

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**

**Dec 30 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., 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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**RESPONDENTS' DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL**

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

**Orders**

1. Order Granting the KapStone Defendants' Rule 12(b)(1) Motion to Dismiss, filed February 26, 2020;
2. Form 4 Order Denying Plaintiffs' Rule 59(e) Motion to Reconsider, filed August 7, 2020;

## **Pleadings, Briefs & Memoranda**

3. First Amended Complaint, filed May 1, 2017;
4. The KapStone Defendants' Rule 12(b)(6) Motion to Dismiss and Motion for Stay of Discovery, filed June 8, 2017;
5. The KapStone Defendants' Amended Rule 12(b)(6) Motion to Dismiss and Motion for Stay of Discovery, filed July 31, 2017;
6. The KapStone Defendants' Second Amended Rule 12(b)(1) Motion to Dismiss and Motion for Stay of Discovery, filed September 22, 2017;
7. The KapStone Defendants' Brief in Support of Their Rule 12(b)(1) Motion to Dismiss and Motion for Stay of Non-Jurisdictional Discovery and Affidavit of Kelly Hulseman, filed September 22, 2017;
  - a. Exhibit A: Sentry Casualty Company's Workers' Compensation Policy for KapStone Paper and Subsidiaries;
  - b. Exhibit B: List of KapStone entities' officers and Directors;
  - c. Exhibit C: KapStone Org. Chart;
8. The KapStone Defendants' Supplemental Memorandum in Support of Rule 12(b)(1) Motion to Dismiss, filed August 6, 2018;
  - d. Exhibit 1: Affidavit of Mark Niehus;
    - i. Exhibit A: Schedule to Affidavit of Mark Niehus;
9. Plaintiffs' Response in Opposition to the KapStone Defendants' Rule 12(b)(1) Motion to Dismiss, filed May 24, 2019;
10. The KapStone Defendants' Reply to Plaintiffs' Response in Opposition to KapStone's Rule 12(b)(1) Motion to Dismiss, filed June 12, 2019;
  - a. Exhibits 1 – 37 included under item 17, below;
11. The KapStone Defendants' Supplemental Brief in Support of Their Rule 12(b)(1) Motion to Dismiss, filed September 19, 2019;
  - a. Exhibit A: Excerpts from the Deposition of Todd Lester;
  - b. Exhibit B: Excerpts from the Deposition of Kelly Hulseman, Rule 30(b)(6) designee on behalf of the KapStone Defendants;
  - c. Exhibit C: Excerpts from the Deposition of Mark Niehus, Rule 30(b)(6) designee on behalf of the KapStone Defendants;

12. Plaintiffs' Motion to Reconsider the Order Granting the KapStone Defendants' Rule 12(b)(1) Motion to Dismiss, filed March 9, 2020;

a. Exhibits A through J not included;

13. The KapStone Defendants' Memorandum in Opposition to Plaintiffs' Motion to Reconsider or Amend, filed March 26, 2020;

#### **Hearing Transcripts**

14. Transcript of Hearing on the KapStone Defendants' Rule 12(b)(1) Motion to Dismiss, page 71, line 24 through page 72, line 23;

#### **Other Materials**

15. Affidavit of Todd Lester;

16. Documents identified by bates numbers in the trial court's February 26, 2020 Order Granting the KapStone Defendants' Motion to Dismiss ("Order"). To the extent documents cited in the Order are identified elsewhere in the Respondents' Designation of Matter to be Included in the Record on Appeal, they are not included here:

- a. KAPSTONE-000002 – 134;
- b. KAPSTONE-000135 – 148;
- c. KAPSTONE-000149 – 192;
- d. KAPSTONE-000273 – 287;
- e. KAPSTONE-000301 – 306;
- f. KAPSTONE-000335 – 337;
- g. KAPSTONE-000339;
- h. KAPSTONE-000344 – 346;
- i. KAPSTONE-000376;
- j. KAPSTONE-000403 – 406;
- k. KAPSTONE-000420;
- l. KAPSTONE-000435 – 436;
- m. KAPSTONE-000439;
- n. KAPSTONE-000464;
- o. KAPSTONE-000465;
- p. KAPSTONE-000684;
- q. KAPSTONE-000694;
- r. KAPSTONE-000698;
- s. KAPSTONE-000702 – 705;
- t. KAPSTONE-000706;
- u. KAPSTONE-000718 – 719;
- v. KAPSTONE-000736;
- w. KAPSTONE-000741 – 745;
- x. KAPSTONE-000758 – 762;
- y. KAPSTONE-001184 – 1185;

- z. KAPSTONE-001620 – 1641;
- aa. KAPSTONE-001897 – 1899;
- bb. KAPSTONE-001901 – 1917;
- cc. KAPSTONE-001947;
- dd. KAPSTONE-001964 – 1968;
- ee. KAPSTONE-001969 – 1979;
- ff. KAPSTONE-002082;
- gg. KAPSTONE-002125 – 2129;
- hh. KAPSTONE-002243 – 2488;
- ii. KAPSTONE-002510;
- jj. KAPSTONE-002596 – 2650;
- kk. KAPSTONE-003286 – 3356;
- ll. KAPSTONE-003387 – 3438;
- mm. KAPSTONE-003462 – 3480;
- nn. KAPSTONE-003483 – 3796;

17. Documents not cited in the Order but provided by the KapStone Defendants to the Court of Common Pleas through the July 13, 2018 and June 14, 2019 Affidavits of Mark Niehus, and cited in other briefs and memoranda, identified as bates ranges:

- a. KAPSTONE-000322 – 327;
- b. KAPSTONE-000328;
- c. KAPSTONE-000329 – 332;
- d. KAPSTONE-000333 – 334;
- e. KAPSTONE-000342;
- f. KAPSTONE-000378 – 383;
- g. KAPSTONE-00414 – 428;
- h. KAPSTONE-000431 – 432;
- i. KAPSTONE-000486;
- j. KAPSTONE-000688;
- k. KAPSTONE-001144 – 1174;
- l. KAPSTONE-001223 – 1515;
- m. KAPSTONE-001642 – 1888;
- n. KAPSTONE-001889 – 1896;
- o. KAPSTONE-001918 – 1942;
- p. KAPSTONE-001943 – 1944;
- q. KAPSTONE-001945 – 1946;
- r. KAPSTONE-001950 – 1958;
- s. KAPSTONE-001959 – 1963;
- t. KAPSTONE-001980 – 1981;
- u. KAPSTONE-001982 – 1983;
- v. KAPSTONE-001985 – 1993;
- w. KAPSTONE-001994 – 1996;
- x. KAPSTONE-001997 – 2081;
- y. KAPSTONE-002082 – 2094;
- z. KAPSTONE-002103 – 2106;

- aa. KAPSTONE-002122;
- bb. KAPSTONE-002489 – 2508;
- cc. KAPSTONE-002668 – 2684;

18. The following excerpts from the deposition of Kelly Hulseman:

- a. 16:9 – 17:5;
- b. 20:23 – 21:7;
- c. 270:7 – 272:14;
- d. 274:11 – 278:14;
- e. 279:20 – 283:21;
- f. 288:16 – 289:14;

19. The following excerpts from the deposition of Mark Niehus, Rule 30(b)(6) representative for the KapStone Defendants:

- a. 67:1 – 68:25;
- b. 76:7 – 18;
- c. 86:1 – 10;
- d. 116:1 – 25;
- e. 132:6 - 13.

Rule 209(c), SCACR Certification

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

*[Signature block on the following page.]*

Respectfully submitted,

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**Attorneys for Respondents KapStone Paper and  
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Kraft Paper Corporation**

Columbia, South Carolina

December 30, 2020

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
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KapStone Paper and Packaging  
Corporation, KapStone Kraft Paper  
Corporation, Safway Group Holdings,  
LLC, Easy Way Insulation Co., Sypris  
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.

**PROOF OF SERVICE**

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I hereby certify that, on this date, the **INITIAL BRIEF OF RESPONDENTS, RESPONDENTS' DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL, and PROOF OF SERVICE** was served on Appellants' counsel via email, pursuant to Supreme Court Order dated March 20,2020, as amended on May 29, 2020, and by first class U.S. mail 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.

BOWMAN AND BROOKE LLP

By: *s/ Richard H. Willis* \_\_\_\_\_

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**Attorneys for Respondents KapStone Paper and  
Packaging Corporation and KapStone  
Kraft Paper Corporation**

December 30, 2020

Columbia, South Carolina

**From:** Kim Rothrock on behalf of Richard Willis  
**Sent:** Wednesday, December 30, 2020 4:37 PM  
**To:** reecewilliams@callisontighe.com; rickdetwiler@callisontighe.com; ianduggan@callisontighe.com; rpost@beckredden.com; dhammond@beckredden.com; alewis@Arnolditkin.com; KFindley@Arnolditkin.com; karnold@Arnolditkin.com; ksellers@Arnolditkin.com; kkimberley@arnolditkin.com; dhighfield@ycrlaw.com; jwiseman@ycrlaw.com; bhorton@ycrlaw.com; tanderson@ycrlaw.com; kstair@carlockcopeland.com; pnorris@carlockcopeland.com; myates@cskl.law; alemons@cskl.law; sonalyhendricks@phswlaw.com; carlpierce@piercesloan.com; carsonparker@piercesloan.com; jtiller@hsblawfirm.com; abower@hsblawfirm.com; caplanr@whiteandwilliams.com; gelnettb@whiteandwilliams.com  
**Cc:** Richard Willis; Derek Tarver; Brianna Arnone  
**Subject:** Jacque Lucas, Shirley Ann Lucas and Daniel Simerly vs KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation, et al. / Appellate Case No. 2020-001210  
**Attachments:** Lucas; 2020-12-30; Respondent Brief.pdf; Lucas; 2020-12-30; Respondents Designation of Matters.pdf; Lucas; 2020-12-30; KapStone Proof of Service re Initial BOR.pdf; Lucas; 2020-12-30; LT Clerk of Court re encl Initial Brief of Respondents, Repondents' Designation of Matter to be Included in the Record of Appeal and Proof of Service - letter only.pdf

Good afternoon:

Please find attached submitted to you on behalf of Attorney Richard H. Willis in connection with the above-referenced matter.

Sincerely,

**Kim Rothrock**  
**Legal Secretary**

Direct: +1.803.726.7474 | Email: Kim.Rothrock@bowmanandbrooke.com



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December 30, 2020

VIA E-MAIL

The Honorable Jenny Abbott Kitchings  
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**RECEIVED**  
**Dec 30 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 Case No. 2020-001210

Dear Ms. Kitchings:

Enclosed please find **Initial Brief of Respondents, Respondents' Designation of Matter to be Included in the Record on Appeal** and a **Poof of Service** in connection with the above-referenced matter. We respectfully request that you file the same with the Court and return a clocked copy via return e-mail.

The enclosed documents have been served upon Appellants' counsel today via e-mail.

Please contact me with any questions.

Sincerely,



Richard H. Willis  
Managing Partner

RHW/bea  
Enclosures: As referenced.

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
December 30, 2020  
Page 2

cc: VIA US MAIL & E-MAIL  
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