

Main Proceeding and Certain Related Relief (the "Wahl Declaration"), and further states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This case has been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of a petition for recognition of the German Proceeding pursuant to section 1515 of the Bankruptcy Code.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

3. Venue in this district is proper under 28 U.S.C. § 1410(3). The Debtor does not have principal offices in the United States, nor is there litigation known to be pending by or against the Debtor in the United States. Wahl Declaration, ¶ 11. The Debtor's assets that are located in the United States include the security retainer paid to and held by the Debtor's counsel in Delaware in advance of filing the Debtor's Verified Petition of Foreign Representative for Recognition of a Foreign Main Proceeding (the "Verified Petition") in the amount of \$150,000; the smaller retainer in the amount of \$1,500 paid to and held by the Debtor's counsel in Chicago; and an indirect ownership interest in ALNO USA Corporation, an affiliate of the Debtor, whose assets have been assigned for the benefit of creditors in *In the Matter of the General Assignment for the Benefit of Creditors of ALNO USA Corporation*, No. 247-17, pending in the Superior Court of New Jersey, Chancery Division (the "ALNO USA Assignment Proceeding").² *Id.*

² The Debtor is the sole shareholder of Zweimarkenholding Impuls GmbH, a German corporation, which in turn is the sole shareholder of ALNO International GmbH, also a German corporation. ALNO International GmbH owns 100% of the shares in ALNO USA Corp. Wahl Declaration, ¶ 11. The Debtor also holds a claim in the ALNO USA Assignment Proceeding in the nominal amount of \$720,864. *Id.* The German Insolvency Administrator currently

4. As further detailed in the Wahl Declaration, the Debtor also possesses potential causes of action or claims against Whirlpool Corporation, a Delaware corporation ("Whirlpool"), and Mr. Marc Bitzer, Whirlpool's Chief Executive Officer. The above-referenced potential causes of action, however, are intangible assets of uncertain value that are likely located, for venue purposes, in Germany, where the Debtor is domiciled. *See Blodgett v. Silberman*, 277 U.S. 1, 48 S. Ct. 410, 72 L. Ed. 749 (1928) (applying the common law maxim that intangible property is viewed as residing with the owner); *In re Healy*, No. 89-4-2488-PM, 1989 WL 149679, at *1 (Bankr. D. Md. Nov. 17, 1989) (holding that the location of intangible assets follows the owner and takes the location of the owner.); *In re Tiffany*, No. 06-00176, 2006 WL 2084009, at *1 (Bankr. D.D.C. June 28, 2006) (holding that it is proper to view intangible property as located wherever the debtor resides). Alternatively, the Debtor's potential claims against Whirlpool may be located, for venue purposes, in Delaware, where Whirlpool is incorporated. *See BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017) (corporation can be sued where it is "home" – that is, in either the state of its incorporation or in the state of its principal place of business).

5. Accordingly, considering the location of the Debtor's primary tangible asset in the United States (the security retainer held in Delaware by the Debtor's Delaware counsel) and the location of the Debtor's primary intangible asset relating in any way to the United States (potential causes of action against Whirlpool of uncertain value located, for venue purposes, in Germany, or possibly Delaware), the Debtor's principal assets in the United States are located in this judicial district.

expects to recover little or nothing from the ALNO USA Assignment Proceeding, either through the Debtor's indirect equity in ALNO USA Corp. or through its claim against ALNO USA Corp. *Id.*, n.2.

6. The Foreign Representative consents to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

BACKGROUND

7. The detailed factual information relating to the Debtor, the Foreign Representative, and the commencement of this Chapter 15 case is set forth in the Wahl Declaration.

8. On July 12, 2017, the Debtor commenced the German Proceeding by filing a petition to open insolvency over the assets of the Debtor under the German Insolvency Code, pending before the German Court. Wahl Declaration, ¶ 2. By order of July 13, 2017, the German Court started a provisional insolvency proceeding over the assets of the Debtor. The Debtor managed the insolvency proceedings under § 270 of the German Insolvency Code and appointed a partner of the Foreign Representative, Prof. Dr. Martin Hörmann (the "German Insolvency Administrator"), as provisional custodian. *Id.* Under German law the role of a custodian in a provisional insolvency proceeding is to supervise the debtor in possession. *Id.* On August 29, 2017, the German Court converted the case and the German Insolvency Administrator was appointed as provisional insolvency administrator. *Id.* With the same order the German Court transferred the right to dispose of the Debtor's assets to the German Insolvency Administrator. *Id.* The Debtor was no longer allowed to administer its own case. On October 1, 2017, the German Court opened an insolvency proceeding over the assets of the Debtor and appointed Dr. Hörmann as the German Insolvency Administrator. *Id.* A true and correct certified translation of the order (the "Commencement Order") of the German Court opening the German Proceeding and appointing Dr. Hörmann as the German Insolvency Administrator of the

Debtor in the German Proceeding is attached as Exhibit A to the Verified Petition, filed contemporaneously herewith.

9. On October 18, 2018, the German Court appointed Mr. Wahl as the Foreign Representative for the specific purpose of handling assets and claims located in the United States, including filing for Chapter 15 registration under the Bankruptcy Code (the "Appointment Order"). *Id.*, ¶ 3. A true and correct certified translation of the Appointment Order in the German Proceeding is attached as Exhibit B to the Verified Petition.

10. The powers the German Court has conferred upon the Foreign Representative pursuant to the Appointment Order include the following: (1) determination, administration and realization of any assets of the Debtor in the United States; and (2) authority to file for and to conduct on account of the insolvency estate for the Debtor a secondary insolvency proceeding in the United States under Chapter 15 of the Bankruptcy Code. Appointment Order, p. 1. Further, the Foreign Representative is entitled to perform any actions, to take all measures and to issue all declarations which the German Insolvency Administrator would have been entitled to, had he initiated these proceedings. *Id.*

11. On the date hereof, the Foreign Representative filed a Verified Petition with the documentation required by Sections 1504 and 1515 of the Bankruptcy Code seeking the entry of an order recognizing the German Proceeding as a "foreign main proceeding," and granting relief under Sections 1520 and 1521 of the Bankruptcy Code.

12. The German Proceeding is a collective judicial proceeding brought under the German Insolvency Code and supervised by the German Court. The German Insolvency Code provides for a controlled liquidation procedure designed to enable an insolvency

administrator to marshal and liquidate assets, pursue claims and otherwise maximize the value of assets available for distribution to creditors. Wahl Declaration, ¶ 39.

13. The German Insolvency Administrator and the Foreign Representative are continuing to identify and marshal the Debtor's remaining assets, including those in the United States. *Id.*, ¶ 40. As such, the German Insolvency Administrator and the Foreign Representative may seek one or more additional orders from this Court recognizing and giving effect in the United States to future orders of the German Court.

RELIEF REQUESTED

14. Pursuant to Sections 105(a), 362, 1517, 1520, and 1521 of the Bankruptcy Code, the Foreign Representative seeks entry of a Final Order, after notice and hearing, (i) granting the Chapter 15 petition in this case and recognizing the German Proceeding as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code, (ii) giving full force and effect in the United States to the Commencement Order and Appointment Order, (iii) applying relief under section 1521 of the Bankruptcy Code, and (iv) granting such other and further relief as the Court deems just and proper.

BASIS FOR RELIEF

15. Chapter 15 of the Bankruptcy Code provides for the recognition of a foreign proceeding, and also allows a foreign representative of an insolvency proceeding outside of the United States to gain access to the United States court system. Once the foreign proceeding is recognized, section 1521(a)(4) authorizes bankruptcy courts to enter an order allowing a foreign representative to take "the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities." 11 U.S.C. § 1521(a)(4); *see also In re Millennium Glob. Emerging Credit Master*

Fund Ltd., 471 B.R. 342, 346 (Bankr. S.D.N.Y. 2012) ("Section 1521(a)(4) provides specifically that the Court may enter an order providing for 'the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities.' 11 U.S.C. § 1521(a)(4)."). Once a Chapter 15 case is commenced, "Bankruptcy Rule 2004 authorizes a party in interest, such as a foreign representative, to subpoena documents relating 'to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate. . .' Fed. R. Bankr. P. 2004(a), 2004(b)." *In re Platinum Partners Value Arbitrage Fund L.P.*, 583 B.R. 803 (Bankr. S.D.N.Y. 2018). Bankruptcy Rule 2004 also permits the taking of testimony through compelled examination. *See id.*; *see also In re Wash. Mut., Inc.*, 408 B.R. 45 (Bankr. D. Del. 2009); *In re Hughes*, 281 B.R. 224 (Bankr. S.D.N.Y. 2002); *In re Drexel Burnham Lambert Grp., Inc.*, 123 B.R. 702 (Bankr. S.D.N.Y. 1991); *In re Millennium Global Emerging Credit Master Fund Ltd.*, 471 B.R. 342 (Bankr. S.D.N.Y. 2012).

16. Accordingly, the Foreign Representative has filed this Verified Petition to extend the protections afforded under sections 1521(a)(4) and 1521(a)(7) of the Bankruptcy Code to immediately employ examination and other discovery pursuant to Bankruptcy Rule 2004, and any other applicable rule, including without limitation section 542(e) of the Bankruptcy Code, to identify and pursue an investigation of the Debtor's assets and causes of action. The Foreign Representative anticipates filing one or more motions to authorize examinations under section 1521(a)(4) of the Bankruptcy Code, Bankruptcy Rule 2004, and other applicable law, as more fully described below, shortly after the Court recognizes this Verified Petition.

I. The German Proceeding Is Entitled to Recognition as a Foreign Main Proceeding

17. By this Motion, the Foreign Representative seeks, under sections 1517 and 1520 of the Bankruptcy Code, recognition of the German Proceeding as a foreign main proceeding and recognition and enforcement of the Commencement Order and the Appointment Order. The German Proceeding is entitled to recognition as a "foreign main proceeding" under Chapter 15 of the Bankruptcy Code because, among other things:

- a. the German Proceeding is a "foreign proceeding" within the meaning of section 101(23) of the Bankruptcy Code because the German Proceeding is in a jurisdiction where the Debtor maintains the center of its main interests;
- b. the Foreign Representative is a "person" within the meaning of section 101(41) of the Bankruptcy Code and a "foreign representative" within the meaning of section 101(24) of the Bankruptcy Code;
- c. the Verified Petition was filed in accordance with Sections 1504 and 1509 of the Bankruptcy Code; and
- d. the Verified 15 Petition meets the requirements of Sections 1504 and 1515 of the Bankruptcy Code.

A. This Case Concerns a "Foreign Proceeding"

18. Section 101(23) of the Bankruptcy Code defines "foreign proceeding" as:

a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S.C. § 101(23). The German Proceeding is a "foreign proceeding" within the meaning of section 101(23) of the Bankruptcy Code because it is a judicial proceeding before the German Court pursuant to the German Insolvency Code. The assets and affairs of the Debtor are subject to the control and supervision of the German Court for the purpose of liquidation. Moreover, the German Proceeding is "collective" in nature. "A proceeding is collective if it considers the rights and obligations of all creditors. . . . Liquidation is, like bankruptcy, a

procedure of an inherently collective nature. . . . The procedure is compulsory, in order to ensure that there is an orderly, cooperative system. The result is that any attempt by a creditor to undermine the collective nature of liquidation is outlawed." *In re ABC Learning Centres Ltd.*, 445 B.R. 318, 328-329 (Bankr. D. Del. 2010) (quoting *In re Betcorp Ltd.*, 400 B.R. 266, 281 (Bankr. D. Nev. 2009)).

19. Given the similarities between German insolvency proceedings and United States bankruptcy cases, United States bankruptcy courts have routinely recognized German proceedings as "foreign proceedings" under section 101(23) of the Bankruptcy Code. *See, e.g., Reutax AG*, No. 13-12135-MFW (Bankr. D. Del.); *In re Pickenpack Holding Germany GmbH*, No. 16-12681 (Bankr. S.D.N.Y.); *In re Qimonda AG*, No. 09-14766 (Bankr. E.D. Va.). Accordingly, the German Proceeding qualifies as a foreign proceeding under section 101(23) of the Bankruptcy Code.

B. This Case was Commenced by a Duly Authorized "Foreign Representative"

20. This Chapter 15 case was commenced by the duly-appointed "foreign representative" of the Debtor within the meaning of section 101(24) of the Bankruptcy Code, which defines a "foreign representative," in pertinent part, as:

a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.

11 U.S.C. § 101(24). In this case, the Foreign Representative was appointed and authorized by the German Court to act as the Debtor's special insolvency administrator and was specifically authorized to file this Chapter 15 case on behalf of the Debtor. *See* Appointment Order, p. 1.

21. Because the Foreign Representative was given authority over the Debtor's assets in the Appointment Order, the Foreign Representative qualifies as a "foreign

representative" of the Debtor. This Court is entitled to presume that the representative identified in the Appointment Order is a "foreign representative" under section 1516(a) of the Bankruptcy Code. Accordingly, the Foreign Representative is a proper "foreign representative" within the meaning of section 101(24) of the Bankruptcy Code.

C. This Case was Properly Commenced under Chapter 15

22. The Foreign Representative duly and properly commenced this Chapter 15 case, as required by sections 1504 and 1509 of the Bankruptcy Code, by filing the Verified Petition under section 1515(a) accompanied by all documents and information required by sections 1515(b) and (c). *See In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122, 127 (Bankr. S.D.N.Y. 2007), *aff'd*, 389 B.R. 325 (S.D.N.Y. 2008) ("A case under chapter 15 is commenced by a foreign representative filing a petition for recognition of a foreign proceeding under section 1515 of the Bankruptcy Code."). Because the Foreign Representative has satisfied the requirements set forth in section 1515 of the Bankruptcy Code, he has properly commenced this Chapter 15 case.

D. The German Proceeding Should be Recognized as a Foreign Main Proceeding

23. The German Proceeding should be recognized as a "foreign main proceeding," as defined in Sections 101(23) and 1502(4) of the Bankruptcy Code. A foreign proceeding will be recognized as a foreign main proceeding if "it is pending in the country where the debtor has the center of its main interests." 11 U.S.C. § 1517(b)(1). Section 1516 of the Bankruptcy Code establishes a rebuttable presumption that the debtor's registered office is the debtor's center of main interests ("COMI"). *See* 11 U.S.C. § 1516. When considering a debtor's COMI, courts may consider the analogous concept of an entity's "principal place of business" or "nerve center." *Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127,

132 n.10 (2d Cir. 2013). As such, courts will look to factors such as the location of the debtor's headquarters, the location of those who actually manage the debtor, and the location of the debtor's primary assets, among other things, to determine the foreign debtor's COMI. *Id.* at 130.

24. Although section 1516(c) of the Bankruptcy Code creates a presumption that a debtor's registered offices are the debtor's COMI, that presumption may be rebutted by evidence to the contrary. 11 U.S.C. § 1516(c). "Center of main interests" is not merely synonymous with "principal place of business"; rather, other factors, such as the location of the debtor's decision-makers and the majority of its creditors, are also relevant. *Fairfield Sentry*, 714 F.3d at 137. When a debtor is in liquidation, the location of those liquidation activities and administrative functions should be considered as factors in determining the debtor's COMI. *Id.*

25. Germany is the center of the Debtor's main interests. Prior to the commencement of the German Proceeding, the Debtor employed approximately 670 employees, and operated its business primarily from Pfullendorf, Germany, where it owned property. The Debtor's assets are being liquidated in Germany through the German Proceeding. Wahl Declaration, ¶¶ 9, 39-41.

26. In addition, recognizing the German Proceeding as a foreign main proceeding would not be manifestly contrary to the public policy of the United States. Rather, granting such recognition is entirely consistent with the United States policy of respecting foreign proceedings as codified in Chapter 15 of the Bankruptcy Code. Proceedings under the German Insolvency Code are similar to cases under the Bankruptcy Code. The German Insolvency Administrator has already sold substantially all of the Debtor's operating assets in a procedure akin to a sale under section 363 of the Bankruptcy Code, and is now together with the Foreign Representative identifying and marshalling the Debtor's remaining assets, including

those here in the United States. The German Insolvency Code also provides for a centralized process to assert and resolve claims against a debtor's estate, by the representatives of a debtor's estate, in order to maximize distributions to stakeholders. Wahl Declaration, ¶¶ 9, 39-45.

27. Based on the foregoing, the Foreign Representative respectfully submits that the conditions for mandatory recognition of the German Proceeding as a foreign main proceeding have been met.

II. The Foreign Representative is Entitled to an Order Granting Recognition

28. As evidenced above, the German Proceeding is a "foreign main proceeding" within the meaning of section 1502 of the Bankruptcy Code, the Foreign Representative applying for recognition is a "foreign representative" within the meaning of section 101(24) of the Bankruptcy Code, and the Verified Petition meets the requirements of section 1515 of the Bankruptcy Code. Section 1517(a) of the Bankruptcy Code provides, in pertinent part, that "[s]ubject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—(1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign non-main proceeding within the meaning of section 1502; (2) the foreign representative applying for recognition is a person or body; and (3) the petitions meet the requirements of section 1515." 11 U.S.C. §1517(a); *see also* H.R. Rep. 109-31(I), 109 Cong., Sess. 2005, *reprinted in* 2005 U.S.C.C.A.N. 88, 169 at 175 (noting, in enacting chapter 15, that the "decision to grant recognition is not dependent upon any findings about the nature of the foreign proceedings of the sort previously mandated by section 304(c) of the Bankruptcy Code. The requirements of this section, which incorporates the definitions in section 1502 and sections 101(23) and (24), are all that must be fulfilled to attain recognition"). The Foreign Representative submits that recognizing the German Proceeding as a foreign main

proceeding is consistent with the purpose of Chapter 15 and United States public policy. Accordingly, the Foreign Representative respectfully submits that the Court should enter an order recognizing the German Proceeding as a "foreign main proceeding" under the Bankruptcy Code.

III. Additional Relief Under Section 1521 Is Warranted and Appropriate

29. In addition to the relief automatically provided by section 1520 of the Bankruptcy Code upon recognition of a foreign main proceeding, the Foreign Representative also seeks additional relief under section 1521 of the Bankruptcy Code to protect the Debtor's assets and its creditors' interests. Section 1521 of the Bankruptcy Code provides, in relevant part, that the court may grant a foreign representative "any appropriate relief," including "any relief that may be available to a trustee," subject to certain limitations (which do not apply here) where necessary to effectuate the purpose of Chapter 15 and to protect the debtor's assets and creditors' interests. 11 U.S.C. § 1521(a). Accordingly, the Foreign Representative requests that the Court extend the protections afforded under (i) section 1521(a)(4) of the Bankruptcy Code to immediately employ examination, and (ii) section 1521(a)(7) of the Bankruptcy Code to extend the protections afforded by sections 362 of the Bankruptcy Code to the Debtor.

30. The Debtor seeks relief under section 1521(a)(4). Failure to authorize the Foreign Representative to employ examination pursuant to Bankruptcy Rule 2004, and any other applicable rule, including without limitation section 542(e) of the Bankruptcy Code, to identify and pursue an investigation of the Debtor's assets and causes of action would permit the harm that the German Proceeding was commenced to prevent. Such relief is necessary to allow the Foreign Representative the ability to investigate the Debtor's potential claims in the United States, which are a critical component of the Debtor's estate. It does no harm to creditors or parties in interest, other than the inconvenience of time required to produce documents and/or

appear for a deposition for the targets of such examinations. That harm is greatly outweighed by the benefit to the Debtor's estate of permitting such examination, as the absence of such an order presents a realistic and material risk of obstruction of the Foreign Representative's right and duty to identify and pursue the Debtor's assets in the United States.

NOTICE

31. The Foreign Representative will provide notice of this Motion consistent with Local Rule 9013-1(m). Notice of this Motion has been provided to (i) all persons or bodies authorized to administer foreign proceedings of the Debtor; (ii) the Office of the United States Trustee for the District of Delaware; and (iii) parties in interest in this Chapter 15 proceeding, including Bauknecht, Whirlpool, Mr. Bitzer and the assignee in the ALNO USA Assignment Proceeding. Notice will be further provided in accordance with any order the Court may enter with respect to the *Motion for Order Scheduling Hearing on Verified Petition under Chapter 15 for Recognition of a Foreign Main Proceeding and for Additional Relief and Assistance under 11 U.S.C. §§ 105(a), 1507 and 1521 and Specifying Form and Manner of Service of Notice of Hearing*, filed contemporaneously herewith. In light of the nature of the relief requested, the Foreign Representative submits that no further notice is required.

CONCLUSION

32. Accordingly, the Foreign Representative seeks, and submits that good cause exists for, this Court's recognition of the German Proceeding as a foreign main proceeding.

WHEREFORE, the Foreign Representative respectfully requests that the Court enter the Final Order, upon notice and a hearing, substantially in the form attached hereto as **Exhibit A**, and grant such other and further relief as it deems just and proper.

Dated: November 20, 2018

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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*Counsel for Tobias Wahl, in his capacity as the
court-appointed Foreign Representative for
Alno AG*

Exhibit A

Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 15
)	
ALNO AG,¹)	Case No. 18-12651
)	
Debtor in a Foreign Proceeding.)	
)	

**FINAL ORDER GRANTING RECOGNITION OF FOREIGN
MAIN PROCEEDING AND CERTAIN RELATED RELIEF**

Upon the motion (the "Motion")² of Tobias Wahl, in his capacity as the court-appointed special insolvency administrator and duly authorized foreign representative ("Foreign Representative") for Alno AG ("Debtor"), for entry of a final order under sections 105(a), 1517, 1520 and 1521 of the Bankruptcy Code: (i) granting the petition in this Chapter 15 case and recognizing the German Proceeding as a foreign main proceeding under section 1517 of the Bankruptcy Code, (ii) giving full force and effect in the United States to the Commencement Order and the Appointment Order entered by the German Court, including any and all extensions, amendments and/or supplements thereto authorized by the German Court and extending the protections of this Order to the Debtor, and (iii) granting related relief, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334, 11 U.S.C. §§ 109 and 1501, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2)(P); and the Foreign

¹ The Debtor does not have an Employer Identification Number. The Debtor's Commercial Register Ulm Number is HRB 727041. The Debtor's headquarters are located at 47 Heiligenberger Strasse, 88630 Pfullendorf Baden-Wuerttemberg, Germany.

² Capitalized terms not defined herein are defined in the Motion.

Representative having consented to the Court's authority to enter a final order consistent with Article III of the U.S. Constitution; and venue being proper before this Court under 28 U.S.C. § 1410(3); and due and proper notice of the relief sought in the Motion having been provided; and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the "Hearing"); and the appearances of all interested parties having been noted in the record of the Hearing and all such parties having had the opportunity to be heard with respect to the relief requested in the Motion; and upon the Wahl Declaration, and the Verified Petition, filed contemporaneously with the Motion, the record of the Hearing and all of the proceedings had before the Court; and the Court having found and determined that the provisional relief sought in the Motion is in the best interests of the Debtor, its creditors, and parties-in-interest, and is in the interest of international comity and not inconsistent with United States public policy, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, **THIS COURT HEREBY FINDS AND DETERMINES THAT:**

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law under Rule 7052 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules") made applicable to this proceeding under Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012.

C. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P).

D. Venue for this proceeding is proper before this Court under 28 U.S.C. § 1410(3).

E. The German Proceeding is a "foreign proceeding" under section 101(23) of the Bankruptcy Code.

F. The Foreign Representative is the duly appointed "foreign representative" of the Debtor within the meaning of section 101(24) of the Bankruptcy Code.

G. This Chapter 15 case was properly commenced under sections 1504, 1509, and 1515 of the Bankruptcy Code.

H. The Foreign Representative has satisfied the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 2002(q).

I. The German Proceeding is entitled to recognition by this Court under section 1517 of the Bankruptcy Code.

J. Germany is the center of main interests of the Debtor, and accordingly, the German Proceeding is a "foreign main proceeding" as defined in section 1502(4) of the Bankruptcy Code, and is entitled to recognition as a foreign main proceeding under section 1517(b)(1) of the Bankruptcy Code.

K. The Foreign Representative has demonstrated that application of Bankruptcy Rule 2004, as made applicable by sections 105(a) and 1521(a)(4) of the Bankruptcy Code, is necessary to prevent harm in the German Proceeding.

L. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted under sections 1517, 1520, and 1521 of the Bankruptcy Code.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The relief requested by the Verified Petition and the Motion is GRANTED as set forth herein.

2. The German Proceeding is granted recognition as a foreign main proceeding under section 1517 of the Bankruptcy Code.

3. The Commencement Order and the Appointment Order entered by the German Court, including any extensions, amendments, or modifications thereto, are hereby enforced on a final basis and given full force and effect in the United States (except as otherwise expressly provided herein).

4. All relief afforded to foreign main proceedings under section 1520 of the Bankruptcy Code is hereby granted to the German Proceeding, the Debtor, and the Foreign Representative as applicable.

5. Bankruptcy Rule 2004 shall hereby apply in this case with respect to the Debtor and the property of the Debtor that is within the territorial jurisdiction of the United States. Specifically, the Foreign Representative is expressly authorized to immediately employ examination pursuant to Bankruptcy Rule 2004 to identify and pursue an investigation of the Debtor's assets and causes of action.

6. Section 362 of the Bankruptcy Code shall hereby apply with respect to the Debtor and the property of the Debtor that is within the territorial jurisdiction of the United States. All entities (as that term is defined in section 101(15) of the Bankruptcy Code), other than the Foreign Representative, the Debtor, and their expressly authorized representatives and agents are hereby enjoined from:

- a. execution against any of the Debtor's assets;

- b. the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, arbitral, or other action or proceeding, or to recover a claim, including without limitation any and all unpaid judgments, settlements, or otherwise against the Debtor in the United States;
- c. taking or continuing any act to create, perfect, or enforce a lien or other security interest, set-off, or other claim against the Debtor or any of its property;
- d. transferring, relinquishing, or disposing of any property of the Debtor to any entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative;
- e. commencing or continuing an individual action or proceeding concerning the Debtor's assets, rights, obligations, or liabilities; and
- f. terminating contracts or otherwise accelerating obligations or exercising remedies thereunder *provided*, in each case, that such injunction shall be effective solely within the territorial jurisdiction of the U.S.

7. Subject to sections 1520 and 1521 of the Bankruptcy Code, the German Proceeding, the Commencement Order, and the Appointment Order, and the transactions consummated or to be consummated thereunder, shall be granted comity and given full force and effect in the United States to the same extent that they are given effect in Germany, and each is binding on all creditors of the Debtor and any of their successors and assigns.

8. The Foreign Representative, the Debtor, and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or local rules of this Court.

9. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. The Foreign Representative, the Debtor and their respective authorized agents are authorized and empowered to take all actions necessary to effectuate the relief granted under this Order in accordance with the Motion.

11. The Foreign Representative, the Debtor and/or each of their successors, representatives, advisors, or counsel shall be entitled to the protections contained in sections 306 and 1510 of the Bankruptcy Code.

12. A copy of this Order, confirmed to be true and correct, shall be served, within three (3) business days of entry of this Order, by facsimile, electronic mail, or domestic or international first class mail, upon all persons or bodies authorized to administer foreign proceedings of the Debtor, all parties to litigation pending in the United States in which any of the Debtor was a party at the time of the filing of the Verified Petition, the Office of the U.S. Trustee for the District of Delaware, and such other entities as this Court may direct. Such service shall be good and sufficient service and adequate notice for present purpose.

13. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: Wilmington, Delaware
_____, 2018

UNITED STATES BANKRUPTCY JUDGE