

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

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Case No. 2017-CP-10-00838  
Appellate Case No. 2020-001210

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**RECEIVED**

**Nov 04 2020**

**SC Court of Appeals**

Jacque Lucas, Shirley Ann Lucas,  
and Daniel Simerly,

Appellants,

v.

KapStone Paper and Packaging  
Corporation, KapStone Kraft Paper  
Corporation, Safway Group  
Holdings, LLC, Easy Way Insulation  
Co., Sypris Technologies, Inc. f/k/a  
Tube-Turns Technologies Inc.,  
Thompson Construction Group, Inc.,  
and Thompson Industrial Services,  
LLC, Defendants,

Defendants,

Of which

KapStone Paper and Packaging  
Corporation and KapStone Kraft  
Paper Corporation are

Respondents.

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**APPELLANTS' DESIGNATION OF MATTER TO BE INCLUDED  
IN THE RECORD ON APPEAL**

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Appellants hereby designate the following matter to be included in the Record on Appeal:

**Pleadings, Memoranda, etc.**

1. Amended Notice of Appeal filed on September 8, 2020;
2. Notice of Appeal filed on September 4, 2020;
3. KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation's ("KapStone") Motion for Certification of Final Judgment filed on August 20, 2020;
4. KapStone's Memorandum in Opposition to Plaintiffs'/Appellants' Motion to Reconsider or Amend filed on March 26, 2020;
5. Plaintiffs'/Appellants' Motion to Reconsider the Order Granting KapStone's Rule 12(b)(1) Motion to Dismiss filed on March 9, 2020;
  - a. Exhibit A: Affidavit Kelly Hulseman
  - b. Exhibit B: Deposition of Kelly Hulseman
  - c. Exhibit C: Affidavit of Mark Niehus
  - d. Exhibit D: Affidavit of David N. Fuller, CFA, ASA
  - e. Exhibit E: Certification of Formation for KapStone Paper and Packaging Corp.
  - f. Exhibit F: Secretary of State Filing for KapStone Charleston Kraft
  - g. Exhibit G: Copy of KapStone Charleston Paycheck
  - h. Exhibit H: Copy of KapStone Charleston W-2
  - i. Exhibit I: KPPC Forfeiture in South Carolina
  - j. Exhibit J: KPPC Certification of Revocation of Authority
6. Plaintiffs'/Appellants' Supplement to Plaintiffs'/Appellants' Response in Opposition to KapStone's Rule 12(b)(1) Motion to Dismiss filed September 26, 2019;
7. KapStone's Supplemental Brief in Support of Their Rule 12(b)(1) Motion to Dismiss filed on September 19, 2019;
  - a. Exhibit A: Excerpts from Deposition of Todd K. Lester
  - b. Exhibit B: Excerpts from Deposition of Kelly Hulseman
  - c. Exhibit C: Excerpts from Deposition of Mark Niehus
8. Plaintiffs'/Appellants' Response in Opposition to KapStone's Memorandum of Law in Support of the Admissibility of the Affidavit of Todd K. Lester filed on July 26, 2019;
9. KapStone's Reply to Plaintiffs' Response in Opposition to KapStone's Rule 12(b)(1) Motion to Dismiss filed on June 12, 2019;

10. KapStone's Memorandum of Law in Support of Admissibility of the Affidavit of Todd K. Lester filed on June 10, 2019;

11. Plaintiffs'/Appellants' Response in Opposition to KapStone's Rule 12(b)(1) Motion to Dismiss filed on May 24, 2019;

- a. Exhibit A: Affidavit Kelly Hulseman
- b. Exhibit B: Deposition of Kelly Hulseman
- c. Exhibit C: Affidavit of Mark Niehus
- d. Exhibit D: Notice of 30(b)(6) Deposition to KapStone Paper and Packaging Corp.
- e. Exhibit E: Certification of Formation for KapStone Paper and Packaging Corp.
- f. Exhibit F: Secretary of State Filing for KapStone Charleston Kraft
- g. Exhibit G: Copy of KapStone Charleston Paycheck
- h. Exhibit H: Copy of KapStone Charleston W-2
- i. Exhibit I: KPPC Forfeiture in South Carolina
- j. Exhibit J: KPPC Certification of Revocation of Authority

12. KapStone's Second Amended Rule 12(b)(1) Motion to Dismiss and Motion for Stay of Discovery filed on September 22, 2017;

13. KapStone's Brief in Support of Their Rule 12(b)(1) Motion to Dismiss and Motion for Stay of Non-Jurisdictional Discovery filed September 22, 2017;

14. KapStone's Amended Rule 12(b)(1) Motion to Dismiss and Motion for Stay of Discovery filed on July 31, 2017;

15. KapStone's Rule 12(b)(1) Motion to Dismiss and Motion for Stay of Discovery filed on June 8, 2017;

16. First Amended Complaint filed on May 1, 2017;

17. Summons and Complaint filed on February 17, 2017;

### **Orders**

18. Order Granting KapStone's Motion for Rule 54(b) Certification of Final Judgment filed on August 26, 2020;

19. Form 4 Order Denying Plaintiffs'/Appellants' Motion to Reconsider the Order Granting KapStone's Rule 12(b)(1) Motion to Dismiss filed on August 7, 2020;

20. Order Granting KapStone's Rule 12(b)(1) Motion to Dismiss filed February 26, 2020;

21. Order Granting KapStone's Motion for Stay of Discovery and Denying Plaintiff's Motion to Compel filed on December 4, 2017;

### **Hearing Transcripts**

22. Transcript of Record (from Motion to Dismiss Hearing) dated September 27, 2019, pages 1–100.

### **Other Materials**

23. Documents identified by bates numbers and/or bates ranges as contained in the Order Granting KapStone's Motion to Dismiss filed February 26, 2020. Those documents are identified as:

- A. KAPSTONE 000002–000134
- B. KAPSTONE 000135–000148
- C. KAPSTONE 000149–000192
- D. KAPSTONE 000273–000287
- E. KAPSTONE 000301–000306
- F. KAPSTONE 000335–000337
- G. KAPSTONE 000339
- H. KAPSTONE 000344–000345
- I. KAPSTONE 000376
- J. KAPSTONE 000403–000405
- K. KAPSTONE 000420
- L. KAPSTONE 000435–000436
- M. KAPSTONE 000439
- N. KAPSTONE 000464
- O. KAPSTONE 000465
- P. KAPSTONE 000684
- Q. KAPSTONE 000694
- R. KAPSTONE 000698
- S. KAPSTONE 000702–000705
- T. KAPSTONE 000706
- U. KAPSTONE 000718–000719
- V. KAPSTONE 000736
- W. KAPSTONE 000741–000745
- X. KAPSTONE 000758–000759
- Y. KAPSTONE 001184–001185
- Z. KAPSTONE 001620–001641
- AA. KAPSTONE 001897–001899
- BB. KAPSTONE 001901–001917
- CC. KAPSTONE 001947
- DD. KAPSTONE 001964–001968
- EE. KAPSTONE 001969–001970
- FF. KAPSTONE 002082
- GG. KAPSTONE 002125–002129

- HH. KAPSTONE 002243–002488
- II. KAPSTONE 002510
- JJ. KAPSTONE 002596–002650
- KK. KAPSTONE 003286–003356
- LL. KAPSTONE 003387–003438
- MM. KAPSTONE 003462–003480
- NN. KAPSTONE 003483–003796

24. Select documents not cited in the Order Granting KapStone’s Motion to Dismiss filed February 26, 2020 but still provided by Defendants to the Court of Common Pleas via two (2) CDs on: (1) June 4, 2019, containing the July 13, 2018 Affidavit of Mark Niehus and the documents Mr. Niehus had authenticated via the affidavit, referenced in the appendix to the same (documents bates labeled KAPSTONE-000001 through KAPSTONE-002522); and (2) June 17, 2019, containing the June 14, 2019 Affidavit of Mark Niehus and the documents Mr. Niehus had authenticated via that affidavit (documents bates labeled KAPSTONE-002596 through KAPSTONE-003828). Those documents are identified as:

- A. KAPSTONE 000001
- B. KAPSTONE 000260–000262
- C. KAPSTONE 000271–000272
- D. KAPSTONE 000288–000293
- E. KAPSTONE 000312–000315
- F. KAPSTONE 000316–000319
- G. KAPSTONE 000373
- H. KAPSTONE 000384–000402
- I. KAPSTONE 000356
- J. KAPSTONE 000358–000362
- K. KAPSTONE 000363
- L. KAPSTONE 000708–000711
- M. KAPSTONE 000752–000757
- N. KAPSTONE 000763–000818
- O. KAPSTONE 000819–000896
- P. KAPSTONE 001208–001222
- Q. KAPSTONE 001642–001888
- R. KAPSTONE 002200–002221
- S. KAPSTONE 002651–002652
- T. KAPSTONE 003341–003356
- U. KAPSTONE 003357–003374
- V. KAPSTONE 003440–003442

Rule 209 (c), SCACR Certification

I certify the foregoing Designation of Matter to be Included in the Record on Appeal contains no matter which is irrelevant to this appeal.

**RECEIVED**  
**Nov 04 2020**  
**SC Court of Appeals**

**CALLISON TIGHE & ROBINSON, LLC**

*s/ D. Reece Williams, III*

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*Attorneys for the Appellants*

November 4, 2020  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

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Case No. 2017-CP-10-00838  
Appellate Case No. 2020-001210

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SC Court of Appeals

Jacque Lucas, Shirley Ann Lucas,  
and Daniel Simerly,

Appellants,

v.

KapStone Paper and Packaging  
Corporation, KapStone Kraft Paper  
Corporation, Safway Group  
Holdings, LLC, Easy Way Insulation  
Co., Sypris Technologies, Inc. f/k/a  
Tube-Turns Technologies Inc.,  
Thompson Construction Group, Inc.,  
and Thompson Industrial Services,  
LLC, Defendants,

Defendants,

Of which

KapStone Paper and Packaging  
Corporation and KapStone Kraft  
Paper Corporation are

Respondents.

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**PROOF OF SERVICE**

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I hereby certify that, on this date, the **Initial Brief of Appellants and Appellants' Designation of Matter to be Included in the Record on Appeal** were served on Respondents' counsel via email, pursuant to Supreme Court Order dated March 20, 2020, as amended on May 29, 2020, as follows:

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A copy of the service email is attached hereto, as required.

I further certify that all parties required by Rule to be served have been served.

*s/ D. Reece Williams, III*  
\_\_\_\_\_  
D. Reece Williams, III

November 4, 2020  
Columbia, South Carolina

## Katie Minton

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**From:** Katie Minton  
**Sent:** Wednesday, November 4, 2020 4:19 PM  
**To:** Richard Willis; 'Derek Tarver'; 'Ducayet, Jim'  
**Cc:** Kurt Arnold; Kyle Findley; Adam Lewis; Kala Sellers; Kason Kimberley; Kristina McDonald; Jill Erickson; KBA Team; 'Sara Rothell'; 'Kim Rothrock'; 'Duke R. Highfield, Esq.'; Wiseman, Jeffrey; 'Brandt R. Horton, Esq.'; 'Anderson, Victoria (Tori)'; 'Brennan, Sally'; Cattles, Martina (Marti); 'kstair@carlockcopeland.com'; Norris, Patrick J.; Yates, Melissa M.; Lemons, Alexandra M.; 'mpeeler@carlockcopeland.com'; Shaw, Katie D.; Canaday, Jenifer L.; Sonaly Hendricks; 'Carl Pierce'; Carson Parker; 'William O. Sweeny IV'; sherrymanning@phswlaw.com; lindsaygrady@phswlaw.com; 'jtiller@hsblawfirm.com'; 'Amy Bower, Esq.'; Caplan, Robert; 'gelnettb@whiteandwilliams.com'; Reece Williams; Rick Detwiler; Ian T. Duggan; Russell Post; Daniel N. Hammond; Harry Dixon; Laura L. Crain  
**Subject:** RE: Appellate Case No. 2020-001210 | Jacque Lucas, Shirley Ann Lucas and Daniel Simerly vs. KapStone Paper and Packaging Corporation, et al.  
**Attachments:** Clerk.Court of Appeals.006 (initial brief and dom) .pdf; Initial Brief of Appellants - FINAL.pdf; Appellants' Designation of Matter - FINAL.pdf; Proof of Delivery - Initial Brief and DOM.pdf

Dear Counsel,

Attached please find our correspondence to the appellate clerk enclosing the Initial Brief of Appellants and Appellants' Designation of Matter to be Included in the Record on Appeal, together with the Proof of Service, in regard to the above-referenced matter. The attached documents are being submitted today to the Court of Appeals for filing. Thank you.

With kind regards,

CALLISON  TIGHE

**Katie A. Minton**  
**Litigation Paralegal**  
Callison Tighe & Robinson, LLC  
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**Nov 04 2020**  
**SC Court of Appeals**

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D. REECE WILLIAMS, III - Member  
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November 4, 2020

**VIA EMAIL:** [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, SC 29211

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**Nov 04 2020**

**SC Court of Appeals**

**Re: Jacque Lucas, Shirley Ann Lucas and Daniel Simerly  
vs. KapStone Paper and Packaging Corporation and  
KapStone Kraft Paper Corporation, et al.  
Appellate Tracking No. 2020-001210  
Our File No. 6716.001**

Dear Ms. Kitchings:

Enclosed herewith please find the Initial Brief of Appellants and Appellants' Designation of Matter to be Included in the Record on Appeal, together with the Proof of Service, in the above-referenced matter. Kindly file the same and return a clocked-in copy of each to the undersigned via return email.

The enclosed documents have been served upon Respondents' counsel today via email as indicated in the Proof of Service.

Please feel free to contact me with any questions. Thank you.

With kind regards, I am

Sincerely yours,

**CALLISON TIGHE & ROBINSON, LLC**

*s/ D. Reece Williams*

D. Reece Williams

DRW:kam  
Enclosures  
cc: (w/ encl.)

VIA EMAIL AND FIRST CLASS MAIL

Richard H. Willis, Esquire  
Derek D. Tarver, Esquire

VIA EMAIL ONLY

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J. Kyle Findley, Esquire  
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