 15-38-50.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE:
(Punitive Damages Are Improper)

49. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

50. Plaintiffs' claims for punitive damages are barred by the applicable provisions, including the due process clauses, in both the United States and the State of South Carolina Constitutions. Plaintiffs are not entitled to an award of exemplary or punitive damages against

ELECTRONICALLY FILED - 2024 Mar 25 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Wumag, because an award of such damages in this case would be inappropriate, contrary to the purposes for which such damages may be allowed, contrary to public policy, inherently unfair and would deny Wumag its right to equal protection of law and due process of laws guaranteed by the Constitution of the United States and the South Carolina Constitution. Furthermore, Wumag did not engage in any intentional, reckless, careless, grossly negligent, wanton and willful, or any other act or omission, or as otherwise pled by Plaintiffs as to give rise to any claim of punitive damages or any other form of damages under South Carolina law. Furthermore, punitive damages are inappropriate and/or limited by the decision of the United States Supreme Court in State Farm v. Campbell, 538 U.S. 408, 123 S.Ct. 1513 (2003).

51. Additionally, an award of punitive damages under the law of South Carolina violates the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and the South Carolina Constitution in that:

a. The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

b. Any award of punitive damages serving a compensatory function is inconsistent with due-process guarantees;

c. Any award of punitive damages based upon the assets of Wumag violates due process guarantees;

d. The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due-process guarantees;

e. Any award of punitive damages may be duplicative under circumstances of this case making it violative of due-process guarantees;

f. Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard fails to give Wumag prior notice of the conduct for which punitive damages may be imposed and is void for vagueness; and

g. Plaintiffs' claims for punitive damages violates the equal-protection clause of the Fourteenth Amendment of the United States Constitution and Article I,

Section 3 of the South Carolina Constitution in that the amount of treble or punitive damages is based upon the assets of Wumag.

52. Additionally, an award of punitive damages in this case against Wumag would contravene the Commerce Clause of the United States Constitution in that such award, if imposed, would constitute an undue and unreasonable burden on interstate commerce.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE:
(Limitation of Punitive Damages)

53. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

54. To the extent that Plaintiffs are entitled to any award for punitive damages against Wumag (which Wumag stringently deny), such an award is limited by S.C. Code Ann. § 15-32-530.

FOR A FIFTEENTH AFFIRMATIVE DEFENSE:
(SC Contribution Among Tortfeasors Act)

55. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

56. To the extent Wumag is in any way liable to Plaintiffs (which it denies), it is entitled to the rights, defenses, and limitations of damages set forth in S.C. Code Ann. 15-38-10, *et. seq.*

FOR A SIXTEENTH AFFIRMATIVE DEFENSE:
(Sophisticated User Doctrine)

57. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

58. Plaintiffs' claims are barred in whole or in part by the sophisticated user doctrine.

ELECTRONICALLY FILED - 2024 Mar 25 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2024 Mar 25 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

FOR A SEVENTEENTH AFFIRMATIVE DEFENSE
(Pending Insolvency)

59. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

60. Wumag is a party to a pending insolvency proceeding in Germany. Thus, to the extent Plaintiffs have claims for damages against Wumag, the exclusive and proper venue for those claims is the Insolvency.

FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE:
(Reservation and Non-Waiver)

61. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

62. Wumag has not an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of Plaintiffs' allegations. It intends to act as best as it can to inform itself of the pertinent facts and prevailing circumstances surrounding any reported injury or damage to Plaintiffs and gives notice of its intent to assert any further affirmative defenses that its information-gathering process may indicate are supported by fact and/or law.

WHEREFORE, having answered Plaintiffs' Complaint, Wumag respectfully requests:

a) That the Court dismiss the Complaint with prejudice;

b) That Plaintiffs have and recover nothing from it;

c) That the Court enter judgment in favor of Wumag as to all claims that Plaintiffs have asserted against it in the Complaint;

d) A jury trial;

e) That the costs of this action be taxed to Plaintiffs; and

f) For such other and further relief as the Court deems just and proper.

This 25th day of March 2023
Greenville, South Carolina

s/ Catherine Wrenn

Catherine F. Wrenn (S.C. Bar No. 76042)
Email: cwrenn@bakerdonelson.com
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
850 Morrison Drive, Suite 775
Charleston, South Carolina 29403
T: (864) 918-3544
Attorneys for Wumag Texroll GmbH & Co. KG

ELECTRONICALLY FILED - 2024 Mar 25 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2024 Apr 04 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiffs, vs. Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG and Wumag Texroll GmbH & Co. KG, Defendants.	IN THE COURT OF COMMON PLEAS Case No. 2021-CP-19-00005 **WUMAG TEXROLL GMBHH & CO. KG F/K/A KELZENBERG + CO. GMBH & CO. KG'S AMENDED ANSWER AND CROSSCLAIMS TO PLAINTIFFS' AMENDED COMPLAINT**

Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG ("Kelzenberg-Wumag" or "Defendant"), identified in the Complaint as Wumag Texroll GmbH & Co. KG, by and through its undersigned counsel, expressly denying each and every allegation not specifically admitted herein and expressly reserving its objection to personal jurisdiction, hereby files its Amended Answer to the Amended Complaint of Plaintiffs Barry Lanham and Obvia Gamble-Lanham ("Plaintiffs").

1. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 1 and, therefore, denies the same and demands strict proof thereof.

2. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 2 and, therefore, denies the same and demands strict proof thereof.

3. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 3 and, therefore, denies the same and demands strict proof thereof.

4. Responding to the allegations of Paragraph 4, Kelzenberg-Wumag admits only that it is a German business that, among other things, manufactures industrial machines. Kelzenberg-Wumag denies the remaining allegations of Paragraph 4 and specifically denies that it

ELECTRONICALLY FILED - 2024 Apr 04 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

manufactured, designed, tested, marketed, certified, supplied, sold, imported, and/or distributed the Laminating Calender Line machine that forms the basis of this action (the "Machine").

5. The allegations of Paragraph 5 Complaint constitute legal conclusions which require no response from Kelzenberg-Wumag.

6. Kelzenberg-Wumag denies the allegations of Paragraph 6.

7. Kelzenberg-Wumag denies the allegations of Paragraph 7 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 7 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

8. Kelzenberg-Wumag denies the allegations of Paragraph 8 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 8 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

9. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 9 of the Complaint and, therefore, denies the same and demands strict proof thereof.

AS TO THE FIRST CAUSE OF ACTION
(Negligence)

10. Responding to the allegations of Paragraph 10 of the Complaint, Kelzenberg-Wumag realleges its responses to the preceding paragraphs as if repeated herein verbatim.

11. Kelzenberg-Wumag denies the allegations of Paragraph 11 of the Complaint, including its subparts.

12. Kelzenberg-Wumag denies the allegations of Paragraph 12 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form

a belief as to the allegations of Paragraph 12 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

13. Kelzenberg-Wumag denies the allegations of Paragraph 13 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 13 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

AS TO THE SECOND CAUSE OF ACTION
(Strict Liability Pursuant to S.C. Code Ann. § 15-73-10, *et seq*.)

14. Responding to the allegations of Paragraph 14 of the Complaint, Kelzenberg-Wumag realleges its responses to the preceding paragraphs as if repeated herein verbatim.

15. Kelzenberg-Wumag denies the allegations of Paragraph 15 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 15 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

16. Kelzenberg-Wumag denies the allegations of Paragraph 16 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 16 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

17. Kelzenberg-Wumag denies the allegations of Paragraph 17 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 17 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

18. Kelzenberg-Wumag denies the allegations of Paragraph 18 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form

ROA 115

ELECTRONICALLY FILED - 2024 Apr 04 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

a belief as to the allegations of Paragraph 18 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

AS TO THE THIRD CAUSE OF ACTION
(Breach of Express and Implied Warranties)

19. Responding to the allegations of Paragraph 19 of the Complaint, Kelzenberg-Wumag realleges its responses to the preceding paragraphs as if repeated herein verbatim.

20. Kelzenberg-Wumag denies the allegations of Paragraph 20 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 20 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

21. Kelzenberg-Wumag denies the allegations of Paragraph 21 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 21 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

22. Kelzenberg-Wumag denies the allegations of Paragraph 22 to the extent they relate to Kelzenberg-Wumag. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 22 to the extent they relate to Defendant Wumag and, therefore, denies the same and demands strict proof thereof.

AS TO THE FOURTH CAUSE OF ACTION
(Loss of Consortium)

23. Kelzenberg-Wumag denies the allegations of Paragraph 23 of the Complaint.

24. Responding to the WHEREFORE clause following Paragraph 23 of the Complaint, Kelzenberg-Wumag denies any and all liability to Plaintiffs and denies that Plaintiffs are entitled to damages or any other relief.

ELECTRONICALLY FILED - 2024 Apr 04 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2024 Apr 04 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

25. Plaintiffs' Complaint should be dismissed, in whole or in part, to the extent it fails to state facts sufficient to constitute a cause of action upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

26. Plaintiffs' damages, if any exist and are proven at trial, were proximately caused by the acts or omissions of third parties over whom Kelzenberg-Wumag had no control, and not by the acts or omissions of Kelzenberg-Wumag.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

27. Plaintiffs' damages, if any exist and are proven at trial, resulted from independent, unforeseeable, superseding, and/or intervening causes unrelated to any conduct of Kelzenberg-Wumag.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

28. Plaintiffs' claims should be dismissed for lack of service of process and/or insufficient service of process.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

29. Plaintiffs' claims should be dismissed for lack of personal jurisdiction.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

30. Plaintiffs' claims are barred by the statute of limitations.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

31. Upon information and belief, any express or implied warranties were limited in duration and expired prior to Plaintiffs' alleged injuries.

ELECTRONICALLY FILED - 2024 Apr 04 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

32. Plaintiffs' claims are barred or should be dismissed by virtue of the doctrine of spoliation of evidence.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

33. Plaintiffs' claims are barred, in whole or in part, by any alteration, modification, or misuse of the Machine, by Plaintiffs or any other third parties, for which Kelzenberg-Wumag cannot be held responsible.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

34. Plaintiffs' injuries and damages, if any, were due to improper use or misuse of the Machine by Barry Lanham, for which Kelzenberg-Wumag is not liable.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

35. To the extent Plaintiffs' claims or the issues raised by Plaintiffs' claims have been previously litigated, Plaintiffs' claims are barred, in whole or in part, from any recovery under the doctrines of res judicata and/or collateral estoppel.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

36. Plaintiffs' claims and those of anyone they purport to represent are barred to the extent they have been released through settlement in any prior litigation.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

37. Any recovery against Kelzenberg-Wumag is barred or limited under the principles of assumption of the risk and informed consent.

ELECTRONICALLY FILED - 2024 Apr 04 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

38. Any recovery against Kelzenberg-Wumag under a theory of negligence is barred because at all times relevant to this Complaint, Kelzenberg-Wumag did not owe a duty of care to Plaintiffs.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

39. Kelzenberg-Wumag pleads and incorporate all rights, defenses, limitations on damages, and other privileges contained in S.C. Code Ann. § 15-38-10 *et seq.* as if fully stated herein.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

40. Plaintiffs' claims are barred in whole or in part by the sophisticated or knowledgeable user doctrine.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

41. Plaintiffs' claims should be dismissed for failure to join necessary persons, parties and/or entities pursuant to Rule 19 of the South Carolina Rules of Civil Procedure.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

42. Plaintiffs' claims, injuries, and damages, if any, are premised in whole or in part on the actions of parties who have not been joined in this action. Accordingly, any damages awarded to Plaintiffs should be barred or limited under the non-party fault provisions of South Carolina law.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

43. Kelzenberg-Wumag would show the Court that no act or omission of Kelzenberg-Wumag, or any agent or employee thereof, proximately caused any injuries to the Plaintiffs, which therefore bars the Plaintiffs from any recovery.

ELECTRONICALLY FILED - 2024 Apr 04 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

44. Plaintiffs' claims are barred by one, or more, of the equitable doctrines of laches, waiver, estoppel, and/or unclean hands.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

45. Plaintiffs' claims are barred in whole or in part to the extent Plaintiffs failed to mitigate damages.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

46. To the extent Plaintiffs may seek punitive damages, Plaintiffs are not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

(a) the judiciary's ability to correct a punitive damage award at the appellate level only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

(b) any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

(c) to the extent an award of punitive damages is excessive, such award violates due process guarantees;

(d) the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

(e) even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and

(f) Plaintiffs' claims for punitive damages violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth and status of Kelzenberg-Wumag.

ELECTRONICALLY FILED - 2024 Apr 04 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Furthermore, even if an award of punitive damages were held to be constitutional in this case, punitive damages are inappropriate in this case as Kelzenberg-Wumag engaged in no malicious, wrongful or intentional conduct upon which an award of such damages could be based.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

47. To the extent Plaintiffs may seek punitive damages, Plaintiffs' claim for punitive damages are limited by S.C. Code Ann. § 15-32-530. Further, pursuant to S.C. Code Ann. § 15-32-520, Kelzenberg-Wumag hereby request trial bifurcation on the issues of actual and punitive damages. To the extent the Court submits the question of punitive damages to the jury, the award of punitive damages, if any, is subject to the caps and limitations set forth in S.C. Code Ann. § 15-32-530, and Kelzenberg-Wumag pleads and incorporate all defenses, limitations on damages, and other privileges contained in S.C. Code Ann. §§ 15-32-520 and 15-32-530 as if fully stated herein.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

48. Plaintiffs' claims against Kelzenberg-Wumag are barred because Kelzenberg-Wumag did not assume any liabilities of Wumag.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

49. Kelzenberg-Wumag is not liable for any damages alleged by Plaintiffs that were pre-existing conditions.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

50. Kelzenberg-Wumag would allege and show that even if Kelzenberg-Wumag was negligent in any respect, which is denied, Plaintiffs were comparatively negligent and/or otherwise at fault, which fault exceeded any fault on the part of Kelzenberg-Wumag, which is denied, and which fault proximately caused Plaintiffs' alleged damages, if any, which are denied, so as to bar any recovery herein pursuant to the doctrine of comparative negligence. Alternatively, Plaintiffs were comparatively negligent and/or otherwise at fault in an amount equal to or less than any fault of Kelzenberg-Wumag, which is denied, which fault proximately caused Plaintiffs' alleged

ELECTRONICALLY FILED - 2024 Apr 04 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

damages, if any, which are denied, so as to proportionally reduce any recovery herein pursuant to the doctrine of comparative negligence.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

51. At all times Kelzenberg-Wumag acted in good faith, in accordance with applicable policies and procedures and in compliance with South Carolina law.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

52. Kelzenberg-Wumag hereby gives notice that it intends to rely upon any other defenses that may become available or apparent during the discovery proceedings in this matter, hereby reserves its right to amend its Answer and to assert any such defenses, and hereby preserves each and every defense, including but not limited to the defenses set forth in the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING BY WAY OF A CROSSCLAIM

53. Kelzenberg-Wumag reiterates each and every prior paragraph of this Amended Answer and Third-Party Complaint as set forth verbatim herein.

54. Notwithstanding this Third-Party Complaint, Kelzenberg-Wumag expressly reserves, and does not waive, its objections to personal jurisdiction and service.

PARTIES AND JURISDICTION

55. Kelzenberg-Wumag is a German company that, among other things, manufactures industrial machines.

56. Kelzenberg-Wumag is registered at the district court of Düren, Germany under number HRA 224 and has a principal place of business is in Düren, Germany.

57. Kelzenberg-Wumag came into existence in September 2019, eighteen months after the events giving rise to this Complaint occurred.

ELECTRONICALLY FILED - 2024 Apr 04 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

58. Wumag Texroll GmbH & Co. KG ("Wumag") is a German company which, during the time period relevant hereto, manufactured and sold industrial machines.

59. Wumag designed, manufactured and/or sold the machine which is the subject of this action (the "Machine").

60. Upon information and belief, Wumag sent employees and/or its agents to Bondex's facility to install and maintain the Machine.

61. Upon information and belief, Wumag directly communicated with Bondex employees located in South Carolina regarding the Machine.

62. By virtue of Wumag designing, manufacturing and/or selling the machine which is the subject of this action, directing its products into South Carolina, maintaining the Machine and communicating with Bondex, Wumag purposefully availed itself of the privilege of conducting business in South Carolina and is subject to personal jurisdiction in the state.

FACTUAL BACKGROUND

63. On September 1, 2019, insolvency proceedings concerning the assets of Wumag Texroll GmbH & Co. KG ("Wumag ") commenced in the district court of Krefeld, Germany.

64. Prior to being insolvent, Wumag was registered at the district court of Krefeld, Germany under number HRA 3719.

65. On or around September 18, 2019, Kelzenberg-Wumag entered into an asset purchase agreement to purchase the assets of Wumag out of insolvency.

66. Pursuant to the asset purchase agreement, Kelzenberg-Wumag purchased certain assets of Wumag.

67. Ownership of the purchased assets was transferred from Wumag to Kelzenberg-Wumag on or around October 1, 2019.

68. Kelzenberg-Wumag neither purchased nor assumed any liabilities of Wumag.

ELECTRONICALLY FILED - 2024 Apr 04 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

69. Following the asset purchase, for marketing reasons, Kelzenberg-Wumag adopted the "Wumag Texroll GmbH & Co. KG" brand name.

FOR A FIRST CAUSE OF ACTION
(Indemnity)

70. Kelzenberg-Wumag reiterates each and every prior paragraph of this Amended Answer and Third-Party Complaint as set forth verbatim herein.

71. The Complaint of Plaintiffs Barry Lanham and Obvia Gamble-Lanham asserts claims arising out of a workplace accident alleged to have occurred on January 22, 2018 at a Bondex, Inc. plant in Trenton, South Carolina.

72. More specifically, Plaintiffs' Complaint alleges that Plaintiff Barry Lanham was injured when his left arm and hand were pulled into the Machine, resulting in severe and permanent damage to his left arm and hand.

73. Plaintiffs' claims against Kelzenberg-Wumag are all based on the allegation that Kelzenberg-Wumag designed, manufactured, sold and/or installed the Machine.

74. It is undisputed that Kelzenberg-Wumag did not design, manufacture, sell and/or install the Machine.

75. In fact, Kelzenberg-Wumag did not come into existence until September 2019, 18 months after the accident and alleged injuries which are the subject of this action occurred.

76. Wumag designed, manufactured, sold and/or installed the Machine, and therefore, Kelzenberg-Wumag denies the substantive allegations in Plaintiffs' Complaint and has denies any and all liability to Plaintiffs.

77. As set forth above, Kelzenberg-Wumag is without fault with respect to the claims asserted by Plaintiffs.

78. To the extent that Kelzenberg-Wumag is held liable to Plaintiffs in this action, such liability would be a direct and proximate result of the wrongful acts, omissions, negligence, recklessness, gross negligence, willful, or wanton conduct of Wumag.

79. A special relationship exists between Kelzenberg-Wumag and Wumag by virtue of Kelzenberg-Wumag purchasing the assets, but not assuming any liabilities, of Wumag.

80. A right of indemnity exists in favor of Kelzenberg-Wumag because it is without fault in this matter and it has been forced to defend itself and is exposed to liability due to the alleged wrongful acts, omissions, negligence, breaches, or representations of Wumag.

81. Wumag must indemnify Kelzenberg-Wumag for the amount of any judgment entered against Kelzenberg-Wumag, for any amount Kelzenberg-Wumag pays Plaintiffs in settlement of Plaintiffs' claims, and for all attorneys' fees, costs and other expenses incurred by Kelzenberg-Wumag as a result of this action.

WHEREFORE, Kelzenberg-Wumag prays to the Court that:

1. Plaintiffs' Complaint be dismissed with prejudice;
2. Judgment be entered in favor of Kelzenberg-Wumag;
3. Plaintiffs recover nothing from Kelzenberg-Wumag;
4. Judgment be entered in favor of Kelzenberg-Wumag on its claim for indemnity against Wumag;
5. Kelzenberg-Wumag is awarded its attorneys' fees and costs; and
6. For such other and further relief as the Court may deem just and proper.

ELECTRONICALLY FILED - 2024 Apr 04 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2024 Apr 04 11:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

s/ Robert C. Osborne III

Robert H. Jordan (SC Bar No.: 13612)
Email: robertjordan@parkerpoe.com
Robert C. Osborne III (SC Bar No.: 101827)
Email: robertosborne@parkerpoe.com
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Post Office Box 160 (29402)
Charleston, SC 29401
Phone: (843) 727-2650
Fax: (843) 727-2680

Attorneys for Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG

April 4, 2024
Charleston, South Carolina

ELECTRONICALLY FILED - 2024 Apr 16 12:20 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD	)	No: 2021-CP-19-00005
Barry Lanham and Obvia Gamble-Lanham, Plaintiffs, v. Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co.: GmbH & Co KG and Wumag Texroll GmbH & Co. KG, Defendants.	)	**Answer to Cross-Claims** **(Jury Trial Requested)**

Defendant Wumag Texroll GmbH & Co. KG ("**Wumag**"), for its Answer to the Cross-Claims of Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co.: GmbH & Co. KG ("**Kelzenberg-Wumag**"), states and alleges the following in response to the numbered paragraphs of Kelzenberg-Wumag's Amended Answer/Cross-Claims. Every allegation not specifically admitted in this Answer is expressly denied.

1. The allegations in Paragraph 1 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 1 of its Answer to Plaintiffs Barry Lanham and Obvia Gamble-Lanham's ("**Plaintiffs**") Complaint.

2. The allegations in Paragraph 2 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 2 of its Answer to Plaintiffs' Complaint.

ELECTRONICALLY FILED - 2024 Apr 16 12:20 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

3. The allegations in Paragraph 3 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 3 of its Answer to Plaintiffs' Complaint.

4. The allegations in Paragraph 4 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 4 of its Answer to Plaintiffs' Complaint.

5. The allegations in Paragraph 5 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 5 of its Answer to Plaintiffs' Complaint.

6. The allegations in Paragraph 6 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 6 of its Answer to Plaintiffs' Complaint.

7. The allegations in Paragraph 7 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 7 of its Answer to Plaintiffs' Complaint.

8. The allegations in Paragraph 8 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 8 of its Answer to Plaintiffs' Complaint.

9. The allegations in Paragraph 9 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 9 of its Answer to Plaintiffs' Complaint.

ELECTRONICALLY FILED - 2024 Apr 16 12:20 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

FIRST CAUSE OF ACTION
(*Negligence)*

10. The allegations in Paragraph 10 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 10 of its Answer to Plaintiffs' Complaint.

11. The allegations in Paragraph 11 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 11 of its Answer to Plaintiffs' Complaint.

12. The allegations in Paragraph 12 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 12 of its Answer to Plaintiffs' Complaint.

13. The allegations in Paragraph 13 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 13 of its Answer to Plaintiffs' Complaint.

SECOND CAUSE OF ACTION
(*Strict Liability pursuant to S.C. Code Ann. § 15-73-10, et. seq.*)

14. The allegations in Paragraph 14 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 14 of its Answer to Plaintiffs' Complaint.

15. The allegations in Paragraph 15 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 15 of its Answer to Plaintiffs' Complaint.

ELECTRONICALLY FILED - 2024 Apr 16 12:20 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

16. The allegations in Paragraph 16 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 16 of its Answer to Plaintiffs' Complaint.

17. The allegations in Paragraph 17 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 17 of its Answer to Plaintiffs' Complaint.

18. The allegations in Paragraph 18 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 18 of its Answer to Plaintiffs' Complaint.

THIRD CAUSE OF ACTION
(*Breach of Express and Implied Warranties)*

19. The allegations in Paragraph 19 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 19 of its Answer to Plaintiffs' Complaint.

20. The allegations in Paragraph 20 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 20 of its Answer to Plaintiffs' Complaint.

21. The allegations in Paragraph 21 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 21 of its Answer to Plaintiffs' Complaint.

22. The allegations in Paragraph 22 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 22 of its Answer to Plaintiffs' Complaint.

ELECTRONICALLY FILED - 2024 Apr 16 12:20 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

FOURTH CAUSE OF ACTION
(*Loss of Consortium*)

23. The allegations in Paragraph 23 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates Paragraph 23 of its Answer to Plaintiffs' Complaint.

24. The allegations in Paragraph 24 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

25. The allegations in Paragraph 25 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

26. The allegations in Paragraph 26 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

27. The allegations in Paragraph 27 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

28. The allegations in Paragraph 28 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

29. The allegations in Paragraph 29 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

30. The allegations in Paragraph 30 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

31. The allegations in Paragraph 31 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

32. The allegations in Paragraph 32 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

ELECTRONICALLY FILED - 2024 Apr 16 12:20 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

33. The allegations in Paragraph 33 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

34. The allegations in Paragraph 34 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

35. The allegations in Paragraph 35 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

36. The allegations in Paragraph 36 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

37. The allegations in Paragraph 37 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

ELECTRONICALLY FILED - 2024 Apr 16 12:20 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

38. The allegations in Paragraph 38 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

39. The allegations in Paragraph 39 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

40. The allegations in Paragraph 40 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

41. The allegations in Paragraph 41 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

42. The allegations in Paragraph 42 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

ELECTRONICALLY FILED - 2024 Apr 16 12:20 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

43. The allegations in Paragraph 43 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

44. The allegations in Paragraph 44 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

45. The allegations in Paragraph 45 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

46. The allegations in Paragraph 46 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

47. The allegations in Paragraph 47 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

48. The allegations in Paragraph 48 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag

ELECTRONICALLY FILED - 2024 Apr 16 12:20 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

refers to and hereby incorporates its Answer to Plaintiffs' Complaint. It also refers to any agreement between Wumag and Kelzenberg-Wumag regarding the afore-mentioned asset purchase.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

49. The allegations in Paragraph 49 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

50. The allegations in Paragraph 50 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

51. The allegations in Paragraph 51 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE:

52. The allegations in Paragraph 52 of Kelzenberg-Wumag's Answer are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

FURTHER ANSWERING BY WAY OF A CROSSCLAIM

53. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein and hereby refers to and incorporates its Answer to Plaintiffs' Complaint.

ELECTRONICALLY FILED - 2024 Apr 16 12:20 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2024 Apr 16 12:20 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

54. The allegations in Paragraph 54 of Kelzenberg-Wumag's Answer/Cross-Claim are not directed to Wumag; thus no response is necessary. However, to the extent a response is necessary, Wumag refers to and hereby incorporates its Answer to Plaintiffs' Complaint.

PARTIES AND JURISDICTION

55. Upon information and belief, Wumag admits the allegations in Paragraph 55 of Kelzenberg-Wumag's Answer/Cross-claim.

56. Wumag is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56 of Kelzenberg-Wumag's Answer/Cross-claim and therefore denies them.

57. Wumag is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57 of Kelzenberg-Wumag's Answer/Cross-claim and therefore denies them.

58. With regard to the allegations in Paragraph 58 of Kelzenberg-Wumag's Answer/Cross-claim, Wumag admits that it is a German company that used to be in the machinery business. However, Wumag no longer operates and it is a party to a pending insolvency proceeding in Germany (which has been pending since September 2019) ("**the Insolvency**"). Wumag denies any remaining allegations in the Paragraph.

59. With regard to the allegations in Paragraph 59 of Kelzenberg-Wumag's Answer/Cross-claim, Wumag admits that it sold a laminating calendar to Bondex Inc. ("**Bondex**") in 2016 ("**Machine**"). It also admits that Bondex had specific requests about and input into the safety aspects of the Machine. However, it denies any remaining allegations in the Paragraph.

60. With regard to the allegations in Paragraph 60 of the Kelzenberg-Wumag's Answer/Cross-claim, Wumag admits that representatives went to Bondex to complete erection and start-up of the Machine. However, it denies any remaining allegations in the Paragraph.

61. Wumag admits the allegations in Paragraph 61 of Kelzenberg-Wumag's Answer/Cross-claim.

62. Paragraph 62 of Kelzenberg-Wumag's Answer/Cross-claim asserts a legal conclusion to which no response is necessary. However, to the extent a response is required, Wumag denies the allegations in the Paragraph.

FACTUAL BACKGROUND

63. Wumag admits the allegations in Paragraph 63 of Kelzenberg-Wumag's Answer/Cross-claim.

64. With regard to the allegations in Paragraph 64 of Kelzenberg-Wumag's Answer/Cross-claim, Wumag admits that its registration in Germany speaks for itself. It denies any remaining allegations in the Paragraph.

65. With regard to the allegations in Paragraph 65 of Kelzenberg-Wumag's Answer/Cross-claim, Wumag admits that Kelzenberg-Wumag entered into an asset purchase agreement with Wumag as part of the Insolvency. It denies any remaining allegations in the Paragraph.

66. Wumag admits the allegations in Paragraph 66 of Kelzenberg-Wumag's Answer/Cross-claim.

67. With regard to the allegations in Paragraph 67 of Kelzenberg-Wumag's Answer/Cross-claim, Wumag admits that Kelzenberg-Wumag entered into an asset purchase

ELECTRONICALLY FILED - 2024 Apr 16 12:20 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

agreement with Wumag as part of the Insolvency. It denies any remaining allegations in the Paragraph.

68. With regard to the allegations in Paragraph 68 of Kelzenberg-Wumag's Answer/Cross-claim, Wumag admits that the terms of the asset purchase agreement between Wumag and Kelzenberg-Wumag speak for themselves. It denies any remaining allegations in the Paragraph.

69. With regard to the allegations in Paragraph 69 of Kelzenberg-Wumag's Answer/Cross-claim, Wumag admits that, following the asset purchase agreement with Wumag, Kelzenberg-Wumag adopted the "Wumag Texroll GmbH & Co. KG" brand name. It is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the Paragraph 69 and therefore denies them.

FOR A FIRST CAUSE OF ACTION
(Indemnity)

70. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein and hereby refers to and incorporates its Answer to Plaintiffs' Complaint.

71. With regard to the allegations in Paragraph 71 of Kelzenberg-Wumag's Answer/Cross-claim, Wumag admits that the allegations in the Complaint speak for themselves. However, it denies any liability to Plaintiffs or Kelzenberg-Wumag and also denies any remaining allegations in the Paragraph.

72. With regard to the allegations in Paragraph 72 of Kelzenberg-Wumag's Answer/Cross-claim, Wumag admits that the allegations in the Complaint speak for themselves. However, it denies any liability to Plaintiffs or Kelzenberg-Wumag and also denies any remaining allegations in the Paragraph.

ELECTRONICALLY FILED - 2024 Apr 16 12:20 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

73. Wumag denies the allegations of Paragraph 73 of Kelzenberg-Wumag's Answer/Cross-claim and refers to the allegations of Plaintiffs' Complaint.

74. With regard to the allegations in Paragraph 74 of Kelzenberg-Wumag's Answer/Cross-claim, Wumag admits that it sold the Machine to Bondex in 2016. However, it has no personal knowledge regarding what, if any, involvement Kelzenberg-Wumag has had with the Machine and it denies any remaining allegations in the Paragraph.

75. Wumag is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 75 of Kelzenberg-Wumag's Answer/Cross-claim and therefore denies them.

76. With regard to the allegations in Paragraph 76 of Kelzenberg-Wumag's Answer/Cross-claim, Wumag admits that it sold the Machine to Bondex. It denies any remaining allegations in the Paragraph.

77. Wumag is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 77 of Kelzenberg-Wumag's Answer/Cross-claim and therefore denies them.

78. Wumag denies the allegations in Paragraph 78 of Kelzenberg-Wumag's Answer/Cross-claim.

79. Wumag denies the allegations in Paragraph 79 of Kelzenberg-Wumag's Answer/Cross-claim.

80. Wumag denies the allegations in Paragraph 80 of Kelzenberg-Wumag's Answer/Cross-claim.

81. Wumag denies the allegations in Paragraph 81 of Kelzenberg-Wumag's Answer/Cross-claim.

ELECTRONICALLY FILED - 2024 Apr 16 12:20 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2024 Apr 16 12:20 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

KELZENBERG-WUMAG'S PRAYER FOR RELIEF

82. Wumag denies that Kelzenberg-Wumag is entitled to any of the relief prayed for in the Complaint against it.

FOR A FIRST AFFIRMATIVE DEFENSE:
(Failure to State a Claim)

83. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

84. Kelzenberg-Wumag's cross-claim against Wumag fails to state facts upon which a claim for relief may be granted against Wumag. Therefore, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Court should dismiss that claim.

FOR A SECOND AFFIRMATIVE DEFENSE:
(Lack of Personal Jurisdiction)

85. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

86. This Court should dismiss the Complaint as it lacks personal jurisdiction over Wumag.

FOR A THIRD AFFIRMATIVE DEFENSE:
(No Contractual Indemnity / Attorneys' Fees)

87. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

88. No contract exists between Wumag and Kelzenberg-Wumag that would entitle Kelzenberg-Wumag to indemnity or the recovery of attorneys' fees with regard to this case.

FOR A FOURTH AFFIRMATIVE DEFENSE:
(Waiver, Laches, Estoppel, Unclean Hands)

89. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

ELECTRONICALLY FILED - 2024 Apr 16 12:20 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

90. Kelzenberg-Wumag's cross-claim against Wumag may be barred in whole or in part by the doctrines of waiver, laches, estoppel, and/or unclean hands.

FOR A FIFTH AFFIRMATIVE DEFENSE:
(Spoliation)

91. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

92. Kelzenberg-Wumag's cross-claim is barred by the doctrine of spoliation of evidence.

FOR A SIXTH AFFIRMATIVE DEFENSE:
(Failure to Mitigate Damages)

93. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

94. Kelzenberg-Wumag's cross-claim may be barred or limited by a failure to mitigate the alleged damages.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(No Wrongdoing)

95. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

96. As asserted in Wumag's Answer to Plaintiffs' Complaint (which Wumag hereby incorporates), it lacks any liability to Plaintiffs and engaged in no wrongdoing with regard to the Machine. As a result, it owes no indemnity to Kelzenberg-Wumag with regard to this case or Plaintiffs' claims.

ELECTRONICALLY FILED - 2024 Apr 16 12:20 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

FOR AN EIGHTH AFFIRMATIVE DEFENSE
(Pending Insolvency)

97. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

98. Wumag is a party to a pending insolvency proceeding in Germany. Thus, to the extent Kelzenberg-Wumag has a claim for damages against Wumag, the exclusive and proper venue for those claims is the Insolvency.

FOR A NINTH AFFIRMATIVE DEFENSE:
(Reservation and Non-Waiver)

99. Wumag incorporates by reference all of the above paragraphs as if they are set forth fully herein.

100. Wumag has not an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of Kelzenberg-Wumag's allegations. It intends to act as best as it can to inform itself of the pertinent facts and prevailing circumstances surrounding any reported injury or damage to Kelzenberg-Wumag and gives notice of its intent to assert any further affirmative defenses that its information-gathering process may indicate are supported by fact and/or law.

WHEREFORE, having answered Kelzenberg-Wumag's Answer/Cross-claim, Wumag respectfully requests:

a) That the Court dismiss the Kelzenberg-Wumag's cross-claim against it with prejudice;

b) That Kelzenberg-Wumag have and recover nothing from it;

c) That the Court enter judgment in favor of Wumag as to all claims that Kelzenberg-Wumag has asserted against it in the Answer/Cross-claim;

d) A jury trial;

e) That the costs of this action be taxed to Plaintiffs/Kelzenberg-Wumag; and

f) For such other and further relief as the Court deems just and proper.

This 16th day of April 2024
Greenville, South Carolina

s/ Catherine Wrenn___
Catherine F. Wrenn (S.C. Bar No. 76042)
cwrenn@bakerdonelson.com
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
850 Morrison Drive, Suite 775
Charleston, South Carolina 29403
T: (864) 918-3544
Attorneys for Wumag Texroll GmbH & Co. KG

ELECTRONICALLY FILED - 2024 Apr 16 12:20 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2021 Mar 22 3:40 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiff, vs. Wumag Texroll GmbH & Co. KG, Defendants.	IN THE COURT OF COMMON PLEAS Case No. 2021-CP-19-00005 **WUMAG TEXROLL GMBHH & CO. KG'S MOTION TO DISMISS**

PLEASE TAKE NOTICE Defendant Wumag Texroll GmbH & Co. KG ("Wumag"), appearing for the limited purpose of filing this motion, hereby moves, pursuant to Rules 12(b)(2), 12(b)(5) and 12(b)(6) of the South Carolina Rules of Civil Procedure, for an order dismissing Plaintiffs' Complaint.

Wumag is a German corporation with its principal place of business in Düren, Germany. Plaintiffs bring this products liability action against Wumag based upon an accident occurring on January 22, 2018 in which plaintiff Barry Lanham was severely injured while cleaning a Laminating Calender Line machine (the "Machine") while working at Bondex, Inc. in Trenton, South Carolina. (Compl. ¶¶ 6—8). Plaintiffs allege the Machine was designed, manufactured and sold by Wumag. (*Id*. ¶ 6). However, Wumag had no involvement in the design, manufacture or sale of the Machine. Rather, approximately eighteen (18) months after the accident, Wumag purchased the assets (but did not assume liabilities) of the company who, upon information and belief, designed, manufactured and sold the Machine to Bondex.

Plaintiffs' claims against Wumag must be dismissed. Wumag is not subject to either general or specific personal jurisdiction in South Carolina, and therefore, Plaintiffs' claims should be dismissed for lack of personal jurisdiction pursuant to Rule 12(b)(2), SCRCP. Additionally, Plaintiffs' purported service of the Complaint through the South Carolina Secretary of State

pursuant to S.C. Code Ann. §15-9-245 is ineffective because Wumag does not do business in South Carolina. *See* S.C. Code Ann. §15-9-245 (allowing for service of process through the Secretary of State when a foreign corporations does business in South Carolina but fails to register with the Secretary of State). Thus, Plaintiffs' Complaint should also be dismissed pursuant to Rule 12(b)(5), SCRCP. Finally, because Wumag did not design, manufacture or sell the Machine, Plaintiffs' Complaint fails to state a claim against Wumag and should be dismissed pursuant to Rule 12(b)(6).

WHEREFORE, Wumag respectfully requests that this Court enter an Order dismissing Plaintiffs' Complaint for lack of personal jurisdiction, insufficient service of process and failure to state a claim pursuant to Rules 12(b)(2), 12(b)(5) and 12(b)(6). This Motion is based on the pleadings, applicable statutes, regulations, case law and legal authorities, and other materials as may be submitted in support hereof.

Respectfully submitted,

s/ Robert H. Jordan
Robert H. Jordan (SC Bar No. 13612)
Robert C. Osborne III (SC Bar No. 101827)
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
(843) 727-2650
robertjordan@parkerpoe.com
robertosborne@parkerpoe.com

Attorneys for Defendant
Wumag Texroll GmbH & Co. KG

March 22, 2021

Charleston, South Carolina

ELECTRONICALLY FILED - 2021 Mar 22 3:40 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiffs, vs. Wumag Texroll GmbH & Co. KG, Defendant.	IN THE COURT OF COMMON PLEAS Case No. 2021-CP-19-00005 **WUMAG TEXROLL GMBHH & CO. KG'S MEMORANDUM OF LAW IN SUPPORT MOTION TO DISMISS**

Defendant Wumag Texroll GmbH & Co. KG ("Kelzenburg-Wumag"),[1] by and through its undersigned counsel, submits this memorandum of law in support of its motion to dismiss pursuant to Rules 12(b)(2) and 12(b)(5) of the South Carolina Rules of Civil Procedure.

I. INTRODUCTION

The Complaint of Barry Lanham and Obvia Gamble-Lanham (collectively, "Plaintiffs") should be dismissed for insufficient service of process and failure to commence an action within the applicable time period. Plaintiffs have not properly served Kelzenburg-Wumag. Because the statute of limitations has run and because Plaintiffs failed to serve Kelzenburg-Wumag within 120 days of filing the Complaint, Plaintiffs' claims are now time barred. Lack of personal jurisdiction over Kelzenburg-Wumag provides an additional basis for dismissal. Kelzenburg-Wumag's sworn declaration demonstrates that Kelzenburg-Wumag is not subject to personal jurisdiction in South Carolina. Contrary to the allegations in the Complaint, Kelzenburg-Wumag did not design, test, manufacture, market, sell, import, distribute, deliver or install the machine that allegedly caused Barry Lanham's injuries. In fact, Kelzenburg-Wumag did not come into existence until 18 months after the accident giving rise to this action occurred. This Court exercising personal jurisdiction

[1] Kelzenburg-Wumag is referred to as "Wumag II" in the attached Declaration of Michael Hess.

over Kelzenburg-Wumag would violate the Due Process Clause. For these reasons, and as set forth in more detail below, Kelzenburg-Wumag's motion to dismiss should be granted.

I. STATEMENT OF FACTS

A. *Plaintiffs' Allegations*

The Complaint alleges that on January 22, 2018, Barry Lanham was severely injured when cleaning a Laminating Calender Line machine while working at Bondex, Inc.'s facility in Trenton, South Carolina. (*Id*. ¶¶ 7—8). Plaintiffs filed this action on January 6, 2021, almost three years later, asserting causes of action against "Wumag Texroll GmbH & Co. KG" for (1) negligence, (2) strict liability pursuant to S.C. Code Ann. § 15-73-10, *et seq.*, (3) breach of express and implied warranties, and (4) loss of consortium. (*Id*. ¶¶ 9–22). In support of their claims, Plaintiffs allege that the machine that injured Barry Lanham was designed, manufactured, sold, delivered, and installed by Wumag Texroll GmbH & Co. KG. (*Id*. ¶ 6). Plaintiffs further allege that after the machine was installed at Bondex's facility, employees and/or agents of Wumag Texroll GmbH & Co. KG deactivated safety devices on the machine. (*Id*. ¶ 7).

B. *Declaration of Michael Hess*

The sworn declaration of Michael Hess ("Hess"), Kelzenburg-Wumag's Managing Director demonstrates that Kelzenburg-Wumag is not subject to personal jurisdiction in this action. (*See* Michael Hess Declaration in Support of Wumag Texroll GmbH & Co. KG's Motion to Dismiss (hereinafter "Hess Declaration") attached hereto as **Exhibit A**). Kelzenburg-Wumag is a German corporation and is registered at the district court of Düren, Germany under number HRA 224. (¶ 4). Kelzenburg-Wumag's principal place of business is in Düren, Germany. (*Id*. ¶ 5). Kelzenburg-Wumag came into existence in September 2019, eighteen months after Barry Lanham was allegedly injured. (*Id*. ¶ 8).

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

On September 1, 2019, Wumag Texroll GmbH & Co. KG ("Wumag"), the company who, upon information and belief, designed, manufactured, sold, delivered, and installed the machine which allegedly injured Barry Lanham filed for insolvency and German insolvency proceedings commenced in the district court of Krefeld, Germany.[2] (*Id*. ¶ 6). As part of the insolvency proceedings, on or around September 18, 2019, Kelzenberg + Co: GmbH & Co. KG ("Kelzenburg") entered into an asset purchase agreement to purchase the assets, but not the liabilities, of Wumag. (*Id*. ¶¶ 8, 10–12). Ownership of the purchased assets was transferred from Wumag to Kelzenberg on October 1, 2019. (*Id*. ¶ 10). Dr. Peter Minuth, a German attorney and the insolvency administrator for the Wumag insolvency proceedings, oversaw the asset purchase. (*Id*. ¶ 9).

Following the asset purchase, for marketing reasons, Kelzenburg changed its name to Wumag Texrol GmbH & Co. KG (identified in this brief as "Kelzenburg-Wumag"). (*Id*. ¶ 5). Although Kelzenburg-Wumag adopted the Wumag name, there is not now, and has never been, commonality of officers, directors, or stockholders between Wumag and Kelzenburg-Wumag. (*Id*. ¶ 14). In addition and relevant to this case, Kelzenburg-Wumag does not now, and has never held an ownership interest in the machine that allegedly caused Barry Lanham's injuries. (*Id*. ¶ 18). It also did not design, test, manufacture, market, sell, import, distribute, deliver or install the machine. (*Id*. ¶ 19). Kelzenburg-Wumag is not now, and has never been registered with the South Carolina Secretary of State. (*Id*. ¶ 20). Kelzenburg-Wumag has never registered an agent for service of process with the South Carolina Secretary of State. (*Id*. ¶ 21). Kelzenburg-Wumag does not now, and has never, maintained an office, manufacturing facility or other place of business

[2] Prior to being insolvent, Wumag was registered at the district court of Krefeld, Germany under number HRA 3719. (Hess Declaration ¶ 7). This is significant because it demonstrates that Wumag and Kelzenburg-Wumag are now, and have always been registered as separate and distinct companies.

within South Carolina. (*Id*. ¶ 22). Kelzenburg-Wumag does not now, and has never, employed any personnel based in South Carolina. (*Id*. ¶ 23).

II. LEGAL STANDARD

A. *Rule 12(b)(5)*

Rule 12(b)(5) of the South Carolina Rules of Civil Procedure governs motions to dismiss for insufficiency of service of process. Rule 12(b)(5) is the "proper vehicle for challenging both the mode of delivery [and] the lack of delivery of the summons and complaint." *Unisun Ins. V. Hawkins*, 342 S.C. 537, 543, 537 S.E.2d 559, 562 (Ct. App. 2000)(citing 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure Civil 2d § 1353 (1990)) (internal citations omitted). When raising a defense under Rule 12(b)(5), the individual or corporation challenging service should provide sufficient specificity detailing how a Plaintiff "failed to satisfy the requirements of the service provision he utilized." *Id*. at 542, 537 S.E.2d at 562.

B. *Rule 12(b)(2)*

Rule 12(b)(2) of the South Carolina Rules of Civil Procedure governs motions to dismiss for lack of personal jurisdiction. The party seeking to invoke personal jurisdiction over a nonresident defendant bears the burden of proving the existence of personal jurisdiction. *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004). "The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case." *Id*. "When a nonresident defendant attacks the allegations of a complaint based on jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction. *Power Prods. & Servs. Co. v. Kozma,* 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct.App. 2008). When a defendant challenges the Court's personal jurisdiction under Rule 12(b)(2), the plaintiff has the burden of proving that jurisdiction

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

exists by a preponderance of the evidence. *Sunny Days Entm't, LLC v. Traxxas, L.P.*, 376 F. Supp. 3d 654, 658 (D.S.C. 2019).

ARGUMENT

I. PLAINTIFFS HAVE NOT PROPERLY SERVED KELZENBURG-WUMAG AND PLAINTIFFS' CLAIMS ARE NOW BARRED BY THE STATUTE OF LIMITATIONS

Plaintiffs' Complaint should be dismissed because Plaintiffs have not properly served Kelzenburg-Wumag. As a result, because the statute of limitations has run and because Plaintiffs did not serve Kelzenburg-Wumag within 120 days of the filing of the complaint, Plaintiffs' claims are time-barred.

A. *Kelzenburg-Wumag is not Subject to Service Pursuant to S.C. Code Ann. § 15-9-245*

Plaintiffs filed this action on January 6, 2021, fourteen days before the expiration of the statute of limitations. Plaintiffs only attempt to serve Kelzenburg-Wumag was through the South Carolina Secretary of State pursuant to S.C. Code Ann. S.C. Code Ann. § 15-9-245. (*See* January 14, 2021 Correspondence attached hereto as **Exhibit B**). Plaintiffs sent copies of the Summons and Complaint to the Secretary of State who then purported to mail a copy to Kelzenburg-Wumag in Germany. Plaintiffs' attempt at service through section 15-9-245 fails in multiple respects.

Section 15-9-245(a) provides a means for service on foreign corporation not authorized to do business in the state of South Carolina but who do, in fact, conduct business within the state. Under section 15-9-245(a), "[e]very foreign business or nonprofit corporation which is not authorized to do business in this State, ***by doing in this State, either itself or through an agent, any business***,…is considered to have designated the Secretary of State as its agent upon whom process against it may be served...." (emphasis added). "A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute." *A.O. Smith Corp. v. S.C. Dep't of Health & Envtl. Control*, 428 S.C. 189, 202, 833 S.E.2d

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

451, 458 (Ct. App. 2019) (citing *Lockwood Greene Eng'rs, Inc. v. S.C. Tax Comm'n*, 293 S.C. 447, 449, 361 S.E.2d 346, 347 (Ct. App. 1987). The plain language of section 15-9-245 clearly provides that a foreign corporation must do business in South Carolina, "either itself or through an agent," in order to be subject to service under the statute. *See* S.C. Code Ann. § 15-9-245. Case law interpreting the statute is equally clear. In *South Carolina v. Bulgartabac Holding Grp.*, No. CV 3:05-124-22, 2005 WL 8165771, at *2 (D.S.C. May 24, 2005), the district court found that section 15-9-245 "applies to any [] corporation that does 'any business' in South Carolina 'either itself or through an agent'" and explicitly held that "[i]n order for § 15-9-245(a) to apply, it [is] necessary to find that [a defendant] does business in South Carolina, either itself or through an agent." *South Carolina v. Bulgartabac Holding Grp.*, No. CV 3:05-124-22, 2005 WL 8165771, at *2 (D.S.C. May 24, 2005) (quoting S.C. Code Ann. § 15-9-245). The Court specifically stated

When it was purportedly served, Kelzenburg-Wumag did not do business in South Carolina. Hess's declaration establishes this fact, and Plaintiffs have not offered *any* evidence to refute it. (*See* Hess Declaration ¶¶ 17-23). When a challenge to service of process is made, the burden of proving effective service is on "the party against whom the challenged is lodged." *Hammond v. Honda Motor Co., Ltd., Honda Research and Development Co., Ltd., and American Honda Motor Co., Inc.*, 128 F.R.D 638, 641 (D.S.C. 1989). There is no evidence in the record that Kelzenburg-Wumag did business in South Carolina at the time it was served. Kelzenburg-Wumag is not subject to service pursuant to section 15-9-245.[3]

[3] Plaintiffs have also failed to comply with section 15-9-245(c), which sets forth specific requirements for demonstrating proof of service, including the filing of an affidavit of compliance and a return receipt signed by Kelzenburg-Wumag evidencing actual delivery of the Summons and Complaint. Plaintiffs have not (and cannot) satisfy the requirements of section 15-9245(c).

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

B. *Plaintiffs' Purported Service Pursuant to S.C. Code Ann. § 15-9-245 Does Not Comply with the Requirements of the Hague Service Convention*

Kelzenburg-Wumag is a German business based in German. That being the case, service on Kelzenburg-Wumag must comply with the Hague Service Convention (the "Hague Convention"). Even if Kelzenburg-Wumag did business in South Carolina and even if Plaintiffs followed the requirements of the statute, service pursuant to section 15-9-245 is ineffective against Kelzenburg-Wumag because the Hague Convention does not allow service by mail on German entities.

The South Carolina Supreme Court recognizes "[t]he Hague Service Convention [as] an international treaty that pre-empts inconsistent methods of service prescribed by state law in all cases where service abroad is required." *Bakala v. Bakala*, 352 S.C. 612, 626, 576 S.E.2d 156, 163 (2003) (quoting *Volkswagenwerk v. Schlunk*, 486 U.S. 694 (1988)). It is "the exclusive means of valid service" for entities in countries that are signatories to the Hague Convention, including Germany. *Volkswagenwerk*, 486 U.S. at 707. The Hague Convention applies when, like in this case, the forum state requires the transmittal of documents abroad. *South Carolina v. Bulgartabac Holding Grp.*, 2005 WL 8165771 *2 (finding the Hague Convention applies when "the internal law of the forum state defines the applicable method of serving process as requiring the transmittal of documents abroad."). Here, it is undisputed that service pursuant to section 15-9-245 requires documents to be mailed to the party being served. *See* S.C. Code Ann. § 15-9245(b). As such, the Hague Convention governs service of Kelzenburg-Wumag in this case. *See id.*; *see also In re Baycol Prod. Litig.*, No. 02-875, 2003 WL 24229818, at *1, *4 (D. Minn. Dec. 12, 2003) ("Since service under state law requires the transmittal abroad of a copy of the summons and complaint upon Bayer AG, the Hague Convention is implicated.").

Pursuant to its rights under the Hague Convention, Germany has objected "to the delivery of judicial documents by postal channels" and "has established Central Authorities to execute

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

requests for international service of process."[4] *U.S. ex rel. Walterspiel v. Bayer AG*, 639 Fed.Appx.164, 167 (2016); *see also Davies v. Jobs & Adverts Online, Gmbh*, 94 F.Supp.2d 719, 722 n.6 (E.D.Va. 2000) (stating Germany has expressly objected to service by mail, and requires that service be effected on the Central Authority). Under the Hague Convention, service on Kelzenburg-Wumag must be carried out by a designated Central Authority in Germany. *Id*. Plaintiffs and the Secretary of State ignored this requirement. Mailing the Summons and Complaint to Kelzenburg-Wumag is not proper service under the Hague Convention. *See U.S. ex rel. Walterspiel*, 639 F. App'x at 167 (holding a plaintiff attempting to serve a German defendant via FedEx was ineffective under the Hague Convention); *Flo & Eddie, Inc. v. Settler*, No. 08-80356-CIV, 2008 WL 4938407, at *1 (S.D. Fla. Nov. 19, 2008) ("[S]ervice by registered mail is not an authorized means of service of process against a German citizen or corporation.").

Under South Carolina law, when service is challenged, the record must affirmatively show that service of process was correctly made." *Jensen v. Doe*, 292 S.C. 583, 358 S.E.2d 148 (Ct. App. 1987). Here, the record plainly shows that Plaintiff have not served Kelzenburg-Wumag in accordance with the requirements of the Hague Convention.[5] Plaintiffs' attempt at service pursuant to section 15-9-245 is ineffective.

C. *Plaintiffs' Have Not Commenced an Action Within the Statute of Limitations, and Their Claims are Now Time Barred*

S.C. Code Ann. § 15–3–20 governs the commencement of actions, and states:

> (A) Civil actions may only be commenced within the periods prescribed in this title after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute.

[4] A list of Central Authorities in Germany is publicly available online. *See* https://assets.hcch.net/docs/494216ab-d7f6-4f7b-9627-93270f8a64da.pdf.

[5] Plaintiffs attempt at service further fails because the Summons and Complaint were not translated into German as is required by the Hague Convention. *See Flo & Eddie, Inc.*, 2008 WL 4938407, at *1 (finding service on a German corporation was ineffective because "the documents attempted to be served were not translated into German, as is also required by the Hague Convention.").

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

> (B) A civil action is commenced when the summons and complaint are filed with the clerk of court ***if actual service is accomplished within one hundred twenty days after filing.***

S.C. Code Ann. § 15–3–20 (2005) (emphasis added). Similarly, Rule 3(a) of the South Carolina Rules of Civil Procedure provides:

> (a) **Commencement of civil action**. A civil action is commenced when the summons and complaint are filed with the clerk of court if:
>
> (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or
>
> (2) ***if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.***

Rule 3(a), SCRCP (emphasis added). Interpreting section 15–3–20(B) and Rule 3(a), SCRCP, our Supreme Court has held that "[w]hen service occurs outside of the statute of limitations it, must occur within 120 days of filing the complaint." *Mims ex rel. Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 347, 732 S.E.2d 395, 398 (2012). Plaintiffs failure to serve Kelzenburg-Wumag within 120 days of the filing of the Complaint requires dismissal of this action.

Plaintiffs' claims arise out of an injury occurring on January 22, 2018 and are subject to a three year statute of limitations. *See* Compl. ¶ 8; S.C. Code Ann. § 15-3-350 (establishing a three year statute of limitations for personal injury claims). Plaintiffs filed this action on January 6, 2021, just 14 days prior to the expiration of the statute of limitations. If service of a summons and complaint, is not accomplished within the statute of limitations, "then service must be made within 120 days of filing.[6]" *Mims ex rel.* Mims, 399 S.C. at 346, 732 S.E.2d at 398 (citing S.C. Code Ann. § 15–3–20(B) and Rule 3(a), SCRCP). More than 450 days have passed since the filing of the Complaint, and Plaintiffs have still not served Kelzenburg-Wumag.[7] Under black-letter South

[6] In this case, Plaintiffs were required to serve Kelzenburg-Wumag on or before May 6, 2021.

[7] Kelzenburg-Wumag filed its motion alleging insufficient service of process on March 22, 2021. In the year that Kelzenburg-Wumag's motion has been pending, Plaintiffs made no effort to properly serve Kelzenburg-Wumag.

Carolina law, Plaintiffs have failed to commence an action within the required time period and Plaintiffs' claims must be dismissed. *See Kinder v. City of Myrtle Beach*, No. 4:15-cv-01416-RBH, 2017 WL 227969 (D.S.C. Jan. 19, 2017) (applying S.C. Code Ann. § 15-3-20(B) and Rule 3(a), SCRCP and dismissing plaintiff's complaint, with prejudice, because the complaint was not served within the statute of limitations or within 120 days of the filing of the summons and complaint).

II. THE EXERCISE OF PERSONAL JURISDICTION OVER KELZENBURG-WUMAG IN SOUTH CAROLINA WOULD VIOLATE THE DUE PROCESS CLAUSE

Although Plaintiffs' failure to properly serve Kelzenburg-Wumag within the required time period is dispositive, Rule 12(b)(2), SCRCP provides additional grounds for this Court to dismiss Plaintiffs' Complaint because this Court exercising personal jurisdiction over Kelzenburg-Wumag would violate the Due Process Clause.

A. The Due Process Clause and Personal Jurisdiction

The "Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)). The minimum contacts requirement "protects a defendant from burdensome litigation in a far-flung jurisdiction" and upholds the general principal of law that "those who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291-92 (1980).

Traditionally, in South Carolina, the determination of whether a court may exercise personal jurisdiction over a nonresident involved a two-step analysis which examined (1) whether the South Carolina long-arm statute is satisfied, and then (2) whether the nonresident's contacts in

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

South Carolina satisfied due process. *Cribb v. Spatholt*, 382 S.C. 490, 499, 676 S.E.2d 714, 719 (Ct.App. 2009) (citing *Power Prods. & Servs. Co. v. Kozma*, 379 S.C. 423, 431, 665 S.E.2d 660, 664 (Ct.App. 2008)). However, "because South Carolina treats its long-arm statute as coextensive with the due process clause, the question becomes whether the exercise of personal jurisdiction would violate due process." *Moosally*, 358 S.C. at 329, 594 S.E.2d at 883; *see also Sunny Days Entm't, LLC*, 376 F. Supp. 3d at 659 (D.S.C. 2019) ("South Carolina's long-arm statute has been interpreted to reach the outer bounds permitted by the Due Process Clause.").

There are two ways to establish personal jurisdiction: (1) general jurisdiction and (2) specific jurisdiction. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). This Court lacks both general and specific jurisdiction over Kelzenburg-Wumag.

B. There is No Basis for This Court to Exercise General Personal Jurisdiction Over Wumag

"In recent years, the Supreme Court has significantly narrowed the reaches of general personal jurisdiction." *Sunny Days Entm't, LLC*, 376 F. Supp. 3d at 660; *see also Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). Under the Due Process Clause, "[a] court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially ***at home*** in the forum State." *Daimler AG*, 571 U.S. at 138-39 (emphasis added) (citing *Goodyear*, 564 U.S. at 919). "[O]nly a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there." *Id*. at 137 (citing *Goodyear*, 564 U.S. at 919). For corporate defendants like Kelzenburg-Wumag, "the 'paradigm" forums in which it can be considered "at home" are the [company's] place of incorporation and its principal place of business. *See BNSF Ry. Co. v. Tyrrell*, 137 S.Ct. 1549 (2017) (citing *Daimler AG*, 571 U.S. at 137). Beyond where the corporate defendant is incorporated or maintains its principal place of business, only in an "exceptional case" will contacts with another forum be "so substantial and of

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

such a nature as to render the corporation at home in that State." *See Daimler AG*, 571 U.S. at 139 n.19.

Kelzenburg-Wumag is a German company with its principal place of business in Düren, Germany. (Hess Declaration ¶ 4). That being the case, exceptional circumstances must exist for Kelzenburg-Wumag to be subject to general personal jurisdiction in South Carolina. *See Daimler AG*, 571 U.S. at 139 n.19. The Complaint fails to allege any facts upon which this Court could determine that this is an "exceptional case" where Kelzenburg-Wumag is to be deemed "at home" in South Carolina. *Id*. Moreover, the Hess Declaration makes it clear that Kelzenburg-Wumag is not "at home" in South Carolina. Kelzenburg-Wumag does not have a business office or manufacturing facility in South Carolina, and has no employees based in South Carolina. (*Id*. ¶ 22). Kelzenburg-Wumag has never been registered with the South Carolina Secretary of State and has never registered an agent for service of process in South Carolina. (*Id*. ¶ 21–22). Clearly, Kelzenburg-Wumag does not have contacts with South Carolina "so substantial and of such a nature as to render [it] at home in [South Carolina]." *Daimler AG*, 571 U.S. at 139 n.19; *compare Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 448 (1952) (business incorporated under the laws of the Philippines, but whose president temporarily moved to Ohio where it kept an office, maintained the company's files, and oversaw the company's activities was an "exceptional case" that warranted finding the company to be subject to general personal jurisdiction in Ohio). Wumag is not subject to general jurisdiction in South Carolina.

C. There is No Basis for This Court to Exercise Specific Personal Jurisdiction Over Kelzenburg-Wumag

This Court also lacks specific personal jurisdiction over Wumag. For specific personal jurisdiction, due process mandates that a defendant have sufficient minimum contacts with the forum state such that it could reasonably anticipate being hauled into court there, and such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Power Prod. & Servs. Co., 379 S.C. at 431, 665 S.E.2d at 665. Guided by these principles, "[t]he determination of whether the requirements of due process are satisfied involves a two-prong analysis of (1) the 'power' prong, under which minimum contacts grant a court the 'power' to adjudicate the action; and (2) the 'fairness' prong, which requires the exercise of jurisdiction to be 'reasonable' or 'fair.'" *Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 541–42, 783 S.E.2d 839, 843 (Ct.App. 2016). If a plaintiff fails to satisfy one of the prongs, "the exercise of personal jurisdiction over the [nonresident] defendant fails to comport with the requirements of due process." *Id*. (citing *S. Plastics Co.*, 310 S.C. at 260, 423 S.E.2d at 131). In this case, Plaintiffs fail to satisfy both the "power" prong and the "fairness" prong.

i. *Plaintiff Fails to Satisfy the Power Prong because Klezenburg-Wumag Does Not Have "Minimum Contacts" with the State of South Carolina*

The power prong of the due process test requires "a minimum contacts analysis" to determine whether a defendant has "directed its activities to residents of South Carolina and that the cause of action arises out of or relates to those activities." *Id*. (citing *Moosally*, 358 S.C. at 331-332, 594 S.E.2d at 884-85. In *Moosally*, the court explained the minimum contacts requirement as follows:

> Without minimum contacts, the court does not have the 'power' to adjudicate the action. ***It is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.*** The 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts.

Moosally, 358 S.C. at 331-332, 594 S.E.2d at 884-85 (emphasis added) (internal citations omitted).

The unopposed declaration of Michael Hess establishes that Kelzenburg-Wumag does not have minimum contacts with South Carolina.[8] Kelzenburg-Wumag is not now, and has never been

[8] Again, "[w]hen a nonresident defendant attacks the allegations of a complaint based on jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." *Power Prods. & Servs. Co.*, 379 S.C. at 430, 665 S.E.2d at 664.

registered with the South Carolina Secretary of State. (Hess Declaration ¶ 20). Kelzenburg-Wumag has never registered an agent for service of process with the South Carolina Secretary of State. (*Id.* ¶ 21). Kelzenburg-Wumag does not now, and has never, maintained an office, manufacturing facility or other place of business within South Carolina. (*Id.* ¶ 22). Kelzenburg-Wumag does not now, and has never, employed any personnel based in South Carolina. (*Id.* ¶ 23).

It is also undisputed that Kelzenburg-Wumag has no contacts with South Carolina related to this case. To the extent Plaintiffs argue that there is some random or attenuated contact between Kelzenburg-Wumag and South Carolina, any such contact is insufficient to confer jurisdiction in this case. "In order for a state court to exercise specific jurisdiction, 'the suit' must arise out of or relate to the defendant's contacts with the forum." *See Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S.Ct. 1773, 1780 (2017). "[T]here must be an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State." *Id*. "When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id*. at 1781.

Although this action and Kelzenburg-Wumag's motion have been pending for more than one year, Plaintiffs have offered no evidence showing that Kelzenburg-Wumag has any connection whatsoever to this case and Plaintiffs' alleged injuries. Plaintiff was injured in January 2018. Eighteen months after the alleged accident, Kelzenburg-Wumag entered into an asset purchase agreement to purchase the assets, but not the liabilities, of Wumag. (Hess Declaration ¶¶ 17–18). Although Kelzenburg-Wumag adopted the prior company's name for marketing reasons, there has never been, commonality of officers, directors, or stockholders between the Kelzenburg-Wumag and Wumag." (*Id*. ¶ 14). Kelzenburg-Wumag does not now, and has never held an ownership interest in the Laminating Calendar Line machine that allegedly injured Barry Lanham. (*Id*. ¶ 18). Moreover, Kelzenburg-Wumag did not design, test, manufacture, market, sell, import, distribute,

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

deliver or install the Laminating Calendar Line machine that allegedly injured Barry Lanham. (*Id*. ¶ 19).

Kelzenburg-Wumag is separate and distinct from Wumag, the company who, upon information and belief, designed, manufactured, sold, delivered, and installed the machine which is the subject of this action. Simply put, Plaintiffs have sued the wrong party. Minimum contacts must arise out of contacts that the 'defendant [itself]' creates with the forum State." *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (emphasis added) (quoting *Burger King Corp.,* 471 U.S. at 474 (1985)). The activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984). The Supreme Court has "consistently rejected attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State." *Walden*, 571 U.S. at 284. Kelzenburg-Wumag does not have the requisite minimum contacts with South Carolina to be subject to jurisdiction in the state.

ii. ***Plaintiff Fails to Satisfy the Fairness Prong because this Court Exercising Jurisdiction Over Kelzenburg-Wumag Does Not Comport with the Notions of "Fair Play and Substantial Justice"***

Even if Plaintiff could establish that Kelzenburg-Wumag has sufficient minimum contacts with the State of South Carolina, which it cannot, the court must also consider the "fairness" prong, which examines whether the exercise of personal jurisdiction over Kelzenburg-Wumag comports with "traditional notions of fair play and substantial justice." *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. at 491, 611 S.E.2d at 508 (citing *Burger King Corp.,* 471 U.S. at 464). Plainly stated, the court must find that the exercise of jurisdiction is 'reasonable' or 'fair.'" Under the fairness prong, "the court must consider: (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction." *Id*. (citing *Clark v. Key,* 304 S.C. 497, 405 S.E.2d 599 (1991)).

The relevant factors weigh heavily against this case continuing in South Carolina. Kelzenburg-Wumag has no contacts in South Carolina related, in any way, to this case. Further, no act or omission of Kelzenburg-Wumag gives rise to Plaintiffs' claims. Kelzenburg-Wumag did not design, test, manufacture, market, sell, import, distribute, deliver, or install the machine that allegedly caused Lanham's injuries. (Hess Declaration ¶ 19). The analysis relating to the third element is moot. If Plaintiffs name the correct party, they will likely have grounds to litigate this action in South Carolina. However, even ignoring that there is no basis for liability against Kelzenburg-Wumag, the inconvenience of forcing it to defend a suit where it has no contacts is readily apparent. Finally, South Carolina has no interest in exercising jurisdiction over a nonresident defendant with no connection to the injuries alleged by Plaintiffs. For all of these reasons, it would be unfair for this this court to exercise jurisdiction over Kelzenburg-Wumag.

This Court lacks both general and specific jurisdiction over Kelzenburg-Wumag, and this Court exercising jurisdiction over Kelzenburg-Wumag would violate due process. Wumag and Kelzenburg-Wumag are separate and distinct entities and must be treated as such. Therefore, Rule 12(b)(2), SCRCP provides an alternate basis to dismiss Plaintiffs' claims against Kelzenburg-Wumag.

CONCLUSION

For the foregoing reasons, Kelzenburg-Wumag respectfully requests that the Court issue an Order dismissing Plaintiffs' Complaint, with prejudice.

Respectfully submitted,

s/ Robert H. Jordan

Robert H. Jordan (SC Bar No. 13612)
Robert C. Osborne III (SC Bar No. 101827)
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
(843) 727-2650
robertjordan@parkerpoe.com
robertosborne@parkerpoe.com

Attorneys for Defendant
Wumag Texroll GmbH & Co. KG

April 7, 2022
Charleston, South Carolina

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

EXHIBIT A

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiff, vs. Wumag Texroll GmbH & Co. KG, Defendants.	IN THE COURT OF COMMON PLEAS Case No. 2021-CP-19-00005 **DECLARATION OF MICHAEL HESS IN SUPPORT OF WUMAG TEXROLL GMBHH & CO. KG'S MOTION TO DISMISS**

COMES NOW, Michael Hess, who deposes and states as follows:

1. My name is Michael Hess, and I am over the age of eighteen (18) years and am competent to give sworn testimony. I have personal, first-hand knowledge of the matters set forth in this declaration. I offer this declaration in support of Wumag Texrol GmbH & Co. KG's ("Wumag II") Motion to Dismiss in the above-captioned action.

2. I am the Managing Director of Wumag II.

3. Wumag II was previously named Kelzenberg + Co: GmbH & Co. KG ("Kelzenberg"), and I previously served as the Managing Director of Kelzenberg from 2008 to 2019.

4. Wumag II is registered at the district court of Düren, Germany under number HRA 224 and the general partner GmbH under number HRB 154.

5. Wumag II's principal place of business is in Düren, Germany.

6. On September 1, 2019, insolvency proceedings concerning the assets of Wumag Texroll GmbH & Co. KG ("Wumag I") commenced in the district court of Krefeld, Germany.

7. Prior to being insolvent, Wumag I was registered at the district court of Krefeld, Germany under number HRA 3719.

8. On or around September 18, 2019, Kelzenberg entered into an asset purchase agreement to purchase the assets of Wumag I out of insolvency.

9. Dr. Peter Minuth, Attorney at Law and Insolvency Administrator, currently serves as the insolvency administrator for the Wumag I insolvency proceedings.

10. Pursuant to the asset purchase agreement, Kelzenberg purchased certain assets of Wumag I, including machinery, equipment, software licenses. Ownership of the purchased assets was transferred from Wumag I to Kelzenberg on October 1, 2019.

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

11. The asset purchase was carried out in Germany and was governed by German law.

12. Under German law, an agreement to purchase assets does not provide for the assumption of liabilities, unless expressly agreed otherwise or statutory provisions of German law stipulate otherwise.

13. On September 18, 2019, for marketing reasons, Kelzenberg changed its name to Wumag II.

14. Despite Wumag II adopted the same name for marketing reasons following the asset purchase, there is not now, and has never been, commonality of officers, directors, or stockholders between Wumag I and Wumag II.

15. The Complaint in this action concerns injuries suffered by Plaintiff Barry Lanham ("Lanham") alleged to have occurred on January 22, 2018 at a Bondex, Inc. plant in Trenton, South Carolina. (*See* Compl. ¶¶ 3–8).

16. Lanham alleges he was injured by a Laminating Calendar Line machine which was designed and manufactured by Wumag Texroll GmbH & Co. KG and then sold by Wumag Texroll GmbH & Co. KG to Bondex, Inc. (*See* Compl. ¶¶ 3–8).

17. Lanham's alleged injuries which are the subject of this action and which give rise to the claims asserted in the Complaint occurred almost two years prior to Wumag II purchasing the assets of Wumag I.

18. Wumag II does not now, and has never held an ownership interest in the Laminating Calendar Line machine that allegedly caused Mr. Lanham's injuries.

19. Wumag II did not design, test, manufacture, market, sell, import, distribute, deliver or install the Laminating Calendar Line machine that allegedly caused Mr. Lanham's injuries.

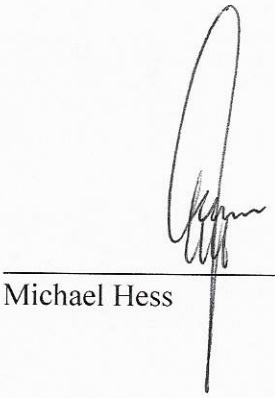
20. Wumag II is not now, and has never been registered with the South Carolina Secretary of State.

21. Wumag II has never registered an agent for service of process with the South Carolina Secretary of State.

22. Wumag II does not now, and has never, maintained an office, manufacturing facility or other place of business within South Carolina.

23. Wumag II does not, does not now, and has never, employed any personnel based in South Carolina.

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



Michael Hess

Date: 08/05/2021

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

EXHIBIT B

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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

1205 PENDLETON STREET, SUITE 525
COLUMBIA, SC 29201

803-734-2170
www.sos.sc.gov

January 14, 2021

INTERNATIONAL REGISTERED MAIL
RETURN RECEIPT REQUESTED

Wumag Texroll GmbH & Co. KG
Dusseldorfer Str. 120
Krefeld, Linn 47809
Germany

RE: Wumag Texroll GmbH & Co. KG, 2021-CP-19-00005

Dear Madam/Sir:

In accordance with South Carolina Code § 15-9-245, we are enclosing herewith a copy of the Summons and Complaint in the above-entitled case. Service was accepted on January 11, 2021 and a copy has been duly filed in our office as of this date. The fee of $10.00 has been paid.

Yours very truly,

Allyson Green

Allyson Green
South Carolina Secretary of State's Office

Enclosures

cc: Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
Megan C. Davis
101 Mulberry Street East Post Office Box 457
Hampton, SC 29924

ELECTRONICALLY FILED - 2021 Jan 06 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	CIVIL ACTION NO.: 2021-CP-19-____
	)	
Barry Lanham and Obvia Gamble-Lanham, Plaintiffs,	)	
	)	**SUMMONS**
v.	)	***(Jury Trial Demanded)***
	)	
Wumag Texroll GmbH & Co. KG, Defendant.	)	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, Peters, Murdaugh, Parker, Eltzroth & Detirck, P.A. at 101 Mulberry Street East, P.O. Box 457, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

RECEIVED
JAN 11 2021
SC SECRETARY OF STATE

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK, P.A.

BY: /s/William F. Barnes, III
William F. Barnes, III (SC Bar #78220)
John E. Parker (SC Bar #4442)
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
wbarnes@pmped.com
jparker@pmped.com
Attorneys for Plaintiffs

January 6, 2021
Hampton, South Carolina

ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	CIVIL ACTION NO.: 2021-CP-19-_____
	)	
Barry Lanham and Obvia Gamble-Lanham, Plaintiffs,	)	
	)	**COMPLAINT**
v.	)	***(Jury Trial Demanded)***
	)	
Wumag Texroll GmbH & Co. KG, Defendant.	)	

The Plaintiffs allege:

1. The Plaintiffs, Barry Lanham and Obvia Gamble-Lanham ("Plaintiffs" or "Lanham") are residents of Edgefield County, South Carolina.

2. Obvia Gamble-Lanham is the wife of Barry Lanham.

3. The Defendant, Wumag Texroll GmbH & Co. KG (hereinafter referred to as "Wumag Texroll") is a foreign corporation organized and maintaining its principal place of business in a state other than South Carolina. Wumag Texroll is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling, importing and distributing steel industrial machines including, but not limited to, the Laminating Calender Line machine ("Subject Machine") that forms the basis of this action.

4. Venue is proper in Edgefield County pursuant to S.C. Code Ann. § 15-7-30 as it is the county where the most substantial part of the act or omission giving rise to the cause of action occurred.

5. Wumag Texroll is subject to the jurisdiction of this Court.

6. Wumag Texroll designed and manufactured a Laminating Calender Line machine, machine number 206460, that was subsequently sold, delivered, and installed at Bondex, Inc. in Trenton, South Carolina.

ELECTRONICALLY FILED - 2021 Jan 06 3:16 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

7. After the Subject Machine was installed by Wumag Texroll, employees and/or agents of Wumag Texroll visited the Bondex plant in Trenton, SC and deactivated safety devices on the Subject Machine.

8. On January 22, 2018, Plaintiff, Barry Lanham, a Bondex, Inc. employee, was cleaning the machine when his left arm and hand was pulled into the Machine, resulting in severe and permanent damage to his left arm and hand.

FIRST CAUSE OF ACTION
(Negligence)

9. The above allegations are repeated as if quoted verbatim.

10. The injuries and damages sustained by Plaintiff are the direct and proximate result of the negligence, carelessness, recklessness, and wanton conduct of Wumag Texroll in the following particulars:

a. In designing a machine that was unsafe and unreasonably dangerous;

b. In manufacturing a machine that was unsafe and unreasonably dangerous;

c. In selling a machine that was unsafe and unreasonably dangerous;

d. In installing a machine that was unsafe and unreasonably dangerous;

e. In failing to warn the Plaintiff of the dangerous and defective condition of the machine;

f. In failing to incorporate certain safeguards on the machine that would have prevented the Plaintiff's injury;

g. In deactivating safety devices on the Subject Machine that would have prevented Plaintiff's injury;

h. In designing, manufacturing, selling, and installing a machine that could not be cleaned without endangering the person so cleaning;

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

j. In designing, manufacturing, selling, installing, and altering a machine in utter disregard of the safety of Plaintiff;

ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2021 Jan 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

k. In failing to provide instructions about how to properly clean the machine; and

l. In such other particulars as the evidence and testimony may establish.

11. As a result of the aforementioned events, Plaintiff suffered severe and permanent injury to this left arm and hand, and other parts of his body from which he has suffered and will continue to suffer physical pain; mental anguish and emotional distress; has expended and will in the future expend monies for medical care and treatment; caused to lose the enjoyment of life; and has lost income.

12. By reason of and in consequence of the above-mentioned negligent, careless, reckless, willful, and wanton conduct of Wumag Texroll, Plaintiff has suffered the injuries, losses, and damages complained of for which Wumag Texroll is liable.

SECOND CAUSE OF ACTION
(Strict Liability pursuant to S.C. Code Ann. § 15-73-10, et seq.)

13. The above allegations are repeated as if quoted verbatim.

14. Plaintiff's injuries occurred because the Machine was designed, manufactured, and sold by Wumag Texroll in a defective condition unreasonably dangerous to the Plaintiff.

15. Wumag Texroll designed, manufactured, and sold the Machine in a defective and unreasonably dangerous condition.

16. At the time of Plaintiff's injury, the Machine was in substantially the same condition as it was when it was installed by Defendant.

17. As a direct and proximate result of the defective and unreasonably dangerous condition of Defendant's machine, Plaintiff suffered the injuries and damages complained of for which Defendant is strictly liable, pursuant to S.C. Code Ann. § 15-73-10, to Plaintiff in an amount to be ascertained by the jury at the trial of this action.

ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2021 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

THIRD CAUSE OF ACTION
(Breach of Express and Implied Warranties)

18. The above allegations are repeated as if quoted verbatim.

19. Wumag Texroll expressly and impliedly warranted that the Machine it sold was merchantable and fit for ordinary use.

20. Wumag Texroll breached express and implied warranties in that the Machine it designed, manufactured, sold, and installed and, which was used by the Plaintiff, was not merchantable and was unfit for ordinary, normal use.

21. The breach of Wumag Texroll's express and implied warranties in the sale of the Machine was the proximate cause of the damages Plaintiff sustained for which Defendant is liable.

FOURTH CAUSE OF ACTION
(Loss of Consortium)

22. The Plaintiff, Obvia Gamble-Lanham, due to the injuries sustained by her husband, has suffered the loss of his consortium, support, and care.

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

[SIGNATURE PAGE TO FOLLOW]

ELECTRONICALLY FILED - 2021 Jan 07 3:37 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: /s/William F. Barnes, III
William F. Barnes, III (SC Bar #78220)
John E. Parker (SC Bar #4442)
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
wbarnes@pmped.com
jparker@pmped.com
Attorneys for Plaintiffs

January 6, 2021
Hampton, South Carolina

State of South Carolina
OFFICE OF
MARK HAMMOND
Secretary of State
1205 Pendleton Street, Suite 525
COLUMBIA, SC 29201

United States Postal Service
REGISTERED MAIL

RR 662 958 442 US

Label 200, July 1999 (102595) 99-M-1904

9400

00106

U.S. POSTAGE PAID
FCMI LTR
COLUMBIA, SC
29201
JAN 14, 21
AMOUNT
$22.39
R2304N116681-43

Wumag Texroll GmbH & Co. KG
Dusseldorfer Str. 120
47809 Krefeld (Linn), Germany

JAMAICA REG. SECT. 2021 JAN 20 OBTAIN

ROA 176

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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,	)	
	)	**AFFIDAVIT OF**
v.	)	**JOHN E. PARKER, JR.**
	)	
WUMAG TEXROLL GMBH & CO. KG,	)	
	)	
Defendant.	)	

Upon penalty of perjury, I, John E. Parker, Jr., having first been duly sworn, depose and say that the following is true and correct:

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

2. On January 7, 2021, two copies of the Summons and Complaint were sent via certified mail (receipt no.: 9489 0090 0027 6092 0824 49), along with a check for ten dollars, to the South Carolina Secretary of State's office for service on Defendant Wumag Texroll GmbH & Co. KG, as a foreign corporation not authorized to do business in South Carolina at Düsseldorfer Str. 120 47809 Krefeld (Linn), Germany. (Ex. 1).

3. On January 11, 2021, the Secretary of State accepted service on behalf of Wumag Texroll GmbH & Co. KG (Ex. 2). On January 14, 2021, the Secretary of State forwarded the copies of the Summons and Complaint to Wumag Texroll GmbH & Co. KG via First-Class International Registered Mail (tracking nos.: RR662958442US). (Ex. 3).

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Proof of service on the South Carolina Secretary of State was filed with the Court of Common Pleas of South Carolina on January 21, 2021.

4. The United States Postal Service has provided an official proof of delivery in the form of a USPS Product Tracking and Reporting System receipt, which shows that the Summons and Complaint were successfully delivered on February 17, 2021. (Ex. 4).

5. This Affidavit is being offered as proof of compliance with the requirements of S.C. Code Ann. § 15-9-245.

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

AS TO ANYTHING FURTHER, THE AFFIANT SAITH NOT.

JOHN E. PARKER JR.

SWORN to before me this
6th day of June 2022.

Notary Public for South Carolina
My Commission Expires: 3/11/2029

CLAUDIA CARTIER NOTARY PUBLIC MY COMMISSION EXPIRES 3/11/2029 SOUTH CAROLINA

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

PMPED
PETERS | MURDAUGH | PARKER | ELTZROTH | DETRICK
ATTORNEYS AT LAW

EXHIBIT
1

January 7, 2021

William F. Barnes, III
Direct Dial: (803) 914-6702
Email: wbarnes@pmped.com
Paralegal: mdavis@pmped.com

VIA CERTIFIED MAIL
RECEIPT NO.: 9489 0090 0027 6092 0824 49

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

Re: Barry & Obvia Lanham v. Wumag Texroll GmbH & Co. KG
Civil Action No.: 2021-CP-19-00005

Dear Sir or Madam:

Enclosed please find two copies of the Summons and Complaint in the above captioned matter of which I would appreciate you having a copy served on Wumag Texroll GmbH & Co. KG, as a foreign corporation not authorized to do business in South Carolina. The last known address for Wumag Texroll GmbH & Co. KG is below:

Wumag Texroll GmbH & Co. KG
Düsseldorfer Str. 120
47809 Krefeld (Linn), Germany
Phone: +49 2421 9654 0
Fax: +49 2421 9654 147

Also, please find enclosed our check in the amount of $10.00 to cover the service fee.

With kind regards, I am

Sincerely,

Megan C. Davis
Megan C. Davis
Paralegal to William F. Barnes, III

/mcd
Enclosures as stated

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	CIVIL ACTION NO.: 2021-CP-19-____
	)	
Barry Lanham and Obvia Gamble-Lanham, Plaintiffs,	)	
	)	**SUMMONS** ***(Jury Trial Demanded)***
v.	)	
	)	
Wumag Texroll GmbH & Co. KG, Defendant.	)	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, Peters, Murdaugh, Parker, Eltzroth & Detirck, P.A. at 101 Mulberry Street East, P.O. Box 457, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: /s/William F. Barnes, III
William F. Barnes, III (SC Bar #78220)
John E. Parker (SC Bar #4442)
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
wbarnes@pmped.com
jparker@pmped.com
Attorneys for Plaintiffs

January 6, 2021
Hampton, South Carolina

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF EDGEFIELD)	CIVIL ACTION NO.: 2021-CP-19-_____
)	
Barry Lanham and Obvia Gamble-Lanham,)	
Plaintiffs,)	
)	**COMPLAINT**
v.)	***(Jury Trial Demanded)***
)	
Wumag Texroll GmbH & Co. KG,)	
Defendant.)	

The Plaintiffs allege:

1. The Plaintiffs, Barry Lanham and Obvia Gamble-Lanham ("Plaintiffs" or "Lanham") are residents of Edgefield County, South Carolina.

2. Obvia Gamble-Lanham is the wife of Barry Lanham.

3. The Defendant, Wumag Texroll GmbH & Co. KG (hereinafter referred to as "Wumag Texroll") is a foreign corporation organized and maintaining its principal place of business in a state other than South Carolina. Wumag Texroll is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling, importing and distributing steel industrial machines including, but not limited to, the Laminating Calender Line machine ("Subject Machine") that forms the basis of this action.

4. Venue is proper in Edgefield County pursuant to S.C. Code Ann. § 15-7-30 as it is the county where the most substantial part of the act or omission giving rise to the cause of action occurred.

5. Wumag Texroll is subject to the jurisdiction of this Court.

6. Wumag Texroll designed and manufactured a Laminating Calender Line machine, machine number 206460, that was subsequently sold, delivered, and installed at Bondex, Inc. in Trenton, South Carolina.

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

7. After the Subject Machine was installed by Wumag Texroll, employees and/or agents of Wumag Texroll visited the Bondex plant in Trenton, SC and deactivated safety devices on the Subject Machine.

8. On January 22, 2018, Plaintiff, Barry Lanham, a Bondex, Inc. employee, was cleaning the machine when his left arm and hand was pulled into the Machine, resulting in severe and permanent damage to his left arm and hand.

FIRST CAUSE OF ACTION
(Negligence)

9. The above allegations are repeated as if quoted verbatim.

10. The injuries and damages sustained by Plaintiff are the direct and proximate result of the negligence, carelessness, recklessness, and wanton conduct of Wumag Texroll in the following particulars:

a. In designing a machine that was unsafe and unreasonably dangerous;

b. In manufacturing a machine that was unsafe and unreasonably dangerous;

c. In selling a machine that was unsafe and unreasonably dangerous;

d. In installing a machine that was unsafe and unreasonably dangerous;

e. In failing to warn the Plaintiff of the dangerous and defective condition of the machine;

f. In failing to incorporate certain safeguards on the machine that would have prevented the Plaintiff's injury;

g. In deactivating safety devices on the Subject Machine that would have prevented Plaintiff's injury;

h. In designing, manufacturing, selling, and installing a machine that could not be cleaned without endangering the person so cleaning;

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

j. In designing, manufacturing, selling, installing, and altering a machine in utter disregard of the safety of Plaintiff;

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

k. In failing to provide instructions about how to properly clean the machine; and

l. In such other particulars as the evidence and testimony may establish.

11. As a result of the aforementioned events, Plaintiff suffered severe and permanent injury to this left arm and hand, and other parts of his body from which he has suffered and will continue to suffer physical pain; mental anguish and emotional distress; has expended and will in the future expend monies for medical care and treatment; caused to lose the enjoyment of life; and has lost income.

12. By reason of and in consequence of the above-mentioned negligent, careless, reckless, willful, and wanton conduct of Wumag Texroll, Plaintiff has suffered the injuries, losses, and damages complained of for which Wumag Texroll is liable.

SECOND CAUSE OF ACTION
(Strict Liability pursuant to S.C. Code Ann. § 15-73-10, et seq.)

13. The above allegations are repeated as if quoted verbatim.

14. Plaintiff's injuries occurred because the Machine was designed, manufactured, and sold by Wumag Texroll in a defective condition unreasonably dangerous to the Plaintiff.

15. Wumag Texroll designed, manufactured, and sold the Machine in a defective and unreasonably dangerous condition.

16. At the time of Plaintiff's injury, the Machine was in substantially the same condition as it was when it was installed by Defendant.

17. As a direct and proximate result of the defective and unreasonably dangerous condition of Defendant's machine, Plaintiff suffered the injuries and damages complained of for which Defendant is strictly liable, pursuant to S.C. Code Ann. § 15-73-10, to Plaintiff in an amount to be ascertained by the jury at the trial of this action.

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

THIRD CAUSE OF ACTION
(Breach of Express and Implied Warranties)

18. The above allegations are repeated as if quoted verbatim.

19. Wumag Texroll expressly and impliedly warranted that the Machine it sold was merchantable and fit for ordinary use.

20. Wumag Texroll breached express and implied warranties in that the Machine it designed, manufactured, sold, and installed and, which was used by the Plaintiff, was not merchantable and was unfit for ordinary, normal use.

21. The breach of Wumag Texroll's express and implied warranties in the sale of the Machine was the proximate cause of the damages Plaintiff sustained for which Defendant is liable.

FOURTH CAUSE OF ACTION
(Loss of Consortium)

22. The Plaintiff, Obvia Gamble-Lanham, due to the injuries sustained by her husband, has suffered the loss of his consortium, support, and care.

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

[SIGNATURE PAGE TO FOLLOW]

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: /s/William F. Barnes, III
William F. Barnes, III (SC Bar #78220)
John E. Parker (SC Bar #4442)
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
wbarnes@pmped.com
jparker@pmped.com
Attorneys for Plaintiffs

January 6, 2021
Hampton, South Carolina

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	CIVIL ACTION NO.: 2021-CP-19-____
	)	
Barry Lanham and Obvia Gamble-Lanham, Plaintiffs,	)	
	)	**SUMMONS** ***(Jury Trial Demanded)***
v.	)	
	)	
Wumag Texroll GmbH & Co. KG, Defendant.	)	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, Peters, Murdaugh, Parker, Eltzroth & Detirck, P.A. at 101 Mulberry Street East, P.O. Box 457, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: /s/William F. Barnes, III
William F. Barnes, III (SC Bar #78220)
John E. Parker (SC Bar #4442)
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
wbarnes@pmped.com
jparker@pmped.com
Attorneys for Plaintiffs

January 6, 2021
Hampton, South Carolina

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	CIVIL ACTION NO.: 2021-CP-19-_____
	)	
Barry Lanham and Obvia Gamble-Lanham, Plaintiffs,	)	**COMPLAINT** ***(Jury Trial Demanded)***
v.	)	
Wumag Texroll GmbH & Co. KG, Defendant.	)	

The Plaintiffs allege:

1. The Plaintiffs, Barry Lanham and Obvia Gamble-Lanham ("Plaintiffs" or "Lanham") are residents of Edgefield County, South Carolina.

2. Obvia Gamble-Lanham is the wife of Barry Lanham.

3. The Defendant, Wumag Texroll GmbH & Co. KG (hereinafter referred to as "Wumag Texroll") is a foreign corporation organized and maintaining its principal place of business in a state other than South Carolina. Wumag Texroll is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling, importing and distributing steel industrial machines including, but not limited to, the Laminating Calender Line machine ("Subject Machine") that forms the basis of this action.

4. Venue is proper in Edgefield County pursuant to S.C. Code Ann. § 15-7-30 as it is the county where the most substantial part of the act or omission giving rise to the cause of action occurred.

5. Wumag Texroll is subject to the jurisdiction of this Court.

6. Wumag Texroll designed and manufactured a Laminating Calender Line machine, machine number 206460, that was subsequently sold, delivered, and installed at Bondex, Inc. in Trenton, South Carolina.

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

7. After the Subject Machine was installed by Wumag Texroll, employees and/or agents of Wumag Texroll visited the Bondex plant in Trenton, SC and deactivated safety devices on the Subject Machine.

8. On January 22, 2018, Plaintiff, Barry Lanham, a Bondex, Inc. employee, was cleaning the machine when his left arm and hand was pulled into the Machine, resulting in severe and permanent damage to his left arm and hand.

FIRST CAUSE OF ACTION
(Negligence)

9. The above allegations are repeated as if quoted verbatim.

10. The injuries and damages sustained by Plaintiff are the direct and proximate result of the negligence, carelessness, recklessness, and wanton conduct of Wumag Texroll in the following particulars:

a. In designing a machine that was unsafe and unreasonably dangerous;

b. In manufacturing a machine that was unsafe and unreasonably dangerous;

c. In selling a machine that was unsafe and unreasonably dangerous;

d. In installing a machine that was unsafe and unreasonably dangerous;

e. In failing to warn the Plaintiff of the dangerous and defective condition of the machine;

f. In failing to incorporate certain safeguards on the machine that would have prevented the Plaintiff's injury;

g. In deactivating safety devices on the Subject Machine that would have prevented Plaintiff's injury;

h. In designing, manufacturing, selling, and installing a machine that could not be cleaned without endangering the person so cleaning;

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

j. In designing, manufacturing, selling, installing, and altering a machine in utter disregard of the safety of Plaintiff;

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

k. In failing to provide instructions about how to properly clean the machine; and

l. In such other particulars as the evidence and testimony may establish.

11. As a result of the aforementioned events, Plaintiff suffered severe and permanent injury to this left arm and hand, and other parts of his body from which he has suffered and will continue to suffer physical pain; mental anguish and emotional distress; has expended and will in the future expend monies for medical care and treatment; caused to lose the enjoyment of life; and has lost income.

12. By reason of and in consequence of the above-mentioned negligent, careless, reckless, willful, and wanton conduct of Wumag Texroll, Plaintiff has suffered the injuries, losses, and damages complained of for which Wumag Texroll is liable.

SECOND CAUSE OF ACTION
(Strict Liability pursuant to S.C. Code Ann. § 15-73-10, et seq.)

13. The above allegations are repeated as if quoted verbatim.

14. Plaintiff's injuries occurred because the Machine was designed, manufactured, and sold by Wumag Texroll in a defective condition unreasonably dangerous to the Plaintiff.

15. Wumag Texroll designed, manufactured, and sold the Machine in a defective and unreasonably dangerous condition.

16. At the time of Plaintiff's injury, the Machine was in substantially the same condition as it was when it was installed by Defendant.

17. As a direct and proximate result of the defective and unreasonably dangerous condition of Defendant's machine, Plaintiff suffered the injuries and damages complained of for which Defendant is strictly liable, pursuant to S.C. Code Ann. § 15-73-10, to Plaintiff in an amount to be ascertained by the jury at the trial of this action.

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

THIRD CAUSE OF ACTION
(Breach of Express and Implied Warranties)

18. The above allegations are repeated as if quoted verbatim.

19. Wumag Texroll expressly and impliedly warranted that the Machine it sold was merchantable and fit for ordinary use.

20. Wumag Texroll breached express and implied warranties in that the Machine it designed, manufactured, sold, and installed and, which was used by the Plaintiff, was not merchantable and was unfit for ordinary, normal use.

21. The breach of Wumag Texroll's express and implied warranties in the sale of the Machine was the proximate cause of the damages Plaintiff sustained for which Defendant is liable.

FOURTH CAUSE OF ACTION
(Loss of Consortium)

22. The Plaintiff, Obvia Gamble-Lanham, due to the injuries sustained by her husband, has suffered the loss of his consortium, support, and care.

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

[SIGNATURE PAGE TO FOLLOW]

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: /s/William F. Barnes, III
William F. Barnes, III (SC Bar #78220)
John E. Parker (SC Bar #4442)
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
wbarnes@pmped.com
jparker@pmped.com
Attorneys for Plaintiffs

January 6, 2021
Hampton, South Carolina

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

EXHIBIT
2

ELECTRONICALLY FILED - 2021 Jan 21 11:43 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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

1205 PENDLETON STREET, SUITE 525
COLUMBIA, SC 29201

803-734-2170
www.sos.sc.gov

January 14, 2021

INTERNATIONAL REGISTERED MAIL
RETURN RECEIPT REQUESTED

Wumag Texroll GmbH & Co. KG
Dusseldorfer Str. 120
Krefeld, Linn 47809
Germany

RE: Wumag Texroll GmbH & Co. KG, 2021-CP-19-00005

Dear Madam/Sir:

In accordance with South Carolina Code § 15-9-245, we are enclosing herewith a copy of the Summons and Complaint in the above-entitled case. Service was accepted on January 11, 2021 and a copy has been duly filed in our office as of this date. The fee of $10.00 has been paid.

Yours very truly,

Allyson Green

Allyson Green
South Carolina Secretary of State's Office

Enclosures

cc: Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
Megan C. Davis
101 Mulberry Street East Post Office Box 457
Hampton, SC 29924

ROA 193

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

EXHIBIT
4

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

==========
HAMPTON
Unit #: 4537800664 ZIP Code: 29924

Date: 06/06/2022 9:04 AM
==========

Tracking Status
Business Date: 06/06/2022

Tracking Number
RR662958442US

Destination and Origin
Destination
ZIP Code:
City: FRANKFURT/FLUGHAFEN
State:
Origin
ZIP Code: 29201-9998
City: COLUMBIA
State: SC

Tracking Number Classification
Class/Service: First-Class Mail International Registered
Class of Mail Code/Description: LC

Origin/Return/Pickup Address Info
Address:
City:
State: ZIP Code: 29201-9998

Payment
Payment Type: 08
Payment Account Number:
Postage: 2.24
Weight: 0 lb (s) 2.00 oz (s)
Rate Indicator: Single Piece - Letters

Extra Services Details

Description: Registered Mail - International
Amount: 16.00

Description: Return Receipt
Amount: 4.15

Description: Registered Mail
Amount:

Event Details

Event: DELIVERED
Date: 02/17/2021
Time: 12:57
Location: GERMANY

For Further Information,
go to USPS.com

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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,	)	
	)	**MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS**
v.	)	
	)	
Wumag Texroll GmbH & Co. KG,	)	
Defendant.	)	

Defendant Wumag Texroll GmbH & Co. KG ("Wumag") has moved the Court to dismiss this action for lack of personal jurisdiction. Wumag, a German corporation, seeks to avoid the jurisdiction of the Court by contending that it was not properly served consistent with the requirements of the Hague Service Convention. Wumag also purports that it is not the successor in liability to a previous entity 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's contentions ignore South Carolina law explicitly providing for the domestic service of process on foreign corporations through the South Carolina Secretary of State.

Additionally, Wumag's arguments fly in the face of German corporate law providing that it is the successor in liability to its predecessor, Wumag Texroll GmbH & Co. KG, because it has carried on the business activities of its predecessor in the exact same business name. Wumag 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 its products to textile manufacturers throughout the state. Through this system, Wumag's products find a home in factories such as the Bondex, Inc. facility in Trenton, South Carolina 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 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's motion lacks merit and should be denied in its entirety.

FACTS

Wumag 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 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.[1] Further, as has been alleged in Plaintiffs' Complaint, agents and employees of

[1] Exhibit 2, Screenshot of U.S. Customs Records for Wumag Texroll GmbH & Co. KG, https://www.importgenius.com/suppliers/wumag-texroll-gmbh-co-kg (last visited June 3, 2022).

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Wumag personally visited the Bondex facility and performed installation work on the specific machinery which injured Plaintiff. (Compl. ¶¶ 6-7).[2]

This case arises out of an accident that occurred in Edgefield County, South Carolina. (Compl. ¶ 4). On January 22, 2018, Barry Lanham was cleaning a Laminating Calender Line machine at the Bondex facility in Trenton (Compl. ¶ 8). The machine was designed and manufactured by Wumag Texroll GmbH & Co. KG with a machine number of 206460. (Compl. ¶ 6). While cleaning the machine, Lanham's left arm and hand were pulled into it, causing permanent damage. (*Id.* at ¶ 8). Plaintiffs have alleged that the incident causing Lanham's injuries was due to the defective condition of the machine and the negligent conduct of Wumag's employees in installing and maintaining the subject machine. (*Id.* at ¶ 7). On January 6, 2021, Lanham filed this products liability and negligence suit against Wumag as the designer, manufacturer, distributor, and seller of the subject machine under theories of negligence, breach of implied warranties and strict liability. (*Id.* at ¶¶ 9-21). A cause of action for loss of consortium was also alleged by Lanham's wife, Obvia Gamble-Lanham. (*Id.* at ¶ 22).

After Lanham's injuries, but prior to his commencement of this action, Wumag Texroll GmbH & Co. KG, became insolvent and its assets were sold to another entity known at the time as Kelzenberg + Co: GmbH & Co. KG ("Kelzenberg"). The asset

[2] Even if the Court were to grant Wumag's Motion to Dismiss on the bases of personal jurisdiction, Plaintiffs' negligence claim would survive as Plaintiffs allege a separate claim for negligence for the acts and omissions of Wumag's agents within the Bondex facility. This claim is not predicated on a stream of commerce theory of products liability and is not subject to the specific personal jurisdiction analysis.

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

sale occurred on September 18, 2019. At that time, Kelzenberg 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. This name was registered with the district court at Krefeld, Germany. Thus, Wumag has continued its business enterprise under the same name, selling the same products, as it did prior to the asset purchase. In fact, on its website, Wumag 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).

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 argues that service on the Secretary of State was improper because Wumag has no business presence in South Carolina, and that the proper means of serving Wumag in this action is by complying with the requirements of the Hague Service Convention. Wumag ignores that the Secretary of State is authorized to accept service in-state on behalf of Wumag (1) because Wumag's products are imported and distributed in this state by entities such as Zima Corporation and Morrison Textile Machinery Inc., both registered with the South Carolina Secretary of State, (2) because Wumag sends its agents and employees into this State to service and install its products, and (3) because Wumag transacts business through the Port of Charleston in interstate commerce. *See* discussion *infra* Sections II.B, II.C.1.a; (Ex.

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

5 & Ex. 6). Wumag also 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 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).

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 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.

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,

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

designated domestic agent without having to serve the defendant abroad. *Id.* at 706, 108 S. Ct. at 2111.

Wumag refuses to acknowledge that in *Holman*, 318 S.C. 201, 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 activity 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.

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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.

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Under S.C. Code Ann. § 15-9-245 and in the present circumstances, service was never effectuated by certified mail sent abroad, because Wumag 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

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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). 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. (Exhibit 3, Order).

Wumag is not authorized to conduct business in South Carolina.[3] However, Wumag 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 *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. 5, Zima Corp. filing; Ex. 6, Morrison Textile Mach. Inc. filing). Further,

[3] Exhibit 4, 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).

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Wumag sends its own agents into South Carolina to perform work on and install its products within textile facilities. (*See* Compl ¶¶ 6-7).

In the light most favorable to the Plaintiff, since Wumag 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 is engaged in business activities that require the Secretary of State to act as Wumag's agent for service of process, even if Wumag 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 engages in interstate commerce within South Carolina by shipping through the Port of Charleston.

The Secretary of State accepted service on behalf of Wumag on January 11, 2021.[4] It is important to note that service was performed in-state on a statutorily designated agent of Wumag. 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 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

[4] Exhibit 7, Service of Wumag Texroll GmbH & Co. KG South Carolina Secretary of State.

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

statutory law, specifically Rule 4, SCRCP, 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.[5]

II. Wumag is subject to personal jurisdiction in South Carolina through the contacts with which Wumag purposefully avails itself of the privilege of conducting business activities within the State.

Wumag's Motion to Dismiss for lack of personal jurisdiction should be denied for the simple reason that this Court has specific personal jurisdiction over Wumag. The Court has specific personal jurisdiction over Wumag because: (1) Wumag 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, (2) Wumag ships its products in interstate commerce through the Port of Charleston, and (3) Wumag has deliberately and precisely chosen in-state importers and distributors to disseminate its products throughout the United States, including South Carolina.

---

[5] Wumag 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. 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. 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 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.").

When a court's power to exercise personal jurisdiction over a non-resident defendant is challenged by a motion under South Carolina Rule of Civil Procedure 12(b)(2), "the plaintiff ***need only make a prima facie showing*** by pleadings and affidavits" that the trial court should exercise personal jurisdiction. *Mid-State Distribs., Inc. v. Century Imps., Inc.*, 310 S.C. 330, 332, 426 S.E.2d 777, 779 (1993) (emphasis added). The trial judge is not required to verify the pleadings, as the allegations of the complaint are normally sufficient to warrant the court's exercise of jurisdiction. *Id.* "It is only when the complaint does not demonstrate jurisdiction that the plaintiff must supply other evidence of jurisdiction." *Springmasters, Inc. v. D & M Mfg.*, 303 S.C. 528, 531, 402 S.E.2d 192, 193 (Ct. App. 1991). "Thus, nothing requires the plaintiff to present evidence of jurisdiction if the complaint demonstrates jurisdiction." *Id.*

Here, the Complaint alleged that Wumag designed and manufactured the subject machine and sold, delivered, and installed the subject machine within South Carolina. (Compl. ¶ 3). Plaintiff's inclusion of a jurisdictional allegation should serve as a prima facie showing of personal jurisdiction sufficient for the Court to deny Wumag's motion to dismiss for lack of personal jurisdiction. Defendant does not dispute that Wumag sold, delivered, and installed the subject machine within South Carolina, but argues instead that these actions were taken by its predecessor, and that it is not liable for its predecessor's conduct. German law indicates otherwise, and federal law holds that the contacts of a predecessor are imputed to the successor within the personal jurisdiction analysis.

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

In the alternative, when a foreign defendant attacks the allegations of the complaint based on personal jurisdiction, the court is not confined to the pleadings and may resort to affidavits and other evidence to determine jurisdiction. *Power Prods. & Servs. Co. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). In resolving a Rule 12(b)(2), SCRCP, motion to dismiss, the court should take as true the allegations of the nonmoving party and resolve all factual disputes in its favor, including any factual disputes brought up by submitted affidavits and evidence. *Brown v. Inv. Mgmt. and Research, Inc.*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996).

A. Defendant is the successor in liability to the previous Wumag entity under German law, and the previous entity's contacts are imputed to the current Defendant.

German law determines whether Wumag in its current form would be liable for the tortious conduct of its predecessor, which did business in South Carolina under an identical name as that of Defendant. In order to determine whether German law or South Carolina law would apply to determine successor liability, the Court must conduct a choice of law analysis, as a true conflict exists between the law of South Carolina and the law of Germany regarding successor liability. 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 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); *see 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. *O'Briant v. Daniel Constr. Co.*, 279 S.C. 254, 256, 305 S.E.2d 241, 243 (1983). Defendant has asserted that it acquired the assets of its predecessor through an asset purchase agreement that was created and executed in Germany and that the agreement does not include the transfer of liabilities from its predecessor to Defendant. 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. 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."

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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, Plaintiff was injured on January 22, 2018, over a year and a half before Defendant acquired the predecessor Wumag entity's assets. Therefore, an obligation or claim under German law existed at the time of the transfer, and since Defendant continued the predecessor entity's business in its exact same name, liability for the claim transferred to Defendant at the time of the asset purchase agreement.

Defendant is likely to argue that even if liability for this action transferred as a result of the asset purchase agreement, it is not subject to personal jurisdiction within South Carolina, because the contacts of its predecessor in selling and installing the subject machine and importing goods into South Carolina cannot be imputed to Defendant. However, this argument is not supported by law. 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 for the purposes of the *International Shoe* due process analysis.

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); *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). Additionally, as demonstrated within this Memorandum, within its current form Defendant itself has continuing and systematic contacts within South Carolina. Because Defendant and its predecessor both have contacts within the State of South Carolina through their importation, distribution, and sales efforts, and because the predecessor's contacts are imputed to Defendant, it is only fair and reasonable that Defendant should be expected to appear and defend itself in a South Carolina court as a result of injuries that were caused by one of its products within the State.

B. The Court has jurisdiction over Wumag 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:

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

> (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 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, 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. 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 statutes, 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 transacts business itself or through an agent as defined by South Carolina's long-arm statutes. And a careful reading of the Affidavit of Michael Hess, submitted

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

by Defendant in support of its Motion to Dismiss, reveals that Defendant does not deny that it designs, tests, manufactures, markets, sells, imports, distributes, delivers, or installs laminating calender line 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, Defendant 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.[6]

Wumag's conduct satisfies several provisions of South Carolina's long-arm statute. Wumag 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 the United States, including textile facilities such as Bondex in South Carolina. Wumag imports its products through the Port of Charleston for such distribution. This is sufficient to support the conclusion that Wumag has a reasonable expectation that its products will be used or consumed

[6] As to personal jurisdiction, under principles of successor liability and United States Supreme Court precedent, Defendant's predecessor's contacts concerning the subject machine are imputed to Defendant, and a causal relationship does not have to exist between Defendant'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*, and Section II.C.1.a., *infra*.

within South Carolina. Therefore, under South Carolina statutory law, Wumag is subject to this Court's personal jurisdiction, so long as the jurisdiction 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 due to its extensive contacts 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.

1. This Court has specific personal jurisdiction over Wumag.

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

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

"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 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, Defendant 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 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 has asserted that the subject machine in this action was not sold by Wumag and that it was sold by its predecessor. However, under German law, South Carolina law and federal precedent, each of these could be true and Wumag would still be subject to the Court's jurisdiction. This would apply even if Wumag'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

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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 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 manufactures and sells its products through in-state entities that it deliberately chose for that purpose.

Wumag 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 has been the shipper of textile manufacturing products and parts to the Port of Charleston, South Carolina as recently as 2021.[7] 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 has been the shipper of imports consigned by companies with South Carolina addresses in Spartanburg and Fort Lawn. The majority of Wumag's products enter the United States through the Port of Charleston. These activities constitute substantial evidence that Defendant, both itself and

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

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

through the imputed contacts of its predecessor, 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.

Citing language from *Walden v. Fiore*, 571 U.S. 277 (2014), Defendant argues that it is not subject to 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, and that its predecessor's contacts cannot be imputed to Defendant. In other words, because Defendant'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 latter argument as to imputed contacts is erroneous. *See* discussion Section II.A, *infra*. As for the former argument, it has recently been unanimously rejected by the Supreme Court of the United States.

In *Ford Motor Co. v. Montana Eighth Judicial District Court*, 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 products. The Court disagreed with Ford's position:

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

> 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 Defendant's activities in seeking to import and distribute its products for use into South Carolina specifically, and the United States as a whole. If not for Defendant's (and its predecessor's) importation efforts, the subject machine would never have arrived within South Carolina to injure Plaintiff.[8] Such a showing of minimum contacts is sufficient to survive a motion to dismiss for lack of personal jurisdiction under both South Carolina and federal law.

b. The exercise of personal jurisdiction over Wumag 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;

[8] 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.").

(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 and/or its predecessor. Wumag continues to sell machinery utilized by the textile industry within South Carolina. 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. Wumag has not come forward with any evidence that its products are not distributed and sold within the State because it cannot.

Defendant 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 its predecessor under German law. This position is astoundingly hypocritical. Defendant benefits from the good will and brand established by its predecessor. Wumag 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 when a product it designed, manufactured, and sold under theories of successor liablity permanently injures one of our citizens.

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Any burden Wumag might undertake in defending itself in South Carolina will be minimal. It is not inconvenient or burdensome to send its agents into South Carolina in connection to a sale, so it should not be inconvenient for Wumag to appear before this Court. Even if the case were adjudicated elsewhere, Wumag 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 facts in this action. 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 sent its products into this State for its own immense profit. Not only is it fair and constitutionally reasonable for Wumag 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 in Germany. Plaintiff has no means to seek a judgment from a German court. Wumag'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. If that is not offensive to "traditional notions of fair play and substantial justice," then nothing is. The Defendant's Motion to Dismiss should be denied.

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

CONCLUSION

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

[SIGNATURE PAGE TO FOLLOW]

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PARKER LAW GROUP, LLP

BY: s/John E. Parker, Jr.
John E. Parker
John E. Parker, Jr.
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
Phone: (803) 943-2111
jparker@parkerlawgroupsc.com
jayparker@parkerlawgroupsc.com

-AND-

BARNES LAW FIRM
William F. Barnes III
13 Mulberry Street East
P.O. Box 897
Hampton, SC 29924

ATTORNEYS FOR PLAINTIFF

July 13, 2022
Hampton, South Carolina

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

EXHIBIT 1

We are looking for YOU!

Currently only available in German. Please take a look to the German page.

Applications by e-mail or post to:

mail@krafft-walzen.com or

WUMAG TEXROLL GmbH & Co. KG
Schoellerstrasse 164
52351 Düren, Germany

Company

More than 70 years old, WUMAG presents itself as a young, modern business company that is highly valued by all experts and it´s customers all over the world for it´s perfomance, it´s extensive experience and absolute relaibility.

WUMAG belongs to those medium-size financed companies whose creativity, specialist knowledge and innovative strengths ensure constant adaptation to changing circumstances

as well as new market requirements and prevent solidification in firmly established structures.

As of October 1, 2019, the business operations of WUMAG TEXROLL in Krefeld will continue as a subsidiary under the direction of **Carl KRAFFT & Söhne GmbH & Co.KG** in Düren.

In the Center of Excellence in Krefeld we are producing the following core products

- Thin-walled Drying Cylinders for textile drying (PED, ASME and Chinese ML specifications) - the #WTD
- Double-Shell Rollers with thin-walled stainless steel jackets
- Double-Shell Large Rollers
- Elektric Heated Dryers - the #EHD

- Cylinder Dryer
- Thermofixing and Strectching Machines
- Calender

© 2020 WUMAG TEXROLL GmbH & Co. KG

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

U.S. Customs Records for Wumag Texroll Gmbh Co.kg,

US Customs Records Notifications available for Wumag Texroll Gmbh Co.kg,, a supplier based in Germany. See exports to Zima Corporation.

Call ImportGenius

EXHIBIT 2

Join ImportGenius to see the import/export activity of every company in the United States. Track your competitors, get freight forwarding leads, enforce exclusivity agreements, learn more about your overseas factories, and much more. Instant signup.

Sign up

Explore

WUMAG TEXROLL GMBH CO.KG, RECORDS

GET A COMPLETE SUPPLIER HISTORY
UPDATED: 2021-11-16

OVERVIEW SHIPMENTS IMPORTERS ABOUT

TOTAL SHIPMENTS
40

1M 3M 6M 1Y 3Y ALL

2006-11-01 - 2021-11-17

TOTAL SHIPMENTS FROM 2006-11-01 TO 2021-11-17

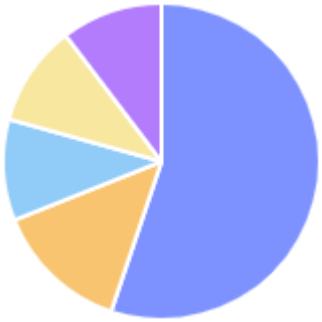
We use cookies to give you the best experience on our website. By continuing to use our website and services, you agree to our use of cookies. For more information, see our privacy policy.

Got it

Precise data and chart data points are only available to paid subscribers

Supplier Shipments

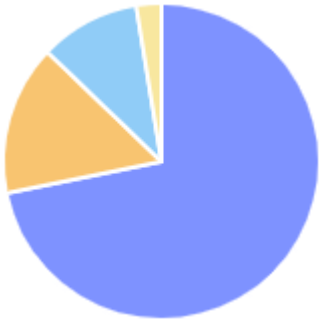
TOP TRADING PARTNERS



LEGEND

- ZIMA CO LTD
- CONTITECH MEXICANA S.A. DE C.V.
- KUESTERS ZIMA CORP
- MORRISON TEXTILE MACHINERY INC.
- DEWTEX INC

TOP PORTS



LEGEND

- CHARLESTON, SOUTH CAROLINA
- SAVANNAH, GEORGIA
- NORFOLK, VIRGINIA
- NEW YORK/NEWARK AREA, NEWARK, NEW JERSEY

We use cookies to give you the best experience on our website. By continuing to use our website and services, you agree to our use of cookies. For more information, see our privacy policy.

Got it

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

SAMPLE SHIPMENT FROM WUMAG TEXROLL GMBH CO.KG,

BILL OF LADING ASQRSE210271673
ARRIVAL DATE: 2021-11-16

PRODUCT TRANSIT COMPANY

SUPPLIER
WUMAG TEXROLL GMBH & CO. KG

DUESSELDORFER STRASSE 120 KREFELD DE

IMPORTER
ZIMA CORPORATION

101 ZIMA PARK DRIVE SPARTANBURG SC 29301 US

More data available to paid subscribers

Get email alerts when this company has new activities.

Follow this company

Get verified contact information.

Contact this company

Related companies to Wumag Texroll Gmbh Co.kg,

We use cookies to give you the best experience on our website. By continuing to use our website and services, you agree to our use of cookies. For more information, see our privacy policy.

Got it

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Ready to get started?

Sign up or get in touch with us today. Our Customer Care Team members are expert users of ImportGenius and are ready to help maximize your experience.

Sign up | Request a demo

8901 E Pima Center Pkwy, Suite 105 Scottsdale, AZ 85258

PRODUCT

How it works

Pricing

Search

Tradebase

COMPANY

Contact us

Blog

RESOURCES

Terms of Service

Privacy Policy

Reviews

FAQ

CONTACT

Sales: 855-374-1199

Service: (803) 636-8950

FOLLOW US

English 中文 Français 한국말

© 2022 Trade Data Services, Inc.

We use cookies to give you the best experience on our website. By continuing to use our website and services, you agree to our use of cookies. For more information, see our privacy policy.

Got it

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2020 Aug 21 11:03 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2303229
ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA)) COUNTY OF GREENVILLE)) Shawn Eric Mayfield,)) Plaintiff,)) v.)) The Hercules Tire & Rubber Co., Sailun Jinyu Group Co., Ltd. f/k/a Sailun Co., Ltd., TBC Corporation, TBC Brands, Sailun Jinyu International, Husky Tire Corporation, Seatex International, Blue Ocean International Tire Corporation, South Regional Truck Sales, LLC, and Todd Mitchell,)) Defendants.)	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2019-CP-23-03229 EXHIBIT 3 **ORDER DENYING DEFENDANTS THE HERCULES TIRE & RUBBER CO. AND SAILUN JINYU GROUP CO., LTD. F/K/A SAILUN CO., LTD.'S MOTIONS TO DISMISS**

This matter came before the Court for a hearing on June 16, 2020, on Defendants', The Hercules Tire & Rubber Co. ("Hercules") and Sailun Jinyu Group Co, Ltd. f/k/a Sailun Co. Ltd. ("Sailun") Motions to Dismiss for lack of personal jurisdiction and insufficient service of process. After reviewing the parties' submissions and hearing argument of counsel, the Court finds as follows:

1. The Motion to Dismiss filed by Sailun for insufficiency of service is denied. The Plaintiff properly served Sailun by service on the South Carolina Secretary of State pursuant to S.C. Code Ann. § 15-9-245(a). See *Holman v. Warwick Furnace Co.*, 456 S.E.2d 894 (1995) (Service on a foreign corporation doing business in South Carolina without authority is complete once the summons and complaint are delivered to the secretary of state.)
2. The Motion to Dismiss for lack of personal jurisdiction filed by Sailun is denied. This Court is authorized to exercise personal jurisdiction over Sailun pursuant to South Carolina

ELECTRONICALLY FILED - 2020 Aug 21 11:03 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2303229
ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Code 36-2-803(A)(8). Further, the exercise of jurisdiction over Sailun in this matter is consistent with due process. Sailun has purposefully availed itself of the benefits and protections of South Carolina laws by doing business in South Carolina on a systematic and continuous basis such that it is fair and reasonable to defend the present suit brought by a South Carolina citizen for injuries allegedly caused by Sailun's product that failed in South Carolina. This finding is consistent with binding precedent from the South Carolina Supreme Court. See *State of South Carolina v. NV Sumatra Tobacco Trading Co.*, 666 S.E.2d 218 (2008).

3. The Motion to Dismiss for lack of personal jurisdiction filed by Hercules is denied. This Court is authorized to exercise personal jurisdiction over Hercules pursuant to South Carolina Code 36-2-803(A)(8). Further, the exercise of jurisdiction over Hercules in this matter is consistent with due process. Hercules has purposefully availed itself of the benefits and protections of South Carolina laws by doing business in South Carolina on a systematic and continuous basis such that it is fair and reasonable to defend the present suit brought by a South Carolina citizen for injuries allegedly caused by Hercules' product that failed in South Carolina. This finding is consistent with binding precedent from the South Carolina Supreme Court. See *State of South Carolina v. NV Sumatra Tobacco Trading Co.*, 666 S.E.2d 218 (2008).

4. Sailun and Hercules shall each have 15 days from the entry of this Order to file responsive pleadings.

IT IS ORDERED.

Dated: _____

_____, South Carolina

_____
Alex Kinlaw, Jr.
Circuit Court Judge

ELECTRONICALLY FILED - 2020 Aug 21 11:03 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2303229
ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Greenville Common Pleas

Case Caption: Shawn Eric Mayfield vs. Hercules Tire & Rubber Co The , defendant, et al

Case Number: 2019CP2303229

Type: Order/Other

So Ordered

s/Alex Kinlaw, Jr., #2763

South Carolina Secretary of State

Business Entities Online

File, Search, and Retrieve Documents Electronically

EXHIBIT 4

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Business Name Search

To Search

Enter the business name of the company you wish to view and click "Search." Find the business in the results below and click to view the official business profile and relevant information.

To File for an Existing Business

Enter the business name of the company for which you wish to file documents and click search. Find the business in the results below and click to view the official business profile. From your business's profile click the "Add Filing" button.

Results displayed will show entities that contain your search criteria.

Search by Business Name

Begins With | Wumag Texroll

This name is available

No Results

For filing questions please contact us at **803-734-2158**

Copyright © 2022 State of South Carolina

South Carolina Secretary of State

Business Entities Online

File, Search, and Retrieve Documents Electronically

EXHIBIT 5

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Zima Corporation

Corporate Information

Entity Type: Corporation

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 12/09/1994

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

Registered Agent

Agent: KOGER M BRADFORD

Address: 101 W. St. John Street, Suite 200
Spartanburg, South Carolina 29306

Official Documents On File

Filing Type	Filing Date
Articles of Amendment	08/23/2019
Articles of Merger	06/15/2017
Notice of Change of Registered Office	05/23/2017
Change of Agent or Office	04/20/2007
Correction	09/01/2005
Merger/Share Exchange	06/28/2005
Amendment	12/21/2001
Merger/Share Exchange	12/30/1996
Incorporation	12/09/1994

Former Names

Name	Filing Date
KUSTERS TEXTILE MACHINERY CORPORATION	N/A
KUSTERS-ZIMA CORPORATION	N/A
KUSTERS ZIMA CORPORATION	09/22/2005

Copyright © 2022 State of South Carolina

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

South Carolina Secretary of State

Business Entities Online

File, Search, and Retrieve Documents Electronically

EXHIBIT 6

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

MORRISON TEXTILE MACHINERY CO.

Corporate Information

Entity Type: Corporation

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 06/22/1959

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

Registered Agent

Agent: JOHN M WHITE JR

Address: 6044 LANCASTER HWY
FORT LAWN, South Carolina 29714

Official Documents On File

Filing Type	Filing Date
Amendment	05/15/2009
Merger/Share Exchange	10/26/2000
Amendment	10/06/2000
Change of Agent or Office	04/26/1999
Amendment	04/07/1993
Amendment	02/09/1989
Amendment	12/22/1988
Amendment	11/26/1976
Amendment	06/29/1967
Amendment	02/14/1964
Incorporation	06/22/1959

For filing questions please contact us at **803-734-2158**

Copyright © 2022 State of South Carolina

ELECTRONICALLY FILED - 2021 Jan 21 11:43 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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

1205 PENDLETON STREET, SUITE 525
COLUMBIA, SC 29201

803-734-2170
www.sos.sc.gov

EXHIBIT
7

January 14, 2021

INTERNATIONAL REGISTERED MAIL
RETURN RECEIPT REQUESTED

Wumag Texroll GmbH & Co. KG
Dusseldorfer Str. 120
Krefeld, Linn 47809
Germany

RE: Wumag Texroll GmbH & Co. KG, 2021-CP-19-00005

Dear Madam/Sir:

In accordance with South Carolina Code § 15-9-245, we are enclosing herewith a copy of the Summons and Complaint in the above-entitled case. Service was accepted on January 11, 2021 and a copy has been duly filed in our office as of this date. The fee of $10.00 has been paid.

Yours very truly,

Allyson Green

Allyson Green
South Carolina Secretary of State's Office

Enclosures

cc: Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
Megan C. Davis
101 Mulberry Street East Post Office Box 457
Hampton, SC 29924

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiffs, vs. Wumag Texroll GmbH & Co. KG, Defendant.	IN THE COURT OF COMMON PLEAS Case No. 2021-CP-19-00005 **WUMAG TEXROLL GMBHH & CO. KG'S AMENDED MEMORANDUM OF LAW IN SUPPORT MOTION TO DISMISS**

Defendant Wumag Texroll GmbH & Co. KG ("Kelzenberg-Wumag"),[1] by and through its undersigned counsel, submits this memorandum of law in support of its motion to dismiss. For these reasons set forth herein, the complaint of Barry Lanham and Obvia Gamble-Lanham (collectively, "Plaintiffs") should be dismissed, with prejudice.

I. INTRODUCTION

Multiple grounds exist for the dismissal of this action. First, the complaint should be dismissed for insufficient service of process and failure to commence an action within the statute of limitations. Plaintiffs have not properly served Kelzenberg-Wumag. Because the statute of limitations has run and because Plaintiffs failed to serve Kelzenberg-Wumag within 120 days of filing the complaint, Plaintiffs' claims are now time-barred. In addition, the complaint should be dismissed for lack of personal jurisdiction. Contrary to the allegations in the complaint, Kelzenberg-Wumag did not design, test, manufacture, market, sell, import, distribute, deliver or install the machine that allegedly caused Barry Lanham's injuries. In fact, Kelzenberg-Wumag did not come into existence until 18 months after the accident giving rise to this action occurred. As such, this Court exercising personal jurisdiction over Kelzenberg-Wumag would violate the Due Process Clause.

[1] Kelzenberg-Wumag is referred to as "Wumag II" in the attached Declaration of Michael Hess.

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

I. STATEMENT OF FACTS

A. *Plaintiffs' Allegations*

The complaint alleges that on January 22, 2018, Barry Lanham was severely injured at work while cleaning a Laminating Calender Line machine (the "Machine") at Bondex, Inc.'s facility in Trenton, South Carolina. (*Id*. ¶¶ 7—8). Plaintiffs filed this action on January 6, 2021, almost three years later, asserting causes of action against "Wumag Texroll GmbH & Co. KG" for (1) negligence, (2) strict liability pursuant to S.C. Code Ann. § 15-73-10, *et seq.*, (3) breach of express and implied warranties, and (4) loss of consortium. (*Id*. ¶¶ 9–22). In support of their claims, Plaintiffs allege that the Machine was designed, manufactured, sold, delivered, and installed by Wumag Texroll GmbH & Co. KG. (*Id*. ¶ 6). Plaintiffs further allege that after the Machine was installed at Bondex's facility, employees and/or agents of Wumag Texroll GmbH & Co. KG deactivated safety devices on the Machine. (*Id*. ¶ 7).

B. *Declaration of Michael Hess*

The sworn declaration of Michael Hess ("Hess"), Kelzenberg-Wumag's Managing Director demonstrates that Kelzenberg-Wumag cannot be liable for Plaintiffs' alleged injuries and is not subject to personal jurisdiction in this action. (*See* Michael Hess Declaration in Support of Wumag Texroll GmbH & Co. KG's Motion to Dismiss (hereinafter "Hess Declaration") attached hereto as **Exhibit A**). Kelzenberg-Wumag is a German corporation and is registered at the district court of Düren, Germany under number HRA 224. (¶ 4). Kelzenberg-Wumag's principal place of business is in Düren, Germany. (*Id*. ¶ 5). Kelzenberg-Wumag came into existence in September 2019, eighteen months after Barry Lanham was allegedly injured. (*Id*. ¶ 8).

On September 1, 2019, Wumag Texroll GmbH & Co. KG ("Wumag"), the company who, upon information and belief, designed, manufactured, sold, delivered, and installed the Machine

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

filed for insolvency.[2] (*Id*. ¶ 6). German insolvency proceedings commenced in the district court of Krefeld, Germany. (*Id*.). As part of the insolvency proceedings, on or around September 18, 2019, Kelzenberg + Co: GmbH & Co. KG ("Kelzenberg") entered into an asset purchase agreement to purchase the assets, but not the liabilities, of Wumag. (*Id*. ¶¶ 8, 10–12). Ownership of the purchased assets was transferred from Wumag to Kelzenberg on October 1, 2019. (*Id*. ¶ 10). Dr. Peter Minuth, a German attorney and the insolvency administrator for the Wumag insolvency proceedings, oversaw the asset purchase. (*Id*. ¶ 9).

Following the asset purchase, for marketing reasons, Kelzenberg changed its name to Wumag Texrol GmbH & Co. KG (identified in this brief as "Kelzenberg-Wumag"). (*Id*. ¶ 5). Although Kelzenberg-Wumag adopted the Wumag name, there is not now, and has never been, commonality of officers, directors, or stockholders between Wumag and Kelzenberg-Wumag. (*Id*. ¶ 14). In addition and relevant to this case, Kelzenberg-Wumag does not now, and has never held an ownership interest in the Machine. (*Id*. ¶ 18). It also did not design, test, manufacture, market, sell, import, distribute, deliver or install the Machine. (*Id*. ¶ 19). Kelzenberg-Wumag is not now, and has never been registered with the South Carolina Secretary of State. (*Id*. ¶ 20). Kelzenberg-Wumag has never registered an agent for service of process with the South Carolina Secretary of State. (*Id*. ¶ 21). Kelzenberg-Wumag does not now, and has never, maintained an office, manufacturing facility or other place of business within South Carolina. (*Id*. ¶ 22). Kelzenberg-Wumag does not now, and has never, employed any personnel based in South Carolina. (*Id*. ¶ 23).

II. LEGAL STANDARD

A. *Rule 12(b)(5)*

[2] Prior to being insolvent, Wumag was registered at the district court of Krefeld, Germany under number HRA 3719. (Hess Declaration ¶ 7). This is significant because it demonstrates that Wumag and Kelzenberg-Wumag are now, and have always been registered as separate and distinct companies.

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Rule 12(b)(5) of the South Carolina Rules of Civil Procedure governs motions to dismiss for insufficiency of service of process. Rule 12(b)(5) is the "proper vehicle for challenging both the mode of delivery [and] the lack of delivery of the summons and complaint." *Unisun Ins. V. Hawkins*, 342 S.C. 537, 543, 537 S.E.2d 559, 562 (Ct. App. 2000)(citing 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure Civil 2d § 1353 (1990)) (internal citations omitted). When raising a defense under Rule 12(b)(5), the individual or corporation challenging service should provide sufficient specificity detailing how a Plaintiff "failed to satisfy the requirements of the service provision he utilized." *Id*. at 542, 537 S.E.2d at 562.

B. *Rule 12(b)(2)*

Rule 12(b)(2) of the South Carolina Rules of Civil Procedure governs motions to dismiss for lack of personal jurisdiction. The party seeking to invoke personal jurisdiction over a nonresident defendant bears the burden of proving the existence of personal jurisdiction. *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004). "The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case." *Id*. "When a nonresident defendant attacks the allegations of a complaint based on jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction. *Power Prods. & Servs. Co. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct.App. 2008). When a defendant challenges the Court's personal jurisdiction under Rule 12(b)(2), the plaintiff has the burden of proving that jurisdiction exists by a preponderance of the evidence. *Sunny Days Entm't, LLC v. Traxxas, L.P.*, 376 F. Supp. 3d 654, 658 (D.S.C. 2019).

ARGUMENT

I. PLAINTIFFS HAVE NOT PROPERLY SERVED KELZENBERG-WUMAG AND PLAINTIFFS' CLAIMS ARE NOW BARRED BY THE STATUTE OF LIMITATIONS

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Plaintiffs have not served Kelzenberg-Wumag. Because the statute of limitations has run and because Plaintiffs did not serve Kelzenberg-Wumag within 120 days of the filing of the complaint, Plaintiffs' claims are time-barred.

A. *Kelzenberg-Wumag is not Subject to Service Pursuant to S.C. Code Ann. § 15-9-245*

Plaintiffs filed this action on January 6, 2021, 16 days before the expiration of the statute of limitations. Plaintiffs only attempt to serve Kelzenberg-Wumag was through the South Carolina Secretary of State pursuant to S.C. Code Ann. S.C. Code Ann. § 15-9-245. (*See* January 14, 2021 Correspondence attached hereto as **Exhibit B**). On January 7, 2021, Plaintiffs sent copies of the Summons and complaint to the Secretary of State who then purported to mail a copy to Kelzenberg-Wumag in Germany. Plaintiffs' attempt at service pursuant to section 15-9-245 fails for multiple reasons.

Under section 15-9-245(a), "[e]very foreign business or nonprofit corporation which is not authorized to do business in this State, ***by doing in this State, either itself or through an agent, any business***,…is considered to have designated the Secretary of State as its agent upon whom process against it may be served...." (emphasis added). "A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute." *A.O. Smith Corp. v. S.C. Dep't of Health & Envtl. Control*, 428 S.C. 189, 202, 833 S.E.2d 451, 458 (Ct. App. 2019) (citing *Lockwood Greene Eng'rs, Inc. v. S.C. Tax Comm'n*, 293 S.C. 447, 449, 361 S.E.2d 346, 347 (Ct. App. 1987). The plain language of section 15-9-245 clearly provides that a foreign corporation must do business in South Carolina, "either itself or through an agent," in order to be subject to service under the statute. *See* S.C. Code Ann. § 15-9-245. Case law interpreting the statute is equally clear. In *South Carolina v. Bulgartabac Holding Grp.*, No. CV 3:05-124-22, 2005 WL 8165771, at *2 (D.S.C. May 24, 2005), the district court explicitly held that that "[i]n order for § 15-9-245(a) to apply, it [is] necessary to find that [a defendant] does

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

business in South Carolina, either itself or through an agent." *South Carolina v. Bulgartabac Holding Grp.*, No. CV 3:05-124-22, 2005 WL 8165771, at *2 (D.S.C. May 24, 2005) (quoting S.C. Code Ann. § 15-9-245).

When it was purportedly served, Kelzenberg-Wumag did not do business in South Carolina. Hess's unrefuted declaration establishes this fact. (*See* Hess Declaration ¶¶ 17-23). When a challenge to service of process is made, the burden of proving effective service is on "the party against whom the challenged is lodged." *Hammond v. Honda Motor Co., Ltd., Honda Research and Development Co., Ltd., and American Honda Motor Co., Inc.*, 128 F.R.D 638, 641 (D.S.C. 1989). Plaintiffs fail to meet their burden. There is no evidence in the record that Kelzenberg-Wumag did business in South Carolina at the time it was served. As such, Kelzenberg-Wumag cannot be subject to service pursuant to section 15-9-245.[3]

B. *Plaintiffs' Purported Service Pursuant to S.C. Code Ann. § 15-9-245 Does Not Comply with the Requirements of the Hague Service Convention*

Kelzenberg-Wumag is a German business based in Germany. That being the case, service on Kelzenberg-Wumag must comply with the Hague Service Convention (the "Hague Convention"). Thus, even if Kelzenberg-Wumag did business in South Carolina and even if Plaintiffs complied with the statute, Plaintiffs attempt at service pursuant to section 15-9-245 still fails. The Hague Convention does not allow service by mail on German entities.

The South Carolina Supreme Court recognizes "[t]he Hague Service Convention [as] an international treaty that pre-empts inconsistent methods of service prescribed by state law in all

[3] Plaintiffs also failed to comply with section 15-9-245(c), which sets forth specific requirements for demonstrating proof of service, including the filing of an affidavit of compliance and a return receipt signed by Kelzenberg-Wumag or "other official proof of delivery" evidencing actual delivery of the summons and complaint. In an affidavit filed on June 6, 2022, approximately 18 months after Plaintiffs claim to have served Kelzenberg-Wumag, Plaintiff's counsel merely attaches a receipt stating the mailing was delivered to "Germany." Plaintiffs still have not provided "official proof of delivery" as required by of section 15-9-245(c). Moreover, as set forth below, even if it is assumed that Plaintiffs did comply with section 15-9-245(c), it is undisputed that they failed to do so within 120 days of the filing of the complaint.

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

cases where service abroad is required." *Bakala v. Bakala*, 352 S.C. 612, 626, 576 S.E.2d 156, 163 (2003) (quoting *Volkswagenwerk v. Schlunk*, 486 U.S. 694 (1988)). The Hague Convention is "the exclusive means of valid service" for entities in countries that are signatories to the Hague Convention, including Germany. *Volkswagenwerk*, 486 U.S. at 707. The Hague Convention applies when, like in this case, the forum state requires the transmittal of documents abroad. *South Carolina v. Bulgartabac Holding Grp.*, 2005 WL 8165771 *2 (finding the Hague Convention applies when "the internal law of the forum state defines the applicable method of serving process as requiring the transmittal of documents abroad."). Here, it is undisputed that service pursuant to section 15-9-245 requires documents to be mailed to the party being served. *See* S.C. Code Ann. § 15-9245(b). As such, the Hague Convention governs service of Kelzenberg-Wumag in this case. *See id*.

Pursuant to its rights under the Hague Convention, Germany has objected "to the delivery of judicial documents by postal channels" and "has established Central Authorities to execute requests for international service of process."[4] *U.S. ex rel. Walterspiel v. Bayer AG*, 639 Fed.Appx.164, 167 (4th Cir. 2016). Under the Hague Convention, service on Kelzenberg-Wumag must be carried out by a designated Central Authority in Germany. *Id*.; *see also Davies v. Jobs & Adverts Online, Gmbh*, 94 F.Supp.2d 719, 722 n.6 (E.D.Va. 2000) (stating Germany has expressly objected to service by mail, and requires that service be effected on the Central Authority). Plaintiffs and the Secretary of State ignored this requirement. Mailing the summons and complaint to Kelzenberg-Wumag is not proper service under the Hague Convention. *See U.S. ex rel. Walterspiel*, 639 F. App'x at 167 (holding a plaintiff attempting to serve a German defendant via FedEx was ineffective under the Hague Convention); *Flo & Eddie, Inc. v. Settler*, No. 08-80356-

[4] A list of Central Authorities in Germany is publicly available online. *See* https://assets.hcch.net/docs/494216ab-d7f6-4f7b-9627-93270f8a64da.pdf.

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

CIV, 2008 WL 4938407, at *1 (S.D. Fla. Nov. 19, 2008) ("[S]ervice by registered mail is not an authorized means of service of process against a German citizen or corporation.").

Under South Carolina law, when service is challenged, the record must affirmatively show that service of process was correctly made." *Jensen v. Doe*, 292 S.C. 583, 358 S.E.2d 148 (Ct. App. 1987). Here, it is undisputed that Plaintiffs claim to have served Kelzenberg-Wumag by virtue of the Secretary of State mailing a copy of the summons and complaint to Germany. The Hague Convention controls and clearly provides that service by mail on a German entity is not a proper method of service.[5] Based on their failure to follow the requirement of the Hague Convention, Plaintiffs have not effected service on Kelzenberg-Wumag

C. ***Plaintiffs' Claims are Now Time-Barred by the Statute of Limitations***

S.C. Code Ann. § 15–3–20 governs the commencement of actions, and states:

> (A) Civil actions may only be commenced within the periods prescribed in this title after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute.
>
> (B) A civil action is commenced when the summons and complaint are filed with the clerk of court ***if actual service is accomplished within one hundred twenty days after filing.***

S.C. Code Ann. § 15–3–20 (2005) (emphasis added). Similarly, Rule 3(a) of the South Carolina Rules of Civil Procedure provides:

> (a) A civil action is commenced when the summons and complaint are filed with the clerk of court if:
>
> (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or
>
> (2) ***if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.***

[5] Plaintiffs attempt at service further fails because the summons and complaint were not translated into German as is required by the Hague Convention. *See Flo & Eddie, Inc.*, 2008 WL 4938407, at *1 (finding service on a German corporation was ineffective because "the documents attempted to be served were not translated into German, as is also required by the Hague Convention.").

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Rule 3(a), SCRCP (emphasis added). Interpreting section 15–3–20(B) and Rule 3(a), SCRCP, our Supreme Court has held that ***"[w]hen service occurs outside of the statute of limitations it, must occur within 120 days of filing the complaint."*** *Mims ex rel. Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 347, 732 S.E.2d 395, 398 (2012) (emphasis added). Plaintiffs failure to serve Kelzenberg-Wumag within 120 days of the filing of the complaint requires dismissal of this action.

Plaintiffs' claims arise out of an injury occurring on January 22, 2018. *See* Compl. ¶ 8; Plaintiffs filed this action on January 6, 2021—16 days prior to the expiration of the statute of limitations. *See* S.C. Code Ann. § 15-3-350 (establishing a three year statute of limitations for personal injury claims). As set forth above, Plaintiffs did not serve Kelzenberg-Wumag within 120 days of filing the summons and complaint.[6] *Mims ex rel.* Mims, 399 S.C. at 346, 732 S.E.2d at 398 (citing S.C. Code Ann. § 15–3–20(B) and Rule 3(a), SCRCP). In fact, it has now been over 550 days since the complaint was filed and Plaintiffs still have not served Kelzenberg-Wumag.[7] Under black-letter South Carolina law, Plaintiffs have failed to commence an action within the statute of limitations.

Courts have consistently enforced the requirements of section 15–3–20(B) and Rule 3(a), SCRCP to dismiss untimely actions. In *Kinder v. City of Myrtle Beach*, the plaintiffs filed their complaint on the last day before to the expiration of the statute of limitations. *See Kinder v. City of Myrtle Beach*, No. 4:15-cv-01416-RBH, 2017 WL 227969, at *4 (D.S.C. Jan. 19, 2017). Despite timely filing the complaint, plaintiffs did not serve the defendant until approximately 8 months later. *Id*. The Court dismissed the plaintiffs' complaint holding that "under South Carolina law, [p]laintiffs' civil action against the City was not timely *commenced* because service did not

[6] Plaintiffs were required to serve Kelzenberg-Wumag on or before May 6, 2021.

[7] Kelzenberg-Wumag filed its motion alleging insufficient service of process on March 22, 2021. On October 11, 2021, Kelzenberg-Wumag sent correspondence detailing that Plaintiffs' had failed to properly serve Kelzenberg-Wumag. In the 16 months that Kelzenberg-Wumag's motion has been pending, Plaintiffs have made no effort to properly serve Kelzenberg-Wumag.

occur within the statute of limitations or within 120 days of the filing of the summons and complaint. *Id*. (emphasis in original) (citing S.C. Code Ann. § 15-3-20(B) (2005) and Rule 3(a), SCRCP). Similarly, in *Brown v. Marriot Int'l, Inc.*, although the plaintiff's complaint was filed within the statute of limitations, because the defendant was served more than 120 days after filing the action and after the statute of limitations expired, the court dismissed the case as untimely. *Brown v. Marriot Int'l, Inc.* No. CIV.A. 2:04-2378CWH, 2007 WL 1840231, at *2 (D.S.C. June 22, 2007). The law requires the same result in this case.

II. THE EXERCISE OF PERSONAL JURISDICTION OVER KELZENBERG-WUMAG IN SOUTH CAROLINA WOULD VIOLATE THE DUE PROCESS CLAUSE

Although Plaintiffs' failure to commence an action within the statute of limitations is dispositive, lack of personal jurisdiction provides an additional ground for this Court to dismiss Plaintiffs' complaint.

A. The Due Process Clause and Personal Jurisdiction

The "Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)). The minimum contacts requirement "protects a defendant from burdensome litigation in a far-flung jurisdiction" and upholds the general principal of law that "those who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291-92 (1980).

Traditionally, in South Carolina, the determination of whether a court may exercise personal jurisdiction over a nonresident involved a two-step analysis which examined (1) whether the South Carolina long-arm statute is satisfied, and then (2) whether the nonresident's contacts in

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

South Carolina satisfied due process. *Cribb v. Spatholt*, 382 S.C. 490, 499, 676 S.E.2d 714, 719 (Ct.App. 2009) (citing *Power Prods. & Servs. Co. v. Kozma*, 379 S.C. 423, 431, 665 S.E.2d 660, 664 (Ct.App. 2008)). However, "because South Carolina treats its long-arm statute as coextensive with the due process clause, the question becomes whether the exercise of personal jurisdiction would violate due process." *Moosally*, 358 S.C. at 329, 594 S.E.2d at 883.

There are two ways to establish personal jurisdiction: (1) general jurisdiction and (2) specific jurisdiction. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). This Court lacks both general and specific jurisdiction over Kelzenberg-Wumag.

B. There is No Basis for This Court to Exercise General Personal Jurisdiction Over Wumag

"In recent years, the Supreme Court has significantly narrowed the reaches of general personal jurisdiction." *Sunny Days Entm't, LLC*, 376 F. Supp. 3d at 660; *see also Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). Under the Due Process Clause, "[a] court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially ***at home*** in the forum State." *Daimler AG*, 571 U.S. at 138-39 (emphasis added) (citing *Goodyear*, 564 U.S. at 919). "[O]nly a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there." *Id*. at 137 (citing *Goodyear*, 564 U.S. at 919). For corporate defendants like Kelzenberg-Wumag, "the 'paradigm" forums in which it can be considered "at home" are the [company's] place of incorporation and its principal place of business. *See BNSF Ry. Co. v. Tyrrell*, 137 S.Ct. 1549 (2017) (citing *Daimler AG*, 571 U.S. at 137). Beyond where the corporate defendant is incorporated or maintains its principal place of business, only in an "exceptional case" will contacts with another forum be "so substantial and of such a nature as to render the corporation at home in that State." *See Daimler AG*, 571 U.S. at 139 n.19.

ROA 252

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Kelzenberg-Wumag is a German company with its principal place of business in Düren, Germany. (Hess Declaration ¶ 4). That being the case, exceptional circumstances must exist for Kelzenberg-Wumag to be subject to general personal jurisdiction in South Carolina. *See Daimler AG*, 571 U.S. at 139 n.19. The complaint fails to allege any facts upon which this Court could determine that this is an "exceptional case" where Kelzenberg-Wumag is to be deemed "at home" in South Carolina. *Id.* Moreover, the Hess Declaration makes it clear that Kelzenberg-Wumag is not "at home" in South Carolina. Kelzenberg-Wumag does not have a business office or manufacturing facility in South Carolina, and has no employees based in South Carolina. (*Id.* ¶ 22). Kelzenberg-Wumag has never been registered with the South Carolina Secretary of State and has never registered an agent for service of process in South Carolina. (*Id.* ¶ 21–22). Clearly, Kelzenberg-Wumag does not have contacts with South Carolina "so substantial and of such a nature as to render [it] at home in [South Carolina]." *Daimler AG*, 571 U.S. at 139 n.19; *compare Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 448 (1952) (business incorporated under the laws of the Philippines, but whose president temporarily moved to Ohio where it kept an office, maintained the company's files, and oversaw the company's activities was an "exceptional case" that warranted finding the company to be subject to general personal jurisdiction in Ohio). Wumag is not subject to general jurisdiction in South Carolina.

C. There is No Basis for This Court to Exercise Specific Personal Jurisdiction Over Kelzenberg-Wumag

This Court also lacks specific personal jurisdiction over Wumag. For specific personal jurisdiction, due process mandates that a defendant have sufficient minimum contacts with the forum state such that it could reasonably anticipate being hauled into court there, and such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Power Prod. & Servs. Co.*, 379 S.C. at 431, 665 S.E.2d at 665. Guided by these principles, "[t]he determination of whether the requirements of due process are satisfied involves a two-prong

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

analysis of (1) the 'power' prong, under which minimum contacts grant a court the 'power' to adjudicate the action; and (2) the 'fairness' prong, which requires the exercise of jurisdiction to be 'reasonable' or 'fair.'" *Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 541–42, 783 S.E.2d 839, 843 (Ct.App. 2016). If a plaintiff fails to satisfy one of the prongs, "the exercise of personal jurisdiction over the [nonresident] defendant fails to comport with the requirements of due process." *Id*. (citing *S. Plastics Co.*, 310 S.C. at 260, 423 S.E.2d at 131). In this case, Plaintiffs fail to satisfy both the "power" prong and the "fairness" prong.

i. ***Plaintiff Fails to Satisfy the Power Prong because Kelzenberg-Wumag Does Not Have "Minimum Contacts" with the State of South Carolina***

The power prong of the due process test requires "a minimum contacts analysis" to determine whether a defendant has "directed its activities to residents of South Carolina and that the cause of action arises out of or relates to those activities." *Id*. (citing *Moosally*, 358 S.C. at 331-332, 594 S.E.2d at 884-85. In *Moosally*, the court explained the minimum contacts requirement as follows:

> Without minimum contacts, the court does not have the 'power' to adjudicate the action. ***It is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.*** The 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts.

Moosally, 358 S.C. at 331-332, 594 S.E.2d at 884-85 (emphasis added) (internal citations omitted).

The unopposed declaration of Michael Hess establishes that Kelzenberg-Wumag does not have minimum contacts with South Carolina.[8] Kelzenberg-Wumag is not now, and has never been registered with the South Carolina Secretary of State. (Hess Declaration ¶ 20). Kelzenberg-Wumag has never registered an agent for service of process with the South Carolina Secretary of

[8] Again, "[w]hen a nonresident defendant attacks the allegations of a complaint based on jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." *Power Prods. & Servs. Co.*, 379 S.C. at 430, 665 S.E.2d at 664.

State. (*Id.* ¶ 21). Kelzenberg-Wumag does not now, and has never, maintained an office, manufacturing facility or other place of business within South Carolina. (*Id.* ¶ 22). Kelzenberg-Wumag does not now, and has never, employed any personnel based in South Carolina. (*Id.* ¶ 23).

It is also undisputed that Kelzenberg-Wumag has no contacts with South Carolina related to this case. "In order for a state court to exercise specific jurisdiction, 'the suit' must arise out of or relate to the defendant's contacts with the forum." *See Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S.Ct. 1773, 1780 (2017). Although this action and Kelzenberg-Wumag's motion have been pending for more than one year, Plaintiffs have offered no evidence showing that Kelzenberg-Wumag has a connection to this case and Plaintiffs' alleged injuries. Plaintiff was injured in January 2018. Eighteen months after the alleged accident, Kelzenberg-Wumag entered into an asset purchase agreement to purchase the assets, but not the liabilities, of Wumag. (Hess Declaration ¶¶ 17–18). Although Kelzenberg-Wumag adopted the prior company's name for marketing reasons, there has never been, commonality of officers, directors, or stockholders between the Kelzenberg-Wumag and Wumag." (*Id*. ¶ 14). Kelzenberg-Wumag does not now, and has never held an ownership interest in the Machine that allegedly injured Barry Lanham. (*Id*. ¶ 18). Moreover, Kelzenberg-Wumag did not design, test, manufacture, market, sell, import, distribute, deliver or install the Laminating Calendar Line machine that allegedly injured Barry Lanham. (*Id*. ¶ 19).

Kelzenberg-Wumag is separate and distinct from Wumag. Simply put, Plaintiffs have sued the wrong party. Kelzenberg-Wumag does not have the requisite minimum contacts with South Carolina to be subject to jurisdiction in the state. Any argument that Kelzenberg-Wumag may be subject to jurisdiction based on Wumag's contacts fails. Minimum contacts must arise out of contacts that the 'defendant [itself]' creates with the forum State." *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (emphasis added) (quoting *Burger King Corp.*, 471 U.S. at 474 (1985)). The Supreme

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Court has "consistently rejected attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State." *Id*. at 284.

ii. ***Plaintiff Fails to Satisfy the Fairness Prong because this Court Exercising Jurisdiction Over Kelzenberg-Wumag Does Not Comport with the Notions of "Fair Play and Substantial Justice"***

Even if Plaintiff could establish that Kelzenberg-Wumag has sufficient minimum contacts with the State of South Carolina, which it cannot, the court must also consider the "fairness" prong, which examines whether the exercise of personal jurisdiction over Kelzenberg-Wumag comports with "traditional notions of fair play and substantial justice." *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. at 491, 611 S.E.2d at 508 (citing *Burger King Corp.*, 471 U.S. at 464). Under the fairness prong, "the court must consider: (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction." *Id*. (citing *Clark v. Key*, 304 S.C. 497, 405 S.E.2d 599 (1991)).

The relevant factors weigh heavily against this case continuing in South Carolina. Kelzenberg-Wumag has no contacts in South Carolina related, in any way, to this case. Further, no act or omission of Kelzenberg-Wumag gives rise to Plaintiffs' claims. Kelzenberg-Wumag did not design, test, manufacture, market, sell, import, distribute, deliver, or install the machine that allegedly caused Lanham's injuries. (Hess Declaration ¶ 19). The analysis relating to the third element is moot. If Plaintiffs name the correct party, they will likely have grounds to litigate this action in South Carolina. However, even ignoring that there is no basis for liability against Kelzenberg-Wumag, the inconvenience of forcing it to defend a suit where it has no contacts is readily apparent. Finally, South Carolina has no interest in exercising jurisdiction over a

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

nonresident defendant with no connection to the injuries alleged by Plaintiffs. For all of these reasons, it would be unfair for this court to exercise jurisdiction over Kelzenberg-Wumag.

Wumag and Kelzenberg-Wumag are separate and distinct entities and must be treated as such. Rule 12(b)(2), SCRCP provides an alternate basis to dismiss Plaintiffs' claims against Kelzenberg-Wumag.

CONCLUSION

For the foregoing reasons, Kelzenberg-Wumag respectfully requests that this Court dismiss Plaintiffs' complaint, in its entirety, with prejudice.

Respectfully submitted,

s/ Robert H. Jordan
Robert H. Jordan (SC Bar No. 13612)
Robert C. Osborne III (SC Bar No. 101827)
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
(843) 727-2650
robertjordan@parkerpoe.com
robertosborne@parkerpoe.com

Attorneys for Defendant
Wumag Texroll GmbH & Co. KG

July 13, 2022
Charleston, South Carolina

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

EXHIBIT A

ELECTRONICALLY FILED - 2022 Apr 13 4:37 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiff, vs. Wumag Texroll GmbH & Co. KG, Defendants.	IN THE COURT OF COMMON PLEAS Case No. 2021-CP-19-00005 **DECLARATION OF MICHAEL HESS IN SUPPORT OF WUMAG TEXROLL GMBHH & CO. KG'S MOTION TO DISMISS**

COMES NOW, Michael Hess, who deposes and states as follows:

1. My name is Michael Hess, and I am over the age of eighteen (18) years and am competent to give sworn testimony. I have personal, first-hand knowledge of the matters set forth in this declaration. I offer this declaration in support of Wumag Texrol GmbH & Co. KG's ("Wumag II") Motion to Dismiss in the above-captioned action.

2. I am the Managing Director of Wumag II.

3. Wumag II was previously named Kelzenberg + Co: GmbH & Co. KG ("Kelzenberg"), and I previously served as the Managing Director of Kelzenberg from 2008 to 2019.

4. Wumag II is registered at the district court of Düren, Germany under number HRA 224 and the general partner GmbH under number HRB 154.

5. Wumag II's principal place of business is in Düren, Germany.

6. On September 1, 2019, insolvency proceedings concerning the assets of Wumag Texroll GmbH & Co. KG ("Wumag I") commenced in the district court of Krefeld, Germany.

7. Prior to being insolvent, Wumag I was registered at the district court of Krefeld, Germany under number HRA 3719.

8. On or around September 18, 2019, Kelzenberg entered into an asset purchase agreement to purchase the assets of Wumag I out of insolvency.

9. Dr. Peter Minuth, Attorney at Law and Insolvency Administrator, currently serves as the insolvency administrator for the Wumag I insolvency proceedings.

10. Pursuant to the asset purchase agreement, Kelzenberg purchased certain assets of Wumag I, including machinery, equipment, software licenses. Ownership of the purchased assets was transferred from Wumag I to Kelzenberg on October 1, 2019.

ELECTRONICALLY FILED - 2022 Apr 07 4:37 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

11. The asset purchase was carried out in Germany and was governed by German law.

12. Under German law, an agreement to purchase assets does not provide for the assumption of liabilities, unless expressly agreed otherwise or statutory provisions of German law stipulate otherwise.

13. On September 18, 2019, for marketing reasons, Kelzenberg changed its name to Wumag II.

14. Despite Wumag II adopted the same name for marketing reasons following the asset purchase, there is not now, and has never been, commonality of officers, directors, or stockholders between Wumag I and Wumag II.

15. The Complaint in this action concerns injuries suffered by Plaintiff Barry Lanham ("Lanham") alleged to have occurred on January 22, 2018 at a Bondex, Inc. plant in Trenton, South Carolina. (*See* Compl. ¶¶ 3–8).

16. Lanham alleges he was injured by a Laminating Calendar Line machine which was designed and manufactured by Wumag Texroll GmbH & Co. KG and then sold by Wumag Texroll GmbH & Co. KG to Bondex, Inc. (*See* Compl. ¶¶ 3–8).

17. Lanham's alleged injuries which are the subject of this action and which give rise to the claims asserted in the Complaint occurred almost two years prior to Wumag II purchasing the assets of Wumag I.

18. Wumag II does not now, and has never held an ownership interest in the Laminating Calendar Line machine that allegedly caused Mr. Lanham's injuries.

19. Wumag II did not design, test, manufacture, market, sell, import, distribute, deliver or install the Laminating Calendar Line machine that allegedly caused Mr. Lanham's injuries.

20. Wumag II is not now, and has never been registered with the South Carolina Secretary of State.

21. Wumag II has never registered an agent for service of process with the South Carolina Secretary of State.

22. Wumag II does not now, and has never, maintained an office, manufacturing facility or other place of business within South Carolina.

23. Wumag II does not, does not now, and has never, employed any personnel based in South Carolina.

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

Michael Hess

Date: 08/05/2021

ELECTRONICALLY FILED - 2022 Apr 13 4:37 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

EXHIBIT B

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

1205 PENDLETON STREET, SUITE 525
COLUMBIA, SC 29201

803-734-2170
www.sos.sc.gov

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

January 14, 2021

INTERNATIONAL REGISTERED MAIL
RETURN RECEIPT REQUESTED

Wumag Texroll GmbH & Co. KG
Dusseldorfer Str. 120
Krefeld, Linn 47809
Germany

RE: Wumag Texroll GmbH & Co. KG, 2021-CP-19-00005

Dear Madam/Sir:

In accordance with South Carolina Code § 15-9-245, we are enclosing herewith a copy of the Summons and Complaint in the above-entitled case. Service was accepted on January 11, 2021 and a copy has been duly filed in our office as of this date. The fee of $10.00 has been paid.

Yours very truly,

Allyson Green

Allyson Green
South Carolina Secretary of State's Office

Enclosures

cc: Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
Megan C. Davis
101 Mulberry Street East Post Office Box 457
Hampton, SC 29924

ELECTRONICALLY FILED - 2021 Jan 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	CIVIL ACTION NO.: 2021-CP-19-____
	)	
Barry Lanham and Obvia Gamble-Lanham, Plaintiffs,	)	
	)	**SUMMONS**
v.	)	***(Jury Trial Demanded)***
	)	
Wumag Texroll GmbH & Co. KG, Defendant.	)	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, Peters, Murdaugh, Parker, Eltzroth & Detirck, P.A. at 101 Mulberry Street East, P.O. Box 457, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

RECEIVED
JAN 11 2021
SC SECRETARY OF STATE

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK, P.A.

BY: /s/William F. Barnes, III
William F. Barnes, III (SC Bar #78220)
John E. Parker (SC Bar #4442)
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
wbarnes@pmped.com
jparker@pmped.com
Attorneys for Plaintiffs

January 6, 2021
Hampton, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	CIVIL ACTION NO.: 2021-CP-19-_____
	)	
Barry Lanham and Obvia Gamble-Lanham, Plaintiffs,	)	
	)	**COMPLAINT**
v.	)	***(Jury Trial Demanded)***
	)	
Wumag Texroll GmbH & Co. KG, Defendant.	)	

The Plaintiffs allege:

1. The Plaintiffs, Barry Lanham and Obvia Gamble-Lanham ("Plaintiffs" or "Lanham") are residents of Edgefield County, South Carolina.

2. Obvia Gamble-Lanham is the wife of Barry Lanham.

3. The Defendant, Wumag Texroll GmbH & Co. KG (hereinafter referred to as "Wumag Texroll") is a foreign corporation organized and maintaining its principal place of business in a state other than South Carolina. Wumag Texroll is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling, importing and distributing steel industrial machines including, but not limited to, the Laminating Calender Line machine ("Subject Machine") that forms the basis of this action.

4. Venue is proper in Edgefield County pursuant to S.C. Code Ann. § 15-7-30 as it is the county where the most substantial part of the act or omission giving rise to the cause of action occurred.

5. Wumag Texroll is subject to the jurisdiction of this Court.

6. Wumag Texroll designed and manufactured a Laminating Calender Line machine, machine number 206460, that was subsequently sold, delivered, and installed at Bondex, Inc. in Trenton, South Carolina.

ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2021 Jan 04 2:51 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2021 Jun 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

7. After the Subject Machine was installed by Wumag Texroll, employees and/or agents of Wumag Texroll visited the Bondex plant in Trenton, SC and deactivated safety devices on the Subject Machine.

8. On January 22, 2018, Plaintiff, Barry Lanham, a Bondex, Inc. employee, was cleaning the machine when his left arm and hand was pulled into the Machine, resulting in severe and permanent damage to his left arm and hand.

FIRST CAUSE OF ACTION
(Negligence)

9. The above allegations are repeated as if quoted verbatim.

10. The injuries and damages sustained by Plaintiff are the direct and proximate result of the negligence, carelessness, recklessness, and wanton conduct of Wumag Texroll in the following particulars:

a. In designing a machine that was unsafe and unreasonably dangerous;

b. In manufacturing a machine that was unsafe and unreasonably dangerous;

c. In selling a machine that was unsafe and unreasonably dangerous;

d. In installing a machine that was unsafe and unreasonably dangerous;

e. In failing to warn the Plaintiff of the dangerous and defective condition of the machine;

f. In failing to incorporate certain safeguards on the machine that would have prevented the Plaintiff's injury;

g. In deactivating safety devices on the Subject Machine that would have prevented Plaintiff's injury;

h. In designing, manufacturing, selling, and installing a machine that could not be cleaned without endangering the person so cleaning;

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

j. In designing, manufacturing, selling, installing, and altering a machine in utter disregard of the safety of Plaintiff;

k. In failing to provide instructions about how to properly clean the machine; and

l. In such other particulars as the evidence and testimony may establish.

11. As a result of the aforementioned events, Plaintiff suffered severe and permanent injury to this left arm and hand, and other parts of his body from which he has suffered and will continue to suffer physical pain; mental anguish and emotional distress; has expended and will in the future expend monies for medical care and treatment; caused to lose the enjoyment of life; and has lost income.

12. By reason of and in consequence of the above-mentioned negligent, careless, reckless, willful, and wanton conduct of Wumag Texroll, Plaintiff has suffered the injuries, losses, and damages complained of for which Wumag Texroll is liable.

SECOND CAUSE OF ACTION

(Strict Liability pursuant to S.C. Code Ann. § 15-73-10, et seq.)

13. The above allegations are repeated as if quoted verbatim.

14. Plaintiff's injuries occurred because the Machine was designed, manufactured, and sold by Wumag Texroll in a defective condition unreasonably dangerous to the Plaintiff.

15. Wumag Texroll designed, manufactured, and sold the Machine in a defective and unreasonably dangerous condition.

16. At the time of Plaintiff's injury, the Machine was in substantially the same condition as it was when it was installed by Defendant.

17. As a direct and proximate result of the defective and unreasonably dangerous condition of Defendant's machine, Plaintiff suffered the injuries and damages complained of for which Defendant is strictly liable, pursuant to S.C. Code Ann. § 15-73-10, to Plaintiff in an amount to be ascertained by the jury at the trial of this action.

ELECTRONICALLY FILED - 2021 Jun 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2022 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2021 Jun 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2022 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

THIRD CAUSE OF ACTION
(Breach of Express and Implied Warranties)

18. The above allegations are repeated as if quoted verbatim.

19. Wumag Texroll expressly and impliedly warranted that the Machine it sold was merchantable and fit for ordinary use.

20. Wumag Texroll breached express and implied warranties in that the Machine it designed, manufactured, sold, and installed and, which was used by the Plaintiff, was not merchantable and was unfit for ordinary, normal use.

21. The breach of Wumag Texroll's express and implied warranties in the sale of the Machine was the proximate cause of the damages Plaintiff sustained for which Defendant is liable.

FOURTH CAUSE OF ACTION
(Loss of Consortium)

22. The Plaintiff, Obvia Gamble-Lanham, due to the injuries sustained by her husband, has suffered the loss of his consortium, support, and care.

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

[SIGNATURE PAGE TO FOLLOW]

ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: /s/William F. Barnes, III
William F. Barnes, III (SC Bar #78220)
John E. Parker (SC Bar #4442)
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
wbarnes@pmped.com
jparker@pmped.com
Attorneys for Plaintiffs

January 6, 2021
Hampton, South Carolina

State of South Carolina
OFFICE OF
MARK HAMMOND
Secretary of State
1205 Pendleton Street, Suite 525
COLUMBIA, SC 29201

United States Postal Service
REGISTERED MAIL

RR 662 958 442 US

Label 200, July 1999 (102595) 99-M-1904

9400

00106

U.S. POSTAGE PAID
FCMI LTR
COLUMBIA, SC
29201
JAN 14, 21
AMOUNT
$22.39
R2304N116681-43

Wumag Texroll GmbH & Co. KG
Dusseldorfer Str. 120
47809 Krefeld (Linn), Germany

ROA 270

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2023 Jun 29 4:22 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

IN THE STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiffs, v. Wumag Texroll GmbH & Co. KG, Defendant.	)	IN THE COURT OF COMMON PLEAS Case No: 2021-CP-19-00005 **Motion to Dismiss Third-Party Complaint**
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.	)	

Pursuant to Rule 12(b)(2) and 12(b)(6) of the South Carolina Rules of Civil Procedure, Third-Party Defendant Wumag Texroll GmbH & Co. KG ("**Wumag**") respectfully moves the Court to dismiss the Third-Party Complaint that Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG ("**Kelzenberg-Wumag**") has filed against it. Specifically, the Court should grant this Motion and dismiss the Third-Party Complaint because:

1. **The Court lacks personal jurisdiction over Wumag.**

Wumag is a German company. See Third-Party Compl., at ¶¶ 58, 61-62. The Third-Party Complaint's personal jurisdiction allegations against Wumag solely consist of conclusory assertions that Wumag "designed, manufactured, and/or sold" the Machine in question and that it directed products to and conducted business in South Carolina. Id., at ¶ 60. It is entirely devoid of any specific factual support for those allegations. For example, the Third-Party Complaint

ELECTRONICALLY FILED - 2023 Jun 29 4:22 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

contains no details about whether Wumag sold the Machine to a South Carolina-based customer, no specifics about Wumag's alleged business in the State, no information about whether Wumag has any physical location, employees, or agents in the State, and no examples of any particular minimum contacts Wumag has with the State.

As South Carolina courts have held, conclusory allegations, like those in the Third-Party Complaint, that lack any factual support are insufficient to establish a prima facie case of personal jurisdiction. See, e.g., Power Prod. & Servs. Co. v. Kozma, 379 S.C. 423, 433, 665 S.E.2d 660, 665 (Ct. App. 2008) (Upholding the dismissal of a complaint as its conclusory allegations about personal jurisdiction were unsupported by any specific facts). Stated differently, they fail to establish "sufficient contacts with this forum such that [Wumag] should have anticipated being sued" in South Carolina or that the Court's exercise of personal jurisdiction over Wumag would in any way comport with "traditional notions of fair play and substantial justice." Abdulla v. S. Bank, 439 S.C. 391, 887 S.E.2d 138, 144 (Ct. App. 2023).

2. **Alternatively, the Third-Party Complaint's single claim against Wumag for indemnity is premature and not yet ripe for adjudication.**

The Court also should dismiss the Third-Party Complaint as its sole claim, for indemnification, is based on Kelzenberg-Wumag's allegation that, ***"[t]o the extent*** that [it, Kelzenberg-Wumag] is held liable to Plaintiffs" in the underlying claims, "such liability ***would be*** a direct and proximate result of" the alleged wrongdoing of Wumag. Third-Party Compl., at ¶ 76 (Emphasis added). Significantly, Plaintiffs' claims against Kelzenberg-Wumag remain pending; Kelzenberg-Wumag denies any liability to Plaintiffs; and it has not been held liable to Plaintiffs (and, in fact, may never be). Thus, Kelzenberg-Wumag's indemnity claim is based on a *future* event that may never occur (its liability to Plaintiffs). As a result, it is simply premature, not yet

ripe for adjudication, and subject to dismissal. See Solaris, Inc. v. Am. S. Ins. Co., No. 2:20-CV-4444-BHH, 2022 WL 19406809, at *5 (D.S.C. Sept. 29, 2022) (Dismissing an indemnity claim as unripe and noting "it does not appear that any factual findings have been made in the Underlying Action, and no judgment has been rendered in the Underlying Action, so any determination as to indemnification are simply not ripe for this Court's consideration"); First Specialty Ins. Corp. v. RHS Enters., LLC, No. 6:09-cv-1325, 2010 WL 11537546 (D.S.C. Mar. 29, 2010) (Dismissing third-party claims as not ripe where the injury alleged by the third-party plaintiff was contingent upon future determination of a related action); U.S. Fid. & Guar. Co. v. Ellett Bros., No. C/A 3:00-3691-24, 2003 WL 23851137, at *8 (D.S.C. Feb. 11, 2003) (Finding indemnity obligations, "if any, will arise only after the Underlying Complaint is resolved. The court agrees that the indemnity claim is not ripe for review").

3. **Similarly, the Third-Party Complaint fails to state any claim against Wumag upon which relief could be granted as it asserts no damages**.

As noted above, Kelzenberg-Wumag's indemnity claim against Wumag is premised on contingent damages that *may* arise in the future, but currently do not exist. Third-Party Compl., at ¶ 76 (Asserting that damages could exist in the future *if* Kelzenberg-Wumag is held liable to Plaintiffs). Under South Carolina law, an indemnity claims fails under Rule 12(b)(6) if it does not allege damages. See, e.g., Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Clear View Const., LLC, 413 S.C. 615, 625, 776 S.E.2d 426, 432 (Ct. App. 2015) (Explaining the requisite elements of an equitable indemnity claim to explain the defendant's fault in causing the plaintiff "damages"). Consequently, the Court should dismiss the Third-Party Complaint

4. **The Third-Party Complaint is barred against Wumag in light of Wumag's pending insolvency proceeding in Germany.**

ELECTRONICALLY FILED - 2023 Jun 29 4:22 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

As the Third-Party Complaint notes, Wumag has been in insolvency in Germany since 2019. Third-Party Compl., at ¶ 61. Under German law, which governs Wumag's insolvency, any alleged claim against Wumag must be asserted in that insolvency proceeding. Thus, the Court should dismiss the Third-Party Complaint.

WHEREFORE, for the reasons outlined above, Wumag respectfully moves the Court, pursuant to Rules 12(b)(2) and (6), to dismiss the Third-Party Complaint against it with prejudice. This Motion is based on the pleadings, applicable statutes, regulations, case law and legal authorities, and other materials as may be submitted in support hereof.

This 29th day of June 2023
Greenville, South Carolina

/s/ Catherine Wrenn
Catherine Wrenn (S.C. Bar No. 76042)
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
40 Calhoun Street, Suite 200B
Charleston, SC 29401
T: (864) 918-3544
cwrenn@bakerdonelson.com

Attorney for Third-Party Defendant

ELECTRONICALLY FILED - 2023 Jun 29 4:22 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

EXHIBIT A

ELECTRONICALLY FILED - 2022 Apr 13 4:37 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiff, vs. Wumag Texroll GmbH & Co. KG, Defendants.	IN THE COURT OF COMMON PLEAS Case No. 2021-CP-19-00005 **DECLARATION OF MICHAEL HESS IN SUPPORT OF WUMAG TEXROLL GMBHH & CO. KG'S MOTION TO DISMISS**

COMES NOW, Michael Hess, who deposes and states as follows:

1. My name is Michael Hess, and I am over the age of eighteen (18) years and am competent to give sworn testimony. I have personal, first-hand knowledge of the matters set forth in this declaration. I offer this declaration in support of Wumag Texrol GmbH & Co. KG's ("Wumag II") Motion to Dismiss in the above-captioned action.

2. I am the Managing Director of Wumag II.

3. Wumag II was previously named Kelzenberg + Co: GmbH & Co. KG ("Kelzenberg"), and I previously served as the Managing Director of Kelzenberg from 2008 to 2019.

4. Wumag II is registered at the district court of Düren, Germany under number HRA 224 and the general partner GmbH under number HRB 154.

5. Wumag II's principal place of business is in Düren, Germany.

6. On September 1, 2019, insolvency proceedings concerning the assets of Wumag Texroll GmbH & Co. KG ("Wumag I") commenced in the district court of Krefeld, Germany.

7. Prior to being insolvent, Wumag I was registered at the district court of Krefeld, Germany under number HRA 3719.

8. On or around September 18, 2019, Kelzenberg entered into an asset purchase agreement to purchase the assets of Wumag I out of insolvency.

9. Dr. Peter Minuth, Attorney at Law and Insolvency Administrator, currently serves as the insolvency administrator for the Wumag I insolvency proceedings.

10. Pursuant to the asset purchase agreement, Kelzenberg purchased certain assets of Wumag I, including machinery, equipment, software licenses. Ownership of the purchased assets was transferred from Wumag I to Kelzenberg on October 1, 2019.

ELECTRONICALLY FILED - 2022 Apr 07 4:37 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

11. The asset purchase was carried out in Germany and was governed by German law.

12. Under German law, an agreement to purchase assets does not provide for the assumption of liabilities, unless expressly agreed otherwise or statutory provisions of German law stipulate otherwise.

13. On September 18, 2019, for marketing reasons, Kelzenberg changed its name to Wumag II.

14. Despite Wumag II adopted the same name for marketing reasons following the asset purchase, there is not now, and has never been, commonality of officers, directors, or stockholders between Wumag I and Wumag II.

15. The Complaint in this action concerns injuries suffered by Plaintiff Barry Lanham ("Lanham") alleged to have occurred on January 22, 2018 at a Bondex, Inc. plant in Trenton, South Carolina. (*See* Compl. ¶¶ 3–8).

16. Lanham alleges he was injured by a Laminating Calendar Line machine which was designed and manufactured by Wumag Texroll GmbH & Co. KG and then sold by Wumag Texroll GmbH & Co. KG to Bondex, Inc. (*See* Compl. ¶¶ 3–8).

17. Lanham's alleged injuries which are the subject of this action and which give rise to the claims asserted in the Complaint occurred almost two years prior to Wumag II purchasing the assets of Wumag I.

18. Wumag II does not now, and has never held an ownership interest in the Laminating Calendar Line machine that allegedly caused Mr. Lanham's injuries.

19. Wumag II did not design, test, manufacture, market, sell, import, distribute, deliver or install the Laminating Calendar Line machine that allegedly caused Mr. Lanham's injuries.

20. Wumag II is not now, and has never been registered with the South Carolina Secretary of State.

21. Wumag II has never registered an agent for service of process with the South Carolina Secretary of State.

22. Wumag II does not now, and has never, maintained an office, manufacturing facility or other place of business within South Carolina.

23. Wumag II does not, does not now, and has never, employed any personnel based in South Carolina.

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

Michael Hess

Date: 08/05/2021

ELECTRONICALLY FILED - 2022 Apr 07 4:37 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

EXHIBIT B

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

1205 PENDLETON STREET, SUITE 525
COLUMBIA, SC 29201

803-734-2170
www.sos.sc.gov

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

January 14, 2021

INTERNATIONAL REGISTERED MAIL
RETURN RECEIPT REQUESTED

Wumag Texroll GmbH & Co. KG
Dusseldorfer Str. 120
Krefeld, Linn 47809
Germany

RE: Wumag Texroll GmbH & Co. KG, 2021-CP-19-00005

Dear Madam/Sir:

In accordance with South Carolina Code § 15-9-245, we are enclosing herewith a copy of the Summons and Complaint in the above-entitled case. Service was accepted on January 11, 2021 and a copy has been duly filed in our office as of this date. The fee of $10.00 has been paid.

Yours very truly,

Allyson Green

Allyson Green
South Carolina Secretary of State's Office

Enclosures

cc: Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
Megan C. Davis
101 Mulberry Street East Post Office Box 457
Hampton, SC 29924

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	CIVIL ACTION NO.: 2021-CP-19-____
	)	
Barry Lanham and Obvia Gamble-Lanham, Plaintiffs,	)	
	)	**SUMMONS**
v.	)	***(Jury Trial Demanded)***
	)	
Wumag Texroll GmbH & Co. KG, Defendant.	)	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, Peters, Murdaugh, Parker, Eltzroth & Detirck, P.A. at 101 Mulberry Street East, P.O. Box 457, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

RECEIVED
JAN 11 2021
SC SECRETARY OF STATE

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK, P.A.

BY: /s/William F. Barnes, III
William F. Barnes, III (SC Bar #78220)
John E. Parker (SC Bar #4442)
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
wbarnes@pmped.com
jparker@pmped.com
Attorneys for Plaintiffs

January 6, 2021
Hampton, South Carolina

ELECTRONICALLY FILED - 2021 Jan 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	CIVIL ACTION NO.: 2021-CP-19-_____
	)	
Barry Lanham and Obvia Gamble-Lanham, Plaintiffs,	)	
	)	**COMPLAINT**
v.	)	***(Jury Trial Demanded)***
	)	
Wumag Texroll GmbH & Co. KG, Defendant.	)	

The Plaintiffs allege:

1. The Plaintiffs, Barry Lanham and Obvia Gamble-Lanham ("Plaintiffs" or "Lanham") are residents of Edgefield County, South Carolina.

2. Obvia Gamble-Lanham is the wife of Barry Lanham.

3. The Defendant, Wumag Texroll GmbH & Co. KG (hereinafter referred to as "Wumag Texroll") is a foreign corporation organized and maintaining its principal place of business in a state other than South Carolina. Wumag Texroll is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling, importing and distributing steel industrial machines including, but not limited to, the Laminating Calender Line machine ("Subject Machine") that forms the basis of this action.

4. Venue is proper in Edgefield County pursuant to S.C. Code Ann. § 15-7-30 as it is the county where the most substantial part of the act or omission giving rise to the cause of action occurred.

5. Wumag Texroll is subject to the jurisdiction of this Court.

6. Wumag Texroll designed and manufactured a Laminating Calender Line machine, machine number 206460, that was subsequently sold, delivered, and installed at Bondex, Inc. in Trenton, South Carolina.

ELECTRONICALLY FILED - 2021 Jun 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2022 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2021 Jun 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

7. After the Subject Machine was installed by Wumag Texroll, employees and/or agents of Wumag Texroll visited the Bondex plant in Trenton, SC and deactivated safety devices on the Subject Machine.

8. On January 22, 2018, Plaintiff, Barry Lanham, a Bondex, Inc. employee, was cleaning the machine when his left arm and hand was pulled into the Machine, resulting in severe and permanent damage to his left arm and hand.

FIRST CAUSE OF ACTION
(Negligence)

9. The above allegations are repeated as if quoted verbatim.

10. The injuries and damages sustained by Plaintiff are the direct and proximate result of the negligence, carelessness, recklessness, and wanton conduct of Wumag Texroll in the following particulars:

a. In designing a machine that was unsafe and unreasonably dangerous;

b. In manufacturing a machine that was unsafe and unreasonably dangerous;

c. In selling a machine that was unsafe and unreasonably dangerous;

d. In installing a machine that was unsafe and unreasonably dangerous;

e. In failing to warn the Plaintiff of the dangerous and defective condition of the machine;

f. In failing to incorporate certain safeguards on the machine that would have prevented the Plaintiff's injury;

g. In deactivating safety devices on the Subject Machine that would have prevented Plaintiff's injury;

h. In designing, manufacturing, selling, and installing a machine that could not be cleaned without endangering the person so cleaning;

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

j. In designing, manufacturing, selling, installing, and altering a machine in utter disregard of the safety of Plaintiff;

k. In failing to provide instructions about how to properly clean the machine; and

l. In such other particulars as the evidence and testimony may establish.

11. As a result of the aforementioned events, Plaintiff suffered severe and permanent injury to this left arm and hand, and other parts of his body from which he has suffered and will continue to suffer physical pain; mental anguish and emotional distress; has expended and will in the future expend monies for medical care and treatment; caused to lose the enjoyment of life; and has lost income.

12. By reason of and in consequence of the above-mentioned negligent, careless, reckless, willful, and wanton conduct of Wumag Texroll, Plaintiff has suffered the injuries, losses, and damages complained of for which Wumag Texroll is liable.

SECOND CAUSE OF ACTION

(Strict Liability pursuant to S.C. Code Ann. § 15-73-10, et seq.)

13. The above allegations are repeated as if quoted verbatim.

14. Plaintiff's injuries occurred because the Machine was designed, manufactured, and sold by Wumag Texroll in a defective condition unreasonably dangerous to the Plaintiff.

15. Wumag Texroll designed, manufactured, and sold the Machine in a defective and unreasonably dangerous condition.

16. At the time of Plaintiff's injury, the Machine was in substantially the same condition as it was when it was installed by Defendant.

17. As a direct and proximate result of the defective and unreasonably dangerous condition of Defendant's machine, Plaintiff suffered the injuries and damages complained of for which Defendant is strictly liable, pursuant to S.C. Code Ann. § 15-73-10, to Plaintiff in an amount to be ascertained by the jury at the trial of this action.

ELECTRONICALLY FILED - 2021 Jun 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2021 Jun 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

THIRD CAUSE OF ACTION
(Breach of Express and Implied Warranties)

18. The above allegations are repeated as if quoted verbatim.

19. Wumag Texroll expressly and impliedly warranted that the Machine it sold was merchantable and fit for ordinary use.

20. Wumag Texroll breached express and implied warranties in that the Machine it designed, manufactured, sold, and installed and, which was used by the Plaintiff, was not merchantable and was unfit for ordinary, normal use.

21. The breach of Wumag Texroll's express and implied warranties in the sale of the Machine was the proximate cause of the damages Plaintiff sustained for which Defendant is liable.

FOURTH CAUSE OF ACTION
(Loss of Consortium)

22. The Plaintiff, Obvia Gamble-Lanham, due to the injuries sustained by her husband, has suffered the loss of his consortium, support, and care.

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

[SIGNATURE PAGE TO FOLLOW]

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: /s/William F. Barnes, III
William F. Barnes, III (SC Bar #78220)
John E. Parker (SC Bar #4442)
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
wbarnes@pmped.com
jparker@pmped.com
Attorneys for Plaintiffs

January 6, 2021
Hampton, South Carolina

ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2021 Jun 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

State of South Carolina
OFFICE OF
MARK HAMMOND
Secretary of State
1205 Pendleton Street, Suite 525
COLUMBIA, SC 29201

United States Postal Service
REGISTERED MAIL

RR 662 958 442 US

Label 200, July 1999 (102595) 99-M-1904

9400

00106

U.S. POSTAGE PAID
FCMI LTR
COLUMBIA, SC
29201
JAN 14, 21
AMOUNT
$22.39
R2304N116681-43

Wumag Texroll GmbH & Co. KG
Dusseldorfer Str. 120
47809 Krefeld (Linn), Germany

ROA 287

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2023 Jul 17 11:51 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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,)	
)	**PLAINTIFFS' NOTICE OF MOTION AND MOTION TO AMEND COMPLAINT**
v.)	
)	
Wumag Texroll GmbH & Co. KG,)	
Defendant.)	
)	
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.)	

TO: DEFENDANT, THIRD-PARTY DEFENDANT AND THEIR ATTORNEYS, ROBERT C. OSBORNE III, ESQ. AND CATHERINE WRENN, ESQ.:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs Barry Lanham and Obvia Gamble-Lanham, by and through their undersigned counsel, will move at a time and place to be arranged by the Court for an Order granting them leave to amend their Complaint pursuant to Rule 15 of the South Carolina Rules of Civil Procedure. Rule 15(a) provides that when a party asks to amend his pleading, "leave shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a), SCRCP. "This rule strongly favors amendments and the court is encouraged to freely

grant leave to amend." *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005). Here, justice requires that the Court grant leave to amend as the amendment will not prejudice any other party. *See* Rule 15(a), SCRCP.

Third-Party Plaintiff Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co.: GmbH & Co. KG ("Kelzenberg"), designated in Plaintiffs' Complaint as Wumag Texroll GmbH & Co. KG ("Wumag"), has brought a claim for indemnity against Third-Party Defendant Wumag, a predecessor German corporation which was acquired by Kelzenberg in an asset purchase agreement. As will be detailed further in a supporting memorandum of law, Plaintiffs wish to amend their Complaint in order to assert negligence, strict liability, warranty, and loss of consortium claims against Third-Party Defendant Wumag, and to amend the named Defendant to also include Kelzenberg along with the already named Wumag. (Ex. A). This request is based upon information learned since the filing of Plaintiffs' Complaint.

This Motion will be supported by a memorandum of law, discovery exchanged between the parties, arguments presented by counsel, and any other documents which may be presented to the Court. Undersigned counsel certifies that consultation would serve no useful purpose.

[SIGNATURE PAGE TO FOLLOW]

ELECTRONICALLY FILED - 2023 Jul 17 11:51 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PARKER LAW GROUP, LLP

BY: s/John E. Parker, Jr.
John E. Parker. SC Bar ID. 4442
John E. Parker, Jr.
SC. Bar ID 104225
Neil E. Alger. SC Bar ID. 100530
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
Phone: (803) 943-2111
jparker@parkerlawgroupsc.com
jayparker@parkerlawgroupsc.com
nalger@parkerlawgroupsc.com

ATTORNEYS FOR PLAINTIFF

July 17, 2023
Hampton, South Carolina

ELECTRONICALLY FILED - 2023 Jul 17 11:51 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

EXHIBIT
A

ELECTRONICALLY FILED - 2023 Jul 17 11:51 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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.)	
)	
Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co.: GmbH & Co. KG and Wumag Texroll GmbH & Co. KG,)	**AMENDED COMPLAINT** (*Jury Trial Demanded*)
)	
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.)	

The Plaintiffs allege that:

1. The Plaintiffs, Barry Lanham and Obvia Gamble-Lanham ("Plaintiffs" or "Lanham") are residents of Edgefield County, South Carolina.

2. Obvia Gamble-Lanham is the wife of Barry Lanham.

3. The Defendant, Wumag Texroll GmbH & Co. KG (hereinafter referred to as "Wumag") is a foreign corporation organized and maintaining its principal place of business in a state other than South Carolina. Wumag is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling,

ELECTRONICALLY FILED - 2023 Jul 17 11:51 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

importing and distributing steel industrial machines including, but not limited to, the Laminating Calender Line machine ("Subject Machine") that forms the basis of this action.

4. The Defendant, Wumag Texroll GmbH & Co. KG f/k/a Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co.: GmbH & Co. KG ("Kelzenberg") is a foreign corporation organized and maintaining its principal place of business in a state other than South Carolina. Kelzenberg is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling, importing and distributing steel industrial machines including, but not limited to, the Laminating Calender Line machine ("Subject Machine") that forms the basis of this action. Kelzenberg is liable for the acts and omissions of Wumag under German principles of successor liability.

5. Venue is proper in Edgefield County pursuant to S.C. Code Ann. § 15-7-30 as it is the county where the most substantial part of the act or omission giving rise to the cause of action occurred.

6. Wumag and Kelzenberg are subject to the jurisdiction of this Court.

7. Wumag and Kelzenberg designed and manufactured a Laminating Calender Line machine, machine number 206460, that was subsequently sold, delivered, and installed at Bondex, Inc. in Trenton, South Carolina.

8. After the Subject Machine was installed by Wumag and Kelzenberg, employees and/or agents of Wumag and Kelzenberg visited the Bondex plant in Trenton, SC and deactivated safety devices on the Subject Machine.

ELECTRONICALLY FILED - 2023 Jul 17 11:51 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

9. On January 22, 2018, Plaintiff, Barry Lanham, a Bondex, Inc. employee, was cleaning the machine when his left arm and hand was pulled into the Machine, resulting in severe and permanent damage to his left arm and hand.

FIRST CAUSE OF ACTION
(Negligence)

10. The above allegations are repeated as if quoted verbatim.

11. The injuries and damages sustained by Plaintiff are the direct and proximate result of the negligence, carelessness, recklessness, and wanton conduct of Wumag and Kelzenberg in the following particulars:

a. In designing a machine that was unsafe and unreasonably dangerous;

b. In manufacturing a machine that was unsafe and unreasonably dangerous;

c. In selling a machine that was unsafe and unreasonably dangerous;

d. In installing a machine that was unsafe and unreasonably dangerous;

e. In failing to warn the Plaintiff of the dangerous and defective condition of the machine;

f. In failing to incorporate certain safeguards on the machine that would have prevented the Plaintiff's injury;

g. In deactivating safety devices on the Subject Machine that would have prevented Plaintiff's injury;

h. In designing, manufacturing, selling, and installing a machine that could not be cleaned without endangering the person so cleaning;

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

j. In designing, manufacturing, selling, installing, and altering a machine in utter disregard of the safety of Plaintiff;

ELECTRONICALLY FILED - 2023 Jul 17 11:51 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

k. In failing to provide instructions about how to properly clean the machine; and

l. In such other particulars as the evidence and testimony may establish.

12. As a result of the aforementioned events, Plaintiff suffered severe and permanent injury to his left arm and hand, and other parts of his body from which he has suffered and will continue to suffer physical pain; mental anguish and emotional distress; has expended and will in the future expend monies for medical care and treatment; caused to lose the enjoyment of life; and has lost income.

13. By reason of and in consequence of the above-mentioned negligent, careless, reckless, willful, and wanton conduct of Wumag and Kelzenberg, Plaintiff has suffered the injuries, losses, and damages complained of for which Wumag and Kelzenberg are liable.

SECOND CAUSE OF ACTION
(Strict Liability pursuant to S.C. Code Ann. § 15-73-10, et seq.)

14. The above allegations are repeated as if quoted verbatim.

15. Plaintiff's injuries occurred because the Machine was designed, manufactured, and sold by Wumag and Kelzenberg in a defective condition unreasonably dangerous to the Plaintiff.

16. Wumag and Kelzenberg designed, manufactured, and sold the Machine in a defective and unreasonably dangerous condition.

17. At the time of Plaintiff's injury, the Machine was in substantially the same condition as it was when it was installed by Defendants.

ELECTRONICALLY FILED - 2023 Jul 17 11:51 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

18. As a direct and proximate result of the defective and unreasonably dangerous condition of Defendants' machine, Plaintiff suffered the injuries and damages complained of for which Defendants are strictly liable, pursuant to S.C. Code Ann. § 15-73-10, to Plaintiff in an amount to be ascertained by the jury at the trial of this action.

THIRD CAUSE OF ACTION
(Breach of Express and Implied Warranties)

19. The above allegations are repeated as if quoted verbatim.

20. Wumag and Kelzenberg expressly and impliedly warranted that the Machine they sold was merchantable and fit for ordinary use.

21. Wumag and Kelzenberg breached express and implied warranties in that the Machine it designed, manufactured, sold, and installed and, which was used by the Plaintiff, was not merchantable and was unfit for ordinary, normal use.

22. The breach of Wumag and Kelzenberg's express and implied warranties in the sale of the Machine was the proximate cause of the damages Plaintiff sustained for which Defendants are liable.

FOURTH CAUSE OF ACTION
(Loss of Consortium)

23. The Plaintiff, Obvia Gamble-Lanham, due to the injuries sustained by her husband, has suffered the loss of his consortium, support, and care.

WHEREFORE, Plaintiffs pray for judgment against the Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of

this action, and for such other and further relief as the Court may deem just and proper.

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PARKER LAW GROUP, LLP

BY: /s/John E. Parker, Jr.
John E. Parker SC. Bar ID 4442
John E. Parker, Jr.
SC. Bar ID 104225
Neil E. Alger. SC Bar ID 100530
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
jparker@parkerlawgroupsc.com
jayparker@parkerlawgroupsc.com
nalger@parkerlawgroupsc.com

Attorneys for Plaintiffs

July 17, 2023
Hampton, South Carolina

ROA 296

ELECTRONICALLY FILED - 2023 Jul 17 11:51 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2023 Dec 08 11:04 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

IN THE STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiffs, v. Wumag Texroll GmbH & Co. KG, Defendant.	)	IN THE COURT OF COMMON PLEAS Case No: 2021-CP-19-00005 **Memorandum in Support of Wumag Texroll GmbH & Co. KG's Motion to Dismiss Third-Party Complaint**
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.	)	

Pursuant to Rule 12(b)(2) and 12(b)(6) of the South Carolina Rules of Civil Procedure, Third-Party Defendant Wumag Texroll GmbH & Co. KG ("**Wumag**") has moved the Court to dismiss the Third-Party Complaint that Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG ("**Kelzenberg-Wumag**") has filed against it because:

1. The Third-Party Complaint's single claim against Wumag for indemnity is premature and not yet ripe for adjudication;

2. Similarly, the Third-Party Complaint fails to state any claim against Wumag upon which relief could be granted as it asserts no damages; and

3. The Court lacks personal jurisdiction over Wumag, a German insolvent entity.

Wumag submits the following in support of its Motion to Dismiss.

ELECTRONICALLY FILED - 2023 Dec 08 11:04 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Factual Background & Third-Party Complaint's Allegations:

The underlying lawsuit ("**Underlying Lawsuit**") is a product liability case arising out of Plaintiff Barry Lanham's ("**Plaintiff Lanham**") work-related arm and hand injuries that occurred while he was "cleaning" a laminating calendar line machine ("**the Machine**"). Compl., at ¶ 8. Plaintiff Lanham has sued Kelzenberg-Wumag for his injuries, asserting that Kelzenberg-Wumag designed, manufactured, and installed the Machine at Plaintiff's place of employment, that Kelzenberg-Wumag "deactivated safety devices" on the Machine, and that it is therefore liable to him based on theories of negligence, strict liability and breach of express and implied warranties. Id., at ¶¶ 6-7; 9-21. Plaintiff Lanham's wife, Obva Gamble-Lanham, (collectively with Plaintiff Lanham, "**Plaintiffs**") has asserted a loss of consortium claim against Kelzenberg-Wumag. Id., at ¶ 22.

In answering the Complaint in the Underlying Lawsuit, Kelzenberg-Wumag has denied any liability to Plaintiffs and has asserted numerous affirmative defenses to the Complaint's allegations against it, including Plaintiff Lanham's misuse of the Machine and the doctrines of comparative negligence and assumption of the risk. Am. Answer, at ¶¶ 74 ("Kelzenberg-Wumag denies the substantive allegations in Plaintiffs' Complaint and has denie[d] any and all liability to Plaintiffs"); 37; 50.

The Underlying Lawsuit remains pending. There has been no judgment against Kelzenberg-Wumag for any of Plaintiffs' claims. Similarly, Kelzenberg-Wumag has not been exonerated for any of Plaintiffs' claims.

Nonetheless, Kelzenberg-Wumag has filed a Third-Party Complaint against Wumag for equitable indemnification. Am. Answer, at ¶¶ 53-79. As the Third-Party Complaint recognizes, **Wumag is an insolvent company located in Germany**. Id., at ¶¶ 55, 61. It has been in insolvency

ELECTRONICALLY FILED - 2023 Dec 08 11:04 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

proceedings in Germany since September 1, 2019, id., at ¶ 61, and Kelzenberg-Wumag "entered into an asset purchase agreement" with Wumag as part of that insolvency proceeding, id., at ¶ 63. Following that purchase agreement, Kelzenberg-Wumag "adopted the 'Wumag Texroll GmbH & Co. KG' brand name." Id., at ¶ 67.

In its equitable indemnification claim, Kelzenberg-Wumag asserts that Wumag "must indemnify" it "for the amount of any judgment entered against Kelzenberg-Wumag, for any amount Kelzenberg-Wumag pays Plaintiffs in settlement of Plaintiffs' claims, and for all attorneys' fees, costs, and other expenses incurred by Kelzenberg-Wumag as a result of this action." Id., at ¶ 79.

As noted above, Wumag has moved to dismiss Kelzenberg-Wumag's equitable indemnity claim against it as, notably, that claim is not yet ripe and fails to state a cause of action upon which relief could be granted, the Court lacks personal jurisdiction over Wumag, and, even if the claim is somehow viable, it should be asserted in the German insolvency proceeding.

Standard of Review:

In evaluating a Rule 12(b)(6) motion to dismiss a complaint, the Court will "construe the complaint in a light most favorable to the nonmovant and determine if the 'facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). Notably, however, mere conslusory allegations, unsupported by any particularized allegations of fact, are insufficient to survive a motion to dismiss. See, e.g. Skywaves I Corp. v. Branch Banking & Tr. Co., 423 S.C. 432, 455, 814 S.E.2d 643, 656 (Ct. App. 2018).

In assessing a pre-trial Rule 12(b)(2) motion to dismiss a complaint for lack of personal jurisdiction, the Court will determine whether the plaintiff has made a "prima facie showing of

ELECTRONICALLY FILED - 2023 Dec 08 11:04 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

jurisdiction in either the complaint or in affidavits." Power Prod. & Servs. Co. v. Kozma, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008).

Analysis:

A. The Court Should Dismiss Kelzenberg-Wumag's Equitable Indemnity Claim as It Is Not Yet Ripe.

The Court should grant Wumag's motion to dismiss the Third-Party Complaint as it is premature. The Third-Party Complaint's sole claim is for equitable indemnification and is based on a future possibility that Kelzenberg-Wumag may be liable to Plaintiffs in the Underlying Lawsuit. Significantly, the Underlying Lawsuit remains pending; Kelzenberg-Wumag denies any liability to Plaintiffs in the Underlying Lawsuit; and Kelzenberg-Wumag has not been held liable to Plaintiffs (and, in fact, may never be). Thus, Kelzenberg-Wumag's indemnity claim is based on a *future* event that may never occur (e.g. a judgment against it and in favor of Plaintiffs). As a result, it is simply premature, not yet ripe for adjudication, and subject to dismissal.

In order for a claim to survive a motion to dismiss, it must represent a ripe, "justiciable controversy" that is "a real and substantial controversy appropriate for judicial determination, *as opposed to a dispute or difference of a contingent, hypothetical or abstract character*." Sloan v. Greenville Cnty., 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003) (Also noting "[t]he concept of justiciability encompasses the doctrines of ripeness, mootness, and standing"). See also Jowers v. S.C. Dep't of Health & Env't Control, 423 S.C. 343, 353, 815 S.E.2d 446, 451 (2018) ("We have explained ripeness by defining what is not ripe, stating 'an issue that is contingent, hypothetical, or abstract is not ripe for judicial review'"). After all, South Carolina courts will not rule upon premature, "academic questions or make an adjudication where there remains no actual," ripe controversy." Sloan, at 552, 590 S.E.2d at 349. See also Beatley v. Ayers, 851 F. App'x 332, 336 (4th Cir. 2021) ("A case is fit for adjudication when the action in controversy is final and not

ELECTRONICALLY FILED - 2023 Dec 08 11:04 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

dependent on future uncertainties; conversely, a claim is not ripe when it rests upon contingent future events that may not occur as anticipated").

Thus, South Carolina courts routinely dismiss third-party claims that are based on the potential for a future liability. See, e.g. First Specialty Ins. Corp. v. RHS Enters., LLC, No. 6:09-cv-1325, 2010 WL 11537546 (D.S.C. Mar. 29, 2010) (Dismissing third-party claims as not ripe where the injury alleged by the third-party plaintiff was contingent upon future determination of a related action); U.S. Fid. & Guar. Co. v. Ellett Bros., No. C/A 3:00-3691-24, 2003 WL 23851137, at *8 (D.S.C. Feb. 11, 2003) (Finding indemnity obligations, "if any, will arise only after the Underlying Complaint is resolved. The court agrees that the indemnity claim is not ripe for review"). For example, in Steineman v. Meridian Sec. Ins. Co., No. CV 0:20-03118-MGL, 2021 WL 3931888, at *4 (D.S.C. Sept. 2, 2021), a South Carolina court determined an indemnity claim arising out of an underlying lawsuit was not ripe for judicial review as the underlying lawsuit remained pending. The Steineman plaintiff sought indemnity for losses related to an underlying car accident lawsuit. The court found the claim was not yet ripe as the underlying car accident lawsuit was ongoing and there thus was not a judgment against the plaintiff from which indemnity could yet arise. It further noted there was not a '"clean-cut and concrete'" "judicial determination of [the plaintiff's] damages." Id.

By way of further example, in Travelers Prop. Cas. Co. of Am. v. M.B. Kahn Constr. Co., Inc., No. 3:20-CV-01304-SAL, 2021 WL 1177861, at *33 (D.S.C. Mar. 29, 2021), a South Carolina court granted a motion to dismiss third-party claims which were based on "too many 'ifs" and hypothetical liability in an underlying, still-pending lawsuit. In that case, a general contractor ("GC") was involved in an underlying construction defect case. The GC's insurers filed a separate, declaratory judgment suit against it, seeking a declaration that their insurance policies did not

provide coverage for the underlying construction defect case. In response, the GC filed a third-party complaint against its insurance broker, asserting that, *if* its insurance policies "are found not to provide coverage to" it for the underlying construction defect suit, then the broker, who procured those policies for it, was liable to it for any damages. The Travelers court dismissed the third-party claims against the broker, finding them premature as:

- The underlying construction defect case remained pending, id., at *33;
- The GC had not been found liable to the plaintiffs in the underlying construction defect case, id.; and
- The insurers' declaratory judgment claims remained pending and there had not yet been a determination that the policies the broker procured for the GC did not provide coverage for the construction defect case, id.

The court highlighted the contingent nature of the third-party claims, noting that, if "the plaintiffs in the Underlying Action are not successful in their claims, [the GC] will not require indemnification." Id.

As in Steineman and Travelers, Kelzenberg-Wumag's third-party claim is based on a *future* event that may never occur – a judgment against it in the still-pending Underlying Lawsuit.[1] As emphasized above, there are too many uncertainties for the claim to be ripe. For instance, the Underlying Lawsuit remains pending and there has been no finding that Kelzenberg-Wumag is liable in any way to Plaintiffs. In fact, if Kelzenberg-Wumag successfully defends the Underlying

[1] Notably, however, equitable indemnity is not available to Kelzenberg-Wumag if it had any fault in causing Plaintiffs' damages. Fowler v. Hunter, 380 S.C. 121, 128, 668 S.E.2d 803, 807 (Ct. App. 2008), aff'd, 388 S.C. 355, 697 S.E.2d 531 (2010) (Noting a requisite element of an equitable indemnification claim is that the "indemnitee [be] exonerated from any liability for [the underlying] damages").

ELECTRONICALLY FILED - 2023 Dec 08 11:04 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2023 Dec 08 11:04 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Lawsuit, it never will be liable for a monetary judgment to Plaintiffs. As a result, Kelzenberg-Wumag's third-party indemnity claim, which asserts that Wumag "must indemnify" it "for the amount of any [*future*] judgment entered against Kelzenberg-Wumag" in the Underlying Lawsuit, Am. Compl., at ¶ 79, is not ripe for judicial review and thus subject to dismissal.

B. The Court Alternatively Should Dismiss the Equitable Indemnity Cause of Action Because It Fails to State a Claim Upon Which Relief Could Be Granted.

The Third-Party Complaint against Wumag also is subject to dismissal under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure as it fails to state a claim upon which relief could be granted. Under South Carolina law, for a party to successfully plead a theory of equitable indemnification, three things must be sufficiently alleged: "(1) the indemnitor was liable for causing the Plaintiff's damages; (2) the indemnitee was exonerated from any liability for those damages; and (3) the indemnitee suffered damages as a result of the Plaintiff's claims against it which were eventually proven to be the fault of the indemnitor." Pulliam v. Clark, No. 4:11-CV-03047-RBH, 2013 WL 353671, at *1 (D.S.C. Jan. 29, 2013). Kelzenberg-Wumag has failed to sufficiently plead those requisite elements.

In fact, in light of the Underlying Lawsuit's pendency and the Complaint's allegations of liability against Kelzenberg-Wumag, see Compl., at ¶¶ 10-22, it is plain that Kelzenbuerg-Wumag has not been "exonerated" from any liability to Plaintiffs. Furthermore, Kelzenberg-Wumag's equitable indemnity claim fails to sufficiently plead that it has suffered any concrete damage as a result of Wumag's alleged wrongdoing; rather, its indemnity claim against Wumag is premised on contingent, uncertain damages. Third-Party Compl., at ¶ 76 ("*To the extent that Kelzenberg-Wumag is held liable to Plaintiffs in this action,* such liability would be a direct and proximate result of the wrongful acts, omissions, negligence, recklessness, gross negligence, willful, or wanton conduct of Wumag") (Emphasis added).

ELECTRONICALLY FILED - 2023 Dec 08 11:04 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

In short, the Third-Party Complaint fails to adequately state a claim for equitable indemnification upon which relief could be granted. It therefore is subject to dismissal under Rule 12(b)(6).

C. The Court Lacks Personal Jurisdiction Over Wumag; It Thus Should Dismiss the Third-Party Complaint.

The Court also should dismiss the Third-Party Complaint as its conclusory, unsupported allegations fail to establish that the Court has personal jurisdiction over Wumag, a non-resident, German (insolvent) company.

In South Carolina, the determination of whether a court may exercise personal jurisdiction over a nonresident defendant involves an analysis of whether the exercise of such jurisdiction would "comport with the requirements of the due process clause," which "requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice." Moosally v. W.W. Norton & Co., 358 S.C. 320, 328-30, 594 S.E.2d 878, 882-83 (Ct. App. 2004). It "is well-settled that the party seeking to invoke personal jurisdiction over a non-resident defendant [] bears the burden of proving the existence of personal jurisdiction." Id., at 327, 594 S.E.2d at 882. "At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by prima facie showing of jurisdiction either in the complaint or in affidavits: Id. ***However, such a prima facia showing is not satisfied with conclusory allegations***. See, e.g. Grant v. Lowe's Home Centers LLC, No. 9:20-CV-00764-DCN, 2020 WL 1494070, at *1 (D.S.C. Mar. 27, 2020) (Noting courts "need not 'credit conclusory allegations or draw farfetched inference"').

Here, the Third-Party Complaint's thread-bare personal jurisdiction allegations against Wumag solely consist of conclusory assertions that are without proof *and based on "information and belief."* The Third-Party Complaint bases its personal jurisdiction allegation on the assertion

ELECTRONICALLY FILED - 2023 Dec 08 11:04 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

that "*[u]pon information and belief*, Wumag designed, manufactured, and/or sold the" Machine. Third-Party Compl., at ¶ 59. It is devoid of any specific factual support for those allegations (and is unsupported by any exhibits to the Third-Party Complaint or by affidavit). See Career Counseling, Inc. v. Amerifactors Fin. Grp., LLC, No. 3:16-CV-03013-JMC, 2017 WL 4269458, at *5 (D.S.C. Sept. 26, 2017) (Noting that "a complaint's allegations based solely 'upon information and belief' are 'insufficient to defeat a motion to dismiss'"). Namely, the Third-Party Complaint contains no details supporting that Wumag actually designed, manufactured, and/or sold the Machine. It also lacks factual allegations regarding whether Wumag sold the Machine to a South Carolina-based customer or whether Wumag has any physical location, employees, or agents in the State (which it does not), and it provides no examples of any minimum contacts Wumag has with South Carolina. Such conclusory, bald allegations are insufficient to establish a prima facie case of personal jurisdiction. Therefore, the Court, pursuant to Rule 12(b)(2) should dismiss the Third-Party Complaint.

Conclusion:

For the reasons outlined above, the Court should grant Wumag's Motion to dismiss the Third-Party Complaint.

This 8th day of December 2023

s/ Catherine Wrenn
Catherine F. Wrenn (S.C. Bar No. 76042)
cwrenn@bakerdonelson.com
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
850 Morrison Drive, Suite 775
Charleston, South Carolina 29403
T: (864) 918-3544
Attorneys for Third-Party Defendant

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiffs, vs. Wumag Texroll GmbH & Co. KG, Defendant,	IN THE COURT OF COMMON PLEAS Case No. 2021-CP-19-00005 **WUMAG TEXROLL GMBHH & CO. KG F/K/A KELZENBERG + CO. GMBH & CO. KG'S MEMORANDUM IN OPPOSITION TO WUMAG TEXROLL GMBHH & CO. KG'S MOTION TO DISMISS THIRD-PARTY COMPLAINT**
Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG, Third-Party Plaintiff, vs. Wumag Texroll GmbH & Co. KG, Third-Party Defendant.	

Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG ("Kelzenberg-Wumag"), identified in the Complaint as Wumag Texroll GmbH & Co. KG, by and through its undersigned counsel, submits this Memorandum in Opposition to Wumag Texroll GmbH & Co. KG's ("Wumag") Motion to Dismiss Third-Party Complaint.

I. INTRODUCTION

This case relates to a workplace injury suffered by Plaintiff Barry Lanham in January 2018. As detailed below, in September 2019, 20 months after the accident, Kelzenberg-Wumag purchased the assets, but did not assume the liabilities of Wumag, through German insolvency proceedings. Kelzenberg-Wumag adopted the "Wumag Texroll GmbH & Co. KG" brand name for marketing reasons following the asset purchase. Despite this, Kelzenberg-Wumag and Wumag have always been legally distinct. Kelzenberg-Wumag is a separately registered company and is

based in a different city. Most importantly, Kelzenberg-Wumag does not have any of the same officers, directors, or stockholders as the prior Wumag.

The industrial machine which allegedly caused Barry Lanham's injuries was manufactured by Wumag in 2016—three years before Kelzenberg-Wumag existed. Because Kelzenberg-Wumag did not exist when the machine was manufactured or when the accident occurred, it cannot be held liable for Plaintiff's injuries. To the extent there is liability arising out of the design, manufacture and/or sale of the machine, Wumag is the clearly responsible party. Based on the foregoing, after it was sued by Plaintiffs, Kelzenberg-Wumag filed a Third-Party Complaint for indemnity against Wumag.

Wumag has moved to dismiss the Third-Party arguing that this court lacks personal jurisdiction over Wumag and arguing that the indemnity claim is legally deficient.[1] and that the claim cannot be asserted based on Wumag's German insolvency. All of Wumag's arguments fail. Wumag is subject to personal jurisdiction based on it designing, manufacturing and selling the machine at issue, and the Third-Party Complaint includes specific factual allegations conferring jurisdiction. Additionally, Kelzenberg-Wumag has sufficiently plead a claim for indemnity. The fact that this lawsuit is ongoing does not preclude Kelzenberg-Wumag's indemnity claim. For these reasons, Wumag's motion should be denied.

II. FACTUAL BACKGROUND

A. Plaintiffs' Allegations

The complaint alleges that on January 22, 2018, Barry Lanham was severely injured at work while cleaning a Laminating Calender Line machine (the "Machine") at Bondex, Inc.'s

[1] Wumag's motion, without any supporting authority, alleged that the third-party complaint is barred by virtue of Wumag's German insolvency. This argument is not addressed in Wumag's memorandum and is abandoned. Regardless, the argument also fails. This Court clearly has jurisdiction to hear cases involving alleged torts which occur within the state. This is especially true when Wumag's foreign bankruptcy has not been recognized by United States' courts.

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

facility in Trenton, South Carolina. (Plaintiff's Complaint ¶¶ 7—8). Plaintiffs filed this action on January 6, 2021, almost three years later, asserting causes of action against "Wumag Texroll GmbH & Co. KG" ("Wumag") for (1) negligence, (2) strict liability pursuant to S.C. Code Ann. § 15-73-10, *et seq.*, (3) breach of express and implied warranties, and (4) loss of consortium. (*Id.* ¶¶ 9–22). In support of their claims, Plaintiffs allege that the Machine was designed, manufactured, sold, delivered, and installed by Wumag. (*Id.* ¶ 6). Plaintiffs further allege that after the Machine was installed at Bondex's facility, employees and/or agents of Wumag deactivated safety devices on the Machine. (*Id.* ¶ 7).

B. Kelzenberg-Wumag's Third-Party Claim

Wumag is a German company which, during the time period relevant hereto, manufactured and sold industrial machines. (Kelzenberg-Wumag's Third-Party Compl. ("Third-Party Compl.") ¶ 55).[2] Wumag was registered at the district court of Krefeld, Germany under number HRA 3719. (*Id.* ¶ 62). Upon information and belief, Wumag designed, manufactured and/or sold the Machine. (*Id.* ¶ 59).

On September 1, 2019, insolvency proceedings concerning the assets of Wumag commenced in the district court of Krefeld, Germany. (*Id.* ¶ 61). On or around September 18, 2019, twenty months after Plaintiff's accident, Kelzenberg-Wumag entered into an asset purchase agreement to purchase the assets of Wumag out of insolvency. (*Id.* ¶ 63). In conjunction with the asset purchase agreement, Kelzenberg-Wumag was established in September 2019. (*Id.* ¶ 57). Thus, Kelzenberg-Wumag did not come into existence until twenty months after the events giving rise to this Complaint occurred.[3] (*Id.*). Kelzenberg-Wumag neither purchased nor assumed any

[2] Kelzenberg-Wumag's Third-Party Complaint is attached hereto as **Exhibit A.** The allegations in Third-Amended Complaint are supported by the previously filed Declaration of Kelzenberg-Wumag's Managing Director, Michael Hess, is attached hereto as **Exhibit B.**

[3] Kelzenberg-Wumag is registered at the district court of Düren, Germany under number HRA 224 and has a principal place of business is in Düren, Germany. This fact is significant because it demonstrates that Wumag, which was

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

liabilities of Wumag. (*Id*. ¶ 66). Following the asset purchase, for marketing reasons, Kelzenberg-Wumag adopted the "Wumag Texroll GmbH & Co. KG" brand name. (*Id*. ¶ 67). Despite adopting the same name for marketing reasons, there is not now, and has never been, commonality of officers, directors, or stockholders between Wumag and Kelzenberg-Wumag. (*See* Hess Declaration ¶ 14).

As set forth above, Plaintiffs' Complaint asserts claims against Kelzenberg-Wumag arising out of a workplace accident alleged to have occurred on January 22, 2018 in Trenton, South Carolina.[4] (*Id*. ¶ 69). Plaintiffs' claims against Kelzenberg-Wumag are all based on the allegation that Kelzenberg-Wumag designed, manufactured, sold and/or installed the Machine. However, Kelzenberg-Wumag did not come into existence until September 2019, twenty months after the accident and alleged injuries which are the subject of this action occurred. (*Id.* ¶ 57). Therefore, Kelzenberg-Wumag, did not, and could not have, designed, manufactured, sold, delivered, and installed the Machine. (*Id*. ¶ 72). Based on the foregoing, Kelzenberg-Wumag asserts a claim for indemnity against Wumag. (*Id*. ¶¶ 68-79). Kelzenberg-Wumag seeks indemnification from Wumag for the amount of any judgment entered against Kelzenberg-Wumag, for any amount Kelzenberg-Wumag pays Plaintiffs in settlement of Plaintiffs' claims, and for all attorneys' fees, costs and other expenses incurred by Kelzenberg-Wumag as a result of this action. (*Id*. at 79).

III. LEGAL STANDARD

A. Rule 12(b)(2)

Rule 12(b)(2) of the South Carolina Rules of Civil Procedure governs motions to dismiss for lack of personal jurisdiction. The party seeking to invoke personal jurisdiction over a nonresident defendant bears the burden of proving the existence of personal jurisdiction. *Moosally*

separately registered at the district court of Krefeld, and Kelzenberg-Wumag are now, and have always been registered as separate and distinct companies. (Third-Party Compl. ¶ 56).

[4] Plaintiffs have moved to amend their complaint to assert direct claims against Wumag.

v. W.W. Norton & Co., 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004). "The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case." *Id.*

The "Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (quoting *International Shoe Co. v. Washington,* 326 U.S. 310, 319 (1945)). The minimum contacts requirement "protects a defendant from burdensome litigation in a far-flung jurisdiction" and upholds the general principal of law that "those who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291-92 (1980).

Traditionally, in South Carolina, the determination of whether a court may exercise personal jurisdiction over a nonresident involved a two-step analysis which examined (1) whether the South Carolina long-arm statute is satisfied, and then (2) whether the nonresident's contacts in South Carolina satisfied due process. *Cribb v. Spatholt*, 382 S.C. 490, 499, 676 S.E.2d 714, 719 (Ct.App. 2009) (citing *Power Prods. & Servs. Co. v. Kozma*, 379 S.C. 423, 431, 665 S.E.2d 660, 664 (Ct.App. 2008)). However, "because South Carolina treats its long-arm statute as coextensive with the due process clause, the question becomes whether the exercise of personal jurisdiction would violate due process." *Moosally,* 358 S.C. at 329, 594 S.E.2d at 883.

B. Rule 12(b)(6)

"A motion under Rule 12(b)(6), SCRCP, tests the legal sufficiency of the complaint. *Charleston Cty. Sch. Dist. v. Harrell*, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011). In considering a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the court must base its ruling solely upon the allegations set forth on the face of the complaint." *Id*. "The question is whether, in

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

the light most favorable to the plaintiff, and with every doubt resolved in [its] behalf, the complaint states any valid claim for relief." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). "Novel questions of law should not ordinarily be resolved on a Rule 12(b)(6) motion." *Chestnut v. AVX Corp*., 413 S.C. 224, 227, 776 S.E.2d 82, 84 (2015).

IV. ARGUMENT

A. Wumag is Subject to Personal Jurisdiction in South Carolina

Wumag argues that the Third-Party Complaint should be dismissed for lack of personal jurisdiction because "the personal jurisdiction allegations against Wumag solely consist of conclusory assertions." (Motion to Dismiss at *1.). This argument ignores the specific factual allegations in the Third-Party Complaint—that Wumag "designed, manufactured and/or sold the [M]achine." (Third-Party Complaint ¶ 59). It also ignores that Wumag does not deny that it designed, manufactured and/or sold the Machine and that Wumag has not offered affidavits or other evidence otherwise challenging this court's exercise of jurisdiction over it. Wumag's motion to dismiss for lack of personal jurisdiction should be dismissed on this basis alone. *See* Rule 6(d), SCRCP ("When a motion is to be supported by an affidavit, the affidavit shall be served with the motion."). At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits." *Power Prod. & Servs. Co. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008) (quoting *Moosally v. W.W. Norton & Co.,* 358 S.C. 320, 328, 594 S.E.2d 878, 882 (Ct.App.2004)).

The Third-Party Complaint sufficiently alleges that Wumag is subject to specific personal jurisdiction. For specific personal jurisdiction, due process mandates that a defendant have sufficient minimum contacts with the forum state such that it could reasonably anticipate being hauled into court there, and such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Power Prods. & Servs. Co. v. Kozma,* 379 S.C. 423, 431, 665

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

S.E.2d 660, 665 (Ct.App. 2008). Stated another way, specific jurisdiction requires "a connection between the forum and the specific claims at issue"—"the suit must arise out of or relate to the defendant's contacts with the forum." *See Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.,* 137 S.Ct. 1773, 1780-81 (2017).

The Third-Party Complaint contains the following allegations which directly relate to this Court's ability to exercise personal jurisdiction over Wumag:

> 59. Upon information and belief, Wumag designed, manufactured and/or sold the machine which is the subject of this action (the "Machine").
>
> 60. By virtue of Wumag designing, manufacturing and/or selling the machine which is the subject of this action, directing its products into South Carolina and purposefully availing itself of the privilege of conducting business in South Carolina, Wumag is subject to personal jurisdiction in the state.

(Third-Party Complaint ¶¶ 59-60). The Third-Party Complaint clearly alleges a case specific connection between Wumag and South Carolina—Wumag designed, manufactured and/or sold the machine which resulted in a South Carolina plaintiff suffering injuries in South Carolina. Nothing more is required, especially when Wumag has offered no evidence challenging its connection with South Carolina.

Wumag's failure to challenge the jurisdictional allegations in the Third-Party Complaint is not surprising. There is clear evidence that Wumag did, in fact, design, manufacture and/or sell the [M]achine. A plate attached to the machine demonstrates it was manufactured by Wumag in 2016, approximately two years before Plaintiff's accident and more than three years before Kelzenberg-Wumag's asset purchase. The reference to Krefeld, Germany on the plate further demonstrates that Kelzenberg-Wumag has no connection to the Machine. As set forth above, Kelzenberg-Wumag is registered and based in Düren, Germany (Third-Party Compl. ¶ 56).

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Wumag is clearly subject to jurisdiction in South Carolina in this case.

Wumag's argument that the Third-Party Complaint must include "specifics about Wumag's alleged business in [South Carolina]…information about whether Wumag has any physical location, employees, or agents in the State" confuses the standards for general personal jurisdiction and specific personal jurisdiction. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (stating there are two ways to establish personal jurisdiction—(1) general jurisdiction and (2) specific jurisdiction.). While this information could be relevant to determining whether Wumag is "at home" in South Carolina such that it is subject to general jurisdiction in South Carolina, these allegations are not necessary to establish specific personal jurisdiction. *See Daimler AG v. Bauman*, 571 U.S. 117, 138-39 (2014) ("[a] court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially ***at home*** in the forum State." (emphasis added). The fact that Wumag

designed, manufactured and/or sold the Machine at issue in this case establishes specific personal jurisdiction.

B. Kelzenburg Wumag's Indemnity Claim is Proper and Ripe for Adjudication

Wumag argues Kelzenberg-Wumag's indemnity claim should be dismissed because "Plaintiffs' claims against Kelzenberg-Wumag remain pending" and [Kelzenberg-Wumag] has not been held liable to Plaintiff." (Motion to Dismiss at *2). This argument also fails. Indemnity is a proper third-party claim under the facts and procedural posture of this case.

Indemnification is a "classic" third-party claim. *CNH Indus. Capital Am. LLC v. Able Contracting, Inc.*, No. 9:16-CV-2520-RMG, 2017 WL 512453, at *2 (D.S.C. Feb. 7, 2017) (quoting Moore's Federal Practice § 14.04(3)(b). "Indemnity is that form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party." *Town of Winnsboro v. Wiedeman-Singleton, Inc*., 398 S.E.2d 500, 502 (Ct. App. 1990). An indemnity claim arises "when a third party…makes a claim against the indemnity plaintiff…for damages the third party sustained as a result of another party's tortious conduct." *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Clear View Const*., LLC, 413 S.C. 615, 624, 776 S.E.2d 426, 431 (Ct. App. 2015).

In this case, Plaintiffs assert claims against Kelzenberg-Wumag alleging the Machine caused his injuries. Kelzenberg-Wumag has denied all of Plaintiffs' allegations against it because it did not design, manufacture, sell or install the Machine. Kelzenber-Wumag's indemnity claim alleges that because Wumag designed, manufactured, sold and/or installed the Machine, "[t]o the extent that Kelzenberg-Wumag is held liable to Plaintiffs in this action, such liability would be a direct and proximate result of the wrongful acts, omissions, negligence, recklessness, gross negligence, willful, or wanton conduct of Wumag." (Amended Answer and Third-Party Complaint ¶¶ 71-76). The Third-Party Complaint states a proper claim for indemnity. The law in

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

South Carolina does not require final resolution of a claim against a party before that party can assert a claim for indemnity. Our courts have repeatedly found claims for indemnity to be proper third-party claims. *See Snow v. Burgess,* No. 2019-001032, 2023 WL 234561, at *3 (S.C. Ct. App. Jan. 18, 2023) (finding the trial court improperly dismissed a third-party complaint seeking indemnity in a wrongful death action); *First Gen. Servs. of Charleston, Inc. v. Miller,* 314 S.C. 439, 443, 445 S.E.2d 446, 448 (1994) (finding improper the dismissal of a third-party claim for indemnity action). The cases cited by Wumag in support of the argument the indemnity claim is not ripe are inapplicable to the facts of this case. *Solaris, Inc. v. Am. S. Ins. Co*., No. 2:20-CV-4444-BHH, 2022 WL 19406809, at *5 (D.S.C. Sept. 29, 2022), *First Specialty Ins. Corp. v. RHS Enters., LLC*, No. 6:09-cv-1325, 2010 WL 11537546 (D.S.C. Mar. 29, 2010) and *U.S. Fid. & Guar. Co. v. Ellett Bros*., No. C/A 3:00-3691-24, 2003 WL 23851137, at *8 (D.S.C. Feb. 11, 2003) are all insurance coverage disputes addressing an insurance carrier's duty to defend or indemnify. Additionally, *Solaris, First Specialty Ins. Corp* and *U.S. Fid. & Guar. Co*. all involved ***separate*** underlying actions which had to be resolved before the coverage and indemnity issues could be decided. *Id*.; *see also Certain Underwriters at Lloyd's London v. Butler*, No. 1:16-CV-00975-JMC, 2017 WL 570024, at *4 (D.S.C. Feb. 13, 2017) (observing that, generally, a determination of whether an insurer has an affirmative duty to indemnify is not ripe for adjudication until factual findings are made in the underlying lawsuit). Unlike the cases cited by Wumag, this is not a coverage action based on an underlying case and the rulings in those cases are inapplicable here.

Additionally, Wumag's argument that Kelzenberg-Wumag's claim is based on potential future liability is incorrect. In addition to seeking "the amount of any judgment entered against Kelzenberg-Wumag [or] … any amount Kelzenberg-Wumag pays Plaintiffs in settlement of Plaintiffs' claims", the Third-Party Complaint seeks "all attorneys' fees, costs and other expenses incurred by Kelzenberg-Wumag as a result of this action." (*Id*. ¶ 79). Kelzenberg-Wumag has

been involved in this matter for over two years and has already incurred a significant amount of attorneys' fees and expert fees as a result of this matter. Thus, in addition to properly asserting an indemnity claim for any future liability arising out of this action, Kelzenberg-Wumag has already suffered an injury in fact which give it standing and makes its indemnity claim ripe for adjudication.

V. CONCLUSION

For the reasons set forth herein, Kelzenberg-Wumag respectfully requests that Wumag's Motion to Dismiss be denied.

s/ Robert C. Osborne III
Robert H. Jordan (SC Bar # 13612)
Email: robertjordan@parkerpoe.com
Robert C. Osborne III (SC Bar # 101827)
Email: robertosborne@parkerpoe.com
PARKER POE ADAMS & BERNSTEIN LLP
850 Morrison Drive, Suite 400
Charleston, South Carolina 29403
Phone: 843-727-2650

Attorneys for Defendant and Third-Party Plaintiff Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG

Charleston, South Carolina

December 8, 2023

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Exhibit A

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiffs, vs. Wumag Texroll GmbH & Co. KG, Defendant,	IN THE COURT OF COMMON PLEAS Case No. 2021-CP-19-00005 **WUMAG TEXROLL GMBHH & CO. KG F/K/A KELZENBERG + CO. GMBH & CO. KG'S AMENDED ANSWER TO COMPLAINT AND THIRD-PARTY COMPLAINT**
Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG, Third-Party Plaintiff, vs. Wumag Texroll GmbH & Co. KG, Third-Party Defendant.	

Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG ("Kelzenberg-Wumag" or "Defendant"), identified in the Complaint as Wumag Texroll GmbH & Co. KG, by and through its undersigned counsel, expressly denying each and every allegation not specifically admitted herein and expressly reserving its objection to personal jurisdiction, hereby files its Answer to the Complaint of Plaintiffs Barry Lanham and Obvia Gamble-Lanham ("Plaintiffs").

1. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 1 of the Complaint and, therefore, denies the same and demands strict proof thereof.

2. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 2 of the Complaint and, therefore, denies the same and demands strict proof thereof.

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

3. Responding to the allegations of Paragraph 3 of the Complaint, Kelzenberg-Wumag admits only that it is a German business that, among other things, manufactures industrial machines. Kelzenberg-Wumag denies the remaining allegations of Paragraph 3 of the Complaint, including the allegation that it manufactured, designed, tested, marketed, certified, supplied, sold, imported, and/or distributed the Laminating Calender Line machine that forms the basis of this action (the "Machine").

4. The allegations of Paragraph 4 of the Complaint constitute legal conclusions which require no response from Kelzenberg-Wumag.

5. Kelzenberg-Wumag denies the allegations of Paragraph 5 of the Complaint.

6. Kelzenberg-Wumag denies the allegations of Paragraph 6 of the Complaint.

7. Kelzenberg-Wumag denies the allegations of Paragraph 7 of the Complaint.

8. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 8 of the Complaint and, therefore, denies the same and demands strict proof thereof.

AS TO THE FIRST CAUSE OF ACTION
(Negligence)

9. Responding to the allegations of Paragraph 9 of the Complaint, Kelzenberg-Wumag realleges its responses to the preceding paragraphs as if repeated herein verbatim.

10. Kelzenberg-Wumag denies the allegations of Paragraph 10 of the Complaint, including its subparts.

11. Kelzenberg-Wumag denies the allegations of Paragraph 11 of the Complaint.

12. Kelzenberg-Wumag denies the allegations of Paragraph 12 of the Complaint.

AS TO THE SECOND CAUSE OF ACTION
(Strict Liability Pursuant to S.C. Code Ann. § 15-73-10, *et seq.*)

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

13. Responding to the allegations of Paragraph 13 of the Complaint, Kelzenberg-Wumag realleges its responses to the preceding paragraphs as if repeated herein verbatim.

14. Kelzenberg-Wumag denies the allegations of Paragraph 14 of the Complaint.

15. Kelzenberg-Wumag denies the allegations of Paragraph 15 of the Complaint.

16. Kelzenberg-Wumag lacks knowledge and information sufficient to form a belief as to the remaining allegations of Paragraph 16 of the Complaint and, therefore, denies the same and demand strict proof thereof.

17. Kelzenberg-Wumag denies the allegations of Paragraph 17 of the Complaint.

AS TO THE THIRD CAUSE OF ACTION
(Breach of Express and Implied Warranties)

18. Responding to the allegations of Paragraph 18 of the Complaint, Kelzenberg-Wumag realleges its responses to the preceding paragraphs as if repeated herein verbatim.

19. Kelzenberg-Wumag denies the allegations of Paragraph 19 of the Complaint.

20. Kelzenberg-Wumag denies the allegations of Paragraph 20 of the Complaint.

21. Kelzenberg-Wumag denies the allegations of Paragraph 21 of the Complaint.

AS TO THE FOURTH CAUSE OF ACTION
(Loss of Consortium)

22. Responding to the allegations of Paragraph 22 of the Complaint, Kelzenberg-Wumag realleges its responses to the preceding paragraphs as if repeated herein verbatim.

23. Kelzenberg-Wumag denies the allegations of Paragraph 23 of the Complaint.

24. Responding to the WHEREFORE clause following Paragraph 23 of the Complaint, Kelzenberg-Wumag denies any and all liability to Plaintiffs and denies that Plaintiffs are entitled to damages or any other relief.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

25. Plaintiffs' Complaint should be dismissed, in whole or in part, to the extent it fails to state facts sufficient to constitute a cause of action upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

26. Plaintiffs' damages, if any exist and are proven at trial, were proximately caused by the acts or omissions of third parties over whom Kelzenberg-Wumag had no control, and not by the acts or omissions of Kelzenberg-Wumag.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

27. Plaintiffs' damages, if any exist and are proven at trial, resulted from independent, unforeseeable, superseding, and/or intervening causes unrelated to any conduct of Kelzenberg-Wumag.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

28. Plaintiffs' claims should be dismissed for lack of service of process and/or insufficient service of process.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

29. Plaintiffs' claims should be dismissed for lack of personal jurisdiction.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

30. Plaintiffs' claims are barred by the statute of limitations.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

31. Upon information and belief, any express or implied warranties were limited in duration and expired prior to Plaintiffs' alleged injuries.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

32. Plaintiffs' claims are barred or should be dismissed by virtue of the doctrine of spoliation of evidence.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

33. Plaintiffs' claims are barred, in whole or in part, by any alteration, modification, or misuse of the Machine, by Plaintiffs or any other third parties, for which Kelzenberg-Wumag cannot be held responsible.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

34. Plaintiffs' injuries and damages, if any, were due to improper use or misuse of the Machine by Barry Lanham, for which Kelzenberg-Wumag is not liable.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

35. To the extent Plaintiffs' claims or the issues raised by Plaintiffs' claims have been previously litigated, Plaintiffs' claims are barred, in whole or in part, from any recover under the doctrines of res judicata and/or collateral estoppel.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

36. Plaintiffs' claims and those of anyone they purport to represent are barred to the extent they have been released through settlement in any prior litigation.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

37. Any recovery against Kelzenberg-Wumag is barred or limited under the principles of assumption of the risk and informed consent.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

38. Any recovery against Kelzenberg-Wumag under a theory of negligence is barred because at all times relevant to this Complaint, Kelzenberg-Wumag did not owe a duty of care to Plaintiffs.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

39. Kelzenberg-Wumag pleads and incorporate all rights, defenses, limitations on damages, and other privileges contained in S.C. Code Ann. § 15-38-10 *et seq.* as if fully stated herein.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

40. Plaintiffs' claims are barred in whole or in part by the sophisticated or knowledgeable user doctrine.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

41. Plaintiffs' claims should be dismissed for failure to join necessary persons, parties and/or entities pursuant to Rule 19 of the South Carolina Rules of Civil Procedure.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

42. Plaintiffs' claims, injuries, and damages, if any, are premised in whole or in part on the actions of parties who have not been joined in this action. Accordingly, any damages awarded to Plaintiffs should be barred or limited under the non-party fault provisions of South Carolina law.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

43. Kelzenberg-Wumag would show the Court that no act or omission of Kelzenberg-Wumag, or any agent or employee thereof, proximately caused any injuries to the Plaintiffs, which therefore bars the Plaintiffs from any recovery.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

44. Plaintiffs' claims are barred by one, or more, of the equitable doctrines of laches, waiver, estoppel, and/or unclean hands.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

45. Plaintiffs' claims are barred in whole or in part to the extent Plaintiffs failed to mitigate damages.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

46. To the extent Plaintiffs may seek punitive damages, Plaintiffs are not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

(a) the judiciary's ability to correct a punitive damage award at the appellate level only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

(b) any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

(c) to the extent an award of punitive damages is excessive, such award violates due process guarantees;

(d) the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

(e) even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and

(f) Plaintiffs' claims for punitive damages violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth and status of Kelzenberg-Wumag.

Furthermore, even if an award of punitive damages were held to be constitutional in this case, punitive damages are inappropriate in this case as Kelzenberg-Wumag engaged in no malicious, wrongful or intentional conduct upon which an award of such damages could be based.

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

47. To the extent Plaintiffs may seek punitive damages, Plaintiffs' claim for punitive damages are limited by S.C. Code Ann. § 15-32-530. Further, pursuant to S.C. Code Ann. § 15-32-520, Kelzenberg-Wumag hereby request trial bifurcation on the issues of actual and punitive damages. To the extent the Court submits the question of punitive damages to the jury, the award of punitive damages, if any, is subject to the caps and limitations set forth in S.C. Code Ann. § 15-32-530, and Kelzenberg-Wumag pleads and incorporate all defenses, limitations on damages, and other privileges contained in S.C. Code Ann. §§ 15-32-520 and 15-32-530 as if fully stated herein.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

48. Plaintiffs' claims against Kelzenberg-Wumag are barred because Kelzenberg-Wumag did not assume any liabilities of Wumag Texroll GmbH & Co. KG.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

49. Kelzenberg-Wumag is not liable for any damages alleged by Plaintiffs that were pre-existing conditions.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

50. Kelzenberg-Wumag would allege and show that even if Kelzenberg-Wumag was negligent in any respect, which is denied, Plaintiffs were comparatively negligent and/or otherwise at fault, which fault exceeded any fault on the part of Kelzenberg-Wumag, which is denied, and which fault proximately caused Plaintiffs' alleged damages, if any, which are denied, so as to bar any recovery herein pursuant to the doctrine of comparative negligence. Alternatively, Plaintiffs were comparatively negligent and/or otherwise at fault in an amount equal to or less than any fault of Kelzenberg-Wumag, which is denied, which fault proximately caused Plaintiffs' alleged damages, if any, which are denied, so as to proportionally reduce any recovery herein pursuant to the doctrine of comparative negligence.

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

51. At all times Kelzenberg-Wumag acted in good faith, in accordance with applicable policies and procedures and in compliance with South Carolina law.

AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

52. Kelzenberg-Wumag hereby gives notice that it intends to rely upon any other defenses that may become available or apparent during the discovery proceedings in this matter, hereby reserves its right to amend its Answer and to assert any such defenses, and hereby preserves each and every defense, including but not limited to the defenses set forth in the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING BY WAY OF A THIRD-PARTY COMPLAINT

53. Kelzenberg-Wumag reiterates each and every prior paragraph of this Amended Answer and Third-Party Complaint as set forth verbatim herein.

54. Notwithstanding this Third-Party Complaint, Kelzenberg-Wumag expressly reserves, and does not waive, its objections to personal jurisdiction and service.

PARTIES AND JURISDICTION

55. Kelzenberg-Wumag is a German company that, among other things, manufactures industrial machines.

56. Kelzenberg-Wumag is registered at the district court of Düren, Germany under number HRA 224 and has a principal place of business is in Düren, Germany.

57. Kelzenberg-Wumag came into existence in September 2019, eighteen months after the events giving rise to this Complaint occurred.

58. Wumag Texroll GmbH & Co. KG ("Wumag") is a German company which, during the time period relevant hereto, manufactured and sold industrial machines.

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

59. Upon information and belief, Wumag designed, manufactured and/or sold the machine which is the subject of this action (the "Machine").

60. By virtue of Wumag designing, manufacturing and/or selling the machine which is the subject of this action, directing its products into South Carolina and purposefully availing itself of the privilege of conducting business in South Carolina, Wumag is subject to personal jurisdiction in the state.

FACTUAL BACKGROUND

61. On September 1, 2019, insolvency proceedings concerning the assets of Wumag Texroll GmbH & Co. KG ("Wumag ") commenced in the district court of Krefeld, Germany.

62. Prior to being insolvent, Wumag was registered at the district court of Krefeld, Germany under number HRA 3719.

63. On or around September 18, 2019, Kelzenberg-Wumag entered into an asset purchase agreement to purchase the assets of Wumag out of insolvency.

64. Pursuant to the asset purchase agreement, Kelzenberg-Wumag purchased certain assets of Wumag.

65. Ownership of the purchased assets was transferred from Wumag to Kelzenberg-Wumag on or around October 1, 2019.

66. Kelzenberg-Wumag neither purchased nor assumed any liabilities of Wumag.

67. Following the asset purchase, for marketing reasons, Kelzenberg-Wumag adopted the "Wumag Texroll GmbH & Co. KG" brand name.

FOR A FIRST CAUSE OF ACTION
(Indemnity)

68. Kelzenberg-Wumag reiterates each and every prior paragraph of this Amended Answer and Third-Party Complaint as set forth verbatim herein.

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

69. The Complaint of Plaintiffs Barry Lanham and Obvia Gamble-Lanham asserts claims arising out of a workplace accident alleged to have occurred on January 22, 2018 at a Bondex, Inc. plant in Trenton, South Carolina.

70. More specifically, Plaintiffs' Complaint alleges that Plaintiff Barry Lanham was injured when his left arm and hand were pulled into the Machine, resulting in severe and permanent damage to his left arm and hand.

71. Plaintiffs' claims against Kelzenberg-Wumag are all based on the allegation that Kelzenberg-Wumag designed, manufactured, sold and/or installed the Machine.

72. However, it is undisputed that Kelzenberg-Wumag did not design, manufacture, sell and/or install the Machine.

73. In fact, Kelzenberg-Wumag did not come into existence until September 2019, 18 months after the accident and alleged injuries which are the subject of this action occurred.

74. Kelzenberg-Wumag denies the substantive allegations in Plaintiffs' Complaint and has denies any and all liability to Plaintiffs.

75. As set forth above, Kelzenberg-Wumag is without fault with respect to the claims asserted by Plaintiffs.

76. To the extent that Kelzenberg-Wumag is held liable to Plaintiffs in this action, such liability would be a direct and proximate result of the wrongful acts, omissions, negligence, recklessness, gross negligence, willful, or wanton conduct of Wumag.

77. A special relationship exists between Kelzenberg-Wumag and Wumag.

78. A right of indemnity exists in favor of Kelzenberg-Wumag because it is without fault in this matter and it has been forced to defend itself and is exposed to liability due to the alleged wrongful acts, omissions, negligence, breaches, or representations of Wumag.

ELECTRONICALLY FILED - 2023 May 02 2:43 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

79. Wumag must indemnify Kelzenberg-Wumag for the amount of any judgment entered against Kelzenberg-Wumag, for any amount Kelzenberg-Wumag pays Plaintiffs in settlement of Plaintiffs' claims, and for all attorneys' fees, costs and other expenses incurred by Kelzenberg-Wumag as a result of this action.

WHEREFORE, Kelzenberg-Wumag prays to the Court that:

1. Plaintiffs' Complaint be dismissed with prejudice;
2. Judgment be entered in favor of Kelzenberg-Wumag;
3. Plaintiffs recover nothing from Kelzenberg-Wumag;
4. Judgment be entered in favor of Kelzenberg-Wumag on its claim for indemnity against Wumag;
5. Kelzenberg-Wumag is awarded its attorneys' fees and costs; and
6. For such other and further relief as the Court may deem just and proper.

s/ Robert C. Osborne III
Robert H. Jordan (SC Bar No.: 13612)
Email: robertjordan@parkerpoe.com
Robert C. Osborne III (SC Bar No.: 101827)
Email: robertosborne@parkerpoe.com
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Post Office Box 160 (29402)
Charleston, SC 29401
Phone: (843) 727-2650
Fax: (843) 727-2680

Attorneys for Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG

May 2, 2023
Charleston, South Carolina

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Exhibit B

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiff, vs. Wumag Texroll GmbH & Co. KG, Defendants.	IN THE COURT OF COMMON PLEAS Case No. 2021-CP-19-00005 **DECLARATION OF MICHAEL HESS IN SUPPORT OF WUMAG TEXROLL GMBHH & CO. KG'S MOTION TO DISMISS**

COMES NOW, Michael Hess, who deposes and states as follows:

1. My name is Michael Hess, and I am over the age of eighteen (18) years and am competent to give sworn testimony. I have personal, first-hand knowledge of the matters set forth in this declaration. I offer this declaration in support of Wumag Texrol GmbH & Co. KG's ("Wumag II") Motion to Dismiss in the above-captioned action.

2. I am the Managing Director of Wumag II.

3. Wumag II was previously named Kelzenberg + Co: GmbH & Co. KG ("Kelzenberg"), and I previously served as the Managing Director of Kelzenberg from 2008 to 2019.

4. Wumag II is registered at the district court of Düren, Germany under number HRA 224 and the general partner GmbH under number HRB 154.

5. Wumag II's principal place of business is in Düren, Germany.

6. On September 1, 2019, insolvency proceedings concerning the assets of Wumag Texroll GmbH & Co. KG ("Wumag I") commenced in the district court of Krefeld, Germany.

7. Prior to being insolvent, Wumag I was registered at the district court of Krefeld, Germany under number HRA 3719.

8. On or around September 18, 2019, Kelzenberg entered into an asset purchase agreement to purchase the assets of Wumag I out of insolvency.

9. Dr. Peter Minuth, Attorney at Law and Insolvency Administrator, currently serves as the insolvency administrator for the Wumag I insolvency proceedings.

10. Pursuant to the asset purchase agreement, Kelzenberg purchased certain assets of Wumag I, including machinery, equipment, software licenses. Ownership of the purchased assets was transferred from Wumag I to Kelzenberg on October 1, 2019.

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

11. The asset purchase was carried out in Germany and was governed by German law.

12. Under German law, an agreement to purchase assets does not provide for the assumption of liabilities, unless expressly agreed otherwise or statutory provisions of German law stipulate otherwise.

13. On September 18, 2019, for marketing reasons, Kelzenberg changed its name to Wumag II.

14. Despite Wumag II adopted the same name for marketing reasons following the asset purchase, there is not now, and has never been, commonality of officers, directors, or stockholders between Wumag I and Wumag II.

15. The Complaint in this action concerns injuries suffered by Plaintiff Barry Lanham ("Lanham") alleged to have occurred on January 22, 2018 at a Bondex, Inc. plant in Trenton, South Carolina. (*See* Compl. ¶¶ 3–8).

16. Lanham alleges he was injured by a Laminating Calendar Line machine which was designed and manufactured by Wumag Texroll GmbH & Co. KG and then sold by Wumag Texroll GmbH & Co. KG to Bondex, Inc. (*See* Compl. ¶¶ 3–8).

17. Lanham's alleged injuries which are the subject of this action and which give rise to the claims asserted in the Complaint occurred almost two years prior to Wumag II purchasing the assets of Wumag I.

18. Wumag II does not now, and has never held an ownership interest in the Laminating Calendar Line machine that allegedly caused Mr. Lanham's injuries.

19. Wumag II did not design, test, manufacture, market, sell, import, distribute, deliver or install the Laminating Calendar Line machine that allegedly caused Mr. Lanham's injuries.

20. Wumag II is not now, and has never been registered with the South Carolina Secretary of State.

21. Wumag II has never registered an agent for service of process with the South Carolina Secretary of State.

22. Wumag II does not now, and has never, maintained an office, manufacturing facility or other place of business within South Carolina.

23. Wumag II does not, does not now, and has never, employed any personnel based in South Carolina.

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

Michael Hess

Date: 08/05/2021

ELECTRONICALLY FILED - 2023 Dec 08 1:42 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2024 Mar 19 10:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

IN THE STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiffs, v. Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co.: GmbH & Co KG and Wumag Texroll GmbH & Co. KG, Defendants.	IN THE COURT OF COMMON PLEAS No: 2021-CP-19-00005 **Motion to Dismiss Third-Party Complaint**
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.	

Defendant/Third-Party Defendant Wumag Texroll GmbH & Co. KG ("**Wumag**") moves to dismiss the Third-Party Complaint of Defendant/Third-Party Plaintiff Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co.: GmbH & Co. KG ("**Kelzenberg-Wumag**") as: (1) Wumag is a *party* to this case (and is Kelzenberg-Wumag's co-defendant) and (2) the Third-Party Complaint asserts an indemnity claim against Wumag which is duplicative of Kelzenberg-Wumag's already-asserted cross-claim against Wumag for indemnity.

In support of this Motion, Wumag submits the following:

ELECTRONICALLY FILED - 2024 Mar 19 10:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

1. In January 2021, Plaintiffs Barry Lanham and Obvia Gamble-Lanham ("**Plaintiffs**") filed the above-captioned products liability case against Kelzenberg-Wumag.
2. Kelzenberg-Wumag answered Plaintiffs' Complaint in August 2021.
3. Kelzenberg-Wumag subsequently filed a motion to amend its answer and file a third-party complaint against Wumag for indemnity. The Court granted that motion, and, in May 2023, Kelzenberg-Wumag filed an amended answer and third-party complaint against Wumag for indemnity ("**Third-Party Complaint**").
4. Thereafter, Wumag filed a June 2023 motion to dismiss the Third-Party Complaint's indemnity claim.[1]
5. In July 2023, Plaintiffs filed a motion to amend their Complaint to name Wumag as a defendant and directly assert claims against it.
6. In December 2023, the Court held a hearing on Wumag's motion to dismiss the Third-Party Complaint's indemnity claim and Plaintiffs' motion to amend their Complaint.
7. On December 19, 2023, the Court entered an Order granting Plaintiffs' motion to amend their Complaint to name Wumag as a defendant and directly assert claims against Wumag.
8. Plaintiffs filed an amended complaint ("**Amended Complaint**") against Kelzenberg-Wumag and Wumag on February 23, 2024.
9. As a result of the Amended Complaint, Wumag is a party to the case and Kelzenberg-Wumag and Wumag are now co-defendants.

[1] That motion to dismiss was based on a lack of personal jurisdiction, the lack of ripeness of the indemnity claim, and Wumag's insolvency.

ELECTRONICALLY FILED - 2024 Mar 19 10:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

10. On March 8, 2024, Kelzenberg-Wumag filed an answer to Plaintiffs' Amended Complaint and asserted a cross-claim against Wumag for indemnity ("**the Cross-Claim**").
11. The Cross-Claim repeats the indemnity claim Kelzenberg-Wumag previously asserted in its Third-Party Complaint against Wumag.
12. Thereafter, on March 13, 2024, the Court entered a Form 4 order, denying Wumag's motion to dismiss Kelzenberg-Wumag's Third-Party Complaint.
13. Despite the fact that Wumag is now a co-defendant and the Cross-Claim is duplicative of the Third-Party Complaint, Kelzenberg-Wumag has not dismissed its Third-Party Complaint.
14. Rule 14 of the South Carolina Rules of Civil Procedure governs third party practice and permits a defendant, "as a third-party plaintiff," to "cause a summons and complaint to be served upon a person ***not*** *a party to the action* who is or may be liable to him for all or part of the plaintiff's claim against him." SCRCP 14(a) (Emphasis added).
15. Because Wumag is no longer a third-party – but is, instead, a defendant in this case – Rule 14 no longer permits Kelzenberg-Wumag to assert a third-party claim against Wumag.
16. Kelzenberg-Wumag appears to recognize this as, in its answer to Plaintiffs' amended complaint, it has repeated its indemnity claim against Wumag as a *cross-claim*.

WHEREFORE, Wumag respectfully requests that the Court dismiss the Third-Party Complaint against it as (1) a third-party claim under Rule 14 is no longer appropriate against Wumag as Wumag is a party to (a defendant) in the case and (2) Kelzenberg-Wumag's third-party

claim for indemnity is duplicative of Kelzenberg-Wumag's already asserted cross-claim for indemnity against Wumag (and thus no prejudice will result to Kelzenberg-Wumag from the requested dismissal).

This 19th day of March 2023
Greenville, South Carolina

s/ Catherine Wrenn
Catherine F. Wrenn (S.C. Bar No. 76042)
Email: cwrenn@bakerdonelson.com
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
850 Morrison Drive, Suite 775
Charleston, South Carolina 29403
T: (864) 918-3544
Attorneys for Wumag Texroll GmbH & Co. KG

ELECTRONICALLY FILED - 2024 Mar 19 10:42 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Jun 13 9:05 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiffs, vs. Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG and Wumag Texroll GmbH & Co. KG, Defendant,	IN THE COURT OF COMMON PLEAS Case No. 2021-CP-19-00005 **WUMAG TEXROLL GMBH & CO. KG F/K/A KELZENBERG + CO. GMBH & CO. KG'S MOTION FOR SUMMARY JUDGMENT**
Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG, Third-Party Plaintiff, vs. Wumag Texroll GmbH & Co. KG, Third-Party Defendant.	

PLEASE TAKE NOTICE Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG ("Kelzenberg-Wumag" or "Defendant"), hereby moves, pursuant to Rules 12(b)(2), 12(b)(5) and 56(c) of the South Carolina Rules of Civil Procedure, for an order dismissing Plaintiffs' claims against Kelzenberg-Wumag.

I. STATEMENT OF FACTS

A. Plaintiffs' Allegations

The complaint alleges that on January 22, 2018, Barry Lanham was severely injured at work while cleaning a Laminating Calender Line machine (the "Machine") at Bondex, Inc.'s facility in Trenton, South Carolina. (*Id*. ¶¶ 7—8). Plaintiffs filed this action on January 6, 2021, almost three years later, asserting causes of action against "Wumag Texroll GmbH & Co. KG" for (1) negligence, (2) strict liability pursuant to S.C. Code Ann. § 15-73-10, *et seq.*, (3) breach of

ELECTRONICALLY FILED - 2025 Jun 13 9:05 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

express and implied warranties, and (4) loss of consortium. (*Id*. ¶¶ 9–22). In support of their claims, Plaintiffs allege that the Machine was designed, manufactured, sold, delivered, and installed by Wumag Texroll GmbH & Co. KG. (*Id*. ¶ 6). Plaintiffs further allege that after the Machine was installed at Bondex's facility, employees and/or agents of Wumag Texroll GmbH & Co. KG deactivated safety devices on the Machine. (*Id*. ¶ 7).

B. Declaration of Michael Hess

The sworn declaration of Michael Hess ("Hess"), Kelzenberg-Wumag's Managing Director demonstrates that Kelzenberg-Wumag cannot be liable for Plaintiffs' alleged injuries and is not subject to personal jurisdiction in this action. (*See* Michael Hess Declaration in Support of Wumag Texroll GmbH & Co. KG's Motion to Dismiss (hereinafter "Hess Declaration") attached hereto as **Exhibit A**). Kelzenberg-Wumag is a German corporation and is registered at the district court of Düren, Germany under number HRA 224. (¶ 4). Kelzenberg-Wumag's principal place of business is in Düren, Germany. (*Id*. ¶ 5). Kelzenberg-Wumag came into existence in September 2019, eighteen months after Barry Lanham was allegedly injured. (*Id*. ¶ 8).

On September 1, 2019, Wumag Texroll GmbH & Co. KG ("Wumag"), the company who, upon information and belief, designed, manufactured, sold, delivered, and installed the Machine filed for insolvency.[1] (*Id*. ¶ 6). German insolvency proceedings commenced in the district court of Krefeld, Germany. (*Id*.). As part of the insolvency proceedings, on or around September 18, 2019, Kelzenberg + Co: GmbH & Co. KG ("Kelzenberg") entered into an asset purchase agreement to purchase the assets, but not the liabilities, of Wumag. (*Id*. ¶¶ 8, 10–12). Ownership of the purchased assets was transferred from Wumag to Kelzenberg on October 1, 2019. (*Id*. ¶

[1] Prior to being insolvent, Wumag was registered at the district court of Krefeld, Germany under number HRA 3719. (Hess Declaration ¶ 7). This is significant because it demonstrates that Wumag and Kelzenberg-Wumag are now, and have always been registered as separate and distinct companies.

10). Dr. Peter Minuth, a German attorney and the insolvency administrator for the Wumag insolvency proceedings, oversaw the asset purchase. (*Id*. ¶ 9).

Following the asset purchase, for marketing reasons, Kelzenberg changed its name to Wumag Texrol GmbH & Co. KG (identified in this brief as "Kelzenberg-Wumag"). (*Id*. ¶ 5). Although Kelzenberg-Wumag adopted the Wumag name, there is not now, and has never been, commonality of officers, directors, or stockholders between Wumag and Kelzenberg-Wumag. (*Id*. ¶ 14). In addition and relevant to this case, Kelzenberg-Wumag does not now, and has never held an ownership interest in the Machine. (*Id*. ¶ 18). It also did not design, test, manufacture, market, sell, import, distribute, deliver or install the Machine. (*Id*. ¶ 19). Kelzenberg-Wumag is not now, and has never been registered with the South Carolina Secretary of State. (*Id*. ¶ 20). Kelzenberg-Wumag has never registered an agent for service of process with the South Carolina Secretary of State. (*Id*. ¶ 21). Kelzenberg-Wumag does not now, and has never, maintained an office, manufacturing facility or other place of business within South Carolina. (*Id*. ¶ 22). Kelzenberg-Wumag does not now, and has never, employed any personnel based in South Carolina. (*Id*. ¶ 23).

II. LEGAL STANDARD

A. Rule 12(b)(5)

Rule 12(b)(5) of the South Carolina Rules of Civil Procedure governs motions to dismiss for insufficiency of service of process. Rule 12(b)(5) is the "proper vehicle for challenging both the mode of delivery [and] the lack of delivery of the summons and complaint." *Unisun Ins. V. Hawkins*, 342 S.C. 537, 543, 537 S.E.2d 559, 562 (Ct. App. 2000)(citing 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure Civil 2d § 1353 (1990)) (internal citations omitted). When raising a defense under Rule 12(b)(5), the individual or corporation challenging service should provide sufficient specificity detailing how a Plaintiff "failed to satisfy the requirements of the service provision he utilized." *Id*. at 542, 537 S.E.2d at 562.

ELECTRONICALLY FILED - 2025 Jun 13 9:05 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Jun 13 9:05 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

B. Rule 12(b)(2)

Rule 12(b)(2) of the South Carolina Rules of Civil Procedure governs motions to dismiss for lack of personal jurisdiction. The party seeking to invoke personal jurisdiction over a nonresident defendant bears the burden of proving the existence of personal jurisdiction. *Moosally v. W.W. Norton & Co.,* 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004). "The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case." *Id.* "When a nonresident defendant attacks the allegations of a complaint based on jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction. *Power Prods. & Servs. Co. v. Kozma,* 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct.App. 2008). When a defendant challenges the Court's personal jurisdiction under Rule 12(b)(2), the plaintiff has the burden of proving that jurisdiction exists by a preponderance of the evidence. *Sunny Days Entm't, LLC v. Traxxas, L.P.*, 376 F. Supp. 3d 654, 658 (D.S.C. 2019).

C. Rule 56(c)

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri,* 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Under South Carolina law, where "plain, palpable and indisputable facts exist on which reasonable minds cannot differ," summary judgment in favor of the moving party is proper. *Williams v. Chesterfield Lumber Co*., 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976). When a party makes a motion for summary judgment, "an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial." *Coker v. Cummings*, 381 S.C. 45, 54, 671 S.E.2d 383, 388 (Ct. App. 2008) (quoting *S.C. Elec. & Gas Co. v. Combustion Eng'g, Inc.,* 283 S.C. 182, 188–89, 322 S.E.2d 453, 457 (Ct.App.1984)). The

ELECTRONICALLY FILED - 2025 Jun 13 9:05 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

nonmoving party must specifically set forth such facts, "as would be admissible in evidence," to show that a true jury issue exists. *See* 56(e), SCRCP. If the adverse party does not respond accordingly, the trial court shall enter summary judgment against him if appropriate." *Coker,* 381 S.C. at 54, 671 S.E.2d at 388. "When a party makes no factual showing in opposition to a motion for summary judgment, the trial " court must grant summary judgment to the moving party if, under the facts presented, the latter is entitled to summary judgment as matter of law." *Id.*

III. ARGUMENT

A. Plaintiffs' Complaint Against Kelzenberg-Wumag Should be Dismissed for Insufficient Service of Process.

Plaintiffs only attempt to serve Kelzenberg-Wumag was through the South Carolina Secretary of State pursuant to S.C. Code Ann. S.C. Code Ann. § 15-9-245. Under section 15-9-245(a), "[e]very foreign business or nonprofit corporation which is not authorized to do business in this State, ***by doing in this State, either itself or through an agent, any business***,…is considered to have designated the Secretary of State as its agent upon whom process against it may be served...." (emphasis added). The plain language of section 15-9-245 clearly provides that a foreign corporation must do business in South Carolina, "either itself or through an agent," in order to be subject to service under the statute. *See* S.C. Code Ann. § 15-9-245. Case law interpreting the statute is equally clear. In *South Carolina v. Bulgartabac Holding Grp.*, No. CV 3:05-124-22, 2005 WL 8165771, at *2 (D.S.C. May 24, 2005), the district court explicitly held that that "[i]n order for § 15-9-245(a) to apply, it [is] necessary to find that [a defendant] does business in South Carolina, either itself or through an agent." *South Carolina v. Bulgartabac Holding Grp.*, No. CV 3:05-124-22, 2005 WL 8165771, at *2 (D.S.C. May 24, 2005) (quoting S.C. Code Ann. § 15-9-245). When it was purportedly served, Kelzenberg-Wumag did not do business in South Carolina. Hess's unrefuted declaration establishes this fact. (*See* Hess Declaration ¶¶ 17-23). Accordingly, Plaintiffs' attempt to serve Kelzenberg-Wumag pursuant to section 15-9-245 is improper.

ELECTRONICALLY FILED - 2025 Jun 13 9:05 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Moreover, even ignoring that Kelzenberg-Wumag is not subject to service under section 15-9-245, Plaintiffs' failed to comply with section 15-9-245(c), which sets forth specific requirements for demonstrating proof of service.

B. Plaintiffs' Complaint Against Kelzenberg-Wumag Should be Dismissed for Lack of Personal Jurisdiction.

Traditionally, in South Carolina, the determination of whether a court may exercise personal jurisdiction over a nonresident involved a two-step analysis which examined (1) whether the South Carolina long-arm statute is satisfied, and then (2) whether the nonresident's contacts in South Carolina satisfied due process. *Cribb v. Spatholt*, 382 S.C. 490, 499, 676 S.E.2d 714, 719 (Ct.App. 2009) (citing *Power Prods. & Servs. Co. v. Kozma*, 379 S.C. 423, 431, 665 S.E.2d 660, 664 (Ct.App. 2008)). However, "because South Carolina treats its long-arm statute as coextensive with the due process clause, the question becomes whether the exercise of personal jurisdiction would violate due process." *Moosally,* 358 S.C. at 329, 594 S.E.2d at 883. There are two ways to establish personal jurisdiction: (1) general jurisdiction and (2) specific jurisdiction. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). Kelzenberg-Wumag is not subject to either general or specific personal jurisdiction in South Carolina, and therefore, Plaintiffs' claims should be dismissed for lack of personal jurisdiction pursuant to Rule 12(b)(2), SCRCP.

C. Plaintiffs' Claims Against Kelzenberg-Wumag Fail as a Matter of Law.

Plaintiffs' Amended Complaints, without any factual supports, alleges the Machine was designed, manufactured and sold by Kelzenberg-Wumag. (Am. Compl. ¶ 6). However, the evidence is undisputed that Kelzenberg-Wumag had no involvement in the design, manufacture or sale of the Machine. Rather, approximately eighteen (18) months after the accident, Kelzenberg-Wumag purchased the assets (but did not assume liabilities) of the company who, upon information and belief, designed, manufactured and sold the Machine. The evidence is also undisputed that

Kelzenberg-Wumag is not subject to successor liability. Accordingly, Plaintiffs' claims against Kelzenberg-Wumag fail as a matter of law.

WHEREFORE, Wumag respectfully requests that this Court enter an Order dismissing Plaintiffs' Complaint for insufficient service of process, lack of personal jurisdiction, and/or pursuant to Rule 56(c). This Motion is based on the pleadings, applicable statutes, regulations, case law and legal authorities, and other materials as may be submitted in support hereof.

s/ Robert C. Osborne III
Robert H. Jordan (SC Bar No.: 13612)
Email: robertjordan@parkerpoe.com
Robert C. Osborne III (SC Bar No.: 101827)
Email: robertosborne@parkerpoe.com
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Post Office Box 160 (29402)
Charleston, SC 29401
Phone: (843) 727-2650
Fax: (843) 727-2680

Attorneys for Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG

June 13, 2025

Charleston, South Carolina

ELECTRONICALLY FILED - 2025 Jun 13 9:05 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiffs, v. 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.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2021-CP-19-00005 **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

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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:

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

> 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.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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.").

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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,

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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*

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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*.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

"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

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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.*

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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*

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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.").

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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]

Colin T.L. Spangler, Esq.
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PARKER LAW GROUP, LLP

BY: */s/John E. Parker, Jr.*
John E. Parker, Esq.
Neil E. Alger, Esq.
John E. Parker, Jr., Esq.
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
Phone: (803) 943-2111
jparker@parkerlawgroupsc.com
nalger@parkerlawgroupsc.com
jayparker@parkerlawgroupsc.com

July 2, 2025
Hampton, South Carolina

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

EXHIBIT 1

We are looking for YOU!

Currently only available in German. Please take a look to the German page.

Applications by e-mail or post to:

mail@krafft-walzen.com or

WUMAG TEXROLL GmbH & Co. KG
Schoellerstrasse 164
52351 Düren, Germany

Company

More than 70 years old, WUMAG presents itself as a young, modern business company that is highly valued by all experts and it´s customers all over the world for it´s perfomance, it´s extensive experience and absolute relaibility.

WUMAG belongs to those medium-size financed companies whose creativity, specialist knowledge and innovative strengths ensure constant adaptation to changing circumstances

ROA 380

as well as new market requirements and prevent solidification in firmly established structures.

As of October 1, 2019, the business operations of WUMAG TEXROLL in Krefeld will continue as a subsidiary under the direction of **Carl KRAFFT & Söhne GmbH & Co.KG** in Düren.

In the Center of Excellence in Krefeld we are producing the following core products

- Thin-walled Drying Cylinders for textile drying (PED, ASME and Chinese ML specifications) - the #WTD
- Double-Shell Rollers with thin-walled stainless steel jackets
- Double-Shell Large Rollers
- Elektric Heated Dryers - the #EHD

- Cylinder Dryer
- Thermofixing and Strectching Machines
- Calender

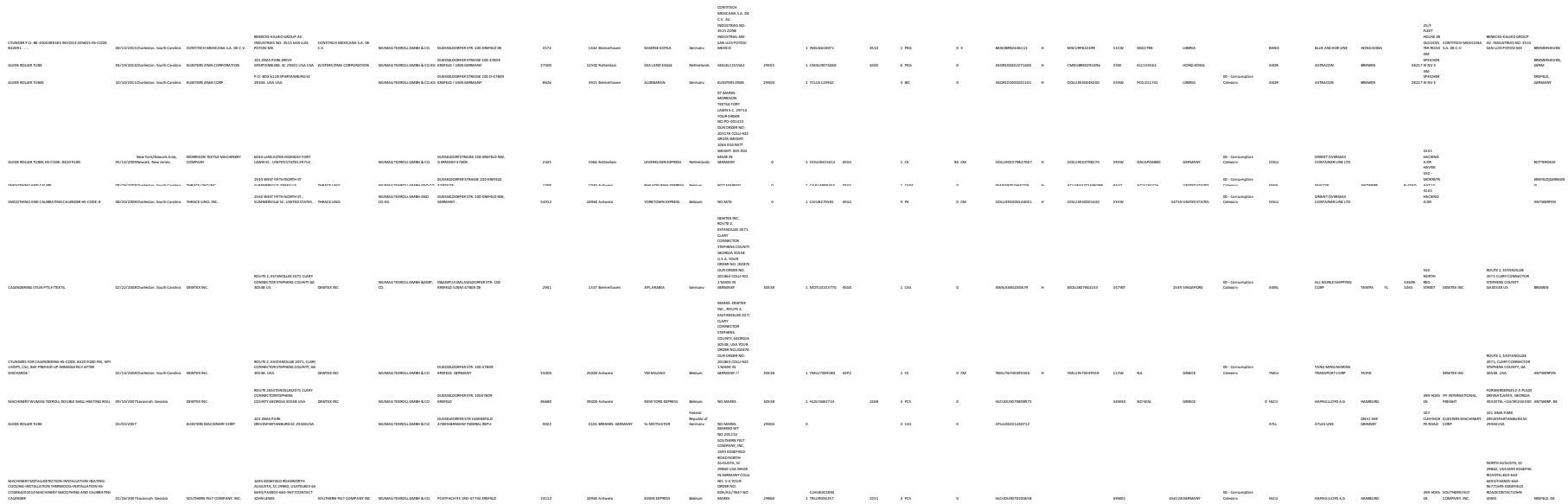
© 2020 WUMAG TEXROLL GmbH & Co. KG

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

EXHIBIT
2

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

PRODUCT DESCRIPTION	ARRIVAL DATE	US PORT	IMPORTER	CONSIGNEE ADDRESS	IMPORTER ENTITY	SHIPPER	SHIPPER ADDRESS	GROSS WEIGHT LB	GROSS WEIGHT (KG)	FOREIGN PORT	VESSEL NAME	COUNTRY OF ORIGIN	MARKS & NUMBERS	ZIP CODE	NO. OF CONTAINERS	CONTAINER NUMBER	CONTAINER TYPE	QUANTITY	QUANTITY UNIT	MEASUREMENT	MEASUREMENT UNIT	BILL OF LADING	HOUSE VS MASTER	MASTER B/L	VOYAGE NUMBER	SEAL	SHIP REGISTERED IN	86 BOND ENTRY TYPE	CARRIER CODE	CARRIER NAME	CARRIER CITY	CARRIER STATE	CARRIER ZIP	CARRIER ADDRESS	NOTIFY PARTY	NOTIFY ADDRESS	PLACE OF RECEIPT
DRYING CYLINDER	01/19/2021	Charleston, South Carolina	ZIMA CORPORATION	101 ZIMA PARK DRIVE SPARTANBURG SC 29301 US 864 INFO@KUSTNERUSZIMA.COM 101 ZIMA PARK DRIVE	ZIMA CORPORATION	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STRASSE 120 KREFELD DE THOMAS KUEN TE +49(2151)3636	19013	8630	Antwerp	RIVER SMILE	Belgium	ZIMA	29501	1	TGBU5170411	4540		7	PKG	0		ASDR62520180323	H	YMJA784009590291	1239E	KUSN3861	UNITED KINGDOM		ASDR	ASTRACON	BREMEN		28217	82 NW 9 AM SPECHER	NOT AVAILABLE	NOT AVAILABLE	ANTWERPEN
DRYING CYLINDER	06/04/2020	Charleston, South Carolina	ZIMA CORPORATION	101 ZIMA PARK DRIVE SPARTANBURG SC 29301 US 864 INFO@KUSTNERUSZIMA.COM 101 ZIMA PARK DRIVE	ZIMA CORPORATION	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STRASSE 120 KREFELD DE THOMAS KUEN TE +49(2151)3636	21351	9686	Stade	HUDSON EXPRESS	Germany	ZIMA CORP.	29501	1	SEGU7788398	4540		6	PKG	0		ASDR62610337062	H	YMJA784009010151	331W	88321000	UNITED STATES		ASDR	ASTRACON	BREMEN		28217	82 NW 9 AM SPECHER	NOT AVAILABLE	NOT AVAILABLE	HAMBURG
DRYING CYLINDER	02/16/2020	Charleston, South Carolina	ZIMA CORPORATION	101 ZIMA PARK DRIVE SPARTANBURG SC 29301 US 864 INFO@KUSTNERUSZIMA.COM 101 ZIMA PARK DRIVE	ZIMA CORPORATION	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STRASSE 120 KREFELD DE THOMAS KUEN TE +49(2151)3636	5660	2569	Valencia/A	DSA/AWE EXPRESS	Germany	ZIMA CORP.	29501	1	MSKU6481329	4540		3	PKG	0		ASDR62302189976	H	YMJA784009599189	342W	KUSN3961	LIBRIA		ASDR	ASTRACON	BREMEN		28217	82 NW 9 AM SPECHER	NOT AVAILABLE	NOT AVAILABLE	ALTENBRUCH 88230
PRINTING ROLL NOZZLE ASSEMBLY WITH DESIGN SHEET PROTECTION SUPPLIED ROLLER NO 116.117, 118+119	01/31/2022	Wilmington, North Carolina	NYC US	101 NY DRIVE NORTH DALTON, GA 30721	NYC US INC	WUXIAG TEXROLL	C/O LAGERHALLE ERAPPT GELANDE PA VOITH DUEREN, DE 52351	27998	12726	Antwerp	INDEPENDENT HORIZON	Belgium	91U1056451200	30721	1	TGU8771222		1	PCS	0		91U1056451200					B23W	NONE	LIBRIA	91U		INDEPENDENT CONTAINERLINE LTD	RICHMOND	VA	23231	5235 NW 101 AVE SUITE 1	NYC US	101 NY DRIVE NORTH DALTON, GA 30721	GERMANY
PARTS FOR TEXTILE DRYERHS CODE: 8420101010	11/04/2021	Charleston, South Carolina	ZIMA CORPORATION	101 ZIMA PARK DRIVE SPARTANBURG SC 29301 US 864 INFO@KUSTNERUSZIMA.COM 101 ZIMA PARK DRIVE	ZIMA CORPORATION	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STRASSE 120 KREFELD DE TF +49(2151)3636	11317	5135	Bremerhaven	COSCO PHILIPPINES	Germany	ZIMA USA	29501	1	FSCU8449123		4500	3	PKG	0		ASDR62102271673	H	COSU1217088000	347W	KUSN3876	HONG KONG		ASDR	ASTRACON	BREMEN		28217	82 NW 9 AM SPECHER	NOT AVAILABLE	NOT AVAILABLE	BREMERHAVEN
PARTS FOR TEXTILE DRYER	09/29/2021	Savannah, Georgia	ZIMA CORPORATION	101 ZIMA PARK DRIVE SPARTANBURG SC 29301 US 864 INFO@KUSTNERUSZIMA.COM 101 ZIMA PARK DRIVE	ZIMA CORPORATION	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STRASSE 100 LINN KREFELD DE TF +49(2151)3636	5960	2700	Bremerhaven	COSCO PHILIPPINES	Germany	ZIMA USA	29501	1	CAIU5100701		2200	3	PKG	0		ASDR62102847977	H	COSU1278848850	346W		343079 HONG KONG		ASDR	ASTRACON	BREMEN		28217	82 NW 9 AM SPECHER	NOT AVAILABLE	NOT AVAILABLE	BREMERHAVEN
PARTS FOR TEXTILE DRYER	09/29/2021	Savannah, Georgia	ZIMA CORPORATION	101 ZIMA PARK DRIVE SPARTANBURG SC 29301 US 864 INFO@KUSTNERUSZIMA.COM 101 ZIMA PARK DRIVE	ZIMA CORPORATION	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STRASSE 100 LINN KREFELD DE TF +49(2151)3636	5896	2680	Bremerhaven	COSCO PHILIPPINES	Germany	ZIMA USA	29501	1	CSLU3522648	2201		3	PKG	0		ASDR62102847956	H	COSU1278848851	346W	85664-98409	HONG KONG		ASDR	ASTRACON	BREMEN		28217	82 NW 9 AM SPECHER	NOT AVAILABLE	NOT AVAILABLE	BREMERHAVEN
CYLINDERS FOR TEXROLLS	09/11/2021	Charleston, South Carolina	ZIMA CORPORATION	101 ZIMA PARK DRIVE SPARTANBURG SC 29301 US 864 INFO@KUSTNERUSZIMA.COM 101 ZIMA PARK DRIVE	ZIMA CORPORATION	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STRASSE 100 LINN KREFELD DE TF +49(2151)3636	19803	9000	Bremerhaven	OOCL ATLANTA	Germany	ZIMA USA	29501	1	OOLU3668193	4501		6	PKG	0		ASDR62102847575	H	COSU1278247576	132W	KUSN3767	HONG KONG		ASDR	ASTRACON	BREMEN		28217	82 NW 9 AM SPECHER	NOT AVAILABLE	NOT AVAILABLE	BREMERHAVEN
MACHINERY	09/11/2021	Charleston, South Carolina	ZIMA CORPORATION	101 ZIMA PARK DRIVE SPARTANBURG SC 29301 US 864 INFO@KUSTNERUSZIMA.COM 101 ZIMA PARK DRIVE	ZIMA CORPORATION	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STRASSE 100 LINN KREFELD DE TF +49(2151)3636	22517	10235	Bremerhaven	OOCL ATLANTA	Germany	ZIMA USA	29501	1	TCNU1076480		4500	8	PKG	0		ASDR62102847558	H	COSU1278247570	132W	KUSN3708	HONG KONG		ASDR	ASTRACON	BREMEN		28217	82 NW 9 AM SPECHER	NOT AVAILABLE	NOT AVAILABLE	BREMERHAVEN
CYLINDERS FOR TEXTILE DRYERHS CODE: 8420101010	09/11/2021	Charleston, South Carolina	ZIMA CORPORATION	101 ZIMA PARK DRIVE SPARTANBURG SC 29301 US 864 INFO@KUSTNERUSZIMA.COM 101 ZIMA PARK DRIVE	ZIMA CORPORATION	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STRASSE 100 LINN KREFELD DE TF +49(2151)3636	19803	9000	Bremerhaven	OOCL ATLANTA	Germany	ZIMA USA	29501	1	OOCU9656377	4501		6	PKG	0		ASDR62102847573	H	COSU1278247573	132W	KUSN3709	HONG KONG		ASDR	ASTRACON	BREMEN		28217	82 NW 9 AM SPECHER	NOT AVAILABLE	NOT AVAILABLE	BREMERHAVEN
CYLINDERS AND ACCESSORIES FOR TEXTILE DRYERHS CODE: 8420101010	09/11/2021	Charleston, South Carolina	ZIMA CORPORATION	101 ZIMA PARK DRIVE SPARTANBURG SC 29301 US 864 INFO@KUSTNERUSZIMA.COM 101 ZIMA PARK DRIVE	ZIMA CORPORATION	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STRASSE 100 LINN KREFELD DE TF +49(2151)3636	26420	12100	Bremerhaven	OOCL ATLANTA	Germany	ZIMA USA	29501	1	FCIU9198606	4501		6	PKG	0		ASDR62102847572	H	COSU1278247571	132W	KUSN3702	HONG KONG		ASDR	ASTRACON	BREMEN		28217	82 NW 9 AM SPECHER	NOT AVAILABLE	NOT AVAILABLE	BREMERHAVEN
CYLINDERS AND ACCESORIES FOR TEXTILE DRYER	09/29/2021	Charleston, South Carolina	ZIMA CORPORATION	101 ZIMA PARK DRIVE SPARTANBURG SC 29301 US 864 INFO@KUSTNERUSZIMA.COM 101 ZIMA PARK DRIVE	ZIMA CORPORATION	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STRASSE 100 LINN KREFELD DE TF +49(2151)3636	11673	5215	Bremerhaven	APL NEW JERSEY	Germany	ZIMA USA	29501	1	OOLU9968221	4501		6	PKG	0		ASDR62102847571	H	COSU1278247572	SV8W	KUSN3902	LIBRIA		ASDR	ASTRACON	BREMEN		28217	82 NW 9 AM SPECHER	NOT AVAILABLE	NOT AVAILABLE	BREMERHAVEN
PARTS FOR TEXTILE DRYER	09/29/2021	Charleston, South Carolina	ZIMA CORPORATION	101 ZIMA PARK DRIVE SPARTANBURG SC 29301 US 864 INFO@KUSTNERUSZIMA.COM 101 ZIMA PARK DRIVE	ZIMA CORPORATION	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STRASSE 100 LINN KREFELD DE TF +49(2151)3636	11660	5300	Bremerhaven	APL NEW JERSEY	Germany	ZIMA USA	29501	1	TCNU3749317		4500	2	PKG	0		ASDR62102847563	H	COSU1278248193	SV8W	KUSN3870	LIBRIA		ASDR	ASTRACON	BREMEN		28217	82 NW 9 AM SPECHER	NOT AVAILABLE	NOT AVAILABLE	BREMERHAVEN
COOLING CYLINDERCOOLING UNITOTHER UNITHS CODE: 8420101010	09/29/2021	Charleston, South Carolina	ZIMA CORPORATION	101 ZIMA PARK DRIVE SPARTANBURG SC 29301 US 864 INFO@KUSTNERUSZIMA.COM 101 ZIMA PARK DRIVE	ZIMA CORPORATION	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STRASSE 100 LINN KREFELD DE TF +49(2151)3636	18821	8535	Bremerhaven	CMA CGM MUSSET	Germany	ZIMA USA	29501	1	FFAU1305366	4500		6	PKG	0		ASDR62102847560	H	COSU1278248760	SV8W	KUSN3725	MALTA		ASDR	ASTRACON	BREMEN		28217	82 NW 9 AM SPECHER	NOT AVAILABLE	NOT AVAILABLE	BREMERHAVEN
WUXIAG TEXROLL COOLING CYLINDER	08/09/2021	Charleston, South Carolina	ZIMA CORPORATION	101 ZIMA PARK DRIVE SPARTANBURG SC 29301 US 864 INFO@KUSTNERUSZIMA.COM 101 ZIMA PARK DRIVE	ZIMA CORPORATION	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STRASSE 100 LINN KREFELD DE TF +49(2151)3636	1201	540	Bremerhaven	BRUSSELS	Germany	ZIMA USA	29501	1	CSNU6462278	4500		1	PKG	0	CM	ASDR62102263213	H	COSU1210507080	019W	WWA0930021290	GERMANY		ASDR	ASTRACON	BREMEN		28217	82 NW 9 AM SPECHER	NOT AVAILABLE	NOT AVAILABLE	BREMERHAVEN
DOUBLE SHELL COOLING CYLINDER INVOICE 20640 BIANDBR6888289 28643.61DRNCM HS-CODE:8422100	07/29/2021	Charleston, South Carolina	CONTITECH MEXICANA S.A. DE C.V.	BENECKE-KALIKO MEXICO AV. NIAGARA NO. 255 PARQUE INDUSTRIAL MILLWAUKM SAN LUIS POTOSI MX	CONTITECH MEXICANA S.A. DE C.V.	WUXIAG TEXROLL GMBH & CO.	CONTITECH MEXICANA S.A. DE C.V. BENECKE-KALIKO MEXICO AV. NIAGARA NO. 255 PARQUE INDUSTRIAL MILLWAUKM SAN LUIS POTOSI MX 78395 MEXICO DELIVERY NOTE 712767 ORDER NO 20738737813 CUSTOMER ORDER TRC-857 DELIVERY NOTE 712767 ORDER NO. 20738737813 CUSTOMER ORDER TRC-857 DELIVERY NOTE 712767 ORDER NO. 20738737813 CUSTOMER ORDER TRC-857	3212	1460	Bremerhaven	MSC FLAMINIA	Germany	ZIMA USA	29501	1	CAIU5923656		8510	1	PKG	0	X	BANDBR6888289		84124		3160/3 GERMANY					21/F FIRST HOUSE 38 GLOUCES TER ROAD	CONTITECH MEXICANA S.A. DE C.V.	BENECKE-KALIKO MEXICO AV. NIAGARA NO. 255 PARQUE INDUSTRIAL MILLWAUKM SAN LUIS POTOSI MX	BREMERHAVEN
WUXIAG TEXROLL TWINS DRIVE ROLL	07/02/2021	Charleston, South Carolina	ZIMA CORPORATION	101 ZIMA PARK DRIVE SPARTANBURG SC 29301 US 864 INFO@KUSTNERUSZIMA.COM 101 ZIMA PARK DRIVE	ZIMA CORPORATION	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STRASSE 100 LINN KREFELD DE TF +49(2151)3636	18293	8315	Bremerhaven	CMA CGM NERVAL	Germany	ZIMA CORP. USA	29501	1	OOLU9629296	4501		5	PKG	0	CM	ASDR62102269641	H	COSU1213328180	SV8Z	WWA3164010	MALTA		ASDR	ASTRACON	BREMEN		28217	82 NW 9 AM SPECHER	NOT AVAILABLE	NOT AVAILABLE	BREMERHAVEN
DRYING CYLINDER	07/02/2021	Charleston, South Carolina	ZIMA CORPORATION	101 ZIMA PARK DRIVE SPARTANBURG SC 29301 US 864 INFO@KUSTNERUSZIMA.COM 101 ZIMA PARK DRIVE	ZIMA CORPORATION	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STRASSE 100 LINN KREFELD DE TF +49(2151)3636	26312	11940	Bremerhaven	CMA CGM NERVAL	Germany	ZIMA CORP. USA	29501	1	GLDU7081957		8500	5	PKG	0	CM	ASDR62102269724	H	CMDU9865513615	SV8Z	WWA3164015	MALTA		ASDR	ASTRACON	BREMEN		28217	82 NW 9 AM SPECHER	NOT AVAILABLE	NOT AVAILABLE	BREMERHAVEN
DRYING CYLINDER	07/02/2021	Charleston, South Carolina	ZIMA CORPORATION	101 ZIMA PARK DRIVE SPARTANBURG SC 29301 US 864 INFO@KUSTNERUSZIMA.COM 101 ZIMA PARK DRIVE	ZIMA CORPORATION	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STRASSE 100 LINN KREFELD DE TF +49(2151)3636	21613	9806	Bremerhaven	CMA CGM NERVAL	Germany	ZIMA CORP. USA	29501	1	OOLU9268490	4501		4	PKG	0	CM	ASDR62102269724	H	COSU1213327620	SV8Z	WWA3164018	MALTA		ASDR	ASTRACON	BREMEN		28217	82 NW 9 AM SPECHER	NOT AVAILABLE	NOT AVAILABLE	BREMERHAVEN
METAL FRAME AND EQUIPMENT FOR 10152 METAL FRAME AND EQUIPMENT FOR 10152	05/28/2021	Raleigh, Virginia	BERRY GLOBAL BINSON	1203 CHICOPEE BINSON, NC 27030 USA	BERRY GLOBAL BINSON	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STR. 120 -D-47809 KREFELD GERMANY	9760	4430	Antwerp	YM EXPRESS	Belgium	ORDER 2071542/30	27500	1	HLBU1236016		8510	6	PCS	0		HCLUMUC1800251997			319W	KUSN3837	LIBRIA		HCLU	HAPAG-LLOYD A G	HAMBURG			399 HOES SCARBOUGH IN	SCARBOUGH INTERNATIONAL LTD.	8140 HAGUE RD STE 100 INDIANAPOLIS IN 46250	ANTWERP, BE
CALENDERING OR OTHER ROLLING MACHINES, OTHER THAN - CASE OR CAN MACHINS CALENDERING OR OTHER ROLLING MACHINES, OTHER THAN - CASE OR CAN MACHINS CALENDERING OR OTHER ROLLING MACHINES, OTHER THAN - CASE OR CAN MACHINS	03/27/2021	Charleston, South Carolina	GST SAFETY TEXTILES MEXICO S. DE R.	AV. INDUSTRIA DE LA CONSTRUCCION TORREON COA 27400 MEXICO	GST SAFETY TEXTILES MEXICO S. DE RL	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STR. 120 KREFELD NW 47809 GERMANY	67850	21750	Antwerp	MSC BARBARA	Belgium	DELIVERY NOTE 712767 ORDER NO 20738737813 CUSTOMER ORDER TRC-857 DELIVERY NOTE 712767 ORDER NO. 20738737813 CUSTOMER ORDER TRC-857 DELIVERY NOTE 712767 ORDER NO. 20738737813 CUSTOMER ORDER TRC-857	27600	8	TGCU3252628	4510 4530 4533		17	CAS	168	X	MEDUBN9911173			611S	61836/3764	PANAMA		MEDU	MSC MEDITERRANEAN SHIPPING COMPANY SA	GENEVA			29 AVENUE EUGENE CORNUAVIN	CUR-CARGO LOGISTICS PITTARD NETWORK CO SUIT	15155 LOCUST ST, SUITE 501 SAINT LOUIS MO UNITED STATES	ANTWERP
METAL FRAME AND EQUIPMENT FOR HS:8422909000 METAL FRAME AND EQUIPMENT FOR HS:8422909000 METAL FRAME AND EQUIPMENT FOR HS:8422909000													ORDER 2071541/62 2196432-000 OP / PLACID JRV0A23 ORDER NO. 2071541/62 2196432-000 OP / PLACID JRV0A23 ORDER NO. 2071541/62 2196432-000 OP / PLACID JRV0A23 ORDER NO. 2071541/62 2196432-000 OP / PLACID JRV0A23 ORDER NO. 2071541/62																							
STEEL PARTS AND FRAMES HS 8422909000 DRYING CYLINDER H	01/19/2021	Raleigh, Virginia	FASTER INC	111 EXCELLENCE LN N. MOORESVILLE NC 28115 US	FASTER INC	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STRASSE 100 KREFELD NW 47809 GERMANY	88268	40050	Antwerp	ATLANTIC SUN	Belgium	BERRY GLOBAL P.O. 2596432-000 OP / PLACID JRV0A23 ORDER NO. 207311 BERRY GLOBAL P.O. 2596432-000 OP / PLACID JRV0A23 ORDER NO. 207311 BERRY GLOBAL P.O. 2596432-000 OP / PLACID JRV0A23 ORDER NO. 207311 BERRY GLOBAL P.O. 2596432-000 OP / PLACID JRV0A23 ORDER NO. 207311 BERRY GLOBAL P.O. 2596432-000 OP / PLACID JRV0A23 ORDER NO. 207311	28115	5	ACLU9718930 ACLU9767241 ACLU9767243 ACLU9767244 ACLU9767245	28115	5		40/20 4040 4060 40/		20	PCS	1	X	ACLUSA20107192			40/20	61836/3843 61836/3844 61836/3845 61836/3842 61836/3841	UNITED KINGDOM		ACLU	ATLANTIC CONTAINER LINE SA	ISELIN	NJ		PO BOX 8000 2120	SCARBOUGH INTERNATIONAL	15155 LOCUST ST 63107 US	911 WORT LOUIS MO 63102	ANTWERP
CONTAINERS SAID TO CONTAIN CONTAINERS SAID TO CONTAIN CONTAINERS SAID TO CONTAIN CONTAINERS SAID TO CONTAIN CONTAINERS SAID TO CONTAIN DRYING CYLINDER AND METAL FRAME FOR CYLINDERS HS CODE 8422901300, 8422909000 DRYING CYLINDER AND METAL FRAME FOR CYLINDERS HS CODE 8422901300, 8422909000 DRYING CYLINDER AND METAL FRAME FOR CYLINDERS HS CODE 8422901300, 8422909000 DRYING CYLINDER AND METAL FRAME FOR CYLINDERS HS CODE 8422901300, 8422909000													BERRY GLOBAL P.O. 2596432-000 OP / PLACID JRV0A23 ORDER NO. 207311 ... BERRY GLOBAL P.O. 2596432-000 OP / PLACID JRV0A23 ORDER NO. 207311 BERRY GLOBAL P.O. 2596432-000 OP / PLACID JRV0A23 ORDER NO. 207311 BERRY GLOBAL P.O. 2596432-000 OP / PLACID JRV0A23 ORDER NO. 207311 BERRY GLOBAL P.O. 2596432-000 OP / PLACID JRV0A23 ORDER NO. 207311																							
CYLINDER AND METAL FRAME FOR CYLINDERS HS CODE 8422901300, 8422909000	02/07/2021	Raleigh, Virginia	CHICOPPEE INC	111 EXCELLENCE LANN MOORESVILLE NC 28115 US	CHICOPPEE INC	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STR 120 -FICHEN - KREFELD -D-47809 DE	88268	40050	Antwerp	ATLANTIC SUN	Belgium	BERRY GLOBAL P.O. 2596432-000 OP / PLACID JRV0A23 ORDER NO. 207311	28115	5	ACLU9718930 ACLU9767241 ACLU9767243 ACLU9767244 ACLU9767245	40/20 4040 4060 40/		20	PCS	1	X	ACLUSA20107192		61836/3843 61836/3844 61836/3845 61836/3842 61836/3841	UNITED KINGDOM		ACLU	ATLANTIC CONTAINER LINE SA	ISELIN	NJ		PO BOX 8000 2120	SCARBOUGH INTERNATIONAL	15155 LOCUST ST 63107 US	911 WORT LOUIS MO 63102	ANTWERP
DOUBLE SHELL COOLING ROLL INVOICE 207122 -BSI ORDER				GRUPO DE EMPRESAS CONTITECH AV. INDUSTRIAL NO 3515 ZONA IND	CONTITECH MEXICANA S.A. DE		CONTITECH MEXICANA SAN LUIS POTOSI MEXICO DELIVERY NOTE DENTEX INC.																											
CYLINDERS & GOINTS / CYLINDERS & JOINTS	04/01/2021	Savannah, Georgia	DENTEX INC	TOCCOA GEORGIA GA 30577 US	DENTEX INC	WUXIAG TEXROLL GMBH & CO.KG	DUESSELDORFER STR. 100 KREFELD DE	12672	5760	Antwerp	NYK MATSON	Belgium	DENTEX INC.	30577	1	NYKU6483585	4540		1	CM	0		DNYMVMC0019916		NYKUUVU0089500	310W	KUSN3765	PANAMA		DNYF						NOT AVAILABLE	NOT AVAILABLE	ANTWERPEN
CASES S.T.C. & CASES GUIDE ROLLER TUBES ORDER NO: 2370961/2013 P.O.NO: PO-324101 TOTAL:32,332 CBM HS-CO 8422901300 PREMAT PREPAID - SHIPPED ON BOARD - CUST - EXPRESS-IES SHIPPED LOSO - STOWAGE AND COUNTING, SHIPLASHING AND SECURING OF CONTAINER(S) - ----- TSHU3833496 DESCRIPTION: ----- * CASES GUID ROLLER TUBES ORDER NO: 2084990 PROJECT NO: 00005-249 P.O.NO: PO-S13418 TOTAL:91,273 CBM, HS-CODE: 8422901 TEL: 011-706- 9570074 CTC: LESLIE ROBINSON IMPORTER@TOCCOALOG.COM ----- * ----- GENERIC DESCRIPTION -----	12/07/2021	Charleston, South Carolina	MORRISON TEXTILE MACHINERY CO	6004 LANCASTER HIGHWAY PORT LEWIS LANN SC 29714 UNITED STATES	MORRISON TEXTILE MACHINERY	WUXIAG TEXROLL GMBH CO	DUESSELDORFER STR. 100 KREFELD NW 47809 GERMANY	22160	10200	Antwerp	NAMIBIA EXHIBITION	Belgium	NO MARKS NO MARKS NO MARKS NO MARKS NO MARKS	29714	1	MSMU6096432		8510	4	CAS	44	X	MSCUOC68644		7475	33567/7 KL	LIBRIA		MSCU	MSC MEDITERRANEAN SHIPPING COMPANY S A	GENEVA	CH 1209		29 AVENUE EUGENE CORNUAVIN	CUR-CARGO LOGISTICS PITTARD NETWORK CO SUIT	15155 LOCUST ST 63107 US	85-93 STIEL CREEK PLACE DRIVE CHARLOTTE NC 28273 UNITED STATES	KREFELD, GERMANY
CYLINDERS FOR TEXTILE DRYER	08/12/2021	Charleston, South Carolina	MORRISON TEXTILE MACHINERY CO	6004 LANCASTER HIGH FORT LEWIS SC US	MORRISON TEXTILE MACHINERY	WUXIAG TEXROLL GMBH CO.	DUESSELDORFER STR. 100. KREFELD DE	24165	10975	Rotterdam	HS ROME	Netherlands	NO MARKS		1	TGHU8819068		4500	7	PCS	0	CM	CMDUHMEA0297643	H	CMDU1486118518	229W	33567/9 KL	LIBRIA		CMDU	COMPAGNIE MARITIME D AFFRETEMENT	NORFOLK	VA	23502	5701 LEAD BRIGHT DR	CONTAINER LINE		KREFELD
WUXIAG TEXROLL DOUBLE SHELL HEATING ROLL FOR TEXTILE CALENDER HS-CODE:8422901300 GUIDE ROLLER TUBES & CASES GUIDE ROLLER TUBES ORDER NO 2106812 PROJECT NO 00005169 P.O.NO PO-2101000	01/28/2021	Savannah, Georgia	NYC US	101 NY DRIVE 30721 DALTON, GA USA T (706) 529-2577 / (919) 6 MAIL:RON.CELEVICIA@VOLP LUS	NYC US INC	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STR. 100 KREFELD	28380	12900	Antwerp	MAERSK DALIAN	Belgium	ORDER NO. 2597/PO 806 -8100/1NADE..	30721	1	HLBU8010369		2251	1	PCS	0		HCLUDU1270007670			333W	KUSN3760	HONG KONG		HCLU	HAPAG-LLOYD A G	HAMBURG			399 HOES IN	IAS FORWARDING (USA)	6249-A CROSSPOINT DRIVE LANDEN, SC 29356 USA T +1(843)384-5377 / F +1(8 MAIL: BRENDA.SWEETAS.COM	ANTWERP, BE
CALENDER WUXIAG TEXROLL SMOOTHING-CALIBRATING-LAMINATING CALENDER	09/11/2021	Charleston, South Carolina	BONDEX INC.	2,MAXWELL DRIVE TRENTON,SC 29847 U.S.A ATT: RIECE MAXWELL, SC PH 803 663 1922 EXT.221 JRIECE@BONDEXINC.COM	BONDEX INC	WUXIAG TEXROLL GMBH & CO.KG	DUESSELDORFER STR.100 KREFELD GERMANY	10164	4620	Antwerp	ST. LOUIS EXPRESS	Belgium	NO MARKS		1	HLXU5167382		2210	2	PCS	0		HCLUDU1160705675			094W	411156620 EX	UNITED STATES		HCLU	HAPAG-LLOYD A G	HAMBURG			399 HOES IN	BONDEX INC.	2,MAXWELL DRIVE TRENTON,SC 29847 U.S.A ATT: RIECE MAXWELL, SC PH 803 663 1922 EXT.221 JRIECE@BONDEXINC.COM	KREFELD, DE
WUXIAG TEXROLL SMOOTHING-CALIBRATING-LAMINATING CALENDER WUXIAG TEXROLL SMOOTHING- CALIBRATING LAMINATING CALENDER	07/16/2021	Charleston, South Carolina	BONDEX INC.	2,MAXWELL DRIVE TRENTON,SC 29847 U.S.A ATT: RIECE MAXWELL, SC PH 803 663 1922 EXT.221 JRIECE@BONDEXINC.COM	BONDEX INC	WUXIAG TEXROLL GMBH & CO.KG	DUESSELDORFER STR.100 KREFELD GERMANY	24873	11215	Antwerp	CHARLESTON EXPRESS	Belgium	NO MARKS .... NO MARKS.		1	DRYU2012867 HLBU8350367	2210 0110		6	PCS	0		HCLUDU1160615683			040W	411156623 EX 411156621 XX	UNITED STATES		HCLU	HAPAG-LLOYD A G	HAMBURG			399 HOES IN	BONDEX INC.	2,MAXWELL DRIVE TRENTON,SC 29847 U.S.A ATT: RIECE MAXWELL, SC PH 803 663 1922 EXT.221 JRIECE@BONDEXINC.COM	KREFELD, DE
CYLINDER FOR TEXTILE CALENDER INVOICE NO. 309976 HS-CODE 8422901300 ...	01/27/2021	Charleston, South Carolina	CONTITECH MEXICANA S.A. DE C.V.	GRUPO DE EMPRESAS CONTITECH AV. INDUSTRIAL NO 3515 ZONA IND SAN LUIS POTOSI MX	CONTITECH MEXICANA S.A. DE C.V.	WUXIAG TEXROLL GMBH & CO.	CONTITECH MEXICANA SAN LUIS POTOSI MEXICO DELIVERY NOTE 711322 ORDER NO 8K-2020081982	1954	886	Bremerhaven	MAERSK EGYKA	Germany	8K-2020081982		1	MSCU9208645		8510	1	CAS	0	X	BANDBR6278234	H	MSCUNV201174	512W	33623656	LIBRIA		BANG	BLUE ANCHOR LINE	HONG KONG			21/F FIRST HOUSE 38 GLOUCES TER ROAD	CONTITECH MEXICANA S.A. DE C.V.	GRUPO DE EMPRESAS CONTITECH AV. INDUSTRIAL NO 3515 ZONA IND. SAN LUIS POTOSI MX	BREMERHAVEN
GUIDE ROLLER TUBE HS 8422901300 PREG	12/08/2021	Charleston, South Carolina	KUSTNER ZIMA CORPORATION	101 ZIMA PARK DRIVE SPARTANBURG SC 29301 US	KUSTNER ZIMA CORPORATION	WUXIAG TEXROLL GMBH & CO.	DUESSELDORFER STR. 100 KREFELD DE	26655	12107	Rotterdam	CMA CGM AZURE	Netherlands	KUSTNER ZIMA USA	29501	1	CMAU5767106		4500	11	CAS	0		CMDUBM0514766	SV7W	411156161/1156639	SW6APOR6		ASDR	ASTRACON	BREMEN		28217	82 NW 9 AM SPECHER	NOT AVAILABLE		ROTTERDAM



ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

EXHIBIT 3

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

Barry Lanham and Obvia Gamble-Lanham,

Plaintiffs,

v. Case No: 2021-CP-19-00005

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

Defendants.

DEPONENT: JOHN REECE WALMSLEY

DATE: MAY 9, 2025

TIME: 10:12 AM TO 12:10 PM

LOCATION: Veritext - Augusta, GA
4 George C. Wilson Court Suite A
Augusta, GA 30909

and remotely via Zoom

REPORTED BY: Michael King
Notary Commission Georgia/W-00526283
Commission Expires: October 6th, 2025

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

APPEARANCES

On behalf of the Plaintiffs:

JOHN E. PARKER, JR., ESQ.
PARKER LAW GROUP, LLP
101 Mulberry St E
Hampton, SC 29924
659-903-6519
jayparker@parkerlawgroupsc.com

On behalf of the Defendant, Wumag Texroll GmbH & Co:

CATHERINE F. WRENN, ESQ.
BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, PC
850 Morrison Drive, Suite 775
Charleston, SC 29403
cwrenn@bakerdonelson.com

ROBERT C. OSBORNE, III, ESQ.
PARKER POE ADAMS & BERNSTEIN LLP
850 Morrison Drive, Suite 400
Charleston, SC 29403
843-727-2680
robertosborne@parkerpoe.com

INDEX

	Page
TESTIMONY OF JOHN REECE WALMSLEY	
DIRECT EXAMINATION BY MS. WRENN	6
EXAMINATION BY MR. OSBORNE III	74
CROSS-EXAMINATION BY MR. PARKER JR.	76
REDIRECT EXAMINATION BY MS. WRENN	85
RE-EXAMINATION BY MR. OSBORNE III	88
JURAT/ERRATA FOR JOHN REECE WALMSLEY	93
CERTIFICATE OF DIGITAL REPORTER	95
CERTIFICATE OF TRANSCRIPTIONIST	96

EXHIBITS

Exhibit		Page
Exhibit 1	Letter 3078	34
Exhibit 2	Diagram 2114-2116	38
Exhibit 3	Accident Investigation 2343-2344	47
Exhibit 4	OSHA 11-13	50
Exhibit 5	OSHA 161-163	54
Exhibit 6	Trouble Shooting Schedule	59
Exhibit 7	Emails	62
Exhibit 8	Cleaning Procedure/Wumag Heatsetter	63
Exhibit 9	OSHA 300 - Work-Related Injury Log	66
Exhibit 11	Wumag Operating Manual OSHA 50-69	87

PROCEEDINGS

THE REPORTER: Good morning. We're now on the record. The time is now 10:12 a.m. on May 9th, 2025. This is the deposition of John Reece Walmsley. My name is Austin King, notary public and digital reporter on behalf of Veritext Legal Solutions in the State of Georgia. I'll be capturing the verbatim record of today's proceeding using electronic audio equipment, a computer, and specialized recording software which is not a form of stenography. The witness is currently located at Veritext Legal Solutions in Augusta and has positively identified himself to me by way of driver's license.

Absent any objection at this time, counsel and witness agree to my administration of the oath and that the final transcript may be used for all purposes allowed by the local rules of civil procedure. Hearing no objections, this shall constitute agreement and stipulation as such.

Counsel, will you please identify yourselves and whom you represent, after which I will swear in the witness?

MS. WRENN: I'm Catherine Wrenn. I represent Wumag.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 6

MR. OSBORNE III: I'm Robert Osborne. I represent Wumag as well. Sometimes we identify it as Wumag 2. It's a successor entity.
MS. WRENN: Jay?
MR. PARKER JR: This is Jay Parker. I represent the Plaintiffs, Barry Lanham and Obvia Lanham.
THE REPORTER: Sir, could you please raise your right hand? Do you solemnly swear or affirm under penalty of perjury that the testimony you give shall be the truth, whole truth, and nothing but the truth?
THE WITNESS: I do.
JOHN REECE WALMSLEY, called as a witness, was examined and testified as follows:
THE REPORTER: Thank you. Counsel, you may proceed.
MS. WRENN: Okay.
DIRECT EXAMINATION
BY MS. WRENN:
Q Good morning again. My name is Catherine Wrenn, and I'm an attorney with Baker, Donelson. We represent Wumag in a lawsuit that Mr. Lanham and his wife had filed. And I'm going to be asking you some questions today about their lawsuit and specifically about the

Page 7

accident that Mr. Lanham was involved in at Bondex in 2018.
If any of my questions are unclear, please let me know, and I'll be happy to rephrase or repeat or ask the question in a different way for you. And if you need a break for any reason, just let us know that. And if you can remember to give verbal answers as opposed to only nodding your head --
A Yes.
Q -- up and down.
A I do want to interfere.
Q That'll help the court reporter get an accurate reflection of what your answers are.
A Yes.
Q And then as the court reporter told you before the deposition started, we just need to be careful not to talk over each other. So if you'll let me answer -- ask my question first before you answer, and I'll try to let you fully respond before I ask you another question. And if you have any questions during the deposition, please direct the question to whoever is asking it to you.
A Okay.
Q All right. Have you ever been through a deposition like this before?
A Never.

Page 8

Q Okay. Have you ever testified in court or at a trial or any kind of hearing before?
A Never.
Q All right. So do you understand that you currently are under oath, and that means you're sworn to tell the truth and that your testimony could be used in the trial in this case?
A Absolutely.
Q Are you currently taking any medications that would interfere with your memory or your ability to testify today?
A No.
Q Prior to this deposition, did you speak with an attorney to prepare for today?
A No.
Q Did you review any kind of documents to prepare for the deposition today?
A No.
Q All right. Where were you born, Mr. Walmsley?
A Blackburn in England.
Q Do you have any relatives over the age of 18 who live in Edgefield County, South Carolina?
A No.
Q And what is your present address?
A 711 Talon Court in Evans, Georgia.

Page 9

Q How long have you lived at that address?
A Ten years.
Q Have you ever lived in Edgewood County, South Carolina?
A No.
Q All right. Did you graduate from high school in England?
A Yes.
Q And what is your post-high school education? College, grad school?
A I have an MBA.
Q And where is that from?
A Huddersfield University, England.
Q And as we talked about, I have lived there.
Other than an MBA, do you hold any other degrees?
A I have a postgraduate diploma in management studies and a certificate in management studies.
Q And are those from colleges or grad schools in England?
A Yes, Lancaster University was the -- the DMS, the diploma in management studies, and similar with the certificate in management studies.
Q Okay. And when you're talking about management studies, are those essentially business degrees?
A Yes, business.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 10

Q Okay. Do you hold any kind of certifications?
A No.
Q All right. I understand at some point you worked for Bondex --
A Yes.
Q -- correct? When did you work for Bondex?
A I worked for Bondex from 2015, and I want to say till February 2020.
Q Where did you work before Bondex?
A I worked for Andrew Industries in England.
Q And are they associated with Bondex --
A They are the --
Q -- the parent company?
A -- owner --
Q Okay.
A They are the owner of Bondex, yes.
Q How long did you work for Andrews Industries in England?
A Let me see. So 2009 until 2015.
Q Okay. And then did Andrews Industries ask you to move to the US to work with Bondex?
A Yes.
Q Okay. What was your role at Andrews Industries?
A I had two roles. I had manufacturing manager

Page 11

and technical manager.
Q And what was your job title at Bondex?
A It was spunlace -- started as spunlace project manager. And then I got promoted to vice president, technical services.
Q All right. So as the spunlace project manager, what were your job duties?
A It was to facilitate the installation of a $9 million spunlace machine and also the associated equipment, heat setter, (inaudible 00:07:08).
Q So when you moved over to work for Bondex, was Bondex starting a new part of its plant?
A It was, yes.
Q And that was the spunlace --
A Yes.
Q -- operations?
A Correct.
Q Okay. So when did the spunlace operations kind of kick-start at Bondex?
A Round about 2016.
Q So we talked about how you were in charge of kind of the installation of all the spunlace machinery. Did that include the Wumag heat-setting --
A It did.
Q -- laminating calender machine?

Page 12

A It did, yes.
Q Okay. Were you involved in the process of buying the machinery?
A I was.
Q When you worked at Andrew -- and is it Andrews or Andrew?
A Andrew.
Q Andrew?
A Yes.
Q Sorry. So when you were working at Andrew Industries and you were a manufacturing manager or the technical manager there, were you involved at all with machinery?
A Yes.
Q Okay. And what kind of involvement did you have?
A I was involved in the design and purchase of several different types of machinery --
Q And --
A -- including Wumag.
Q Okay. And what kind of Wumag machines did you help design and purchase for Andrew Industries?
A There were -- for Andrew Industries, there were three heat-set laminators.
Q And were those heat-set laminators similar to

Page 13

the one we're talking about today?
A No.
Q How --
A But it -- it depends how you define "similar."
Q Okay.
A It -- it was still a laminating machine, but the -- the three which -- which we designed with Andrew Industries had a different high-temperature roller in them. But the one at Bondex does not have that.
Q Okay. Other than not having the high-temperature roller, were they --
A Very, very --
Q -- similar?
A -- similar. Yeah, very --
Q Okay.
A -- very similar.
Q And in terms of the safety of machines, were they similar?
A They -- the three in -- the three that are designed with Andrew Industries, they were the same, exactly identical machines.
Q To each other?
A To each other.
Q Okay. With regard to the one at Bondex, did it have similar safety features to the ones that you had at

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 14

Andrew Industries?
A No, there were additional safety features on the one in America.
Q Okay. Do you recall what the additional safety features were for the one Bondex had?
A It was the light curtain on entry to the -- what we call the nip, where the two rollers meet.
Q Okay. So the heat-setting laminators at Andrew Industries did not have the light curtain at the nip; is that correct?
A Correct.
Q Okay. So I understand that you helped with the design and purchase of the heat-setting laminators for Andrew Industries. When you got to Bondex, did you work with Wumag to design and purchase the heat-setting laminator?
A Yes.
Q How long have you worked in the manufacturing setting?
A 39 years.
Q So pretty much your entire career?
A All -- all in the same industry.
Q Okay.
A Technical textiles.
Q So I want to talk a little bit more about the -

Page 15

- your design input into the laminating machines. How were you involved with the design of these Wumag machines?
A So typically, we would get the sales director over to England. And then we would sit in the boardroom, and we would discuss our needs in terms of temperatures, speeds, accessibility, wind up, off wind. And it was -- it was all a combination of talking to the sales director and talking with us, what we need, and then he delivered what we needed.
Q So are these machines kind of customer-specific?
A They are, yes.
Q Okay.
A Yes.
Q So in other words, you're not purchasing a stock laminating machine?
A Absolutely not.
Q Okay. So you're talking about what needs your company has, and then you work with Wumag to design a machine that meets those needs?
A Yes, correct.
Q Okay. All right. So it sounds like you left Bondex in around February 2020?
A Yeah. And I -- yeah. It was when COVID sort

Page 16

of happened, but I don't know whether that was '19 or '20, I'm sorry.
Q It was definitely 2020.
A Right. Well, it was 2020 then, yeah.
Q All right. So when you left Bondex, where did you go?
A I then went to Sandler Nonwovens in Warner Robins, Georgia.
Q Is that where you're still working?
A No, no.
Q Okay. Where do you work now?
A I now work for Southern Felt Company in Edgefield County.
Q And does Southern Felt -- are they also in the nonwovens --
A Yes.
Q -- industry?
Does Southern Felt have any heat-setting laminating machines?
A They do.
Q Did Sandler Nonwovens have any heat-setting laminating machines?
A They had some heat-setting, but not laminating.
Q With regard to the heat-setting laminating machine at Southern Felt Company, is it similar in design

Page 17

to the one that Bondex had?
A Very, very similar.
Q What kind of safety mechanisms does the machine for Southern Felt have?
A It will have a pull wire. Emergency stop.
Q Does it have a light curtain?
A No.
Q Does it have any kind of safety features with regard to the nip point?
A I would have to say I don't know on the nip point.
Q Is it fair to say that you have, in your career, worked with a number of heat-setting laminating machines?
A Absolutely.
Q Okay. Do most of the machines have any kind of safety feature at the nip point?
A Not all because they rely on either. They do have a light barrier, so -- but not a light barrier. It's just a red dot going against the reflector. Some have, some don't, and some rely on a pull wire. So it's -- it's an either-or situation.
Q Okay. And based on your experience, is either one sufficient for a safety purpose?
A Yes.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 18

Q Okay. And the Wumag machine at Bondex, did it have the safety pull wire?
A It did.
Q And then when it came to Bondex, did it have a working light curtain at the nip point?
A Not -- not at the nip point, but it did have a light curtain. But it was not -- it was working, but it was not as per design.
Q Okay. Tell me about that.
A So when I sat with the engineer in Dusseldorf, I said, "We cannot have a light curtain because we have a media that goes in through that point." So you cannot have a full light curtain with -- with -- with respect that -- to have a pull wire is fine because it can go over or under a pull wire. But when you have a full light curtain, that's blocking out all access to the media, which -- which defeats the point of a laminator. You have to have the media feeding in.
Q Okay. And so when the machine arrived at Bondex, was there an issue with the light curtain?
A There was, yes.
Q Okay. And is that because it was --
A It was blocking --
Q -- triggering --
A Yeah.

Page 19

Q -- anytime you would feed in the fabric?
A It was triggering the light curtains, so the machine was unusable.
Q Okay. So when the light curtain was triggered, does that mean the machine was shut down?
A Yes.
Q Okay. So at that point, did Bondex disable the light curtain?
A The light curtain was disabled, and we put a pull wire in -- in -- in place of that because that's what we have on all our other calenders.
Q Okay. And how many other calenders did Bondex have in 2018?
A At the time, they had two. They now have four.
Q Okay. And at least the last time that you were there, all of those calender machines had the emergency pull wire?
A Yes.
Q Okay. Did any of them have the light curtain?
A One of them did have -- not a curtain but again, you know, the light -- photocell light, one of them did have.
Q Okay. So walk me through how the emergency pull wire works.
A Well, the emergency pull wire shuts off all

Page 20

power to the machine. It automatically opens the nip, and it automatically shuts off the heat. And also the pull wire automatically -- at the end where it's winding up because you have a nip point, it automatically lifts the arm. So whenever an emergency stop happens, that's what happens. The -- the arm lifts at the back end where it's winding up, the temperature goes -- the heat stops, and the nip automatically opens.
Q Okay. And so in your opinion, having the emergency pull wire is sufficient from a safety standpoint; is --
A Yes.
Q -- that fair to say?
Okay. All right. In January of 2018, what was your job title at Bondex? Were you the spunlace --
A I was --
Q -- project manager?
A I was vice president there.
Q Vice president of technical services?
A Yes.
Q Okay. And as vice president of technical services, did your job responsibilities change or shift at all?
A Not really, no.
Q Okay.

Page 21

A I was still in -- in charge of the machinery and -- and design and engineering of products.
Q And as the vice president of technical services in charge of spunlace, would you have ever allowed your employees to work on a machine that you felt like was unsafe?
A Never.
Q In January of 2018, do you recall about how many employees worked at Bondex?
A Maybe around 40, something like that.
Q And how many of those --
A That would be a guess.
Q Okay. And how many of those employees were in the spunlace department?
A Around about five.
Q And Mr. Lanham worked in the spunlace department --
A He did.
Q -- is that correct?
A Yes.
Q Okay.
A And I'm sorry if I'm vague, but it's seven years ago. It's --
Q Totally understand.
A Yeah.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 22

Q And I meant to tell you, I understand that it was seven years ago. So if I'm asking you something and you don't recall the answer, it's fine just to tell me you don't recall.
A Okay. Yeah.
Q So in some discovery responses in this case, Mr. Lanham enlisted a few different individuals who worked at Bondex. And one of those was Kevin Fields (phonetic).
A Yes.
Q Do you remember Kevin?
A Yes.
Q What was his role there?
A Kevin was spunlace operations manager.
Q So what did that mean that he did?
A He was in charge of production.
Q Okay.
A So when the orders came in, he made sure that they went through in a timely fashion --
Q Okay.
A -- from start to finish.
Q Was he Mr. Lanham's supervisor?
A He was.
Q Do you know where Kevin is now or he works --
A Still --

Page 23

Q -- now?
A -- at Bondex.
Q Okay. All right. And who is Donald Shealy?
A So Donald Shealy was, like, what we would call a floater. So he would help out wherever needed, whether that be the card, the laminator, packaging, QC.
THE REPORTER: That's "floater"?
THE WITNESS: We call it floater, yeah, a floating position.
BY MS. WRENN:
Q Okay. Do you know where Donald works now?
A Unfortunately, he passed.
Q He passed away?
A (No verbal response.)
Q And then is Harry Walmsley your son?
A He is, yes.
Q Okay. And was he working in the spunlace department in January of 2018?
A He was.
Q Okay. And what was his role?
A He was a production operator.
Q And as the production operator, would he operate the machinery?
A Yes.
Q Did he ever operate the Wumag --

Page 24

A Yes.
Q -- calender machine?
Did anyone else work in the spunlace department that you can remember?
A At that time, we may have had one or two, but I don't recall. I'm sorry.
Q That's okay. So in terms of --
A It was a very small department back then.
Q Okay. And so in terms of people who were actually operating the machinery, would that have been Donald, Harry, and Mr. Lanham?
A Correct.
Q Okay. Did you ever operate the machinery?
A Yes.
Q Did you ever operate the Wumag machine?
A Yes.
Q Did you ever clean the rollers --
A Yes.
Q -- of the Wumag machine? Other than you and Mr. Lanham, who else would have cleaned the Wumag rollers?
A Harry, Kevin.
Q Did you know Mr. Lanham prior to him working at Bondex?
A No.

Page 25

Q What was Mr. Lanham's role at Bondex? Was he also a production operator?
A Yes, but more on the QC and heat setter side, not on the spunlace side.
Q What did he do on the spunlace side?
A He didn't do -- he didn't do much on the spunlace -- the spunlace was a department, but then that -- that consists of a card, a spunlace line, and then you have heat-setting, you have QC. That's a full department. But really, Barry only concentrated on the QC and the heat-setting --
Q Okay.
A -- laminating.
Q Would he have been pretty familiar with the Wumag machine --
A Oh, yes.
Q -- in January 2018?
A Yes.
Q Okay. And that's because he operated it and he had cleaned it before?
A Yes.
Q Okay. How often was the Wumag machine cleaned?
A Almost daily, sometimes twice daily if we were running an extended shift.
Q Okay. And would all cleaning involve cleaning

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 26

the rollers, or was that a --
A Yes. Always the rollers, yes.
Q Okay. So is it fair to say that the rollers were cleaned almost daily?
A Yes.
Q And they would have been cleaned almost daily by either Harry, Kevin, or Mr. Lanham?
A Yes.
Q Okay.
A I would -- I would like to add that when it's in laminating mode, they're cleaned daily. If it was just in heat-setting, then they didn't need cleaning daily.
Q Okay. How often was the machine in laminating mode?
A Maybe -- it came in sort of bouts, but maybe we could be laminating for two full straight weeks. And then maybe -- the next week, maybe two days.
Q Okay.
A Yeah.
Q Okay. So it could be two days; it could be two weeks? Very --
A It was sporadic, yes.
Q -- sporadic?
A Yes.

Page 27

Q Okay. But it sounds like over, let's say, a year period before Mr. Lanham's accident, the machine would have been cleaned quite frequently?
A Yes.
Q Okay. And when it was in laminating mode, that would include cleaning the rollers?
A Yes, it would.
Q Okay. Prior to Mr. Lanham's accident, had anyone ever been injured while cleaning the Wumag rollers before?
A No.
Q And I know you said that you had personally cleaned the rollers --
A Yes.
Q -- before. And while you had personally cleaned the rollers, did you have any kind of safety concerns?
A No.
Q Can you walk me through the procedure that you used to clean the rollers of the Wumag machine?
A Yes. So typically when -- when it was due for cleaning, we would lower the temperature to 50 degrees centigrade. And then we would put the rollers in a mode where they were coming towards you. So there was a mode where the bowls were open so that there was no nip as

Page 28

such, and bowls were coming towards you. So even if you went near the nip, it would push you away.
Q Okay. And when you talk about the bowls, is that (inaudible 00:26:15) --
A Sorry, roller.
Q -- the rollers?
A Rollers. Sorry.
Q Okay. And then when you talk about the nip, is that the space between the top and the bottom --
A Correct.
Q -- roller?
A Yes.
Q Okay. So if I'm hearing you correctly, when you would clean the rollers for the machine, you would make sure that it was in a lower temperature of 50 degrees Celsius?
A Absolutely, yes.
Q And then you would put the machine into the mode where there was some separation between the top and the bottom --
A Yes.
Q -- roller, and the rollers were also going to rotate toward you --
A Yes.
Q -- as opposed to toward the inside of the

Page 29

machine?
A Yes.
Q And do you recall what mode number that was?
A I don't recall. I'm sorry.
Q Okay.
THE REPORTER: Just try to let her finish.
BY MS. WRENN:
Q All right. So once you had put the machine into that mode where the rollers are rolling toward you, what would you then do?
A Once the temperature reached 50 degrees centigrade, then we would spray oven cleaner, just straight-from-the-supermarket oven cleaner because the sodium hydroxide in the oven cleaner breaks down the polymer to clean the roller. So we would spray it with the roller, and then we would wipe with abrasive scouring pads, the green scour pad. And then that would get into -- all the polymer would come off. And then once all the polymer were off, then we would put floor wax. And that would bring the roller back to a shine, a polish.
Q Okay. And when you are wiping rollers with the pads, are the rollers rotating at that point?
A They are.
Q And in what direction are they rotating?
A Towards you.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 30

Q Okay. And you said earlier that prior to Mr. Lanham's accident, any time these machine -- this machine's rollers had been cleaned, no one had ever been injured?
A Correct.
Q And at no point prior to Mr. Lanham's accident, did you have a personal concern about safety of cleaning the rollers in the process that you mentioned?
A Never.
Q And when you had worked at other companies with laminating calender machines like this, did those companies use a similar process to clean the rollers?
A Yes.
Q Okay. And that similar process included having the rollers rotate toward you during cleaning?
A That's correct.
Q And at any of your prior jobs where calender machine rollers had been cleaned using this process, had anyone been injured during that process?
A Never.
Q And in your 39 years of working in this industry, has anyone ever been injured cleaning rollers like Mr. Lanham has?
A No, to my knowledge.
Q What is your understanding of how Mr. Lanham's

Page 31

accident happened?
A My understanding is that he had the machine in the wrong mode. He had the bowls -- the rollers turning towards the nip.
Q And when you say "the rollers turning towards the nip," is that kind of layman's terms? That's the rollers turning toward the inside of the machine?
A Correct, yes.
Q Okay.
A Into the center.
Q Okay. And is there a safety concern with cleaning the rollers in that type of a mode?
A There is.
Q Can you tell me about that?
A Because the -- the roller, if -- if the rag gets caught or anything, then you're going towards the nip. And you should never -- never have any access with your hands when it's going towards the nip. It should always come away from nip.
Q And why do you not want your hands to be going towards the nip?
A Because your -- your arm would go through that nip.
Q And it could get caught in the --
A Yes.

Page 32

Q -- nip point?
And is it your understanding that's what happened with Mr. Lanham?
THE WITNESS: I'm sorry. (inaudible 00:30:28) just stopped here.
THE REPORTER: Can we --
MS. WRENN: Yes.
THE REPORTER: We got to go off the record.
(OFF THE RECORD)
THE REPORTER: We're back on the record at 10:51 a.m.
BY MS. WRENN:
Q All right. So before we went off the record, we were talking about your understanding of how Mr. Lanham's accident happened. And you said that -- and you can correct me if I'm wrong, but your understanding is that he had the rollers rotating in the wrong mode?
A Correct.
Q Okay. And by that, you meant the rollers were rotating inward toward the inside of the machine as opposed to outward toward the operator?
A Yes.
Q Okay. What kind of training did the employees at Bondex have about how to clean the rollers?

Page 33

A They was all shown how to clean the rollers. They all witnessed how to clean the rollers. Typically, you would never usually have one person cleaning the roller because we want to get the rollers clean and get the machine running as quick as possible. So typically, you would have two people cleaning rollers. On that particular time, it was just Barry.
Q Okay. So typically, you would have two people cleaning the rollers at one time?
A Correct.
Q Okay. And then on the day that Mr. Lanham was injured, it was just him cleaning the rollers?
A Yes.
Q Was there any reason for just having him that day? Was it short staffing, or?
A I don't -- I don't recall.
Q Okay. Had there been other instances where just one person had cleaned the rollers?
A Maybe.
Q Okay. So with regard to training, it sounds like the training was in-person watching someone clean the rollers, and that's how someone like Mr. Lanham would have learned what to do?
A Yes.
Q Okay. Do you know who would have done that

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 34

training?
A I don't.
Q Okay.
A Maybe me, maybe Kevin, maybe a combination because it was -- it was during and people with you are learning how to clean it, so.
Q So it's a hands-on training?
A It was a hands-on, yeah.
Q Okay.
A I'm sorry. That's the best answer I can give to that one.
Q That's okay. I know it's been a long time anyway.
All right. I want to hand you what has been marked as Exhibit Number 1.
(EXHIBIT 1 MARKED FOR IDENTIFICATION)
A Yes.
MS. WRENN: And just for the record, this is Bondex subpoena response 3078 through 3080.
BY MS. WRENN:
Q All right. Exhibit --
MR. PARKER JR: Can you tell me in more detail what that is?
MS. WRENN: Yeah. It is a March 8th, 2018, letter from Willson Jones Carter & Baxley.

Page 35

BY MS. WRENN:
Q All right. So Mr. Walmsley, this is a letter from Bondex's attorney about Mr. Lanham's accident. Have you ever seen this before?
A No.
Q Okay. So I want to look specifically at the 2nd page of the letter. And there's a long paragraph in the middle right here --
A Yes.
Q -- where it talks about the Bondex investigation into Mr. Lanham's accident. Were you involved at all in the investigation?
A I don't think I was.
Q Okay. Did anyone ask you any questions about --
A Yes.
Q -- the accident?
A Yes.
Q Okay. So according to this letter, it says, "The initial investigation of the accident revealed Claimant told his immediate supervisor, Kevin Fields, that he was operating the machine in the wrong mode when Mr. Fields visited Claimant in the hospital a few days after the accident. Specifically, Claimant stated he switched the machine from mode 3, the cool-down cleaning

Page 36

mode to mode 1, which is the operational mode." Is that consistent with your understanding of what happened that day?
A It is, yes.
Q Okay. And earlier when you talked about the different modes, was mode 3 the mode where the roller is rotating toward the operator?
A It is now because this refreshed my memory.
Q Okay. And for mode 1, is that a mode where the rollers are rotating toward the inside of the machine?
A Yes.
Q Okay. All right. The letter then states that "We have learned the machine has three modes. Modes 1 and 2 are the operational modes which heat up the cylinder rolls. In order to clean the cylinders, or bowls, the machine is switched to mode 3 to cool down, which also reverses the bowls in the opposite direction to prevent anything from being jerked into the bowls while they are being cleaned"; do you agree with that statement?
A I agree, yes.
Q Okay. And it says, "Apparently, Reece Walmsley switched the machine to mode 3 at 10:00 a.m. to cool down. After lunch, Reece walked by the machine, observed it had cooled, and told Donald Shealy to tell Claimant

Page 37

the machine was ready to be cleaned"; do you remember that?
A Yes.
Q And is that a correct statement?
A That is a correct statement.
Q Okay. So when you switch the machine to mode 3, is that when the rollers would be rotating toward the inside of the machine?
A No, toward -- mode 3 is cleaning mode, so it will be --
Q Sorry. Correct. So the rollers are rotating toward the operator --
A Correct.
Q -- away from the inside of the machine?
Okay. So it sounds like -- did you personally turn the machine to mode 3 then --
A Yes.
Q -- that morning? Okay.
A Yes.
Q And was that in preparation for cleaning?
A Yes.
Q Okay. And after lunch, when you walked by the machine, was the machine still running in mode 3?
A It was.
Q Okay. All right. I'm going to hand you what's

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 38

marked as Exhibit Number 2.
(EXHIBIT 2 MARKED FOR IDENTIFICATION)
A We finished with this one?
Q For right now.
A Oh, okay.
Q I'll get back to it in just a second.
MS. WRENN: So for the record, Exhibit Number 2 is Bondex Subpoena Response 2114 through 2116.
BY MS. WRENN:
Q This is a document that was provided by Bondex, which appears to show the direction of the rollers in each of the modes, 1 through 3. For mode 1, it appears to show that the top roller and the bottom roller are rotating toward the inside of the machine; is that correct?
A That's correct.
Q Okay. Should this mode be used for cleaning the rollers?
A Never.
Q And why is that?
A Because you're -- the rollers are taking you towards the nip point.
Q So if something got caught, it would go inside toward the nip point?

Page 39

A Yes, correct.
Q Okay. And for mode 2, it appears to show the rollers rotating outside --
A Yes.
Q -- is that correct?
A Yes, that's correct.
Q Okay. And should this mode be used for cleaning the rollers?
A Not -- it could be --
Q Okay.
A -- but not necessarily because -- it could be.
Q Okay. And is that because the rollers are rotating toward the operator and away from the nip point?
A Correct, yes.
Q Okay. And then for mode 3, it shows the rollers rotating in the same direction as 2 --
A Yes.
Q -- away from the nip point?
A Yes.
Q And in your opinion, mode 3 is the correct one to use when cleaning the rollers?
A Absolutely.
Q Okay. Is there a difference between mode 2 and 3 in terms of heat or anything else?
A I don't recall.

Page 40

Q Okay. Do you know how Bondex made the decision to use mode 3 for cleaning?
A If I recall this correctly, mode 3 would not enable the nip to close. That's why I was hesitant to say mode 2 because even though the rollers are coming towards you, the nip could close.
Q Okay. So it would be safer in cleaning the rollers to have it in a mode where the nip could not close on something caught in between --
A Yes.
Q -- the two rollers? In mode 1, can the nip close?
A Yes.
Q Okay. Was it possible to clean the rollers while they were not moving when the machine was turned off?
A No, not effectively enough.
Q And why is that?
A Because you only have access to a certain amount of the roller.
Q Okay. So could you, I guess, clean the part of the roller that you had access to, then turn the machine on to get to a different part of the roller?
A Yes.
Q So it would just take longer?

Page 41

A It would take far longer, yes.
Q Okay. So having the machine turned on and the rollers rotating was just a more efficient way to clean?
A Correct.
Q A faster way to do it?
A Yes.
Q Okay. Does the machine automatically turn off after a certain amount of time in operation, or does someone have to physically turn it off?
A Someone has to physically turn it off.
Q All right. I want to look back at the letter you were looking at before, which is Exhibit Number 1. And back to that same --
A Yeah.
Q -- paragraph that you were looking at. And it says that "The Claimant," who's Mr. Lanham, "had been working with Harry Walmsley on needle boards when Donnie told Claimant to clean the machine. Donnie walked away to use the restroom. Reece, Kevin, and Harry Walmsley were working on other machines on the needle board."
A That --
Q How far --
A That's incorrect.
Q Incorrect. Okay. How is that incorrect?
A Because I was actually in a meeting in an

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 42

office.
Q Okay. So were you on the floor at the time when Mr. Lanham was cleaning the machine?
A I was not.
Q Okay. How far away was the Wumag calender machine from the needle board and other machines?
A Maybe 20 yards.
Q Okay. The letter goes on to say that "Kevin heard Claimant screaming and ran towards Claimant, but they could not get the bowls to lift enough to extract Claimant's left arm. Apparently, no one looked to check the mode when they responded to the scene." Did you ever personally go over to the machine after the accident?
A Yes.
Q Can you describe what you remember seeing?
A When I -- so Kevin came running to me in my office and said, "Barry's stuck in the machine. You need to come. You need to come quickly." So I ran out to the machine, and then I saw Barry with his left arm -- with his left arm stuck in the machine.
Q Okay. Was the machine still running at that point?
A The machine was stopped.
Q Do you know who had stopped the machine?
A From what I was told by Kevin Fields, Barry had

Page 43

stopped the machine by pulling the cord.
Q And is that the emergency pull cord --
A It is.
Q -- that we talked --
A Yes.
Q -- about earlier?
A Yes.
Q Where is the emergency pull cord located on that machine?
A It's -- it's probably at about, I would say, neck height. Well, no. Probably neck height, maybe -- or chest height.
Q Is it at the rollers?
A It's before the rollers.
Q Okay.
A Yeah, it's probably about maybe 18 -- 18 inch, 24 inch before the rollers.
Q So someone who is cleaning the rollers is able to pull the emergency cord machine --
A Yes.
Q -- the cord if they need to?
A Yes.
Q Okay. So it's your understanding that Barry was able to -- did pull the emergency cord himself?
A It's my understanding because Kevin told me

Page 44

that he didn't -- Kevin did not stop the machine.
Q Okay.
A And when -- and when he got to it, the machine was stopped.
Q Okay. Did someone later check the mode to see what mode it had been operating in at the time of the accident?
A I personally didn't.
Q Do you know if anyone else did?
A I don't know.
Q Okay. All right. So the letter goes on to say that "Claimant had cleaned the machine several times before." And that's consistent with what you testified earlier, right?
A Yes. Yes.
Q Okay. And that "he was an excellent employee. And the interviews of fellow coworkers revealed a general consensus that this was a freak accident and the machine did not malfunction." Do you agree that this was an accident and the machine did not malfunction?
A I agree.
Q Do you believe anybody was at fault for causing the accident?
A In my opinion?
Q Yes, sir.

Page 45

A Because of what Barry told me, he had the machine in the wrong direction. He spent probably the first ten minutes apologizing to me, saying, "Reece, I effed up. Reece, I effed up." And I said, "Barry, let's just get you out of this machine. Let's -- let's not worry about that yet." Because I mean, I could see that his arm was fully degloved. I didn't want to enter into that conversation. And then he put pressure on me because he said, "Reece, you're the smart guy. Get me out of this machine," which was a lot of pressure on me.
Q Right.
A And then my son was comforting Barry because my son was very close to Barry because he was a really good employee and a good friend, trying to comfort Barry while we were trying to figure out how to extract him from the machine.
Q So it sounds like after you arrived on the scene when Mr. Lanham's arm was still in it, Mr. Lanham told you that he had messed up --
A Yeah.
Q -- and the machine was in the wrong mode?
A Yes.
Q Okay. Do you believe that the accident could have been prevented if it was in mode 3?
A Absolutely.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 46

Q All right. The letter goes on to say that "There have been no issues with this machine in the past." Is that a correct statement with regard to the safety of this machine?
A In regards to the safety, yes.
Q Okay. And I saw in the OSHA report that prior to Mr. Lanham's accident, there have been no other accidents or injuries on this particular machine; is that --
A That's correct.
Q Okay. All right. If you look on page 1 of this letter, there's a bolded paragraph at the bottom that talks about having an inspection done of the machine. And then the top of the next page says, "Unfortunately, I do not believe the inspection will be fruitful for any of us as the Claimant indicates it was operator error, and he did not have the machine in cleaning mode but set in operating mode." And it sounds like that's consistent with what Mr. Lanham told you?
A That's correct.
Q Okay. All right. And then looking back down at the 2nd paragraph, it says, "It's my understanding the insured, Bondex, plans to offer the Claimant a position to return to work once he fully recovers and is fitted with a prosthetic device." Do you know if Bondex ever

Page 47

offered Mr. Lanham a job after the accident?
A I don't recall. I know that there was never an indication that we would ever terminate him. It was always, "Let's just get him, you know, to a position." And if he would want to come back, then surely, you know, he could come back.
Q Okay. So I know that you spoke with Mr. Lanham right after the accident when his arm was still in the machine. Did you ever speak with him again after that?
A Yes.
Q Okay. Did he tell you anything differently about how the accident had happened?
A I -- I visited him in the hospital, and he stated again and apologized to me because he had -- he did have a lot of respect for me. And he said, "Reece, I'm -- I'm sorry. I'm sorry."
Q All right. I'm going to hand you what's marked as Exhibit Number 3.
(EXHIBIT 3 MARKED FOR IDENTIFICATION)
MS. WRENN: And this is, for the record, Bondex email response 2344 -- or I'm sorry, 2343 to 2344.
BY MS. WRENN:
Q So I may have put the sticker on the wrong side, sorry. I know I had it right for you.

Page 48

A Right. So 2343 --
Q To 2344.
A 44. Yes. Okay.
Q Yes. Okay. This is a January 29th, 2018, accident investigation report by Bondex. And it looks like it's signed by the president, Steve Fransoso, and the controller, Mark Wetherell?
A Yes.
Q Were you involved at all in looking at a draft or helping to work on this letter?
A No.
Q Okay. All right. If you look at the 2nd page of the letter, there's a paragraph that talks about what you had explained. And it says that you explained that you placed the Wumag heat setter in the heating and cooling mode, anticipating a cleaning of the Wumag bowls. This took place approximately mid-morning around 10:00 a.m. or so.
"Reece notified Kevin Fields that the bowls would need to be cleaned. Kevin then notified both Donnie and Barry. After lunch, Reece noticed the blue line could cool down to the appropriate temperature and instructed Donnie to proceed. In turn, Donnie instructed Barry to proceed with the cleaning. The accident occurred approximately 1:50 p.m. It was determined that the heat

Page 49

setter was in mode 1 and that Barry must have made a change from mode 1 to mode 3." Is that consistent with your understanding?
A Yes.
Q Okay. Did Mr. Lanham ever tell you why he changed the mode?
A He didn't.
Q Okay. All right. And then the last paragraph says, "The staff further discussed corrective action plans, and it was suggested and agreed that a checklist should be implemented whereby the operations supervisor would review and check if the equipment is in the appropriate mode and review speed and temperature."
"Also, Reece suggested a password system be developed to place the Wumag in mode 1, eliminating operator error." At the time of Mr. Lanham's accident, was there any kind of a written checklist or procedure for employees with regard to cleaning?
A I don't recall.
Q Okay. After Mr. Lanham's accident, do you know if any changes were made to the machine itself with regard to safety?
A No.
Q So no changes were made --
A No.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 50

Q -- after this accident?
Okay. And I believe earlier you said, you believe it was safe to clean the rollers when the machine was in mode 3 --
A Yes.
Q -- correct?
A Absolutely.
Q Did you speak with anyone at OSHA during its investigation of Mr. Lanham's accident?
A Yes.
Q I am going to hand you Exhibit Number 4.
(EXHIBIT 4 MARKED FOR IDENTIFICATION)
MS. WRENN: And this, for the record, is OSHA Bates numbers 11 through 13.
BY MS. WRENN:
Q And this is part of the official report about Mr. Lanham's accident. And there's a summary at the bottom down there.
A Okay.
Q And the summary has a description of the calender machine itself, including that the machine had a yellow shin roll -- I don't know if I'm saying that right -- light curtain?
A Where are you looking on that one?
Q Toward the middle. This down here.

Page 51

A All right. Yeah. I've got -- I've got it now. Yeah.
Q And I may be saying the name wrong, but --
A Yeah.
Q -- yellow light curtain --
A Okay.
Q -- with a transmitter and receiver bars mounted at the same height of the point operation. It was mounted between the operator and the point of operation. The light curtain was approximately 11 inches away from the point of operation. There was another light curtain mounted at the bottom section of the bottom roller. It was mounted between the operator and the bottom roller. So were those light curtains still on the machine at the time of the accident?
A They were.
Q Okay. But they had been disabled, correct?
A Yes.
Q Okay.
A And also the -- on the bottom one, because the bottom one was disabled, a -- a further trip -- pull wire was put at the bottom one.
THE REPORTER: A what trip wire?
MS. WRENN: (inaudible 0:53:21) --
THE WITNESS: An emergency pull cord.

Page 52

THE REPORTER: Don't expand it further. Trip wire. Yeah. And sorry, if I ask you to repeat something, like don't expand your answer. Just try to repeat exactly. Yeah.
THE WITNESS: Yeah, trip -- trip wire.
THE REPORTER: Oh, thank you.
MS. WRENN: Okay.
THE WITNESS: Sorry.
THE REPORTER: No worries. I should have told you before.
BY MS. WRENN:
Q Okay. So it sounds like at the time of the accident, there were two emergency pull cords?
A Yes.
Q So one was at the top roller and one was at the bottom roller?
A No.
Q Tell me where they were.
A They -- so the top one was into the entrance of the nip and then the bottom one was basically round about knee -- knee level, and it was just to stop anybody actually climbing into the machine.
Q Okay. And what was the purpose of the light curtain when it was active?
A The purpose of the light curtain was to stop

Page 53

the machine if anybody accessed that particular area through that barrier.
Q All right. And then the 3rd page of Exhibit Number 4 has a section that addresses light curtains.
A Yes.
Q And it says that the employer deactivated the light curtains because of the slack from the fabric kept setting off the light curtain. The employer provided machine guard training through the third-party vendor. Employee number 1, Mr. Lanham, received that training, the training covered conveyors. And is that -- it's essentially what you told me earlier that Bondex deactivated the light curtains because when the material was fed through --
A Yes.
Q -- it would be set off.
A Correct.
Q Okay. And it sounds like when the light curtains were deactivated, did Bondex add the -- an emergency pull cord?
A Yes.
Q Okay. And earlier, you said that based on your experience, 39 years in the industry, an emergency pull cord is sufficient for safety purposes.
A Yes.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 54

Q In other words, having an active light curtain is not a necessary safety component of this type of machine.
A Correct.
Q Okay. When Wumag delivered the machine, I take it the light curtains worked.
A Yes.
Q Okay. Okay, I'm going to hand you Exhibit Number 5.
(EXHIBIT 5 MARKED FOR IDENTIFICATION)
Q This is also part of the OSHA report, and it's Bates numbers OSHA 161 through 163. And it notes, at the very top, that Steve Fransoso, President, and Reese Walmsley, VP Technical Service, both stated that the Wumag calender machine had a light curtain at the point of operation between the upper and lower roller. They stated they deactivated the light roller because it was interfering with production. And that's correct, right?
A That's correct.
Q Okay. And then paragraph number 3, it says, "Mr. Walmsley stated that the European Union, they changed the design of the calender predecessor. This calender was equipped light sensor mounted at the point of operation. The position was that the sensor was too close to the point of operation where it would catch a

Page 55

worker's fingers. As a result, the manufacturer decided to use light curtains. The calender --" okay. So is that an accurate statement that this -- and that is what you said earlier, this particular machine had different light curtains --
A Yes.
Q -- to the ones that you've used at Andrew.
A Yes.
Q Okay. All right. It then says the calender -- in paragraph number 4, "The calender was placed in production," and someone has written down, "March 2017." Is that approximately when the calender went into operation?
A Probably. Yeah. I'd say late 2016, '17.
Q Okay. And then paragraph number 5 says, "The employers stated that the employees were not exposed to the hazard during normal operations. However, they knew that the employees would be exposed to the hazard. The employer evaluated the modes of operation for cleaning. There were three modes and decided that mode 3 was the safest mode to clean the rollers." And is that an accurate statement?
A It is, yes.
Q Okay. Do you recall when about Bondex deactivated the light curtain?

Page 56

A I don't recall.
Q Okay. If you look at the 3rd page, this might help with your recollection. I thought somewhere in here it said when the light curtain was deactivated. Let me find it. Okay. So if you look at paragraph number 1 --
A Yes.
Q -- it says the light curtain again was deactivated for interfering with production. And paragraph number 2 talks about how Mr. Lanham was cleaning the rollers. Number 3 says the employees were instructed to clean the unguarded rollers for approximately 10 months. Does it sound about right?
A Yes.
Q For about 10 months, you guys did not have the light curtain activated.
A Correct.
Q Okay. Do you know who at Bondex made the decision to deactivate the light curtain?
A It was a combination of -- of discussions between the president, myself, and the plant manager.
Q Who was the plant manager at that time?
A Charlie -- Charlie Waters.
Q Okay. And I take it you guys believed that the emergency pull cords were sufficient and the light curtains were not needed for safety purposes; is that

Page 57

fair?
A Based on experience and the amount of machinery that we have within the group, yes, that's -- that's a fair statement.
Q Okay. And earlier you said the vast majority of the machinery at Bondex did not have a light curtain for safety purposes.
A Correct.
Q Okay. How was the light curtain deactivated? Is there an on-off switch, or?
A It's within the electrical control panel. That's about as far as I -- my remit on that. I don't know.
Q Okay.
A I'm not an electrician.
Q So I take it you personally did not do the deactivation?
A No.
Q Okay. Did Bondex discuss deactivating the light curtain with Wumag?
A Absolutely.
Q Tell me about that.
A Again, it's very sketchy memory, but we had a lot of email traffic between the engineer at Wumag and myself at the time. Of course, this is seven years gone

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 58

by. I -- I haven't got access to those emails. But I'm sure Wumag have them.
Q Do you recall the substance of any kind of communications about deactivating the light curtain?
A Yes, because I -- I said that you -- you have delivered a machine that is not to the specification that was given to you. Unfortunately, the engineer was probably a very short tenure at Wumag, so we didn't have the historic data from the other engineers. But I wanted the machine delivering exactly like the other three machines that I had purchased.
Q So when you say the machine was not delivered per specifications, are you talking about with regard to the light curtain?
A Yes. I told him that the light curtain would not work because we have to have media transported in that area.
Q So for the design, did you want or not want the light curtain?
A I did not want light curtains.
Q Okay.
A That was specified from the get-go.
Q Okay. So when you say the machine's not delivering per specifications, that's because it had a light curtain and you did not want the light curtain.

Page 59

A It was not a usable machine with that light curtain.
Q Okay. For the design of the machine, did you only want the emergency pull cords?
A I didn't specify how Wumag would -- and I'm sorry I said Wumag. It's because it's German, and they don't pronounce the Ws. So that's why I said Wumag. But -- but Wumag would not -- they said that there was an EU regulation now, and it has to have a light curtain.
Q Okay.
A And the previous machines didn't come under that regulation at the time, even though they were still in existence and in operation.
Q Okay. So the machines delivered with light curtains that worked, but they interfered with production. So Bondex deactivated the light curtains and installed an emergency pull switch?
A Yes.
Q Okay. Okay. So I'm going to hand you Exhibit Number 6.
(EXHIBIT 6 MARKED FOR IDENTIFICATION)
Q And this is a document that has been produced by Wumag. And there's no Bates number, I apologize, but it's entitled Bondex Troubleshooting Schedule. Are you familiar with this document? I know, again, it's been a

Page 60

really long time.
A (inaudible 1:03:41), but it's a while ago, yes.
Q So there's a box, and the bottom box talks about the light curtain. And it says, "Sensitive Light Barriers 26.01.2017. The systems are protected by a light barrier so that no employee will be harmed. The last three plants also have a light barrier, but it is not as safe as the new state of the (inaudible 1:04:08). The customer now has problems because the light barrier reacts more sensitively." And that's what you were talking about earlier, right?
A But that's an incorrect statement --
Q Okay.
A -- because the other three do not have light barriers.
Q Okay.
A They have photocells.
Q Okay. And then it says, "At start, the machine two flaps are put together, and these are suspended. This causes a light barrier to trip. The customer had to change the process and cut the flaps before starting." Do you know what that's referring to?
A Yes.
Q What is that?
A Because it's such a lightweight media, any air

Page 61

current within the facility could, like, blow them in. It was very, very thin material. So that's what that is referring to.
Q And what are the flaps, the cutting the flaps before starting? Is that the material?
A That's the material.
Q Okay. It says, "If the customer wishes the old variant of the light barrier, Wumag does not assume any responsibility for the security." And is that talking about the light beams that you're --
A Yes -- no, that's -- that's talking about that Wumag said that they would not take the light barriers off.
Q Okay. Okay. So they -- did they essentially tell you that if you wanted to deactivate the light barriers, you'd have to do that yourself? They were not going to assume --
A They were not going to do that.
Q Okay. And was Bondex okay with that?
A Yes.
Q Okay.
A As I recall.
Q Okay. And did you guys understand they were not assuming responsibility for the disabling of the light barrier?

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 62

A Yes.
Q Okay. Did anybody at Bondex complain about the disabling of the light barrier or raise any safety concerns about it?
A No.
Q So I know you said that the rollers for the machine were cleaned fairly often.
A Yes.
Q And is that -- when the rollers were cleaned, were both the top and the bottom rollers always cleaned?
A Yes.
Q Okay.
A Let me retract that. Sometimes both.
Q Okay. Have the bottom roller ever been cleaned before Mr. Lanham's accident?
A Yes.
Q Okay. And is the procedure for cleaning the rollers the same regardless of whether one or both of the rollers are going to be cleaned?
A Yes.
Q All right. I'm going to show you Exhibit Number 7.
(EXHIBIT 7 MARKED FOR IDENTIFICATION)
Q And this is a March 6th, 2017, email from Henning Gugel -- I don't know how you pronounce that --

Page 63

to you. And Henning Gugel, or whatever his name is, he was a Wumag employee.
A Yes.
Q Are you familiar with Henning?
A Yes.
Q Okay. And this email at the very bottom, the second to last paragraph talks about any changes to the safety equipment or software. And he says, "I kindly have to inform you that any change of the safety equipment or software, the responsibility for the safe operation will go over to Bondex, Inc. Wumag will not be responsible for accidents caused by changed equipment. This also applies to the changed position in the light barrier." And is that a responsibility that Bondex accepted?
A Yes.
Q Okay. I'm going to hand you Exhibit Number 8.
(EXHIBIT 8 MARKED FOR IDENTIFICATION)
Q And this is Bondex Subpoena Response 2414 and 2104. And these are the cleaning procedure for the machine and also a checklist for cleaning. It's my understanding that these documents were created after Mr. Lanham's accident. Do you know if that's true?
A I would say yes because they have not -- I have not been involved in this.

Page 64

Q Okay.
A Because I stated earlier that the 60 -- it's 50 degrees. It's always 50 degrees. It's never 60.
Q Okay. Other than the 50 degrees as opposed to 60 degrees as stated on here --
A Yeah.
Q -- is this the cleaning procedure that should have been used for the Wumag machine?
A Yes, that's correct.
Q Okay. And is this the procedure that Mr. Lanham would have been given training to follow?
A Yes.
Q Okay. And in bullet point number 2, it says gap should be open. And is that the nip point opening that you talked about --
A Yes.
Q -- in mode 3 that would exist?
A Yes.
Q And is the gap open or can it be opened in mode 1?
A Yes.
Q Okay. Is there a difference between being able to open the gap in mode 1 vs. mode 3? Or is the gap larger in one mode vs. the other one?
A No, it's -- it's always a set distance. But

Page 65

again, I don't recall whether in mode 3 -- I think in mode 3 that it was not able to close. But in mode 1 and 2, it was able to close.
Q Okay. So the gap can always be open. It's just whether or not it can be closed --
A Yes.
Q -- in a mode vs. another mode?
And so in mode 3, that gap is not going to close. In other words, the nip point is not going to close?
A Yes.
Q Okay. Other than Mr. Lanham, are you aware of any other employee at Bondex ever being injured on the job?
A My son was injured.
Q Okay. Was he injured with a machine?
A Yes.
Q Can you tell me about that?
A He was very, very near to a QC inspection machine, and he had some -- a trailing cloth in his pocket. The cloth got caught, and then he went to grab the cloth, and he broke his arm.
Q Okay. Sorry to hear that. I hope he's okay.
A Yeah, he's okay now.
Q Okay. Mr. Lanham in his deposition testified about an employee who worked on the other side of the

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 66

plant who was injured in an accident similar to his. Do you have any knowledge of that?
A No.
Q Okay. I'm going to hand you Exhibit Number 9.
(EXHIBIT 9 MARKED FOR IDENTIFICATION)
A Thank you.
Q This is Bondex OSHA logs of work-related injuries and illnesses. And the first one is referring to Mr. Lanham's injury.
A Yes.
Q Can you see that?
A Yes.
Q And then if you flip to the page that has 2331 on the bottom?
A Yes.
Q It talks about your son Harry's accident --
A Yes.
Q -- and also someone named Charles Hamilton's accident. And then if you flip, let's see, to the page that has 2334 on the bottom.
A Yes.
Q This talks a little bit more about Charles Hamilton's accident. And on the side, it says that -- under number 15, it says, "What happened?" It says, "Employee was attempting to remove fiber from rollers on

Page 67

incline apron when his arm was pulled between the rollers and broken." Do you know anything about that?
A I don't know.
Q Okay. And I assume this was not in the spunlace department.
A No. So Bondex is on a split level. So that -- that would have been in the thermal bond operation, and I was in the spunlace operation.
Q Okay. Did Bondex have any other Wumag machines in this plant?
A Yes.
Q Okay.
A I don't know whether at the time of the injury.
Q Okay. Were any of the other machines laminating --
A Yes.
Q -- on your machines?
A Yes.
Q Were they just on the other part of the plant, or were they also in spunlace?
A No. So for information, the three original laminating machines that we have, one was in England, I installed one in India, and I installed one in China.
Q Okay.
A So then I went over to China to -- I

Page 68

commissioned the machine in China, and then I decommissioned the machine to bring back to the US.
Q Okay. So one of the machines -- so there were how many machines? Two of our machines at Bondex?
A At Bondex, yes.
Q Okay. And one of them was one that you'd brought with you from China?
A Yes.
Q Okay. And then one was the one that was shipped directly to Bondex from Wumag?
A Yes. Yes.
Q Okay. And so the one that came with you from China, it was also a laminating calender machine?
A Yes.
Q Were there any differences other than the light curtain?
A The high -- that had a high-temperature roll and -- and the light curtain difference, yes.
Q Okay. And it had two rollers and a nip point?
A Yes.
Q And did Bondex utilize the same cleaning procedure for the one that had come from China?
A We didn't specifically have a mode, but we always made sure that the operation, that it's coming towards you.

Page 69

Q Okay. So for the -- I'm just going to refer to it as the China one.
A Yeah.
Q So the China one, in cleaning those rollers, Bondex would always ensure that the rollers themselves were rotating toward the operator and away from the nip point.
A Correct.
Q And that same procedure was used for the machine in question here.
A Yes.
Q And in particular, for this machine, in order to have the rollers rotating toward the operator, mode 3 was used.
A Yes.
Q Okay. And had there been any injuries or accidents in cleaning the Chinese machine before?
A No.
Q Okay. And it sounds like from your testimony earlier that Bondex, in particular, you worked with Wumag on the specifics of the design of this machine.
A Yes.
Q Okay. And with regard to safety, Wumag insisted on the light curtains, and Bondex did not want the light curtains.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 70

A No.
Q Bondex instead wanted to have the emergency pull cords.
A Yes.
Q Any other safety aspects of the machine that were discussed or were implemented?
A Just during the design phase, Henning came back, and he -- he put a complete cage around the machine. And I -- and I said, "That is lazy engineering. You need to go back to the drawing board because we have to have access to the machine." And that's when he came back with the light curtains.
Q Okay. So it sounds like, ultimately, Wumag and Bondex never really agreed on the safety aspects of the machine.
A With that particular machine, no.
Q Okay. So it was a light curtain vs. pull cord?
A Yes.
Q And ultimately, Bondex decided to adopt the pull cord.
A Yes.
Q And did Bondex actually install those pull cords?
A Yes.
Q Okay. All right. Based on email

Page 71

communications, it looks like some Wumag technicians came over to Bondex at some point in time.
A Yes.
Q And it looks like that was around September 2016. Do you -- sitting here today, do you have a memory of when they came over?
A I don't.
Q Okay. Did they come over on multiple occasions?
A I think maybe twice.
Q Okay. When --
A Maybe three times.
Q Okay. When the Wumag technicians came over two or three times, did they ever make any changes to the safety aspects of this machine?
A No.
Q Okay. So when you left Bondex in early 2020, was the Wumag machine still in operation?
A It was.
Q Had there been any other accidents on that machine since Mr. Lanham's that you're aware of?
A No. That I'm aware of, no.
Q Right. And I'm just talking about when you were there --
A Oh, yes. Okay.

Page 72

Q -- from February of 2020.
A Yes.
Q I know you don't know since then. So in between Mr. Lanham's accident and your leaving, had there been any other accidents on this machine?
A No.
Q Did Bondex change the cleaning procedure for the rollers after Mr. Lanham's accident?
A No, because the procedure was the procedure. So they didn't change anything.
Q In your mind, the procedure worked, and it was safe --
A Yes.
Q -- if followed.
A Yes.
Q And the reason that Mr. Lanham's accident happened is because he did not follow the procedure.
A Correct.
Q Okay. And prior to Mr. Lanham's accident, did you believe the Wumag machine was safe to clean using this procedure?
A Yes.
Q Okay. And you would not have let your son clean this machine with that procedure if you believed it was unsafe in some way.

Page 73

A I would not let anybody clean the machine, whether it be my son or anybody.
Q Do you believe that the design of the machine as it was in operation at the time of his accident was unsafe or unreasonably dangerous?
A No.
Q Do you believe that Mr. Lanham needed any kind of warning about the danger of the machine?
A I think everybody was aware of the machine, its potential for injury. Well, it's not a thing I know because I've been around equipment for 39 years, and I always stress to people, always respect the machine because every machine will try to kill you. That's the way I always presented it. So it just got in their head that the danger is there, and it's always there in any machine.
Q Do you believe that any other safety mechanism was needed to make this machine safe to clean?
A No.
MS. WRENN: All right. I don't have any further questions. Thank you.
Robert, do you have any?
MR. OSBORNE III: Mr. Walmsley, we've been going a while. If you want to take maybe a five-minute break and that may give me --

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 74

THE WITNESS: I'm good.
MR. OSBORNE III: Okay. All right.
THE WITNESS: Yeah.
THE REPORTER: Can you put your mic on, please?
THE WITNESS: If we've got some water, that would be good.
MS. WRENN: Yeah, let's take a break. I think there is water back here in the rear.
THE REPORTER: We're off the record at 11:43 a.m.
(OFF THE RECORD)
THE REPORTER: We're back on the record at 11:46 a.m.
EXAMINATION
BY MR. OSBORNE III:
Q All right, Mr. Walmsley. My name is Robert Osborne. We met prior to the deposition. I represent an entity that's also known as Wumag. But are you aware that the entity that you had dealings with Wumag went through bankruptcy?
A Administration, yeah, yeah.
Q Okay.
A Yes, I was.
Q And have you had any dealings with Wumag since

Page 75

that bankruptcy?
A No, I haven't had any dealings since I left Bondex, with Wumag.
Q And you're not familiar about their continued operations or anything like that?
A I just know that they went into administration or bankruptcy, but I -- I didn't know then from what point happened whether somebody came to take them over. I don't know.
Q Ms. Wrenn covered most of everything with you, so I'm going to jump around a little bit and just have a handful of follow-up questions. Do you know -- would the rollers move freely if the machine was turned off?
A No.
Q And I believe you testified earlier that when the light curtains were active, if the light curtain was triggered, that would open up the rollers, correct?
A It -- it automatically opens up the roller, knocks off the heat, and also the wind up with the material going through the machine. At the far end, the winding arm would lift.
Q Are you aware of any other machines at Bondex where the operating mode was password protected?
A No.
MR. OSBORNE III: Mr. Walmsley, I think

Page 76

that's all the questions I have for you. Thank you.
THE WITNESS: Wow. That was quick.
MR. OSBORNE III: Mr. Parker may have some for you.
MS. WRENN: Jay, do you have any questions?
MR. PARKER JR: Yeah.
CROSS-EXAMINATION
BY MR. PARKER JR.:
Q Mr. Walmsley, thank you for giving us the time today. I appreciate that.
And just to be clear, you are not an engineer, correct?
A I am not an engineer.
Q You have no sort of engineering education?
A No.
Q You do not have any sort of degree in industrial engineering or mechanical engineering, anything alike?
A That's correct.
Q And to the extent that you spoke about assisting Wumag with design, am I correct in believing what -- that what that means is you made suggestions about the needs for Bondex? Is that correct?
A Yes. And then, typically, they would come back

Page 77

with a counter, and then we would see if that worked for us. And then -- there would be a to and fro.
Q And so you've never actually designed the machine from an engineering standpoint, correct?
A Not from an engineering standpoint.
Q Okay. And you're not going -- you know, today, as I ask you, you're not going to tell the jurors that you are qualified in any way to give engineering design opinions; are you?
A No.
Q And you're not qualified from an engineering standpoint to say whether or not a machine is effectively designed; are you?
A From an engineering standpoint, no. From an operational standpoint, yes.
Q And you're not qualified from an engineering standpoint to give any sort of opinion on what sort of guardings or warnings a machine needs; are you?
A From an engineering standpoint, no. From an operational standpoint, yes.
Q You said that you had spoken to agents or employees at Wumag regarding the design of the machine. But these conversations with Wumag, they continued after the machine was in America?
A Yes.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 78

Q And as far as maintenance and using the machine as y'all were going through the setup process at the Bondex facility, y'all continued to have discussions concerning that machine after it was in Edgefield -- or in Trenton, correct?
A That's correct.
Q And so Wumag was fully aware that this machine was in South Carolina?
A Yes.
Q And they actually did send, occasionally, employees to the facility in South Carolina?
A Yes.
Q Okay. How long does it take to clean those rollers?
A Once it's in the correct state, you know, down to 50 degrees, then maybe an hour.
Q Okay. And do you know if Wumag includes any sort of cleaning instructions in the manual that comes with the machine?
A No.
Q You don't know or it does not?
A It -- it -- as I recall, it does not.
Q So you don't believe that it has any instructions in the manual concerning whether or not to shut the machine down or lock out or tag out the machine

Page 79

when you're cleaning it?
A That's my understanding.
Q Okay. So Bondex came up with -- basically had to come up with some cleaning protocol for the machine.
MS. WRENN: Object to the form.
You can answer if you --
THE WITNESS: Okay.
MS. WRENN: But you don't need to.
THE WITNESS: Bondex came up with that procedure because that was the best working procedure. Typically with textile machinery, the -- the manufacturer of the OEM of the machine does not tell you how to operate the machine or how to clean the machine. They just deliver the machine.
BY MR. PARKER JR.:
Q Why is that?
A Pardon?
Q Why don't they provide instructions for how to maintain or clean the machine?
A They will provide a maintenance schedule, but they will not tell you how to clean the machine.
Q I'm sorry. Could you repeat that again?
A I said they will provide a maintenance schedule, but they -- they typically do not provide a cleaning method for the machine.

Page 80

MR. PARKER JR: You guys, I need to take a quick just five -- not even five minute, like a couple of minute break. I'll be right back.
MS. WRENN: Okay. Okay.
MR. PARKER JR: Sorry about that.
THE WITNESS: All right.
THE REPORTER: We're off the record at 11:53 a.m.
(OFF THE RECORD)
THE REPORTER: We're back on the record at 11:56 a.m.
BY MR. PARKER JR.:
Q Okay. Thanks. I want to circle back and ask a question that I forgot. I want to be more specific. When you were asked at the beginning of your deposition, had you spoken to any attorneys prior today concerning this matter, you said no; is that correct?
A I said no, but I remember at the time that Barry got some -- and again, I'm sorry if I misspoke, but I know that Barry got some attorneys originally that came into Bondex. And then sort of after I left, I don't know what happened.
Q Have you spoken to anyone about this lawsuit prior to the beginning of your deposition today?
A No. Oh, prior?

Page 81

Q Yes.
A I'm sorry. Can you just rephrase the question, or?
Q Have you ever -- have you spoken to anyone concerning this lawsuit prior to the commencement of your deposition today?
A No.
Q Whether that be an attorney or anyone at all?
A To my understanding, no. I mean, this deposition came right out of the blue for me.
Q Did you know why your deposition was being taken?
A Just probably because I've had dealings with Wumag.
Q Okay. So just to be totally clear, you've spoken to no one about this before this deposition started at 10 o'clock. You did not have a single conversation concerning your upcoming deposition, the content of your testimony today. You've not spoken to anyone about any of that in the proceeding months?
A No.
Q Or weeks.
A No.
Q Okay. I just wanted to make sure I wasn't missing anything, okay?

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 82

A I've obviously -- I've obviously mentioned it at work because I have to have the time off to come to the deposition.
Q Right. I'm just making sure I was getting the understanding correctly.
A Okay.
Q And there's not something -- I know -- I'm not trying -- I know people hear questions from lawyers sometimes, and you think I know something or I'm trying to trick you. I'm not doing that now. I'm just (inaudible 1:31:32).
A No. And again, I'm not -- I'm just here to tell the truth as it is, as I -- as -- as I recall it.
Q Right. Okay. Tell me about this cage that was around the machine at some point. You mentioned that their -- that one of the -- the engineer had designed a cage around the machine, and then you thought it was lazy engineering?
A Yes, and that was -- that was the first iteration that they sent through as a drawing, which I rejected.
Q And that's something that the engineer for Wumag came up with?
A Yes.
Q And can you give me a more precise description

Page 83

of what this cage was like?
A It was basically encasing the whole of the machine.
Q And is that -- would that have been similar to the kind of interlocking gate that's on the back of that machine right now?
A Yes, but it would have been all the way around the machine.
Q Got it.
A Everything would be enclosed.
Q Okay. Why did you think that was lazy engineering?
A Because you need access to the machine to see what's happening with the rollers and see what's happening with the media.
Q Did the machine have a gate in it? I mean, the cage, did it have a gate in it?
A It did have a gate, but the gate would then knock the machine off.
Q Okay. I mean, again, you're not qualified from an engineering standpoint to actually say whether or not something is lazy engineering; are you?
A Well, I feel I am in the operational standpoint, yes. When I purchased millions of dollars worth of machinery and millions of pounds worth of

Page 84

machinery, I know where lazy engineering is, and where it isn't. I've actually done --
Q I'm saying you don't have any education or training in engineering that qualifies you to have that opinion; is that right?
A And that's why I said from an operational standpoint.
Q Okay. But not from an engineering standpoint, correct?
A Correct.
Q Okay.
A And you would agree with me that a pull cord is not guarding a nip point, correct?
Q I disagree with that.
A How does a pull cord prevent you from coming into contact with the nip point?
Q The pull cord will stop the machine and open the nip.
A Correct, but it doesn't prevent you from coming into contact with the nip; does it?
Q Well, then I -- then I agree with you.
A Correct. And it didn't prevent the accident in this instance; did it?
Q No.
A Okay. And do you believe that the accident

Page 85

could have been prevented if the touchscreen interface would have had a password-protected access to it so that Mr. Lanham couldn't have changed the operating mode?
MS. WRENN: Object to the form.
BY MR. PARKER JR.:
Q I mean, that was your suggestion, right? That it should have had something like that?
MS. WRENN: Object to the form.
MR. PARKER JR: You can answer.
THE WITNESS: Oh. So as I said, that was a -- that was -- you know, hindsight is a wonderful thing, and after an accident, then maybe that could have happened. If -- if it was password-protected, then he wouldn't have been able to change the mode of operation.
MR. PARKER JR: Okay. Let me just look at this real quick, and I think I'm probably done. Okay. I don't have any more questions. Thank you.
MS. WRENN: Okay. I just have a few follow-up questions.
REDIRECT EXAMINATION
BY MS. WRENN:
Q Jay asked you about the password protection to prevent someone from changing the operating mode. Is it standard on any machines to have password protection to

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 86

lock operation modes?
A No.
Q Ultimately, after the accident, did Bondex make the operating mode password-protected?
A I don't know.
Q Okay. With regard to the nip point, do you -- from an operational standpoint, and based on your 39 years of experience in the industry, do you believe there needs to be a safety mechanism guarding the nip point?
A There has to be a safety mechanism, yes.
Q And was there one on the Wumag?
A Yes.
Q Okay. And what was that?
A The pull wire.
Q But at some point, the fabric has to be able to go through the nip without triggering some kind of safety mechanism that would turn the machine off, correct?
A Yes.
Q Okay. And again, do you believe that having the machine in mode 3 without a light curtain was a safe way to operate -- or a safe way to clean the rollers?
A Yes, I do.
Q Okay. And again, that is essentially how all of the calender machines that you've worked with in your 39 years of experience have been cleaned, correct?

Page 87

A Correct.
Q Not with password protection, not with a light curtain, correct?
A That's correct.
Q All right. Jay also asked you about the operating manual that Wumag provided. So what I want to show you is what I'll mark as Exhibit Number 11.
(EXHIBIT 11 MARKED FOR IDENTIFICATION)
A Thank you.
Q And I understand it's been a long time since you looked at any of this information.
A A long time, yes.
Q This is a translation of operating manual for the calender machine that Wumag gave to Bondex.
A Okay.
Q And so if you look through these pages, they deal with maintenance of the machine. And then specifically, on the very last page of the exhibit, it has more information about maintenance, in particular with regard to the rollers. And it says, "Use nothing but a soft sponge and plain water to clean the rollers. Use sand and quartz-free cleaning agents only. Chemical substances may have to be removed with commercial solvents. After cleaning, carefully rub the rollers dry to prevent the moisture penetrating material underneath.

Page 88

Afterwards, briefly heat up the rollers." Would you agree those are instructions from Wumag about how to clean the roller?
A It looks that way.
Q Okay. So regardless of whether or not these were the instructions that Bondex gave to employees, Wumag did provide instructions in the manual about cleaning, correct?
A It looks that way.
Q Okay. And then Bondex adopted its own cleaning procedure for the rollers --
A Yes.
Q -- correct?
A Correct.
MS. WRENN: Okay. All right. Those are all the questions I have.
MR. OSBORNE III: Just a few other additional questions.
RE-EXAMINATION
BY MR. OSBORNE III:
Q Mr. Walmsley, cleaning is a form of maintenance, correct?
A Yes.
Q And you were asked by Mr. Parker about your dealings with Wumag. And you testified earlier that you

Page 89

don't believe -- when would -- when do you think your last dealing with Wumag was?
A Oh, I -- I couldn't give you a date. I just know that it was -- the -- the dealing with Wumag ongoing since the machine was delivered because I was never fully happy with the machine. Not safety-related, part was safety-related, but you've got the email traffic for that. But also there was a -- there was a problem with the heating and cooling. So my dealing was ongoing with Wumag ever since that machine landed at Bondex.
Q Let me ask another way. You testified earlier you were aware of the insolvency proceedings that Wumag went through, correct?
A Yes, yes.
Q And am I correct that you didn't have any dealings with Wumag after those -- after it went into insolvency?
A Oh, no, no.
Q Is GWK an entity that you're familiar with?
A Yes.
Q Okay. What does GWK do?
A So GWK is the heating and cooling element of all the Wumag machines.
Q The Wumag machine is operated by a touchscreen; is that correct?

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 94

CERTIFICATE OF TRANSCRIPTIONIST

I, Brandon Diaz, CER, a Legal Transcriptionist do hereby certify:

That the foregoing is a complete and true transcription of the original digital audio recording of the testimony and proceedings captured in the above-entitled matter. As the transcriptionist, I have reviewed and transcribed the entirety of the original digital audio recording of the proceeding to ensure a verbatim record to the best of my ability.

I further certify that I am neither attorney for nor a relative or employee of any of the parties to the action; further, that I am not a relative or employee of any attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this matter.

IN WITNESS THEREOF, I have hereunto set my hand this 23rd day of May, 2025.

Brandon M Diaz

Brandon Diaz, CER

Page 95

John Reece Walmsley
reece.walmsley@gmail.com
May 27, 2025
RE: Lanham, Barry v. Wumag Texroll Gmbh & Co.
5/9/2025, John Reece Walmsley (#7310089)
The above-referenced transcript is available for review.
Within the applicable timeframe, the witness should read the testimony to verify its accuracy. If there are any changes, the witness should note those with the reason, on the attached Errata Sheet.
The witness should sign the Acknowledgment of Deponent and Errata and return to the deposing attorney. Copies should be sent to all counsel, and to Veritext at cs-carolinas@veritext.com.
Return completed errata within 30 days from receipt of testimony.
If the witness fails to do so within the time allotted, the transcript may be used as if signed.

Yours,
Veritext Legal Solutions

Page 96

Lanham, Barry v. Wumag Texroll Gmbh & Co.
John Reece Walmsley (#7310089)
ERRATA SHEET
PAGE_____ LINE_____ CHANGE_____
_____
REASON_____
PAGE_____ LINE_____ CHANGE_____
_____
REASON_____
PAGE_____ LINE_____ CHANGE_____
_____
REASON_____
PAGE_____ LINE_____ CHANGE_____
_____
REASON_____
PAGE_____ LINE_____ CHANGE_____
_____
REASON_____
PAGE_____ LINE_____ CHANGE_____
_____
REASON_____

_____ _____
John Reece Walmsley Date

Page 97

Lanham, Barry v. Wumag Texroll Gmbh & Co.
John Reece Walmsley (#7310089)
ACKNOWLEDGEMENT OF DEPONENT
I, John Reece Walmsley, do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

_____ _____
John Reece Walmsley Date
*If notary is required
SUBSCRIBED AND SWORN TO BEFORE ME THIS
_____ DAY OF _____, 20___.

_____
NOTARY PUBLIC

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
EDGEFIELD COUNTY

DEPOSITION OF BARRY LANHAM

BARRY LANHAM AND OBVIA GAMBLE-LANHAM,

Plaintiffs,

vs. CASE NO. 2021-CP-19-00005

WUMAG TEXROLL GmbH & CO. KG,

Defendant,

WUMAG TEXROLL GmbH & CO. KG f/k/a KELZENBERG + CO: GmbH & CO. KG,

Third-Party Plaintiff,

vs.

WUMAG TEXROLL GmbH & CO. KG,

Third-Party Defendant.

DATE: MARCH 25, 2025

TIME: 10:00 AM

LOCATION: FLOYD & SPANGLER
1611 AUGUSTA ROAD
WEST COLUMBIA, SC 29169

REPORTED BY: RACHAEL CLARK, CVR
CERTIFIED VERBATIM REPORTER
CLARK BOLEN
29 GAMECOCK AVENUE, SUITE 200
CHARLESTON, SC 29407
843-762-6294
WWW.CLARKBOLEN.COM
Office@clarkbolen.com

A P P E A R A N C E S

ON BEHALF OF PLAINTIFFS:

PARKER LAW GROUP, LLP
BY: JOHN "JAY" E. PARKER, JR, ESQ.
101 Mulberry Street East
Hampton, SC 29924
-and-
FLOYD & SPANGLER
BY: COLIN T.L. SPANGLER, ESQ.
1611 Augusta Road
West Columbia, SC 29169

ON BEHALF OF DEFENDANT WUMAG TEXROLL GmbH & CO. KG f/k/a KELZENBERG + CO: GmbH & CO. KG:

PARKER POE ADAMS & BERNSTEIN, LLP
BY: ROBERT C. OSBORNE, III, ESQ.
P.O. Box 160
Charleston, SC 29402

ON BEHALF OF DEFENDANT WUMAG TEXROLL GmbH & CO. KG:

BAKER, DONELSON, BEARMAN, CALDWELL, & BERKOWITZ, PC
BY: CATHERINE F. WRENN, ESQ.
850 Morrison Drive, Suite 775
Charleston, SC 29403

ALSO PRESENT: OBVIA GAMBLE-LANHAM

INDEX

EXAMINATION	PAGE
BY MR. OSBORNE	4
BY MS. WRENN	168
BY MR. OSBORNE	238
CERTIFICATE OF REPORTER	240

EXHIBITS

NO.	DESCRIPTION	PAGE
Exhibit No. 1	Training record	53
Exhibit No. 2	Photo of Wumag machine	59
Exhibit No. 3	Photo of Wumag screen	63
Exhibit No. 4	Photo of roller	67
Exhibit No. 5	AU record	94
Exhibit No. 6	AU record	96
Exhibit No. 7	AU record	97
Exhibit No. 8	AU record	99
Exhibit No. 9	AU record	101
Exhibit No. 10	AU discharge summary	112
Exhibit No. 11	Aiken Regional record	118
Exhibit No. 12	Aurora Pavilion record	121
Exhibit No. 13	Self Regional record	126
Exhibit No. 14	John F. Abess document	127
Exhibit No. 15	Bondex accident report	143
Exhibit No. 16	SC Dept of Labor report	136
Exhibit No. 17	Warren Forensic report	148
Exhibit No. 18	Wumag cleaning procedure	150
Exhibit No. 19	Wumag cleaning checklist	151
Exhibit No. 20	Wumag operating manual	152
Exhibit No. 21	Plaintiffs' answers	160
Exhibit No. 22	Wumag manual excerpt	207
Exhibit No. 23	Wumag manual excerpt	214
Exhibit No. 24	Photos of Bondex plant	222
Exhibit No. 25	OSHA report excerpt	229

BARRY LANHAM,

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. OSBORNE:

Q. All right. Mr. Lanham, my name is Robert Osborne. I'm an attorney for, I'll say, one of the Wumag entities today. There are two of us here today. My client, just so you're aware, bought the assets of the prior Wumag out of German bankruptcy, and so it's a little confusing. We've got sort of two Wumag parties, but I did want to let you know about that before we get started.

So if you can, will you state your full name for the record?

A. Barry Alexander Lanham.

Q. Have you ever been known by any other names?

A. No, sir.

Q. Have you ever been deposed before?

A. Deposed? No, sir.

Q. Yeah. Okay. This is the first time in a conference room like this and an attorney asking you questions?

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 5

A. Oh, yes. I had a deposition before, if that's what you mean.
Q. Yeah, that's right.
A. Deposed. Okay.
Q. Yeah, deposed.
A. Yes, I had a deposition before.
Q. Okay. Tell me --
A. I'm sorry.
Q. No. That's okay. I'm glad -- I'm glad you got me to clarify. Tell me about what -- what other case did you have a deposition in?
A. It was with workers' comp for this case.
Q. For this case, your workers' comp action?
A. Yes, sir.
Q. Okay. About how long ago was that? Do you remember about how long it was after the accident?
A. A couple years maybe.
Q. A couple years. Okay.
A. I think, if I'm not mistaken.
Q. And was -- Mr. Spangler, he was your attorney in that action, correct?
A. Yes.
Q. Okay. You probably heard some of these

Page 6

rules before then in that deposition, but I'm going to go over them just to give you a little bit of a reminder.

You are under oath today. So it's just like you're in a courtroom, even though we're in a conference room today.

If you don't understand a question that I ask, which is going to happen today -- it's already happened once today -- if you'll just ask me to clarify that question rather than looking to your attorneys for clarification. I'll do my best to try to clarify for you.

A. Okay.
Q. You're doing a good job of this so far, but the court reporter's taking everything down, so if you'll let me finish my question, I'll let you finish your answer. It's very hard for her to take down two people talking at once, and if you'll also try to, you know, give a verbal response rather than nod your head or shake your head, again, she's got to take down a verbal answer. So at some point today, you may hear me say, Is that a yes, is that a no. That's not me trying to be rude. It's just trying to make the job -- her job a little bit easier. Okay?

Page 7

A. Yes.
Q. Okay. If you if you need a break at any point, just let me now. I'll try to watch the clock. I will try to take a break about every hour or something like that, but if you need at any point in between to use the restroom or go stretch your legs, just let me know you need to take a break.
A. Yes, sir.
Q. Okay. All right. Are you under the influence of any substances or medications today that would affect your ability to testify truthfully?
A. No, sir.
Q. All right. I would ask you -- and I don't want to have any -- the substance of any conversations that you may have had with your attorneys, but what, if anything, did you do to prepare for today's deposition?
A. Spoke with my attorney of course, looked over some paperwork about the workers' comp previously, talked to my wife, thought about it a lot.
Q. And did you meet with your attorney's prior to -- I know that you were meeting this

Page 8

morning. Did you meet at any point prior to today or was it just this morning?
A. No. I met prior.
Q. Okay. And when was that?
A. Monday. Yesterday, I think.
Q. Yesterday. Was that in person or over the telephone?
A. In person.
Q. Any other family members besides your wife that you discussed the deposition with?
A. No, sir.
Q. Did you bring any documents with you today?
A. No.
Q. Tell me your date of birth.
A. January 26th, 1986.
Q. And what are the last four digits of your Social Security number?
A. 6361.
Q. All right. I want to get a little personal background about you. Tell me, where were you born?
A. Edgefield, South Carolina.
Q. Did you grow up in Edgefield?
A. Yes, sir.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 9

Q. Did you go to high school in Edgefield?
A. Yes, sir.
Q. Did you graduate?
A. Yes, sir.
Q. What high school?
A. Strom Thurmond High School.
Q. And what year did you graduate?
A. 2004.
Q. Family growing up, did you live with your mother and father?
A. Yes, sir.
Q. How many siblings did you have?
A. I've got three sisters and a brother.
Q. And are your mother and father still alive?
A. Yes.
Q. Both of them?
A. Yes, sir.
Q. What's your mother's name?
A. Irene Lanham.
Q. Okay. And your father's name?
A. Glenn Davis Lanham.
Q. Are there -- and the reason I ask these questions, if we were to pick a jury in Edgefield County, we're not going to want to get

Page 10

any of your family members on the jury.
So are there any family names besides Lanham that are relatives of yours that live in Edgefield County?
A. Harris.
Q. Anything besides Harris?
A. Rouse.
Q. How do you spell that?
A. R-O-U-S-E. I think that's --
Q. That's it?
A. I think that's about it. Uh-huh.
Q. Okay. What did you do after high school?
A. Started having kids early.
Q. That'll keep you busy. All right. Let's -- well, let's get into your -- well, let's take it -- all right. We'll stick with the kids.
How many children do you have?
A. Five.
Q. Five. Okay. And can you give me their names and ages, please?
A. Yes. DazeJah Lanham. She's 20. Barry Alexander Lanham, Jr. He's 15. BreJhana Lanham. She's 14. Iyhana, she's -- Iyhana Lanham. She's 13. Zyhana Lanham is 11.

Page 11

Q. Okay. Your oldest daughter's name is DazeJah?
A. DazeJah.
Q. Does she live in Edgefield County?
A. No. She current- -- she lives in Lexington County, but she goes to school in Sumter.
Q. Okay.
A. So she stays on campus.
Q. Got it. All right. And are these children -- the mother of all five of your children is Ms. Lanham here today?
A. Yes, sir.
Q. How many of the children still live in the home with you-all?
A. Four.
Q. And what's your current address?
A. 1 -- 196 Casa Dell Road, Gaston, South Carolina.
MR. PARKER: It's not a test. You -- you need to try to give the right answer. Your address. Hey, I don't know my wife's phone number. So it's all right. I can't remember it.
Q. Okay. When'd you move -- so you grew up in -- in Edgefield, and we'll sort of go back

Page 12

to -- after high school, it sounds like you started having children.
Did you get a job after high school?
A. I don't think directly after. Maybe -- maybe here and there some side jobs because I went to -- I remember going to college for, like, a couple -- like a semester, and then -- then I maybe got a job after that because I did go to college for a semester.
Q. Okay. And where was that?
A. Aiken Tech -- Technical College.
Q. All right. But you did not graduate from Aiken Tech?
A. No, sir.
Q. And you went there for about a semester, you think?
A. Uh-huh.
Q. All right. And what was your first job after leaving Aiken Tech?
A. Probably, if I'm not mistaken, it was with my brother-in-law. He's an electrician. He's got his own business, but at the time, he didn't have his own business, but I think that was probably my first job, pulling wire.
Q. Okay. And a timeframe in terms of the

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 13

year, when would that have been?
A. 2005 maybe. 2005, 2006 maybe. Somewhere up in there.
Q. And then just briefly -- I don't want to spend a bunch of time on this, but walk me through some of the jobs that you've had leading up to your time at Bondex.
A. Well, that one, it was the pulling wire job. Then I think I went to a like -- like, a -- probably, like, an industrial job. Maybe at Carlisle or something. It was called -- I think it was called Carlisle. It was a tire company, and I worked there for a while.
Q. And where is Carlisle?
A. That's in Aiken, South Carolina. I think that was around 20, 21, and then I had a -- and then I had a couple dead-end jobs here and there until I started working at, like, the National Wild Turkey Federation in -- what year -- I don't know -- but, yeah, the first, like, job that I, like, stayed on for a while-while was, like, National Wild Turkey Federation.
Q. That's in Edgefield, correct?
A. Yes, sir.

Page 14

Q. What did you do there?
A. I was a -- I operated a nail machine and a saw machine and I cut picture frames and nailed picture frames.
Q. All right. And then that would've -- when about did you start working at the National Wild Turkey Federation?
A. 2015 maybe. 2015. I'm not sure. Something like that. 2010 maybe. It's been a long while, so I'm not really sure.
Q. Do you remember about how long you worked there?
A. I worked there, like, 6 months the first time, and I think I got laid off because I was just seasonal, and then I went back when the season came back around, and I stayed there for like 2 or 3 years after that.
Q. And was that the job that you had immediately prior to working for Bondex?
A. No, not immediately prior.
Q. Okay. What did you do between the --
A. After Turkey Federation, I went to Wilson & Mold -- it was a tire mold company -- for, like, 6 months, and then I went to Southern Felt, which is the job I had right

Page 15

before Bondex.
Q. At the tire company that you just mentioned, tell me the name of that company again.
A. Wilson Tire & Mold.
Q. And where is that company located at?
A. It was in -- it's in -- it was in Edgefield, South Carolina when I worked there, but now I think it's in Trenton, South Carolina.
Q. And then the one after that, you said Southern Mills?
A. No. Southern Felt.
Q. Southern Felt. I'm sorry.
And where is Southern Felt located?
A. It's in Edgefield County, but it's, like, in Trenton, South Carolina also.
Q. And then you started working at Bondex after Southern Felt?
A. Yes, sir.
Q. Okay. At -- when roundabout did you start working at Bondex?
A. Had to be 2017. End of 2017, if I'm not mistaken. It had to be 2017.
Q. When did you move from Edgefield to Gaston?

Page 16

A. Right -- it was after my accident. So it was, like, 2020 maybe. 2020, I think.
Q. And, Gaston, that's Lexington County?
A. Yes, sir.
Q. And have you lived at the same address in Gaston since you moved there?
A. Yes, sir.
Q. Do you rent the house or --
A. Own it.
Q. Okay. Do you own it with your wife?
A. Yes, sir.
Q. What's your current telephone number?
A. 803-622-8138.
Q. All right. Do you have a driver's license?
A. Yes, sir.
Q. Any restrictions on your license?
A. Maybe a left mirror restriction or something.
Q. All right. You are currently married; is that correct?
A. Yes, sir.
Q. Any prior marriages?
A. No, sir.
Q. Have you ever -- I may have been

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 17

mistaken on this.
Did you file for divorce at some point?
A. No, sir.
Q. Do you live -- I know you testified you live with your wife and you've got four children that --
A. Five children. I'm sorry.
Q. Yeah. The four that live with you though, correct?
A. If -- my daughter, she's in college, but I don't know if, you know, classifies as her staying with us. You know, like, in the off times, she comes home.
Q. She comes home. Okay. Anybody else in the family that lives with you, parents or uncles or anything like that?
A. No, sir.
Q. Are you a member of a -- any sort of church or --
A. Not that I attend, but I'm a member.
Q. Okay. But not one that you attend regularly?
A. No. I don't attend regularly.
Q. Are you a member of any other clubs or organizations that you're actively involved in?

Page 18

A. No, sir.
Q. Have you ever been in the military?
A. No, sir.
Q. What do you do you currently for work, if anything?
A. I don't work. I'm unemployed.
Q. Okay. Have you been -- have you had any jobs since you left Bondex with the accident?
A. No, sir.
Q. What do you do in terms of hobbies?
A. Dogs. Breed dogs.
Q. What kind of dogs do you breed?
A. American Bullies.
Q. Anything else that you like to do?
A. Fish. I like to fish.
Q. Prior -- well, in high school, did you play any sports?
A. Basketball, baseball.
Q. Did you play all four years in high school?
A. Basketball, uh-huh.
Q. Basketball. How long did you -- when did you stop playing baseball?
A. For the school, I only probably played one year, in the 9th grade, but I played Sandlot

Page 19

up until, like, I lost -- I lost my arm. Up until I lost my -- like, around that time.
Q. And that would just be playing with friends at a --
A. No. We had a league. It was a Sandlot League where we go to other counties or whatever and play.
Q. Do you remember, did it have a specific name or anything like that, like the group that you were a part of?
A. No. It was just a Sandlot League. No specific name.
Q. Tell me again -- I'm sorry -- you said you graduated high school in 2010?
A. 2004.
Q. 2004. That's right. Did you play basketball at all after high school?
A. After?
Q. Yes.
A. Yeah, like pickup ball.
Q. Play any other sports?
A. Baseball. Up until -- I played Sandlot baseball.
Q. Other than baseball and basketball?
A. Not played, no. No, sir.

Page 20

Q. Have you ever been arrested before?
A. Yes, sir.
Q. Okay. What -- what have you been arrested for?
A. Domestic violence, armed robbery, child endangerment, and I know I got some simple possession charges, but I don't know if I was actually arrested for them, but I got simple possession charges. Marijuana.
Q. Okay. The domestic violence arrest, when was that?
A. Had to be -- I think it was, like, 2020.
Q. Do you remember what county it was?
A. It was Lexington County. It was -- it was Edgefield County. Sorry.
Q. All right. Tell me -- tell me what happened. Why were you arrested?
A. Why was I arrested? The cops was called. We got into an altercation and the cops was called. I called the cops for help to help me, and they seen blood and they seen glass and they arrested me.
Q. When you say "we got into an altercation" --
A. Me and my wife.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Q. You and your wife. Okay. That was, you said, in Edgefield County in 2020, you think?
A. Yes.
Q. How were those charges resolved?
A. I know I did PTI for them. I don't know if they was dismissed or what, but I know I did PTI because, like, all my charges was -- ran concurrent. Like, all of them, I think. So some of them's dismissed and all of them, like, ran concurrent. It all happened, like, around the same time.
Q. Okay. Did you spend any time in jail on the domestic violence charge?
A. All of them. On all of them. It was at the same time. So it was domestic and the armed robbery at the same time that I got locked up.
Q. Okay. So the armed robbery --
A. I had a couple warrants. I'm sorry.
Q. No. That's okay. The armed robbery charge, you were arrested at the same time as the domestic violence?
A. When I got arrested -- no. No. I wasn't arrested for the domestic violence then. I think I ended up going to court for -- for the marijuana, and that's when they served me the

warrants.
Q. Okay. Tell me, what did the -- the armed robbery charge, what did that stem from? Like, what were this circumstances around that?
A. I was charged with armed robbery. Some guy -- a guy said I did something in the parking lot with him. I was charged with armed robbery.
Q. What did he say that you did in the parking lot?
A. He said I pulled a gun out on him and ran through Tractor Supply and took my car from him or something, he said.
Q. You took his car from him?
A. No. My car from him.
Q. Why did he have your car?
A. Because he was a -- a tow truck person. A snatch truck person.
Q. Like, a -- he was repossessing your car?
A. Yes.
Q. And he said that you pulled a gun on him as he was repossessing the car?
A. That's what he -- yes.
Q. And that was at a Tractor Supply?
A. He said it was at a Tractor Supply.
Q. In Edgefield County or where?

A. I think they consider it Lexington County. It was in Batesburg though.
Q. All right. When about did that take place?
A. All around the same time. Like, 2020, I think.
Q. All right. Tell me about the child endangerment charge. What were the circumstances around that?
A. I think it stemmed from the domestic violence, and I think they -- like, after I left my house, I think they ended up going in and getting some marijuana. That's where one of the marijuana charges came from. So they considered it, I guess, child endangerment at the time.
Q. And that would've been sometime in -- the child endangerment would have been in 2020 as well?
A. Uh-huh.
Q. Okay. And what county was that charge from?
A. Edgefield County.
Q. Edgefield. All right. And you think that one of the possession of marijuana charges was stemming from that same domestic violence

incident in Edgefield; is that right?
A. Yes, sir.
Q. All right. Have you ever had any other possession charges other than that one?
A. Yes, sir.
Q. All right. And was it for possession of marijuana?
A. Yes, sir.
Q. Where and when was that?
A. It was around the same time, but it was, like, probably 2020. 2019, 2020.
Q. And was that other one in Edgefield as well?
A. Edgefield County, yes, sir.
Q. Okay. Any other possession charges for drugs besides marijuana?
A. No, sir.
Q. All right. You mentioned that you felt like all these were sort of taken care of at -- at once.
Were the -- well, tell me this, did you spend -- when you were arrested for domestic violence that day, did you go to jail?
A. I wasn't arrested that day. Remember, I said I had to go to court for that marijuana, and

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 25

that was the day I was arrested.
Q. Okay. So the -- but police officers came to your house at one point for a domestic violence incident. They left --
A. Yeah. I left with the -- with the ambulance. I left with her in the ambulance.
Q. Okay.
A. I went to the hospital.
Q. And at some point --
A. They --
Q. -- after that --
A. I'm sorry. Yeah. They showed up, like, about that Monday. I think it was on Friday. They showed up that Monday with the -- with the tickets and the charges. Yeah. I didn't get locked up. They just gave me the ticket.
Q. And they told you to come to court?
A. Yeah.
Q. Okay.
A. And that's when they gave me the charges for domestic violence, once I went to court.
Q. Okay. And what happened when you went to court?
A. They locked me up. They gave me the warrants for the armed robbery, and I got -- I

Page 26

was locked up in Edgefield County, and then I got shipped to Lexington County.
Q. Okay. How long were you in jail in Edgefield County?
A. Probably -- probably, like, 4 or 5 days.
Q. And then they transferred you to Lexington County?
A. Yes, for the armed robbery.
Q. For armed robbery. And how long did you stay in jail in Lexington County?
A. Probably three weeks.
Q. And then did you bond out?
A. Yes, sir.
Q. Okay. And then did you have to go back to court after that for the final resolution of the charge?
A. Yes, sir.
Q. And what did the judge sentence you to?
A. PTI.
Q. Okay. Gave you credit for time served?
A. Basically, yeah. I didn't get no prison time or nothing. I just -- yeah.
Q. Okay. So you --
A. Just PTI.
Q. You -- after about three weeks you spent

Page 27

in jail in Lexington County, you didn't go back to jail for those charges?
A. After the three weeks when I bonded out, then I started -- I started PTI. They offered me PTI. I pled to it. I pled to the charges to get PTI. I started PTI, and I completed it.
Q. So you think that you pled guilty to the armed robbery charge?
A. Yes.
Q. And do you think that you pled guilty to the domestic violence, child endangerment, and possession of marijuana charges?
A. Yes.
Q. When did -- were you on probation for a period of time as part of the PTI?
A. No, I wasn't on probation.
Q. What did you have to do for PTI other than just stay out of trouble?
A. Attend classes. Domestic violence classes.
Q. And where were those classes?
A. In Lexington. Lexington County.
Q. Did you have to undergo drug testing?
A. Yes.
Q. Where did those drug tests take place?

Page 28

A. It was in Lexington County. I can't remember the facility, but it was in Lexington County.
Q. How long did PTI last?
A. I can't -- it was like -- I don't remember the exact number of sessions, but it was whenever I completed the sessions. So I had to complete, like, 16 sessions. I'm not sure the exact number, but once I completed it, I couldn't -- everything wouldn't go away until I completed it, and then after that, it was expunged off my record.
Q. Did you fail any drug tests?
A. No, sir.
Q. Have you ever been a party to any other lawsuits besides this one?
A. Maybe, like, a car -- car accident or something like that.
Q. Tell me about that car accident and the circumstances of that.
A. It had to be like -- I think it was, like, 2005. Me and my daughter was T-boned. She was in the backseat. She was only 6 months. She was in a carseat. We was T-boned down a 13-foot embankment and, yeah, the car was totaled.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 29

Everything. We -- we -- we made it out ali- -- like, safely though, like, pretty much. Banged up. Banged up, but we was -- we was good.

Q. That's good. All right. So you brought a lawsuit after that accident?

A. Yes, sir.

Q. Do you remember who your attorney was?

A. Leon Green.

Q. Where is Mr. Green?

A. Aiken, South Carolina.

Q. And do you remember how that case was resolved?

A. In a -- in a settlement.

Q. Do you remember how much the settlement was?

A. Probably, like, $6,000.

Q. All right. Other than the 2005 car accident, any other lawsuits?

A. No, sir. No, sir.

Q. Have you ever filed for bankruptcy?

A. No, sir.

Q. Have you ever been on unemployment?

A. No, sir. No, sir. I don't think I have.

Q. Are you currently on disability?

Page 30

A. No, sir.

Q. What -- what do you do for income?

A. My wife works.

Q. What does your wife do for work?

A. She's a picker at Amazon.

Q. Any other sources of monthly income besides your wife's income?

A. No, sir.

Q. We talked about your jobs -- prior employment earlier. Have you ever been fired from any of those positions?

A. No, sir.

Q. Do you remember how much you were paid when you were working at Bondex?

A. Like, 16.50 an hour.

Q. Do you remember what your pay was at Southern Felt?

A. Like, 18.50.

Q. What made you go from Southern Felt, where you were making a little more money, to Bondex?

A. To get off nightshift.

Q. The Wilson Tire -- I don't think I got that name exactly right.

A. Tire & Mold.

Page 31

Q. Tire & Mold. What were you making there an hour?

A. Like, $10 an hour.

Q. About how much money does your wife bring in every month?

A. Every month, probably -- probably around 1,800, 2,000 probably.

Q. Okay. And what's your mortgage payment a month?

A. I don't have a mortgage.

Q. How did you buy the home that you purchased?

A. With the workers' comp.

Q. Workers' comp, you got $240,000; is that right?

A. Give or take. Probably not -- I don't think that was net or after. You know, that's probably the initial settlement. I don't know if that's what I got, like, after fees and all.

Q. Okay.

A. The lawyers' fees.

Q. You paid some in attorney's fees?

A. I'm pretty sure.

Q. Did you -- are you aware if you paid any medical bills with that money?

Page 32

A. I'm not sure.

Q. Do you drink alcohol?

A. Yes.

Q. Okay. How often?

A. A few times a week.

Q. And we'll talk about some of the -- your medical records in more detail later on.

At some point in your life, did you think that maybe you had -- you were drinking too much?

A. I mean, not really.

Q. No. Okay. And right now, you don't -- you don't feel like you have an issue with alcohol?

A. No, sir.

Q. Do you smoke at all?

A. Yes, sir.

Q. Cigarettes?

A. No, sir.

Q. Marijuana?

A. Yes, sir.

Q. How often?

A. For pain.

Q. For pain?

A. Uh-huh.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 33

Q. Every day?
A. Every day.
Q. How long have you been smoking marijuana?
A. 5 years. Got to be. It was after the accident. So it's 5. Probably about 5 years.
Q. You smoked marijuana prior to the accident as well, correct?
A. Prior in my life, but not at the time of the accident.
Q. A little more detail on that. When -- like, when did you first start smoking marijuana?
A. Probably 15, 16.
Q. Okay. And you smoked until what point?
A. Until -- it was -- I had to be like -- because I got hurt at 32. So I had to stop at, like, 28. So I probably smoked up until, like, 28. Until I was, like, 28.
Q. Okay.
A. Something like that.
Q. And why did -- did you stop because you were getting drug tested for work?
A. Not really. I stopped because I had a life change starting ministry.
Q. And about when did you start back

Page 34

smoking marijuana?
A. 2020. I think it was 2020. Something like that. After I was trying to wean off the pain pills from the accident.
Q. And you said that -- you testified that you smoked it for pain relief?
A. Uh-huh.
Q. What -- what pain do you have?
A. Phantom pain.
Q. What's phantom pain?
A. Ghost pain. Phantom pain. Feels like my arm's still here, caught in the machine or whatever. It constantly feels like my arm is still here. It's phantom pain. It's what they call phantom pain or ghost pain.
Q. Okay. And is that -- do you have any other physical pain?
A. Yeah. Normal, like, back ailments, shoulder, but the normal.
Q. In terms of pain that you attribute to be related to the accident at Bondex, is phantom pain the only pain you have related to that still?
A. Phantom pain and some back pain.
Q. Okay. So you think that some of your

Page 35

back pain is related to the accident?
A. Uh-huh. Of course.
Q. Okay. And you mentioned your shoulder. You think -- is that your right shoulder?
A. Kind of both because once I got hurt, I had to lay on this side mostly and so it became painful, and then I got frozen shoulder in this one, like, once I started moving this side and stopped moving this side. So, like, yeah, both of them, but not like -- not -- my right isn't excruciating pain, but, yeah, it's some pain. Some discomfort.
Q. Okay. Any other pain beside your shoulder or back pain or phantom pain that you attribute to the accident?
A. No.
Q. Do you go to a primary care physician or a doctor that you see regularly?
A. Yes.
Q. Who is that?
A. Dr. Abraham Weaver.
Q. And where is Dr. Weaver located?
A. In Edgefield.
Q. What facility in Edgefield?
A. Edgefield Medical Clinic.

Page 36

Q. And how far of a drive is that from Gaston to Edgefield?
A. An hour and 15 minutes, I think.
Q. You just still go to him just because you have a history of going to him?
A. Uh-huh.
Q. When did you start going to Dr. Weaver?
A. I think it was after my accident. It was after my accident. So it was like -- had to be, like, 2020 maybe. 2019, 2020. Something like that, I think.
Q. Did you go to a doctor regularly prior to the accident?
A. I had a doctor, but I didn't have to go regularly, but I had a family doctor prior to that.
Q. And do you remember his or her name?
A. Her name was -- it was on the tip of my tongue. I can't really remember her name. We just discussed it. I forgot now, but, yeah, it was a lady, but I can't remember her name.
Q. Okay. Do you remember what facility where she --
A. Edgefield Medical.
Q. Same -- same facility is Dr. Weaver?

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 37

A. Uh-huh.
Q. Okay.
A. Uh-huh. She left. That's why I ended up getting Dr. Weaver, because she ended up leaving.
Q. Again, I'll talk to you a little bit more -- in more detail about this later, but I want to talk about just any sort of prior medical issues that you had prior to the accident.
It looks like in looking from -- at your mental -- at some medical records you had some mental health struggles prior to the accident; is that correct?
A. Uh-huh.
Q. Is that a yes?
A. Yes. I'm sorry.
Q. That's okay. What about anything else, anything else that you had, medical issues prior to the accident?
A. I was in a car wreck, so I had some back pain prior to the accident.
Q. And that -- so that -- some of that -- well, you had back pain from 2005 forward?
A. Yes.
Q. Any other issues or conditions?

Page 38

A. No, sir.
Q. What about, have you ever gone -- had surgery?
A. Yes, I've had surgery.
Q. Well, other than -- other than for your -- other than for your arm, have you had --
A. Yes, sir.
Q. Okay.
A. At -- like, around the same time.
Q. You had a hernia at some point?
A. Yes, sir.
Q. Okay.
A. Yes, sir.
Q. And anything else besides that hernia surgery?
A. I had a -- I think I had an abscess surgery a long time ago. It was kind -- but it was like -- it wasn't a go-under type surgery.
Q. Okay.
A. Like, I just had an abscess in the back of my throat, and they had to cut it out, but I didn't go under or nothing.
Q. The hernia surgery, was that before or after the accident?
A. That was after the accident.

Page 39

Q. But you don't contend that that was caused by the accident, do you?
A. No, sir.
Q. Do you take any medications currently?
A. Yes, sir.
Q. Which ones?
A. Paxil.
Q. That's for depression?
A. And anxiety, yes, sir.
Q. Okay. Anything else?
A. Wellbut- -- Wellbutrin.
Q. And is that also for depression and anxiety?
A. Uh-huh.
Q. And you take each of those daily?
A. Yes.
Q. How long have you been taking Paxil?
A. I've been taking Paxil for a while. Probably since 2017, '16. Something like that.
Q. Prior to the accident?
A. Prior to the accident, yes, sir.
Q. How about Wellbutrin, how long have you been taking it?
A. That was only after the accident. So, like, 5 years, and, Paxil, they upped the dose

Page 40

after the accident.
Q. After the accident, you were taking opioids for a period of time, correct?
A. Yes, sir.
Q. Okay. That was from -- the accident was in January of 2018, correct?
A. Yes, sir.
Q. How long did you take opioids after the accident?
A. Well, when I got out of the hospital, I had to go through a six-month waiting period to get in the pain center. So it was probably from, like, middle of 2018 to probably, like, the end of 2018. It wasn't long. It wasn't long. Like, 2019, probably, at the latest I was taking opioids.
Q. And you've been able to stop taking those?
A. Yes, sir.
Q. Why did you have to wait to get into the pain center? Was it full?
A. It was protocol. Yeah.
Q. Okay.
A. It's full. It's always full.
Q. Okay. And so it was just until a spot

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 41

opened up?
A. It always -- yeah. If you the first -- for your first time -- your first time, you got to wait 6 months. It's a 6-month wait period.
Q. All right. Other than -- just to be clear, other than Paxil and Wellbutrin, you're not taking any medications currently?
A. No, sir.
Q. All right. Let's talk about -- in more detail about your job at Bondex. I think you testified earlier that you started working there at some point in 2017.
A. (Speaking sotto voce.) Yes, sir.
Q. Okay. The accident was in January of '18. Do you remember sort of around about when in 2017 you would've started working there?
A. It was 6 months prior to the accident. So only August or something.
Q. August timeframe?
A. Maybe. Somewhere up in there.
Q. What does Bondex do or make?
A. Textile.
Q. What kind of textiles? What are they used in? Do you know?
A. Like, felt or, like, Teflon. Like, used

Page 42

in fire -- fire gear or whatever. Like, inside of fire vests or --
Q. Turnout gear?
A. Uh-huh. Or, like, bulletproof, I guess, for, like, Teflon for -- I don't know.
Q. How did you come to work at Bondex? How'd you learn about it?
A. Through my -- through the supervisor conducts. Through my supervisor at Bondex. He was my supervisor at Southern Felt also.
Q. And what was his name?
A. Kevin Fields.
Q. And so he moved over, and you knew about the position and applied and got the position?
A. Well, yeah. I knew he moved over and I -- me and him used to conversate and I asked him about it, and he got me the job up there.
Q. And at Southern Felt, you were working the nightshift?
A. Yes, sir.
Q. And this allowed you to get off the nightshift, working at Bondex?
A. Yes, sir.
Q. What was -- what was your position when you started working at Bondex?

Page 43

A. I was hired to be a card operator. Same position I had at Southern Felt.
Q. And what's a cart operator?
A. A card, C-A-R-D.
Q. Card. Okay.
A. It's a big card machine. It's a machine that you put felt fabric in, and it makes the felt.
Q. Okay.
A. Or it's --
Q. Just a little -- me not knowing about the textile industry or how those machines work, what -- just briefly, sort of what would you -- what would you do in terms of how would you operate that machine?
A. You -- you get the fiber. You go -- you go get it from the warehouse, the fiber -- whatever kind of fiber mix they need. Put it in the hopper -- what they call the hopper. The hopper loads it into the big machine, it comes down, and it -- all the felt gets threaded together. It goes through a threader, and then it comes around and gets threaded some more, and then you -- it comes off on a doff roller and you doff the roll.

Page 44

Q. And that's called a card machine?
A. Card, yes, sir.
Q. Okay. So how long did you work on the card machine?
A. At Southern Felt, probably was, like, 2 years, if I'm not mistaken. Like, 2 years.
Q. What sort of training did you get at Southern Felt in terms of working with industrial machines?
A. Safety training. Equipment training. Machine training. Forklift training.
Q. Okay. Had you worked on industrial machines or around industrial machines prior to working at Southern Felt?
A. Uh-huh.
Q. At what positions?
A. Turkey Federation, I -- saw machine, the nail machine. Probably the Carlisle job. They probably had plenty of machines in there.
Q. All right. And so when you came over from Southern Felt to Bondex, you were originally assigned to a card machine as well?
A. I was hired for a card machine.
Q. You were hired for a card machine.
A. Uh-huh.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 45

Q. Did you ever work for a -- at a card machine at Bondex?
A. Yes.
Q. For how long?
A. Not long. It was the startup period. So, like, we ran a little here and there. So it wasn't in full production mode, is what I'm saying. So we ran a little here on the card machine, and then we'd go to a different machine. So it was in the beginning. So it was -- it was in the beginning. So I wasn't -- that's why I said I wasn't assigned to just one particular machine because it was still a startup company.
Q. Okay. So Bondex hadn't been operating for a very long time when you started working there?
A. Not too long. Probably a year, but not too long.
Q. And when you say it was the startup period, they were still sort of figuring out the process and what machines did and how everything would work?
A. How the felt -- mainly how the fabric had to come out, how that machines was bring it out or whatever. I guess it was -- because I

Page 46

remember they had some high-power water machines. So it was, like, a lot to it. So that's why it had to be a slow process in the beginning, to make sure everything was good before beginning full production mode.
Q. We're going to talk about, I guess, the Wumag machine a lot today. Is that -- did you -- the machine where you were injured, what did you refer to it as?
A. Heat setter or Wumag.
Q. Okay. And so if we -- was there another Wumag machine at the facility?
A. Possibly, but I'm not sure if it was by the -- made by Wumag or if it was -- but there was other machines there.
Q. Okay. So if we -- if we talk about the Wumag machine today, we can both understand that we're going to be talking about the machine where you got injured?
A. Yes.
Q. Okay. And tell me about the Wumag machine. What did it do?
A. It was a heat setter. Well, it gets hot and it shrinks the fabric. You put it through, and it shrinks it to a smaller size.

Page 47

Q. Okay. It's made to basically preshrink fabric, right?
A. To preshrink it? To shrink it while it's going through.
Q. Okay. So it doesn't shrink after it gets out of production?
A. You always -- you always got to shrink it down. So it goes from one machine shrinking it. Then the heat setter shrinks it some more.
Q. And when did you start working at the Wumag machine?
A. Since we was there. Like I told you, we would go from one machine to the other one. So, like, mainly standing around, looking, figuring -- watching things. So, like, the whole time, we was just alternating between different machines.
Q. All right. So it wasn't like you were hired for the card machine, but then two weeks later you went to the Wumag machine. You kind of operated all of the machines there?
A. Kind of did what was necessary. Like, I was hired for the card machine, but since it wasn't in full production, we just fit in where we could, you know, to get work done.

Page 48

Q. You said -- I believe his name was -- Kevin Fields was your supervisor?
A. Yes, sir.
Q. Okay. Who else did you, you know, sort of answer to or was in management that you had interaction with?
A. My lead man, Donny Shealy, and the guy over Kevin was Reece. Reece Walmsley.
Q. What was Donny Shealy's position?
A. He was the lead man.
Q. Okay. And so was -- between Donny and Kevin, was one -- one supervisor over the other? Were they counterparts --
A. Kevin was the supervisor, and Donny was the lead man. Kevin was over Donny.
Q. Kevin was over Donny. And so Donny would sort of be -- if you had an issue, Donny might be the first person that you would go talk to?
A. Uh-huh.
Q. Would you work in pairs at Bondex or were you kind of working by yourself?
A. Sometimes we would work in pairs.
Q. Okay. And who would you work with if you were working as a pair?

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 49

A. Whoever. Kevin, Reece, Donny, Harry. Whoever -- whoever you had to work with.
Q. You mentioned a Harry. I saw in some of the documents there was a Harry Walmsley, right?
A. Uh-huh. Reece's son.
Q. Reece's son. Okay. What was Reece's position, if you know?
A. I don't know if he was plant manager or what. Some -- something like that, like, over the plant. I guess, like, over the startup. Over -- he was the -- he was the head one, I guess. Like, the plant manager or -- I'm not sure his position title.
Q. And what about Harry, what did he do? What was his role?
A. Whatever he was told. He was -- that was like -- that was his son. You know. You know how that goes. You know, he was the boss's son. So you already know how that goes, but he did work. No. He would work. Yeah. So he just did whatever he had to.
Q. Any coworkers other than who we've talked about that you were friends with or close with?
A. It was two sides of the company. So it

Page 50

was -- it was a guy or two that maybe I used to talk to at the -- like, in the other side, but Bondex, that was, like, all of us. There was only a couple of us because it was a new. It was a startup. So --
Q. So on the startup side that we we're talking about, between Reece, Kevin, Donny, yourself, and Harry, that was kind of everybody on that one side?
A. Yes.
Q. Okay. And what did the other side do? What sort of --
A. I think they kind of did similar, but I wasn't too sure. Like, kind of similar though. It was kind of similar.
Q. Okay. But it -- was it a different building?
A. It was in the same building, just a different apartment. You know, it was, like, up the hill in a different department.
Q. Okay. So --
A. You know, it was, like, two compan- -- it wasn't -- it's kind of hard to explain. It was the same company, but, like, I guess the machines was so different in this part, like,

Page 51

that's what separated them I guess. I'm not sure.
Q. And I -- I -- I went there once and I know -- I remember -- I don't remember it that well, but you kind of walk into an office and I think you walk sort of down a ramp --
A. Yeah.
Q. -- to get to where the Wumag machine was --
A. Yeah.
Q. -- and this other side --
A. And then up the ramp --
Q. -- would have been the other way?
A. Yeah. Up the ramp.
Q. Okay. Do you know anybody that still works at Bondex?
A. I'm pretty -- I don't know if Kevin still works there.
Q. Do you ever talk to him?
A. No.
Q. Okay. Do you ever talk to Donny?
A. Donnie's dead.
Q. How did Donny pass away?
A. COVID.
Q. What about Reece, have you spoken with

Page 52

him at all recently?
A. No, sir.
Q. Harry?
A. No, sir.
Q. All right. You said at Southern Felt -- I think you felt like you got good training on how to operate the machines; is that right?
A. Uh-huh.
Q. Okay. Do you feel like you got good training in terms of how to operate the machines at Wumag? Or --
MR. PARKER: Object to the form.
Q. -- excuse me, at Bondex.
MR. PARKER: You got to answer.
A. Oh, good training.
Q. Mr. Lanham, we're going to start going through some exhibits, which are basically just documents that I'm going to show you and ask you some questions about. So the first one --
MR. PARKER: What is that from?
MR. OSBORNE: This is from the Bondex subpoena response. Do you want a copy, Jay?
MR. PARKER: Yeah.
MR. OSBORNE: Colin, you want one?

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 53

MR. SPANGLER: Yeah, sure.
Q. Mr. Lanham, I'm going to represent to you, and feel free to take your time looking at it, but these are some training records from Bondex, Inc.
Have you seen these documents before?
(Exhibit No. 1 was marked for identification.)
A. I'm not sure I've seen these -- this. You mean all of these? You asking --
Q. Yeah. I'll --
A. Go through them?
Q. If you flip through them -- and you just let me know when you're ready. I'll ask you some specific questions, but feel free to familiarize yourself with the documents.
You ready for some questions?
A. Uh-huh. Yes, sir.
Q. So tell me generally, when you started working at Bondex, what did you do for training to learn how to operate these machines?
A. Stand around and look, observe, and listen.
Q. And who were you watching or listening to?

Page 54

A. Either Kevin or Donny.
Q. And do you remember anything specific about the training you received relating to the Wumag machine?
A. Anything specific? No.
Q. Did you -- do you remember at -- at some point did a -- like, a third-party, Cintas, come in and conduct some training? Do you remember that?
A. I don't remember it.
Q. And so, like, this -- this class roster, which is the second page of that document that I just handed you, it references some sort of class in August of 2017.
You don't have any specific recollection of that?
A. Not really, no.
Q. Do you recognize these names that are on the second page, like, Tracy Marion, Woodrow McKie?
A. I -- I think I recognize Tracy.
Q. And Donald Shealy, that's -- that's Donny?
A. Uh-huh.
Q. He's number 8 on this?

Page 55

A. Uh-huh.
Q. But in terms of specifics, you don't remember anything specific about this training class?
A. Not specifics.
Q. All right. And the answer to these next questions may be the same, but if you look on the -- it's the fourth page, and this is conveyor safety if you look at the course name kind of where all the names are printed. I think maybe flip one back.
Do you remember anything specifically about a conveyor safety course?
A. No.
Q. Okay. The next page, the course name is LOTO. Go back that way. Yeah. One more. There you go.
You see LOTO at the course name?
A. Oh, yeah.
Q. I believe -- do you think that stands for lockout-tagout?
A. Probably.
Q. Tell me what, if anything, you remember about lockout-tagout training at Bondex.
A. I don't remember too much at Bondex, but

Page 56

I remember lockout-tagout from Southern Felt.
Q. And what was the lockout-tagout process at Southern Felt?
A. You cut the machine off and you put your lock on it, your tag on it. You tag it, and you don't remove it. If you see one, you don't remove it until if the machine is fixed and you know for sure, like, because the person with the tag, maybe they was under the machine or something. You never knew. So if you see a tag, you don't touch it. It's locked. You don't -- you don't cut on the machine. You don't take the tag off. You use the tag when you shutting off the machine -- all the power off -- and you don't -- you know it ain't going to move because it's got the tag. Ain't nobody can cut on the power unless it's cut off or whatever.
Q. And so what's the purpose of a lockout-tagout procedure?
MR. PARKER: Object to the form. Go ahead and answer.
A. The purpose of a lockout-tagout procedure is to keep the machine from -- from cutting on accidentally.
Q. And to keep somebody from getting

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 57

injured?
MR. PARKER: Object to the form.
A. It keeps the machine from cutting on -- from somebody cutting on the machine if you might be in there. If somebody might be under it or it might be home. You never know. It's just to keep the machine from cutting on.
Q. Okay. And the lockout-tagout procedure was used at Southern Felt?
A. Correct, yes.
Q. Are you aware of whether or not -- well, let me ask you this way.
Did you ever use a lockout or tagout procedure while employed at Bondex?
A. No.
Q. And why did you not use a lockout-tagout procedure at Bondex?
MR. PARKER: Object to the form.
A. I wasn't -- I wasn't told to. I wasn't -- we wasn't given a lockout-tagout. I had no lockout-tagout.
Q. Were you ever given any sort of written materials -- written training materials in terms of how to operate the machines or anything else while at Bondex?

Page 58

A. Maybe I received some written material. I'm not sure. I'm pretty sure I probably did.
Q. Okay. But you can't specifically remember any?
A. I know you get a lot of paperwork at the beginning when you start in the job. So, you know, I don't really remember, but I'm pretty sure I probably got some.
Q. Did you ever receive specific training on how to clean the Wumag machine?
A. Some, yes.
Q. And tell me about that. Who trained you on that?
A. Donny and Kevin.
Q. And what did they tell you?
A. They showed me how to clean the top roller.
Q. And -- and how did they -- what -- what did -- what'd you do? What was the process?
A. To put your hand on the machine -- cut it on fast, put your hand on it and let it degrease. Hold a rag on it, and it pulls the grease off.
Q. And you said that they told you how to clean the top roller; is that right?

Page 59

A. Yes, sir.
Q. Did they ever show you how to clean the bottom roller?
A. We hadn't got to that yet. We -- we had never got to be able to -- it was clean. So, like, the machine, you only cleaned it -- you don't clean both at the same time. So it hadn't got dirty at the bottom yet prior to the day they asked me to clean it.
Q. Okay. Did anybody at Bondex ever show you how to clean the bottom roller prior to the accident?
A. No.
Q. All right. I'm going to hand you what we've marked as Exhibit Number 2.
(Exhibit No. 2 was marked for identification.)
MR. OSBORNE: And, Jay, these are photographs from -- I think -- is it Ricky Dixon (Ph.)?
MR. PARKER: Uh-huh.
MR. OSBORNE: From his -- his file.
Q. All right. Mr. Lanham, do you recognize what's shown here in Exhibit Number 2?
A. Yes.

Page 60

Q. Okay. What is it?
A. The Wumag, looks like.
Q. And you believe that this is the machine where the accident took place?
A. Yeah, but it didn't look like this.
Q. What --
A. I think -- yeah. Hold on. I'm not sure. Yeah. It looks like -- it looks similar. It looks similar. I don't know if them rollers was that small. I'm not sure, but --
Q. What looks different to you?
A. Nah. This looks like the Bruckner, if I'm not mistaken.
MS. WRENN: It looks like the, what? I'm sorry.
THE WITNESS: The Bruckner.
Q. And what's the Bruckner?
A. The Bruckner's a different machine there.
Q. So you -- you don't believe that this is the machine that -- where the injury took place?
A. Possibly. Hold on. Let me make sure. This could have been the machine. It could have been. Shit. Is it?
Q. And I'll -- I'll tell you -- I mean,

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 61

certainly, you tell me if you think I'm wrong. This is the machine that we were shown as the machine where you were -- were injured.

A. (Speaking sotto voce.) Yeah. Yeah. It got to be. Yeah. It got to be, I guess.

Q. All right. So just tell me -- I guess just -- again, I don't know how these machines operate, but what would you -- you do if you were operating this machine? Where would you stand and what was your sort of role?

A. This don't look like -- it just looks different to me, bro, because I know all -- all that stuff wasn't right there because I remember specifically sitting on that bar when I was stuck. So if that part were right there, I wouldn't have been able to sit -- I wouldn't have been able to be right there.

(Gesturing.)

Q. And tell me just so we can -- you know, she's taking everything down -- so we can try to -- what -- what bar do you think that you were sitting on?

A. I know I was sitting on a bar. If this is the machine -- I was sitting on a bar, but I know that couldn't have been right there

Page 62

because -- that couldn't have been right there. I wouldn't --

MR. PARKER: Do you want him to circle on the picture?

Q. Yeah, if you don't mind. Here, I'll hand you this Sharpie. If you circle where you think you would have been sitting --

A. (The witness obliged.)

Q. All right. And what makes you think that -- all right. Thank you for doing that.

A. I ain't -- I'm saying I think. I don't know for sure. It just -- I don't know -- remember. I can't remember.

Q. Okay.

A. Because it wasn't a machine I ran every day, so, like, I don't vividly remember this, but I swear this -- it looks -- it don't -- I don't know.

Q. All right. Let me ask you about the -- do you see the touchscreen on the cabinet on the right-hand side of the photo?

A. Uh-huh.

Q. Okay. Would you ever -- what did that touchscreen do?

A. I think it turned on the machine.

Page 63

Q. Okay. Is that something that you -- in your position, would you mess with that touchscreen?

A. Uh-huh.

Q. Okay. And what would you do there?

A. I think it lowered -- it raised -- probably raised and lowered the -- the rollers.

Q. Let me -- I'm going to hand you -- I'm going to mark this as Exhibit Number 3. This will be easier to talk about.

(Exhibit No. 3 was marked for identification.)

A. (Speaking sotto voce.)

MS. WRENN: Do you want to take one of these?

MR. OSBORNE: Yeah. I'll hand one to Jay.

Q. Does this appear to be the screen?

A. Uh-huh.

Q. Okay. And does this help you remember what you would have done --

A. Speed --

Q. -- on the screen?

A. Yeah. Speed up the rollers and -- it speeded up the roller, cuts the fan on, and it

Page 64

shows you how to thread up the machine.

Q. Okay. And this -- this would've been something that you would have used these controls on the screen to -- to do what the machine -- what you wanted the machine to do?

A. Yes. For the most part, yes, sir.

Q. Okay. On Exhibit Number 3, do you see on the screen that it's got modes 1, 2, and 4?

A. Uh-huh.

Q. Okay. Can you tell me about the difference between those modes 1, 2, and 4?

A. Not really. The only difference I can tell you -- the only thing I know about that is it's trying to show you how to thread up the machine. So, like, the difference was -- I can see from 1 to 2 it's being thread up different. That's the difference I can see. The 4, it don't got no thread. That's -- that's the only difference I can see.

Q. Do you remember getting any training about what the different modes did?

A. How to thread them up. That's what I -- I'm pretty, how to thread them up. Yeah. I'm -- yeah. I got -- to know how to use the machine, I'm pretty sure I got some training on how to

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 65

thread it up.
Q. Okay. And so in terms of what you would make or have the machine make using mode 1, what would the machine make using mode 1?
A. I don't know. I -- yeah. It's only -- only -- only thing I can see from mode 1 is how to thread it up. Like, you -- you get this lead. It's what you call a lead. You have to -- you see how all those -- on that first page how you got all these bars?
Q. Uh-huh.
A. The only thing mode 1 is showing you is how -- okay. Put it under the bar or over the bar. You see what I'm saying?
Q. Okay.
A. That's what it -- that's what it's showing you other. Like, put it up under this one, take it over that one, take it under this one. That's what it's showing you, just how to thread it up.
Q. Okay. But -- but -- but you don't know when you would use mode 1 versus mode 2?
A. When they tell me --
MR. PARKER: Object to the form.
THE WITNESS: Oh.

Page 66

MR. PARKER: You're good. You go ahead and answer. Don't listen to me.
A. When they tell me to.
Q. Okay.
A. It was a startup. I didn't -- I was hired for the card machine. So whatever they told me, that's what -- if they say mode 1, I thread it up like mode 1.
Q. Okay.
A. They say thread 2 --
Q. You -- you'd follow directions in terms of what they told you on what mode to use?
A. Yes, sir. On the threader, yeah. That's just showing you how to thread up.
Q. And if you go back on the first photograph I showed you, which is Exhibit Number 2, you see the keys and some of the buttons below -- above and below the screen?
A. Yes.
Q. What do those buttons and keys do?
A. Probably stop -- stop and start it, I imagine. Probably stop and start it.
Q. Now, would you -- would you operate those buttons or --
A. Uh-huh. Yes, sir.

Page 67

Q. Okay. Did you have a key?
A. No, sir.
Q. Okay. Who would have had the keys?
A. I think the keys stayed in there.
Q. Okay. I'm going to pass you what's been marked as Exhibit Number 4.
Mr. Lanham, I believe that this is -- from our understanding, this shows the roller pinch point where your arm got stuck --
(Exhibit No. 4 was marked for identification.)
MR. PARKER: Do you need a break? We can take a break.
MR. OSBORNE: Yeah. We'll take a break.
(Recess.)
Q. All right. Mr. Lanham, we'll get started again, and before we do, I just want to acknowledge I know -- I know some of this is going to be tough today, and I'm not trying to do this to be difficult or put you in a difficult situation. We're just trying to get information about the case and -- and -- that we need to try to defend the case. So if at any point today you need to take a break, totally understand.

Page 68

A. Yes, sir.
Q. You get up and take a break, and we'll -- we'll work around your schedule. Okay?
A. Appreciate it. Appreciate it.
Q. I know some of this is going to be hard to look back and think about and not what you want to talk about. So I appreciate you being here.
A. Yes, sir. Thank you.
Q. All right. We're looking at Exhibit Number 4, and I think this shows the two rollers where -- where your arm got caught, and does that appear to be the case?
A. Yes, sir.
Q. Okay. And you -- I think you testified earlier that you are cleaning that bottom roller, and it would be the bottom, smooth roller, correct?
A. Yes. That -- that one.
(Gesturing.)
Q. Okay. Why don't you -- if you can, take that Sharpie and just put an 'X' on where -- the roller that you were cleaning.
A. (The witness obliged.) Attempting. Attempting to clean.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 69

Q. All right. Do you see off to the side there's a -- a yellow bar, and it's got what looks like a little sort of green light at the -- at the bottom of it called a light curtain?
A. Right here?
(Gesturing.)
Q. I was looking at --
A. This one?
(Gesturing.)
Q. -- this one here. Do you see that?
(Gesturing.)
A. Yeah, I see it.
Q. Okay. Are --
A. Right here.
(Gesturing.)
Q. Are you familiar with what a light curtain is?
A. I think.
Q. What -- what's your understanding of what a light curtain is?
A. I think it's supposed to like -- like, if something comes in that area, shut the machine off, I think.
Q. Do you know whether or not the light curtain on this machine was operational at any

Page 70

point?
A. Was it operational at any point? I heard that it might have been operational. I heard that it might've been removed to, like, keep the machine running.
Q. Were you aware of any issues where the light curtain -- well, excuse me -- there was slack in the fabric being fed in that was causing the light curtain to turn the machine off?
A. What about it? Was I aware?
Q. Right.
A. I didn't know why they would've turned the light -- took it off. I don't know what the problem was or the issue, so I don't why, like, they would've moved it or put it back on or not have it on. I didn't know much about the machine. I just had heard it had been -- a light -- supposed to have been a light curtain or might've been a light curtain.
Q. And did you hear this before or after the accident?
A. Before.
Q. Before the accident?
A. Yeah.
Q. Okay. And who -- who do you think that

Page 71

you would've heard that from?
A. Probably -- probably Harry, but it was just, like, basic conversation. It wasn't like -- because it wasn't -- the accident hadn't happened yet, so it was just, like, basic conversation, like, that I think I recall hearing before. Like, it wasn't nothing, like, that stood out. It was just basic conversation one day.
Q. When you went to clean the machine prior to the accident, did you do anything with the light curtain in terms of turning it on or turning it off?
A. To my knowledge, I never had knowledge of a light curtain when I was on the machine.
Q. And -- and when you were operating this machine, so not immediately before that you were cleaning it, but whenever you were operating it, did anybody ever tell you that you need to do this or you need to do that to the light curtain?
A. No, sir.
Q. At any point when the machine was operating and you were not cleaning it, would you be in the vicinity where you were putting, you know, your hands or arms or anything near these

Page 72

rollers?
A. You said was -- when it wasn't operating?
Q. When it was operating, but not -- not when you were cleaning it. Like, if it was just in --
A. Okay. If it --
Q. -- your area of production.
A. -- was just in motion?
Q. Right.
A. If it was just in production and the fabric -- all the fabric would be back here. You would stand in this area.
(Gesturing.)
Q. And that --
A. You would stand on the --
Q. You're pointing to the platform --
A. The walk- -- the walking platform.
Q. Okay. On Exhibit Number 2?
A. Yeah. That would kind of be the area you walk through and scan the fabric, like, for any defects or anything. So, like, you know, you wouldn't be on the machine anymore, so that's where the fabric's at.
Q. And so as you sit here today, can you

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 73

say one way or the other whether or not that light curtain was ever working when you were at Bondex?

A. As I sit here today, do I -- I have no knowledge of a light curtain, like, working that day or -- I don't -- I had no conversations about the light curtain --

Q. Okay.

A. -- other than somebody might've removed it before, but, no, I didn't know if it worked or didn't work.

Q. And do you know in terms of specifically who might have been the one to remove or deactivate that light curtain?

A. If it was moved (sic) -- if it was -- anything that had to be done on the machine, like, people from overseas came and did it. The company. Anything that had to be constructed on the machine, any defects or whatever, the guys had to come over and -- over -- from overseas and work on it.

Q. Did you ever see anybody from overseas working on the Wumag machine personally?

A. Not personally. Not -- not that I can remember. Maybe the doors or something, but I

Page 74

don't know because they always was over there. So I wasn't really paying attention to them, what they was doing. So I could've -- might've seen them working on it, but I don't know for sure.

Q. Who that was employed by Bondex knew the most about how the machines operated?

A. How they operated? It would be Kevin and Reece.

Q. Kevin and Reece?

A. How they operated. Yeah. Reece would know the most.

Q. You said Reece, you think, would know?

A. Reece. Reece Walmsley would know the most, and Kevin Fields. Because I don't know if Reece was actually employed by Bondex. I don't know how that works. So --

Q. Did you ever see Reece working on the machines?

A. Not to my knowledge. I don't know. Like -- not, like, mechanically, no.

Q. Okay. All right. I want to talk to you about the day of the accident and, again, if you need time or you want to take a break, you just let me know.

A. Uh-huh.

Page 75

Q. The accident took place on January 22nd, 2018, correct?

A. Yes, sir.

Q. Okay. About what time did the accident take place?

A. I'm not sure. 11 maybe. Around 11-ish maybe. I'm really not sure.

Q. What time would you have reported to work that day?

A. I think we started at 8:00, but probably got there around 7:30 or something. Quarter to 8:00.

Q. What, if anything, do you remember about what you did that morning?

A. I only remember -- I only remember going out to the car and getting my lunch from my wife because she had just brought me some lunch, and I remember going back to sit at the needle boards with Harry before -- prior.

Q. Okay. What are the needle boards?

A. Remember I told you the machine threaded it -- threaded the fabric? It's a big, long needle board with needles -- with needles in it, and you have to -- like, when they break, you have to knock them out and replace them.

Page 76

Q. And you said you would've sat down. Did you -- do you feel like you ate your lunch with Harry?

A. No. No. I just went and got my lunch, brought it back to the break room, and I went and sat down and continued working on the needle boards with Harry.

Q. Got it. Okay. The accident happened when you were trying to clean the machine?

A. Uh-huh.

Q. Who asked you to clean the machine?

A. Donny.

Q. But if he -- if you remember, what did he ask you to do?

A. He came and said, Barry, can you clean the bottom roller? I need you to clean the -- Kevin said for you to clean the bottom roller.

Q. Okay. And this was the first time you had cleaned the bottom roller?

A. Uh-huh.

Q. What, if anything, was different about cleaning the bottom roller from the top roller?

A. Hind- --

MR. PARKER: Object to the form. Go ahead.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

A. Now or hindsight or at that time?
Q. Well, let's -- let's take it at that time.
A. At that time -- at that time, nothing. It was the same as the top, in my mind.
Q. Okay. Now, looking back on it, what was different?
A. I probably should've -- it probably should've been cut on a different way than the top.
Q. Was anybody helping you clean the machine?
A. No, sir.
Q. Did Donny give you any sort of instructions about how to clean that bottom roller?
A. No, sir.
Q. Did he tell you whether or not the machine should be on or off when you're cleaning the bottom roller?
A. It was -- it was -- that's how you -- that's the only way they showed -- I was -- knew how to clean it, to have it on.
Q. To have it on.
A. That's the way I was -- been seeing it

done. That's how it was done.
Q. When it was on, what way were the rollers rolling?
A. I'm not sure. I'm not sure. I cut it on and it was -- it happened that fast. Cut it on, put -- my hand was going. I mean, hindsight, evidently that-a-way, but, you know, I just cut it on and turned it up to, like, 25.
(Gesturing.)
Q. And what -- what's 25?
A. Like, the speed. Like, you see the -- where that exhibit -- that close one? You see it say "speed" over here?
(Gesturing.)
Q. Okay.
A. You see it's on 4?
(Gesturing.)
Q. Yeah.
A. It say 4 right now. 4 is, like, just a slow-rolling speed. 25 is real fast. Like, real fast because it got -- you know, the idea is to run your hand concurrent and it pull off the grease. So you cut it on kind of fast, and it's hot at the same time.
Q. Okay. All right. So tell me -- let's

back up a little bit. You were asked to clean the machine. I assume you walked to the machine. Was it on at that point?
A. No.
Q. Okay. And so who turned it on?
A. I turned it on.
Q. How did you turn it on?
A. With the buttons.
Q. Okay. And at that point after you turned the machine on, did you change -- well, after you turned the machine on, what, if any, settings did you change?
A. None. I just turned it -- I put it on 25. I put the speed up. I turned it on and cut the speed up.
Q. And had anybody told you -- or excuse me -- who told you to turn the speed up to clean the machine?
MR. PARKER: Object to the form. Answer.
A. Just that was how you -- okay. If it's on 4, it's going to go slow. It's not enough -- it ain't going fast enough to clean nothing. So that's how it was done. That's how you do it. That's how I cleaned the top one.

Q. Did anybody give you any instruction on whether or not it should be in a certain mode when it was cleaned?
A. No.
Q. When you first started, were you cleaning the top roller as well?
A. I had cleaned it before. No. At that time? That day?
Q. Right.
A. No. They -- remember, I told you they don't be cleaned at the same time.
Q. Okay.
A. Either one or the other.
Q. Do one or the other. Okay.
A. Yeah. One gets dirty faster than the other one.
Q. All right. When you turned the machine on, were both rollers rolling or was it just the bottom roller that was rolling?
A. I think just a bottom because I was cleaning the bottom. So I think just the bottom, but I don't really remember. It just happened so fast, but I imagine it was just the bottom one rolling. I don't know, to be honest with you.
Q. That's fair. I mean, I know it's been

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 81

a --
A. Yeah.
Q. -- period of time now.
A. But I think it was just the bottom.
Q. Did you notice anything -- was anything unusual about how the machine was operating that you remember before you went to start cleaning it?
A. Not to my knowledge.
Q. And what did you do to try to clean it?
A. I put a glove on. I had a towel and I had a spray bottle in my right hand, and I sprayed -- what I was going to do was spray it on there and put my hand on there and let it run concurrent, but after that, it was just -- it was too late. Once I touched it, there was nothing else to do.
Q. All right. Did you notice -- prior to going to start to clean it and touching it, did you notice one way or the other whether the roller was hot?
A. I know it was hot because I got third-degree burns.
Q. But -- but before that --
A. It's a heat setter. I imagine it was

Page 82

hot, and you cut it on -- I mean, like, that's how you got to clean it, it being some heat on it. So I imagine it -- I'm pretty sure it was hot. I know it was hot.
Q. When you had cleaned the top roller before, you cleaned it while it was hot?
A. Uh-huh.
Q. All right. And it happened -- the accident happened quickly after you put the towel on it, and am I correct that it pulled your arm into the machine?
A. (The witness nodded.)
Q. Is --
A. Yes, sir.
Q. -- that a yes?
A. Yes. I'm sorry.
Q. No. That's okay. And what did you do after it pulled your arm in?
A. Well, when I put my hand on it, I -- it pulled -- it pulled me so fast. I don't know what I did, like, initially. Like, I probably thought about it, like, what in the world, but I, like, immediately -- once I noticed, like, there was nothing I could do but, like, scream for help, that's what I did. I started screaming for

Page 83

help.
Q. All right. Was the machine continuing to roll and operate while your hand was stuck?
A. Until it got, like, up to here.
(Gesturing.)
Q. Did you have to hit the emergency stop button?
A. No. I couldn't move. Like, I was stuck there, so I was -- I couldn't hit nothing. I could only scream, Help. I couldn't hit nothing. It was so high, it stopped or what I hit or what happened, I don't know. I couldn't hit nothing. I could just only scream for help.
Q. Were there any people that actually witnessed your arm getting pulled in in terms of saw that portion of it?
A. No, sir. I was the only one back there.
Q. Okay. Who -- who was the first person to respond to you when you were stuck?
A. Kevin.
Q. Okay. Where -- where was Kevin prior?
A. I think he was in the break room maybe on break. I think he was on lunch maybe, and he came from the break room.
Q. Okay. And, again, I went there one

Page 84

time, but where was the break room? Was it in sort of that office building where they had the conference rooms?
A. Yes. Yeah, where the off- -- where the conference room was.
Q. And so in that -- in that space where the Wumag machine was, at the time, you were the only person in that large space? There wasn't anybody else that you can remember working on other machines?
A. No. It was -- Donny was in the bathroom. Harry, he probably hadn't took off to the bathroom because he was over there on the needle boards, and Kevin was at the front, and Willy had just got fired. So I know it was just me. Yeah. Kevin was in the break room I think.
Q. Okay. And when Donny got to you, what, if anything --
A. Kevin.
Q. Kevin. Excuse me. I'm sorry. Kevin was the first one that got to you?
A. Yes.
Q. And what do you remember -- what was the first thing he did?
A. He asked me what I wanted him to do, and

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 85

I told him to cut the machine on and let me try to pull my arm, but in the midst of me telling him to cut the machine on to pull my arm out, I said, Cut the machine on and -- I think I said -- yeah. Cut the machine on. Let me try to pull my arm out, and he did it, but while he was doing it, I was, like -- in my mind, I said my arm's going to pop off and I'm going to bleed to death.

So I was like, Stop. Stop. I told him to stop, and he stopped the machine, and he said, What you want me to do? I said, Go call 911. Go to the office. Because they had just built them a new office back there. I was like, Go the office. Call 911. And they went in his office and tried to call 911, but he couldn't call out, and so he had to run to the front to call 911.

Q. He couldn't call out because his phone wasn't working?

A. Yeah, for some reason. I guess his phone -- he came out of the office like, They won't let me call out, and I told him to run to the front. I said, Go to the front. Go to the front. Go call 911. Go to the front, and he went to the front and called 911.

Q. When your arm was in there and you

Page 86

initially asked him to turn the machine on, was it -- was it -- was he able to turn it on for a small amount of time?

A. Maybe. I don't know. I just know I got a thought that said you're going to pop your arm off, and I said, Stop. Stop. So I don't know if he had hit a button or not or was about to hit it. I just know I told him, Stop. Stop. Stop. Don't -- don't do nothing. Because I was like -- I'm making a mistake if I tell him -- if he cuts it on and tries to pull it out, I'm going to pop my arm off. I'm going to die.

So I was like, Stop. Stop. Stop. And I immediately told him to stop. So I don't know if he made the cut on. Did it cut on a little -- any? Did it pull me in any more? I'm not sure. I just told him to stop.

Q. At this point when your arm was stuck, could you -- could you feel any portion of your arm?

A. Of my arm?

Q. Right.

A. Feel? Not really. Feel. I didn't want -- I didn't care to feel nothing. I just didn't want to die. So, feel, no. I really

Page 87

couldn't. I just heard -- I know I heard every bone crush and I could -- like, feeling, it's hard to explain. You really can't feel when you want to live. So, like, I ain't really feel it at that time. I just knew I didn't want to be in that situation like --

Q. Obviously -- in terms of pain on a level from 1 to 10, what was the pain at that point while it was in there?

A. At that time, like I told you, I couldn't really feel, so I can't say that I had a pain level at all. I can't even say. Maybe I was in shock. I don't know, but to say I was in pain, I couldn't really think about pain at that time.

I was really -- honestly, if you want to know the honest to God truth, I was talking to my cousin that had just passed away 6 months prior to that, saying, I'm about to come where you are. So that's where my mind was, thinking I was about to get pulled in the machine and die. So that's what I remember thinking. So I know that's what I was thinking, talking to him, because I was like, man, well, now I'm coming to see you because I'm fitting to die. So that's what I

Page 88

remember thinking.

Feeling, that's what I felt. I didn't feel pain. So I can't say I had a pain level. I'd be lying if I tried to say 10. Of course, it should have been a 10, but did I feel it at that time? Probably not.

Q. Understood. Did someone else other than Kevin eventually come to the site?

A. Yes, sir.

Q. Who else came?

A. People came from other plants. They -- they -- I was in there for a while. So they came from Southern Felt. They came from -- there's another plant across the road. I don't know if you remember when you came in a plant on the right-hand side.

Q. I think so, yeah.

A. Menardi, I think it's called. They came from there, but the next person, I think, to get there was Donny because I remember -- no. I don't know. It might've been -- it might've been Reece, and then him and Kevin went over there, but I remember when I seen Donny -- I remember I got happy because I thought Donny was going to be able to help me. So Donny was, like, the next

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 89

person I think I had encountered with, and when I had seen him, I was like, Yo, Donny, help me. I know you can help me. He was like, I can't help you. Like, whatever they told him on the other side of the machine, he was like, I can't -- I can't help you. I can't do nothing. I can't help you.

I'm like, Okay. Help me in one way. I told him, Grab my phone out of my back pocket and call my wife, and that's what he did. He called my wife, and then she came with my 4-year-old daughter. They made it up there. Then my mama made it up there, my sisters. Two of my sisters. Her boyfriend. So it was, like, tons of people there.

Q. And did they come back to the area where you were?

A. Yeah. They was all -- everybody was -- I was in the machine. Everybody was, like, standing right here, like, watching -- crying and watching right there.

(Gesturing.)

Q. What was the -- the -- and Reece was there?

A. He was somewhere in the vicinity. I

Page 90

think he was on the opposite side of the machine. Him and Kevin was back there talking I think because I think that's where Donny ended up going, back there. Like, they was talking. I don't know, but they probably was talking about the situation. I don't know, but I know that Reece was probably back there in the area somewhere.

Q. I think I saw in one record that it estimated that your arm was stuck in the machine for about 40 minutes. Is that we think?

A. About an hour. 40 to an hour. Something like that. Yeah.

Q. How did you -- did you ever lose consciousness?

A. No, sir.

Q. How did you ultimately get your machine -- your arm out of the machine?

A. The -- the fire department. They ended up pumping it -- putting a bag in there and pumping it up. Like, I guess, like, when somebody have a wreck -- how they have to do it -- they were saying it was similar to that. So they put the bag in there and pumped it up and was able to get -- release the pressure off my

Page 91

arm.

Q. Are you aware of whether or not anybody from Bondex, you know, thought about could they put the machine in reverse, and so it would roll away -- away from you?

A. No. They was doing what I told them. They was taking instructions from -- directions from me. I was directing everybody.

Q. And you said, Don't mess with the machine?

A. Yeah. Don't touch the -- yeah. After I -- I told Kevin to cut it on at first to try to pull it out, but then I told him to stop, and so nobody messed with it from there.

Q. Are you aware of anybody, fire department or Bondex or anybody else, that took any photographs of the accident while you were stuck in the machine?

A. No, sir, I'm not aware.

Q. Okay. Do you know whether or not Bondex had surveillance video of the accident?

A. I'm not aware, but they had cameras. So I'm pretty sure they probably do, but I'm not aware.

Q. You haven't seen any surveillance video

Page 92

of the accident?

A. No, sir.

Q. But from your time working at Bondex, you're aware that they had cameras at the facility?

A. If I'm not mistaken, I think they did.

Q. Were -- EMTs, ambulance, were they on site with the fire department as well?

A. Yes. Yes. The lady -- from EMT -- she was trying to put -- put an IV in my arm. So I know they was site, yeah, because she -- yeah.

Q. Just walk me through, if you can remember, once they got you free from the machine, what happened after that?

A. The lady -- the lady that was there, the EMT lady, she put a tourniquet -- she made a tourniquet for my arm -- or whatever -- put it in a bag or whatever. I didn't really look. I didn't want to, you know, see it. So they took -- she put a tourniquet on in there and took me outside to the helicopter.

Q. The helicopter was waiting to take you?

A. Uh-huh.

Q. Okay. Did anybody ride with you on the helicopter?

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 93

A. No.
Q. They took you to Augusta, correct?
A. Yes, sir.
Q. And that was Augusta -- sorry -- I grew up in Augusta, and I can't remember all the --
A. Augusta Hospital, but --
Q. -- hospital names.
A. -- it was actually -- it used to be MCG.

MR. PARKER: I can't remember them either for some reason.
MR. OSBORNE: They got -- they got a bunch of them right there.
MR. PARKER: Yeah.
MR. OSBORNE: There's University --
A. Augusta Medical Center, I think.
Q. Okay. And so that's -- they took you to the emergency room at Augusta -- we'll call it, I think -- University Health.
A. AUG. One of them. I don't know.
Q. Okay. The helicopter ride was, what, 10, 15 minutes? Something like that?
A. Probably.
Q. Okay. Do you remember specifically what type of doctors met you when the helicopter

Page 94

arrived?
A. Yeah. I remember -- I just remember seeing the surgeon, and I asked him -- I was like, Doc, can I die from this? He was like, Yeah, but you ain't. And that was enough to make me just go out. I just went out from there because he said I wasn't going to die. So that was kind of a relief. So I faded from there. I didn't wake up until, like, two days later.
Q. Okay. And so at that point you lost consciousness, you feel like?
A. Went to sleep or whatever you want to call it. Lost consciousness. Yeah, I guess, because I got -- had to go to emergency surgery. Like, I think -- I think they took me right into surgery. Because I woke up with my arm still on. That's why I say I think I went to surgery.
Q. All right. I'll just sort of walk through what happened and the treatment you got at the hospital. So I'm going to hand you Exhibit Number 5.
(Exhibit No. 5 was marked for identification.)
MS. WRENN: Do you need one?
MR. OSBORNE: I got one.

Page 95

Q. All right. Mr. Lanham, about the middle of this first page, it's got date/time, and it references the hour. It's 1522, which is 3:22 PM.
Is that consistent with what you remember in terms --
A. I don't know what time of day it was.
Q. And in this medical record, it references that you were trapped for 40 minutes prior to the removal of your arm, and that -- you testified earlier that you believe that to be a fair estimation?
A. I say to an hour. I say an hour, but somewhere around there, yeah.
Q. And is it true -- and at the bottom of the first page, it references that you had no sensation in your hand.
A. Yeah, none.
Q. Or your palms or fingers?
A. Yes, sir, none.
Q. Could you -- it does reference that you had sensation in your upper arm above the injury.
Do you remember whether or not that was true?
A. I'm pretty sure because it's still here.

Page 96

So I'm pretty sure I had some sensation, but I'm not sure. I really wasn't worried about the arm that much. I was worried about living, so I can't really remember, but I'm pretty sure.
Q. Okay. And so this -- obviously, this first record is from the 22nd, which would've been the day of the accident, correct?
A. Yes. The 22nd, yes, sir.
Q. All right. I'm going to go through some of these fairly quickly. I'll hand you Exhibit Number 6.
(Exhibit No. 6 was marked for identification.)
MR. OSBORNE: For whatever reason, it looks like I've only got four of these. I'm sorry.
MS. WRENN: That's okay.
Q. Just -- I guess the -- one quick question on this. Here in the -- towards the bottom of the page -- of the first page, it says, PT reports he was cleaning machine when the machine turned on and pulled his arm in.
A. Yeah. I seen that.
Q. Is that -- is that accurate?
A. No. No. The machine was already on.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 97

Q. The machine was already on. Okay. I'm going to hand you Exhibit Number 7. All right. This is a medical record, and it references, towards the top of the document, date of surgery, January 26th, 2018. Do you see that?

(Exhibit No. 7 was marked for identification.)

A. My birthday, yep.

Q. Okay. And so this would've been four days after the accident, correct?

A. Yes, sir.

Q. And it appears to me if you look at the line where it says, Indication for procedure -- and I believe that this would've been the first operation that you went under after the accident; is that consistent with your memory, that it would have been four days later?

A. Uh-huh. Uh-huh, because I woke up on the 24th, and they told me on the 25th, which is her birthday, and the 26th is mine, so that's accurate.

Q. Okay. What -- was there a hope for a period of time that they may be able to salvage your arm? They were seeing --

A. For me?

Page 98

Q. -- for you, yeah --

A. No.

Q. -- how it went?

A. No.

Q. They -- they knew pretty early --

A. I knew. I told you-all when I was in the machine I didn't worry about that. Me and God -- I had a clear understanding that arm wasn't going to be there. I just wanted my life. You know what I mean? I could hear every bone crunching. It's only a tenth of a thousandth of a millimeter gap. Your arm going through something like that, my mind was that arm ain't going to be no good.

Q. Do you know why the doctors waited four days or so before they did the surgery to amputate the arm?

A. Probably because I was unconscious and they wanted to see if I felt anything, had any sensation when I came to, I guess.

Q. Am I correct that the first surgery or amputation that you went under for on the 26th, they tried to amputate it below the elbow?

A. Yes, sir.

Q. And -- and what -- what's better -- maybe that's not the correct word.

Page 99

Why did they want to first try to do it below the elbow?

A. Because they was trying to save the elbow to make it better for a prosthetic in the future.

Q. And so you would've still had -- been able to move your actual elbow?

A. Elbow, yes.

Q. Understood. And as far as you remember and as far as you know, the first surgery on the 26th, there were no complications in that surgery?

A. In the surgery, no. I mean, after the surgery, I still had pain and stuff, so I knew something wasn't right.

Q. I'm going to hand you Exhibit Number 8, and this is a medical record from Augusta Health University, and it references a surgery on January 31st, 2018.

(Exhibit No. 8 was marked for identification.)

Do you see that about midway through the page?

A. Yes, sir.

Page 100

Q. Okay. And so this would've been about, what, 9 days after the original accident?

A. Yes, sir.

Q. Okay. And am I correct that at this point they had to go in and do a second amputation, and this time above the elbow?

A. I think. I think because I think it was a third surgery too, but, yeah, I think this was the time they probably went above the elbow, but I'm not sure.

Q. Okay. And if you go to the last -- last page of this exhibit, page 3, I'm going to read part of this. During the procedure, the blood vessels were explored, and there was found a significant amount of necrotic tissue below the elbow, with the amputation being best indicated and the free flap not being a good option for this case. There was a significant amount of necrotic tissue below the elbow.

And I know you're not a doctor, but can you -- do you remember why they had to go above the elbow after the first surgery?

A. I think it was still infection (sic) and -- I think it was still infection inside my arm. I don't -- that's what I think.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Q. Okay. And at this point, were you awake and conscious and able to comprehend what the doctors were telling you, things like that?
A. Yes. Yes, sir.
Q. Okay. Do you remember before this procedure having a discussion with the doctors about, you know, they may have to go above the elbow?
A. Yes.
Q. I'm going to hand you Exhibit Number 9. Mr. Lanham, Exhibit Number 9 references another surgery on February 7th of 2018, and on my account, this would be the third surgery that you went under.
(Exhibit No. 9 was marked for identification.)
A. Yes, sir.
Q. Okay. What did they do if you know, on this third surgery?
A. I just know they -- I think they cut it. I think they cut it some more and got all the -- got all the infection out. I just knew that evidently what they did had worked because when I came out the surgery this time, it wasn't feeling the same. It was -- it was -- I could tell

something -- they got all the infection out. Like, it was better. Like, that pain wasn't so bearing (sic) like it had been the couple -- the first two times I came out of surgery.
Q. So you felt like after you came out of this surgery there was a noticeable change in how your arm felt?
A. Yeah. Yes, sir.
Q. Did they do any sort of skin graft, like take skin from your thigh?
A. Yes, sir.
Q. Okay. And what were they doing there?
A. They took skin from my thigh and put it on my arm.
Q. All right. As far as I can see from looking through the medical records, it appeared that this surgery on February 7th of 2018 -- was that the last surgery that you went under for your arm?
A. Yes, sir.
Q. I want to ask you -- and we talked -- touched on this previously. There were some medical records in what we've gotten in this case that referenced pain in your shoulder.
Was that your right shoulder?

A. Some. Yes, some. Both.
Q. Both. Okay. And I should've asked this earlier, but the -- the arm that was injured and that you had amputated, it's your left shoulder, correct?
A. Yes.
Q. Were you right-handed or left-handed before the incident?
A. Right-handed.
Q. Right-handed. Okay. But you now have pain that you believe is related to this incident in both shoulders?
A. Yes, some. Some pain in my right -- my right one.
Q. And have you seen a doctor for that issue?
A. Not -- not recently. I seen them for my -- for my left in the beginning.
Q. And what did the doctor tell you in terms of why he or she thought you were having pain in your shoulder?
A. That was -- it was from -- they said it was from frozen shoulder. Not -- not being -- since it was gone, I wasn't moving it. I didn't realize I still had to rotate it and stuff. So

they said it came from frozen shoulder.
Q. Okay. And that -- so that was obviously your left shoulder.
A. Yes.
Q. Okay. Did you ever see a doctor about your right shoulder?
A. No, sir. I mean, I discussed it with them, but never, like, nothing serious. No surgery or nothing.
Q. Okay. And is frozen shoulder something that's fairly common after an amputation?
A. I guess. I don't -- I'm not sure.
Q. At some point, did you get a prosthetic arm?
A. Yes, sir.
Q. Okay. Tell me, how far after the accident did you first get the prosthetic arm?
A. I think it was kind of right after maybe. It was like -- it wasn't -- it wasn't too far after. It was kind of right after. Like, probably 2019 or something. It had to be right after.
Q. And you're not wearing it today, correct?
A. No, sir. I don't currently have that

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 105

arm anymore.
Q. Okay. What happened with the arm?
A. The -- the -- the caseworker, she convinced me to turn it back in because I -- in the beginning, I was depressed real bad. So at that time it was a stressor more than anything, and I was telling her that. Told them, like, yes, it's good, but at that time in my life, my mind wasn't -- so once I put it on, it just made me more stressed and more depressed. So I was telling her that, and she wanted me to go to therapy. And I was telling her, like, it's not helping because I'm so -- it's a stressor more than anything, and she just -- she convinced me to turn it back in.
Q. When you said she wanted you to go to therapy, was that therapy for your depression or therapy to learn how to use the arm?
A. To learn how to use the arm.
Q. All right. Tell me, what did the -- what did the arm look like, the one that you had?
A. It was a myoelectric arm. It looked like a robot arm. It looked like a big -- like up the -- it had a big thing that goes over my shoulder here, and then it had like -- you got a

Page 106

all black thing for the forearm type -- and then a myoelectric hand that do all the -- every grip. All the grips.
(Gesturing.)
Q. And so the hand would have five fingers on it?
A. Five fingers. It rotat- -- the whole wrist rotated 360. Open and close, pinch. You know, it had to pinch to keep the key thing or whatever -- yeah. It held a lot of that.
Q. How long did you have the prostatic?
A. It wasn't long. It wasn't. It was probably a couple of months because I told you -- like I said, I was depressed and she was wanting me to go to therapy, and it was just becoming -- it was so heavy at the time. It was a stressor. That was just -- at that time, it was just a stressor.
Q. You -- was it Hanger Prosthetics? Is that the name of the clinic?
A. Yes, sir.
Q. Okay. Is that -- is that the only place you went to related to that prosthetic arm?
A. Yes and -- other than the therapy they sent me to because I attended a couple of the

Page 107

therapy sessions.
Q. Do you remember where the therapy would have been?
A. It was in relations to Augusta University, but it wasn't directly at that facility, but it was one of they facilities -- Augusta University's facilities, if I ain't mistaken.
Q. Do you recall how many therapy sessions you went to?
A. Two or three, four maybe at the most, if I'm not mistaken.
Q. What did they try to teach you to do in therapy?
A. Like, the grip -- different grip patterns because with the prosthetic, you had to move your -- you got to move your muscles to make it work, and at that time I was so down in the dumps, it was -- it was so much. So they was teaching me, like, basically how to teach the muscles and what -- what grip patterns, stuff like that. Picking up -- picking up stuff. Trying to pick up, like, little stuff. Screws or whatever. Stuff like that. Different grip patterns and stuff.

Page 108

Q. I imagine that that can take some time to learn, correct?
A. Uh-huh.
Q. Okay.
A. Yes, sir.
Q. Do you remember, did -- di the prosthetic clinic tell you sort of what the typical timeframe is to get comfortable with using an arm like that?
A. No. I mean, they didn't tell me. If I -- if they did, I don't remember, but it was like -- it didn't matter at that time. I was depressed. It was just like -- it was just a stressor. It was like a blockade right here. I just -- at the time, it was just so stressed -- stressful.
(Gesturing.)
Q. Do you think by the end of 2018 that you had gotten rid of the prosthetic arm by that point?
A. 2018? I don't know if I had it that early. I think I got it in 2019 or maybe 2018, but I know it wasn't too long. I can't remember the exact date.
Q. But you didn't have it for more than a

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 109

couple months?
A. About a couple months.
Q. And you haven't at any point tried to get it back?
A. I got a body-powered one.
Q. What's --
A. They gave a different one. They gave me a body-powered one.
Q. Okay. Tell me the difference with that.
A. With a body-powered, instead of it working off your muscles like the myoelectric one -- because the myoelectric, they put transmitters so they can -- it can feel your contractions. With a body-powered one, you just move your shoulders. It moves off your body. Like, it ain't electric. It's just shoulder, body movement.
Q. Okay. And does this one still have --
A. That's a hook. It's got a hook.
Q. It's got a hook. And do you wear that one sometimes?
A. Not right now, but I have.
Q. When do you -- are there certain things, like, if you're doing certain things, activities that you wear that one or is it --

Page 110

A. If I'm going fishing or something like that.
Q. How often per week do you wear it?
A. Not often. Not even -- probably once a blue moon.
Q. Okay.
A. Once a month. Yeah, a blue moon.
Q. Do you wear it for anything other than going fishing?
A. Not really.
Q. Have you ever thought about getting another one of the electric prosthetic arms again?
A. Yeah. I thought about it, yeah, because at that time I wasn't in no position to -- it was a good thing, but I wasn't in a position to go full throttle with it, and she made me turn it back in, so I ain't -- you know, I always thought about it, yeah, I would want -- especially if they could make it better -- probably better these days, a couple years later.
Q. After the accident took -- well, when the accident took place, you were living in Edgefield, correct?
A. Yes, sir.

Page 111

Q. Okay. And you spent -- I think you were discharged from the hospital the same day of this last surgery, the 7th; is that right?
A. It wasn't -- that wasn't the last day of the surgery. It might've been the 7th, but, huh-uh, they didn't let me go right after surgery I don't think. I remember it being the Super Bowl. I was in -- I was in there on the Super Bowl. What day was the Super Bowl on that year? Because I remember watching the Super Bowl in there.
So I know they didn't let me go on surgery day because it was a Sunday. They wouldn't have did surgery on no Sunday. No money because I was just go there, and I ain't go home that Sunday. I went home that Monday because I watched the Super Bowl there. So it wasn't the same day I had the surgery I'm pretty sure, but I swear that look like my discharge date. I think that's the date I remember being discharged, but I don't -- I ain't had surgery the same day I got discharged.
Q. I'll hand you what's marked as Exhibit Number 10. All right. And on this document -- and I'll represent to you this is a discharge

Page 112

summary. Do you see that?
(Exhibit No. 10 was marked for identification.)
A. Uh-huh.
Q. And do you see on the left-hand side of the page, Date of discharge: February 7th, 2018?
A. Uh-huh.
Q. Okay. And you were admitted January 22nd, 2018?
A. Yes, sir.
Q. Okay. And so you believe that that's accurate, that you were discharged on --
A. I think I was discharged on that day, but I just don't think that was the final -- that ain't the day the last surgery was I don't think.
Q. Understood. Where did you go when you got discharged from the hospital?
A. Home to my house. Home.
Q. And at that point, you had five children living in the house?
A. Uh-huh. Yes, sir.
Q. When you got discharged from the hospital, what was the pain, if any, that you were experiencing?
A. A lot of phantom pain. Phantom pain.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 113

Because they didn't -- they wouldn't send you home -- at that time, they wouldn't send you home with pain meds. It was prohibited. You had to go through a pain management clinic. So pain level was on 10 because I didn't get sent home with no pain meds.

Q. Okay. And the phantom pain to me -- just if you could explain it a little bit more.

Is that pain, like, in your upper arm here or is it pain that you feel like you're feeling where your arm was amputated?

A. Where my arm originally at, but it kind of feels like a hand on the end of this versus a whole arm. So it's, like, in the air right here. Like, here. It even itches sometimes. I'll be scratching the air, but, yeah, it's, like, right here. It feels like my hands still there. Like my hand's still there.

(Gesturing.)

Q. And you would see -- eventually you got into a pain center for the phantom pain?

A. Yes.

Q. And what was the name of that pain center?

A. Royal Pain.

Page 114

Q. Where is --

A. In Augusta, Georgia. In Augusta.

Q. Okay. Do you remember the name of the doctor you saw?

A. Dr. Downey.

Q. Dr. Downey. Are you still seeing Dr. Downey?

A. No, sir.

Q. And did you stop -- I think earlier you testified -- is Royal Pain where you were getting opioids?

A. Yes, sir.

Q. Okay. And so when you testified earlier that you got off opioids or stopped taking opioids, is that -- would have been when you stopped seeing Dr. Downey?

A. Yes, sir.

Q. Okay. Did you ever take any pain medication other than opioids?

A. Yes, sir. Baclofen, Gabapentin.

Q. And did you take those for a longer period of time than the opioids?

A. Yes, sir, because that's the only thing I got sent home with.

Q. And so you would have used those for

Page 115

about, like, the 6 months leading up to when you got into the pain center?

A. Yes, sir.

Q. Okay. When do you think the last time you went to see Dr. Downey was?

A. That was 2000-probably-19, like, right after I got in there. It took me 6 months to get the appointment, but right after I got in there, I probably stayed in there -- oh, I probably saw him one time after that because you have to take drug tests. I probably took one drug test, and that was it because I -- in that time, I went through the depression. That's -- getting the opioids, I don't know if they sent me into a depression, but that was around the same time that I went into the depression.

I didn't know nothing about opioids, so, hindsight, yeah, the opioids don't mix with depression medicine, but, you know, that was hindsight, but -- so it had to be 2019. It was right after I got in the pain center. I didn't take them long. I only got, like, one refill, and I got depressed in the middle of it and ran out and they gave me -- they ended up giving me a genetic (sic) version, and I took it one time and

Page 116

it started giving me suicidal thoughts, and I just buried them and tried to kick the habit. Got rid of them.

Q. We're at sort of a stopping point where we're going to change gears a little bit.

Do you want to take a quick break?

A. Yes, sir.

MR. OSBORNE: Okay. All right. Why don't we take 5, 10 minutes.

THE WITNESS: All right.

MR. OSBORNE: Just come back whenever you're ready.

(Recess.)

Q. All right. Mr. Lanham, I want to talk a little bit about your mental health and some records that we have related to that going back for some period of time.

Did you have depression prior to the accident?

A. Yes, sir.

Q. Okay. Do you have a family history of depression?

A. My dad, yes, sir.

Q. Your dad was at one point diagnosed with bipolar disorder; is that right?

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 117

A. Yes, sir.
Q. Have you been diagnosed with bipolar disorder?
A. No, sir.
Q. What diagnosis -- mental health diagnoses do you have?
A. Before the accident, it was just anxiety and depression.
Q. Okay. How about now?
A. Now, PTSD and depression, anxiety.
Q. What -- are you currently seeing a mental health doctor or counselor?
A. Not currently. I finished the sessions I was doing.
Q. And a large part of -- and we'll get into these, but Aurora -- is it Aurora --
A. Aurora Pavilion.
Q. Pavilion?
A. Uh-huh.
Q. Is that where you got most of your mental health treatment?
A. Yes.
Q. What doctor or professional has diagnosed you with PTSD?
A. The doctors at Aurora. I don't know the

Page 118

specific names.
Q. This is marked as Exhibit Number 11. Mr. Lanham, Exhibit Number 11 is a medical record from Aiken Regional Medical Centers, May 25th, 2014.
Do you see that?
(Exhibit No. 11 was marked for identification.)
A. Uh-huh.
Q. Okay. Aiken Regional Medical Centers, is that just a hospital in Aiken?
A. It's -- yeah. It's, like, a part of -- a part of Aurora. Yeah. It's a Aiken hospital.
Q. All right. And in the assessment notes, which is toward the top of the page, you were -- at this point in 2014, you were 28 years old?
A. 2014. Okay.
Q. You see under, Evaluator's Impression?
A. Uh-huh. Uh-huh.
Q. And you were brought in by your wife and your sister due to severe depression.
A. Uh-huh.
Q. Would you agree with that characterization that, in May of 2014, you had severe depression?

Page 119

A. Yes, sir.
Q. All right. Later on in this document in that same paragraph, it says, PT -- which stands for patient -- is depressed and having anxiety.
Do you see that?
A. Yes, sir.
Q. And you would agree that that's accurate, that at that point you had anxiety as well?
A. Yes, sir.
Q. What is -- what was the -- if anything -- was there a certain thing that was -- you felt like what triggering your depression and anxiety at this point in time?
A. No, because I didn't know nothing about it. So to me, it kind of caught me off guard, but, like, when I thought -- not thinking about it, but hindsight, it -- like, afterwards -- it happened -- then like, it was determined, like, basically I was overwhelmed, you know, like, with financial -- so it was mainly being overwhelmed.
Q. And if you'll flip to the second page, under, Assessments -- this is starting at the second line down -- it says, I've even lost interest in my sex life.

Page 120

Do you see that?
A. Yes.
Q. Okay. And at that point in 2014, had you lost interest in your sex life?
A. Yes. If you're depressed, you're going to lose -- you lose interest in everything basically. So at that time I was depressed.
Q. Okay. Just one thing too, I mean, these are going to be some personal questions about your sex life.
A. Yes, sir.
Q. The reason I got to ask those questions is because the loss of consortium claim. So --
A. Yes, sir.
Q. I'm not trying to be overly --
A. Yes, sir.
Q. -- invasive or intrusive, but there are questions we got to ask.
A. Yes, sir.
Q. All right. And here further down in this record, it states that your father has bipolar disorder, and you confirmed a minute ago that that is a diagnosis that he has, correct?
A. Yes, sir.
Q. Does your father manage his bipolar

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 121

disorder with medication?
A. Yes, sir.
Q. And have you been evaluated specifically to determine whether or not you do have bipolar disorder?
A. Yes, I've been evaluated.
Q. And do you remember what doctor would have evaluated you for that?
A. The doctors at Aurora. I've been to Aurora twice. So it was more than one, you know.
Q. I'll hand you what we've marked as Exhibit Number 12. I'll represent to you this is a medical record from Aurora Pavilion behavioral health services on June 27th, 2014.
Do you see that?
(Exhibit No. 12 was marked for identification.)
A. Uh-huh.
Q. And this would've been approximately a month after you went to Aiken Regional Medical Center; is that right?
A. Yeah. I seen a mistake, that's why I had did that.
Q. Okay.
A. It says, 28-year-old white male. I seen

Page 122

a mistake.
Q. It's funny. There are a couple in here. There's one that says her or she or something. I noticed the same thing going through them.
So -- so what happened between when you went to the hospital in May of '14 and June of '14 that caused you to go back? And this time I believe you were ultimately admitted to Aurora for mental health services.
A. No. I never -- I never was an inpatient back in 2014, but I guess I went back probably because it didn't get no better after I talked to them the first time, but I never was admitted for inpatient. It was outpatient therapy.
Q. And in the month -- in this assessment or problems, it says, again, Patient reported (is) a 28-year-old white male. We know that's not accurate. He came in for assessment due to worsening depression, increased anxiety, with thoughts of sporadic -- thoughts of SI/HI.
What -- do you know what that stands for?
A. Suicidal ideation or homicidal ideation.
Q. Okay. But with no specific plan or intent.

Page 123

So at this time, were you having suicidal or hom- -- and homicidal thoughts?
A. At that time.
Q. And what was the -- the trigger of that, if anything?
A. I don't know. Like I said, it was so new at that time, I was just -- I was just trying to figure out what was going on. Like -- like -- so I didn't know I had a trigger or if I did, what was triggers at that time. So I don't know what was the trigger that time. I guess it was just -- I don't know because I didn't know much about depression at that time. So I didn't know. I couldn't recognize my triggers I guess because I didn't know nothing about it, you know.
Q. Further down in the record, it states, Patient stated a bad thought came across my mind to hurt my children and myself, but I never acted out on the thought.
At this point in time, were you having thoughts of harming your children?
A. That's what started it. The homicidal thought that came out of nowhere. That's what initially brung on the whole depression, but after I thought about it, I said it had to be

Page 124

from being overwhelmed. I don't know, but that's what -- that's what I said.
Q. Is the fact that you were having thoughts of harming your children one of the reasons why you sought treatment for your mental health issues?
A. Yes, sir.
Q. Have you ever carried out any sort of harm against your children?
A. No, sir.
Q. All right. After this visit in June of 2014, I believe you started going into some sort of outpatient therapy.
A. Yes, sir.
Q. Okay. And that's where you -- from what I could see, you were going pretty much every day or almost every day to Aurora.
A. Uh-huh.
Q. Okay. And what would you do there? Was it group --
A. Group therapy.
Q. Group therapy.
A. Yes, sir.
Q. Okay. And how -- how long each day would that be?

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 125

A. Until about -- from about 8 until about 3:00 maybe I think. I think because we had a session in the morning, and then we had lunch there, and then we would do an evening session, and then we'd go home. It was about from 8 to 3 I think.

Q. And in this time period in June of '14, how long was that outpatient therapy session?

A. You mean, how long did they last?

Q. Yes. Right.

A. I'm not sure if it was 8 weeks or something like that. Maybe, like, 8 weeks I think.

Q. And did you feel like it was helpful?

A. Oh, yeah. Yes, sir. My bad.

Q. That's all right. You don't need to call me sir.

Any -- after doing that outpatient therapy, did you continue seeing a mental health professional after that?

A. I don't think so. No, sir. I got -- because they gave me the meds, and then I went back to work.

Q. Is this when you first were prescribed Paxil?

Page 126

A. Yes, sir.

Q. Okay. And you've stayed on Paxil since today, correct?

A. Yeah, but they upped my dose. Yeah. So I was on, like, a small dose back then, but now they upped my dose after my accident.

Q. And what doctor was that, if you remember, that upped your dose?

A. It might've been Dr. Abraham or, no, it might've been a doctor at Aurora.

Q. At Aurora?

A. Yeah.

Q. I'll hand you Exhibit Number 13, and this is a record of a visit to Self Regional Healthcare in Edgefield in September of 2017.

Do you see that?

(Exhibit No. 13 was marked for identification.)

A. Yes, sir.

Q. Okay. And then towards the bottom of the page, it references -- and, well, timeline-wise, this would have been about three months prior to the accident, correct? Excuse me --

A. -- four months.

Page 127

Q. Four months. Yeah.

A. Yes, sir.

Q. Four months prior to the accident?

A. Yes, sir.

Q. Okay. And here you were requesting a refill of your -- is Paroxetine -- is that Paxil?

A. Paxil, yes, sir.

Q. Okay. And it references that you've been on that medicine for depression and anxiety and it's worked well for you for the prior four years?

A. Yes, sir.

Q. Okay. And so this was -- clearly this was the medication that you were taking prior to the accident.

A. Yes, sir.

Q. I've handed you Exhibit Number 14. Mr. Lanham, is Exhibit Number 14 a document that you've seen before?

(Exhibit No. 14 was marked for identification.)

A. No, sir.

Q. Do you recognize the name John -- I'm going to say Abess. Abess?

A. Abess. Abess, yes, I think. Yes, sir.

Page 128

Q. Okay. Who is John Abess?

A. He was one of the psycho- -- the psychologists I went and seen, I think, for an assessment. I don't know. Dealing with this case, I think.

Q. Would this be somebody you saw for the workers' compensation action?

A. Probably. I think that's -- that's what it was.

Q. All right. And where was Dr. Abess located?

A. Charleston.

Q. And did you go to Charleston to see him?

A. Yes, sir.

Q. And tell me about -- what did you do when you went there?

A. Just -- just talked. Just talked to him. I think I was -- I think I was -- I think I was depressed then. So I don't -- I know I was talking -- probably just talking to him. I don't know. I just talked to him like a therapist. He just -- I guess he was doing an assessment or whatever.

Q. Did you only see Dr. Abess one time?

A. I think. I barely remember him, so I

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 129

probably think it was one time, if I ain't mistaken.
Q. And I believe the -- the record -- this document references that you went down with your wife and your children as well; is that right?
A. No, sir. Probably just me and my wife. I don't think my children was there.
Q. Okay. And this record is dated June of 2000-and- --
A. '18?
Q. Well, in 2000- -- do you remember what time of year you met with Dr. Abess?
A. I mean, it say it right here -- it say June of '18. So it had to be summertime.
Q. Is that consistent with you -- your recollection?
A. At that time, I was depressed. I don't remember what time of year or day it was or nothing. I just was going with the flow.
Q. And you testified earlier you don't recall ever seeing this actual written document that he prepared?
A. No, sir.
Q. Do you ever -- do you remember having any sort of discussion with him about what his

Page 130

ultimate findings or conclusions were?
A. I don't remember. I don't know if I did, but I don't remember.
Q. The only thing you remember is going down there and speaking with him one day?
A. Uh-huh.
Q. Do you recall that he reviewed some of your medical records prior to your meeting?
A. I'm not sure.
Q. And if you flip through the first, really, three pages of this document, it references that you received mental health treatment in 2014, and we just reviewed some documents that demonstrated that treatment, correct?
A. Yes, sir, because it -- it still got I was admitted in July 2014. I wasn't never -- remember, I told you I wasn't never admitted, but I don't know if they consider an outpatient as admitted too.
Q. Okay. Understood. Do you see on the line item for July 31st, 2014, where there was a major depressive disorder diagnosis?
A. Uh-huh.
Q. And were you diagnosed with major

Page 131

depressive disorder in 2014?
A. Yes, sir.
Q. I believe the -- when we were talking about the accident itself you referenced that you had a cousin or a family member that had died shortly before. Tell me about that if you don't mind, who that was and how they passed away.
A. It was my cousin, Aaron. Aaron Rauch. He was like a -- my brother. Aaron, he got killed in a motorcycle accident.
Q. He was a cousin that you were very close with?
A. Uh-huh. Yes, sir.
Q. And that happened about 6 months prior to the accident?
A. Yes, sir.
Q. Where -- was he in Edgefield County with you?
A. You mean living at the time?
Q. At the time before he passed away.
A. He was living in Augusta.
Q. He was in Augusta, but did --
A. He's from Edgefield.
Q. Somebody you still saw frequently?
A. Yes, sir.

Page 132

Q. And his death was difficult for you, it sounds like.
A. Yes, it was.
Q. Do you think his death contributed to your depression at the time?
A. No, sir.
Q. If you will, flip to -- at the -- sort of the top heading where it says Dr. Abess's name, you'll see it's got a 'p' and then a page number. If you will, flip to page 4, please. Maybe looking on the -- see the second page right there? It's real small.
A. Okay.
Q. All right. There's a reference to a visit or a diagnosis from October 10th of 2018. This is the second item on the page. Do you see that?
A. May 16th?
Q. The next down October --
A. 10th?
Q. -- 18th.
A. Okay. Yes, sir.
Q. Excuse me. October 10th.
A. Yes, sir.
Q. Dr. Weaver, that's a doctor that you

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 133

see?
A. Yes, sir.
Q. Okay. And in 2018, the note references that you told Dr. Weaver that depression had been an issue for you for 5 years prior to that; is that correct?
A. Yes.
Q. At the bottom of the page is November 23rd, 2018, and there's a notation about you presented to the Aiken Regional Medical Center again with issues regarding depression.
A. Uh-huh. Yes, sir. I'm sorry.
Q. And there's a line there that says, Exacerbating issues identified as family problems.
Do you know what that is in reference to?
A. In 2018?
Q. Yeah.
A. Exacerbating issues identified as family problems. Well, I guess with the overwhelming financial -- financial situation, I guess.
Q. You testified earlier that you weren't aware of -- you've never seen this document before, correct?

Page 134

A. No, sir.
Q. Okay. And you never had any sort of follow-up conversation with Dr. Abess about what he -- his conclusion were?
A. Not that I recall.
Q. So in terms of asking about whatever his conclusions were, I'd be better off speaking with Dr. Abess directly rather than discussing those with you, correct?
A. I guess. I think. I don't know. I don't think he actually -- yeah. I don't think he ever told me no, like, diagnosis or nothing. I just spoke with him, and this is the next time I'm hearing about it I think. I mean, I know his name. I know I seen him.
Q. And at some point, you went for inpatient treatment at Aurora, correct?
A. Yes, sir.
Q. Okay. When was that?
A. After the accident. I don't remember a specific date. It was 2019 probably. I don't remember the specific date though.
Q. Okay. What prompted you to go seek in-patient treatment?
A. Depression again. Depression. Deep

Page 135

depression.
Q. How long were you in inpatient?
A. Not long. Not long at all. Probably a week, if that. Five days maybe.
Q. And was it helpful?
A. Was it helpful treatment?
Q. Yeah.
A. I imagine it was. I don't really think it was. Not at that time because I was -- I know I remember being depressed for a long time the second time. Like, way longer than the first time. So when I got out, was I feeling better? Probably not, but, you know, I had to keep going. So --
Q. How -- in terms of your depression, how do you feel today?
A. Today? Oh, I'm good today.
Q. You're good?
A. I feel decent. Uh-huh.
Q. Okay. Is -- is that -- you've been feeling good for a period of time or is it day by day?
A. A period of time, and its kind of -- you know, some weeks you might feel a little down, but my medicine kinda helps manage it.

Page 136

Q. And tell me, did you get on the Wellbutrin after the in-patient?
A. Yes.
Q. And you've been taking that since?
A. Yes.
Q. And it's been effective for you, helpful?
A. Yes.
Q. Before we move on to sort of a different subject, is there anything about your mental health treatment or issues that you may be having that we haven't discussed already today?
A. No, sir.
Q. Mr. Lanham, I just handed you what's marked as Exhibit Number 16.
Is this a document that you've seen before?
(Exhibit No. 16 was marked for identification.)
A. No, sir.
Q. Were you aware that the South Carolina Department of Labor, Licensing, & Regulation did an investigation after your accident?
A. No, sir.
Q. You were never contacted by anybody

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 137

from -- they call it SC OSHA or the LLR about the accident?
A. No, sir.
Q. And -- and nobody from Bondex ever contacted you to get information about the accident?
A. Someone contacted me, but I didn't speak with them.
Q. Who contacted you?
A. I can't remember his name. I think it was -- I don't know, but I can't remember the name. I can't remember his name, but he -- I remember somebody calling me, and I was like, you know, I don't -- I don't know nothing at this time. So I just didn't want to speak to nobody because I didn't want to say nothing wrong because I didn't want to speak to nobody.
Q. Did anybody from Bondex ever come see you in the hospital?
A. Reece and Harry came up there the day of, I think, that it happened. I think they came the day that it happened.
Q. Did Bondex do anything for you or your family while you were going through this in terms of -- I mean, did they send you flowers? Did

Page 138

they help you out with groceries, anything like that?
A. No, sir. They -- no. They ain't -- not that I know of. They didn't send me no flowers. I don't think. I'm trying to think. Did they? No, sir.
Q. Nobody from Bondex ever called you while you were in the hospital just to check on you, see how you were doing?
A. Donny probably called me one -- one time. He said he was going to come visit me, but he never came up there. Yeah. I think -- yeah.
Q. Okay. I just want to walk through some things on this document. At the bottom of the first page, the last paragraph, it says, The employer did not -- it's supposed to say develop -- but the employer did not develop lockout-tagout for cleaning the Wumag Calender Machine.
Do you see that?
A. It says the employer had lockout-tagout?
Q. No. It says, The employer did not develop --
A. Okay. I see what you -- yeah. The employer did develop lockout-tagout to --

Page 139

(Speaking sotto voce.)
Q. The employer would've been Bondex, correct?
A. The employer, yes.
Q. Okay. And do you agree with that, that Bondex did not have a lockout-tagout procedure for cleaning the Wumag machine?
A. No, sir. Yeah, I agree with that. There's no procedure.
Q. Are you aware -- and I'm looking at page 4 of 8. Were you aware -- and this is toward the middle of the page under the April 10th, 2018 paragraph.
Were you aware that Bondex was issued a serious citation and a regulatory citation based on the accident that took place?
A. No, sir.
Q. Do you see where it's redacted in the summary and there's a black box?
A. Yes, sir.
Q. Okay. And it says, (Blank) tasked Employee #1 to clean the top smoothing and bottom smoothing rollers.
We established earlier that was Donny that asked you to do that.

Page 140

A. Not the top. Just the bottom.
Q. Okay. So he just asked you to clean the bottom roller. Okay. Toward the bottom of this paragraph, it talks about the different modes of operation for the machine.
Do you see that?
A. Yes, sir.
Q. Starting with mode 1?
A. Yes, sir.
Q. You testified earlier that you were not told about any difference between the modes of the machine, correct?
A. I mean, not -- not as far as I can remember. Like --
Q. All right. And flip into the next -- next page, page 5 out of 8, and he references -- this is towards the middle of that paragraph, The employer used mode 3 to clean the rollers.
A. Let me see. Where does it say that?
Q. The employer used mode 3 to clean the rollers.
Do you see that?
A. Is it -- is it referencing to me?
Q. That -- that's -- I just want to ask, were you ever told to use mode 3 to clean the

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 141

rollers?
A. I don't remember what mode was to clean the rollers, but that says the employer was -- I -- I'm the employee, right?
Q. Okay. I think you --
A. Yeah. That says the employer --
Q. You're referenced in here as Employee #1.
A. Okay.
Q. And what they find here is Employee #1, you, placed the calendar machine to mode 1.
Do you agree that you put the machine in mode 1?
A. I don't remember exactly what mode it was because I thought the mode was only to show you how you string up the thing, so I don't remember how -- what mode I put it in.
Q. Okay. And the last sentence of this paragraph, Both light curtains were not working at the time of the accident.
You testified earlier you don't have any specific recollection about any discussions about the light curtains.
A. No, sir.
Q. If you go to page 6 of 8 of this

Page 142

document, again, I want to ask you one more thing about the light curtain.
It says the employer -- and, again, that would be Bondex, correct?
A. Yes.
Q. Okay. The employer deactivated the light curtain because of -- the slack of the fabric kept setting off the light curtains.
Do you remember anything about slack in the fabric --
A. No.
Q. -- setting off the light curtains?
A. No. I'm not sure why -- what was -- what happened to the machine and why it was done.
Q. Okay. And are you aware of anything that was done to light curtains after the accident?
A. After the accident? I'm not aware of anything that was done to the machine after the accident.
Q. I'm going to hand you what's marked as Exhibit Number --
MR. OSBORNE: Are we 15? Did I get that --
MS. WRENN: I think you marked

Page 143

some --
THE COURT REPORTER: You skipped --
MS. WRENN: Yeah. I think you skipped 15. Yeah.
MR. OSBORNE: Okay. I skipped 15. Well, will it mess you up if we just mark this one 15?
THE COURT REPORTER: No.
MR. OSBORNE: All right.
THE WITNESS: Can I take a quick bathroom break?
MR. OSBORNE: Yeah, of course.
(Recess.)
Q. Exhibit Number 15 is a Bondex accident investigation.
Have you ever seen this document, Mr. Lanham?
(Exhibit No. 15 was marked for identification.)
A. No, sir.
Q. Joe Daniel that he references, one of the individuals about halfway down the first page, was that somebody that you ever interacted with?
A. No, sir.

Page 144

Q. Is that a name you recognize?
A. No, sir.
Q. What about Brian Little, is that a name that you recognize?
A. No, sir.
Q. Mark Wetherell, do you recognize that name?
A. No, sir.
Q. And I'm sorry I'm of the second page now, but Charlie Waters, is that a name you recognize?
A. I think I heard a Charlie Waters name. I think.
Q. But not really somebody you interacted with?
A. Not really. I don't think so.
Q. Why don't you just -- starting with the line that says, Reece Walmsley explained that he had placed the Wumag heat setter in the heating and cooling mode -- starting there, if you'll just read the rest of the page, and then I'll ask you some questions about that.
A. It says, Reece Walmsley explained that he had placed the Wumag heat setter in the heating and cooling mode anticipating a cleaning

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 145

of the Wumag bowls. This place -- this took place approximately mid-morning around 10 AM or so. Reece notified Kevin Fields that the bowls will need to be clean. Kevin then notified both Donny and Barry that the bowls will need to be cleaned. After lunch, Reece noticed that the Wumag had cooled down to the appropriate temperature and instructed Donny to proceed. In turn, Donny instructed Barry to proceed with the cleaning. The accident occurred approximately 1:50 PM.

Q. Let me stop you there.

Do you agree with everything that's written in that paragraph?

A. No.

Q. Okay. What --

A. No, sir.

Q. What do you not agree with there?

A. Kevin didn't notify me, Donny did, and I have no knowledge of Reece touching it or whether he did or didn't. I don't know. So I don't have no knowledge of -- like, Reece explained that he did it, but I don't know it. That ain't something I got knowledge of, and Kevin didn't say nothing to me, Donny did.

Page 146

Q. Are you familiar with how long it would take the machine to heat up once you turned it on?

A. I'm not familiar, no. I was new. I mean, the company was new. Like, so I wasn't really familiar with how long it would take.

Q. And in terms of the timeline between when you got to machine, started cleaning it, and your arm got stuck, it was a short period of time, correct?

A. Yes. I never started cleaning it. I tried.

Q. And at that point the machine was already very hot?

A. I imagine. I got third-degree -- I mean, like, I don't -- I didn't touch the bowl to see if it was hot. I just went and turned it on and started trying to do my job.

Q. All right. And the next line -- sentence says, It was determined that the heat setter was in mode 1 and that Barry must have made a change from mode 1 to mode 3.

A. Why would I change it? I don't know nothing -- like, I didn't know the different modes or what to do from mode 1 to 3. So I

Page 147

didn't -- I wouldn't change it. I don't know if I did -- if I did -- and if I did change it, I didn't, like, know it. I don't know. I didn't change it like that.

Q. You didn't know anything about the modes?

A. I knew the mode showed you how to -- like, if you -- okay. If you tell me do it this way, it got to be in mode 1 and strang (sic) up this way. Mode -- yes, but I didn't know specifically like that, mode 3 was the cleaning mode or what mode was the cleaning mode or nothing.

Q. Nobody from Bondex ever told you that, correct?

A. If they did, I don't remember.

Q. And -- and Bondex -- when you had cleaned the machine before, Bondex had told you to turn on the machine while you were cleaning it, correct?

A. That's how I thought it was -- assumed it was cleaned, like any heat setter.

Q. And just -- I'll read the last paragraph to you, The staff discussed further -- the staff further discussed corrective action plans and it

Page 148

was suggested and agreed that a checklist should be implemented whereby the Operations Supervisor would review and check that the equipment in in the appropriate mode and review speed, temperature, et cetera.

When you were cleaning the Wumag machine when the accident occurred, there was no written checklist, correct?

A. No, sir.

Q. And you're not aware of any written instructions about how to clean the machine?

A. If it was, I didn't -- I'm not sure.

Q. I'll hand you Exhibit Number 17.

Did -- do you -- did you ever meet with an engineer that may have been hired by one of your attorneys about the accident?

(Exhibit No. 17 was marked for identification.)

A. I'm not sure. You mean a machine engineer?

Q. Correct.

A. I don't think so.

Q. Okay.

A. Not that I'm not aware of.

Q. All right. This references some sort of

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 149

meeting in October -- on October 19th of 2020. I believe it's Jeff Warren.

Is that a name that's familiar to you?

A. I don't know if I heard his name before. I'm not sure. I'm not sure I remember Jeff Warren. I don't know. He said he met with me?

Q. I'm not sure.

A. Oh, okay.

Q. That was one of the questions I have. It says, Barry Spangler, and so this may have been a meeting that he had with your attorney.

A. Oh, okay, could have been.

Q. I just want to ask you a little bit -- and some of this is a little bit -- his handwriting's a little bit hard to read, but about -- about halfway down the page, there's a reference to "assumed bottom same as top", and we talked about that earlier, correct, that you assumed that you would clean this bottom roller the same way that you would clean the top?

A. Uh-huh. Yes, sir.

Q. Nobody from Bondex ever told you otherwise, correct?

A. If they did, I don't remember.

Page 150

Q. Okay. And this is about the fifth item from the bottom, and this was their first time to clean the bottom roll, correct?

A. Yes.

Q. Okay. And there was -- you received no training on lockout-tagout for cleaning, correct?

A. Not that I'm aw- -- not that I remember.

Q. You were trained to hold your hand against the rotating roller in terms of how you were clean- -- to clean it?

A. Yeah. You hold your hand concurrent with the roller.

Q. I'm handing you Exhibit Number 18, and this is a document titled "Cleaning Procedure for Wumag Heatsetter".

Do you see that?

(Exhibit No. 18 was marked for identification.)

A. Uh-huh. Yes, sir.

Q. You're not aware of any sort of written procedure being in place for cleaning the Wumag heat setter while you were employed by Bondex, correct?

A. There might've been a procedure in place, but I don't know if I read it. I can't

Page 151

tell you there wasn't one in place.

Q. Okay. You've never seen this document?

A. This document, I haven't seen.

Q. And if I were to tell you that this was created after your accident, you have no reason to dispute that, correct?

A. I guess I have to go with what you say. I don't know. I wasn't there after I got hurt, so --

Q. This is Exhibit Number 19. Again, this is a -- this is "Check List for Cleaning of Wumag Heat Setter".

Did you ever see this document while you were employed at Bondex?

(Exhibit No. 19 was marked for identification.)

A. No, sir.

Q. And this is not a procedure that you would have gone through or that was in place in January of 2018?

A. If it was, I didn't know.

Q. And you testified earlier that when you were cleaning it, you were the only person in that whole area of the facility, correct?

A. In -- cleaning it. Like I said, Reece

Page 152

could've been back there somewhere. I don't know exactly where everybody was, but I was right there.

Q. And nobody went to check the machine with you in terms of which mode it was in before you started cleaning it?

A. No. On the paper, it says Reece said he went and did it, but not to my knowledge. I didn't know if anybody went there.

Q. He wasn't with you when you started cleaning, correct?

A. No, sir.

MS. WRENN: That's 20, right?

MR. OSBORNE: Oh, shoot. I messed up because I skipped a few, so thank you for keeping me in order and track of my tabs.

Q. All right. I'm going to hand you Exhibit Number 20.

You ever seen this document before?

(Exhibit No. 20 was marked for identification.)

A. Possibly. I think I've seen this before.

Q. When do you think that you would've seen this before?

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 153

A. Probably the beginning when I first got there maybe.
Q. Okay. Do you think that they gave you a copy of this manual to look at?
A. Possibly. Like I said, when you first start jobs, you get all kinds of papers, but possibly. I'm not sure though.
Q. You don't have any specific -- and, tell me, what is this document?
A. It looks like the -- the -- the calendar -- the laminating calendar line thing.
Q. It says, Translation of the original operating manual, Laminating calender Line.
A. Uh-huh.
Q. And that's the Wumag machine where you were injured, correct?
A. Yes. I think they called it a calendar.
Q. You don't have any specific recollection of reviewing this document while at Bondex?
A. I might've looked through, scanned through it, but not, like, word for word. I don't remember what's in it.
Q. And do you remember whether or not they had this document available anywhere that if you wanted to go look at it you could pick it up and

Page 154

take a look at it?
A. I'm not sure. Maybe. Possibly, but I'm not sure.
Q. I want to go through a couple things here, and it's difficult because they're not great page numbers here, so we may just have to sort of look through it together here, but if you look at the bottom of the page, it says group one, and then it's page 2 of 4, and it's probably 10 or 15 pages in.
A. You said group 1?
Q. Yeah.
MR. PARKER: It's got these things on the side.
A. Page 4 of 4?
MR. PARKER: Look for those.
THE WITNESS: Right there?
Q. All right. Do you see group 1, page 2 of 4?
A. Yes, sir.
Q. All right. And then at the bottom of the page, it says, Prior to and during maintenance operations. The first thing it says is switch the machine off.
Do you see that?

Page 155

A. Yes.
Q. Okay. The instructions with this Wumag machine clearly state that if you're doing any maintenance, the machine should be off, correct?
A. That's what this paper says, yes, sir.
Q. And that's not what Bondex told you, was it? They told you to have the machine operating when you were cleaning it?
A. That's how I saw it done.
Q. That's -- okay. That's how you saw it being done a Bondex?
A. Yes, sir.
Q. Okay. It also says, Turn off and lock the master switch.
Do you see that?
A. Yes.
Q. We talked earlier about the key that was in the machine, and that's how you turn it on and off, right?
A. Yes, sir.
Q. Okay. And you said that key was left in the machine at all times?
A. I didn't -- I don't notice the key. So I'm pretty sure it -- when I -- when I seen it, it was when the machine was on. Whether it was

Page 156

left in overnight, all the time, I'm not sure, but it was in there to work evid- -- I mean, I don't know if it stayed in there all the time. I remember you asking me was that my key. I don't -- I don't -- you know --
Q. All right. And if you'll flip two more pages, this is group 1, page 4 of 4. At the top of the page it says, Special dangers.
Do you see that?
A. Yes.
Q. Underneath, it says, Mechanical hazards.
A. Yes.
Q. Okay. And there's -- the third bullet point down references, Danger of being caught in rotating rolls, correct?
A. Yes.
Q. Okay. And is -- and that's where your arm was caught, in the rotating rolls, correct?
A. Yes.
Q. And there's also reference in the operating manual that there's a pinch point at the roller gap, correct?
A. Yes.
Q. If you continue going -- and maybe this is easier, but it's Section 4.1 up here at the

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 157

top of the page. It's probably another 5 or 6 pages.
You there?
A. Yes.
Q. Section 4.1.
A. Lamination Mode.
Q. Lamination Mode. The fourth -- there's no bullets -- but fourth paragraph from the bottom, The roller gap must be secured by a safety light curtain that triggers an emergency stop when tripped.
Do you see that?
A. Yes, sir.
Q. Okay. And that light curtain -- as we discussed earlier, that light curtain was not activated when you were cleaning the machine, was it?
A. Not to my knowledge. I don't think it was.
Q. All right. And if you keep going another probably 10 pages, and we're going to section, now, 2.1, Maintenance safety instructions, and you see there, under "also note", it says, Maintenance work may only be carried out when the machine is not in operation,

Page 158

exclamation point.
Do you see that?
MS. WRENN: The next page.
Q. You may need to go down --
MS. WRENN: It's the second page of 2.1.
Q. I'm sorry. Also note.
MS. WRENN: It's on the page right behind it. Yeah.
A. Oh, okay.
Q. And, again, it says, Also note: Maintenance work may only be carried out when the machine is not in operation, exclamation point.
Do you see that?
A. Yes.
Q. Okay. And that's -- it's clear from looking at this document, the operating manual, that the machine should have been turned off when you were doing any sort of maintenance work, correct?
A. That's what this -- that's what that say.
Q. But that's not what you were instructed to do at Bondex, was it?
A. I was cleaning it the way I thought I

Page 159

was taught to clean it.
Q. And you -- you're -- also, you were cleaning it the way that you saw other people at Bondex clean it, correct?
A. I never seen the bottom. Yeah, the top roller. Uh-huh.
Q. Okay. And nobody ever told you, Hey, don't do that, you need to turn the machine off before you're cleaning it?
A. I never knew how -- how to clean it really, like, how it was supposed to be cleaned.
Q. Do you know the amount of your medical bills that you've incurred in relation to the accident?
A. No, sir. Not the -- not off the top of my head.
Q. Are you familiar with what discovery requests are as part of a lawsuit?
A. I think I heard it. Like, motion discovery? Same thing?
Q. It's -- it's -- well, I'll show you the document. I'm handing you what's been marked as Exhibit Number 21, and this is what's labeled as defendants answers to percent of the entire interrogatories.

Page 160

Do you see that?
(Exhibit No. 21 was marked for identification.)
A. Yes.
Q. Okay. And I don't want to know anything about sort of the substance of your conversations, but do you remember your attorneys getting some questions from the defendants in the case and providing answers to those questions?
A. No, sir.
Q. Okay. Do you -- do you recognize this document at all as something you reviewed?
A. Yes.
Q. All right. And if you will, go to -- it's page 5 of 18. Okay.
And I want to ask you about the -- the -- well, you are seeking to recover monetary damages for your medical bills in this action, correct?
A. Yes, I imagine.
Q. All right. And then I want to just ask and make sure that we -- there's nothing that you feel like's missing that's not listed here, but we've got Augusta Health University of $238,000. This is number 3.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 161

A. I see Augusta University.
Q. Okay. And do you see where it says, Total medical expenses?
A. Above it, it says 200-and- --
MS. WRENN: Interrogatory Number 3 at the bottom.
THE WITNESS: Okay. Okay. Okay.
Q. And we'll just run through these quickly, but Augusta Health University, you're familiar with getting treatment there?
A. Yes.
Q. Do you have any reason to dispute the $238,000 is -- is the amount that you incurred in medical bills there?
A. No, sir.
Q. You don't think that that's missing anything as far as you sitting here today?
A. No, sir.
Q. And the Hanger Prosthetic, $47,000 in medical bills.
Does that number seem accurate to you?
A. Yes, sir.
Q. Okay. Going down, there's $415 with Dr. Downey.
Do you see that at the bottom?

Page 162

A. Yes, sir.
Q. Okay. Any reason to dispute that?
A. No, sir.
Q. Okay. And then flipping back to number 2 -- question number 2, there's a reference to $286,000 in medical bills.
Do you see that at the very top of the answer to number 2? PLG --
A. Yes.
Q. -- Medical Expense Summary.
A. Yes.
Q. And it references $286,000 in medical bills?
A. Yes, sir.
Q. Okay. Is that the amount that you believe that you've incurred in medical bills?
A. I -- most likely. Yes, I think.
Q. Do you believe it -- how do you believe that this accident, if at all, has impacted your relationship with your family?
A. Tremendously.
Q. How so?
A. You mean my immediate family or my entire family?
Q. Well, let's start with the immediate

Page 163

first.
A. All my kids are athletes. So I can't -- you know, I used to be able to train them and coach them, you know, with them being able to see me do it, and I really can't, you know, do all that. There's a lot of stuff that's changed. I -- working-wise, we had to switch roles. She used to be a housewife. A lot of ways.
Q. You referenced earlier that depression had a impact on your sex life; is that correct?
A. Yes.
Q. And, again, I'm not trying to be intrusive or invasive with these questions, but I need to ask them.
Do you believe that this accident has made you have -- have intimate relations with your wife -- less frequency than you did before the accident?
A. Yes.
Q. Can you give me some more information on that in terms of how you think it's impacted you?
A. You really want to -- can't grab both butt cheeks. Can't pick her up. Oh, I mean -- you mean in sex-wise, right?
Q. Yeah.

Page 164

A. Okay. Well, because it's kind of -- you know.
Q. Do you believe that this accident has -- has had an impact on your sex life in terms of the frequency, the amount of times you have sex?
A. Yes. That's kind of awkward.
Q. I would agree with you.
A. You-all looking all awkward in the face.
Q. Not -- not my favorite part of the deposition.
A. You-all looking all red. You're like --
Q. But you did have -- at least, there's some indication that you had issues with your sex life prior to the accident, correct?
A. Prior?
Q. Yeah.
A. Only when I was depressed. No. Like, that was just a stage. Like, I didn't have problems other than that. That was just a stage in my depression, like, in my life when I dealt with depression at that stage. I never had problems other than that.
Q. Have you applied for any other jobs since the accident?
A. No, sir.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 165

Q. And is the reason in there just you've switched roles?
A. Switched roles, felt like I'll be in the way. Kids want -- their mindset of me being at work, maybe get hurt again. It was a lot. You know, it was a lot. A lot to grab. So when she switched roles, it just became a little easier.
Q. Would you agree with me that there are certain jobs that you could get if you wanted to go back to work that you could still do --
MR. PARKER: Object to the form.
Q. -- despite the fact that you don't have a left arm?
A. It's -- it depends on a lot of factors. I got anxiety, so it depends on what type of job, and there's a lot of factors that go into it.
Q. Do you think that you would be physically able to do some sort of office job?
MR. PARKER: Object to the form.
A. Physically able, I'm not -- I'm not sure. It depends. It depends on the job task. It depends on what I would have to do.
Q. Do you anticipate -- are you currently seeing any sort of doctor for your left arm?
A. Currently?

Page 166

Q. Yes.
A. No, not currently.
Q. Are you aware of any future medical treatment you're going to need related to your left arm?
A. If I can possibly get a prosthetic, yeah, that would be -- if that's considered medical treatment.
Q. Who are your best friends in life? Who do you hang out with the most outside of your family?
A. I really don't hang out. These days, social media's easier, you know what I mean, to -- but I don't really hang out.
Q. What social media accounts do you have?
A. Facebook, Instagram.
Q. What's your name -- your Facebook name? Is it Barry Lanham?
A. Yes.
Q. What's your handle for Instagram?
A. I think it's B-E-A-R Lanham. My, nickname, Bear Lanham.
Q. All right. Before I pass it over to Ms. Wrenn, have you understood all my questions today?

Page 167

A. Yes.
Q. Okay. And are there any answers now that you think about that you want to go back and change or give some sort of different response now that we've finished?
A. Only one. Only one. You asked me did Bondex give me anything. They gave me workers' comp afterwards, yes, sir.
MR. OSBORNE: All right. Mr. Lanham, thank you for your patience today. I appreciate you answering my questions.
THE WITNESS: No problem.
MS. WRENN: So I have some follow-up questions. Before I get started, do you want to take another break?
THE WITNESS: That's up to you-all. I'm fine.
MS. WRENN: Okay. I'm fine to go. I didn't know --
THE WITNESS: I think I'm --
MS. WRENN: -- if you needed one.
THE WITNESS: I think I might need a break.
MR. PARKER: Yeah. Let me get a restroom break.

Page 168

(Recess.)

EXAMINATION

BY MS. WRENN:

Q. Okay. We met earlier, but I'm Catherine Wrenn, and I represent the other Wumag entity --
A. Yes, ma'am.
Q. -- in this case. So I'm going to have some follow-up questions to what Robert already asked you.
A. Yes, ma'am.
Q. So the same rules apply when I'm asking you questions that applied when Robert did. So if any of my questions are unclear, please let me know, and I'm happy to rephrase or re-ask the question, et cetera.
A. Yes, ma'am.
Q. And if you need to take a break for any reason, just let me know.
A. Yes, ma'am.
Q. Okay. You testified earlier about the lack of a lockout-tagout procedure while you worked at Bondex, and earlier you said you were never given a lockout-tagout procedure to use while you were there; is that correct?

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 169

A. I was never given a lockout-tagout actual lock and tag.
Q. Okay. That was going to be one of questions.
So was there ever a tag available to you to use when you were working on any of the machines at Bondex?
A. Not to me.
Q. Was it available to anybody?
A. I'm not sure. I don't know if maintenance had them. I'm not -- I'm not -- I can only -- you know.
Q. Did you ever see a lockout tag on any of the machines while you were at Bondex?
A. I can't remember, but I don't think so. I ain't -- like, you see a lockout tag -- tagout, you got to go in that area, you know, where you turn it on and stuff. So, no, it was no need for me to work on the machines. So that was the only time you would see a lockout-tagout, if somebody was working on the machine.
Q. And did you ever see a lockout-tagout tag?
A. Maybe. Maybe saw it around the plant, but, you know, not on a specific machine I can

Page 170

say I seen one that was locked out and sitting stationary.
Q. Okay. So sitting here today, you don't have a -- a personal memory of ever seeing a lockout-tag at Bondex?
A. Not on the machine that I got hurt on, but maybe if I seen it around the plant on another machine -- I'm not sure if I seen it. You know, I don't know. So I can't say they don't use the procedure, is what I'm saying. It's just I didn't have a lockout tag, is all I'm saying.
Q. Was there -- I understand you didn't have a lockout-tag.
Was there a lockout-tagout procedure of any kind that you ever utilized at Bondex?
A. That I utilized, no, ma'am.
Q. Okay. All right. Earlier you talked about some of the jobs that you had before coming to Bondex.
A. Yes, ma'am.
Q. And I know that you were at some other plants --
A. Yes, ma'am.
Q. -- beforehand.

Page 171

A. Yes, ma'am.
Q. And you worked with some machinery, correct?
A. Yes, ma'am.
Q. At any of those prior jobs working with machinery, did you ever have to clean those machines?
A. No, ma'am.
Q. Did you ever see anybody cleaning any machines at the prior plants you worked at?
A. The heat setter was the only machine that I ever seen that needed cleaning. The other jobs I worked at, I didn't work in the area of heat setter. So I never seen a machine get cleaned prior to that.
Q. Okay. So the first time you saw a machine get cleaned was when you were at Bondex?
A. Correct.
Q. Okay. I understand that you didn't clean any other machines at your other employers, but did you ever receive any kind of training about how to clean machines from those other employers?
A. Sorry. No, ma'am. I didn't -- never worked on a machine that needed to be cleaned

Page 172

before.
Q. So earlier you talked a little bit about the light curtains, and I believe you said that you -- before the accident you had heard that the light curtain may have been operational and then removed.
A. Yes. I may have overheard that.
Q. Okay.
A. I'm not specific and can't give you specific -- but I think I heard a conversation about that before, is what I said.
Q. Okay. Is it fair to say that if someone disabled the light curtain, you don't have any personal knowledge about who that was?
A. No, I don't have any personal knowledge.
Q. Had you ever worked with a machine that had a light curtain on it before?
A. No, ma'am.
Q. Prior to the accident, were you familiar with the general concept of how a light curtain works?
A. Prior to it? I never thought about it before, but, I mean, hindsight, I -- you know, I can kind of -- you know -- what's the word I'm looking for? The concept, yeah, I can understand

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 173

the concept now, yeah --
Q. Okay.
A. -- but I never really thought about it before.
Q. And earlier you said, I think, the concept that you understand it as is if any part of your body would cross the light curtain, the machine would automatically shut down?
A. Any -- any object, anything, yeah. Not just your body. Like, anything that was -- from my knowledge, anything. A bird flying in it, it'll stop -- it should stop it. That's what I was thinking.
Q. Do you know where the light curtains were or were supposed to be on the Wumag machine?
A. Not until I seen that picture today.
Q. Okay. And from the picture you looked at today, was the light curtain located near where you were cleaning the roller?
A. The picture looked like it. It looked like the picture, but I don't -- I don't know if that was prior, after, or before. I'm just -- can go off what I see in the picture.
Q. Right. Do you think it would have been a good idea to have the light curtain operational

Page 174

when you were cleaning the machine?
MR. PARKER: Object to the form.
A. Do I think it would have been a good idea?
Q. Yes, sir.
A. I'm not sure what it would be. I -- would it be a good idea? I imagine it would be a good idea, but I'm not sure. I don't know because I don't know if it -- how the machine was running before then or what happened, but, you know, I think it would be a good idea.
Q. You think it would be a good idea?
A. I think so.
MR. PARKER: Object to the form.
Q. Do you think if the light curtain had been operational when you were cleaning the machine that would've prevented your accident?
MR. PARKER: Object to the form.
A. I'm not sure.
Q. So when you said you think it would've been a good idea to have the light curtain operational during cleaning, what do you mean by that?
MR. PARKER: Object to the form.
A. In hindsight, the concept may seem all

Page 175

right, but don't -- even if it was there, I don't know if it would've prevented anything or worked or helped or however the situation may be.
Q. Okay. How many times had you cleaned the top roller of the machine before this accident?
A. Maybe once or twice maybe.
Q. And during those one or two times that you cleaned the top roller beforehand, was the light curtain ever operational during those times?
A. I don't think so. I'm not sure though.
Q. And when you cleaned the top roller on those prior occasions, was the machine on?
A. When I cleaned it?
Q. Yes, sir.
A. Yes, ma'am.
Q. And do you know what the speed was that you would've put the machine on when you were cleaning those top rollers?
A. I'm not sure the exact speed that I would've put the top roller on. I'm not sure. 10, 15, what I would've put it on, but I know the bottom roller I cut on pretty fast. I just don't know the exact number.

Page 176

Q. Okay. So you think the top roller was about a 10 or 15 speed?
A. I'm not sure. I'm saying I don't remember. I don't --
Q. Okay.
A. -- recall what I put it on when I did clean the top roller. That's what I was saying.
Q. Okay. Do you know -- you said earlier that you observed other people cleaning the machine, and that's kind of how you learned how to do it when you were at Bondex.
A. Yes, ma'am.
Q. Is that a fair summary?
A. I observed, yes, ma'am.
Q. Do you remember who you observed doing the cleaning?
A. It probably was Donny or Kevin.
Q. And do you remember what you saw them doing to clean the machine?
A. Not specific other than running the -- letting the rag run concurrent with their hand. Sprayed -- sprayed something on there and let it run concurrent with their hand. That's what I -- that's my knowledge of what I seen. Like, that's what I took in. Cut it on, let it run concurrent

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 177

with your hand to scrub the grease off.
Q. Okay. And when you observed them cleaning the machine, were they only cleaning the top roller?
A. No. I think I -- I think they had cleaned the bottom before, but I don't know. I know I cleaned the top before. That was my first time cleaning the bottom, but they may have cleaned the bottom.
Q. Okay.
A. They may have.
Q. Okay. So when you saw them actually cleaning the machine, do you know if they were cleaning the top or the bottom roller?
A. Each specific time, no, I don't remember. I think I seen them clean both over the span of time I was there.
Q. Okay.
A. But --
Q. So when you saw them cleaning the machine and that's how you learned how to do it, was that a specific, Hey, Barry, come over here and let us teach you how to clean the machine or did you just walk by and happen to see them cleaning the machine?

Page 178

A. I mean, in a setting -- in a job setting, I'm always observing and paying attention. So I was tuned in, paying attention just having a normal conversation. It was a slow, like, process job where we didn't have production work, so we could kind of take our time. So it was conversations probably, but, you know, specific written down, I can't remember, but I'm pretty sure we had conversations. I observed a lot more than anything.
Q. Got it. So it sounds like there was not an official training session for anyone to come learn how to clean the machine. It was just kind of on-the-fly, if you walk by you're going to observe them doing it; is that fair?
A. I mean, we kind of -- you know, we had a closer relationship than that. So it wasn't like I was just walking by and seeing random people. You know, so it was, like, just being there with them. You know, on the job. You're on the job. You're going to talk. You're going to get close on the job. So it was, like, more of that, not more of -- you know what I'm -- I'm here. I can't just stand around. I'm ain't just trying to stand around. So try to figure -- learn as much as I can.
Q. Got it.
A. That's just any job I go to.
Q. Got it. Earlier, Robert showed you some of the training records from when you were at Bondex, and it didn't look like any of those included, like, an official training class on cleaning the machine; would you agree with that?
MR. PARKER: Object to the form.
A. The forms, they look official. They got all the official stuff in the forms. You said do the forms look official?
Q. No. Did any of those forms about training include cleaning the Wumag machine?
A. Those forms?
Q. Yes, sir.
A. Those forms, yes. I seen stuff in those forms, I think. It's a lot of stuff in those forms. I didn't read everything.
Q. Yeah.
A. But I don't -- yeah, I don't know if it said anything specific about cleaning in those forms.
Q. So if you wouldn't mind pulling out Exhibit Number 1, which are the training records

Page 179

Page 180

that we were talking about, I see on the first page that you received some training about the Wumag calender Operator Job Duties.
Do you see that?
A. Uh-huh. Yes, ma'am.
Q. And then it says, Setup Wumag for heat setting operation.
Is that different than cleaning the machine?
A. I imagine it is, yes.
Q. Okay. And then underneath that is says, Setup Wumag for Tencate Calendaring.
Maybe I'm saying that wrong, but is that the same thing as cleaning the rollers?
A. I don't think it --
MR. PARKER: Object to the form.
Q. Okay. Do you -- do you know if that's the same thing as cleaning the rollers?
A. I don't think it's the same thing.
Q. Okay. Do you see anywhere in Exhibit Number 1 where you received any specific formal training about how to clean the machine?
A. It just says, Wumag calender Operator Job Duties.
Q. And if you --

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 181

A. But it don't specifically say.
Q. Okay. And then there are also some other pages about Cintas training. It has PPE training; blood-borne pathogens; conveyor safety, lockout-tagout; ladder safety; slips, trips, and falls.
A. Yes, ma'am.
Q. Compressed air safety.
A. (Speaking sotto voce.)
Q. Hearing conservation, fire safety, and none of that would have anything to do with how to clean the Wumag machine, right?
MR. PARKER: Object to the form. You can answer.
A. Don't -- don't look like it. I don't see anything.
Q. Okay. And so sitting here today, and I understand it's years later, you don't -- do you have any memory of any formal training that you would have ever received on how to clean the machine other than walking by and having some conversations with your coworkers when they were cleaning it?
A. Can you repeat the question?
Q. Sure. So do you have any memory sitting

Page 182

here today of any formal training class or watching any kind of videos or reading any kind of manuals about how to -- how to clean the Wumag machine?
A. No, ma'am, not to my knowledge. Not any videos or anything. Not any formal training classes.
Q. Okay. So when you observed Kevin or Donny cleaning the machine, did they walk you through how to clean it step-by-step?
MR. PARKER: Object to the form.
A. No, ma'am, not step-by-step.
Q. And I take it from your testimony earlier that no one ever instructed you about any certain mode to place the machine in when it was being cleaned.
A. Not that I recall.
Q. Okay. All right. Switching gears for just a minute, and sorry to jump around, you mentioned that -- so you were on Paxil for depression and anxiety before the accident, and then you said that your dose has been upped since the accident; is that correct?
A. Yes, ma'am.
Q. Do you know what the dose was before the

Page 183

accident and how it has been upped?
A. I'm not sure, but I think it was maybe 20 milligrams before, and it's probably 40 now, if I'm not mistaken, but I could be wrong. It could be 30, but I think it's 40, if I'm not mistaken.
Q. So I know that you said you had never cleaned the bottom roller before the day of the accident.
When Donny asked you to go clean it, did you ask him any questions about how to do that?
A. No, ma'am.
Q. I take it from your testimony that you could get one roller to move and spin and have the other remain stationary; is that correct?
A. I think so, yes.
Q. And in order to do that, would you select a certain function on the operation panel?
A. Yes. You had -- I think that's how you had to do it.
Q. Okay. Was that separate and apart from the mode that the machine would operate in?
A. What you -- what you mean? You say -- repeat that. Can you repeat that again? You said --

Page 184

Q. Yeah. So there's two rollers --
A. Yes.
Q. -- right?
A. Uh-huh.
Q. Okay. And I think you said earlier -- and I could be wrong about this -- but you could have one of the rollers be operating and moving and have the other roller remain stationary.
A. Uh-huh.
Q. Is that correct?
A. You could. You could move one roller at a time.
Q. Okay. And how would you do that? Is that a spec- -- operational mode that you would select?
A. I'm pretty sure, but, like I said, I was so new, I didn't really know the ins and outs all the way. I just thought I knew -- I thought I knew more than I knew.
Q. Do you believe that Bondex should have provided you with more training before they asked you to clean the bottom roller of the machine?
MR. PARKER: Object to the form.
A. I feel I was properly trained to be -- to me, I have a -- my mindset is so, like, I know

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 185

I can do it gung-ho, so I felt like I could perform the task.
Q. Okay. So if I understand you correctly, you don't think you needed any additional training on that machine before you went to clean the bottom roller?
A. At the time --
MR. PARKER: Object to the form.
A. At the time, I didn't think I did --
Q. Sitting here today --
A. -- but evidently I did.
Q. -- do you feel the same way?
MR. PARKER: Object to the form.
A. Sitting here today, I feel like it's inevitable. What happened happened and it is what it is. That's how I try to maintain it. I don't try to think about it so much, as in not too much. I just try not to think about it too much.
Q. So I want to look at what was marked as Exhibit Number 15. I think yours should be in order hopefully.
MR. OSBORNE: I think it's this one here.
MS. WRENN: It was before that.

Page 186

Q. So Exhibit Number 15 is the Bondex January 29, 2018 accident investigation, and on the second page that Robert and you discussed earlier -- so if you flip it to the second page -- there's the paragraph that you read out earlier about what Reece said about the machine and how he'd placed it in the heating and cooling mode in anticipation of cleaning, and then after lunch he believed that the machine had cooled down to the appropriate temperature for cleaning.
Do you know what the appropriate temperature was for cleaning the machine?
A. No, ma'am.
Q. Did anyone at Bondex ever tell you what the appropriate temperature was for the machine to be on before cleaning?
A. I never knew what the temperature went to, like how hot or cold it had to be ever. Never knew, like, discussed, like, how -- what temperature it was supposed to be at.
Q. So no one ever taught you what temperature it was supposed to be on before cleaning it; is that correct?
A. No. No, not before cleaning it.
Q. And then below that, it talks about how

Page 187

Bondex believed that you changed the mode from 1 to 3 prior to cleaning it.
Do you agree with that statement?
A. I changed it from 1 to 3? Maybe I did. I don't know. I don't remember. I don't recall what I changed it to or what I put it in or --
Q. Okay. So earlier I think you said that you did place it on a very high speed prior to doing the cleaning.
MR. PARKER: Object to the form.
Q. Is that correct?
A. I put it on a speed that I thought was high. To my -- to my eyesight, it seemed like it was moving pretty fast. I don't know the specific number I put it on, but it was moving pretty fast.
Q. And in -- had you been trained to put it on a high speed for cleaning?
A. I had cleaned the top before and it got the results I needed, so I did the same thing again.
Q. So when you cleaned it before, had you cleaned it at a high speed?
A. I don't remember the specific number it was on. It was at enough speed to get the grease

Page 188

off.
Q. And before, those were only with the top roller going at a high speed?
A. Yes, ma'am.
Q. So in that instance the top roller was going at a high speed. The bottom roller, was it stationary?
A. In -- in what instance was this?
Q. When you had cleaned it on the prior occasions, the top roller.
A. Yeah, the bottom one was -- it was stopped.
Q. And on the day of the accident, did you place the bottom roller at a high speed?
A. I turned on the bot- -- I turned up the speed.
Q. Of the bottom roller?
A. That's the one that I was cleaning, yes, ma'am.
Q. And do you recall if the top roller was stationary?
A. I don't recall, but I think it was.
Q. And just to clarify, you received no training from Bondex on how to clean the bottom roller, correct?

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 189

MR. PARKER: Object to the form.
A. I said I received some training on that machine.
Q. Did you receive any specific training --
A. I had never --
MR. PARKER: Object to the form.
A. -- cleaned the bottom roller, but I seen it cleaned. So probably some training. That's why I say some training. I never had cleaned it though. I had seen someone do it. I observed.
Q. When you observed someone cleaning the bottom roller before, did learn what mode to put the machine in to do so?
MR. PARKER: Object to the form.
A. No, ma'am.
Q. And when you saw someone cleaning the bottom roller before, did you learn what temperature the machine was supposed to be to clean it?
MR. PARKER: Object to the form.
A. No, ma'am.
Q. Do you think Bondex could have done anything differently to have prevented your accident?
MR. PARKER: Object to the form.

Page 190

A. Bondex, no. Wumag, yes.
Q. Okay. Tell me why you think that.
A. About Wumag?
Q. Yes, sir.
A. Simply because if I had designed the machine, it would have been no way possible -- I don't care -- it would have been just no way possible -- I would have -- I would have put something in place, a hard something. Just no way -- the way it was designed, I think I could have helped, if that answers your question.
Q. Okay. So you believe the design of the machine should have been different?
A. You're asking me did I think that -- what -- what I thought that would help me. Not that -- I don't know how it was designed or how different it could have been. I'm just saying -- but, for reference, it should have -- I would think it would've had a guard to prevent my body from going in.
Q. Okay. And where would that guard be?
MR. PARKER: Object to the form.
A. On the machine. Somewhere on the machine.
Q. Somewhere in front of the rollers?

Page 191

MR. PARKER: Object to the form.
A. Any place to keep my body from going in the machine.
Q. Is there anything else that you think Wumag could have or should have done differently that would've prevented your accident?
A. No. I mean, I'm not a psychic, so, like I say, I try to take it as it is, what it is, so that's about one thing or it being a self-cleaning machine. I don't know.
Q. Did anybody from Wumag ever teach you how to clean the machine?
A. I was -- not by Wumag, I don't think.
Q. Did you ever personally speak with anybody from Wumag?
A. Guys came over all the time over -- over to the plant all the time from overseas.
Q. Did you ever speak to any of them when they were at the plant?
A. I don't know specifically if they was from Wumag, but it was the guys that came over. Yeah, I spoke to guys -- it was always different guys in there, you know, so I guess some -- some from Wumag, some from other places. I don't know, but I always seen foreign guys in there,

Page 192

and I always talked to them.
Q. Did you ever talk to anybody that came from a different country specifically about the Wumag Calender Machine?
A. I didn't have a conversation with them.
Q. Did you ever have any safety concerns about the machine prior to the accident?
A. Not about the specific machine. You never think you're going to get hurt.
Q. Did you ever talk to anybody at Bondex about whether the guard could be placed somewhere on the machine?
A. It would be impossible because I would have to know that I was -- it was going to turn out like that. It was just something I never thought about. I never thought about whether -- what machine had a guard, should have a guard. It was just something that never crossed my mind.
Q. Okay. So just to clarify, you never talked to anybody at Bondex about whether a guard could be placed at the machine?
MR. PARKER: Object to the form.
A. No, not that machine. I didn't assume I was going to get hurt.
Q. Prior to the accident, did you ever talk

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 193

with any about -- anybody about -- Bondex about any kind of safety concerns you had about the way the cleaning of the machine worked?

A. No, ma'am.

Q. So earlier you and Robert looked at portions of the operating manual for the machine. Do you remember that?

A. Yes, ma'am.

Q. And he read various sections of the operating manual that talked about turning the machine off during the maintenance.

Do you recall those?

A. Yes.

Q. Okay. At any point while you were working at Bondex, did anyone ever tell you that the machine should be turned off during cleaning or any kind of maintenance of the machine?

MR. PARKER: Object to the form.

A. No.

Q. Were you ever aware that Wumag recommended the machine be turned off during cleaning and maintenance?

MR. PARKER: Object to the form.

A. Was I aware of that?

Q. Yes, sir.

Page 194

A. I wasn't aware.

Q. Sitting here today, is this the first time that you're aware that the machine is recommend to be turned off during cleaning?

MR. PARKER: Object to the form.

A. Yes.

Q. Is it possible to clean the rollers while the machine is turned off?

A. That, I don't know.

MR. PARKER: Object to the form.

A. That -- that's -- that's why I say the way it was designed -- that's why I -- it's so iffy, because I don't know if they could have designed it to self clean or whatever. That's why I say that.

Q. Okay. Did you ever attempt to clean the rollers with the machine off?

A. No, ma'am.

Q. Have you been cleared by doctors to return to work?

A. Yes, ma'am, I think.

Q. And I think earlier you said you have not been to any job interview since the accident; is that correct?

A. Yes, ma'am.

Page 195

Q. Have you attempted to do any jobs at all since the accident?

A. No, ma'am. My wife works.

Q. Have you been to any occupational training to do any new types of jobs?

A. No, ma'am.

Q. Prior to this accident, have you ever had a workers' compensation claim before?

A. No, ma'am.

Q. Can you walk me through what a typical day in your life looks like now?

A. I get up about 6, wake the kids up. They get ready for school. Take my wife to work around 7. She got to be there at, like, 7:30. Get back. I have to let the dogs out. I let the dogs out, run around for about 30, 45 minutes. Come back in. Put the dishes in the sink. Let them soak in the sink for an hour or two. Start picking up around the house. Vacuuming. Trying to kill time. Cleanup whatever needs to be cleaned up. Get a shower if I need it.

By that time, if I can, I been took -- well, I been took something out of the freezer. Let it thaw out. If it's done thawed early, I'll start dinner. Let it start simmering until my

Page 196

kids get home around 3, 3:30 from the bus, and I'll cut it on low temp and watch the pot until I have to pick up Iyhana from basketball practice.

Then when I come back, I drop her off and go directly to pick up my wife from work. Come back. It's around 5:30. We probably have to stop by the store or something. Come back. It's about 5:30, 6:00. Wind down and do it all over again.

Q. So it sounds like you're one of the -- the main caretakers for the house and for the children while they're home; is that correct?

A. Yes.

Q. And earlier you said you're right hand dominant, right?

A. Yes. Yes, ma'am.

Q. So you're still able to write; is that correct?

A. Yes, ma'am.

Q. And it sounds like you're able to do daily living activities by yourself; is that correct, like bathing, using the bathroom, doing chores, getting dressed?

A. Not all the time because, really, I have to -- that's why I say sometimes I take a shower

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 197

because, really, I have to wait on her so -- because I can't bathe my right side, like, my right arm and stuff.

Q. Okay. So you -- sometimes you need help bathing your right side?

A. Yes, and then most of the time I get my daughter to help me if I need to cut up vegetables or cut up potatoes, stuff like that. So I do need help. I wouldn't say I didn't need help.

Q. Okay. All right. Anything else that you routinely need assistance with around the house or --

A. Helping with the trash. Help taking out the trash. Tying up trash. If it's got to be something go up under the house, I'm going to have to need help or my son going to have to go or me or my wife have to take out. So, yes, it's a lot of stuff that I need help with.

Q. Okay. And it sounds like you're able to drive a car.

A. I drive.

Q. Okay. And you're able to run errands?

A. I run some errands. It depends on how big the task is.

Page 198

Q. And so we've talked a lot about -- today about it's happened a couple of years.

Did you take any notes or keep any kind of a diary of any kind after the accident?

A. Mainly -- no. Just in my head.

Q. Okay. And so going back to when you were first hired at Bondex, I understand you were hired to operate a particular machine; is that right?

A. Yes, ma'am.

Q. Is that the card machine? Is that what you said?

A. Yes, ma'am.

Q. Okay. Did you ever have to clean the card machine?

A. No. Yeah, but it ain't the same type of cleaning.

Q. Okay.

A. It's a different type of clean down. Like, you're spraying, like, the dust off it and stuff. So it's a different type of cleaning.

Q. Okay.

A. Not, like, really cleaning. You're just spraying -- spraying the dust off or whatever or you might have to clean it, get inside it or

Page 199

whatever, but -- so, yeah, I cleaned it sometimes, but not like the way the heat setter's cleaned.

Q. When you were cleaning the card machine, was the card machine on?

A. No, it wasn't on.

Q. Were there any other machines that you worked on at Bondex other than the card machine and the calender machine?

A. I probably ran the Synger a time or two and the Bruckner.

Q. The Cinder and the Bruckner?

A. The Synger.

Q. Synger.

A. And the Bruckner.

Q. Did either of those machines have any kind of rollers or pinch points?

A. Yes, I think. I think they did.

Q. Did you ever have to clean either the Synger or the Bruckner?

A. No, ma'am.

Q. Does the card machine have rollers or pinch points?

A. The card machine?

Q. Yes, sir.

Page 200

A. Inside the machine, it does.

Q. It has rollers?

A. Inside the machine. Like, the card has got doors and it's protected. So it's inside the machine.

Q. And did you ever have to clean inside of the card machine?

A. Yeah. I -- remember, I just told you sometimes you got to blow it, and then you might have a chunk where you have to get out -- like, get a bamboo stick and get the little chunk of thread out or something like that. That's why I said it was a different type. It wasn't, like, scrubbing grease off or nothing. You just -- you might have a -- what they call a choke.

A choke is just some fiber getting stuck somewhere, and you got to get it. Fish it out. So it wasn't the same type of cleaning.

Q. Okay. Did the rollers of the card machine ever have to get cleaned?

A. Not to my knowledge. Not then.

Q. So it's fair to say, when you cleaned the card machine, you did not clean the rollers inside that machine?

A. No, ma'am.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 201

Q. And, again, when you would clean the Synger and the Bruckner, the machines were off when you were cleaning?
A. I never cleaned the Bruckner.
Q. Okay.
A. Or the Synger.
Q. Okay. Did you ever see anybody else cleaning either of those two machines?
A. No, ma'am.
Q. In some discovery responses, I noticed that you listed Reece Walmsley as working at a nearby textile plant.
A. No, ma'am.
Q. Okay. Did -- so he worked at the same part of the Bondex plant that you worked in?
A. Yes, ma'am.
Q. Okay. Did Reece Walmsley ever provide any kind of training about the calender machine to you?
MR. PARKER: Object to the form.
A. I told you it wasn't nothing directly. If he did, you know, I observed him the same way I did Kevin or -- or Donny.
Q. Have you ever heard of another employee at Bondex being injured?

Page 202

A. Have I heard of it?
Q. Yes, sir.
A. Yes, but not on our side.
Q. And what did you hear about someone being injured on the other side of the plant?
A. I think similar. I think it was -- it could have been similar to mine, but not -- like, he didn't lose his arm or nothing. I think his thumb. He hurt his thumb somehow in the machine. That's what I heard.
Q. Are there any calender-type machines on the other side of the plant?
A. I think, yeah. I think -- I think there are. I'm not sure though, but I know it's a -- like, a card type, so I know calendar's inside the card.
Q. Okay. Do you know the name of the person that hurt his thumb in another injury?
A. No, ma'am.
Q. In that particular incident where someone hurt their thumb, was that before your accident?
A. Yes, ma'am.
Q. Do you know anything else about how he would've hurt his thumb?

Page 203

A. No, ma'am. I just heard that he might've hurt his thumb.
Q. Was it caught in a pinch point?
A. I'm not sure.
Q. Okay. No details. Okay. Are you aware of any other employee being injured on this particular calender machine?
A. This particular one, no.
Q. So as far as you're aware, you're the only one that's been injured on this machine?
A. Yes, ma'am.
Q. All right. I want to look at Exhibit Number 18, which you looked at earlier, which is the cleaning procedure for --
MR. PARKER: I gotcha.
Q. -- the calender machine, and I know you said earlier you had not seen this document prior to your accident. So it talks about three different modes, and it says mode 3 is the one that's necessary to clean the bowls.
And what is -- what are the bowls? Can you clarify that for me?
A. The rollers.
Q. Okay. And have you ever put the machine into mode 3 before that you're aware of?

Page 204

A. I'm not sure.
Q. Okay. And you were not aware that mode 3was what you were supposed to be putting the machine in?
A. I wasn't aware.
Q. Okay. And then step number two in the cleaning procedure is the gap should be open.
Do you know what that's referring to?
A. The two rollers should be open.
Q. And when you went to go clean the machine, was the gap open between the two rollers?
A. About like that. 10,000th-of-a-millimeter gap, you know, which I thought was normal. It was supposed to be, I mean, at the time.
(Gesturing.)
Q. Okay. So you showed me with your hands --
A. Yeah. You --
Q. It looks like it's -- I mean --
A. Barely open.
Q. -- maybe, like, the size of, like, a pencil at most was the gap between the two rollers.

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 205

A. Just that little bit.
Q. And then it says, Step number three, the temperature of both bowls should be 60 degrees or lower.
Were you aware of that information prior to your accident?
A. Prior to, no, ma'am.
Q. Okay. And would you agree that 60 degrees is not very hot?
A. You to your arm, it probably feels hot.
Q. And do you know what temperature the rollers were when you went over to go start cleaning the machine?
A. No, ma'am.
Q. And, again, you were never told what the temperature should be, correct?
A. No, ma'am.
Q. And then it says, Step number four, operator should wear gloves and eye guards.
Were you wearing gloves and eye guards?
A. I had two gloves on my left hand. I think I had on safety glasses. I should have. Yeah.
Q. Okay. And, going back to how the accident happened, did you ever intentionally

Page 206

place your hand in between the two rollers?
A. Intentionally?
Q. Yes, sir.
A. No, ma'am.
Q. Okay. So from your description earlier, it sounds like you wanted to have the bottom roller spinning and you just place a rag on the outside of that bottom roller. So as it would spin, your rag would make contact and get any grease off?
A. Yes, ma'am.
Q. Was your hand going, like, horizontally across the roller at the time of the accident?
A. It didn't have a chance to do but pull it -- go in.
Q. Okay.
A. I just touched it. Just did that.
(Demonstrating.)
Q. Okay. So when you walked over, the roller was already moving?
A. I had just cut it on, cut the speed up, sprayed some degreaser and touched it, and that was it.
Q. And you touched it, I'm assuming, with your left hand.

Page 207

A. Yes, ma'am.
Q. Okay. So you placed your hand on that bottom roller that was spinning and immediately it caught your hand and pulled it in?
A. Immediately.
Q. Okay.
A. That's why I say I never got to clean it. That's why I keep stating I never cleaned it. I attempted to clean it.
Q. Got it.
MS. WRENN: What exhibit are we on?
THE COURT REPORTER: That was 21.
MS. WRENN: So this is 22?
MR. OSBORNE: 22.
THE COURT REPORTER: 22.
Q. All right. I'm going to hand you what's been marked as Exhibit Number 22, and it's part of the same exhibit that we looked at earlier that's Exhibit Number 20, but just for simplicity and sake of time, I just have a few excerpts that I wanted to talk about, and so it might be easier --
(Exhibit No. 22 was marked for identification.)

Page 208

A. Yes, ma'am. Yes, ma'am.
MS. WRENN: And, sorry, I only have four.
Q. All right. So I want to flip to the second page, and this is part of Section 2.1 of the operation manual, the general safety instructions, and under, Intended Use, the first bullet point starts off, The machine is built -- do you see where I am --
A. Yes, ma'am.
Q. -- on the second page?
A. Yes, ma'am.
Q. Okay. And it says, This machine is built to the state of the art and in accordance with recognized safety regulations. Nevertheless, if used inappropriately or for purposes other than its intended use, the machine can represent a danger to the life and limb of the operator or other persons and a danger of damage to the machine or other equipment.
Were you aware prior to the accident that the machine could be dangerous?
A. All machines are dangerous.
Q. Okay. Is that something that's pretty obvious?

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 209

MR. PARKER: Object to the form.
A. It's objec- -- I guess it's subjective. Opinionated. It's an opinion.
Q. So based on your experience working with machines, you understood that this particular machine could be dangerous; is that fair?
A. Yes.
Q. Did you understand that there was a risk related to the rollers and the pinch point?
A. A risk? Yes, ma'am.
Q. And what risk did you know there was?
A. I mean, from previous jobs and the one before, you always hear about risks of a pinch point, but you never -- you never think you're going to be in that situation. You know, you hear the risks. Yeah, I know the risks. I heard about them, but I never thought it would be me being a part of it.
Q. Right. And when you talk about the risk of a pinch point, is that a risk that a body part get caught in between?
A. Anything. Clothes. Hair.
Q. And so we talked about earlier how it was your understanding that the machine was supposed to be on during maintenance, right?

Page 210

A. You said during maintenance?
Q. Yes.
A. Maintenance --
Q. Or cleaning?
A. Yes.
Q. Okay. If the machine was on and the rollers were on during cleaning, did you think that there would be some safety risks possible with that?
A. I didn't think about it. I never thought about it. Just -- I'm never quit -- I'm not the type to question too much on a job. I just try to be ready and be -- be on time to be there, and just -- I remember -- you know, you know about risks, you hear about them, but I ain't never think about it.
Q. Okay. When there are rollers that would have a pinch point, do you think the dangers of that pinch point increase when the roller's operating versus stable?
A. Logically, yes.
Q. Okay. With regard to the calender machine, is there an emergency stop button?
A. There's emergency cords and I think there's an emergency stop button.

Page 211

Q. Okay.
A. But, like, it wasn't close to where I was, but it was cords.
Q. Okay. If someone had been standing with you while you were cleaning it, would they have been able to hit the emergency stop button or pull the emergency cords?
MR. PARKER: Object to the form.
A. Would they be able to?
Q. Yes, sir.
A. I mean, they might've been able to, but I don't know how effective -- because I told you it was going so fast it happened so fast.
Q. All right. I want to look at Section 2.2 of the same exhibit, and it has, at the bottom, what we call Bates numbers. SCDLLR-OSHA 0063 at the bottom. It looks like this.
(Gesturing.)
A. 63? Yes, ma'am.
Q. Yes, sir. At the bottom.
A. Yes, ma'am.
Q. Okay. So this is part of Section 2.2 of the manual, and -- let's see -- it says, While -- or at the very top, When servicing the machine

Page 212

while it is in operation. It says to exercise extreme care and attention and have a second person as backup, for example, to operate the emergency off button.
And to be clear, there was no second person acting as a backup for you while you were cleaning the machine; is that right?
A. Yes, that's right.
Q. And in cleaning the machine, were you ever trained to have a second person as backup to operate the emergency off button if needed?
MR. PARKER: Object to the form.
A. Not really.
Q. So when you say not really, what do you mean by that?
A. You -- answer -- you -- ask your question again. You said --
Q. Yep.
A. -- while I was working, was I trained for somebody to be there?
Q. While you were cleaning it.
A. I told you, like, it was always two or three of us there. So maybe they just didn't explain it or I didn't catch it, but it was always somebody there that was, you know, so --

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 213

Q. Well, to be fair, nobody was there next to you on the day of the accident, right?
A. Not the day of the accident, no.
Q. Okay. When you had ever cleaned the machine in the past, the top roller, had there ever been a second person to act as backup to pull the emergency cord or push the emergency off button if needed?
A. I mean, it been -- it been people there before, but I never thought about needing nobody to pull the cord, you know, so --
Q. And nobody ever instructed you, Do not go clean that machine unless you have a second person as backup, did they?
MR. PARKER: Object to the form.
A. I wasn't never instructed to have a second person.
Q. Okay. And I think you said that on the day of the accident people were in -- eating lunch or in the bathroom, but nobody was really near you and the calender machine; is that right?
A. Unless Reece was on the opposite side. Like I said, I don't know who was on that side.
Q. Okay. So when you were cleaning the machine on the day of the accident, you were

Page 214

doing that all by yourself, right?
A. I was --
MR. PARKER: Object to the form.
A. -- attempting to clean it by myself.
Q. Attempting to clean it. Got it. All right. I'm going to hand you Exhibit Number 23, which is also part of the operating manual, and so this is part of section 5.1.8 with regard to the smoothing roller, and if you look on the first page under, Safety Precautions, the first one is: Warning - danger of crushing in the vicinity of the rotating roller.
And do you agree that there was a danger of crushing in the vicinity of the rotating roller?
(Exhibit No. 23 was marked for identification.)
MR. PARKER: Object to the form.
A. Any machine is dangerous. All machines are dangerous.
Q. Specifically, do you agree that there's a danger of crushing when in the vicinity of the rotating roller of this calender machine?
MR. PARKER: Same objection.
A. I mean, any machine you get close to,

Page 215

there's always a risk. So I know, you know, going into a job is a risk.
Q. Okay. So my question though is specifically about the rotating roller on this machine.
A. Yes, ma'am.
Q. Did you understand prior to the accident there was a danger of crushing with regard to that rotating roller?
A. I had done had class -- seen videos on pinch points, so yes.
Q. Okay. And those videos, were those at prior jobs?
A. Yes.
Q. Okay. With regard to the OSHA investigation about the accident -- you may have said this earlier -- did OSHA interview you as part of the investigation?
A. I don't think so. I don't think I ever met with OSHA. I'm not sure, but I don't think I did.
Q. There are a couple of places in the OSHA report where it talks about Employee #1, you, stated various things.
A. From OSHA?

Page 216

Q. Yes, sir.
A. That I stated them to OSHA?
Q. Yes.
A. I don't remember. I don't know if I talked to OSHA, but I could have.
Q. Okay.
A. I talked to a lot of people, so I really don't --
Q. Do you have any memory of talking to OSHA at all about the on-the-job training you received at Bondex?
A. I don't remember talking to OSHA at all.
Q. Okay. So when you had cleaned the top roller in the past, did you do anything differently with regard to set up that you did with regard to the bottom roller?
A. No, ma'am. Not from my knowledge, no, ma'am.
Q. Okay. So the way that you turned the machine on and any settings you would have applied, those were the same as you had done with regard to the top roller in the past?
A. I only turned on the machine and turned up the speed, so yes, ma'am.
Q. What do you think the difference was on

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 217

the day of the accident that resulted in an injury?

MR. PARKER: Object to the form.

A. The difference is I never had cleaned the bottom roller before.

Q. What is different about the top roll- -- cleaning the top roller and the bottom roller?

A. They turn in a different direction.

Q. Okay. So the top roller, when you cleaned it, in what direction was it turning?

A. I don't -- I didn't set it to turn a specific way. So I guess it just -- whatever I turned it on -- the way it was already moving, and it happened to be the correct way.

Q. So --

A. So it probably was this-a-way. I don't know. One of the ways.

(Demonstrating.)

Q. Okay. So on the day of the accident, do you know which way the bottom roller was turning, away from you or toward you?

A. I mean, logically, it only could've been going one way, so -- but I only turned it on the way -- just turned it on. I never tried to adjust the directions of the roller.

Page 218

Q. So --

A. I didn't think I had to.

Q. I understand that. So I'm just trying to get a clear picture --

A. Yes, ma'am.

Q. -- of what happened. So I know it happened fast.

When it was rotating, the bottom roller, at the time of your accident, was it rotating inward toward the inside of your machine?

A. That's the only way you would get pulled in.

Q. Okay. So it sounds like, though, when you cleaned the top roller in the past it was rotating outward toward you; is that --

A. Seemed like it, yeah.

Q. -- a correct assumption?

A. It'd have to be.

Q. I could be wrong.

(Overlapping dialogue.)

A. No. No. No. You're right because I'm saying -- I'm just thinking about the way it would -- so you wouldn't get pulled -- yeah. I'm only looking from hindsight. So probably I never thought about it.

Page 219

Q. Yeah.

A. I just click it on and go, but hindsight, you know, you know it had to be going this way. Hindsight, I guess you wouldn't get pulled in like that. I don't know. Man, I'm not sure.

Q. Okay. So it sounds like, though, the top roller and the bottom roller were going opposite directions whenever you cleaned them. So when you cleaned the top roller, it was rotating in one direction, and when you cleaned the bottom roller, it was rotating the opposite direction.

MR. PARKER: Object to the form.

Q. Is that fair?

A. I don't know. I told you I just turned them on. I don't know what direction they was going. Just hindsight -- you know.

Q. Okay.

A. It had -- I guess it was turning this way, the bottom one, but the top one, it wasn't spinning. So --

(Demonstrating.)

Q. Did you know how -- on the operation panel how to choose which direction the rollers would rotate in?

Page 220

A. At that time, it -- I didn't think. Like I said, I thought I knew more than I knew, so I thought, okay, you do it the same way you do the top; you just turn it on, cut the speed up, and let it go. I didn't think about that you can change the directions or that I needed to change the direction.

Q. Can you choose the direction on the operation panel?

A. I'm pretty sure you can, but I'm not sure --

Q. Okay.

A. -- but I'm not sure, but I'm pretty sure you can.

Q. Okay. And to be fair, no one taught you at Bondex that you needed to choose a particular direction --

A. Maybe --

Q. -- of the roller --

A. If they did teach me, I didn't catch it because I -- I'm pretty sure I wouldn't have did it.

Q. Okay.

A. So maybe they taught me and I didn't

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 221

catch it, but I'm not sure.
Q. You seem to be defending Bondex a lot.
A. No, I'm not. I'm not. I'm -- you're trying to make it seem like I -- you know, I'm going in that direction, but what I'm telling you is only how I honestly feel.
Q. Okay. Fair enough.
A. Like, I can only tell you how I honestly feel.
Q. Fair enough.
A. Yeah. I'm not defending them.
Q. If I were in your shoes, I would be angry at Bondex, but you don't seem --
MR. PARKER: Object to the form.
Q. -- to have any anger.
A. No. I'm not angry at no one. I don't really care about anger. So I'm not angry.
Q. The place where you were injured, is that the inlet to the calender stack?
A. You -- say that again. The inlet?
Q. Is that where you would place the fabric to go inside the machine?
A. Yes, but not initially. It ends up going there. You put it on the back where the thing's at, and then it ends up there.

Page 222

Q. Do you -- if you're operating the machine, do you ever directly feed any material into the rollers?
A. No.
Q. Okay.
A. You thread it up. You -- you -- the mold, how it show you to thread it up, you take a thin piece of felt -- a string -- and you thread it up so it's not on when you're putting it through the roller.
MS. WRENN: (Overlapping dialogue.)
A. It was just threading it up.
MS. WRENN: -- 24?
MR. OSBORNE: 24.
Q. Okay. I'm going to hand you what's been marked as Exhibit Number 24, and these are photos from the OSHA report.
Can you look through there and show me, like, on any of the photos where you would actually thread in any material to this machine?
(Exhibit No. 24 was marked for identification.)
A. On page 6.
Q. Is that this one?
(Gesturing.)

Page 223

A. Yes, ma'am.
Q. Okay.
A. You see where the rollers at?
Q. Yes.
A. You thread it back here at the very back, not close to the rollers.
(Gesturing.)
Q. Can you mark --
A. Back here. Okay. I'm going to show you were you start it.
MR. PARKER: Pull.
THE WITNESS: My hand's slippery.
MR. PARKER: Two of us can't do it.
A. All right. You might start feeding it into this top one here first.
Q. Are you pointing to, like, right here?
(Gesturing.)
MR. PARKER: Yeah.
MS. WRENN: Okay.
A. Yes, ma'am.
Q. Okay.
A. Okay. You might start there and loop it over the top or up under, however it's telling you to do it, and then you come down here to that second roll up under it, and you going to have to

Page 224

loop it a kind of way. Then to the next one. And then the one at the bottom.
Q. The red one?
A. No, ma'am. That ain't no -- that ain't a roller. The one at the bottom.
Q. Oh, the very bottom. Got it.
A. Then you got to go up under there with it, and you might have to either go up under there or go on top, and then it goes to the heat setter.
(Demonstrating.)
Q. Okay. How does it get to the heat setter from that bottom roller?
A. It go up under that platform.
Q. Okay.
A. And come back. Then you got to loop it over this other bar. That bar that sits up under, like, inside the heat setter. Do you want me to --
Q. Do you want to -- I was going to say, do you want to do, like, numbers for like -- start here. Maybe, like, 1, 2, 3, just kind of the steps.
A. (The witness obliged.) See, every one -- every time you're threading it up

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 225

different most of the time. So you could go under --
Q. Over, under or --
A. Yes, ma'am.
Q. Okay.
A. But sometimes it might not have to go up under this bottom bar. And then it's another bar right here. It's a couple more bars up here that it got to go through before it make it to the actual heat setter.
Q. Okay. So --
A. So you can see 1 starts, 2, 3, 4 down here. Then you coming to 5 with this one here. You got another one up in here, and then you start getting to get to the heat setter.
(Demonstrating.)
Q. Okay. So by the time you get to step number 6, are you still touching the fabric anymore or at --
A. Yes. Yes.
Q. -- that point is the machine doing it?
A. No, ma'am. You still got to thread it up and put it through. Like, it ain't on. You're just feeding it through, and then you go to the other side and you got to -- it's got to

Page 226

be lined up again, and then you put a -- you put a roller thing there and wrap the thing around it. Then you go tie the lead to the actual felt, and it pulls it through --
Q. Okay.
A. -- like that.
(Demonstrating.)
Q. At any point in time when you're doing steps 1 through 6 and those other steps you talked about, is the machine on?
A. No, ma'am.
Q. Okay. When do you turn the machine on?
A. After you -- after you thread it all the way up and then go get the -- then go get the roller that's going to go through there -- the felt that's going to go through there. You take the lead and you tie it to the -- to the fabric, and it pulls it through for you.
Q. And then you turn the machine on?
A. That's how it pulls through, yes, ma'am, you turn it on.
Q. Okay. So --
A. In jog mode. And you -- and it comes through, and you bring it up to where it's about to go in, and then you turn it fully on.

Page 227

Q. Okay. So during operation of the machine, at any point in time when the machine is on, are you ever standing on this platform?
A. Yes, ma'am.
Q. Okay. And what are you doing on that platform while the machine is on? You can that back. Sorry.
A. This platform right here? You're walking back and forth.
Q. Yeah, sorry.
A. Walking back and forth looking at the fiber, looking at the felt, making sure there ain't no stains on it and stuff like that. Making sure there ain't no defects in the felt.
Q. Okay. At and any point during the operation of the machine, are you ever touching the rollers while they are on and rotating?
A. No, ma'am.
Q. Is it fair to say the only time you ever touched the rollers while they were on is when you were cleaning?
A. Touched, as in --
Q. I mean, not with your bear hand, but with a rag or --
(Overlapping dialogue.)

Page 228

A. I mean, you got to kind of touch it a little bit when you're threading it up.
Q. When you're threading it up --
A. It's not on.
Q. -- is the machine on?
A. No, ma'am.
Q. Okay.
A. Oh, you're saying when it's on though?
Q. Yes, sir.
A. No, ma'am.
Q. Okay. So at no time are you ever touching those rollers while they're on unless you're cleaning it?
A. Yes, ma'am.
Q. Okay. Do you know sitting here today if Bondex ever operated the calender machine when the light curtains were enabled and working?
A. I'm not sure.
Q. And when you talked about how you had heard that the light curtains may have been deactivated, had you heard that someone at Bondex had deactivated them?
A. No.
Q. Did anyone --
A. Anytime the machines be -- need to be

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 229

maintenanced (sic) or touched, then the guys from Germany come over.

Q. Okay. I'm going to hand you Exhibit Number 25, which is part of the OSHA report, and if you look at section number 1, it says, Steven Fransoso, President, and Reece Walmsley, Vice President Technical Service, both stated that Wumag Calender Machine had a light curtain at the point of operation between the upper and lower roller.

And that's where you were injured, correct, between the upper and lower roller?

(Exhibit No. 25 was marked for identification.)

A. Uh-huh.

Q. Is that a yes?

A. Yes, ma'am. I'm sorry.

Q. And then it says, They stated that they deactivated the light curtain because it was interfering with production.

Had you ever heard that they, being Bondex, deactivated the light curtain?

A. No.

MR. PARKER: Object to the form.

Q. Okay. Is today the first time you're

Page 230

learning that they deactivated the light curtain?

MR. PARKER: Object to the form.

A. I see that it say they deactivated the light curtain. It's the first time I'm hearing it.

Q. Would you agree that Bondex's disabling of the light curtains made the machine less safe --

(Overlapping dialogue.)

MR. PARKER: Object to the form.

A. I'm not sure. I'm not sure.

Q. Do you agree that Bondex's disabling of the light curtains changed the design and condition of the machine?

MR. PARKER: Object to the form.

A. I'm not sure. I wasn't there when it was on, so I told you I can't compare how it was running before to how it would have ran without the light curtain. You know, the -- I'm sorry. Go ahead.

Q. Go ahead.

A. The third one say that Reece stated that the Europeans changed the design of the calender, but, in 1, it says that Reece -- that they did it, but, in 3, it says that Walmsley stated the

Page 231

European Union made a change to the design of calender process.

Q. Right. And then it says the manufacturer decided to use light curtains at the end of that, correct? And then number 4 says, The calender was placed in production and equipped with a light curtain at the point of operation, right?

A. That's what it says.

Q. And then it says, The employer stated (that) the employees were not exposed to the hazard during normal operations. However, they knew (that) the employees would be exposed to the hazard. And that's when they chose mode 3 to operate the cleaners.

Were you aware of any of that prior to the accident?

A. I don't know nothing --

MR. PARKER: Object to the form.

A. -- none of that. (Speaking sotto voce.) I don't understand that.

Q. And then section number 5 talks about the different modes of operation, and it talks about how in mode 1 the top and bottom rollers rotated toward the point of operation and away

Page 232

from the operator, and then mode 3 talks about how the rollers are going toward the operator, and it sounds like from how the accident happened the roller -- the bottom roller was rotating toward the operator, being you, correct?

A. Yes, I'm the operator. Yes, ma'am.

Q. And then it also says that for mode 3 the point of operation opened -- opening increased approximately 1.5 to 2 inches, which sounds like a larger opening than what you saw when you started cleaning; is that fair to say?

A. Yes.

Q. And then there are number 8, it says, The employer (Bondex) had a fully functional light curtain at the point of operation mounted on the calender. He deactivated it because it was interfering with production.

And again, you weren't aware of any of that before your accident, correct?

MR. PARKER: Object to the form.

A. I told you I thought I heard something about a light curtain, but I ain't -- that's only -- I just heard there was probably a light curtain there.

Q. So when you turned the machine on, at

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 233

that point, do you have to select a mode?
A. I'm pretty sure you should, but I only just turned it on. I think I just remember just turning it on.
Q. Okay.
A. Not realizing you had to select what mode to clean it or what.
Q. All right. I want to look back at these photos that I showed you earlier. I think there were 24 possibly. So you look toward the very back. It's sort of a -- the last photos. Like, the sixth to the last one. It looks like this. Are you on the same page? Can't tell.
A. Uh-huh.
Q. Okay. This picture looks like it shows some warning placards on the machine.
Had you seen these before?
A. No, ma'am.
Q. Do you know what these are warning of?
A. It looks like it's saying don't touch, but I don't -- I'm not sure.
Q. And it says -- at the very bottom with a hand crossed out with the red cross -- it says, Only to open at machine stop.
Do you see that?

Page 234

A. Yes, ma'am.
Q. What does that mean to you?
A. I don't know because this one here -- when I was -- I don't know what that means. Only when the machine stops. Only when the machine stops, do you open this door or whatever, but this door is new to me.
Q. Do you think this door existed at the time of your accident?
A. I don't think it did.
Q. Okay. Do you know if Bondex made any other changes to the calender machine other than deactivating the light curtain?
A. I'm not sure.
Q. Okay. Do you know if the machine ever changed while you were working there?
A. Ever changed? I'm not sure.
Q. Okay.
A. Not -- see, I used to work at the bottom too, and the bottom, you can't see up here, so I don't know if it was changed while I was working up there.
Q. Okay. Prior to the accident, how many times had you operated the machine?
A. Several times before because operating

Page 235

on it requires you to stand there and look -- look at the fibers. So I know I operated it a few times.
Q. And when you say a few times, do you mean, like, five times?
A. Probably somewhere around there.
Q. Okay. And then you said you had cleaned the top roller two to three times; is that correct?
A. Yes, ma'am.
Q. And prior to the accident you said no concerns about safety of the machine or did you have any concerns about safety of the machine?
A. No. I said every machine does -- there's a safety risk, you know.
Q. Did you have any specific concerns about the safety of this particular machine prior to the accident?
A. No, ma'am.
Q. Do you think that if the bottom roller had been rotating the opposite way your accident would have happened?
A. Logically. If --
Q. How --
A. If it would have been going the opposite

Page 236

way, it wouldn't have happened.
Q. Okay. Is there anything specifically about the design of the machine that you think caused the incident to happen?
MR. PARKER: Object to the form. I don't want to be rude, but we're going on five hours, and we're starting to ask a lot of the same questions over and over again. I'm sorry. That's -- I'll just leave it at that.
Q. Is there anything specifically about the design of the machine that you think caused the accident to happen?
A. Yes.
Q. And what is that?
A. I don't think you should have been able to bypass the light curtain.
Q. Anything else?
A. After sitting -- after thinking about it today and hearing it, that's, like, the bottom line to me. Like, the machine shouldn't even be able to operate without the light curtain. Without it. If somebody deactivated it, the machine shouldn't have been able to work, in my mind.
Q. Okay. Anything else?

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Page 237

A. Not that I can think of. I mean, if it was self-cleaning and -- and whatever, but that's neither here nor there, but, like I said, if the -- I feel like the light curtain shouldn't be able to be deactivated.

Q. Other than the light curtain, are you aware of anything else that was deactivated on the machine?

A. Not to my knowledge, no, ma'am.

Q. And I know you said that after the accident you started smoking marijuana to deal with pain.

Did you smoke marijuana at all on the day of the accident?

A. No, ma'am.

Q. Did you smoke any marijuana before today's deposition?

A. No, ma'am.

MR. PARKER: Object to the form.

Q. And when the calender machine is being cleaned, does the rest of the factory continue to operate or is there a shutdown day for cleaning?

A. No, there's not a shutdown day for cleaning.

Q. Okay. How often does the top roller

Page 238

have to be cleaned?

A. Whenever they said it. I don't really know, like, the timeframe. I just, you know, do what they tell me to do. So I didn't really -- I guess after a few runs maybe. I guess it should -- might have to be cleaned, but I'm not sure.

MS. WRENN: Okay. All right. I think those are all the questions that I have.

EXAMINATION

BY MR. OSBORNE:

Q. Very briefly. Mr. Lanham, just a couple follow-ups.

You testified earlier that you saw some individuals that appeared to be from overseas that came to visit the facility at various times; is that right?

A. Uh-huh. Yes, sir.

Q. And you don't have any specific or personal knowledge about whether or not those individuals were employed -- well, what company those individuals were employed by?

A. No. I'm not sure.

Q. Okay.

A. I don't -- I ain't never seen no

Page 239

paperwork on who they was employed by.

MR. OSBORNE: Okay. That's it. Thank you.

MR. PARKER: I don't have any questions.

MR. SPANGLER: No questions.

MR. PARKER: You good? Done.

(The deposition was concluded at 3:03 PM.)

Page 240

CERTIFICATE OF REPORTER
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

I, RACHAEL CLARK, Certified Verbatim Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and location therein stated; that the testimony of the witness and all objections made at the time of the examination were recorded by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete and true record of the testimony of the witness and of all objections made at the time of the examination; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself/herself of the opportunity to sign or the signature has been waived.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal on May 4, 2025, at Richland County, South Carolina.

RACHAEL CLARK, CVR
CERTIFIED VERBATIM REPORTER
My Commission expires
September 23, 2030

EXHIBIT 5

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA COUNTY OF EDGEFIELD Barry Lanham and Obvia Gamble-Lanham, Plaintiff, vs. Wumag Texroll GmbH & Co. KG, Defendants.	IN THE COURT OF COMMON PLEAS Case No. 2021-CP-19-00005 **DECLARATION OF MICHAEL HESS IN SUPPORT OF WUMAG TEXROLL GMBHH & CO. KG'S MOTION TO DISMISS**

COMES NOW, Michael Hess, who deposes and states as follows:

1. My name is Michael Hess, and I am over the age of eighteen (18) years and am competent to give sworn testimony. I have personal, first-hand knowledge of the matters set forth in this declaration. I offer this declaration in support of Wumag Texrol GmbH & Co. KG's ("Wumag II") Motion to Dismiss in the above-captioned action.

2. I am the Managing Director of Wumag II.

3. Wumag II was previously named Kelzenberg + Co: GmbH & Co. KG ("Kelzenberg"), and I previously served as the Managing Director of Kelzenberg from 2008 to 2019.

4. Wumag II is registered at the district court of Düren, Germany under number HRA 224 and the general partner GmbH under number HRB 154.

5. Wumag II's principal place of business is in Düren, Germany.

6. On September 1, 2019, insolvency proceedings concerning the assets of Wumag Texroll GmbH & Co. KG ("Wumag I") commenced in the district court of Krefeld, Germany.

7. Prior to being insolvent, Wumag I was registered at the district court of Krefeld, Germany under number HRA 3719.

8. On or around September 18, 2019, Kelzenberg entered into an asset purchase agreement to purchase the assets of Wumag I out of insolvency.

9. Dr. Peter Minuth, Attorney at Law and Insolvency Administrator, currently serves as the insolvency administrator for the Wumag I insolvency proceedings.

10. Pursuant to the asset purchase agreement, Kelzenberg purchased certain assets of Wumag I, including machinery, equipment, software licenses. Ownership of the purchased assets was transferred from Wumag I to Kelzenberg on October 1, 2019.

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

11. The asset purchase was carried out in Germany and was governed by German law.

12. Under German law, an agreement to purchase assets does not provide for the assumption of liabilities, unless expressly agreed otherwise or statutory provisions of German law stipulate otherwise.

13. On September 18, 2019, for marketing reasons, Kelzenberg changed its name to Wumag II.

14. Despite Wumag II adopted the same name for marketing reasons following the asset purchase, there is not now, and has never been, commonality of officers, directors, or stockholders between Wumag I and Wumag II.

15. The Complaint in this action concerns injuries suffered by Plaintiff Barry Lanham ("Lanham") alleged to have occurred on January 22, 2018 at a Bondex, Inc. plant in Trenton, South Carolina. (*See* Compl. ¶¶ 3–8).

16. Lanham alleges he was injured by a Laminating Calendar Line machine which was designed and manufactured by Wumag Texroll GmbH & Co. KG and then sold by Wumag Texroll GmbH & Co. KG to Bondex, Inc. (*See* Compl. ¶¶ 3–8).

17. Lanham's alleged injuries which are the subject of this action and which give rise to the claims asserted in the Complaint occurred almost two years prior to Wumag II purchasing the assets of Wumag I.

18. Wumag II does not now, and has never held an ownership interest in the Laminating Calendar Line machine that allegedly caused Mr. Lanham's injuries.

19. Wumag II did not design, test, manufacture, market, sell, import, distribute, deliver or install the Laminating Calendar Line machine that allegedly caused Mr. Lanham's injuries.

20. Wumag II is not now, and has never been registered with the South Carolina Secretary of State.

21. Wumag II has never registered an agent for service of process with the South Carolina Secretary of State.

22. Wumag II does not now, and has never, maintained an office, manufacturing facility or other place of business within South Carolina.

23. Wumag II does not, does not now, and has never, employed any personnel based in South Carolina.

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

Michael Hess

Date: 08/05/2021

ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

EXHIBIT 6

ELECTRONICALLY FILED - 2020 Aug 21 11:03 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2303229
ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Shawn Eric Mayfield, Plaintiff, v. The Hercules Tire & Rubber Co., Sailun Jinyu Group Co., Ltd. f/k/a Sailun Co., Ltd., TBC Corporation, TBC Brands, Sailun Jinyu International, Husky Tire Corporation, Seatex International, Blue Ocean International Tire Corporation, South Regional Truck Sales, LLC, and Todd Mitchell, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2019-CP-23-03229 **ORDER DENYING DEFENDANTS THE HERCULES TIRE & RUBBER CO. AND SAILUN JINYU GROUP CO., LTD. F/K/A SAILUN CO., LTD.'S MOTIONS TO DISMISS**

This matter came before the Court for a hearing on June 16, 2020, on Defendants', The Hercules Tire & Rubber Co. ("Hercules") and Sailun Jinyu Group Co, Ltd. f/k/a Sailun Co. Ltd. ("Sailun") Motions to Dismiss for lack of personal jurisdiction and insufficient service of process. After reviewing the parties' submissions and hearing argument of counsel, the Court finds as follows:

1. The Motion to Dismiss filed by Sailun for insufficiency of service is denied. The Plaintiff properly served Sailun by service on the South Carolina Secretary of State pursuant to S.C. Code Ann. § 15-9-245(a). See *Holman v. Warwick Furnace Co.*, 456 S.E.2d 894 (1995) (Service on a foreign corporation doing business in South Carolina without authority is complete once the summons and complaint are delivered to the secretary of state.)
2. The Motion to Dismiss for lack of personal jurisdiction filed by Sailun is denied. This Court is authorized to exercise personal jurisdiction over Sailun pursuant to South Carolina

Code 36-2-803(A)(8). Further, the exercise of jurisdiction over Sailun in this matter is consistent with due process. Sailun has purposefully availed itself of the benefits and protections of South Carolina laws by doing business in South Carolina on a systematic and continuous basis such that it is fair and reasonable to defend the present suit brought by a South Carolina citizen for injuries allegedly caused by Sailun's product that failed in South Carolina. This finding is consistent with binding precedent from the South Carolina Supreme Court. See *State of South Carolina v. NV Sumatra Tobacco Trading Co.*, 666 S.E.2d 218 (2008).

3. The Motion to Dismiss for lack of personal jurisdiction filed by Hercules is denied. This Court is authorized to exercise personal jurisdiction over Hercules pursuant to South Carolina Code 36-2-803(A)(8). Further, the exercise of jurisdiction over Hercules in this matter is consistent with due process. Hercules has purposefully availed itself of the benefits and protections of South Carolina laws by doing business in South Carolina on a systematic and continuous basis such that it is fair and reasonable to defend the present suit brought by a South Carolina citizen for injuries allegedly caused by Hercules' product that failed in South Carolina. This finding is consistent with binding precedent from the South Carolina Supreme Court. See *State of South Carolina v. NV Sumatra Tobacco Trading Co.*, 666 S.E.2d 218 (2008).

4. Sailun and Hercules shall each have 15 days from the entry of this Order to file responsive pleadings.

IT IS ORDERED.

Dated: _____

_____, South Carolina

_____
Alex Kinlaw, Jr.
Circuit Court Judge

ELECTRONICALLY FILED - 2020 Aug 21 11:03 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2303229
ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2020 Aug 21 11:03 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2303229
ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Greenville Common Pleas

Case Caption: Shawn Eric Mayfield vs. Hercules Tire & Rubber Co The , defendant, et al

Case Number: 2019CP2303229

Type: Order/Other

So Ordered

s/Alex Kinlaw, Jr., #2763

South Carolina Secretary of State

Business Entities Online

File, Search, and Retrieve Documents Electronically

EXHIBIT 7

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Business Name Search

To Search

Enter the business name of the company you wish to view and click "Search." Find the business in the results below and click to view the official business profile and relevant information.

To File for an Existing Business

Enter the business name of the company for which you wish to file documents and click search. Find the business in the results below and click to view the official business profile. From your business's profile click the "Add Filing" button.

Results displayed will show entities that contain your search criteria.

Search by Business Name

Begins With | Wumag Texroll

This name is available

No Results

For filing questions please contact us at **803-734-2158**

Copyright © 2022 State of South Carolina

South Carolina Secretary of State

Business Entities Online

File, Search, and Retrieve Documents Electronically

EXHIBIT 8

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

Zima Corporation

Corporate Information

Entity Type: Corporation

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 12/09/1994

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

Registered Agent

Agent: KOGER M BRADFORD

Address: 101 W. St. John Street, Suite 200
Spartanburg, South Carolina 29306

Official Documents On File

Filing Type	Filing Date
Articles of Amendment	08/23/2019
Articles of Merger	06/15/2017
Notice of Change of Registered Office	05/23/2017
Change of Agent or Office	04/20/2007
Correction	09/01/2005
Merger/Share Exchange	06/28/2005
Amendment	12/21/2001
Merger/Share Exchange	12/30/1996
Incorporation	12/09/1994

Former Names

Name	Filing Date
KUSTERS TEXTILE MACHINERY CORPORATION	N/A
KUSTERS-ZIMA CORPORATION	N/A
KUSTERS ZIMA CORPORATION	09/22/2005

Copyright © 2022 State of South Carolina

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

South Carolina Secretary of State

Business Entities Online

File, Search, and Retrieve Documents Electronically

EXHIBIT 9

ELECTRONICALLY FILED - 2022 Jul 13 3:29 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

MORRISON TEXTILE MACHINERY CO.

Corporate Information

Entity Type: Corporation

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 06/22/1959

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

Registered Agent

Agent: JOHN M WHITE JR

Address: 6044 LANCASTER HWY
FORT LAWN, South Carolina 29714

Official Documents On File

Filing Type	Filing Date
Amendment	05/15/2009
Merger/Share Exchange	10/26/2000
Amendment	10/06/2000
Change of Agent or Office	04/26/1999
Amendment	04/07/1993
Amendment	02/09/1989
Amendment	12/22/1988
Amendment	11/26/1976
Amendment	06/29/1967
Amendment	02/14/1964
Incorporation	06/22/1959

For filing questions please contact us at **803-734-2158**

Copyright © 2022 State of South Carolina

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

1205 PENDLETON STREET, SUITE 525
COLUMBIA, SC 29201

803-734-2170
www.sos.sc.gov

EXHIBIT
10

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

January 14, 2021

INTERNATIONAL REGISTERED MAIL
RETURN RECEIPT REQUESTED

Wumag Texroll GmbH & Co. KG
Dusseldorfer Str. 120
Krefeld, Linn 47809
Germany

RE: Wumag Texroll GmbH & Co. KG, 2021-CP-19-00005

Dear Madam/Sir:

In accordance with South Carolina Code § 15-9-245, we are enclosing herewith a copy of the Summons and Complaint in the above-entitled case. Service was accepted on January 11, 2021 and a copy has been duly filed in our office as of this date. The fee of $10.00 has been paid.

Yours very truly,

Allyson Green

Allyson Green
South Carolina Secretary of State's Office

Enclosures

cc: Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
Megan C. Davis
101 Mulberry Street East Post Office Box 457
Hampton, SC 29924

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	CIVIL ACTION NO.: 2021-CP-19-____
	)	
Barry Lanham and Obvia Gamble-Lanham, Plaintiffs,	)	
	)	**SUMMONS**
v.	)	***(Jury Trial Demanded)***
	)	
Wumag Texroll GmbH & Co. KG, Defendant.	)	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, Peters, Murdaugh, Parker, Eltzroth & Detirck, P.A. at 101 Mulberry Street East, P.O. Box 457, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

RECEIVED
JAN 11 2021
SC SECRETARY OF STATE

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK, P.A.

BY: /s/William F. Barnes, III
William F. Barnes, III (SC Bar #78220)
John E. Parker (SC Bar #4442)
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
wbarnes@pmped.com
jparker@pmped.com
Attorneys for Plaintiffs

January 6, 2021
Hampton, South Carolina

ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	CIVIL ACTION NO.: 2021-CP-19-_____
	)	
Barry Lanham and Obvia Gamble-Lanham, Plaintiffs,	)	
	)	**COMPLAINT**
v.	)	***(Jury Trial Demanded)***
	)	
Wumag Texroll GmbH & Co. KG, Defendant.	)	

The Plaintiffs allege:

1. The Plaintiffs, Barry Lanham and Obvia Gamble-Lanham ("Plaintiffs" or "Lanham") are residents of Edgefield County, South Carolina.

2. Obvia Gamble-Lanham is the wife of Barry Lanham.

3. The Defendant, Wumag Texroll GmbH & Co. KG (hereinafter referred to as "Wumag Texroll") is a foreign corporation organized and maintaining its principal place of business in a state other than South Carolina. Wumag Texroll is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling, importing and distributing steel industrial machines including, but not limited to, the Laminating Calender Line machine ("Subject Machine") that forms the basis of this action.

4. Venue is proper in Edgefield County pursuant to S.C. Code Ann. § 15-7-30 as it is the county where the most substantial part of the act or omission giving rise to the cause of action occurred.

5. Wumag Texroll is subject to the jurisdiction of this Court.

6. Wumag Texroll designed and manufactured a Laminating Calender Line machine, machine number 206460, that was subsequently sold, delivered, and installed at Bondex, Inc. in Trenton, South Carolina.

ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

7. After the Subject Machine was installed by Wumag Texroll, employees and/or agents of Wumag Texroll visited the Bondex plant in Trenton, SC and deactivated safety devices on the Subject Machine.

8. On January 22, 2018, Plaintiff, Barry Lanham, a Bondex, Inc. employee, was cleaning the machine when his left arm and hand was pulled into the Machine, resulting in severe and permanent damage to his left arm and hand.

FIRST CAUSE OF ACTION
(Negligence)

9. The above allegations are repeated as if quoted verbatim.

10. The injuries and damages sustained by Plaintiff are the direct and proximate result of the negligence, carelessness, recklessness, and wanton conduct of Wumag Texroll in the following particulars:

a. In designing a machine that was unsafe and unreasonably dangerous;

b. In manufacturing a machine that was unsafe and unreasonably dangerous;

c. In selling a machine that was unsafe and unreasonably dangerous;

d. In installing a machine that was unsafe and unreasonably dangerous;

e. In failing to warn the Plaintiff of the dangerous and defective condition of the machine;

f. In failing to incorporate certain safeguards on the machine that would have prevented the Plaintiff's injury;

g. In deactivating safety devices on the Subject Machine that would have prevented Plaintiff's injury;

h. In designing, manufacturing, selling, and installing a machine that could not be cleaned without endangering the person so cleaning;

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

j. In designing, manufacturing, selling, installing, and altering a machine in utter disregard of the safety of Plaintiff;

k. In failing to provide instructions about how to properly clean the machine; and

l. In such other particulars as the evidence and testimony may establish.

11. As a result of the aforementioned events, Plaintiff suffered severe and permanent injury to this left arm and hand, and other parts of his body from which he has suffered and will continue to suffer physical pain; mental anguish and emotional distress; has expended and will in the future expend monies for medical care and treatment; caused to lose the enjoyment of life; and has lost income.

12. By reason of and in consequence of the above-mentioned negligent, careless, reckless, willful, and wanton conduct of Wumag Texroll, Plaintiff has suffered the injuries, losses, and damages complained of for which Wumag Texroll is liable.

SECOND CAUSE OF ACTION

(Strict Liability pursuant to S.C. Code Ann. § 15-73-10, et seq.)

13. The above allegations are repeated as if quoted verbatim.

14. Plaintiff's injuries occurred because the Machine was designed, manufactured, and sold by Wumag Texroll in a defective condition unreasonably dangerous to the Plaintiff.

15. Wumag Texroll designed, manufactured, and sold the Machine in a defective and unreasonably dangerous condition.

16. At the time of Plaintiff's injury, the Machine was in substantially the same condition as it was when it was installed by Defendant.

17. As a direct and proximate result of the defective and unreasonably dangerous condition of Defendant's machine, Plaintiff suffered the injuries and damages complained of for which Defendant is strictly liable, pursuant to S.C. Code Ann. § 15-73-10, to Plaintiff in an amount to be ascertained by the jury at the trial of this action.

ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

THIRD CAUSE OF ACTION
(Breach of Express and Implied Warranties)

18. The above allegations are repeated as if quoted verbatim.

19. Wumag Texroll expressly and impliedly warranted that the Machine it sold was merchantable and fit for ordinary use.

20. Wumag Texroll breached express and implied warranties in that the Machine it designed, manufactured, sold, and installed and, which was used by the Plaintiff, was not merchantable and was unfit for ordinary, normal use.

21. The breach of Wumag Texroll's express and implied warranties in the sale of the Machine was the proximate cause of the damages Plaintiff sustained for which Defendant is liable.

FOURTH CAUSE OF ACTION
(Loss of Consortium)

22. The Plaintiff, Obvia Gamble-Lanham, due to the injuries sustained by her husband, has suffered the loss of his consortium, support, and care.

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

[SIGNATURE PAGE TO FOLLOW]

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: /s/William F. Barnes, III
William F. Barnes, III (SC Bar #78220)
John E. Parker (SC Bar #4442)
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
wbarnes@pmped.com
jparker@pmped.com
Attorneys for Plaintiffs

January 6, 2021
Hampton, South Carolina

ELECTRONICALLY FILED - 2021 Jan 06 8:16 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ROA 485

State of South Carolina
OFFICE OF
MARK HAMMOND
Secretary of State
1205 Pendleton Street, Suite 525
COLUMBIA, SC 29201

United States Postal Service
REGISTERED MAIL

RR 662 958 442 US

Label 200, July 1999 (102595) 99-M-1904

9400

00106

U.S. POSTAGE PAID
FCMI LTR
COLUMBIA, SC
29201
JAN 14, 21
AMOUNT
$22.39
R2304N116681-43

Wumag Texroll GmbH & Co. KG
Dusseldorfer Str. 120
47809 Krefeld (Linn), Germany

ELECTRONICALLY FILED - 2022 Jul 13 4:25 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

EXHIBIT
11

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

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,	)	**AFFIDAVIT OF JOHN E. PARKER, JR.**
	)	
v.	)	
	)	
WUMAG TEXROLL GMBH & CO. KG,	)	
	)	
Defendant.	)	

Upon penalty of perjury, I, John E. Parker, Jr., having first been duly sworn, depose and say that the following is true and correct:

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

2. On January 7, 2021, two copies of the Summons and Complaint were sent via certified mail (receipt no.: 9489 0090 0027 6092 0824 49), along with a check for ten dollars, to the South Carolina Secretary of State's office for service on Defendant Wumag Texroll GmbH & Co. KG, as a foreign corporation not authorized to do business in South Carolina at Düsseldorfer Str. 120 47809 Krefeld (Linn), Germany. (Ex. 1).

3. On January 11, 2021, the Secretary of State accepted service on behalf of Wumag Texroll GmbH & Co. KG (Ex. 2). On January 14, 2021, the Secretary of State forwarded the copies of the Summons and Complaint to Wumag Texroll GmbH & Co. KG via First-Class International Registered Mail (tracking nos.: RR662958442US). (Ex. 3).

Proof of service on the South Carolina Secretary of State was filed with the Court of Common Pleas of South Carolina on January 21, 2021.

4. The United States Postal Service has provided an official proof of delivery in the form of a USPS Product Tracking and Reporting System receipt, which shows that the Summons and Complaint were successfully delivered on February 17, 2021. (Ex. 4).

5. This Affidavit is being offered as proof of compliance with the requirements of S.C. Code Ann. § 15-9-245.

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

AS TO ANYTHING FURTHER, THE AFFIANT SAITH NOT.

JOHN E. PARKER JR.

SWORN to before me this
6th day of June 2022.

Notary Public for South Carolina
My Commission Expires: 3/11/2029

CLAUDIA CARTIER NOTARY PUBLIC MY COMMISSION EXPIRES 3/11/2029 SOUTH CAROLINA

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

EXHIBIT
1

PMPED
PETERS | MURDAUGH | PARKER | ELTZROTH | DETRICK
ATTORNEYS AT LAW

January 7, 2021

William F. Barnes, III
Direct Dial: (803) 914-6702
Email: wbarnes@pmped.com
Paralegal: mdavis@pmped.com

VIA CERTIFIED MAIL
RECEIPT NO.: 9489 0090 0027 6092 0824 49

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

Re: Barry & Obvia Lanham v. Wumag Texroll GmbH & Co. KG
Civil Action No.: 2021-CP-19-00005

Dear Sir or Madam:

Enclosed please find two copies of the Summons and Complaint in the above captioned matter of which I would appreciate you having a copy served on Wumag Texroll GmbH & Co. KG, as a foreign corporation not authorized to do business in South Carolina. The last known address for Wumag Texroll GmbH & Co. KG is below:

Wumag Texroll GmbH & Co. KG
Düsseldorfer Str. 120
47809 Krefeld (Linn), Germany
Phone: +49 2421 9654 0
Fax: +49 2421 9654 147

Also, please find enclosed our check in the amount of $10.00 to cover the service fee.

With kind regards, I am

Sincerely,

Megan C. Davis

Megan C. Davis
Paralegal to William F. Barnes, III

/mcd
Enclosures as stated

EXHIBIT
2

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

1205 PENDLETON STREET, SUITE 525
COLUMBIA, SC 29201

803-734-2170
www.sos.sc.gov

ELECTRONICALLY FILED - 2021 Jan 21 11:43 AM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

January 14, 2021

INTERNATIONAL REGISTERED MAIL
RETURN RECEIPT REQUESTED

Wumag Texroll GmbH & Co. KG
Dusseldorfer Str. 120
Krefeld, Linn 47809
Germany

RE: Wumag Texroll GmbH & Co. KG, 2021-CP-19-00005

Dear Madam/Sir:

In accordance with South Carolina Code § 15-9-245, we are enclosing herewith a copy of the Summons and Complaint in the above-entitled case. Service was accepted on January 11, 2021 and a copy has been duly filed in our office as of this date. The fee of $10.00 has been paid.

Yours very truly,

Allyson Green

Allyson Green
South Carolina Secretary of State's Office

Enclosures

cc: Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
Megan C. Davis
101 Mulberry Street East Post Office Box 457
Hampton, SC 29924

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	CIVIL ACTION NO.: 2021-CP-19-____
	)	
Barry Lanham and Obvia Gamble-Lanham, Plaintiffs,	)	**SUMMONS** *(Jury Trial Demanded)*
v.	)	
Wumag Texroll GmbH & Co. KG, Defendant.	)	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, Peters, Murdaugh, Parker, Eltzroth & Detirck, P.A. at 101 Mulberry Street East, P.O. Box 457, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Colin T.L. Spangler, Esquire
FLOYD & SPANGLER, ATTORNEYS AT LAW
1611 Augusta Road
West Columbia, SC 29169

-AND-

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: /s/William F. Barnes, III
William F. Barnes, III (SC Bar #78220)
John E. Parker (SC Bar #4442)
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
wbarnes@pmped.com
jparker@pmped.com
Attorneys for Plaintiffs

January 6, 2021
Hampton, South Carolina

ROA 491

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2022 Apr 07 3:57 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

EXHIBIT
4

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005
ELECTRONICALLY FILED - 2025 Jul 02 4:54 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

==========

HAMPTON
Unit #: 4537800664 ZIP Code: 29924

Date: 06/06/2022 9:04 AM

==========

Tracking Status
Business Date: 06/06/2022

Tracking Number
RR662958442US

Destination and Origin
Destination
ZIP Code:
City: FRANKFURT/FLUGHAFEN
State:
Origin
ZIP Code: 29201-9998
City: COLUMBIA
State: SC

Tracking Number Classification
Class/Service: First-Class Mail Internationa
l Registered
Class of Mail Code/Description: LC

Origin/Return/Pickup Address Info
Address:
City:
State: ZIP Code: 29201-9998

Payment
Payment Type: 08
Payment Account Number:
Postage: 2.24
Weight: 0 lb (s) 2.00 oz (s)
Rate Indicator: Single Piece - Letters

Extra Services Details

Description: Registered Mail - International
Amount: 16.00

Description: Return Receipt
Amount: 4.15

Description: Registered Mail
Amount:

Event Details

Event: DELIVERED
Date: 02/17/2021
Time: 12:57
Location: GERMANY

For Further Information,
go to USPS.com

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	CIVIL ACTION NO.: 2021-CP-19-_____
	)	
Barry Lanham and Obvia Gamble-Lanham, Plaintiffs,	)	**COMPLAINT** *(Jury Trial Demanded)*
v.	)	
Wumag Texroll GmbH & Co. KG, Defendant.	)	

The Plaintiffs allege:

1. The Plaintiffs, Barry Lanham and Obvia Gamble-Lanham ("Plaintiffs" or "Lanham") are residents of Edgefield County, South Carolina.

2. Obvia Gamble-Lanham is the wife of Barry Lanham.

3. The Defendant, Wumag Texroll GmbH & Co. KG (hereinafter referred to as "Wumag Texroll") is a foreign corporation organized and maintaining its principal place of business in a state other than South Carolina. Wumag Texroll is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling, importing and distributing steel industrial machines including, but not limited to, the Laminating Calender Line machine ("Subject Machine") that forms the basis of this action.

4. Venue is proper in Edgefield County pursuant to S.C. Code Ann. § 15-7-30 as it is the county where the most substantial part of the act or omission giving rise to the cause of action occurred.

5. Wumag Texroll is subject to the jurisdiction of this Court.

6. Wumag Texroll designed and manufactured a Laminating Calender Line machine, machine number 206460, that was subsequently sold, delivered, and installed at Bondex, Inc. in Trenton, South Carolina.

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

7. After the Subject Machine was installed by Wumag Texroll, employees and/or agents of Wumag Texroll visited the Bondex plant in Trenton, SC and deactivated safety devices on the Subject Machine.

8. On January 22, 2018, Plaintiff, Barry Lanham, a Bondex, Inc. employee, was cleaning the machine when his left arm and hand was pulled into the Machine, resulting in severe and permanent damage to his left arm and hand.

FIRST CAUSE OF ACTION
(Negligence)

9. The above allegations are repeated as if quoted verbatim.

10. The injuries and damages sustained by Plaintiff are the direct and proximate result of the negligence, carelessness, recklessness, and wanton conduct of Wumag Texroll in the following particulars:

a. In designing a machine that was unsafe and unreasonably dangerous;

b. In manufacturing a machine that was unsafe and unreasonably dangerous;

c. In selling a machine that was unsafe and unreasonably dangerous;

d. In installing a machine that was unsafe and unreasonably dangerous;

e. In failing to warn the Plaintiff of the dangerous and defective condition of the machine;

f. In failing to incorporate certain safeguards on the machine that would have prevented the Plaintiff's injury;

g. In deactivating safety devices on the Subject Machine that would have prevented Plaintiff's injury;

h. In designing, manufacturing, selling, and installing a machine that could not be cleaned without endangering the person so cleaning;

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

j. In designing, manufacturing, selling, installing, and altering a machine in utter disregard of the safety of Plaintiff;

ELECTRONICALLY FILED - 2022 Jun 06 12:10 PM - EDGEFIELD - COMMON PLEAS - CASE#2021CP1900005

k. In failing to provide instructions about how to properly clean the machine; and

l. In such other particulars as the evidence and testimony may establish.

11. As a result of the aforementioned events, Plaintiff suffered severe and permanent injury to this left arm and hand, and other parts of his body from which he has suffered and will continue to suffer physical pain; mental anguish and emotional distress; has expended and will in the future expend monies for medical care and treatment; caused to lose the enjoyment of life; and has lost income.

12. By reason of and in consequence of the above-mentioned negligent, careless, reckless, willful, and wanton conduct of Wumag Texroll, Plaintiff has suffered the injuries, losses, and damages complained of for which Wumag Texroll is liable.

SECOND CAUSE OF ACTION
(Strict Liability pursuant to S.C. Code Ann. § 15-73-10, et seq.)

13. The above allegations are repeated as if quoted verbatim.

14. Plaintiff's injuries occurred because the Machine was designed, manufactured, and sold by Wumag Texroll in a defective condition unreasonably dangerous to the Plaintiff.

15. Wumag Texroll designed, manufactured, and sold the Machine in a defective and unreasonably dangerous condition.

16. At the time of Plaintiff's injury, the Machine was in substantially the same condition as it was when it was installed by Defendant.

17. As a direct and proximate result of the defective and unreasonably dangerous condition of Defendant's machine, Plaintiff suffered the injuries and damages complained of for which Defendant is strictly liable, pursuant to S.C. Code Ann. § 15-73-10, to Plaintiff in an amount to be ascertained by the jury at the trial of this action.