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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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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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**RECORD ON APPEAL**
**VOLUME I**

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| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF CHARLESTON | ) | FOR THE NINTH JUDICIAL CIRCUIT |
| Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly, *Plaintiffs*, | ) | CIVIL ACTION #: 2017-CP-10-00838 |
| vs. | ) | **[Proposed] Order Granting Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation's Motion for Rule 54 (b) Certification of Final Judgment** |
| KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, Safway Group Holdings, LLC, Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc., and Thompson Industrial Services, LLC, *Defendants*. | ) | |

This matter is before the Court pursuant to Defendants KapStone Paper and Packaging Corporation ("KapStone Paper") and KapStone Kraft Paper Corporation's ("KapStone Kraft") (collectively, "the KapStone Defendants") Motion for Certification of Final Judgment under Rule 54(b), SCRCP. For the following reasons, the Court finds there is no just cause to delay certifying its dismissal of the KapStone Defendants as a final judgment.

**I.** Case History

On May 24, 2016, Plaintiffs were injured in a workplace accident while performing duties for their employer and subsidiary of the KapStone Defendants, KapStone Charleston Kraft, LLC ("KapStone Charleston"). Plaintiffs recovered workers compensation benefits for these injuries under a workers-compensation insurance policy procured by KapStone Paper that covered the employees of its subsidiaries. Plaintiffs thereafter sued several defendants, including the KapStone Defendants, under various tort claims for their injuries.

Shortly after Plaintiffs commenced this lawsuit, the KapStone Defendants filed a Rule

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12(b)(6) motion to dismiss, later modified to 12(b)(1), based on the South Carolina Supreme Court's holding in *Poch v. Bayshore* that workers-compensation tort immunity accorded to an employer extends to related entities if those entities were sufficiently economically integrated with the employer at the time of the plaintiff's injury, based on a non-exclusive eight-factor test. *See* 405 S.C. 359, 747 S.E.2d 757 (2012). The *Poch* test is a jurisdictional analysis that focuses exclusively on economic integration between the defendants and the plaintiff's employer. *See id.* A *Poch*-based defense does not address the merits of the plaintiff's underlying tort claims. During the pendency of this motion, the Court stayed merits discovery as to the KapStone Defendants.

On February 26, 2020, this Court granted the KapStone Defendants' motion to dismiss, having found that a preponderance of the evidence showed the KapStone Defendants were sufficiently economically integrated with KapStone Charleston to be considered "one economic entity" for workers' compensation purposes. On March 9, 2020, the Plaintiffs filed a motion to reconsider, which the Court denied on August 7, 2020. The KapStone Defendants have now filed a motion requesting the Court certify its dismissal as a final judgment.

**II.** Rule 54 (b) Certification

In a case involving multiple claims against multiple parties, Rule 54(b), SCRCP, allows the Court to enter final judgment on certain claims against certain parties, to permit the timeline for appeal to commence as to those claims. *See Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 351 S.C. 459, 468, 570 S.E.2d 197, 201 (Ct. App. 2002). Where the case is not certified as a final judgment, the timeline for appeal is tolled until conclusion of the underlying case. *See id.*

There is no just cause for the Court to delay certifying its dismissal of the KapStone Defendants as a final judgment. The basis for the dismissal of the KapStone Defendants under

*Poch* is independent of Plaintiffs' underlying tort claims against the remaining Defendants.

Accordingly, this Court certifies that its February 26, 2020 dismissal of the KapStone Defendants, pursuant to Rule 12(b)(1), SCRCP, is a final judgment, so that an immediate appeal of its underlying order may be pursued.

AND SO IT IS ORDERED,

The Honorable Jennifer B. McCoy

Date



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Charleston Common Pleas

| | |
|---|---|
| **Case Caption:** | Jacque Lucas , plaintiff, et al VS KapStone Paper and Packaging Corporation , defendant, et al |
| **Case Number:** | 2017CP1000838 |
| **Type:** | Order/Other |

So Ordered

s/Jennifer B. McCoy #2764

ELECTRONICALLY FILED - 2020 Aug 07 9:50 AM - CHARLESTON - COMMON PLEAS - CASE#2017CP1000838

**FORM 4**

**STATE OF SOUTH CAROLINA**
**COUNTY OF** Charleston
**IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**

**CASE NO.** 2017CP1000838

Jacque Lucas et al
PLAINTIFF(S)

Safway Group Holdings LLC 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:

Plaintiff filed a Motion to Reconsider the Order Granting Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation's Rule 12(b)(1) Motion to Dismiss filed on March 09, 2020. "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment, is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). This Court Denies Plaintiff's Motion to Reconsider without the necessity of a hearing pursuant to Rule 59(f), SCRCP, and stands by the rulings in its original Order.

**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 08/06/2020 .

Kason Richey Kimberley for Jacque Lucas,Shirley Ann Lucas,Daniel Simerly
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Case Party Info Protected for Jacque Lucas,Shirley Ann Lucas,Daniel Simerly
Case Party Info Protected for Jacque Lucas,Shirley Ann Lucas,Daniel Simerly

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

## 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.**

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Charleston Common Pleas

| | |
|---|---|
| **Case Caption:** | Jacque Lucas , plaintiff, et al VS KapStone Paper and Packaging Corporation , defendant, et al |
| **Case Number:** | 2017CP1000838 |
| **Type:** | Order/Electronic Form 4 |

So Ordered

s/Jennifer B. McCoy #2764

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| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF CHARLESTON | ) | FOR THE NINTH JUDICIAL CIRCUIT |
| | ) | |
| | ) | CIVIL ACTION #: 2017-CP-10-00838 |
| Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly, | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | |
| vs. | ) | **ORDER GRANTING DEFENDANTS KAPSTONE PAPER AND PACKAGING CORPORATION AND KAPSTONE KRAFT PAPER CORPORATION'S RULE 12(b)(1) MOTION TO DISMISS** |
| | ) | |
| KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, Safway Group Holdings, LLC, Easy Way Insulation Co., Inc., Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc. and Thompson Industrial Services, LLC, | ) | |
| | ) | |
| Defendants. | ) | |
| | ) | |

This matter is before the Court pursuant to Defendants KapStone Paper and Packaging Corporation ("KapStone Paper") and KapStone Kraft Paper Corporation's ("KapStone Kraft") (collectively, "the KapStone Defendants") Second Amended Rule 12(b)(1) Motion to Dismiss for Lack of Jurisdiction. A hearing was held before the Court of Common Pleas for Charleston County on September 27, 2019.

After considering the briefs, the record, the controlling law, and arguments of counsel, the Court finds as follows:

## I. FACTUAL AND PROCEDURAL HISTORY

On May 24, 2016, Plaintiffs suffered serious injuries while performing duties as employees of KapStone Charleston Kraft, LLC ("KapStone Charleston"). After Plaintiffs were injured, they filed workers compensation claims to recover under a workers' compensation policy held by

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KapStone Paper for the benefit of its subsidiaries' employees.[1] Plaintiffs have already recovered nearly $4,000,000 under this policy to cover their medical bills and lost wages. *See* Memo. of Law in Support of Petitioner Sentry Cas. Company's Motion to Intervene, at 2-3 (December 21, 2017).

There are three KapStone entities at issue in this case: KapStone Paper, KapStone Kraft, and KapStone Charleston. These entities form a parent-subsidiary relationship: KapStone Paper (a publicly traded corporation) is the sole shareholder of KapStone Kraft (a privately held corporation), which is the sole "member" of KapStone Charleston, LLC (a limited liability company). *See* KAPSTONE-000122; KAPSTONE-000273-287, at 275.

The South Carolina Workers' Compensation Act's "Exclusivity Rule" provides that when a claimant can recover for work-related injuries under a workers'-compensation policy, the claimant's employer is immune to civil liability in tort for those injuries. *See* S.C. Code Ann. § 42-1-540. South Carolina law permits the employee to pursue an action against a parent company of his employer under certain circumstances. *See Poch v. BayShore Concrete Products/South Carolina, Inc.*, 405 S.C. 359, 370-71, 747 S.E.2d 757, 764 (2013) (quoting 82 Am. Jur.2d *Workers' Compensation* § 90 (2003) (footnotes omitted)). On February 17, 2017, Plaintiffs filed a civil action against both KapStone Kraft and KapStone Paper, along with several other third-party defendants unrelated to the KapStone entities.

In response, the KapStone Defendants filed a Rule 12(b)(6) motion to dismiss, asserting that they, like KapStone Charleston, should be accorded tort immunity, pursuant to the analysis in *Poch v. Bayshore Concrete Products/South Carolina, Inc.* ("*Poch*"). On July 31, 2017, the KapStone Defendants filed an Amended Rule 12(b)(6) motion, clarifying their position. On

[1] Initially in these claims, Plaintiffs identified their employer as KapStone Paper, then later amended their claims to identify their employer as KapStone Kraft before finally identifying their employer as KapStone Charleston. *See, e.g.*, Plaintiffs' Workers'-Compensation Pre-Hearing Briefs, KAPSTONE-000435-36; KAPSTONE-000706.

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September 22, 2017, the KapStone Defendants submitted a Second Amended Motion to Dismiss, specifying that they were challenging subject matter jurisdiction under Rule 12(b)(1). *See Poch*, 405 S.C. at 367, 747 S.E.2d at 761 (quoting *Glass v Dow Chem. Co.*, 325 S.C. 198, 201-02, 482 S.E.2d 49, 51 (1997) (noting that issue of employer-employee relationship for purposes of workers' compensation is jurisdictional)); *see also Johnson v. Jackson*, 401 S.C. 152, 735 S.E.2d 664 (Ct. App. 2012) (performing *Poch* analysis under a Rule 12(b)(1) motion to dismiss); *see also Keene v. CNA Holdings, LLC*, 426 S.C. 357, 827 S.E. 183 (Ct. App. 2019) (applying the *Poch* analysis under a Rule 12(b)(6) motion to dismiss).

On November 28, 2017, the Honorable Judge John Hayes entered an Order staying merits discovery until the jurisdictional issue was resolved. Pursuant to this Order, Plaintiffs and the KapStone Defendants engaged in substantial jurisdictional discovery on the various *Poch* factors. Over the next eighteen months, the KapStone Defendants produced approximately 3,800 pages of business records in response to Plaintiffs' jurisdictional discovery requests. In addition, the KapStone Defendants submitted three affidavits by corporate officers, one by Ms. Kelly Hulseman, the Vice President of Shared Services at KapStone Paper, and two by Mr. Mark Niehus, the Vice President and Controller for KapStone Paper. Plaintiffs deposed these affiants. The KapStone Defendants also submitted the affidavit of Mr. Todd Lester, a financial analyst and forensic accounting consultant, on the nature of the KapStone companies' corporate relationship from the perspective of a financial analyst. Mr. Lester was deposed on September 5, 2019.

Plaintiffs sought to exclude Mr. Lester's affidavit, asserting that Mr. Lester's opinion "constituted improper conclusions of law." After considering the parties' arguments and briefs on this issue, the Court ruled in favor of admitting Mr. Lester's affidavit. *See* July 29, 2019 Order.

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Plaintiffs subsequently submitted an affidavit by David Fuller, a financial analyst, to respond to Mr. Lester's affidavit.

On September 27, 2019, this Court heard the parties' arguments on the KapStone Defendants' Second Amended Rule 12(b)(1) Motion to Dismiss. In their briefs and at the hearing, Plaintiffs asserted the following arguments: (1) *Poch* is not controlling in this case; (2) even if *Poch* is controlling, the record does not support a conclusion that the KapStone Defendants were sufficiently economically integrated with KapStone Charleston to justify the extension of workers' compensation immunity; (3) the post-incident "One KapStone" project demonstrates the KapStone entities were not integrated under *Poch*; (4) the Court should strike the affidavit of Ms. Hulseman; (5) Mr. Lester's Affidavit is inadmissible legal opinion; and (6) Mr. Lester's Affidavit was untimely. Upon hearing the parties' arguments, considering the law and reviewing the extensive record, the Court finds that the KapStone Defendants' motion to dismiss should be granted.

## II. APPLICABLE LAW

### a. *Poch v. Bayshore Concrete Products/South Carolina, Inc.*

"The Workers' Compensation Act is the exclusive remedy against an employer for an employee's work-related accident or injury." *Poch*, 405 S.C. at 366, 747 S.E.2d at 761 (quoting *Edens v. Bellini,* 359 S.C. 433, 441, 597 S.E.2d 863, 867 (Ct. App. 2004)). "The exclusivity provision of the Act precludes an employee from maintaining a tort action against an employer where the employee sustains a work-related injury." *Id.* (quoting *Edens* at 441–42, 597 S.E.2d 863) (interpreting S.C. Code Ann. § 42–1–540 (1985)).

Concerning whether the Exclusivity Rule extends to an employer's corporate parent, the South Carolina Supreme Court has explained:

> A parent corporation is generally not immune from an action in tort by an injured employee of its subsidiary by virtue of the employee's

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> entitlement to workers' compensation. Where an employee of a subsidiary is injured while working on property owned by the parent corporation and receives workers' compensation benefits from the subsidiary, the employee may maintain an action in tort against the parent corporation even though parent and subsidiary are covered by same policy of workers' compensation insurance.
>
> *However*, a parent corporation's immunity has been recognized in some instances on the theory that the parent is or may be found to be the alter ego of the employer-subsidiary corporation.

*Poch*, 405 S.C. at 370-71, 747 S.E.2d at 763 (quoting 82 Am.Jur.2d *Workers' Compensation* § 90 (2003) (footnotes omitted) (emphasis added) (also citing Annotation, *Workers' Compensation Immunity as Extending to One Owning Controlling Interest in Employer Corporation,* 30 A.L.R.4th 948, § 2 (1984 & Supp. 2013) (discussing alter ego theory by which a parent corporation may seek tort immunity via its interest in the employer-corporation; noting that immunity does not extend where: (1) parent and subsidiary are separate and distinct entities; or (2) there is evidence of fraud, abuse of corporate privilege, or an attempt to circumvent the law to avoid liability)).

The Supreme Court of South Carolina has adopted an eight-factor test (the "*Poch* test") used to determine whether a parent company and its subsidiary are so integrated that the subsidiary's workers' compensation tort immunity should be extended to the parent. 405 S.C. at 371-72, 747 S.E.2d at 764 (citing *Monroe v. Monsanto Co.*, 531 F. Supp. 426 (1982)). This test, the court explained, is "the correct approach" under South Carolina law to "determin[e] whether two related businesses are separate and distinct corporations for workers' compensation purposes." *Id.*

The *Poch* test considers the following factors:

> (1) Did the two businesses maintain separate corporate identities?
>
> (2) Did the two businesses maintain separate Boards of Directors?
>
> (3) Did the two businesses transact business from different locations under different managers?

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(4) Did the two businesses hire and pay their own employees?

(5) Did the two corporations hold themselves out to their employees as two separate identities?

(6) Did the two corporations engage in different business activities?

(7) Did the two corporations maintain separate books, bank accounts, and payroll records?

(8) Did the two corporations file separate tax returns?

*Poch*, 405 S.C. at 372, 747 S.E.2d at 764 (quoting *Monroe* at 434). The court noted that "these factors [a]re not the only relevant factors and that none of the factors alone provide[] immunity." *Id.*

**b. Standard of review under the *Poch* test**

"[T]he determination of the employer-employee relationship for workers' compensation purposes is jurisdictional." *Poch*, 405 S.C. at 367, 747 S.E.2d at 761 (quoting *Glass v Dow Chem. Co.*, 325 S.C. 198, 201-02, 482 S.E.2d 49, 51 (1997)). Thus, when a court is faced with a motion to dismiss based on *Poch*, the court "has the power and duty to review the entire record and decide the jurisdictional facts in accord with the preponderance of the evidence." *Id.* "Any doubts as to a worker's status should be resolved in favor of including him or her under the Workers' Compensation Act." *Poch*, 405 S.C. at 367, 747 S.E.2d at 761 (quoting *Posey v. Proper Mold & Eng'g, Inc.*, 378 S.C. 210, 218-19, 661 S.E.2d 395, 400 (Ct. App. 2008)). This preference applies with equal force to cases in which the employer-employee relationship is being asserted as a sword (to obtain coverage) or a shield (to assert immunity). *See Olmstead v. Shakespeare*, 354 S.C. 421, 427, 581 S.E.2d 483, 486 (2003). ("[B]road construction in favor of coverage . . . . is the standard of review for cases in which the workers' compensation statute is used as a shield to liability under another theory[.]").

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## III. ANALYSES

Having reviewed the record and considered the parties' arguments, the Court finds as follows:

### a. The eight-factor test adopted in *Poch v. Bayshore* is controlling.

As a preliminary matter, this dispute is governed by the South Carolina's Workers' Compensation Act, S.C. Code Ann. § 42-1-10, *et seq.*, and *Poch v. Bayshore*. Plaintiffs sustained injuries in the scope of their employment with KapStone Charleston and recovered approximately $4,000,000 in benefits through workers' compensation claims. Plaintiffs seek to recover against KapStone Kraft and KapStone Paper, respectively the corporate parent and grandparent of KapStone Charleston, for the same injuries. The KapStone Defendants have asserted that Kapstone Charleston's workers' compensation tort immunity extends to them because of the extensive economic interrelation between the three companies. Therefore, the eight-factor test adopted by the Supreme Court of South Carolina in *Poch* is "the correct approach" to determine whether these KapStone entities "are separate and distinct corporations for workers' compensation purposes." 405 S.C. at 371-72, 747 S.E.2d at 764 (citing *Monroe v. Monsanto Co.*, 531 F. Supp. 426 (1982)).

### b. The KapStone Defendants and KapStone Charleston were economically integrated under *Poch*

Having determined that the *Poch* analysis controls in this dispute, the Court has reviewed the materials submitted by the parties and finds as follows:

#### 1. Did the two businesses maintain separate corporate identities?

In *Poch*, the Supreme Court of South Carolina held that the relationship between Bayshore Corp. and its subsidiary Bayshore SC satisfied this factor because the companies used the named

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"Bayshore" "interchangeably" in signing documents. *See* 405 S.C. at 373, 747 S.E.2d at 764. In addition, Bayshore SC used several documents, including letterhead, employment applications, benefits packages, and safety manuals that "displayed the standard Bayshore Corp. designation." *See id.* Further, the court noted that one workers' compensation policy covered all of the Bayshore subsidiaries. *See id.*

Review of the documents produced by the KapStone Defendants in this matter shows that the KapStone companies maintained a shared corporate identity at least to the same degree of the companies in *Poch*, if not more so.[2] Internal documents, external communications, and public filings, such as KapStone Paper's 10-K, all show that KapStone Paper, KapStone Kraft, and KapStone Charleston often referred to themselves collectively as "KapStone" or the "Company." *See, e.g.*, KAPSTONE-000002-134, at 3-40, *et seq.* (referring to the KapStone companies collectively as "KapStone" or "we"). The KapStone entities shared the "KapStone" name, logo, trademark, and color scheme. *See, e.g.*, KAPSTONE-000344-45, 376, 465, 684, 758-59, 3438 (demonstrating use of shared name, logo, trademark, and color scheme). Part of this shared corporate identity included a shared "KapStone" website, *see* KAPSTONE-000758-59, letterhead with the "KapStone" logo and trademark, *see* KAPSTONE-000344-45, common employment forms, *see* KAPSTONE-000376, and shared corporate policies and procedures. *See* KAPSTONE-000465, 1897-98, 1899, 1901, 1902-09, 1910-13.

[2] It is important to note that the concept of a "shared corporate identity" is separate from the concept of "separate entities." Corporate identity is the "[c]ombination of color schemes, designs, words, etc., that a firm employs to make a visual statement about itself and to communicate its business philosophy. It is an enduring symbol of how a firm views itself, how it wishes to be viewed by others, and how others recognize and remember it. . . . [C]orporate identity is . . . conveyed by things such as buildings, décor, logo, name, slogan, stationery, uniforms. . . ." *See* Business Dictionary, Definition of "Corporate Identity," http://www.businessdictionary.com/definition/corporate-identity.html.

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Plaintiffs' employment applications, hiring letters, and signed company policies all exhibited the shared "KapStone Paper" name, logo, and trademark. Plaintiffs' employment applications were on KapStone Paper documents. *See* KAPSTONE-000702-05, 741-44. Plaintiff Simerly's hiring letter exhibited the KapStone Paper logo and included the following: "On behalf of KapStone Paper and Packaging Corporation, I am delighted to extend an offer of employment to you for the position of Lubricator in the Maintenance Department." *See* KAPSTONE-000345. As to Plaintiff Lucas, the hiring letter also had the KapStone Paper logo and offered a position "at the KapStone Kraft Division, North Charleston Mill." *See* KAPSTONE-000344. Finally, as also noted in *Poch*, the workers' compensation policy at issue was procured and funded by the corporate grandparent KapStone Paper and covered all of the KapStone subsidiaries' employees, including Plaintiffs. *See* KAPSTONE-000301-306, at 303 (declaration page of the applicable policy). Accordingly, a preponderance of the evidence supports a finding that the KapStone Defendants maintained a shared corporate identity with KapStone Charleston.

**2. <u>Did the two businesses maintain separate Boards of Directors?</u>**

In *Poch*, the Supreme Court found this factor was satisfied when "with the exception of two people, the corporations shared the same officers and directors." *See* 405 S.C. at 373, 747 S.E.2d at 764. The court noted that Bayshore SC's Board of Directors was comprised entirely of members of Bayshore Corp.'s Board of Directors, and that all officers received their salaries from Bayshore Corp. *Id.*

Under the analysis in *Poch*, the KapStone Defendants satisfy this element. The documents produced by the KapStone Defendants, as well as the deposition testimony of Ms. Hulseman and Mr. Niehus, show that the KapStone Defendants maintained overlapping Officers and Boards of Directors. Each of the KapStone companies had the same persons as officers in essentially the

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same positions. *See* KAPSTONE-001184-85. KapStone Charleston, as an LLC, had no Board of Directors, but had the same officers as KapStone Kraft and KapStone Paper. *See id.* The LLC's sole managing member was KapStone Kraft, who appointed KapStone Charleston's officers. *See* KAPSTONE-000273-287, at 276 and 277. Thus, KapStone Charleston was governed directly by KapStone Kraft's Board of Directors, all of whom were also on KapStone Paper's Board of Directors. *See* KAPSTONE-001184-85. The record also shows that the salaries of these Directors and Officers, like all KapStone employees, were funded by KapStone Paper. Accordingly, a preponderance of the evidence supports a finding that the KapStone Defendants and KapStone had overlapping Officers, and that KapStone Kraft's and KapStone Paper's Board of Directors had direct influence over KapStone Charleston.

**3. <u>Did the two businesses transact business from different locations under different managers?</u>**

In *Poch*, the Supreme Court found that Bayshore SC and Bayshore Corp. satisfied this factor, even though they were headquartered in different states. *See* 405 S.C. at 373, S.E.2d at 764. There, the court noted that the parent entered into leases for and purchased equipment on behalf of its subsidiary, and periodically sent its own employees to oversee its subsidiaries' operations. *See id.* Further, the parent provided services for its subsidiary, including the processing and paying of invoices, and human resources services. *See id.*

Here, the KapStone Defendants were headquartered in the same location as their subsidiaries, at KapStone's "corporate office," located at 1101 Skokie Blvd, Suite 300, in Northbrook, Illinois. *See* KAPSTONE-00002; KAPSTONE-000275-276. KapStone Kraft's primary physical operations are performed at its mill in Roanoke Rapids, North Carolina. *See* Niehus Dep. 45:8-21. KapStone Charleston's paper mill is located in North Charleston, South Carolina, and four chip mills located throughout South Carolina. *See* Niehus Dep. 59:14-21. Each

location employs managers who reside near and work at the various plants. *See* KAPSTONE-002596-2650 (records maintained by KapStone Paper on every KapStone employee's location, payroll listing, and role).

Although each KapStone entity was engaged in its own day-to-day operations, like the Bayshore entities in *Poch*, several KapStone Paper and KapStone Kraft employees worked at KapStone Charleston's facilities (approximately 8% of the total work force at the Charleston mill), and several KapStone Kraft employees worked at the corporate office in Northbrook, Illinois (approximately 15% of the work force). *See* KAPSTONE-002596-2650. The various operational policies for KapStone Charleston show that these subsidiaries were subject to oversight and policies implemented by KapStone Paper at the corporate office. *See* KAPSTONE-000420; 1902-1909; 1914-1917; 1947; 1964-1968.

As the headquarters for the KapStone entities, the corporate office served as KapStone's "nerve center." It was the location for all board meetings. *See* Niehus Dep. 132:6-132:12. It was also the location from which KapStone Paper provided shared accounting services, shared payroll services, and several other shared administrative services for KapStone Kraft and KapStone Charleston. *See* Hulseman Dep. 270:7-272:14.

KapStone Paper and KapStone Kraft also entered into leases on KapStone Charleston's behalf for machinery used at KapStone Charleston's North Charleston mill. *See* KAPSTONE-003286-3300; 3301-3314; 3315-3324; 3325-3340; 3341-3356; 3387-3396; 3397-3435; 3436-3437. These leases were entered into at the corporate office. *See id.* The corporate office was also the location of KapStone's "centralized purchasing system," which directed purchase orders for paper to the KapStone entity best suited to fulfil the request. *See* Niehus Dep. 85:9-86:10. KapStone Paper processed invoices and made payments from the corporate office for services and



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deliveries to KapStone Charleston's facilities. *See* KAPSTONE-002125-29. KapStone Paper procured and funded employee payroll and benefits for KapStone Kraft and KapStone Charleston employees at the corporate office, *see* KAPSTONE-000439, 335-337, 2510, 718, including the applicable workers' compensation insurance policy. *See* KAPSTONE-000301-306, at 303. Accordingly, a preponderance of the evidence supports a finding that the KapStone companies conducted business from shared locations, to at least the same degree as the entities in *Poch*.

**4. <u>Did the two businesses hire and pay their own employees?</u>**

In *Poch*, the Supreme Court found this factor was satisfied because Bayshore Corp. hired, fired, and provided compensation and benefits to Bayshore SC's salaried employees. *See* 405 S.C. at 373-74, 747 S.E.2d at 764-65. However, the court noted that Bayshore SC was in charge of hiring and paying its hourly workers, in addition to hiring temporary workers, although temporary workers' compensation was indirectly provided by Bayshore Corp. *See id.*

Each KapStone entity generally hired its own local employees, both hourly and salaried, although as noted above, there was some employee overlap between locations. Payroll records show that all employee compensation was processed and funded by KapStone Paper through shared payroll services and a third-party payment processor, ADP. *See* KAPSTONE-000439, 335-337, 2510, 718 (in that order). Benefits packages presentations for hourly employees of KapStone Kraft and KapStone Charleston show that hourly employees' benefits, including life insurance, health insurance, short and long-term disability insurance, employee assistance programs, tuition reimbursement, scholarships for employee dependents, workers' compensation policies, and 401(k)s were procured and funded by KapStone Paper. *See* KAPSTONE-000149-192, 403-05. As discussed further below under factor 7, all of the funds generated by the KapStone subsidiaries were transferred overnight to KapStone Paper, who controlled the finances of its subsidiaries with

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minor exception.[3] *See* KAPSTONE-000339 (identifying zero-balance accounts as "ZBA"). Accordingly, while KapStone Paper was not directly in charge of hiring or firing employees at KapStone Charleston, it was in charge of handling payroll and other forms of compensation.

**5. Did the two corporations hold themselves out to their employees as two separate identities?**

In *Poch*, the Supreme Court found that Bayshore SC and Bayshore Corp held themselves out as related entities because Bayshore SC employees "were provided with employment documents that were standard for Bayshore Corp." *See* 405 S.C. at 374, 747 S.E.2d at 765. That is also the case here.

The KapStone entities held themselves out to their employees and the public as related companies with a shared corporate identity. In addition to general shared use of the "KapStone" name, logo, trademark, internal letterhead, website, and business forms, Plaintiffs' personnel files show that the KapStone entities held themselves out to employees as interrelated. Plaintiffs' employment applications to work at KapStone Charleston's mill used the KapStone Paper logo and referred specifically and repeatedly to "KapStone Paper and Packaging Corporation" as the entity to whom the application was being submitted. *See* KAPSTONE-000702-705, 741-744. As part of their application for employment, Plaintiffs signed a "KapStone Paper and Packaging Corporation" background check authorization form. *See* KAPSTONE-000698, 745. Plaintiffs received hiring letters that referenced KapStone Paper and KapStone Kraft. *See* KAPSTONE-000344, 345. Once hired, Plaintiffs signed off on several KapStone Paper and Packaging Corporation policies, including the "KapStone Paper and Packaging Corporation Code of Conduct and Ethics," *see* KAPSTONE-000694, 736, 2082, *et seq.*, and the "KapStone Paper and Packaging

[3] KapStone Paper and KapStone Charleston also appear to have jointly held bank accounts with Bank of America/Merrill Lynch. *See* KAPSTONE-001620-1641. This suggests that KapStone Charleston had some financial independence, although still tethered to KapStone Paper. *See* KAPSTONE-001969-1970.

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Corporation Computer Use Policy User Agreement." *See* KAPSTONE-000464. When Plaintiffs sought to update their personal data with the company, they filled out a "KapStone Paper and Packaging Corporation Personal Data Change Form." *See* KAPSTONE-000684. This is all evidence of a shared corporate identity. As such, a preponderance of the evidence supports a finding that the KapStone entities held themselves out to their employees and the public as having a common identity.

**6. Did the two corporations engage in different business activities?**

In *Poch*, the Supreme Court held that Bayshore Corp. and Bayshore SC "engaged in the same business activity of providing concrete forms for construction sites." *See* 405 S.C. at 375, 747 S.E.2d at 765. Here, while KapStone Kraft and KapStone Charleston were engaged in the same general business of manufacturing kraft paper products, KapStone Paper did not literally manufacture paper. Instead, KapStone Paper managed the financial aspects of its subsidiaries that were engaged in the paper-manufacturing industry.

The record shows that the KapStone companies collectively engaged in the business of manufacturing, selling, and distributing paper products. The various KapStone companies were segmented into separate "divisions," each of which performed a different step in the paper-making and paper-selling process. These included the Mill Division (making kraft paper), the Container Division (turning kraft paper into boxes or other packaging) (occasionally collectively referred to as the "Paper and Packaging Segment"), and Distribution (shipping the paper and boxes to customers). *See* KAPSTONE-00002-134.

As part of the Mill Division, KapStone Charleston and KapStone Kraft operated paper mills that manufactured kraft paper products. *See id.* at 2, 4, 6. KapStone Paper provided managerial and financial oversight to these operations, and supplied shared accounting, payroll,

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and other administrative services for its subsidiaries. *See id.* at 2-9. The array of KapStone entities were engaged in the various functions necessary to the manufacture, sale and distribution of kraft paper products. *See id.* In essence, the various KapStone companies operated as a single-purpose entity with specialized divisions, all funded by KapStone Paper. In addition to functioning as a single-purpose entity, KapStone Paper also marketed its corporate family to the public as a single paper company, and marketed and sold its products as coming from "KapStone." *See* KAPSTONE-000758-759.

In addition to functioning like a single paper company, several governmental agencies, including the EPA and OSHA, officially categorized KapStone Paper and its subsidiaries under NAICS and SIC codes designated for paper manufacturing, paper mills, and pulp mills. *See, e.g.*, EPA, *Economic Impact Analysis: Proposed Revisions to the National Emission Standards for Hazardous Air Pollutants*, Table 2-7 (October 2016), available at https://www. epa.gov/sites /production/files/2016-12/documents/subpart_mm_eia_10_31_2016_ final.pdf (identifying KapStone Paper as one of the largest "U.S. Pulp and Paper Companies in 2015").

The KapStone entities' overall function as a paper manufacturing business is more akin to the entities in *Poch* than those discussed in *Monroe v. Monsanto*, where the court found insufficient integration. *See* 531 F. Supp. 426, 434 (1982). In *Poch*, the court found the parent and subsidiary entities were both engaged in manufacturing concrete forms for construction projects. *See* 405 S.C. at 374, 747 S.E.2d at 765. Conversely, in *Monroe v. Monsanto*, the court found that the sibling entities operated independently of one another, one company "processing . . . continuous fiber into carpet staple" and the other "processing . . . fibers and manufactur[ing] and marketing fabrics." *See id.* Here, as noted above, to the extent they were in different KapStone divisions, the KapStone entities did not engage in exactly the same day-to-day activities. Despite this, the

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several entities were collectively engaged in the business of paper manufacturing. As such, a preponderance of the evidence supports a conclusion that the KapStone entities satisfied this element.

7. **Did the two corporations maintain separate books, bank accounts, and payroll records?**

In *Poch*, the Supreme Court found that Bayshore Corp. and Bayshore SC maintained separate books, accounting records, and bank accounts for purposes of financial accountability. *See* 405 S.C. at 374, 747 S.E.2d at 765. However, the court found that this factor was satisfied because "Bayshore SC contributed to Bayshore Corp.'s gross revenues" and "[m]ore importantly, Bayshore Corp. was entirely responsible for the financial operation of Bayshore SC." *See id.*

Here, the KapStone entities maintained consolidated books and payroll records. The KapStone subsidiaries had individual bank accounts, but these were "zero balance accounts" that did not serve as operating accounts. *See* KAPSTONE-000339. Any funds in these accounts were swept nightly into a KapStone Paper "master account." *See id.* KapStone Paper maintained consolidated electronic records for the operations of its subsidiaries, in which it recorded its subsidiaries' profits and losses, amalgamated into a single profit and loss chart, as well as overall product manufacture and sale, costs of goods sold, unit average selling price, and employee headcount for its subsidiaries' locations, among other details. *See* KAPSTONE-003462-3480.

The KapStone entities also collectively entered into a "Receivables Purchase Agreement" and "Receivables Sales Agreement" whereby ownership of "accounts receivable" generated by KapStone subsidiaries were transferred to KapStone Receivables, LLC, which would sell the accounts receivables to a "purchaser" (in this case, Wells Fargo Bank), for ninety-nine cents on the dollar. *See* KAPSTONE-002243-2488. KapStone Receivables, LLC, would then transfer the funds obtained from the sale of its accounts receivable to KapStone Paper's "master account,"

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from which KapStone Paper would then fund the operations, payroll, benefits, and other costs of its subsidiaries, including KapStone Charleston. *See id.*

In addition to the above, KapStone Paper maintained consolidated payroll records for its subsidiaries' employees. Payroll was processed by KapStone Paper at the "corporate office," after which KapStone Paper would request ADP, a third-party vendor, to process payments; ADP would then draft payroll checks with funds provided by KapStone Paper, for direct deposit or distribution to its subsidiaries' employees. *See* KAPSTONE-000439, 335-337, 2510, 718. As such, there is sufficient evidence to find that the KapStone Defendants satisfied this factor.

**8. Did the two corporations file separate tax returns?**

In *Poch*, the Supreme Court noted that this is a "weighty" factor, yet still found sufficient integration despite finding that the Bayshore entities maintained separate tax identification numbers and filed separate tax returns. *See* 405 S.C. 374, 747 S.E.2d at 765. Comparatively, the *Monsanto* court found that this factor was satisfied simply by the entities at issue filing a consolidated tax return. *See* 531 F. Supp. 426, 434. Based on this, the Court finds the KapStone entities satisfied this factor, as they filed a single consolidated federal tax return.

Pursuant to the above analysis, the Court finds the documents in the record, by a preponderance of the evidence, supports a conclusion that the KapStone Defendants were so economically integrated and commingled that they "could be viewed only as one economic entity." *See Poch*, 405 S.C. at 374, 747 S.E.2d at 765.

**c. The post-accident "One KapStone" documents show that the KapStone Defendants were financially integrated**

Plaintiffs argued that the "One KapStone" documents, mostly generated after Plaintiffs' accident, and which related to efforts to improve "integration" of operations between KapStone's Mill and Container Divisions, show that the KapStone entities were not financially integrated

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under *Poch* at the time of Plaintiffs' injuries. After reviewing these documents, the Court disagrees.

As an initial matter, the question of *Poch*-based immunity is based on the degree of economic integration between entities as of the date of the employee's injuries. *See Poch v. BayShore Concrete Products/South Carolina, Inc.*, 405 S.C. 359, 747 S.E.2d 757. To this extent, the post-incident nature of the "One KapStone" documents arguably renders these documents less relevant to the issue before the Court. However, Plaintiffs argue that post-incident efforts to become more integrated imply a lack of previous integration. Thus, the Court has reviewed these documents as part of the *Poch* inquiry.

The "One KapStone" documents are relevant and probative of the *Poch* issues, although not necessarily in the manner Plaintiffs assert. On their face, the "One KapStone" documents appear to have been developed in furtherance of a goal to better "integrate" the *operations* of the KapStone Mill and Container Divisions: to make them more uniform. *See* KAPSTONE-0003543; KAPSTONE-003483-3796. As explained above, KapStone's Mill Division companies, which included KapStone Kraft and KapStone Charleston, manufactured kraft paper. KapStone's Container Division companies, which included KapStone Container Corporation, used the kraft paper made by the Mill Division to manufacture cardboard boxes and other forms of packaging. These are the segments of the KapStone family of companies that were subject to the "One KapStone" plan. *See, e.g.*, KAPSTONE-003543 (discussing the urgent need to "[i]ntegrate the operations and supporting functions of our Mill and Container systems" and "[i]dentify and execute major performance improvements across both"); KAPSTONE-003547 (planning by 2019 to "[d]evelop standardized scales, supply chain, production, and distribution processes across Container and Mill Systems").

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Plaintiffs assert that the use of the words "integrate" and "integration" in the "One KapStone" documents shows that the KapStone companies were not integrated under *Poch*. This argument conflates the meaning of "economic integration," as it is used in *Poch*, with the meaning of "integrate" in the context of the "One KapStone" documents. Under *Poch*, "integration" includes factors such as shared corporate identity, economic (financial) interrelation, and shared corporate governance. *See* 405 S.C. at 372, 747 S.E.2d at 764 (quoting *Monroe* at 434). In the "One KapStone" documents, "integration" appears to refer to operational uniformity between the KapStone Mill and Container Division entities.

The "One KapStone" documents demonstrate economic integration, shared books and accounting, overlapping management and corporate control over subsidiary operations and finances, as well as a shared corporate identity. *See* KAPSTONE-003536-3572. The "One KapStone" documents note that the purpose of the program was to capture a "$150M EBITDA gap" by making the operations of the Mill and Container Divisions more consistent and efficient. *See, e.g.*, KAPSTONE-0003543, 3546, 3549, 3573, 3672, 3678 (referencing KapStone EBITDA). This is telling. EBITDA stands for "earnings before interest, tax, depreciation, and amortization." The fact that KapStone Paper identified an "EBITDA gap" on a KapStone-wide scale, caused by inconsistencies between its subsidiaries, shows that KapStone Paper maintained consolidated books and accounts from which to reach this conclusion. Further, the fact that KapStone Paper could implement a "One KapStone" program to make its subsidiaries' operations more consistent demonstrates KapStone Paper's overarching control over its subsidiaries' business operations. Finally, as to corporate identity, the "One KapStone" documents repeatedly refer to all of the KapStone entities collectively as "KapStone," "we," or "the Company." *See, e.g.*, KAPSTONE-

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003536-3572, 3579, 3580, 3591, 3599, 3606, 3702, 3734. The KapStone name, logo, and trademark is used throughout the documents. *See id.*

Based on the foregoing, the Court finds that the "One KapStone" documents support a finding that the KapStone Defendants were economically integrated with KapStone Charleston under the *Poch* test.

**d. The KapStone Defendants properly authenticated and entered supporting business records and related testimony into the record before this Court**

The KapStone Defendants' have supported their motion to dismiss with approximately 3,800 pages of documents produced in response to Plaintiffs' discovery requests. Plaintiffs objected to the KapStone Defendants' referencing these documents, asserting that the documents were not "in the record." Plaintiffs raise a similar objection in footnote 1 of their July 25, 2019 Response in Opposition to Defendants KapStone's Memorandum of Law in Support of the Admissibility of the Affidavit of Todd K. Lester, arguing: "Defendants' attempt to put every document produced into the record in support of their motion to dismiss fails, as the business records affiant could not properly authenticate those records in his deposition."

The requirement of authentication is satisfied by evidence sufficient to support a finding that the document in question is what the proponent claims it to be. Rule 901(a), SCRE. Under this rule, the testimony of a witness with knowledge that a matter is what it is claimed to be is sufficient to establish its authenticity. *See* Rule 901(b)(1), SCRE. "'The burden to authenticate . . . is not high' and requires only that the proponent 'offer[] a satisfactory foundation from which the [fact finder] could reasonably find that the evidence is authentic.'" *Deep Keel, LLC v. Atl. Private Equity Grp.*, 413 S.C. 58, 773 S.E.2d 607 (Ct. App. 2015) (quoting *United States v. Hassan*, 742 F.3d 104, 133 (4th Cir. 2014)).

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The KapStone Defendants authenticated the documents on which they rely through two affidavits of Mark Niehus, the Vice President and Controller for KapStone Paper, executed on July 13, 2018 and June 14, 2019. In these affidavits, Mr. Niehus affirms that he reviewed the documents and affirmed that they were authentic records of the KapStone Defendants' business activities, created and maintained in the regular course of business. In the deposition of Mr. Niehus on January 8, 2019, Plaintiff acknowledged that Mr. Neihus had authenticated the documents listed in the appendix to the June 13, 2018 affidavit. *See* Niehus Dep. 23:16-21. As such, the Court finds that the KapStone Defendants have authenticated the documents in the record.

Plaintiffs' second argument, that the KapStone Defendants did not enter these documents into the record, is incorrect. Pursuant to the Court's directive on submitting large files of documents, on June 4, 2019, the KapStone Defendants sent the Court two CDs, one of which contained the July 13, 2018 Affidavit of Mark Neihus 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). On June 17, 2019, the KapStone Defendants sent the Court a second CD with 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). In doing so, the KapStone Defendants have entered these documents into the record in support of their motion to dismiss.

**e. <u>The Affidavit of Kelly Hulseman</u>**

Plaintiffs argued in their May 24, 2019 Response in Opposition to the KapStone Defendants' Motion to Dismiss and at the September 27, 2019 hearing, that the affidavit of Ms. Hulseman must be stricken, because in her affidavit Ms. Hulseman denied having "personal knowledge" of the information included in it, therefore rendering it a "sham."

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The South Carolina Rules of Evidence require evidence showing a witness has "personal knowledge" of a matter in order to testify about it. *See* Rule 602, SCRE. "Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony." *Id.* "Personal knowledge" may be based on personal observations, experience, or first-hand knowledge of information. *See, e.g., Divine v. Robbins*, 385 S.C. 23, 40-41, 683 S.E.2d 286, 295 (Ct. App. 2009) (permitting witness testimony based on personal observations, experiences, and first-hand knowledge).

There is sufficient evidence for the Court to find that Ms. Hulseman had personal knowledge of certain facts, as testified to in her deposition. Ms. Hulseman testified in her deposition that she had worked in the KapStone "corporate office" for over ten years, having started in 2007. *See, e.g.*, Hulseman Dep. 56:13-14. Ms. Hulseman testified repeatedly that she had personal knowledge of many of the facts in her affidavit. *See* Hulseman Dep. 30:22-31:2; 33:12-16; 221:4-12; 222:9-13; 233:18-22; 241:4-11; 242:7-12; 251:7-16; 255:1-7; 256:6-18.

Plaintiffs' assertion that the affidavit was a "sham" is a misunderstanding of the definition of a "sham" affidavit under South Carolina law. In this jurisdiction, a "sham" affidavit is one created to contradict prior harmful testimony. *See Cothran v. Brown*, 357 S.C. 210, 218, 592 S.E.2d 629, 633 (2004) (holding same). Here, Ms. Hulseman's affidavit was generated prior to her deposition, and was substantively consistent with her deposition testimony. As such, the affidavit is not a "sham."

The Court finds sufficient evidence exists that Ms. Hulseman had personal knowledge upon which to base certain facts in her affidavit. The affidavit is not a "sham" affidavit. Accordingly, the Court declines to strike the affidavit. Given the extensive documentary evidence in the record, the Court does not need to rely on Ms. Hulseman's affidavit to reach its conclusion in this matter.

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The Court has instead focused its attention on the relevant documentary evidence included in the record by the KapStone Defendants, cited herein.

**f. Todd Lester's expert affidavit**

Todd Lester's expert affidavit is admissible to assist the Court in its role as fact finder, although, as is the case with Ms. Hulseman's affidavit, based on the substantial documentary support in the record, the Court has not relied on the substance of the affidavit to reach its factual findings in this matter. The "question of law" in this case is whether the Court has jurisdiction over the KapStone Defendants in light of the degree of economic integration between the KapStone Defendants and KapStone Charleston. Mr. Lester did not offer a legal opinion as to this issue. His affidavit focuses on the nature of documents and the corporate relationships from the perspective of a financial analyst. These are factual matters generally beyond the knowledge of a lay person. As such, the affidavit is both appropriate expert opinion under Rule 702, SCRE, and does not violate the rule against expert opinions on issues of law. *See Dawkins v. Fields*, 354 S.C. 58, 65, 580 S.E.2d 433, 437 (2003) (citing *O'Quinn v. Beach Assocs*, 272 S.C. 95, 106-07, 249 S.E.2d 734, 739-40 (1978) (holding an expert opinion may not contain "legal arguments and conclusions" in an attempt to "inappropriately . . . usurp the trial court's role" to determine legal issues)). In any event, the Court does not rely on the Lester or Hulseman affidavits in reaching its conclusion as to the KapStone Defendants' motion to dismiss.

**g. The KapStone Defendants' expert disclosure and submission of Mr. Lester's affidavit were timely**

Plaintiffs further objected to Mr. Lester's affidavit on the grounds that: (1) the KapStone Defendants did not timely identify Mr. Lester as an expert; and (2) The KapStone Defendants did not timely serve his affidavit. Plaintiffs are incorrect on both points.

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The KapStone Defendants disclosed Mr. Lester as an expert on April 30, 2019, pursuant to the Court's November 9, 2018 scheduling order, which was in effect at that time. This disclosure was timely. No rule under the South Carolina Rules of Civil Procedure requires production of an expert report or affidavit, nor did the Court's scheduling order impose this requirement. The only obligation the KapStone Defendants had to serve Mr. Lester's affidavit on opposing counsel arose from this Court's instruction at a May 24, 2019 status conference that the parties submit any evidence they planned to rely on at least ten days before the then-scheduled June 21, 2019 hearing on this matter. On May 31, 2019, the KapStone Defendants submitted Mr. Lester's affidavit pursuant to this order, twenty-one days prior to the proposed hearing date.[4] Furthermore, the court provided additional time for the Plaintiffs to depose Mr. Lester, which they did, as well as determine whether they would hire their own expert, which they also did, thus alleviating any potential prejudice to the Plaintiffs as a result of receiving a late report. Accordingly, the KapStone Defendants' disclosure of Mr. Lester and his affidavit was timely.

**ORDER**

Based on the foregoing, this Court rules as follows:

1. The South Carolina's Workers' Compensation Act, S.C. Code Ann. § 42-1-10, *et seq.*, and *Poch v. Bayshore Concrete Products/South Carolina, Inc.* is controlling in this matter;
2. The KapStone Defendants are immune from Plaintiffs' tort actions under *Poch*, as the KapStone Defendants and KapStone Charleston could be viewed as only one economic entity;

[4] This hearing was subsequently rescheduled to July 26, 2019. During this period, Plaintiffs deposed Mr. Lester and submitted a counter affidavit.

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3. The KapStone Defendants properly authenticated and entered into the record the business records and testimony upon which they relied;
4. The Affidavit of Kelly Hulseman need not be struck;
5. The Affidavit of Todd Lester is admissible, albeit not relied upon by this court; and
6. The KapStone Defendants timely disclosed Todd Lester as an expert.

Based on the foregoing, this Court grants the KapStone Defendants' Second Amended Rule 12(b)(1) Motion to Dismiss. With entry of this Order, the Court lifts the stay on merits discovery entered by Judge Hayes on November 28, 2017.

AND SO IT IS ORDERED,

_____
The Honorable Jennifer B. McCoy

_____
Date

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Charleston Common Pleas

| | |
|---|---|
| **Case Caption:** | Jacque Lucas , plaintiff, et al VS KapStone Paper and Packaging Corporation , defendant, et al |
| **Case Number:** | 2017CP1000838 |
| **Type:** | Order/Dismissal |

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2020-02-26 14:21:07 page 26 of 26

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF CHARLESTON | ) | FOR THE NINTH JUDICIAL CIRCUIT |
| | ) | |
| | ) | CIVIL ACTION #: 2017-CP-10-00838 |
| Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly, | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | |
| vs. | ) | **ORDER GRANTING DEFENDANTS KAPSTONE PAPER AND PACKAGING CORPORATION AND KAPSTONE KRAFT PAPER CORPORATION'S MOTION FOR STAY OF DISCOVERY AND DENYING PLAINTIFFS' MOTION TO COMPEL** |
| KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, Safway Group Holdings, LLC, Easy Way Insulation Co., Inc., Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc. and Thompson Industrial Services, LLC, | ) | |
| | ) | |
| Defendants. | ) | |

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JULIE J. ARMSTRONG
CLERK OF COURT

This matter is before the Court pursuant to Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation's (collectively, "the KapStone Defendants") Motion for Stay of Discovery and Plaintiffs' Motion to Compel. A hearing was held before the Court of Common Pleas for Charleston County on October 12, 2017. Attending the hearing was Kyle Findley for Plaintiff, and Richard Willis for the KapStone Defendants.

After consideration of the briefs and arguments of counsel, the Court hereby finds as follows:

## FACTUAL AND PROCEDURAL HISTORY

The Amended Complaint alleges that on May 24, 2016, Plaintiffs suffered injuries

while performing duties as employees of KapStone Charleston Kraft, LLC ("KapStone Charleston"), a subsidiary of the KapStone Defendants. The South Carolina Workers' Compensation Act provides immunity to Plaintiffs' employer from civil liability for Plaintiffs' injuries. *See* S.C. Code Ann. § 42-1-540 (West 2017). Accordingly, Plaintiffs have brought this action against several other parties, including the KapStone Defendants.

The KapStone Defendants assert that the Immunity extends to them, citing governing law, *Poch v. Bayshore*, and that this is a dispositive issue of subject matter jurisdiction. *See* 405 S.C. 359, 747 S.E.2d 757 (2013). As such, the KapStone Defendants filed a Rule 12(b)(1) Motion to Dismiss, and an accompanying Motion for Stay of Merits Discovery.

At the same time, Plaintiffs have served general merits discovery on the KapStone Defendants, and the KapStone Defendants have objected to answering non-jurisdictional discovery accordingly. On October 9, 2017, Plaintiffs filed a Motion to Compel the KapStone Defendants' response to their merits discovery. On October 12, 2017, a hearing was held before this Court regarding the KapStone Defendants' Motion for Stay and the Plaintiffs' Motion to Compel.

**ANALYSIS**

It is generally accepted South Carolina law that a Rule 12(b)(1) motion raises a threshold jurisdictional issue that should be decided before discovery on the merits proceeds. *See, e.g.*, *Simons v. Longbranch Farms, Inc.*, 345 S.C. 277, 280, 547 S.E.2d 500, 502 (Ct. App. 2001) (discussing the bifurcation and consideration of jurisdictional issues before merits issues); *Spivey ex rel. Spivey v. Crawler, et al.*, Order Granting Defendant's Motion to Dismiss for Lack of Jurisdiction, No. 01-CP-193, 2002 WL

34128008, at *1 (S.C. Com. Pl. Oct. 2, 2002) (Segregating jurisdictional challenge from merits and considering first jurisdictional challenge). This includes limiting discovery to the issue of jurisdiction. *See, e.g., Thigpen v. United States*, 800 F.2d 393, 396-97 (4th Cir. 1986) (noting that the District Court of South Carolina appropriately stayed merits discovery where the question of immunity-based lack of jurisdiction was raised); *Coastal States Gas Corp. v. Dept. of Energy*, 84 F.R.D. 278, 282 (D.C. Del. 1979) (explaining that staying merits discovery where jurisdictional discovery is ongoing "is an eminently logical means to prevent wasting the time and effort of all concerned, and to make the most efficient use of judicial resources."). If in the face of a jurisdictional challenge, a court compels merits discovery to be pursued along with jurisdictional discovery, which is what the Plaintiffs seek, the court runs the risk of issuing orders in a matter over which it does not have jurisdiction, rendering those orders nullities. *See Linda Mc Co., Inc. v. Shore*, 375 S.C. 432, 438, 653 S.E.2d 279, 282 (Ct. App. 2007).

Plaintiffs' Motion to Compel and Response to the KapStone Defendants' Motion to Stay have missed their mark. In their motions, Plaintiffs cite cases in which the presiding courts explained the breadth of permissible discovery under Rule 26(b), but did not face the issue of a pending jurisdictional challenge like the one raised by the KapStone Defendants. In this sense, the cases on which Plaintiffs rely are factually distinguishable, and, therefore, are neither binding nor persuasive on this Court regarding the issue at hand.

It is well established that it is within the Court's discretion to schedule discovery in a manner that prevents undue burden or prejudice upon the parties. *See* SCRCP 26(c) (West 2017). In this case, where jurisdiction is unclear, it is "eminently logical" for the

Court to bifurcate discovery and reach a jurisdictional conclusion before granting an order compelling a response to merits discovery. To stagger discovery in this manner avoids exposing the parties and the Court to potentially unnecessary costs and a waste of time and effort, and preserves the integrity of the Court by ensuring that no orders be issued over a party that may not be subject to the Court's power.

**ORDER**

Based on the foregoing, this Court grants the KapStone Defendants' Motion to Stay Merits Discovery until such time as the jurisdictional issues are resolved, and denies Plaintiffs' Motion to Compel such discovery at this time.

AND SO IT IS ORDERED,

The Honorable John C. Hayes, III

#4

This 28th day of November, 2017

Lancaster, 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

RECEIVED
Sep 08 2020
SC Court of Appeals

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Case No. 2017-CP-10-00838

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Jacque Lucas, Shirley Ann Lucas and Daniel Simerly, Appellants,

v.

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

Of Whom

KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation, are Respondents.

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**AMENDED NOTICE OF APPEAL**

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Jacque Lucas, Shirley Ann Lucas and Daniel Simerly appeal the Order Granting Defendants KapStone Paper and Packing Corporation and KapStone Kraft Paper Corporation's Rule 12(b)(1) Motion to Dismiss dated February 26, 2020, and the Order (Form 4) Denying Plaintiffs' Motion to Reconsider dated August 6, 2020, and entered and electronically served by the Clerk of Court for Charleston County on August 7, 2020 (the "59(e) Order"). Undersigned counsel received electronic notice of the entry of the 59(e) Order on August 7, 2020. Plaintiffs also note the Order Granting Defendants KapStone Paper and Packing Corporation and KapStone Kraft Paper Corporation's

Motion for Rule 54(b) Certification of Final Judgment filed on August 26, 2020, which relates to the above Orders being appealed.

**CALLISON TIGHE & ROBINSON, LLC**

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September 8, 2020
Columbia, South Carolina

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| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF CHARLESTON | ) | FOR THE NINTH JUDICIAL CIRCUIT |
| | ) | CIVIL ACTION #: 2017-CP-10-00838 |
| Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly, | ) | |
| Plaintiffs, | ) | |
| vs. | ) | **ORDER GRANTING DEFENDANTS KAPSTONE PAPER AND PACKAGING CORPORATION AND KAPSTONE KRAFT PAPER CORPORATION'S RULE 12(b)(1) MOTION TO DISMISS** |
| KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, Safway Group Holdings, LLC, Easy Way Insulation Co., Inc., Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc. and Thompson Industrial Services, LLC, | ) | |
| Defendants. | ) | |

RECEIVED
Sep 08 2020
SC Court of Appeals

This matter is before the Court pursuant to Defendants KapStone Paper and Packaging Corporation ("KapStone Paper") and KapStone Kraft Paper Corporation's ("KapStone Kraft") (collectively, "the KapStone Defendants") Second Amended Rule 12(b)(1) Motion to Dismiss for Lack of Jurisdiction. A hearing was held before the Court of Common Pleas for Charleston County on September 27, 2019.

After considering the briefs, the record, the controlling law, and arguments of counsel, the Court finds as follows:

## I. FACTUAL AND PROCEDURAL HISTORY

On May 24, 2016, Plaintiffs suffered serious injuries while performing duties as employees of KapStone Charleston Kraft, LLC ("KapStone Charleston"). After Plaintiffs were injured, they filed workers compensation claims to recover under a workers' compensation policy held by

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KapStone Paper for the benefit of its subsidiaries' employees.[1] Plaintiffs have already recovered nearly $4,000,000 under this policy to cover their medical bills and lost wages. *See* Memo. of Law in Support of Petitioner Sentry Cas. Company's Motion to Intervene, at 2-3 (December 21, 2017).

There are three KapStone entities at issue in this case: KapStone Paper, KapStone Kraft, and KapStone Charleston. These entities form a parent-subsidiary relationship: KapStone Paper (a publicly traded corporation) is the sole shareholder of KapStone Kraft (a privately held corporation), which is the sole "member" of KapStone Charleston, LLC (a limited liability company). *See* KAPSTONE-000122; KAPSTONE-000273-287, at 275.

The South Carolina Workers' Compensation Act's "Exclusivity Rule" provides that when a claimant can recover for work-related injuries under a workers'-compensation policy, the claimant's employer is immune to civil liability in tort for those injuries. *See* S.C. Code Ann. § 42-1-540. South Carolina law permits the employee to pursue an action against a parent company of his employer under certain circumstances. *See Poch v. BayShore Concrete Products/South Carolina, Inc.*, 405 S.C. 359, 370-71, 747 S.E.2d 757, 764 (2013) (quoting 82 Am. Jur.2d *Workers' Compensation* § 90 (2003) (footnotes omitted)). On February 17, 2017, Plaintiffs filed a civil action against both KapStone Kraft and KapStone Paper, along with several other third-party defendants unrelated to the KapStone entities.

In response, the KapStone Defendants filed a Rule 12(b)(6) motion to dismiss, asserting that they, like KapStone Charleston, should be accorded tort immunity, pursuant to the analysis in *Poch v. Bayshore Concrete Products/South Carolina, Inc.* ("*Poch*"). On July 31, 2017, the KapStone Defendants filed an Amended Rule 12(b)(6) motion, clarifying their position. On

[1] Initially in these claims, Plaintiffs identified their employer as KapStone Paper, then later amended their claims to identify their employer as KapStone Kraft before finally identifying their employer as KapStone Charleston. *See, e.g.*, Plaintiffs' Workers'-Compensation Pre-Hearing Briefs, KAPSTONE-000435-36; KAPSTONE-000706.

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September 22, 2017, the KapStone Defendants submitted a Second Amended Motion to Dismiss, specifying that they were challenging subject matter jurisdiction under Rule 12(b)(1). *See Poch*, 405 S.C. at 367, 747 S.E.2d at 761 (quoting *Glass v Dow Chem. Co.*, 325 S.C. 198, 201-02, 482 S.E.2d 49, 51 (1997) (noting that issue of employer-employee relationship for purposes of workers' compensation is jurisdictional)); *see also Johnson v. Jackson*, 401 S.C. 152, 735 S.E.2d 664 (Ct. App. 2012) (performing *Poch* analysis under a Rule 12(b)(1) motion to dismiss); *see also Keene v. CNA Holdings, LLC*, 426 S.C. 357, 827 S.E. 183 (Ct. App. 2019) (applying the *Poch* analysis under a Rule 12(b)(6) motion to dismiss).

On November 28, 2017, the Honorable Judge John Hayes entered an Order staying merits discovery until the jurisdictional issue was resolved. Pursuant to this Order, Plaintiffs and the KapStone Defendants engaged in substantial jurisdictional discovery on the various *Poch* factors. Over the next eighteen months, the KapStone Defendants produced approximately 3,800 pages of business records in response to Plaintiffs' jurisdictional discovery requests. In addition, the KapStone Defendants submitted three affidavits by corporate officers, one by Ms. Kelly Hulseman, the Vice President of Shared Services at KapStone Paper, and two by Mr. Mark Niehus, the Vice President and Controller for KapStone Paper. Plaintiffs deposed these affiants. The KapStone Defendants also submitted the affidavit of Mr. Todd Lester, a financial analyst and forensic accounting consultant, on the nature of the KapStone companies' corporate relationship from the perspective of a financial analyst. Mr. Lester was deposed on September 5, 2019.

Plaintiffs sought to exclude Mr. Lester's affidavit, asserting that Mr. Lester's opinion "constituted improper conclusions of law." After considering the parties' arguments and briefs on this issue, the Court ruled in favor of admitting Mr. Lester's affidavit. *See* July 29, 2019 Order.

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Plaintiffs subsequently submitted an affidavit by David Fuller, a financial analyst, to respond to Mr. Lester's affidavit.

On September 27, 2019, this Court heard the parties' arguments on the KapStone Defendants' Second Amended Rule 12(b)(1) Motion to Dismiss. In their briefs and at the hearing, Plaintiffs asserted the following arguments: (1) *Poch* is not controlling in this case; (2) even if *Poch* is controlling, the record does not support a conclusion that the KapStone Defendants were sufficiently economically integrated with KapStone Charleston to justify the extension of workers' compensation immunity; (3) the post-incident "One KapStone" project demonstrates the KapStone entities were not integrated under *Poch*; (4) the Court should strike the affidavit of Ms. Hulseman; (5) Mr. Lester's Affidavit is inadmissible legal opinion; and (6) Mr. Lester's Affidavit was untimely. Upon hearing the parties' arguments, considering the law and reviewing the extensive record, the Court finds that the KapStone Defendants' motion to dismiss should be granted.

## II. APPLICABLE LAW

### a. *Poch v. Bayshore Concrete Products/South Carolina, Inc.*

"The Workers' Compensation Act is the exclusive remedy against an employer for an employee's work-related accident or injury." *Poch*, 405 S.C. at 366, 747 S.E.2d at 761 (quoting *Edens v. Bellini,* 359 S.C. 433, 441, 597 S.E.2d 863, 867 (Ct. App. 2004)). "The exclusivity provision of the Act precludes an employee from maintaining a tort action against an employer where the employee sustains a work-related injury." *Id.* (quoting *Edens* at 441–42, 597 S.E.2d 863) (interpreting S.C. Code Ann. § 42–1–540 (1985)).

Concerning whether the Exclusivity Rule extends to an employer's corporate parent, the South Carolina Supreme Court has explained:

> A parent corporation is generally not immune from an action in tort by an injured employee of its subsidiary by virtue of the employee's

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> entitlement to workers' compensation. Where an employee of a subsidiary is injured while working on property owned by the parent corporation and receives workers' compensation benefits from the subsidiary, the employee may maintain an action in tort against the parent corporation even though parent and subsidiary are covered by same policy of workers' compensation insurance.
>
> *However*, a parent corporation's immunity has been recognized in some instances on the theory that the parent is or may be found to be the alter ego of the employer-subsidiary corporation.

*Poch*, 405 S.C. at 370-71, 747 S.E.2d at 763 (quoting 82 Am.Jur.2d *Workers' Compensation* § 90 (2003) (footnotes omitted) (emphasis added) (also citing Annotation, *Workers' Compensation Immunity as Extending to One Owning Controlling Interest in Employer Corporation,* 30 A.L.R.4th 948, § 2 (1984 & Supp. 2013) (discussing alter ego theory by which a parent corporation may seek tort immunity via its interest in the employer-corporation; noting that immunity does not extend where: (1) parent and subsidiary are separate and distinct entities; or (2) there is evidence of fraud, abuse of corporate privilege, or an attempt to circumvent the law to avoid liability)).

The Supreme Court of South Carolina has adopted an eight-factor test (the "*Poch* test") used to determine whether a parent company and its subsidiary are so integrated that the subsidiary's workers' compensation tort immunity should be extended to the parent. 405 S.C. at 371-72, 747 S.E.2d at 764 (citing *Monroe v. Monsanto Co.*, 531 F. Supp. 426 (1982)). This test, the court explained, is "the correct approach" under South Carolina law to "determin[e] whether two related businesses are separate and distinct corporations for workers' compensation purposes." *Id.*

The *Poch* test considers the following factors:

> (1) Did the two businesses maintain separate corporate identities?
>
> (2) Did the two businesses maintain separate Boards of Directors?
>
> (3) Did the two businesses transact business from different locations under different managers?

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(4) Did the two businesses hire and pay their own employees?

(5) Did the two corporations hold themselves out to their employees as two separate identities?

(6) Did the two corporations engage in different business activities?

(7) Did the two corporations maintain separate books, bank accounts, and payroll records?

(8) Did the two corporations file separate tax returns?

*Poch*, 405 S.C. at 372, 747 S.E.2d at 764 (quoting *Monroe* at 434). The court noted that "these factors [a]re not the only relevant factors and that none of the factors alone provide[] immunity." *Id.*

**b. Standard of review under the *Poch* test**

"[T]he determination of the employer-employee relationship for workers' compensation purposes is jurisdictional." *Poch*, 405 S.C. at 367, 747 S.E.2d at 761 (quoting *Glass v Dow Chem. Co.*, 325 S.C. 198, 201-02, 482 S.E.2d 49, 51 (1997)). Thus, when a court is faced with a motion to dismiss based on *Poch*, the court "has the power and duty to review the entire record and decide the jurisdictional facts in accord with the preponderance of the evidence." *Id.* "Any doubts as to a worker's status should be resolved in favor of including him or her under the Workers' Compensation Act." *Poch*, 405 S.C. at 367, 747 S.E.2d at 761 (quoting *Posey v. Proper Mold & Eng'g, Inc.*, 378 S.C. 210, 218-19, 661 S.E.2d 395, 400 (Ct. App. 2008)). This preference applies with equal force to cases in which the employer-employee relationship is being asserted as a sword (to obtain coverage) or a shield (to assert immunity). *See Olmstead v. Shakespeare*, 354 S.C. 421, 427, 581 S.E.2d 483, 486 (2003). ("[B]road construction in favor of coverage . . . . is the standard of review for cases in which the workers' compensation statute is used as a shield to liability under another theory[.]").

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## III. ANALYSES

Having reviewed the record and considered the parties' arguments, the Court finds as follows:

### a. The eight-factor test adopted in *Poch v. Bayshore* is controlling.

As a preliminary matter, this dispute is governed by the South Carolina's Workers' Compensation Act, S.C. Code Ann. § 42-1-10, *et seq.*, and *Poch v. Bayshore*. Plaintiffs sustained injuries in the scope of their employment with KapStone Charleston and recovered approximately $4,000,000 in benefits through workers' compensation claims. Plaintiffs seek to recover against KapStone Kraft and KapStone Paper, respectively the corporate parent and grandparent of KapStone Charleston, for the same injuries. The KapStone Defendants have asserted that Kapstone Charleston's workers' compensation tort immunity extends to them because of the extensive economic interrelation between the three companies. Therefore, the eight-factor test adopted by the Supreme Court of South Carolina in *Poch* is "the correct approach" to determine whether these KapStone entities "are separate and distinct corporations for workers' compensation purposes." 405 S.C. at 371-72, 747 S.E.2d at 764 (citing *Monroe v. Monsanto Co.*, 531 F. Supp. 426 (1982)).

### b. The KapStone Defendants and KapStone Charleston were economically integrated under *Poch*

Having determined that the *Poch* analysis controls in this dispute, the Court has reviewed the materials submitted by the parties and finds as follows:

#### 1. Did the two businesses maintain separate corporate identities?

In *Poch*, the Supreme Court of South Carolina held that the relationship between Bayshore Corp. and its subsidiary Bayshore SC satisfied this factor because the companies used the named

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"Bayshore" "interchangeably" in signing documents. *See* 405 S.C. at 373, 747 S.E.2d at 764. In addition, Bayshore SC used several documents, including letterhead, employment applications, benefits packages, and safety manuals that "displayed the standard Bayshore Corp. designation." *See id.* Further, the court noted that one workers' compensation policy covered all of the Bayshore subsidiaries. *See id.*

Review of the documents produced by the KapStone Defendants in this matter shows that the KapStone companies maintained a shared corporate identity at least to the same degree of the companies in *Poch*, if not more so.[2] Internal documents, external communications, and public filings, such as KapStone Paper's 10-K, all show that KapStone Paper, KapStone Kraft, and KapStone Charleston often referred to themselves collectively as "KapStone" or the "Company." *See, e.g.*, KAPSTONE-000002-134, at 3-40, *et seq.* (referring to the KapStone companies collectively as "KapStone" or "we"). The KapStone entities shared the "KapStone" name, logo, trademark, and color scheme. *See, e.g.*, KAPSTONE-000344-45, 376, 465, 684, 758-59, 3438 (demonstrating use of shared name, logo, trademark, and color scheme). Part of this shared corporate identity included a shared "KapStone" website, *see* KAPSTONE-000758-59, letterhead with the "KapStone" logo and trademark, *see* KAPSTONE-000344-45, common employment forms, *see* KAPSTONE-000376, and shared corporate policies and procedures. *See* KAPSTONE-000465, 1897-98, 1899, 1901, 1902-09, 1910-13.

[2] It is important to note that the concept of a "shared corporate identity" is separate from the concept of "separate entities." Corporate identity is the "[c]ombination of color schemes, designs, words, etc., that a firm employs to make a visual statement about itself and to communicate its business philosophy. It is an enduring symbol of how a firm views itself, how it wishes to be viewed by others, and how others recognize and remember it. . . . [C]orporate identity is . . . conveyed by things such as buildings, décor, logo, name, slogan, stationery, uniforms. . . ." *See* Business Dictionary, Definition of "Corporate Identity," http://www.businessdictionary.com/definition/corporate-identity.html.

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Plaintiffs' employment applications, hiring letters, and signed company policies all exhibited the shared "KapStone Paper" name, logo, and trademark. Plaintiffs' employment applications were on KapStone Paper documents. *See* KAPSTONE-000702-05, 741-44. Plaintiff Simerly's hiring letter exhibited the KapStone Paper logo and included the following: "On behalf of KapStone Paper and Packaging Corporation, I am delighted to extend an offer of employment to you for the position of Lubricator in the Maintenance Department." *See* KAPSTONE-000345. As to Plaintiff Lucas, the hiring letter also had the KapStone Paper logo and offered a position "at the KapStone Kraft Division, North Charleston Mill." *See* KAPSTONE-000344. Finally, as also noted in *Poch*, the workers' compensation policy at issue was procured and funded by the corporate grandparent KapStone Paper and covered all of the KapStone subsidiaries' employees, including Plaintiffs. *See* KAPSTONE-000301-306, at 303 (declaration page of the applicable policy). Accordingly, a preponderance of the evidence supports a finding that the KapStone Defendants maintained a shared corporate identity with KapStone Charleston.

**2. <u>Did the two businesses maintain separate Boards of Directors?</u>**

In *Poch*, the Supreme Court found this factor was satisfied when "with the exception of two people, the corporations shared the same officers and directors." *See* 405 S.C. at 373, 747 S.E.2d at 764. The court noted that Bayshore SC's Board of Directors was comprised entirely of members of Bayshore Corp.'s Board of Directors, and that all officers received their salaries from Bayshore Corp. *Id.*

Under the analysis in *Poch*, the KapStone Defendants satisfy this element. The documents produced by the KapStone Defendants, as well as the deposition testimony of Ms. Hulseman and Mr. Niehus, show that the KapStone Defendants maintained overlapping Officers and Boards of Directors. Each of the KapStone companies had the same persons as officers in essentially the

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same positions. *See* KAPSTONE-001184-85. KapStone Charleston, as an LLC, had no Board of Directors, but had the same officers as KapStone Kraft and KapStone Paper. *See id.* The LLC's sole managing member was KapStone Kraft, who appointed KapStone Charleston's officers. *See* KAPSTONE-000273-287, at 276 and 277. Thus, KapStone Charleston was governed directly by KapStone Kraft's Board of Directors, all of whom were also on KapStone Paper's Board of Directors. *See* KAPSTONE-001184-85. The record also shows that the salaries of these Directors and Officers, like all KapStone employees, were funded by KapStone Paper. Accordingly, a preponderance of the evidence supports a finding that the KapStone Defendants and KapStone had overlapping Officers, and that KapStone Kraft's and KapStone Paper's Board of Directors had direct influence over KapStone Charleston.

**3. <u>Did the two businesses transact business from different locations under different managers?</u>**

In *Poch*, the Supreme Court found that Bayshore SC and Bayshore Corp. satisfied this factor, even though they were headquartered in different states. *See* 405 S.C. at 373, S.E.2d at 764. There, the court noted that the parent entered into leases for and purchased equipment on behalf of its subsidiary, and periodically sent its own employees to oversee its subsidiaries' operations. *See id.* Further, the parent provided services for its subsidiary, including the processing and paying of invoices, and human resources services. *See id.*

Here, the KapStone Defendants were headquartered in the same location as their subsidiaries, at KapStone's "corporate office," located at 1101 Skokie Blvd, Suite 300, in Northbrook, Illinois. *See* KAPSTONE-00002; KAPSTONE-000275-276. KapStone Kraft's primary physical operations are performed at its mill in Roanoke Rapids, North Carolina. *See* Niehus Dep. 45:8-21. KapStone Charleston's paper mill is located in North Charleston, South Carolina, and four chip mills located throughout South Carolina. *See* Niehus Dep. 59:14-21. Each

location employs managers who reside near and work at the various plants. *See* KAPSTONE-002596-2650 (records maintained by KapStone Paper on every KapStone employee's location, payroll listing, and role).

Although each KapStone entity was engaged in its own day-to-day operations, like the Bayshore entities in *Poch,* several KapStone Paper and KapStone Kraft employees worked at KapStone Charleston's facilities (approximately 8% of the total work force at the Charleston mill), and several KapStone Kraft employees worked at the corporate office in Northbrook, Illinois (approximately 15% of the work force). *See* KAPSTONE-002596-2650. The various operational policies for KapStone Charleston show that these subsidiaries were subject to oversight and policies implemented by KapStone Paper at the corporate office. *See* KAPSTONE-000420; 1902-1909; 1914-1917; 1947; 1964-1968.

As the headquarters for the KapStone entities, the corporate office served as KapStone's "nerve center." It was the location for all board meetings. *See* Niehus Dep. 132:6-132:12. It was also the location from which KapStone Paper provided shared accounting services, shared payroll services, and several other shared administrative services for KapStone Kraft and KapStone Charleston. *See* Hulseman Dep. 270:7-272:14.

KapStone Paper and KapStone Kraft also entered into leases on KapStone Charleston's behalf for machinery used at KapStone Charleston's North Charleston mill. *See* KAPSTONE-003286-3300; 3301-3314; 3315-3324; 3325-3340; 3341-3356; 3387-3396; 3397-3435; 3436-3437. These leases were entered into at the corporate office. *See id.* The corporate office was also the location of KapStone's "centralized purchasing system," which directed purchase orders for paper to the KapStone entity best suited to fulfil the request. *See* Niehus Dep. 85:9-86:10. KapStone Paper processed invoices and made payments from the corporate office for services and



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deliveries to KapStone Charleston's facilities. *See* KAPSTONE-002125-29. KapStone Paper procured and funded employee payroll and benefits for KapStone Kraft and KapStone Charleston employees at the corporate office, *see* KAPSTONE-000439, 335-337, 2510, 718, including the applicable workers' compensation insurance policy. *See* KAPSTONE-000301-306, at 303. Accordingly, a preponderance of the evidence supports a finding that the KapStone companies conducted business from shared locations, to at least the same degree as the entities in *Poch*.

**4. Did the two businesses hire and pay their own employees?**

In *Poch*, the Supreme Court found this factor was satisfied because Bayshore Corp. hired, fired, and provided compensation and benefits to Bayshore SC's salaried employees. *See* 405 S.C. at 373-74, 747 S.E.2d at 764-65. However, the court noted that Bayshore SC was in charge of hiring and paying its hourly workers, in addition to hiring temporary workers, although temporary workers' compensation was indirectly provided by Bayshore Corp. *See id.*

Each KapStone entity generally hired its own local employees, both hourly and salaried, although as noted above, there was some employee overlap between locations. Payroll records show that all employee compensation was processed and funded by KapStone Paper through shared payroll services and a third-party payment processor, ADP. *See* KAPSTONE-000439, 335-337, 2510, 718 (in that order). Benefits packages presentations for hourly employees of KapStone Kraft and KapStone Charleston show that hourly employees' benefits, including life insurance, health insurance, short and long-term disability insurance, employee assistance programs, tuition reimbursement, scholarships for employee dependents, workers' compensation policies, and 401(k)s were procured and funded by KapStone Paper. *See* KAPSTONE-000149-192, 403-05. As discussed further below under factor 7, all of the funds generated by the KapStone subsidiaries were transferred overnight to KapStone Paper, who controlled the finances of its subsidiaries with

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minor exception.[3] *See* KAPSTONE-000339 (identifying zero-balance accounts as "ZBA"). Accordingly, while KapStone Paper was not directly in charge of hiring or firing employees at KapStone Charleston, it was in charge of handling payroll and other forms of compensation.

**5. Did the two corporations hold themselves out to their employees as two separate identities?**

In *Poch*, the Supreme Court found that Bayshore SC and Bayshore Corp held themselves out as related entities because Bayshore SC employees "were provided with employment documents that were standard for Bayshore Corp." *See* 405 S.C. at 374, 747 S.E.2d at 765. That is also the case here.

The KapStone entities held themselves out to their employees and the public as related companies with a shared corporate identity. In addition to general shared use of the "KapStone" name, logo, trademark, internal letterhead, website, and business forms, Plaintiffs' personnel files show that the KapStone entities held themselves out to employees as interrelated. Plaintiffs' employment applications to work at KapStone Charleston's mill used the KapStone Paper logo and referred specifically and repeatedly to "KapStone Paper and Packaging Corporation" as the entity to whom the application was being submitted. *See* KAPSTONE-000702-705, 741-744. As part of their application for employment, Plaintiffs signed a "KapStone Paper and Packaging Corporation" background check authorization form. *See* KAPSTONE-000698, 745. Plaintiffs received hiring letters that referenced KapStone Paper and KapStone Kraft. *See* KAPSTONE-000344, 345. Once hired, Plaintiffs signed off on several KapStone Paper and Packaging Corporation policies, including the "KapStone Paper and Packaging Corporation Code of Conduct and Ethics," *see* KAPSTONE-000694, 736, 2082, *et seq.*, and the "KapStone Paper and Packaging

[3] KapStone Paper and KapStone Charleston also appear to have jointly held bank accounts with Bank of America/Merrill Lynch. *See* KAPSTONE-001620-1641. This suggests that KapStone Charleston had some financial independence, although still tethered to KapStone Paper. *See* KAPSTONE-001969-1970.

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Corporation Computer Use Policy User Agreement." *See* KAPSTONE-000464. When Plaintiffs sought to update their personal data with the company, they filled out a "KapStone Paper and Packaging Corporation Personal Data Change Form." *See* KAPSTONE-000684. This is all evidence of a shared corporate identity. As such, a preponderance of the evidence supports a finding that the KapStone entities held themselves out to their employees and the public as having a common identity.

**6. Did the two corporations engage in different business activities?**

In *Poch*, the Supreme Court held that Bayshore Corp. and Bayshore SC "engaged in the same business activity of providing concrete forms for construction sites." *See* 405 S.C. at 375, 747 S.E.2d at 765. Here, while KapStone Kraft and KapStone Charleston were engaged in the same general business of manufacturing kraft paper products, KapStone Paper did not literally manufacture paper. Instead, KapStone Paper managed the financial aspects of its subsidiaries that were engaged in the paper-manufacturing industry.

The record shows that the KapStone companies collectively engaged in the business of manufacturing, selling, and distributing paper products. The various KapStone companies were segmented into separate "divisions," each of which performed a different step in the paper-making and paper-selling process. These included the Mill Division (making kraft paper), the Container Division (turning kraft paper into boxes or other packaging) (occasionally collectively referred to as the "Paper and Packaging Segment"), and Distribution (shipping the paper and boxes to customers). *See* KAPSTONE-00002-134.

As part of the Mill Division, KapStone Charleston and KapStone Kraft operated paper mills that manufactured kraft paper products. *See id.* at 2, 4, 6. KapStone Paper provided managerial and financial oversight to these operations, and supplied shared accounting, payroll,

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and other administrative services for its subsidiaries. *See id.* at 2-9. The array of KapStone entities were engaged in the various functions necessary to the manufacture, sale and distribution of kraft paper products. *See id.* In essence, the various KapStone companies operated as a single-purpose entity with specialized divisions, all funded by KapStone Paper. In addition to functioning as a single-purpose entity, KapStone Paper also marketed its corporate family to the public as a single paper company, and marketed and sold its products as coming from "KapStone." *See* KAPSTONE-000758-759.

In addition to functioning like a single paper company, several governmental agencies, including the EPA and OSHA, officially categorized KapStone Paper and its subsidiaries under NAICS and SIC codes designated for paper manufacturing, paper mills, and pulp mills. *See, e.g.*, EPA, *Economic Impact Analysis: Proposed Revisions to the National Emission Standards for Hazardous Air Pollutants*, Table 2-7 (October 2016), available at https://www. epa.gov/sites /production/files/2016-12/documents/subpart_mm_eia_10_31_2016_ final.pdf (identifying KapStone Paper as one of the largest "U.S. Pulp and Paper Companies in 2015").

The KapStone entities' overall function as a paper manufacturing business is more akin to the entities in *Poch* than those discussed in *Monroe v. Monsanto*, where the court found insufficient integration. *See* 531 F. Supp. 426, 434 (1982). In *Poch*, the court found the parent and subsidiary entities were both engaged in manufacturing concrete forms for construction projects. *See* 405 S.C. at 374, 747 S.E.2d at 765. Conversely, in *Monroe v. Monsanto*, the court found that the sibling entities operated independently of one another, one company "processing . . . continuous fiber into carpet staple" and the other "processing . . . fibers and manufactur[ing] and marketing fabrics." *See id.* Here, as noted above, to the extent they were in different KapStone divisions, the KapStone entities did not engage in exactly the same day-to-day activities. Despite this, the

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several entities were collectively engaged in the business of paper manufacturing. As such, a preponderance of the evidence supports a conclusion that the KapStone entities satisfied this element.

7. **Did the two corporations maintain separate books, bank accounts, and payroll records?**

In *Poch*, the Supreme Court found that Bayshore Corp. and Bayshore SC maintained separate books, accounting records, and bank accounts for purposes of financial accountability. *See* 405 S.C. at 374, 747 S.E.2d at 765. However, the court found that this factor was satisfied because "Bayshore SC contributed to Bayshore Corp.'s gross revenues" and "[m]ore importantly, Bayshore Corp. was entirely responsible for the financial operation of Bayshore SC." *See id.*

Here, the KapStone entities maintained consolidated books and payroll records. The KapStone subsidiaries had individual bank accounts, but these were "zero balance accounts" that did not serve as operating accounts. *See* KAPSTONE-000339. Any funds in these accounts were swept nightly into a KapStone Paper "master account." *See id.* KapStone Paper maintained consolidated electronic records for the operations of its subsidiaries, in which it recorded its subsidiaries' profits and losses, amalgamated into a single profit and loss chart, as well as overall product manufacture and sale, costs of goods sold, unit average selling price, and employee headcount for its subsidiaries' locations, among other details. *See* KAPSTONE-003462-3480.

The KapStone entities also collectively entered into a "Receivables Purchase Agreement" and "Receivables Sales Agreement" whereby ownership of "accounts receivable" generated by KapStone subsidiaries were transferred to KapStone Receivables, LLC, which would sell the accounts receivables to a "purchaser" (in this case, Wells Fargo Bank), for ninety-nine cents on the dollar. *See* KAPSTONE-002243-2488. KapStone Receivables, LLC, would then transfer the funds obtained from the sale of its accounts receivable to KapStone Paper's "master account,"

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from which KapStone Paper would then fund the operations, payroll, benefits, and other costs of its subsidiaries, including KapStone Charleston. *See id.*

In addition to the above, KapStone Paper maintained consolidated payroll records for its subsidiaries' employees. Payroll was processed by KapStone Paper at the "corporate office," after which KapStone Paper would request ADP, a third-party vendor, to process payments; ADP would then draft payroll checks with funds provided by KapStone Paper, for direct deposit or distribution to its subsidiaries' employees. *See* KAPSTONE-000439, 335-337, 2510, 718. As such, there is sufficient evidence to find that the KapStone Defendants satisfied this factor.

**8. Did the two corporations file separate tax returns?**

In *Poch*, the Supreme Court noted that this is a "weighty" factor, yet still found sufficient integration despite finding that the Bayshore entities maintained separate tax identification numbers and filed separate tax returns. *See* 405 S.C. 374, 747 S.E.2d at 765. Comparatively, the *Monsanto* court found that this factor was satisfied simply by the entities at issue filing a consolidated tax return. *See* 531 F. Supp. 426, 434. Based on this, the Court finds the KapStone entities satisfied this factor, as they filed a single consolidated federal tax return.

Pursuant to the above analysis, the Court finds the documents in the record, by a preponderance of the evidence, supports a conclusion that the KapStone Defendants were so economically integrated and commingled that they "could be viewed only as one economic entity." *See Poch*, 405 S.C. at 374, 747 S.E.2d at 765.

**c. The post-accident "One KapStone" documents show that the KapStone Defendants were financially integrated**

Plaintiffs argued that the "One KapStone" documents, mostly generated after Plaintiffs' accident, and which related to efforts to improve "integration" of operations between KapStone's Mill and Container Divisions, show that the KapStone entities were not financially integrated

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under *Poch* at the time of Plaintiffs' injuries. After reviewing these documents, the Court disagrees.

As an initial matter, the question of *Poch*-based immunity is based on the degree of economic integration between entities as of the date of the employee's injuries. *See Poch v. BayShore Concrete Products/South Carolina, Inc.*, 405 S.C. 359, 747 S.E.2d 757. To this extent, the post-incident nature of the "One KapStone" documents arguably renders these documents less relevant to the issue before the Court. However, Plaintiffs argue that post-incident efforts to become more integrated imply a lack of previous integration. Thus, the Court has reviewed these documents as part of the *Poch* inquiry.

The "One KapStone" documents are relevant and probative of the *Poch* issues, although not necessarily in the manner Plaintiffs assert. On their face, the "One KapStone" documents appear to have been developed in furtherance of a goal to better "integrate" the *operations* of the KapStone Mill and Container Divisions: to make them more uniform. *See* KAPSTONE-0003543; KAPSTONE-003483-3796. As explained above, KapStone's Mill Division companies, which included KapStone Kraft and KapStone Charleston, manufactured kraft paper. KapStone's Container Division companies, which included KapStone Container Corporation, used the kraft paper made by the Mill Division to manufacture cardboard boxes and other forms of packaging. These are the segments of the KapStone family of companies that were subject to the "One KapStone" plan. *See, e.g.*, KAPSTONE-003543 (discussing the urgent need to "[i]ntegrate the operations and supporting functions of our Mill and Container systems" and "[i]dentify and execute major performance improvements across both"); KAPSTONE-003547 (planning by 2019 to "[d]evelop standardized scales, supply chain, production, and distribution processes across Container and Mill Systems").

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Plaintiffs assert that the use of the words "integrate" and "integration" in the "One KapStone" documents shows that the KapStone companies were not integrated under *Poch*. This argument conflates the meaning of "economic integration," as it is used in *Poch*, with the meaning of "integrate" in the context of the "One KapStone" documents. Under *Poch*, "integration" includes factors such as shared corporate identity, economic (financial) interrelation, and shared corporate governance. *See* 405 S.C. at 372, 747 S.E.2d at 764 (quoting *Monroe* at 434). In the "One KapStone" documents, "integration" appears to refer to operational uniformity between the KapStone Mill and Container Division entities.

The "One KapStone" documents demonstrate economic integration, shared books and accounting, overlapping management and corporate control over subsidiary operations and finances, as well as a shared corporate identity. *See* KAPSTONE-003536-3572. The "One KapStone" documents note that the purpose of the program was to capture a "$150M EBITDA gap" by making the operations of the Mill and Container Divisions more consistent and efficient. *See, e.g.*, KAPSTONE-0003543, 3546, 3549, 3573, 3672, 3678 (referencing KapStone EBITDA). This is telling. EBITDA stands for "earnings before interest, tax, depreciation, and amortization." The fact that KapStone Paper identified an "EBITDA gap" on a KapStone-wide scale, caused by inconsistencies between its subsidiaries, shows that KapStone Paper maintained consolidated books and accounts from which to reach this conclusion. Further, the fact that KapStone Paper could implement a "One KapStone" program to make its subsidiaries' operations more consistent demonstrates KapStone Paper's overarching control over its subsidiaries' business operations. Finally, as to corporate identity, the "One KapStone" documents repeatedly refer to all of the KapStone entities collectively as "KapStone," "we," or "the Company." *See, e.g.*, KAPSTONE-

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003536-3572, 3579, 3580, 3591, 3599, 3606, 3702, 3734. The KapStone name, logo, and trademark is used throughout the documents. *See id.*

Based on the foregoing, the Court finds that the "One KapStone" documents support a finding that the KapStone Defendants were economically integrated with KapStone Charleston under the *Poch* test.

**d. The KapStone Defendants properly authenticated and entered supporting business records and related testimony into the record before this Court**

The KapStone Defendants' have supported their motion to dismiss with approximately 3,800 pages of documents produced in response to Plaintiffs' discovery requests. Plaintiffs objected to the KapStone Defendants' referencing these documents, asserting that the documents were not "in the record." Plaintiffs raise a similar objection in footnote 1 of their July 25, 2019 Response in Opposition to Defendants KapStone's Memorandum of Law in Support of the Admissibility of the Affidavit of Todd K. Lester, arguing: "Defendants' attempt to put every document produced into the record in support of their motion to dismiss fails, as the business records affiant could not properly authenticate those records in his deposition."

The requirement of authentication is satisfied by evidence sufficient to support a finding that the document in question is what the proponent claims it to be. Rule 901(a), SCRE. Under this rule, the testimony of a witness with knowledge that a matter is what it is claimed to be is sufficient to establish its authenticity. *See* Rule 901(b)(1), SCRE. "'The burden to authenticate . . . is not high' and requires only that the proponent 'offer[] a satisfactory foundation from which the [fact finder] could reasonably find that the evidence is authentic.'" *Deep Keel, LLC v. Atl. Private Equity Grp.*, 413 S.C. 58, 773 S.E.2d 607 (Ct. App. 2015) (quoting *United States v. Hassan*, 742 F.3d 104, 133 (4th Cir. 2014)).

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The KapStone Defendants authenticated the documents on which they rely through two affidavits of Mark Niehus, the Vice President and Controller for KapStone Paper, executed on July 13, 2018 and June 14, 2019. In these affidavits, Mr. Niehus affirms that he reviewed the documents and affirmed that they were authentic records of the KapStone Defendants' business activities, created and maintained in the regular course of business. In the deposition of Mr. Niehus on January 8, 2019, Plaintiff acknowledged that Mr. Neihus had authenticated the documents listed in the appendix to the June 13, 2018 affidavit. *See* Niehus Dep. 23:16-21. As such, the Court finds that the KapStone Defendants have authenticated the documents in the record.

Plaintiffs' second argument, that the KapStone Defendants did not enter these documents into the record, is incorrect. Pursuant to the Court's directive on submitting large files of documents, on June 4, 2019, the KapStone Defendants sent the Court two CDs, one of which contained the July 13, 2018 Affidavit of Mark Neihus 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). On June 17, 2019, the KapStone Defendants sent the Court a second CD with 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). In doing so, the KapStone Defendants have entered these documents into the record in support of their motion to dismiss.

**e. <u>The Affidavit of Kelly Hulseman</u>**

Plaintiffs argued in their May 24, 2019 Response in Opposition to the KapStone Defendants' Motion to Dismiss and at the September 27, 2019 hearing, that the affidavit of Ms. Hulseman must be stricken, because in her affidavit Ms. Hulseman denied having "personal knowledge" of the information included in it, therefore rendering it a "sham."

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The South Carolina Rules of Evidence require evidence showing a witness has "personal knowledge" of a matter in order to testify about it. *See* Rule 602, SCRE. "Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony." *Id.* "Personal knowledge" may be based on personal observations, experience, or first-hand knowledge of information. *See, e.g., Divine v. Robbins*, 385 S.C. 23, 40-41, 683 S.E.2d 286, 295 (Ct. App. 2009) (permitting witness testimony based on personal observations, experiences, and first-hand knowledge).

There is sufficient evidence for the Court to find that Ms. Hulseman had personal knowledge of certain facts, as testified to in her deposition. Ms. Hulseman testified in her deposition that she had worked in the KapStone "corporate office" for over ten years, having started in 2007. *See, e.g.*, Hulseman Dep. 56:13-14. Ms. Hulseman testified repeatedly that she had personal knowledge of many of the facts in her affidavit. *See* Hulseman Dep. 30:22-31:2; 33:12-16; 221:4-12; 222:9-13; 233:18-22; 241:4-11; 242:7-12; 251:7-16; 255:1-7; 256:6-18.

Plaintiffs' assertion that the affidavit was a "sham" is a misunderstanding of the definition of a "sham" affidavit under South Carolina law. In this jurisdiction, a "sham" affidavit is one created to contradict prior harmful testimony. *See Cothran v. Brown*, 357 S.C. 210, 218, 592 S.E.2d 629, 633 (2004) (holding same). Here, Ms. Hulseman's affidavit was generated prior to her deposition, and was substantively consistent with her deposition testimony. As such, the affidavit is not a "sham."

The Court finds sufficient evidence exists that Ms. Hulseman had personal knowledge upon which to base certain facts in her affidavit. The affidavit is not a "sham" affidavit. Accordingly, the Court declines to strike the affidavit. Given the extensive documentary evidence in the record, the Court does not need to rely on Ms. Hulseman's affidavit to reach its conclusion in this matter.

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The Court has instead focused its attention on the relevant documentary evidence included in the record by the KapStone Defendants, cited herein.

**f. Todd Lester's expert affidavit**

Todd Lester's expert affidavit is admissible to assist the Court in its role as fact finder, although, as is the case with Ms. Hulseman's affidavit, based on the substantial documentary support in the record, the Court has not relied on the substance of the affidavit to reach its factual findings in this matter. The "question of law" in this case is whether the Court has jurisdiction over the KapStone Defendants in light of the degree of economic integration between the KapStone Defendants and KapStone Charleston. Mr. Lester did not offer a legal opinion as to this issue. His affidavit focuses on the nature of documents and the corporate relationships from the perspective of a financial analyst. These are factual matters generally beyond the knowledge of a lay person. As such, the affidavit is both appropriate expert opinion under Rule 702, SCRE, and does not violate the rule against expert opinions on issues of law. *See Dawkins v. Fields*, 354 S.C. 58, 65, 580 S.E.2d 433, 437 (2003) (citing *O'Quinn v. Beach Assocs*, 272 S.C. 95, 106-07, 249 S.E.2d 734, 739-40 (1978) (holding an expert opinion may not contain "legal arguments and conclusions" in an attempt to "inappropriately . . . usurp the trial court's role" to determine legal issues)). In any event, the Court does not rely on the Lester or Hulseman affidavits in reaching its conclusion as to the KapStone Defendants' motion to dismiss.

**g. The KapStone Defendants' expert disclosure and submission of Mr. Lester's affidavit were timely**

Plaintiffs further objected to Mr. Lester's affidavit on the grounds that: (1) the KapStone Defendants did not timely identify Mr. Lester as an expert; and (2) The KapStone Defendants did not timely serve his affidavit. Plaintiffs are incorrect on both points.

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The KapStone Defendants disclosed Mr. Lester as an expert on April 30, 2019, pursuant to the Court's November 9, 2018 scheduling order, which was in effect at that time. This disclosure was timely. No rule under the South Carolina Rules of Civil Procedure requires production of an expert report or affidavit, nor did the Court's scheduling order impose this requirement. The only obligation the KapStone Defendants had to serve Mr. Lester's affidavit on opposing counsel arose from this Court's instruction at a May 24, 2019 status conference that the parties submit any evidence they planned to rely on at least ten days before the then-scheduled June 21, 2019 hearing on this matter. On May 31, 2019, the KapStone Defendants submitted Mr. Lester's affidavit pursuant to this order, twenty-one days prior to the proposed hearing date.[4] Furthermore, the court provided additional time for the Plaintiffs to depose Mr. Lester, which they did, as well as determine whether they would hire their own expert, which they also did, thus alleviating any potential prejudice to the Plaintiffs as a result of receiving a late report. Accordingly, the KapStone Defendants' disclosure of Mr. Lester and his affidavit was timely.

**ORDER**

Based on the foregoing, this Court rules as follows:

1. The South Carolina's Workers' Compensation Act, S.C. Code Ann. § 42-1-10, *et seq.*, and *Poch v. Bayshore Concrete Products/South Carolina, Inc.* is controlling in this matter;
2. The KapStone Defendants are immune from Plaintiffs' tort actions under *Poch*, as the KapStone Defendants and KapStone Charleston could be viewed as only one economic entity;

[4] This hearing was subsequently rescheduled to July 26, 2019. During this period, Plaintiffs deposed Mr. Lester and submitted a counter affidavit.

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3. The KapStone Defendants properly authenticated and entered into the record the business records and testimony upon which they relied;
4. The Affidavit of Kelly Hulseman need not be struck;
5. The Affidavit of Todd Lester is admissible, albeit not relied upon by this court; and
6. The KapStone Defendants timely disclosed Todd Lester as an expert.

Based on the foregoing, this Court grants the KapStone Defendants' Second Amended Rule 12(b)(1) Motion to Dismiss. With entry of this Order, the Court lifts the stay on merits discovery entered by Judge Hayes on November 28, 2017.

AND SO IT IS ORDERED,

_____
The Honorable Jennifer B. McCoy

_____
Date

ELECTRONICALLY FILED - 2020 Feb 26 4:37 PM - CHARLESTON - COMMON PLEAS - CASE#2017CP1000838

Charleston Common Pleas

| | |
|---|---|
| **Case Caption:** | Jacque Lucas , plaintiff, et al VS KapStone Paper and Packaging Corporation , defendant, et al |
| **Case Number:** | 2017CP1000838 |
| **Type:** | Order/Dismissal |

So Ordered

s/Jennifer B. McCoy #2764

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP1000838

Jacque Lucas et al
PLAINTIFF(S)

Safway Group Holdings LLC 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.

RECEIVED
Sep 08 2020
SC Court of Appeals

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

Plaintiff filed a Motion to Reconsider the Order Granting Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation's Rule 12(b)(1) Motion to Dismiss filed on March 09, 2020. "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment, is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). This Court Denies Plaintiff's Motion to Reconsider without the necessity of a hearing pursuant to Rule 59(f), SCRCP, and stands by the rulings in its original Order.

**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 08/06/2020 .

Kason Richey Kimberley for Jacque Lucas,Shirley Ann Lucas,Daniel Simerly
Case Party Info Protected
Case Party Info Protected
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Case Party Info Protected for Jacque Lucas,Shirley Ann Lucas,Daniel Simerly
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**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**



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## 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.**

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Charleston Common Pleas

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|---|---|
| **Case Caption:** | Jacque Lucas , plaintiff, et al VS KapStone Paper and Packaging Corporation , defendant, et al |
| **Case Number:** | 2017CP1000838 |
| **Type:** | Order/Electronic Form 4 |

So Ordered

s/Jennifer B. McCoy #2764

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Sep 08 2020
SC Court of Appeals

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| STATE OF SOUTH CAROLINA ) | IN THE COURT OF COMMON PLEAS |
| ) | |
| COUNTY OF CHARLESTON ) | FOR THE NINTH JUDICIAL CIRCUIT |
| Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly, *Plaintiffs*, ) | CIVIL ACTION #: 2017-CP-10-00838 |
| vs. ) | **[Proposed] Order Granting Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation's Motion for Rule 54 (b) Certification of Final Judgment** |
| KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, Safway Group Holdings, LLC, Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc., and Thompson Industrial Services, LLC, ) | |
| *Defendants*. ) | |

This matter is before the Court pursuant to Defendants KapStone Paper and Packaging Corporation ("KapStone Paper") and KapStone Kraft Paper Corporation's ("KapStone Kraft") (collectively, "the KapStone Defendants") Motion for Certification of Final Judgment under Rule 54(b), SCRCP. For the following reasons, the Court finds there is no just cause to delay certifying its dismissal of the KapStone Defendants as a final judgment.

**I.** Case History

On May 24, 2016, Plaintiffs were injured in a workplace accident while performing duties for their employer and subsidiary of the KapStone Defendants, KapStone Charleston Kraft, LLC ("KapStone Charleston"). Plaintiffs recovered workers compensation benefits for these injuries under a workers-compensation insurance policy procured by KapStone Paper that covered the employees of its subsidiaries. Plaintiffs thereafter sued several defendants, including the KapStone Defendants, under various tort claims for their injuries.

Shortly after Plaintiffs commenced this lawsuit, the KapStone Defendants filed a Rule

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12(b)(6) motion to dismiss, later modified to 12(b)(1), based on the South Carolina Supreme Court's holding in *Poch v. Bayshore* that workers-compensation tort immunity accorded to an employer extends to related entities if those entities were sufficiently economically integrated with the employer at the time of the plaintiff's injury, based on a non-exclusive eight-factor test. *See* 405 S.C. 359, 747 S.E.2d 757 (2012). The *Poch* test is a jurisdictional analysis that focuses exclusively on economic integration between the defendants and the plaintiff's employer. *See id.* A *Poch*-based defense does not address the merits of the plaintiff's underlying tort claims. During the pendency of this motion, the Court stayed merits discovery as to the KapStone Defendants.

On February 26, 2020, this Court granted the KapStone Defendants' motion to dismiss, having found that a preponderance of the evidence showed the KapStone Defendants were sufficiently economically integrated with KapStone Charleston to be considered "one economic entity" for workers' compensation purposes. On March 9, 2020, the Plaintiffs filed a motion to reconsider, which the Court denied on August 7, 2020. The KapStone Defendants have now filed a motion requesting the Court certify its dismissal as a final judgment.

**II.** Rule 54 (b) Certification

In a case involving multiple claims against multiple parties, Rule 54(b), SCRCP, allows the Court to enter final judgment on certain claims against certain parties, to permit the timeline for appeal to commence as to those claims. *See Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 351 S.C. 459, 468, 570 S.E.2d 197, 201 (Ct. App. 2002). Where the case is not certified as a final judgment, the timeline for appeal is tolled until conclusion of the underlying case. *See id.*

There is no just cause for the Court to delay certifying its dismissal of the KapStone Defendants as a final judgment. The basis for the dismissal of the KapStone Defendants under

*Poch* is independent of Plaintiffs' underlying tort claims against the remaining Defendants.

Accordingly, this Court certifies that its February 26, 2020 dismissal of the KapStone Defendants, pursuant to Rule 12(b)(1), SCRCP, is a final judgment, so that an immediate appeal of its underlying order may be pursued.

AND SO IT IS ORDERED,

_____
The Honorable Jennifer B. McCoy

_____
Date

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Charleston Common Pleas

| | |
|---|---|
| **Case Caption:** | Jacque Lucas , plaintiff, et al VS KapStone Paper and Packaging Corporation , defendant, et al |
| **Case Number:** | 2017CP1000838 |
| **Type:** | Order/Other |

So Ordered

s/Jennifer B. McCoy #2764

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

---

Case No. 2017-CP-10-00838

---

RECEIVED
Sep 08 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, Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc. and Thompson Industrial Services, LLC, Defendants,

Of Whom

KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation, are Respondents.

---

**PROOF OF SERVICE**

---

I hereby certify that, on this date, the **AMENDED NOTICE OF APPEAL** was served on Respondents' 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.

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

September 8, 2020
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

RECEIVED
Sep 04 2020
SC Court of Appeals

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Case No. 2017-CP-10-00838

---

Jacque Lucas, Shirley Ann Lucas and Daniel Simerly, Appellants,

v.

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

Of Whom

KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation, are Respondents.

---

**NOTICE OF APPEAL**

---

Jacque Lucas, Shirley Ann Lucas and Daniel Simerly appeal the Order (Form 4) Denying Plaintiffs' Motion to Reconsider dated August 6, 2020, and entered and electronically served by the Clerk of Court for Charleston County on August 7, 2020 (the "59(e) Order"). Undersigned counsel received electronic notice of the entry of the 59(e) Order on August 7, 2020.

**CALLISON TIGHE & ROBINSON, LLC**

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*Attorneys for the Appellants*

September 4, 2020
Columbia, South Carolina

Other Counsel of Record:

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*ATTORNEYS FOR KAPSTONE PAPER AND PACKING CORPORATION AND KAPSTONE KRAFT PAPER CORPORATION*

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FORM 4

**STATE OF SOUTH CAROLINA**
**COUNTY OF** Charleston
**IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**

**CASE NO.** 2017CP1000838

Jacque Lucas et al
PLAINTIFF(S)

Safway Group Holdings LLC 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:

Plaintiff filed a Motion to Reconsider the Order Granting Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation's Rule 12(b)(1) Motion to Dismiss filed on March 09, 2020. "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment, is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). This Court Denies Plaintiff's Motion to Reconsider without the necessity of a hearing pursuant to Rule 59(f), SCRCP, and stands by the rulings in its original Order.

**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 08/06/2020 .

Kason Richey Kimberley for Jacque Lucas,Shirley Ann Lucas,Daniel Simerly
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**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

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Sep 04 2020
SC Court of Appeals

## 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.**

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Charleston Common Pleas

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|---|---|
| **Case Caption:** | Jacque Lucas , plaintiff, et al VS KapStone Paper and Packaging Corporation , defendant, et al |
| **Case Number:** | 2017CP1000838 |
| **Type:** | Order/Electronic Form 4 |

So Ordered

s/Jennifer B. McCoy #2764

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

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Case No. 2017-CP-10-00838

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RECEIVED
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Jacque Lucas, Shirley Ann Lucas and Daniel Simerly, Appellants,

v.

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

Of Whom

KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation, are Respondents.

---

**PROOF OF SERVICE**

---

I hereby certify that, on this date, the **NOTICE OF APPEAL** was served on Respondents' 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.

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

September 4, 2020
Columbia, South Carolina

ELECTRONICALLY FILED - 2020 Aug 20 5:06 PM - CHARLESTON - COMMON PLEAS - CASE#2017CP1000838

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF CHARLESTON | ) | FOR THE NINTH JUDICIAL CIRCUIT |
| Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly,<br>*Plaintiffs*, | ) | CIVIL ACTION #: 2017-CP-10-00838 |
| vs. | ) | **Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation's Motion for Certification of Final Judgment** |
| KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, Safway Group Holdings, LLC, Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc., and Thompson Industrial Services, LLC,<br>*Defendants*. | ) | |

Defendants KapStone Paper and Packaging Corporation ("KapStone Paper") and KapStone Kraft Paper Corporation ("KapStone Kraft") (collectively, the "KapStone Defendants"), submit this Motion for Certification of Final Judgment, pursuant to Rule 54(b), SCRCP. As shown below, there is no just reason for delay of entry of final judgment as to Plaintiffs' claims against the KapStone Defendants.

## Background

This action involves seven separate Defendants from whom Plaintiffs seek recovery under various tort-based causes of action. Shortly after this action was commenced, the KapStone Defendants filed a Rule 12(b)(6) motion to dismiss, later modified to 12(b)(1), based on the South Carolina Supreme Court's holding in *Poch v. Bayshore* that workers-compensation tort immunity accorded to an employer extends to related entities if those entities were sufficiently economically integrated with the employer at the time of the plaintiff's injury, based on a non-exclusive eight-

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factor test. *See* 405 S.C. 359, 747 S.E.2d 757 (2012). This inquiry focused on the jurisdictional facts relevant to the *Poch* test, which do not pertain to the merits of Plaintiffs' underlying tort claims. As such, during the pendency of this motion, the Court stayed merits discovery as to the KapStone Defendants. On February 26, 2020, this Court granted the KapStone Defendants' motion to dismiss. On March 9, 2020, the Plaintiffs filed a motion to reconsider, which the Court denied on August 7, 2020.

**Law**

In a case involving multiple claims against multiple parties, Rule 54(b), SCRCP, allows the Court to enter final judgment on certain claims against certain parties, to permit the timeline for appeal to commence as to those claims. *See Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 351 S.C. 459, 468, 570 S.E.2d 197, 201 (Ct. App. 2002). Where the case is not certified as a final judgment, the timeline for appeal is tolled until conclusion of the underlying case. *See id.*

The purpose of requiring the trial court to certify a final judgment in such a case is "to spare the court of appeals from relearning the facts of a case on successive appeals." *See id.* at 466, 570 S.E.2d at 200. This concern only arises where "there is a substantial factual overlap between the claim[s] adjudged and the remaining claims." *Id.* at 467, 570 S.E.2d at 200. "[T]he adjudged claim must be separate and unrelated to the remaining claims," to avoid piecemeal appeals of related issues. *See id.* at 467, 570 S.E.2d at 200-01.

**Argument**

The KapStone Defendants request the Court certify its dismissal as a final judgment, as there is no just reason for delay. The jurisdictional facts relevant to the dismissal of the KapStone Defendants' are separate from the merits of Plaintiffs' underlying tort claims against the remaining

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Defendants. There is no "substantial factual overlap"—there are two separate and unrelated issues: (1) economic integration of the KapStone entities under *Poch*; and (2) general tort liability of Defendants unrelated to KapStone. No other Defendant has, or can, raise the jurisdictional arguments the KapStone Defendants have in this case. Even if they could, no other Defendant would have the same economic integration facts as the KapStone Defendants, as those facts are wholly unique to these defendants. As such, there is no possibility that an appeal of the jurisdictional issue would result in the Court of Appeals having to relearn the same facts for appeals later raised by the remaining parties.

Certification of final judgment would further interest of judicial efficiency and fair and timely adjudication of the Plaintiffs' claims against the KapStone Defendants. Until the Court certifies its dismissal as a final judgment, the KapStone Defendants remain in limbo, both dismissed and yet unable to obtain final judgment and certainty on this jurisdictional issue. Certifying the Court's dismissal as a final judgment will allow the timeline for appeal to progress as it normally would, instead of requiring the KapStone Defendants to hold fast until the remaining parties litigate the merits of Plaintiffs' claims over the coming months, and through the timing and logistical uncertainty caused by the COVID-19 global pandemic.

**Conclusion**

Based on the above reasons, the KapStone Defendants request the Court certify as a final judgment its February 26, 2020, dismissal of Plaintiffs' claims against the KapStone Defendants, pursuant to Rule 54(b), SCRCP, so the time for filing and appeal may commence.

(Signature block on following page)

Respectfully submitted,

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

August 20, 2020

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| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF CHARLESTON | ) | FOR THE NINTH JUDICIAL CIRCUIT |
| | ) | |
| Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly,<br>*Plaintiffs*, | ) | CIVIL ACTION #: 2017-CP-10-00838 |
| vs. | ) | **Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation's Memorandum in Opposition to Plaintiffs' Motion to Reconsider or Amend** |
| KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, Safway Group Holdings, LLC, Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc., and Thompson Industrial Services, LLC,<br>*Defendants*. | ) | |

Defendants KapStone Paper and Packaging Corporation ("KapStone Paper") and KapStone Kraft Paper Corporation ("KapStone Kraft") (collectively, the "KapStone Defendants"), submit this Memorandum in Opposition to Plaintiffs' Motion to Reconsider the Order Granting the KapStone Defendants' Rule 12(b)(1) Motion to Dismiss (Plaintiffs' "Motion").

## INTRODUCTION

Plaintiffs' Motion fails to assert any compelling reasons for the Court to reconsider or amend its ruling. The Court considered and ruled on all of the issues Plaintiffs raise in their Motion: (1) Ms. Hulseman's affidavit is admissible, but is not necessary to the Court's ruling; (2) *Poch* controls the issues raised in the KapStone Defendants' Motion to Dismiss; (3) a preponderance of the evidence supports a conclusion that the KapStone entities were economically integrated under *Poch*; and (4) because such integration exists, the Court lacks subject matter

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jurisdiction over Plaintiffs' claims against the KapStone Defendants. The Court thoroughly explained its reasoning in reaching these conclusions in its February 26, 2020 Order.

To the extent Plaintiffs raise new issues in their Motion, Plaintiffs are either incorrect, have no authority that supports their arguments, or both. Specifically, Plaintiffs contend the Court erred by: (1) applying the standard of review set forth by the Supreme Court of South Carolina in *Poch*, and should have instead applied the standard used by federal district courts in unrelated cases; (2) finding certain evidence satisfied more than one *Poch* factor; (3) reaching a "binary" conclusion as to whether each *Poch* factor was satisfied, instead of creating a "weighted" analysis for each factor; (4) failing to bifurcate its *Poch* analysis as to each KapStone entity; (5) concluding the "One KapStone" documents supported the KapStone Defendants' position, and including this conclusion in its Order, which Plaintiffs describe as "surplusage" that should be "cut out" of the Court's Order. Each of these assertions is incorrect, and will be addressed in turn.

To the extent Plaintiffs failed to raise any of the above five arguments prior to judgment, but raise them now in short, conclusory arguments without supporting authority, Plaintiffs are attempting to raise issues that they have waived. A party cannot use a motion to reconsider, alter or amend a judgment to present a new issue that could have been raised prior to the judgment, but was not. *See Dixon v. Dixon*, 362 S.C. 388, 608 S.E.2d 849, 854 (2005); *Kiawah Prop. Owners Grp. v. Public Serv. Comm'n.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004).

## FACTS

This is a personal injury action involving Plaintiffs who were injured while performing job-related duties for their employer KapStone Charleston. Subject to South Carolina's Workers' Compensation Act (the "Act"), Plaintiffs received substantial recovery under an insurance policy procured and funded by KapStone Charleston's corporate grandparent, KapStone Paper.

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Because Plaintiffs recovered under the Act, they could not pursue legal action for their injuries against KapStone Charleston. *See* S.C. Code Ann. § 42-1-540 (the "Exclusivity Rule"). Plaintiffs thereafter sued KapStone Kraft and KapStone Paper, KapStone Charleston's corporate parent and grandparent, respectively, in an attempt to recover further for their workplace injuries. KapStone Paper and KapStone Kraft filed a Rule 12(b)(6) motion to dismiss, later amended to a Rule 12(b)(1) motion to dismiss, based on the Supreme Court of South Carolina's ruling in *Poch v. Bayshore* that an employer's tort immunity under the Act would extend to the employer's corporate parents if the entities were sufficiently economically integrated. *See* 405 S.C. 359, 747 S.E.2d 757 (2013).

Because the Supreme Court ruled in *Poch* that a motion to dismiss based on tort immunity under the Exclusivity Rule was a jurisdictional issue, *see id.*, the KapStone Defendants' moved for a stay of merits discovery until the jurisdictional inquiry was answered. On November 28, 2017, Judge Hayes entered an Order staying merits discovery in this action as to the KapStone Defendants until the pending motion to dismiss was ruled upon. The jurisdictional discovery that followed was extensive, spanning nearly two years, and included several sets of written discovery and depositions. On September 27, 2019, the Court held a hearing on the KapStone Defendants' motion to dismiss. On January 27, 2020, the Court notified the parties that it was electing to grant the motion. On February 26, 2020, the Court entered an Order in which it ruled on several evidentiary issues raised at the hearing and in Plaintiffs' briefs, as well as the KapStone Defendants' motion to dismiss, and explained its reasoning for same. On March 9, 2020, Plaintiffs filed their Motion to Reconsider.

## ANALYSIS

### I. The Court correctly applied the standard of review set forth by the Supreme Court of South Carolina in *Poch*

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As the Court correctly held, *Poch* controls this dispute. This includes both the eight-factor test *and* the standard of review for same, which the Supreme Court clearly set forth in *Poch*. To argue that it should not (and that a standard of review from federal case law applying other state's laws should apply) makes no sense.

Procedurally and factually, this case parallels *Poch*. In *Poch*, when the plaintiffs sued the Bayshore defendants for workplace injuries they had received workers' compensation benefits for, the Bayshore defendants moved to dismiss for lack of subject matter jurisdiction based on tort immunity under the Act's Exclusivity Rule. *See Poch v. Bayshore*, 386 S.C. 13, 19, 686 S.E.2d 689, 692 (Ct. App. 2009). Here, when Plaintiffs sued the KapStone Defendants for workplace injuries they had received workers' compensation benefits for, the KapStone Defendants moved to dismiss Plaintiffs' claims for lack of subject matter jurisdiction based on tort immunity under the Exclusivity Rule.

The Supreme Court held in *Poch* that the standard of review for a motion to dismiss based on tort immunity under the Exclusivity Rule requires the court "to review the entire record and decide the jurisdictional facts in accord with the preponderance of the evidence." *See* 405 S.C. 359, 367, 747 S.E.2d 757, 761 (2013) (quoting *Glass v. Dow Chem. Co.*, 325 S.C. 198, 201-02, 482 S.E.2d 49, 51 (1997)). The court further held that "[a]ny doubts as to a worker's status should be resolved in favor of including him or her under the Workers' Compensation Act." *Id.* (quoting *Posey v. Proper Mold & Eng'g, Inc.* 378 S.C. 210, 218-19, 661 S.E.2d 395, 400 (Ct. App. 2008)).

Because this case turns on questions raised in *Poch*, the correct inquiry and standard of review here is the one the Supreme Court adopted in *Poch*. This is the inquiry and the standard of review the Court applied here. As such, Plaintiffs' assertion that some other standard of review should apply in this case should be rejected.

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## II. The Court correctly considered certain evidence was relevant and probative of multiple *Poch* factors

Plaintiffs' assertion that evidence is "single-use" for purposes of a *Poch* inquiry is incorrect. Not only did the Supreme Court *not* hold this, but – to the contrary – the Supreme Court expressly considered certain facts as relevant and probative of more than one *Poch* factor. *See* 405 S.C. 359, 373-74, 747 S.E.2d 757, 764. Specifically, the Supreme Court identified employment documents (including applications, benefits packages, and safety manuals) as relevant to the first and fifth factors, in terms of shared corporate identity and related entities. *See id.* The Supreme Court also identified the lease agreement for the property at issue as relevant and probative of the first and third factors. *See id.* The court also considered the payment of invoices by the corporate parent as relevant to the third and fourth factors, and, to the extent payment of invoices inferentially related to the financial operations of the subsidiary, relevant to the seventh factor. *See id.*

The Court's analysis of the record in this case is correct and follows the Supreme Court's analysis in *Poch*. Factual evidence can be, and in many cases is, relevant to more than one *Poch* factor. Not only did the *Poch* court *not* hold what Plaintiffs assert in their Motion, the *Poch* court did *exactly the opposite*. Accordingly, Plaintiffs' argument that evidence in the record is "single use" for any *Poch* analysis is incorrect and should be rejected.

## III. The Court correctly concluded that *Poch* factors were satisfied, and is not required to assign weights to the *Poch* factors

There is no authority in support of Plaintiffs' assertion that the Court erred by finding that any *Poch* factor was "satisfied" or "not satisfied." There is also no authority in support of Plaintiffs' argument that a court should assign a "comparative weight" to any given *Poch* factor. The *Poch* court's analysis did not include any assignment of weight to any factor (aside from the Supreme Court stating that shared tax returns was a "weighty" factor, but still finding in favor of

integration despite this factor not being satisfied). *See* 405 S.C. at 374, 747 S.E.2d at 765. Further, the Supreme Court did not hold in *Poch* that a binary analysis ("yes" or "no"; "satisfied" or "not satisfied") is inappropriate.

The Supreme Court reached no holding whether the satisfaction of *Poch* factors was binary or weighted. However, in *Monroe v. Monsanto* the district court considered the answer to each factor to be binary. *See* 531 F. Supp. 426, 434 (D.S.C. 1982). As to the first issue, the *Monroe* court noted: "The answer here is yes." *See id.* As to the second issue: "Again, the answer is yes." *See id.* As to the third issue: "Yes." *See id.* Fourth: "Yes." *See id.* Fifth: "Yes." *See id.* Sixth: "Yes." *See id.* Seventh: "Yes." *See id.* Eighth: "No." *See id.*

While *Monroe* is not controlling, the Supreme Court's *Poch* test was adopted from *Monroe*. As such, the Plaintiffs' argument that the Court erred by concluding that any factor was "satisfied" or "not satisfied" is incorrect.

## IV. The Court correctly analyzed integration among the KapStone entities

There is no authority in support of Plaintiffs' assertion that the Court "incorrectly comingled" the KapStone Defendants by analyzing the integration of the KapStone entities collectively rather than separately. The Supreme Court did not reach this holding in *Poch*, nor did the district court in *Monsanto*. The analyses in *Poch* and *Monsanto* were focused on two companies because, factually, that is how many entities were before those courts. The Supreme Court has given no contrary instructions on how a lower court's analysis should be structured where the inquiry turns on integration of three entities.

Plaintiffs misconstrue the Court's analysis. Where the Court discusses the KapStone Defendants in the collective, it is referring to each KapStone Defendant. For example, where the Court explains: "the KapStone Defendants were headquartered in the same location as their



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subsidiaries," it also means: "KapStone Paper was headquartered in the same location as its subsidiaries" and "KapStone Kraft was headquartered in the same location as its subsidiaries." To disregard these collective analyses is to overlook the overwhelming majority of the Court's findings in its Order.

Beyond ignoring the volume of evidence that the Court found demonstrated integration between *both* KapStone Defendants and KapStone Charleston, Plaintiffs comb through the Order to highlight the few instances in which the Court identified entity-specific evidence that showed integration. Plaintiffs then argue that it somehow demonstrates a lack of integration as to the excluded Defendant. This argument elevates form over substance. The Court held that the preponderance of the evidence supports the Court's findings that the KapStone entities -- KapStone Paper, KapStone Kraft, and KapStone Charleston -- were sufficiently economically integrated to support the extension of KapStone Charleston's workers' compensation immunity to KapStone Paper and KapStone Kraft. As such, Plaintiffs' assertion that Court erred in the structure and substance of its collective analysis is incorrect.

## V. The Court's analysis of the "One KapStone" documents is appropriate and properly segmented in its Order

The Court's discussion of the "One KapStone" documents in a separate section of its Order is because Plaintiffs' argument at the hearing on September 27, 2019, was focused almost exclusively on this evidence. The Court found that the "One KapStone" documents were evidence of economic integration under *Poch*. This finding is not erroneous, and is supported by substantial evidence in the record.

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## CONCLUSION

The KapStone Defendants request the Court deny Plaintiffs' Motion, as it provides no compelling reason for the Court to alter or amend its ruling. The Court correctly ruled upon the issues Plaintiffs raise in their Motion. To the extent Plaintiffs raised new issues in their motion, they are incorrect and provide no legal or factual bases that supports their arguments.

As to the arguments Plaintiffs make: (1) the Court appropriately applied standard of review set forth in *Poch*; (2) the Court appropriately found that certain evidence satisfied more than one *Poch* factor; (3) the Court did not err by reaching "binary" conclusions as to whether each *Poch* factor was satisfied; (4) the Court did not err by performing a collective analysis of the KapStone entities' integration; and (5) the Court's analysis of the "One KapStone" documents was well-reasoned and not "surplusage" that should be "cut out" of the Court's Order. As such, the Court should deny Plaintiffs' Rule 59(e) Motion and permit this matter to go up on appeal, if Plaintiffs so choose.

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March 26, 2020
Columbia, South Carolina

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| COUNTY OF CHARLESTON | ) | FOR THE NINTH JUDICIAL CIRCUIT |
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| | ) | CIVIL ACTION #: 2017-CP-10-00838 |
| Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly, | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | |
| vs. | ) | |
| | ) | **Plaintiffs' Motion to Reconsider the** |
| KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, Safway Group Holdings, LLC, Easy Way Insulation Co., Inc., Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc. and Thompson Industrial Services, LLC, | ) | **Order Granting Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation's Rule 12(b)(1) Motion to Dismiss** |
| | ) | |
| Defendants. | ) | |

**PLAINTIFFS' MOTION TO RECONSIDER THE ORDER GRANTING DEFENDANTS KAPSTONE PAPER AND PACKAGING CORPORATION AND KAPSTONE KRAFT PAPER CORPORATION'S RULE 12(B)(1) MOTION TO DISMISS**

Plaintiffs Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly, pursuant to Rules 52(b) and 59(e), SCRCP, file this, Plaintiffs' Motion to Reconsider or altering and amending the Court' order Granting Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation's Rule 12(b)(1) Motion to Dismiss.

## I.

## Summary

Plaintiffs respectfully request that the Court reconsider its decision or alter and amend its order granting Defendants Kapstone Paper and Packaging Corporation and Kapstone Kraft Paper Corporation's Rule 12(b)(1) Motion to Dismiss.

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**A. The Court should reconsider its decision to deny Plaintiffs' motion to strike the affidavit of Kelly Hulseman.**

The only evidence attached in support of Defendants' Brief in Support of their Rule 12(b)(1) Motion to Dismiss was the affidavit of Kelly Hulseman. Plaintiffs, as part of their opposition to Defendants' motion, moved the Court to strike Hulseman's affidavit based on the fact that Hulseman did not have personal knowledge of the matters stated in the affidavit. Rather, it appears that the affidavit was prepared for Hulseman to sign only so that Defendants could offer it as support for their arguments based on *Poch v. Bayshore Concrete Prod./S.C., Inc.*, 405 S.C. 359, 747 S.E.2d 757 (2013). Consequently, the information in the affidavit is unreliable, should form no basis of the Court's decision, and should be struck. Furthermore, the Court stated in its order that it did not rely on Hulseman's affidavit in reaching its decision, rendering irrelevant any finding by the Court that the affidavit is admissible.

**B. The Court should reconsider its decision to grant Defendants' motion to dismiss, or alter and amend its order granting Defendants' motion.**

1. Respectfully, the Court should reconsider its decision to grant Defendants' motion to dismiss for the following reasons:

   a. Defendants based their motion on the eight-factor test from *Poch*, and the Court adopted that test as the basis for its decision. But *Poch* does not apply because it involved facts that are distinguishable from the facts involved in this case.

   b. Defendants failed to support their motion with proper evidence because Hulseman's affidavit is unreliable as a matter of law and Mark Niehus's affidavit is simply a business records affidavit.

   c. Even if the *Poch* test applied to this case, methodically analyzing and weighing its eight factors would show that Defendants failed to meet their burden in proving that either of them was sufficiently integrated with Plaintiffs' employer, KapStone Charleston Kraft, LLC, for them to be considered alter egos.

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2. Even if the Court does not change its decision to grant Defendants' motion, Plaintiffs' move that the Court alter or amend its order. Plaintiffs object to the entirety of the Court's order because:

a. The order relies on an erroneous analysis of the *Poch* factors as applied to this case. Defendants each claim that KapStone Charleston Kraft, LLC, is its alter ego, but the Court reviewed the relationships among all three instead of looking at each Defendants' relationship to KapStone Charleston Kraft, LLC, independently. In addition, the Court credited the same evidence in Defendants' favor multiple times by applying it to more than one *Poch* factor. Lastly, the Court entered findings that Defendants "satisfied" *Poch* factors rather than assigning comparative weights to the factors.

b. The Court's findings of fact that underlie its order lack sufficient evidence. Some of the evidence that Defendants offered and the Court adopted is analytically flawed. This, plus the erroneous application of *Poch*, erodes the reliability of the factual findings underlying the Court's order.

c. The Court's findings regarding the One KapStone documents are surplusage and should be altered or amended.

d. Defendants failed to meet their burden to prove that KapStone Charleston Kraft, LLC, was their alter ego.

## II.

## Brief Factual and Procedural Background

As this Court is well aware, this case arises from a tragic accident that occurred on May 24, 2016, when Plaintiffs Jacque Lucas and Daniel Simerly were working for KapStone Charleston Kraft, LLC ("KapStone Charleston"), at a paper mill in North Charleston, South Carolina. On that date, Plaintiffs sustained severe and horrific burns after black liquor discharged from an overhead vessel onto their bodies while they were working on and around scaffolding underneath the vessel hatch. As a result of the incident, Plaintiffs have undergone extensive medical treatment, including

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procedures for their painful burns, orthopedic injuries, and serious mental and psychological issues, including Post-Traumatic Stress Disorder.

Specifically, and for the edification of this Court, Plaintiff Lucas, a forty-eight (48) year-old father and husband at the time of the incident sustained such serious and extensive chemical burns that he could not be transported by ambulance, and instead, had to be life-flighted from the facility to the Joseph M. Still Burn Center at Doctors Hospital in Augusta, Georgia. When he arrived at the hospital, he was assessed to have second- and third-degree chemical burns to 66% of his total body surface area. His burns were so severe that he was immediately taken to the burn center debridement room upon arrival. Plaintiff Lucas spent a total of forty-seven days in the hospital, with forty-four of those days spent in the intensive care unit. In addition to the many surgical procedures and extensive wound care during his hospital stay, Plaintiff Lucas participated in extensive occupational and physical therapy before finally being discharged on July 10, 2016. He has required ongoing treatment for both his physical and psychological injuries since being released from the hospital in July 2016.

Furthermore, Plaintiff Daniel Simerly was similarly transported by life flight helicopter to the Joseph M. Still Burn Center at Doctors Hospital as a result of the debilitating burns he received as a result of this incident. Plaintiff Simerly's burns also required surgical debridement and grafting, along with daily dressing changes, to treat the second- and third-degree burns to his back, arms, abdomen, and face. In addition, Plaintiff Simerly experienced a deep venous thrombosis (DVT) while hospitalized, further complicating his condition. While Plaintiff Simerly was discharged on May 27, 2018, he has required ongoing treatment that has severely limited his ability to perform the activities and duties he used to enjoy prior to this accident. He has also required continuing psychological care to treat his ongoing PTSD from the trauma he experienced.

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As Defendants point out, and Plaintiffs do not deny, Plaintiffs have received workers' compensation benefits following the incident from their employer, KapStone Charleston Kraft, LLC, in the form of medical and indemnity payments.

Significantly, however, Plaintiffs have not received benefits from any other defendant in this case, including Defendants KapStone Paper and Packaging Corporation ("KPPC") and KapStone Kraft Paper Corporation ("Kraft"). This is simply because Plaintiffs were not, are not, and have never been employees (of any kind) of KPPC or Kraft. Instead, Plaintiffs were employed at the time of the incident by KapStone Charleston – a completely distinct and separate legal entity from any party in this lawsuit. Under SC Code Ann. §42-1-560(a), "[t]he right to compensation and other benefits under this title [Workers' Compensation] **shall not** be affected by the fact the injury or death is caused" by a third party. "The injured employee . . . shall be entitled to receive the compensation and other benefits provided by this title and to enforce by appropriate proceedings his . . . rights against the third party." SC Code Ann. §42-1-560(b).

Despite these undisputed facts, Defendants KKPC and Kraft filed their Rule 12(b)(1) Motion to Dismiss, claiming that Plaintiffs are not entitled to recover from these separate and distinct entities because Plaintiffs are barred by the exclusivity provision of the South Carolina Workers' Compensation Act ("Act"). Because Plaintiffs are not employees of Defendants herein, and are therefore outside the exclusivity provision of the Act, Defendants' motion should be denied. Further, because the *Poch* case on which Defendants rely is entirely and completely distinguishable from the facts in this matter, Defendants' reliance on the *Poch* factors to provide them with immunity from tort liability is misplaced and should be rejected.

As of now, the Court has decided to grant Defendants' motion, and on February 26, 2020, signed a proposed order drafted by Defendants to that effect. Pursuant to Rules 52(b) and 59(e),

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SCRCP, Plaintiffs now request that the Court reconsider that decision and alter or amend its order in accordance with its judgment based on the arguments herein.

## III.

## Argument

### A. The Court should reconsider its decision to deny Plaintiffs' motion to strike the affidavit of Kelly Hulseman.

As a preliminary matter, Plaintiffs moved to strike the Affidavit of Kelly Hulseman that was referenced in Defendants' Brief in Support of their Rule 12(b)(1) Motion to Dismiss filed on September 20, 2017, and attached hereto as Exhibit A. Specifically, Defendants relied on a singular substantive affidavit in support of their motion to dismiss that was sworn to by the Vice President of Shared Services at KPPC, Kelly Hulseman. This affidavit should be struck in its entirety and removed from consideration with regards to the motion to dismiss.

First, an affidavit cannot be proper when it contains information outside the personal knowledge of the affiant. Second, the testimony given by Hulseman after having sworn to the information contained in the affidavit establishes that the affidavit is a sham because it is not based on Hulseman's personal knowledge. Instead, the affidavit appears to have been created by Defendants' counsel with little to no input from Hulseman, but was designed only to persuade this Court that Defendants can establish the necessary factors under the *Poch* case to be granted a dismissal in this lawsuit.

Plaintiffs provide the following testimony from Hulseman's deposition to illustrate the alarming nature of this affidavit, which was signed with the attestation that the information it contained was "true and correct, to the best of **my knowledge and belief**," by Ms. Hulseman, in the presence of a notary, on September 20, 2017.

***Deposition of Kelly Hulseman:***

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Q. Okay. And this is going to -- I think I know what you are talking about and just so we are, I want to make sure we are on the same page, okay. So I am going to hand you what I have marked as exhibit number, I think we are on six.

(Plaintiff's Deposition Exhibit No.

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6 was marked for identification.)

BY MR. FINDLEY:

Q. And as I understand it, this is your affidavit?

A. It is.

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Q. So back to what we are talking about organizational chart Exhibit C attached to the affidavit, you did not create that, true?

A. I did not.

Q. Okay. You didn't review any documents that went into creating it, fair? You weren't the person who did that?

A. Created this document, I was not.

Q. Okay. And you weren't the person, let me give you example, who went back and reviewed corporate filings or any of the other types of various documents that might go into creating an organizational chart, correct?

A. I did not.

Q. Okay. So as far as what those documents contain that were used to create this organizational chart, you don't have personal knowledge of those as we

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sit here today, fair? All you have personal knowledge of is what would be contained on this chart, true?

A. True.

**Q. Okay. Now, as far as this chart, do you know if this chart was created specifically for this case?**

**A. I'm not sure.**

**Q. Okay. Do you know what years of documents regarding filings were reviewed in order to create this?**

**A. I do not.**

**Q. Okay. And so whether it was 2015, 2016 or 2018 sitting here today you couldn't tell us that, fair?**

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**A. Fair.**
**Q. Okay. And the reason why I am asking that is because in this organizational chart it's got -- well, do you know who made it?**
**A. I do not.**
**Q. Okay. Did it just show up on your desk?**
**A. As part of the affidavit, yes.**
Q. Okay. And is it fair to say the entire Exhibit 6 you did not have any part in making it, correct?
A. No.
**Q. You didn't type any of the words in the affidavit, they came like that?**

32

**A. I did not type the words, no.**

*See* Ex. B.

Not only did Hulseman apparently have no part in actually creating or writing her affidavit, she did nothing to ensure that she did actually have personal knowledge of the items that she was swearing to have knowledge of in the affidavit. Instead, the affidavit and the documents appeared at her desk from the legal department, awaiting signature.

***Deposition of Kelly Hulseman:***

33

Q. Okay. As far as having personal knowledge as to what paperwork is contained with filings regarding officers and directors, that wasn't research that you did in order to generate this, fair?
A. Fair.
Q. As far as having personal knowledge as to what is contained in those documents regarding directors and officers, you do not have any personal knowledge other than what is contained on Exhibit B, correct?
A. Correct.

33

Q. Okay. Did you review any documents as to who the officers and directors were in 2016?
A. I did not.

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34

**Q. Okay. Who provided you with this Exhibit B?**
**A. Legal. KapStone's legal department.**
**Q. KapStone Paper and Packaging Corporation legal department?**
**A. Yes.**

52

Q. And it looks like it was signed and notarized on September 20, 2017, is that accurate?
A. Yes.
Q. Okay. As far as how long of a time passed from the time you received it until the time you signed it, do you know?
A. I don't.
Q. Okay. Do you remember if it was years? Do you know if it was in the late part of the 2017 that you received it and signed it?
A. Yes.
Q. So if we said sometime in the fall of 2017 you received it and signed it, is that fair?
A. That's fair.
**Q. Before you signed it did you go look at any other documents other than the ones that were attached?**
**A. I did not.**

211

Q. All right. Let's go to your affidavit. We know that you did not type out the words in this affidavit, fair?
A. Yes.
Q. Okay. We know that you did not pour through documents to formulate the paragraphs of this affidavit, correct?
A. Correct.

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Q. Okay. This affidavit was typed up by an attorney, correct?

Q. Is that your understanding?
A. Yes.

*See* Ex. B.

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Alarmingly, there are multiple topics in the affidavit that Hulseman not only lacked any knowledge about, but that she also chose not to research prior to signing her name on the notarized dotted line.

***Deposition of Kelly Hulseman:***

34

Q. As far as who the officers and directors were at the time of this incident whether or not they are the same or different, that wasn't something you looked into, is that accurate?
A. Yes.

215

My question is when you received this affidavit and it contained the statement in Exhibit 4, did you go back and look at every single premium payment and verify that Kapstone Paper and Packaging Corporation did, in fact, pay the premiums?
A. I did not.

222

Q. So as far as how these entities are set up or the legal documents related to them, that is -- you didn't go research or verify paragraph six when it was written to you in your affidavit to sign, fair?
A. Fair.

223

Q. When it says, "Both entities generally use similar processes and types of equipment to conduct these activities," that's not something that you know anything about other than you have been to them before, right?

A. Right.

233

Q. Okay. And what I am saying is besides when you signed this affidavit did you take any steps on your own to go look at documents to verify the veracity of paragraph 11?
A. No.

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Q. Okay. So as far as its veracity regarding paragraph 15 as well as paragraph 16, we could agree that you did not do any independent searching to figure out whether or not those are accurate statements, fair?

263

A. Fair.
Q. Okay. And as far as speaking to any Kapstone Charleston Kraft LLC's employees regarding who they report to, you didn't do that, fair? That's not even something you do with your job?
A. Correct.

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Q. Well, fair enough. But, Ma'am, you have to understand my position, you have an affidavit that's signed and notarized that says number 19 is true based on your information and belief and what I am just trying to figure out so that we can clarify this for later is, is it fair to say you have no idea and do not feel comfortable testifying to the contents of paragraph 19 and we can move on to the next one?

A. Right.

*See* Ex. B.

Plaintiffs provide the Court with this non-exclusive list of examples to illustrate for the Court the complete lack of reliability associated with the only substantive affidavit attached as part of the record in support of Defendants' motion to dismiss. This jurisdictional issue is extremely critical, and this Court should not consider a self-serving affidavit that was signed by an affiant who admitted that she had no personal knowledge of the vast majority of information contained in the affidavit. This, despite her signed attestation that the information was true and correct to her knowledge. *See* Ex. A at 6.

Utilizing an affidavit as evidence in a Rule 12(b)(1) motion to dismiss should be held to the same standard as an affidavit attached in support of a motion for summary judgment, as both

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are dispositive motions and are determined as a matter of law. Affidavits in the summary judgment realm must be made on personal knowledge, and so should affidavits in support of motions to dismiss. *See* Rule 56(e) ("Supporting . . . affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.") *Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 302, 433 S.E.2d 871, 873 (Ct. App. 1993); *Robertson v. First Union*, 350 S.C. 339, 351, 565 S.E. 2d 309, 315-16 (Ct.App. 2002) (finding that affidavit was inadmissible for summary judgment because of among other things, failure to show affiant was familiar with the issues and standards). Even more simply, the Rules of Evidence forbid the introduction of matters for evidentiary consideration unless it is established that the witness has personal knowledge. "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." S.C.R. Evid. 602.

It is clear from the deposition testimony that Hulseman lacked personal knowledge on the matters she purported to swear to in her affidavit. For multiple reasons, including SCRCP 56(3) and South Carolina Rule of Evidence 602, Hulseman should not be permitted to present matters to this Court for consideration in support of Defendants' motion to dismiss by way of her self-serving affidavit. Plaintiffs therefore request this Court strike the Affidavit of Kelly Hulseman, and reject consideration of any evidence contained therein for purposes of Defendants' motion to dismiss.

**B. The Court should reconsider its decision to grant Defendants' motion to dismiss, or alter and amend its order granting Defendants' motion.**

**1. The Court should reconsider its decision to grant Defendants' motion to dismiss.**

Defendants filed their motion to dismiss pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure. This Rule is derived from, and identical to, the corresponding provision

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of the Federal Rules of Civil Procedure. *Compare* Rule 12(b)(1), SCRCP *with* FED. R. CIV. P. 12(b)(1). The argument presented by Defendants under SCRCP 12(b)(1) is therefore akin to a Federal Rule 12(b)(1) motion to dismiss, stating the court lacks subject matter jurisdiction because of the exclusivity provisions of the Workers' Compensation Act. While the case law in South Carolina is relatively scarce with regards to the legal standard underlying Rule 12(b)(1) and the exclusivity provision of the Act, the Fourth Circuit provides guidance with regards to the necessary standards that must be met to meet the heavy burden necessary to mandate dismissal.

A motion to dismiss under Rule 12(b)(1) should only be granted if the court lacks subject matter jurisdiction. The question of subject matter jurisdiction is a question of law for the court. *Woodard v. Westvaco Corp.*, 315 S.C. 329, 433 S.E.2d 890 (Ct.App.1993) (vacated on other grounds by, 319 S.C. 240, 460 S.E.2d 392 (1995)). "[A] defendant may challenge subject matter jurisdiction in one of two ways." *24th Senatorial Dist. Republican Comm. v. Alcorn*, 820 F.3d 624, 629 (4th Cir. 2016) (quoting *Kerns v. United States*, 585 F.3d 187, 192 (4th Cir. 2009)). "First, the defendant may contend that a complaint simply fails to allege facts upon which subject matter jurisdiction can be based." *Id.* (quoting *Kerns*, 585 F.3d at 192). "When a defendant makes a facial challenge to subject matter jurisdiction, 'the plaintiff, in effect, is afforded the same procedural protection as he would receive under a rule 12(b)(6) consideration.'" *Kerns*, 585 F.3d at 192 (quoting *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982)). "In that situation the facts alleged in the complaint are taken as true, and the motion must be denied if the complaint alleges sufficient facts to invoke subject matter jurisdiction." *Id.*

"Alternatively, the defendant may contend 'that the jurisdictional allegations of the complaint were not true.'" *24th Senatorial Dist.*, 820 F.3d at 629 (quoting *Adams*, 697 F.2d at 1219). "In [this] scenario, '[a] trial court may then go beyond the allegations of the complaint' and

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hold an evidentiary hearing to 'determine if there are facts to support the jurisdictional allegations.'" *Id.* (quoting *Adams*, 697 F.2d at 1219). "There is no presumption of truth and the court weighs the evidence presented in a 12(b)(1) hearing to determine jurisdiction." *Id.* (citing *Adams*, 697 F.2d at 1219). "If, however, the jurisdictional facts are intertwined with the facts central to the merits of the complaint, '**a presumption of truthfulness should attach to the plaintiff's allegations**.'" *Id.* (quoting *Rich v. United States*, 811 F.3d 140, 145 (4th Cir. 2015) (citing *Kerns*, 585 F.3d at 193))(emphasis added). "And 'the court should resolve the relevant factual disputes only after appropriate discovery.'" *Id.* (quoting *Rich*, 811 F.3d at 145).

Ultimately, a Rule 12(b)(1) motion should be granted only if it appears certain that the plaintiff cannot prove any set of facts supporting his claim to relief. *See Ramming v. United States,* 281 F.3d 158, 161 (5th Cir. 2001).

**a. The *Poch* factors do not apply to this case.**

Defendants' entire argument for dismissal rested squarely on the assumption that the *Poch v. Bayshore Concrete Products/South Carolina, Inc.* case was applicable to this jurisdictional matter. For the reasons set forth below, Plaintiffs contend the *Poch* case is irrelevant for purposes of any jurisdictional dispute in this case.

**i. The *Poch* case is entirely distinguishable from this matter.**

While Defendants provide the Court with a shortened summary of their view of the *Poch* case in their motion, Plaintiffs would take this opportunity to fully outline the facts and issues present in the *Poch* case to illustrate the obvious distinguishable differences that are important for this jurisdictional analysis.

In *Poch,* the two plaintiffs – Poch and Key – were not employed by the Bayshore defendants who sought relief through the exclusivity provision of the Act. Instead, Poch and Key

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were employees of a staffing agency, who contracted the men out for temporary work to the Bayshore South Carolina, Inc. ("Bayshore SC") worksite. *See Poch*, 405 S.C. 359. While working to dismantle equipment alongside Bayshore SC employees, an accident occurred killing Poch, and injuring Key. *Id.* at 363. Poch's estate and Key received workers' compensation benefits through the temporary staffing agency, Job Place. Subsequently, the petitioners (including Key and the estate of Poch) filed suit against Bayshore SC and its parent company, Bayshore Concrete Products Corporation ("Bayshore Corp."). *Id.* Bayshore SC and Bayshore Corp. both claimed to be the statutory employers of Poch and Key, and therefore, moved to dismiss for lack of subject matter jurisdiction, claiming workers' compensation was the exclusive remedy. *Id.* at 365.

The Supreme Court determined – after finding that Bayshore SC was the statutory employer of Poch and Key – that the exclusivity provision extended to Bayshore Corp. under a non-exclusive eight-factor test. *Id.* at 374.[1] However, the Bayshore SC/Bayshore Corp. relationship is completely distinguishable from that of KPPC and KapStone Charleston. Specifically, Bayshore Corp. created Bayshore SC for a limited purpose and for a single job. It was created essentially as a limited-engagement extension of Bayshore Corp. in order to complete a job in South Carolina that had been secured through a bid by Bayshore Corp. *Id.* at 759. On the exact day that the job was secured, Bayshore Corp. formed Bayshore SC as its wholly owned subsidiary **for the purpose of acting as a remote casting yard to fulfill the bid locally for the project**. *Id.* Put more simply, Bayshore Corp. created an offshoot of itself for the sole purpose of acting as a remote location of itself in order to have a local presence for the job Bayshore Corp. secured. For further proof, not only did Bayshore Corp. win the bid for the job and create the local acting entity the same day, the parent company also executed a lease for the local factory site and

[1] As further set forth below, Defendants do not even qualify as statutory employers in this case.

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bought the equipment for Bayshore SC to use for the job. This was a temporary entity created merely to satisfy the need for a local presence for a job.

In the instant case, KapStone Charleston was formed as a complete and separate legal entity over ten years ago for the purpose of manufacturing unbleached kraft paper and lumber products for retail and industrial applications. KapStone Charleston does not even perform the same work that is performed by its parent company, which does not operate at all in the manufacturing of paper and lumber products. KapStone Charleston was not formed to act as a local presence for KPPC's project, and its jobs, equipment, and property are procured and/or owed by KapStone Charleston – not its parent company, KPPC. While the issues argued in the *Poch* case have not been litigated frequently, especially considering the relative recency of the decision, it is **clear** that the scenario contemplated in the *Poch* case was not intended to be expanded to protect every parent company who has a subsidiary with workers' compensation coverage. The *Poch* case demonstrates a narrow situation wherein a parent company created a legal entity to serve as a local presence for the parent company during a project.

*Poch* is even further distinguishable from the case at hand because it dealt primarily with the analysis of whether or not the plaintiffs were statutory employees of the Bayshore entities. Here, there is no question that no statutory employer/employee relationship exists between Plaintiffs and either KPPC or Kraft. The exclusivity provision of the Workers' Compensation Act applies to 'direct' employees, and those identified as 'statutory employees' under §42-1-400. *See id.* At 367. It is clear that the Defendants are not 'direct' employers of Plaintiffs, as further described below, and do not qualify as a statutory employer under any of the tests applied by the Supreme Court in *Poch.* Specifically, the work being performed by Plaintiffs was not an important

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part of Defendants' business activities, as these entities are not involved in the manufacturing of kraft paper and lumber in South Carolina.

Further, the work being performed at the time Plaintiffs were burned had nothing to do with Defendants' business, and therefore, could not be considered a necessary or integral part of their business. And finally, there is no evidence that the work being performed at KapStone Charleston at the time of the incident had ever been performed by any employees of KCCP or Kraft. *See id.* at 368; *see also Fortner v. Thomas M. Evans. Const. and Development, LLC*, 402 S.C. 421, 431-32 (2013). There is no question that Plaintiffs are neither direct, nor statutory employees of KKPC or Kraft, and therefore the *Poch* analysis is inapplicable to this case. Considering this case is completely distinguishable from the facts underlying the *Poch* case, Plaintiffs request that the Court reconsider its decision and deny Defendants' motion.

**ii. Parent companies may be held liable under the law.**

As a general rule, that parent companies may be held liable for injuries to a subsidiary's employee under the law. In fact, the general rule does not extend immunity to the parent company, and only if there is an *exception* to that rule, should a parent company be immune from liability. The general rule reads as follows:

> A parent corporation is generally not immune from an action in tort by an injured employee of its subsidiary by virtue of the employee's entitlement to workers' compensation. Where an employee of a subsidiary is injured while working on property owned by the parent corporation and receives workers' compensation benefits from the subsidiary, the employee may maintain an action in tort against the parent corporation even though parent and subsidiary are covered by same policy of workers' compensation insurance.

*See* 82 Am.Jur.2d *Workers' Compensation* § 90 (2003).

In this case, Plaintiffs can maintain a cause of action against the parent companies of their employer because they were injured due to the acts and/or omissions of the parent companies,

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separate and apart from any actions of their employer. There is no exception that applies to divert from the general rule, and neither KPPC nor Kraft is immune from liability due to some overreaching extension of workers' compensation immunity. Therefore, the Court should reconsider its decision and deny Defendants' motion.

**b. No competent evidence exists to support Defendants' motion to dismiss.**

**i. Defendants' motion is entirely premised on Hulseman's affidavit.**

Defendants are not entitled to dismissal, especially considering that the entirety of their argument is supported by one substantive affidavit – the affidavit of KPPC's corporate representative, Kelly Hulseman. Specifically, Defendants' motion to dismiss references ***only*** Hulseman's affidavit with its three exhibits in support of their request for dismissal. *See* Defendants' Brief in Support. For the reasons described above, Hulseman's affidavit must be struck because it is not based on the affiant's personal knowledge or any other competent evidence. Without any competent affidavits supporting their arguments, the contentions included in Defendants' motion lack foundation and are, simply, baseless.

This Court should not, and cannot, rule to dismiss KPPC and Kraft from this lawsuit simply because a motion says it should. The decision to grant a dismissal pursuant to 12(b)(1) in this instance is fact-intensive, and requires the movant (Defendants) to bring forth sufficient evidence. Because they have not, and instead rely solely on the affidavit of an incompetent affiant, the motion must be denied.

**ii. Mark Niehus's affidavit is simply a business records affidavit.**

Furthermore, the only other affidavit presented in this case for purposes of the motion to dismiss is a later-filed affidavit from Mark Niehus – the more recently designated "corporate representative" who assumedly was named in an attempt to undo the admissions KCCP previously

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made through Ms. Hulseman. *See* Ex. C. This affidavit, however, is not substantive in nature, and provides no evidentiary support for Defendants' original motion to dismiss. Instead, Niehus's affidavit is a business records affidavit, seeking to authenticate a large list of documents produced by Defendants in discovery. An affidavit purporting to authenticate records as being maintained in the ordinary course of business does nothing to advance Defendants' argument under the *Poch* case. Therefore, as there ought to have been no evidence in the record to support Defendants' argument for dismissal on a theory of economic oneness, the Court should have found that Defendants failed to meet their burden under Poch. *Poch*, 405 S.C. at 379–80. Therefore, the Court should reconsider its decision and deny Defendants' motion.

**c. Even if the *Poch* factors applied, Defendants' motion to dismiss fails.**

To the extent *Poch* is at all relevant or applicable to the case at hand (and Plaintiff firmly contends it is not), ***and*** if Ms. Hulseman's affidavit is not stricken in its entirety, leaving Defendants' with absolutely no support for their motion, Plaintiffs submit that Defendants' motion to dismiss still fails as a matter of law because the evidence in this case proves that KapStone Charleston does not constitute a singular economic entity with either KPPC or Kraft. As evidenced below, the effort to create this "one economic entity" did not begin until ***after*** the incident made the basis of this suit, in a blatant attempt to avoid liability in this case. This manipulative behavior should not be permitted, and Defendants' motion should be denied.

Again, while Plaintiffs contend these factors are not applicable to this case and the jurisdictional question should be granted in Plaintiffs' favor without ever getting to the *Poch* case, *Poch* and additional authorities support Plaintiffs' position.

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In *Poch*, the Supreme Court explained that, although a parent corporation is not immune from an action in tort by an injured employee of its subsidiary, immunity can extend to the parent when the two corporations operate as essentially one economic entity. *Id.*, 405 S.C. at 370-75.

The Supreme Court further stated that to determine whether corporate entities operate in this manner, courts should consider the following non-exhaustive factors:

1. Did the two businesses maintain separate corporate identities?
2. Did the two businesses maintain separate boards of directors?
3. Did the two businesses transact business from different locations under different managers?
4. Did the two businesses hire and pay their own employees?
5. Did the two corporations hold themselves out to their employees as two separate identities?
6. Did the two corporations engage in different business activities?
7. Did the two corporations maintain separate books, bank accounts, and payroll records?
8. Did the two corporations file separate tax returns?

*Id.*, 405 S.C. at 372,

The Supreme Court looked to the Federal District Court of South Carolina for inspiration in setting forth these *"Poch* Factors." In *Monroe v. Monsanto Company*, 531 F.Supp. 426 (D.S.C.1982) the plaintiff sustained injuries while employed at the Fovil Manufacturing Company. *Monroe*, 531 F.Supp. at 427. The plaintiff lost his arm in a machine called the Gamble Cutter, which was designed, built, and placed in the Fovil plant by the Hale Manufacturing Company and the Monsanto Company. *Id.* After receiving workers' compensation benefits from Fovil, the plaintiff persisted in a suit against Hale. The defendants moved for summary judgment on the

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grounds that since Fovil and Hale were wholly owned subsidiaries of Monsanto, all three corporations were in essence a single entity. *Id.* at 427. Ultimately, after analyzing the foregoing factors the District Court denied the defendant's motion, finding Hale was a separate and distinct corporate entity from the plaintiff's employer, Fovil. As a result, the court found that Hale could not escape tort liability. *Id.* at 434–35.

Although the two corporations at issue in the *Monroe* case were "sister" corporations owned by a single parent company, the Supreme Court of South Carolina described as "correct" the "approach" taken by the District Court when analyzing whether two corporations should be treated as one economic entity. *Poch*, 405 S.C. at 371. In essence, the foregoing "*Poch* factors" analyzing economic unity in a *parent-subsidiary* corporation relationship were born as *"Monroe* factors" analyzing economic unity in a relationship where two sister corporations were owned by the same entity.

In reaching its decision, the *Monroe* court relied on two other South Carolina appellate cases specifically dealing with "sister" corporations and their potential status as one economic entity: *Gordon v. Hollywood Beaufort Package Corp.*, 213 S.C. 438, 49 S.E.2d 718(1948) and *Brown v. Moorhead Oil Co.*, 239 S.C. 604, 124 S.E.2d 47 (1962). These two cases provide additional support for denying Defendants' motion to dismiss.

In *Gordon,* the Supreme Court of South Carolina found that the employer and its wholly owned subsidiary were separate and distinct corporations. "The mere ownership of the capital stock of one corporation by another does not create an identity of corporate interest between the two companies, . . . or create the relationship of principal and agent, or representative, or alter ego between the two." *Gordon v. Hollywood-Beaufort Package Corp.*, 213 S.C. 438, 444, 49 S.E.2d 718, 720 (1948).

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In *Brown v. Moorhead Oil Co.,* the Claimant, George T. Brown, was injured in an accident while employed by Crown Royal Service Inc.—a company not subject to the then Workmen's Compensation Law because of the number of individuals it employed. As he could not obtain relief from his direct employer, he filed a claim for relief against Moorhead Oil Company, alleging that because of the "close connection between the two corporations" the circumstances justified him receiving relief under the Workmen's Compensation Act. *Brown v. Moorhead Oil Co.*, 239 S.C. 604, 606, 124 S.E.2d 47, 48 (1962). The Commission in effect at that time awarded him benefits, the judgment was affirmed on appeal to the Circuit Court, but that decision was directly overturned on further appeal before the South Carolina Supreme Court. *Id.* In its reversal, the Supreme Court of South Carolina held that the two corporations were separate and distinct corporations, and thus, the claimant had no viable claim for Workmens' Compensation against the parent company.

In reaching this conclusion, the Supreme Court of South Carolina considered the following facts to be significant:

1. The two companies were engaged in different business activities, one recapping tires and one distributing petroleum products.

2. The plaintiff worked at Crown Royal's place of business, was carried as an employee of Crown Royal on its payroll records, and his wages were paid by payroll checks of Crown Royal.

3. Although Albert Moorhead owned and generally supervised the management of both corporations, their business was transacted from separate locations under separate managers and their separate legal identities were preserved.

4. Although the books of both corporations were kept by the same persons in the offices of Moorhead Oil Company, separate books, bank accounts and payroll records were kept for each.

5. Separate tax returns were filed for each corporation.

*Monroe v. Monsanto Co.*, 531 F. Supp. 426, 433 (D.S.C. 1982)

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In light of *Poch, Monroe, Gordon, and Moorhead Oil*, the deposition testimony of Kelly Hulseman, KPPC's corporate representative, and the expert report of David N. Fuller (*see* Fuller affidavit and report attached as Ex. D and incorporated herein) will show that the non-exhaustive multi-factor test that Defendants wish to apply actually weighs in favor of denying Defendants' motion to dismiss.

**i. KapStone Charleston maintained a separate corporate identity from KPPC and Kraft.**

First, it is clear from the record in this case that KapStone Charleston (Plaintiffs' employer) maintained a completely separate business entity presence from both Defendants in this case. While this "factor" is heavily correlated with many other factors Defendants seek to address in their motion, the following testimony conclusively establishes that for purposes of this jurisdictional question, Plaintiffs' employer was a separate corporate entity from KPPC and Kraft.

Specifically, it is clear the businesses are separate legal entities, with different legal names:

***Deposition of the Corporate Representative of KapStone Paper and Packaging:***

22

Q. What I am asking about is the day-to-day operations, okay? There are lots of KapStone plants throughout the United States, correct?
A. Yes.
Q. They all have different legal entity names, correct?
A. Correct.
Q. They all are filed separately as far as legal entities are concerned, some are corporations, some are

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limited liability companies, correct?
A. Correct.

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Q. Okay. You don't know. You do know that the Kapstone Charleston Kraft LLC is a legal filing with a separate entity?

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20 A. Yes.
21 Q. Separate entity than your employer, correct?
22 A. Yes.
23 Q. And you do know that KapStone Kraft Paper
24 Corporation is a separate and distinct legal entity from

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1 your employer, correct?
2 A. Yes.

*See* Ex. B.

In fact, the businesses are so separate, that they each have the ability to purchase, own, and operate their own separate facilities and equipment:

***Deposition of the Corporate Representative of KapStone Paper and Packaging:***

115

1 Q. Okay, and that's fair and we will get to that
2 in a second, but what I want to show you is Exhibit No.
3 10. This is a deed that you had looked at, I assume,
4 and I can hand you that copy.
5 (Plaintiff's Deposition Exhibit No.
6 10 was marked for identification.)
7 A. Yes.
8 Q. Okay, and you have seen this before, correct?
9 A. Yes.
10 Q. And what this deed indicates is that KapStone
11 Charleston Kraft LLC is the owner of the plant that we
12 are talking about, the one in Charleston, correct?
13 A. Yes.
14 Q. So Jacque Lucas is employed by KapStone Kraft
15 LLC, we know that, right?
16 A. Yes.
17 Q. And he works at a plant that is at least
18 according to the warranty deed owned by KapStone
19 Charleston Kraft LLC, correct?
20 A. Yes.
21 Q. The same with Jacque Lucas, I mean excuse me,
22 the same with Daniel Simerly, your understanding is he
23 is also an employee of KapStone Charleston Kraft LLC,
24 true?

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1 A. Yes.

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Q. And he also works at the plant owned by KapStone Charleston Kraft LLC as shown in Exhibit 10, correct?
A. Correct.

*See id.*

Furthermore, when referring to where a person is employed, the businesses are identified separately – not as a single KapStone entity.

***Deposition of the Corporate Representative of KapStone Paper and Packaging:***

133

**Q. Well, if you wanted to be specific about whom my clients work for, you would refer to them by their employer?**
**A. Charleston.**
Q. Right. The Charleston for short, correct?
A. Correct.

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Q. Okay, fair enough. In any event there might be from time to time where someone comes to you and talks to you about an employee and refers to you as a Charleston employee, correct?
A. Correct.
Q. And what you would take that to mean is he is employed by Kapstone Charleston Kraft LLC, right, the same as what we talked about earlier?
A. Correct.
Q. Okay. And when you say a Charleston employee or a Kapstone Charleston Kraft LLC employee, a hundred

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percent of the time it's going to deal with someone in South Carolina for the Charleston area, right?
MR. WILLIS: Objection to form.
A. I believe so.

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Q. All right. So let's go -- as far as W2s are concerned, we talked about the different legal entities between Kapstone Kraft Paper Corporation, Kapstone Charleston Kraft LLC, and then your employer, Kapstone

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Paper and Packaging Corporation. Are we on the same page with those three entities so far?
A. Yes.
**Q. Each one of them has a different federal tax I.D. number, correct?**
**A. Correct.**
**Q. Each one of them issue separate W2s or separate checks with their names on it, correct?**
**A. Correct.**

*See* Ex. B.

KPPC is a separate legal entity – in legal filings, identification, and name recognition – from Plaintiffs' employer, KapStone Charleston. In fact, KPPC and Kraft are both a completely different form of legal entity – specifically, a corporation – compared to Plaintiffs' employer, which is a limited liability company. *See i.e.* Exs. E and F.

As the court in *Monroe* recognized as a first principle: "There are benefits to be derived by the parent corporation maintaining a separate identity from that of the subsidiary . . . [h]aving retained whatever benefits may be available to themselves as separate and distinct corporations, associated corporations may be estopped to deny their separate existence.'" *Monroe*, 531 F. Supp. at 432 (citing to 18 C.J.S. Corporations ss 105-115).

Considering the admittedly separate identities of these businesses, not only in the eyes of the law but in the eyes of KPPC through the testimony of its representative, the KapStone entities are separate for purposes of the economic integration argument, and this factor weighs against Defendants'.

**ii. KPPC began modifying its management system AFTER this incident in an attempt to reflect that it was one economic entity with its subsidiaries.**

Second, all evidence confirms that KPPC did not intend to function as one economic entity as referenced by the *Poch* case until ***after*** the incident made the basis of this suit. It is clear from

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the timing of the incident and the filing of the lawsuit that KPPC made a conscious decision to try and avoid liability in this case by merging the management of their businesses into a "Shared Services" department. However, and importantly, the critical time to evaluate the economic integration of the Defendants as compared to Plaintiffs' employer is on the date of the incident – not eight (8) months later when Defendants were attempting to form a more integral management plan in an effort to satisfy the *Poch* factors.

KPPC testified to the timing of the changes below (keeping in mind the date of this incident was May 24, 2016:

***Deposition of the Corporate Representative of KapStone Paper and Packaging:***

18

Q. And then at some point you were given a new title of vice president of Shared Services in January 2017.
A. Uh-huh.
**Q. Was that a new position that was created?**
**A. Yes.**
Q. So prior to January 2017 there was no Shared Services department, fair?
A. Not formally there was no Shared Service Department.

19

**My question is pretty simple. Prior to January of 2017 at KapStone Paper and Packaging Corporation there was no Shared Services Department, correct?**
**A. Correct.**
Q. In January of 2017, a position was created called the vice president of Shared Services at KapStone Paper and Packaging Corporation and you filled that role, true?
A. True.

143

Q. Okay. And what I understand is that at some point in time over the last year the thing started becoming more centralized, would you agree with that?

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A. By design, yes.
Q. Right, by design. Kind of like your role of being appointed to a vice president of a shared systems, correct?
A. Correct.
**Q. That was part of that process of moving to a centralized role, correct?**
**A. To be an integrated company, integrated packaging.**

144

Q. Well, maybe I am saying it wrong. My understanding was as far as your title that you have, it's VP of Shared Services, correct?
A. Correct.
Q. And that title did not exist prior to January 2017, correct?
A. Correct.
Q. And it was a title that was created for the first time in January 2017, correct?
A. Correct.

146

**Q. Okay. As far as when we look through our documents and start to see actual evidence in the documentation related to this restructure, you would agree with me titles and positions started changing on January 1, 2017 along with yours, correct?**
**A. Correct.**

*See* Ex. B.

In fact, the corporate entity went so far as to roll out an entirely new program in an attempt to appear more economically integrated in the months following the incident wherein Plaintiffs were horrifically burned.

***Deposition of the Corporate Representative of KapStone Paper and Packaging:***

228

Q. Okay. Leadership One was this whole centralized thing that came out with your new position on January 1, 2017, correct?
A. Yes.
Q. Okay. Came out when they listed this new

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14 list of officers and directors on January 1, 2017 as
15 well, correct?
16 A. Correct.
17 Q. It wasn't in existence prior to that,
18 correct?
21 A. Correct.

*See id.*

In *Strickland v. Textron, Inc.*, 433 F.Supp. 326 (D.S.C.1977), the plaintiff was injured while employed by "Talon Division of Textron, Inc." After receiving workmen's compensations as an employee of Talon, she sued Textron, Inc., alleging that it was the entity that caused her injury. The court dismissed the case on summary judgment, finding that "Talon has no board of directors and is not a separate corporate entity." *Id.* at 328. The court dismissed the concerns as "unreasonable" that prior to the date of plaintiff's hiring by Talon Division of Textron, Inc. in 1970, "Talon Inc." was a separate legal entity. *Id.* at 329. "On July 15, 1968 . . . Textron Inc. acquired all of the assets of Talon [Inc. and Talon Inc.] was dissolved with its operations being designated as the Talon Division of Textron Inc." *Id.* at 327. The court concluded that "[t]his is not the case of an employee commencing work with only one employer only to have that employer change without her knowledge. Here, plaintiff commenced her employment with the Talon Division of Textron, Inc. and was so employed on the date of the accident." *Id.* at 329.

The timing of the formation of this new "Leadership One" program is at the very least suspect, especially given the impending lawsuit KCCP became aware of in the months leading up to January 2017. Despite this curious timing, however, the important consideration to take into account, based upon a common-sense approach and the District Court's holding in *Textron,* is the state of the entities on the date of the incident. It is clear from the testimony that the move to a more "integrated company" took place in 2017, over six months after Plaintiffs were burned.

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Therefore, economic integration was not instituted until after the incident occurred. Under these circumstances, this Court, as a matter of common-sense and public policy, should not grant its imprimatur to the efforts of Defendants, whether through purposeful circumvention or fortuitous coincidence, to escape liability by after-the-fact modification of corporate structures.

**iii. The two businesses transact business from different locations under different managers.**

Third, KPPC and Kraft both operate their completely separate businesses from different locations than KapStone Charleston and under the direct supervision of different managers than KapStone Charleston. In fact, the managers who work for KapStone Charleston work **exclusively** for KapStone Charleston and manage KapStone Charleston employees located in Charleston, to the total exclusion of any other KapStone entity or location.

***Deposition of the Corporate Representative of KapStone Paper and Packaging:***

130

Q. Okay. As far as who the managers are at
Kapstone Charleston Kraft LLC -- well, let me back up.
**My understanding is there are managers at Kapstone Charleston Kraft LLC that are employed at the mill that do help transact business, is that right?**

**131**

**A. Yes.**

132

Q. Okay. Or -- okay. You agree with me that
Kapstone Charleston Kraft LLC operates exclusively in
Charleston, correct?
MR. WILLIS: Objection to the form.
A. Can you define operates?
**Q. Okay. What I mean is they have one plant in Charleston, right?**
**A. Correct.**
**Q. Okay. They have all of the employees of Kapstone Charleston Kraft LLC are located in Charleston or surrounding areas, right?**
**A. Correct.**

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**Q. They work at the plant in Charleston?**
**A. Correct.**
Q. As far as they might supply paper and packaging to other locations, but as far as where it's

133

generated, it's generated there?
A. Correct.
Q. The work product they make related to -- the work product they make related to packaging and paper is there at that location for those employees at KapStone Kraft LLC, fair?
A. Fair.

*See* Ex. B.

Considering how KPPC operates with its own managers in Northbrook, Illinois, and KapStone Charleston operates its own business, supervised by its own managers, in Charleston, South Carolina, to the complete exclusion of any other location or employees, this factor weighs against a finding that either Defendant was economically integrated with KapStone Charleson.

**iv. The two businesses hire and pay their own employees.**

Similar to the third factor in the *Poch* analysis, KPPC hires, pays, and fires its employees in Illinois, whereas KapStone Charleston hires, pays, and fires its own employees in Charleston, SC. KPPC testified that it does not fire the employees – like Plaintiffs in this case – down at Charleston's facility. Instead, those hiring and firing decisions are made by KapStone Charleston employees and management. Additionally, KPPC had no part in entering a collective bargaining agreement with Plaintiffs' union, through which they were employed. All decisions with regards to hiring, firing, and payment are dealt with exclusively at the Charleston facility by KapStone Charleston employees.

***Deposition of the Corporate Representative of KapStone Paper and Packaging:***

109

**Q. Okay. Before we get started I wanted to ask**

**you a few questions about, let's just start here, your employer is KapStone Paper and Packaging Corporation, correct?**
**A. Yes.**
**Q. Okay. KapStone Charleston Kraft LLC has its own employees as well, correct?**
**A. Correct.**
**Q. And KapStone Kraft Paper Corporation has its own employees as well, correct?**
**A. Correct.**
**Q. All are separate employers of individuals, true?**
**A. Yes.**

137

Q. Are you aware of any employees at the Charleston Plant who are employed by Kapstone Paper and Packaging Corporation? Can you name me one?
A. I cannot.

153

Q. Enters into the agreement like an individual who is in charge of it. Let me back up. Kapstone Charleston LLC we are familiar so far, right?
A. Yes.
Q. It enters into a Collective Bargaining Agreement with a union, correct?
A. Yes.
Q. There should be representatives on both sides or people involved in that process, fair?
A. Yes.
Q. Do you know who that is?
A. I believe Gary Pairfencik (Phonetically).
Q. Pairfencik?
A. Pairfencik, I don't know how to spell it.
**Q. And that's fine. Gary Pairfencik and he would be the person on behalf of Kapstone Charleston**

154

**Kraft LLC?**
**A. He negotiated the agreement.**
**Q. On behalf of Kapstone Charleston Kraft LLC?**
**A. Yes.**
Q. Okay. And then do you know the name of the union representative who negotiated on the other side?
A. I do not.



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Q. Okay. And what you are saying your personal knowledge that you have regarding what managers are allowed to do is based on your experience as a KapStone Paper and Packaging Corporation manager located here in North Bridge (sic) Illinois, fair?
A. Yes.
Q. You don't have any experience or any exposure as a Kapstone Paper and Packaging Corporation manager at any other location than this one in Chicago, fair?
A. Yes.
**Q. You have never hired or fired anyone at any other location other than KapStone Paper and Packaging Corporation, fair?**
**A. Yes.**
**Q. Okay. You have never hired or fired a Kapstone Charleston Kraft LLC employee, true?**
**A. True.**
Q. And as far as what goes into that or how it's

270

done or who does it, that's never something that you personally have been involved in, fair?
MR. WILLIS: Objection to form.
BY MR. FINDLEY:
Q. Yes?
A. Yes.

283

Q. Okay. The ones you just named, all the employee -- each one of those that you named has their own set of the employees, fair?
A. They have employees.
Q. Okay.
A. People are employed by those entities, yes.

*See* Ex. B.

Because KPPC hires, fires, and pays its own employees, to the exclusion of KapStone Charleston which hires, fires, and pays its own employees, this factor weighs against Defendants'.

**v. The two businesses hold themselves out as two separate identities.**

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Not only are both KPPC and Kraft separate and distinct legal entities from KapStone Charleston, but as referenced above in overlapping factor arguments, the entities were identified internally, and to the public, as entirely separate entities. Employees would receive W-2s and paychecks identifying them as being employed by only one of these companies – not all as employees of a singular KapStone entity. *See e.g.*, Exs. G and H.

***Deposition of the Corporate Representative of KapStone Paper and Packaging:***

109

Q. Now, your paychecks would, do your paychecks actually say KapStone Paper and Packaging Corporation, right?
A. Yes.

110

**Q. Fair enough. What you are saying is that the W2s, if an individual is employed by KapStone Charleston Kraft LLC, his W2 will reflect that entity, correct?**
**A. Yes. Yes.**
**Q. The W2 will not say Kapstone Paper and Packaging Corporation, correct?**
**A. Yes.**

110

Q. 2016 W2 for Jacque Lucas as we see indicating KapStone Charleston Kraft LLC, correct?
A. Yes.
Q. Now, your W2 would say KapStone Paper and Packaging Corporation, fair?
A. Yes.

111

Q. Okay. Now, there are other W2s out there that would say if someone is employed by that entity would say KapStone Kraft Paper Corporation, correct?
A. Yes.

112

Q. Exhibit No. 9 would be a, there is a copy of a check at the bottom, correct?
A. Yes.
Q. The entity listed on that check being paid to

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16 Jacque Lucas is KapStone Charleston Kraft, correct?
17 A. Yes.
18 Q. The same as his W2 KapStone Charleston Kraft,
19 correct?
20 A. Yes.

112

12 Q. Exhibit No. 9 would be a, there is a copy of
13 a check at the bottom, correct?
14 A. Yes.
15 Q. The entity listed on that check being paid to
16 Jacque Lucas is KapStone Charleston Kraft, correct?
17 A. Yes.
18 Q. The same as his W2 KapStone Charleston Kraft,
19 correct?
20 A. Yes.

*See* Ex. B.

Additionally, it is clear that KapStone Charleston employees consider themselves to be employed by KapStone Charleston, and identify as such. Furthermore, KapStone Charleston employees are only found in the Charleston plant, which is owned and operated by KapStone Charleston.

***Deposition of the Corporate Representative of KapStone Paper and Packaging:***

113

20 Q. Okay. Have you ever come across a KapStone
21 Charleston Kraft LLC employee at any location other than
22 the Charleston mill?
23 A. We speak of it in terms of location numbers
24 and acronym, so we do have employees. The question is

114

1 do we have Charleston employees at a different location?
**2 Q. Correct. Is whether you have KapStone**
**3 Charleston Kraft LLC employees at locations other than**
**4 the plant in Charleston?**
**5 A. I don't believe so.**

165

15 Q. Okay. Fair enough. I am just going through
16 to get a recap of what we talked about. Kapstone

Charleston Kraft LLC where my employer worked, those individuals with that employer would work at the North Charleston mill, correct?
A. Yes.
Q. They would have positions other than management and IT. It could be things like mechanic like my client was, right?
A. Yes.

234

**Q. Okay, and I understand that you are considered corporate. Okay. So you are saying -- when we talk about corporate, if you were to describe your employment, okay, you would say I work for corporate, would you agree?**
**A. Yes.**
**Q. Okay. And when people refer to corporate**

**235**

**they are talking about Kapstone Paper and Packaging Corporation, correct?**
**A. We are talking about Northbrook.**
Q. Okay. Well, you don't work for Northbrook, you work for KapStone Paper and Packaging Corporation?
A. Yes.

283

Q. Okay. Well, let's do it this way. We already talked about payroll for Kapstone Charleston Kraft LLC. They get a, if you want a hard check with

284

KapStone Charleston Kraft LLC, you can receive it, correct, receive a copy of it?
A. Yes.
Q. Okay. The same with their W2s, it has a separate legal entity of Kapstone Charleston Kraft LLC, correct?
A. Yes.
Q. Of those entities you just read, they are all separate and distinct legal entities, correct?
A. Correct.
Q. Okay. Each one of those that you read the employees for those particular entities receive a check with their respective entity on there, their employer?
A. Yes.



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15 Q. Okay. And that would be true whether it
16 comes as direct deposit or whether it comes as a hard
17 check because their W2s list their distinct employer as
18 well, correct?
19 A. Correct.

*See* Ex. B.

Considering the businesses are held out to the public and to their own employees as being two separate entities, this factor weighs against finding that Defendants' were one economic entity.

**vi. The two businesses engage in different business activities.**

As discussed briefly above, KPPC and Kraft perform completely different business activities from those performed by KapStone Charleston. In fact, KPPC is not in the business of manufacturing or selling paper products whatsoever. This factor weighs strongly in favor of denying Defendants' motion to dismiss.

***Deposition of the Corporate Representative of KapStone Paper and Packaging:***

39

**13 Q. All right. Would you agree with me that**
**14 KapStone Paper and Packaging does not manufacture or**
**15 sell paper products?**
**16 A. I agree.**
**17 Q. Do you agree with me that KapStone Charleston**
**18 Kraft LLC does manufacture and sell paper products?**
**19 A. I agree.**

88

23 Q. Okay. You would agree with me and we talked
24 about it earlier that KapStone Paper and Packaging

89

1 Corporation does not manufacture paper products, it does
2 not sell paper products, fair?
3 A. Fair.

89

12 One is in the business of selling and
13 manufacturing paper products and one is not, true?
14 MR. WILLIS: Object to the form of the question.

15 A. True.

166

4 Q. KapStone Paper and Packaging Corporation is a
5 different entity, it's your employer, correct?
6 A. Correct.
7 Q. Okay. And your employer would have under 200
8 people that it employs, correct?
9 A. I would like to confirm that, but yes.
10 Q. Give or take a few, right?
11 A. Yes.
12 Q. And of those 200 give or take that your
13 employer employs including yourself, none of those job
14 duties or descriptions would include turning wrenches or
15 doing maintenance inside a plant, fair?
16 A. I believe so, yes.
**17 Q. Okay. And that's all I am getting at, as far**
**18 as my client's employer and his job descriptions they**
**19 would be different than say your employers which is**
**20 KapStone Paper and Packaging Corporation, fair?**
**21 A. Fair.**

160

14 Q. Okay. Of the under 200 people that work at
15 actually employed by KapStone Paper and Packaging
16 Corporation, we are together so far?
17 A. Yes.
18 Q. You know what people I am talking about now?
19 A. Kapstone Paper and Packaging employees.
**20 Q. Okay, right. Of those, under those 200**
**21 people, do any of them do, actually work the job that my**
**22 client works meaning a mechanic at a mill for the paper**
**23 manufacturing and selling?**
**24 A. No.**

161

**1 Q. Okay. None of them do, right?**
**2 A. Correct.**

162

6 Q. Just for using an example for you, more
7 manual labor, performance of duties in the field, no one
8 at KapStone Paper and Packaging Corporation, the under
9 200 people employees actually perform the work in the
10 field, fair?
11 A. Yes.



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*See* Ex. B.

Defendants, in passing, profess that they are "statutory employers" of Plaintiffs pursuant to SC Code Ann. §42-1-410.[2] Defendants' Amended Motion to Dismiss, para. 6. But, the South Carolina Supreme Court in *Poch* concluded that applying the "statutory employer" test (founded on a contractor/subcontractor relationship) in a parent-subsidiary relationship (as is present in this case) is "an incorrect legal standard." *Poch*, 405 S.C. at 370. Rather, the Court "recognize[d]" that the "correct approach" in assessing immunity in a parent-subsidiary relationship "is the one found in *Monroe v. Monsanto Company,* 531 F.Supp. 426 (D.S.C.1982)." *Poch*, 405 S.C. at 371.

Even if this Court were to apply this errant contractor/subcontractor statutory employer test, Defendants would still not qualify for immunity.[3] KapStone Charleston's business activities are restricted to the manufacturing and sale of paper products – something Defendants do not do. Defendants' actual employees engage in "office" work and none of them engage in anything close

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[2] "When any person, in this section and §§ 42–1–420 to 42–1–450 referred to as "contractor," contracts to perform or execute any work for another person which is not a part of the trade, business or occupation of such other person and contracts with any other person (in this section and §§ 42–1–420 to 42–1–450 referred to as "subcontractor") for the execution or performance by or under the subcontractor of the whole or any of the work undertaken by such contractor, the contractor shall be liable to pay to any workman employed in the work any compensation under this Title which he would have been liable to pay if that workman had been immediately employed by him."

[3] As the *Poch* Court held:

> In determining whether an employee is engaged in activity that is 'part of [the owner's] trade, business, or occupation' as required under section 42–1–400, this Court has applied three tests." *Olmstead v. Shakespeare,* 354 S.C. 421, 424, 581 S.E.2d 483, 485 (2003). "The activity is considered 'part of [the owner's] trade, business, or occupation' for purposes of the statute if it (1) is an important part of the owner's business or trade; (2) is a necessary, essential, and integral part of the owner's business; ***or*** (3) has previously been performed by the owner's employees." *Id.* "If the activity at issue meets even *one* of these three criteria, the injured employee qualifies as the statutory employee of 'the owner.'" *Id.*

*Poch*, 405 S.C. at 368 (revisions and emphasis in original).

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to resembling the hard and manual labor within the paper mill that Plaintiffs were employed to do. And, as Defendants did not engage in paper manufacturing or selling, the work done by Plaintiffs was, by definition, not something that was an essential part of Defendants' business activities.

Not only are the types of business carried out by each entity different, **KPPC was not even permitted to perform business in the state of South Carolina at the time of this incident.** *See* Exs. I and J. It was not until after Hulseman's deposition as corporate representative took place that KPPC began attempting to renew their ability to perform work in South Carolina.

***Deposition of the Corporate Representative of KapStone Paper and Packaging:***

179

Q. Do you have any idea why your employer, KapStone Paper and Packaging Corporation, forfeited its existence in 2015 with the Secretary of State in South Carolina?
MR. WILLIS: Objection to form.
A. I don't.

179

Q. This is your employer, correct, KapStone Paper and Packaging Corporation?
A. Yes.
Q. Okay. And it says dissolved date June 16, 2015, do you see that on the right side?
A. Yes.
Q. At least according to the Secretary of State based on this document your employer is not registered to do business in the State of South Carolina, fair?

180

MR. WILLIS: Objection to form.
A. I am not familiar with the form, but I believe so.
MR. FINDLEY: It says what it says, right?
A. Yes. Yes.

*See* Ex. B.

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In *Monroe*, the District Court found that it was relevant to consider, in finding that two corporations were separate economic entities for workers' compensation immunity purposes, that one of the companies had, as is the case here, "surrendered its previously granted authority to transact business in [South Carolina]." *Monroe*, 531 F. Supp. at 431 (D.S.C. 1982).

It is undisputable in this case that KPPC and KapStone Charleston performed completely different business operations, and therefore, are not one economic entity for purposes of workers' compensation and the *Poch* factors. Any argument to the contrary would require ignoring of hundreds of pages of testimony in this case. Therefore, this factor weighs heavily against Defendants. Plaintiffs request that the Court reconsider its decision and deny Defendants' motion.

**vii. The two businesses maintained separate records.**

Finally, although possibly repetitive of previous factors, KPPC and KapStone Charleston maintained separate records, including operations documents, payroll documents, and employee files, to name a few. The separation of business records is yet another factor that weighs heavily against a finding that Defendants and KapStone Charleston were one and the same, and militates for denial of Defendants' motion.

***Deposition of the Corporate Representative of KapStone Paper and Packaging:***

157

Q. And let's just take Kapstone Charleston Kraft, for instance. Okay, if you are employed by them and you wanted to pick up a Kapstone Charleston Kraft LLC check, you would drive to the Charleston location to get it, correct?
A. I would have to check what we are doing

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today.
Q. I'm not -- well, today, when you did this job in 2014, surely the people who are employed at Kapstone Charleston Kraft LLC in Charleston could pick up their checks at the Charleston mill, correct?

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A. Correct.

Q. Okay. As far as if you wanted to pick up a check for KapStone Paper and Packaging Corporation, your employer, right, you would drive to the Chicago location where you are employed, correct?
A. Correct.

172

**Q. If I wanted to know where his entire employment file was located based on your experience of working there since 2008, would you say that it would be at the Charleston mill location?**
**A. I believe so, yes.**
Q. Okay. And based on your experience of working here for Kapstone Paper and Packaging Corporation, employment files for all the various entities over the United States are not located here, correct?
MR. WILLIS: Objection to form.

173

A. I do not believe so.

282

**Q. Okay. And they would have separate payroll as well meaning they have payroll checks with their entity name on it, correct?**
**A. Yes.**
**Q. Okay. It wouldn't say KapStone Paper and Packaging Corporation, true?**
**A. Yes.**

*See* Ex. B.

It is clear from the unequivocal testimony in this case that not only KPPC and KapStone Charleston hold themselves out as separate entities, they are in fact, completely separate, distinguishable entities for all purposes, including economic. KapStone Charleston's separate business, run by separate managers, for a different and separate business purpose cannot be considered the same entity as the KapStone Defendants for purposes of workers' compensation. Furthermore, to the extent that Defendants seek to present evidence that competes or contradicts

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the prior sworn testimony of Hulseman, they should be estopped from doing so. *See generally Cothran v. Brown*, 357 S.C. 210, 217, 592 S.E.2d 629, 633 (2004).[4]

**2. The Court should alter or amend its February 26, 2020, order granting Defendants' motion to dismiss.**

Plaintiffs object to the entirety of the Court's order (attached hereto as Ex. K), and request that the Court alter or amend its order in line with its decision on this motion.

**a. The order relies on an erroneous analysis of the *Poch* factors as applied to this case.**

Respectfully, the Court's decision and order follow from an incorrect analysis of the *Poch* factors. While the Court noted in its order that it found the Hulseman and Lester affidavits admissible, the Court also noted that it did not rely on either of them in reaching its decision. Left only with documentary evidence, the Court should have found that neither KPPC nor Kraft proved its economic oneness with KapStone Charleston under the *Poch* inquiry. However, the Court employed the *Poch* test in a manner that spoiled the test's neutrality, resulting in findings that were biased to Defendants' benefit.

**i. The Court's analysis of the *Poch* factors incorrectly comingled the two Defendants and reviewed their dissimilar relationships to KapStone Charleston as one tripartite whole instead of analyzing each Defendant's relationship to KapStone Charleston independently.**

The *Poch* test is designed to analyze whether **two** corporate entities should be considered as one due to their being so financially integrated that they are each other's alter ego. *Poch*, 405

[4] At Section I in their September 22, 2017, Brief in Support of Their Rule 12(b)(1) Motion to Dismiss, Defendants cite to a "final additional factor" – the right of a parent entity to "close down" a subsidiary, purportedly recognized by the South Carolina Court of Appeals in *Mickle v. Boyd Brothers' Transportation, Inc.* No. 1025-UP-068, 2015 WL 576711, at *2 (Ct. App. Feb. 11, 2015). That was an unpublished order though and "ha[s] no precedential value." Rule 268(d)(2), South Carolina Appellate Court Rules. Even if this is an additional factor for this court's consideration, it is but one of many, and standing alone, is not controlling nor dispositive.

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S.C. at 371, 372, 373, 374, 375. However, Defendants are two corporate entities both claiming that a third entity—Plaintiffs' employer—is their alter ego. Based on the order, it appears that the Court did not independently scrutinize each Defendant's claim that Plaintiffs' employer was its alter ego, but rather looked at the mixed relationships among all three entities together. This approach was incorrect because it attributed to both Defendants evidence applicable to only one. Without a finding that Defendants are so interrelated that if KapStone Charleston is alter ego of one then it is alter ego of the other as well, this approach cannot stand.

As a consequence of comingling KPPC's and Kraft's separate relationships with KapStone Charleston into one, the Court was more likely to find that individual *Poch* factors weighed in both Defendants' favor. Evidence of KPPC's connections to KapStone Charleston benefitted Kraft, and evidence of Kraft's connections to KapStone Charleston benefitted KPPC. Under this approach, it would be possible for a corporate entity lacking sufficient connection to a plaintiff's employer under *Poch* to nonetheless escape liability by piggybacking on the sufficient connection of another corporate entity. Even more unfair, it would allow two corporate entities that would both fail to prove a sufficient connection to a plaintiff's employer under *Poch*, if they each had to do so separately, to pool their evidence, tag-team the *Poch* factors, and "prove" a tripartite connection. Presuming that Defendants are one and the same relieves one or both of them of their full burden of proof. Biasing the *Poch* test in this manner works a manifest injustice because it undercuts a plaintiff's right to seek legal redress for injury.

Under the first *Poch* factor, the Court's order states that "Plaintiffs' employment applications, hiring letters, and signed company policies all exhibited the shared 'KapStone Paper' name, logo, and trademark." Ex. K at 9. But this statement refers only to KapStone Charleston's use of the same name, logo, and trademark as KPPC. The order does not cite evidence or contain

findings that these documents have anything to do with Kraft's relationship to KapStone Charleston. As a named Defendant, Kraft has the burden to produce evidence on its own behalf. Kraft failed to produce any evidence on *Poch*'s first factor, and KPPC's evidence was weak (as will be discussed further below). A finding in favor of both Defendants on this factor was not supported by evidence.

In discussing the second *Poch* factor, the Court noted that "the KapStone Defendants maintained overlapping Officers and Boards of Directors." *Id.* But this statement refers only to Defendants, not to KapStone Charleston. Moreover, KapStone Charleston is an LLC and, therefore, has no board of directors. KapStone Charleston is wholly owned by Kraft, not KPPC. While the Court notes that KapStone Charleston's officers are all either directors or officers of KPPC and Kraft, this finding is given too much weight when the Court combines KPPC and Kraft into the same *Poch* analysis.

For the third *Poch* factor, the Court found that "the KapStone Defendants were headquartered in the same location as their subsidiaries"—Northbrook, Illinois—but then went on to state that KapStone Charleston was located in Charleston, South Carolina. *Id.* at 10. This finding has nothing to do with either Defendant's relationship to KapStone Charleston. Moreover, even though the Court stated in its order that "each KapStone entity was engaged in its own day-to-day operations," *id.* at 11, the Court went on to find that a preponderance of the evidence supports a finding that the KapStone companies conducted business from shared locations." *Id.* at 12. But the majority of the evidence supporting that finding relates to a few managerial activities undertaken by KPPC at its corporate office, including board meetings (which KapStone Charleston could not attend because it has no board) and shared accounting and payroll services. This evidence was



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used to show that both KPPC *and* Kraft did business from the same location and under the same managers as KapStone Charleston even though the weight of the evidence shows otherwise.

*Poch* factor number four questions whether the two businesses hired and paid their own employees. Here, again, the Court conflates KPPC and Kraft when it notes, as it did under the third factor, that employee compensation is "processed and funded by [KPPC] through shared payroll services and a third-party payment processor." *Id.* at 12. On this factor, too, Kraft failed to produce any evidence on its own behalf. The Court's finding as to which way this factor leans in this case is not clear from the order, but the Court did note that "[e]ach KapStone entity generally hired its own local employees, both hourly and salaried." Plaintiffs assert that the evidence on factor number four is strongly in their favor.

For the fifth factor, the Court found that "the KapStone entities held themselves out to their employees and the public as having a common identity." *Id.* at 14. As under the first factor, the Court noted that KapStone Charleston used KPPC's "name, logo, trademark, internal letterhead, website, and business forms," including on employment applications and hiring letters. *Id.* at 13. The court also noted that Plaintiffs signed various forms referring to KPPC policies. *Id.* at 13-14. As the only evidence relevant to Kraft, the Court noted that "Plaintiffs received hiring letters that referenced [KPPC] and [Kraft]." *Id.* at 13. Here, too, Kraft skates by on KPPC's evidence.

Under *Poch* factor six, KPPC benefits from Kraft's evidence. The question is whether two companies engage in different business activities. If they do, then a court is less likely to find that one is alter ego of the other. The Court's order for this factor noted that "while [Kraft] and KapStone Charleston were engaged in the same general business of manufacturing kraft paper products, [KPPC] did not literally manufacture paper." *Id.* at 14. That should have ended the Court's analysis under this factor. Instead, the Court went on to find that KPPC was also engaged

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in the same business as Kraft and KapStone Charleston because "[i]n essence, the various KapStone companies operated as a single-purpose entity with specialized divisions, all funded by [KPPC.]" *Id.* at 15. This finding is error because it takes the object of the *Poch* analysis (whether two companies are economically integrated), assumes it is met, and then uses it as a point of support for the analysis. Similarity in business between Kraft and KapStone Charleston should not be imputed to KPPC. KPPC failed to show that factor six weighs in its favor. Kraft and KPPC are not the same, so their disparate relationships to KapStone Charleston should not be comingled.

The Court's finding that both Defendants "satisfied" the seventh *Poch* factor—whether the companies maintained separate books, bank accounts, and payroll records—relied on evidence applicable only to KPPC. In addition, much of the evidence the Court relied on for this factor is the same evidence the Court relied on to find in Defendants' favor on other factors (as will be discussed below).

Because evidence applicable to only either KPPC or Kraft was applied to both, the Court's finding that KapStone Charleston was the alter ego of both is unclear and flawed. For that reason alone, and more so for that reason in conjunction with the other reasons stated in this motion, Plaintiffs request that the Court alter or amend its order.

**ii. The Court biased the *Poch* test in Defendants' favor by counting the same evidence under multiple factors.**

The *Poch* factors are meant to be weighed so that a court may evaluate whether on balance they lean toward a finding of alter ego status or not. This balancing test must be designed and applied in a neutral manner so as not to tilt the inquiry one way or another at the outset, which would prejudice the opposing side. However, the Court's order shows that in many instances the Court counted the same evidence across multiple factors. In doing so, the Court biased the *Poch* test in Defendants' favor and to Plaintiffs' detriment.

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There was substantial overlap in the evidence the Court relied on for its findings under *Poch* factors one and five. Factor one looks to whether the businesses maintained separate corporate identities, and factor five considers whether the businesses held themselves out to their employees as having separate identities. The difference between these factors is plain from their wording: factor one is objective, and concerns corporate identity in general, and factor five focuses on employees' impressions of corporate identity. In finding that both factors were in Defendants' favor, the Court referred to substantially the same evidence: use of KapStone's name, logo, trademark, color scheme, website, and employment forms. Given the distinct questions asked by factors one and five, the Court's double counting here is unwarranted and prejudicial to Plaintiffs.

There was even greater overreliance on the same evidence in the Court's analysis under factors three, four, six, and seven. For these factors, the Court relied heavily on its finding that KPPC streamlines administrative overhead among the KapStone entities by centralizing payroll, accounting, and some leasing. That finding supported the Court's conclusion that Defendants and KapStone Charleston transacted business from the same location under the same managers (factor three); engaged in the same business activities (factor six); and maintained shared books, bank accounts, and payroll records (factor seven).

The questions posed by these factors are too dissimilar for the same evidence to be fairly used for all of them. The evidence is of Defendants' centralization of payroll, accounting, and other administrative overhead. Such evidence is best fitted to the question of shared books, bank accounts, and payroll records under factor seven. The evidence is not on point for the question of whether KPPC or Kraft conducted business in the same location and under the same managers as KapStone Charleston. They did not. Nor is it on point for the question of whether the companies were involved in the same business activities. They were not.

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The Court's double counting under factors one and five and quadruple-counting under factors three, four, six, and seven wrongfully applied the *Poch* analysis in a way that was prejudicial to Plaintiffs. For that reason, Plaintiffs request that the Court alter or amend its order.

**iii. The Court's overall balancing of the *Poch* factors was flawed because it assigned binary values to each factor rather than comparative weights, and those binary values were wrongly tilted in Defendants' favor.**

In order to conduct the overall balancing test after analyzing each of the *Poch* factors, the Court must have had some sense of each factor's comparative weight, even if in the abstract. But in its order, the Court simply found that individual factors were "satisfied" in Defendants' favor. While this binary approach may work in some circumstances, such as when no factor goes in the other direction or certain factors are simply far too compelling, it cannot work here. In this case, the *Poch* analysis was broken at the outset due to the Courts' comingling Defendants' relationships, crediting the same evidence multiple times in Defendants' favor, and relying on flawed or otherwise insufficient evidence (as will be discussed below). Therefore, Plaintiffs request the Court alter or amend its order granting Defendants' motion.

**b. The Court's findings of fact that underlie its order lack sufficient evidence.**

There was insufficient evidence to support the Court's findings on various *Poch* factors. Some evidence was irrelevant, some evidence was improperly considered multiple times, and some evidence was simply logically faulted. As a result, the Court's determination on these factors was in error, and the overall balancing of the factors should not have gone in Defendants' favor.

**i. Did the two businesses maintain separate corporate identities?**

The Court's finding on this factor relied on irrelevant and analytically flawed evidence. In its order, the Court noted that "[KPPC], [Kraft], and KapStone Charleston often referred to

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themselves collectively as 'KapStone' or the 'Company.'" *Id.* at 8. The cited evidence for this finding was KPPC's form 10-K, filed with the Securities and Exchange Commission ("SEC"). *Id.* But this filing has no relevance to KapStone Charleston—which is an LLC, has no SEC filing requirements, and is not a subsidiary of KPPC (but is wholly owned by Kraft). KPPC's 10-K therefore shows only that it (KPPC) and Kraft are sometimes referred to as "KapStone" or the "Company." Simply put, KPPC's 10-K does not have anything to do with either KPPC's or Kraft's relationships to KapStone Charleston.

In addition, the finding that three different companies whose names all begin with "KapStone" all sometimes refer to themselves as "KapStone" or the "Company" is not probative that the three companies share an identity. "KapStone" is just an equally convenient shorthand for them all. Similarly, virtually every business in the English-speaking world could (and may) refer to itself as the "company." That does not make them all one with KapStone.

Respectfully, the Court should not have considered this evidence in ruling on Defendants' motion to dismiss. The evidence should be disregarded, and so should any other evidence that was double-counted under this factor if it would have been more appropriate to count under factor five. After discounting all unreliable evidence, the Court should analyze this factor as to KPPC and Kraft individually.

**ii. Did the two businesses maintain separate Boards of Directors?**

The Court noted that "the KapStone Defendants maintained overlapping Officers and Boards of Directors." *Id.* at 9. But overlap between the boards of directors for KPPC and Kraft is irrelevant to the question of shared directors with KapStone Charleston. And even though KapStone Charleston's officers were also either directors or officers of KPPC, they still owed professional duties to KapStone Charleston separately. *See* S.C. Code § 33-8-310.

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### iii. Did the two businesses transact business from different locations under different managers?

In its order, the Court relied on irrelevant evidence in finding that factor three weighed in Defendants' favor. The Court noted that "the KapStone Defendants were headquartered in the same location as their subsidiaries, at KapStone's 'corporate office,' located . . . in Northbrook, Illinois." Ex. K at 10. But then the Court stated that Kraft, a KPPC subsidiary, had its primary place of business in Roanoke Rapids, North Carolina. These statements are at odds.

More importantly, the headquarters or primary place of business of "the KapStone Defendants"—KPPC and Kraft—is irrelevant inasmuch as it is not the same location as KapStone Charleston's headquarters or primary place of business. And it is not, as KapStone Charleston's place of business is Charleston, South Carolina. Absent minimum contacts, KapStone Charleston would not even be subject to personal jurisdiction in KPPC's headquartered state. This renders incorrect and irrelevant the Courts finding that "[as] the headquarters for the KapStone entities, the corporate office served as KapStone's 'nerve center.'" *Id.* at 11. The Court noted that KPPC's headquarters "was the location for all board meetings," *id.*, but Defendants acknowledged, and so does the Court's order, that KapStone Charleston has no board. *Id.* at 10.

In addition, the Court's order noted that "several [KPPC] and [Kraft] employees "worked at KapStone Charleston's facilities (approximately 8% of the total work force at the Charleston mill), and several [Kraft] employees worked at the corporate office in Northbrook, Illinois (approximately 15% of the work force)." *Id.* at 11. First, these numbers are not even close to substantial enough for them to be considered as probative evidence that KPPC and Kraft conduct the same business from the same location. Second, the higher of these numbers (15% of KPPC's employees worked for Kraft) is not even relevant to either KPPC's or Kraft's relationships to KapStone Charleston.

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The foregoing evidence should not have been included in the Court's analysis under factor three. In addition, the Court should isolate any evidence counted under this factor and others to the single factor where the evidence best fits. After that, the Court should analyze this factor again as it pertains to KPPC's and Kraft's relationships to KapStone Charleston individually.

**iv. Did the two businesses hire and pay their own employees?**

The Court's analysis under this factor relied on duplicative evidence. The Court should properly assign evidence relied on under this factor to where it is most appropriate and undertake the analysis fresh.

**v. Did the two businesses hold themselves out to their employees as two separate identities?**

Here, too, the Court relied on duplicative evidence, as the same materials formed support for a finding in Defendants' favor on this factor as well as factor one. This is error and detrimental to Plaintiffs' efforts to obtain recovery for their injuries. The Court should compartmentalize the evidence to the appropriate factors.

**vi. Did the two businesses engage in different business activities?**

The Court's reasoning in finding that this factor weighs in Defendants' favor is in error. The Court's order does state explicitly that "while [Kraft] and KapStone Charleston were engaged in the same general business of manufacturing kraft paper products, [KPPC] did not literally manufacture paper." *Id.* at 14. That should have ended the Court's analysis under this factor. Instead, the Court's order went on to find that KPPC was also engaged in the same business as Kraft and KapStone Charleston because "[i]n essence, the various KapStone companies operated as a single-purpose entity with specialized divisions, all funded by [KPPC.]" *Id.* at 15.

This finding is error because it takes the object of the *Poch* analysis (whether two companies are economically integrated), assumes it is met, and then uses it as a point of support

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for the analysis. In other words, the Court employed circular reasoning to find in Defendants' favor. For this reason, the Court's finding that "[t]he record shows that the KapStone companies collectively engaged in the business of manufacturing, selling, and distributing paper products," *id.* at 14, is wrong. The point of asking whether two (in this case three) companies engage in different business activities is to answer the larger question of whether the companies are in fact one whole enterprise. Taking all three companies as a "collective" whole puts the cart before the horse. Respectfully, Plaintiffs request that the Court reconsider its finding on this factor.

**vii. Did the two businesses maintain separate books, bank accounts, and payroll records?**

On this factor, the Court noted evidence that KPPC has a practice of selling KapStone Charleston's accounts receivable to Wells Fargo Bank and using the proceeds to pay KapStone Charleston's personnel expenses. This evidence arguably shows that KPPC does not actually pay KapStone Charleston's overhead like it says it does. Rather, the accounts receivable are debts owed to KapStone Charleston, so the sale of those debts amounts to assets that KapStone Charleston owns. As this evidence should be interpreted in Plaintiffs' favor, Plaintiffs request that the Court reconsider its finding on this factor.

**c. The Court's findings regarding the One KapStone documents are surplusage and should be altered or amended.**

In its order, the Count found "that the 'One KapStone' documents support a finding that the KapStone Defendants were economically integrated with KapStone Charleston under the *Poch* test." Ex. K at 20. But the Court went through the *Poch* analysis before it entered this finding, and nowhere in the analysis did the Court refer to any of the One KapStone documents. In addition, the Court's explanation for the relevance and probative value of the One KapStone documents is inconsistent. The Court notes a difference between the concepts of "economic integration," which

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is the object of the *Poch* analysis, and "operational uniformity," which the Court notes relates to "standardized scales, supply chain, production, and distribution processes across Container and Mill Systems." *Id.* at 18-19.

The inconsistency arises when the Court goes from finding that the One KapStone documents relate to operational uniformity to finding that they relate to economic integration. First, the Court found that "the 'One KapStone' documents appear to have been developed in furtherance of a goal to better 'integrate' the *operations* of the KapStone Mill and Container Divisions: to make them more uniform." *Id.* at 18 (emphasis in original). Right after that, the Court reinforces this finding when it shoots down Plaintiffs' argument that the documents' use of the words "integrate" and "integration" show that Defendants and KapStone Charleston were not economically integrated before the accident.

> Plaintiffs assert that the use of the words "integrate" and "integration" in the "One KapStone" documents shows that the KapStone companies were not integrated under Poch. This argument conflates the meaning of "economic integration," as it is used in Poch, with the meaning of "integrate" in the context of the "One KapStone" documents. Under Poch, "integration" includes factors such as shared corporate identity, economic (financial) interrelation, and shared corporate governance. *See* 405 S.C. at 372, 747 S.E.2d at 764 (quoting *Monroe* at 434). **In the "One KapStone" documents, "integration" appears to refer to operational uniformity between the KapStone Mill and Container Division entities.**

*Id.* at 19 (emphasis added).

The very next sentence of the Court's finding, however, says that "[t]he One KapStone documents demonstrate economic integration, shared books and accounting, overlapping management and corporate control over subsidiary operations and finances, as well as a shared corporate identity." *Id.* In other words, it was the Court's order that conflated aspects of "economic integration" and "operational uniformity" when it used both to find economic integration.

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Moreover, the Court's specific findings regarding "shared books and accounting, overlapping management and corporate control over subsidiary operations and finances, as well as a shared corporate identity" all refer to the same evidence that the Court cited in its *Poch* analysis. The One KapStone documents offered nothing new, but were just another place where the Court found the same details: centralized overhead; reference to "the KapStone entities collectively as 'KapStone,' 'we,' or 'the Company'; and use of "[t]he KapStone name, logo, and trademark." *Id.* at 19-20.

Because (1) the Court did not cite the One KapStone documents anywhere in its *Poch* analysis, (2) the documents do not add any information beyond what the Court already considered under the *Poch* factors, and (3) the One KapStone program and documents were created after the incident causing Plaintiffs' injuries, the One KapStone documents are not relevant or probative to the Court's decision. The Court's findings regarding the documents are surplusage. The documents are relevant and probative only to show that Defendants and KapStone Charleston were less integrated—economically and operationally—at the time of the incident causing Plaintiffs' injuries. Accordingly, Plaintiffs respectfully request that the Court alter or amend its order by cutting out any findings regarding the One KapStone documents.

**d. Defendants failed to meet their burden to prove that KapStone Charleston was their alter ego.**

The burden to prove that KapStone Charleston was both KPPC's alter ego and Kraft's alter ego was on KPPC and Kraft individually. *Poch*, 405 S.C. at 379–80. Because Defendants presented their *Poch* argument by (1) comingling their separate relationships to KapStone Charleston, (2) counting identical evidence multiple times over different factors, and (3) producing insufficient evidence, and because the Court endorsed Defendants' argument, the Court's *Poch* analysis was flawed and turned out an incorrect result. Defendants did not meet their burden, and the Court should reconsider its decision and order granting their motion.

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## IV.

## Conclusion

Wherefore, Plaintiffs request that the Court grant this motion to reconsider and deny Defendants' motion to dismiss. In the alternative, Plaintiffs request that the Court alter or amend its order in which it granted Defendants' motion and entered findings of fact, and enter a new order summarily granting Defendants' motion. "Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56." SCRCP 52(a).

This 9th day of March, 2020.

[SIGNATURE PAGE TO FOLLOW]

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Respectfully Submitted,

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**ATTORNEYS FOR PLAINTIFFS**

March 9, 2020
Columbia, South Carolina

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## RULE 11 AFFIRMATION

[ ] In accordance with Rule 11 (SCRCP), I affirm that I have communicated with opposing counsel and have attempted in good faith to resolve the matter contained in this motion.

[X] I have not communicated with opposing counsel because of my belief consultation would serve no useful purpose.

Sign: *s/ Ian T. Duggan*

# EXHIBIT A

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF CHARLESTON | ) | FOR THE NINTH JUDICIAL CIRCUIT |
| | ) | |
| Jacque Lucas, Shirley Ann Lucas and Daniel Simerly, | ) | CIVIL ACTION #: 2017-CP-10-00838 |
| | ) | |
| *Plaintiffs,* | ) | |
| | ) | |
| vs. | ) | |
| | ) | |
| KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, Safway Group Holdings, LLC, Easy Way Insulation Co., Inc., Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc. and Thompson Industrial Services, LLC, | ) | **Affidavit of Kelly Hulseman** |
| | ) | |
| *Defendants.* | ) | |
| | ) | |

1. I, Kelly Hulseman, am the Vice President of Shared Services at KapStone Paper and Packaging Corporation ("KapStone Paper"). I work at KapStone Paper's headquarters at 1101 Skokie Boulevard, Northbrook, Illinois. I am a resident of Illinois.

2. I have personal knowledge of the facts and documents described herein, or where noted I am providing information based on my understanding and good-faith belief, having been informed of the basic facts and issues in question in this lawsuit.

3. Plaintiffs Jacque Lucas and Daniel Simerly are employed by KapStone Charleston Kraft, LLC ("KapStone Charleston") and filed workers' compensation claims that I understand have so far resulted in a payout of over $3,500,000. I understand that the claims remain open, continue to incur costs, and are subject to ongoing adjudication in the workers' compensation forum.

4. KapStone Paper procured, paid the premiums for, and is the policyholder of the workers' compensation policy ("Policy"), issued by Sentry Insurance, that insures KapStone Paper, KapStone Kraft Paper Corporation ("KapStone Kraft"), KapStone Charleston, and other KapStone entities. This is the Policy that covers the injuries at issue here. The Declaration Page from that Policy is attached as Exhibit A.

5. KapStone Paper paid a deductible under the Policy in the amount of $250,000 toward Plaintiffs' workers' compensation claims.

6. KapStone Paper is a publicly traded corporation and is the ultimate parent corporation of numerous direct and indirect wholly-owned subsidiaries, including KapStone Kraft and KapStone Charleston.

7. KapStone Charleston and KapStone Kraft manufacture and sell certain paper products, including unbleached Kraft paper and containerboard. Both entities generally use similar processes and types of equipment to conduct these activities.

8. KapStone Paper does not manufacture or sell paper products itself, but it provides support and oversight to the operations of certain subsidiaries, including KapStone Kraft and KapStone Charleston.

9. KapStone Charleston is a Limited Liability Company (LLC) and is wholly owned by KapStone Kraft. KapStone Kraft is the sole managing member of KapStone Charleston.

10. KapStone Kraft is wholly owned by KapStone Paper.

11. KapStone Paper, KapStone Kraft, and KapStone Charleston are each headquartered in the same location: 1101 Skokie Boulevard, Suite 300, Northbrook, Illinois.

12. KapStone Kraft and KapStone Charleston share the same five officers, all of whom are also officers of KapStone Paper. The five officers consist of: (1) Executive Chairman, (2)

Chief Executive Officer, (3) President, (4) Vice President, Treasurer, Chief Financial Officer, and (5) Secretary. All of the officers of each entity are located at the headquarters and perform senior-level management of each entity's business operations. KapStone Kraft has two directors who are both directors of KapStone Paper. A list of the officers and directors of KapStone Paper, KapStone Kraft, and KapStone Charleston is attached as Exhibit B.

13. KapStone Charleston does not have any directors because it is a Limited Liability Company and instead has a sole managing member, which is Kapstone Kraft.

14. KapStone Charleston does not have the authority to sell or dissolve itself. The sale or dissolution of KapStone Charleston would require the consent of KapStone Kraft to take either action, and KapStone Paper, as the sole shareholder of KapStone Kraft, possesses the right, but not the obligation, to direct KapStone Kraft to do so. An organizational chart showing the structure among KapStone Paper, KapStone Kraft and KapStone Charleston is attached as Exhibit C.

15. Approximately 20 employees of KapStone Charleston report directly to managers at KapStone Kraft or KapStone Paper, and approximately 5 employees of KapStone Kraft report to managers at KapStone Paper.

16. KapStone Kraft employs over 20 managers who work at or perform work for KapStone Charleston. They include managers of operations, communications, process optimization, sourcing, procurement, technical sales, research and development, production planning, marketing, public affairs and communications, product stewardship, and the mill system supply chain, among others.

17. KapStone managers have hiring and firing authority over all of their direct reports.

18. KapStone Paper provides strategic direction and shared services, including integrated accounting, cash management, payroll management, employee-benefit services, and insurance programs to KapStone Kraft and KapStone Charleston.

19. KapStone Paper and several subsidiaries, including KapStone Kraft and KapStone Charleston, are parties to a consolidated receivables securitization program in which the account receivables travel through a special-purpose receivables vehicle and ultimately end up in a KapStone Paper account.

20. The integrated accounting system and cash management system include accounts receivable and accounts payable.

21. KapStone Paper collects receivables from the operations of KapStone Kraft and KapStone Charleston. These receivables are ultimately swept into bank accounts in the name of KapStone Paper. Neither KapStone Kraft nor KapStone Charleston possess or manage cash, except for the limited purpose of international transactions. KapStone Paper uses the receivables it collects to pay for expenses for KapStone Charleston and KapStone Kraft, including payroll, employee benefits and all accounts payable.

22. KapStone Paper procures, sponsors, administers, and pays for all employee payroll and benefits for employees of KapStone Kraft and KapStone Charleston. This includes payroll, 401(k) plans, health insurance policies, disability benefits, deferred compensation plans, management incentive plans, life insurance policies, unemployment insurance, and employee assistance program benefits.

23. KapStone Paper procures, pays for, is the policyholder of, and administers all insurance policies for KapStone Kraft and KapStone Charleston.

24. Most contracts and purchases for KapStone Charleston require legal review and formal approval from managers at KapStone Paper or KapStone Kraft.

25. KapStone Paper maintains consolidated financial records that incorporate data from KapStone Kraft and KapStone Charleston. These consolidated records are filed annually with the U.S. Securities and Exchange Commission.

26. KapStone Paper files an annual consolidated federal tax return with the Internal Revenue Service that includes KapStone Kraft and KapStone Charleston. KapStone Charleston is considered a "disregarded entity" for tax purposes because of its status as a Limited Liability Company.

27. KapStone Paper, KapStone Kraft, and KapStone Charleston use the same trademark in their day-to-day business. Standard business documents used by KapStone Paper, KapStone Kraft, and KapStone Charleston, such as letterhead, internal communications, email addresses and signatures, invoices and checks, display the "KapStone" designation.

28. Standard employment documents used by KapStone Paper, KapStone Kraft, and KapStone Charleston, such as job applications, forms for employee background checks, offer letters, new-hire paperwork, benefit documents, and general employment policies, including the Employee Handbook and KapStone Code of Conduct, also display the "KapStone" designation.

29. KapStone Paper implements numerous policies that apply to KapStone Kraft and KapStone Charleston, including an employee handbook that applies to all non-bargained (non-union) employees, the KapStone Code of Conduct, information-technology policies, antitrust and anti-bribery policies, and policies regarding contract review, purchasing authorization, and signing authority.

30. KapStone Paper, KapStone Kraft, and KapStone Charleston share an Internet domain, a cloud-based email system, a universal internal help-desk number, and a centralized technology budget.

31. The above-recited information is true and correct, to the best of my knowledge and belief.

This 20th day of September 2017.

Kelly Hulseman
Vice President of Shared Services
KapStone Paper and Packaging Corporation

Sworn to before me this 20th day of September 2017.

RENEE JUVAN
Official Seal
Notary Public - State of Illinois
My Commission Expires Jul 29, 2019

# Exhibit A

SENTRY CASUALTY COMPANY
STEVENS POINT, WISCONSIN
(A PARTICIPATING STOCK COMPANY)
A MEMBER OF THE SENTRY FAMILY OF INSURANCE COMPANIES

Carrier Code No. 37877

## WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY INFORMATION PAGE

ITEM CORP. POLICY NUMBER 90-16567-04 00 151
RENEWAL OF 90-16567-04 00 141

1. INSURED NAME AND ADDRESS:
KAPSTONE PAPER AND PACKAGING CORPORATION
1101 SKOKIE BLVD., SUITE 300
NORTHBROOK IL 60062

PRODUCER 90171105
MARSH USA INC
540 W MADISON ST
CHICAGO, IL 60661
312-627-6000

Phone Number (847) 441-1805 1st Named Insured Federal ID 202699372

See Schedule of Entities for Other Insured Entities

Other workplaces not shown above:
See Schedule of Entities and Locations

2. POLICY PERIOD:
This policy period is from 07-01-2015 TO 07-01-2016, 12:01 A.M., Standard time at the Insured's mailing address.

3. COVERAGE
A. Workers Compensation Insurance: Part One of the policy applies to the workers compensation law of the states listed here:

| | | |
|---|---|---|
| ALABAMA | ARIZONA | CALIFORNIA |
| COLORADO | CONNECTICUT | FLORIDA |
| GEORGIA | IDAHO | ILLINOIS |
| INDIANA | IOWA | KENTUCKY |
| MASSACHUSETTS | MICHIGAN | MINNESOTA |
| MISSISSIPPI | MISSOURI | NEVADA |
| NEW JERSEY | NEW YORK | NORTH CAROLINA |
| OREGON | PENNSYLVANIA | SOUTH CAROLINA |
| TENNESSEE | TEXAS | UTAH |
| VIRGINIA | | |

B. Employers Liability Insurance: Part Two of the policy applies to work in each state listed in Item 3.A. The limits of our liability under Part Two are:

| | | |
|---|---|---|
| Bodily Injury by Accident | $ | 1,000,000 each accident |
| Bodily Injury by Disease | $ | 1,000,000 each employee |
| Bodily Injury by Disease | $ | 1,000,000 policy limit |

C. Other States Insurance: Part Three of the policy applies in all states except those listed in Item 3.A., and the following:
ND NE OH WA WI WY

D. This policy includes these Endorsements and Schedules:

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| WC 00 00 00C | 0115 | WC 00 03 10 | 0484 | WC 00 03 11A | 0891 |
| WC 00 03 13 | 0484 | WC 00 04 03 | 0484 | WC 00 04 14 | 0790 |
| WC 00 04 19 | 0101 | WC 00 04 21D | 0115 | WC 00 04 22B | 0115 |
| WC 02 06 01 | 0586 | WC 04 03 01B | 0112 | WC 04 03 60A | 1199 |
| WC 04 04 21 | 0108 | WC 04 06 01A | 1293 | WC 04 06 03A | 0107 |
| WC 05 04 02 | 1190 | WC 05 04 03 | 0393 | WC 05 04 04 | 0112 |
| WC 06 03 01 | 0484 | WC 06 03 03C | 0711 | WC 06 06 01 | 0103 |
| WC 09 03 03 | 0805 | WC 09 04 02 | 1088 | WC 09 04 03B | 0115 |
| WC 09 04 07 | 0713 | WC 09 06 06 | 1098 | WC 10 04 02 | 0113 |
| WC 10 06 01B | 0714 | WC 12 03 06A | 0711 | WC 12 06 01E | 0115 |
| WC 16 03 05 | 0607 | WC 16 06 01 | 1297 | WC 16 06 02 | 1099 |

WC 00 00 01 COPYRIGHT 1987 NATIONAL COUNCIL ON COMPENSATION INSURANCE



CONTINUED ON NEXT PAGE

SENTRY CASUALTY COMPANY
STEVENS POINT, WISCONSIN
(A PARTICIPATING STOCK COMPANY)
A MEMBER OF THE SENTRY FAMILY OF INSURANCE COMPANIES

Carrier Code No. 37877

## WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY INFORMATION PAGE

| | | |
|---|---|---|
| WC 20 03 01 0484 | WC 20 03 02A 0908 | WC 20 03 03D 0810 |
| WC 20 04 05 0601 | WC 20 06 01A 0708 | WC 21 03 03A 0697 |
| WC 21 03 04 0484 | WC 21 04 02B 0115 | WC 22 00 00A 1103 |
| WC 22 06 01D 0806 | WC 24 03 02 0114 | WC 24 04 06C 0805 |
| WC 24 06 01B 0196 | WC 24 06 02B 0706 | WC 24 06 04A 0913 |
| WC 27 06 01C 1008 | WC 29 03 06B 0707 | WC 29 06 01A 0194 |
| WC 29 06 02B 0105 | WC 31 03 08 0484 | WC 31 03 19G 1013 |
| WC 32 03 01C 0114 | WC 36 03 06 0102 | WC 36 04 06 1001 |
| WC 36 06 01E 0108 | WC 36 06 02 0111 | WC 37 04 05 0896 |
| WC 37 06 01 0484 | WC 37 06 02 0484 | WC 37 06 03A 0895 |
| WC 37 06 04 1099 | WC 42 03 01G 0614 | WC 42 03 04B 0614 |
| WC 42 04 08A 0614 | WC 43 06 01 0193 | WC 43 06 02 0702 |
| WC 45 06 02 0793 | WC 90 06 01 1201 | WC 90 06 03 1201 |
| WC 99 02 01 0105 | WC 99 06 16 0107 | WC 99 06 18 0107 |
| WC 99 06 30 0108 | WC 99 06 31 0108 | WC 99 06 34 0108 |
| WC 99 06 69 0908 | WC 99 06 70 0199 | WC 99 31 04 0108 |
| WC 99 32 01 0597 | WC 99 36 03 0506 | WC 99 41 02 0608 |
| WC990664 LCF 0196 | WC990668 LCF 0108 | |

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00706

SENTRY CASUALTY COMPANY
STEVENS POINT, WISCONSIN
(A PARTICIPATING STOCK COMPANY)
A MEMBER OF THE SENTRY FAMILY OF INSURANCE COMPANIES

Carrier Code No. 37877

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY
INFORMATION PAGE

SCHEDULE OF ENTITIES AND LOCATIONS

ENTITY 001
KAPSTONE PAPER AND PACKAGING CORPORATION
NAME LINK CODE 001
Corporation
FEDERAL ID # 202699372

LOCATION 002
100 GASTON ROAD
ROANOKE RAPIDS NC 27870

LOCATION 003
1101 SKOKIE BLVD, 3RD FL
NORTHBROOK IL 60062

LOCATION 005
NO SPECIFIC LOCATION SC

LOCATION 050
NO SPECIFIC LOCATION AL

LOCATION 006
NO SPECIFIC LOCATION MS

LOCATION 008
NO SPECIFIC LOCATION PA

LOCATION 009
NO SPECIFIC LOCATION TN

LOCATION 010
NO SPECIFIC LOCATION MO

LOCATION 025
550 BROAD ST STE 605
NEWARK NJ 07102
TAXPAYER ID # 202699372000

LOCATION 026
28 PARK DRIVE
AMSTERDAM NY 12010

LOCATION 032
NO SPECIFIC LOCATION AZ

LOCATION 048
NO SPECIFIC LOCATION IN

LOCATION 051
NO SPECIFIC LOCATION MI

ENTITY 003
KAPSTONE CHARLESTON KRAFT LLC
NAME LINK CODE 002
Limited Liability Company
FEDERAL ID # 262582068

LOCATION 026
28 PARK DRIVE
AMSTERDAM NY 12010
UNEMPLOYMENT # 4871304

ENTITY 004
NAME LINK CODE 003

WC 00 00 01 COPYRIGHT 1987 NATIONAL COUNCIL ON COMPENSATION INSURANCE



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00708

SENTRY CASUALTY COMPANY
STEVENS POINT, WISCONSIN
(A PARTICIPATING STOCK COMPANY)
A MEMBER OF THE SENTRY FAMILY OF INSURANCE COMPANIES

Carrier Code No. 37877

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY
INFORMATION PAGE

SCHEDULE OF ENTITIES AND LOCATIONS

KAPSTONE CONTAINER CORPORATION
Corporation
FEDERAL ID # 581392513

LOCATION 005
NO SPECIFIC LOCATION SC

LOCATION 028
NO SPECIFIC LOCATION VA

LOCATION 010
NO SPECIFIC LOCATION MO

LOCATION 018
NO SPECIFIC LOCATION GA

LOCATION 019
NO SPECIFIC LOCATION IA

LOCATION 021
NO SPECIFIC LOCATION MA

LOCATION 022
NO SPECIFIC LOCATION MN
ASSOC FILE # 1392513
UNEMPLOYMENT INS 581392513000

LOCATION 024
NO SPECIFIC LOCATION TX

LOCATION 025
550 BROAD ST STE 605
NEWARK NJ 07102
TAXPAYER ID # 581392513000

LOCATION 026
28 PARK DRIVE
AMSTERDAM NY 12010

LOCATION 027
225 MITCH MCCONNELL WAY
BOWLING GREEN KY 42101

LOCATION 029
NO SPECIFIC LOCATION CT

LOCATION 030
NO SPECIFIC LOCATION FL

ENTITY 005
LONGVIEW FIBRE PAPER &
PACKAGING INC
NAME LINK CODE 004
Corporation
FEDERAL ID # 203674771

LOCATION 036
8511 BLAINE ST
OAKLAND CA 94621

LOCATION 037
1350 WOOTEN LAKE RD STE 102
KENNESAW GA 30144

WC 00 00 01 COPYRIGHT 1987 NATIONAL COUNCIL ON COMPENSATION INSURANCE


CONTINUED ON NEXT PAGE

00709

SENTRY CASUALTY COMPANY
STEVENS POINT, WISCONSIN
(A PARTICIPATING STOCK COMPANY)
A MEMBER OF THE SENTRY FAMILY OF INSURANCE COMPANIES

Carrier Code No. 37877

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY
INFORMATION PAGE

SCHEDULE OF ENTITIES AND LOCATIONS

LOCATION 038
348 SOUTH PARK AVENUE WEST
TWIN FALLS ID 83301

LOCATION 039
3828 CIVIC CENTER DR
NORTH LAS VEGAS NV 89030

LOCATION 040
4780 WEST HIGHWAY 56 UNEMPLOYMENT # 2036747
CEDAR CITY UT 84720

LOCATION 041
2200 NORTH MAIN UNEMPLOYMENT # 2036747
SPANISH FORK UT 84660

LOCATION 042
701 NORTH 1000 WEST UNEMPLOYMENT # 2036747
LOGAN UT 84321

LOCATION 043
3667 DEXTER COURT
DENVER CO 80207

LOCATION 044
906 HILLDALE LANE
BUFFALO GROVE IL 60089

LOCATION 046
NO SPECIFIC LOCATION OR

WC 00 00 01 COPYRIGHT 1987 NATIONAL COUNCIL ON COMPENSATION INSURANCE



CONTINUED ON NEXT PAGE

00710

SENTRY CASUALTY COMPANY
Carrier Code No. 37877

WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

POLICY NUMBER 90-16567-04 00 151

NAMED INSURED ENDORSEMENT

IT IS AGREED THAT ITEM 1 OF THE INFORMATION PAGE IS AMENDED TO READ:

KAPSTONE PAPER AND PACKAGING CORPORATION - FIRST NAMED INSURED

KAPSTONE KRAFT PAPER CORPORATION
KAPSTONE RECEIVABLES LLC
KAPSTONE CHARLESTON KRAFT LLC
KAPSTONE CONTAINER CORPORATION
LONGVIEW FIBRE PAPER & PACKAGING INC

AND ANY SUBSIDIARY, CORPORATION, JOINT VENTURE, PARTNERSHIP, LIMITED LIABILITY COMPANY OR OTHER ENTITY WHICH WAS, IS, OR SHALL BE OWNED, OPERATED, MANAGED OR FINANCIALLY CONTROLLED BY ANY OF THE ABOVE.

# Exhibit B

## KAPSTONE ENTITY DIRECTORS AND OFFICERS

**KapStone Paper and Packaging Corporation**

- Type of entity: Delaware corporation
- Last change in directors and/or officers: January 1, 2017
- Directors:
  - Roger W. Stone
  - Matthew Kaplan
  - Robert J. Bahash
  - John M. Chapman
  - Paula H.J. Cholmondeley
  - Johnathan R. Furer
  - David G. Gabriel
  - Brian R. Gamache
  - Ronald J. Gidwitz
  - Matthew H. Paull
  - Maurice S. Reznik
  - David P. Storch
- Officers:
  - Executive Chairman: Roger W. Stone
  - President and Chief Executive Officer: Matthew Kaplan
  - Executive Vice President and Chief Financial Officer: Andrea K. Tarbox
  - Executive Vice President of Integrated Packaging: Randy J. Nebel
  - Vice President and General Manager of the Mill System: Bill G. Kessinger
  - Vice President and General Manager of the Corrugated Container System: Patrick W. Ortiz
  - Vice President, Secretary, and General Counsel: Kathryn D. Ingraham
  - Vice President and Corporate Controller: Mark A. Niehus
  - Vice President – Strategic Planning and Initiatives: Michael J. Murphy
  - Vice President – Containerboard and Kraft Paper Sales and Marketing: Antionette Meyers

**KapStone Kraft Paper Corporation**

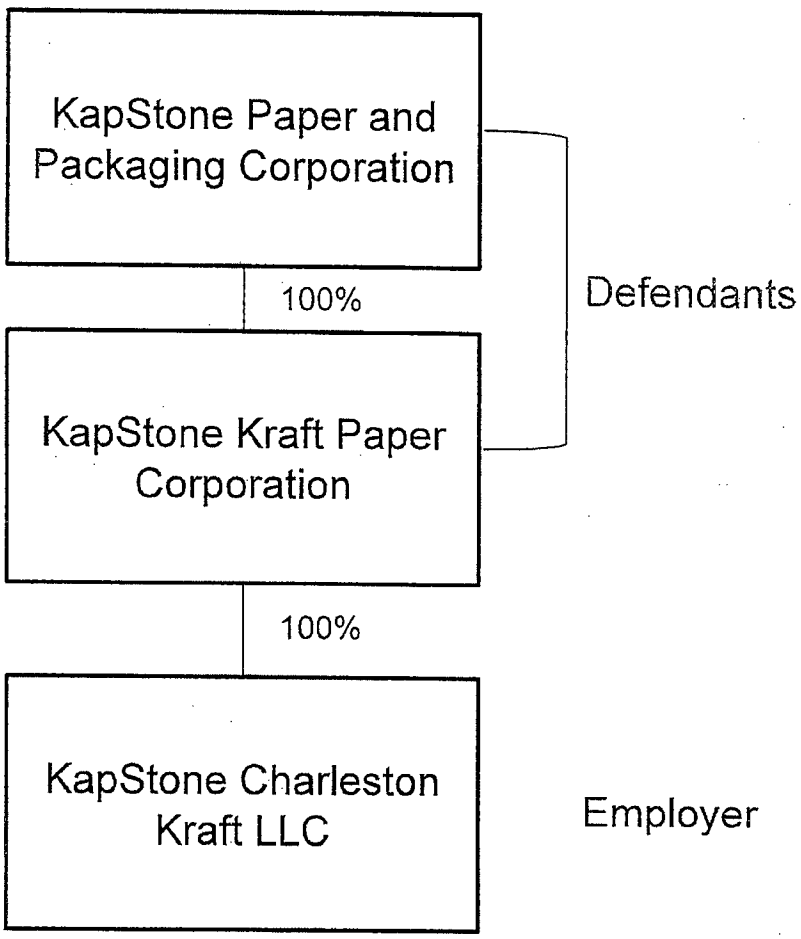
- Type of entity: Delaware corporation
- Last change in directors and/or officers: January 1, 2017
- Directors: Roger W. Stone, Matthew Kaplan
- Officers:
  - Executive Chairman: Roger W. Stone
  - Chief Executive Officer: Matthew Kaplan
  - President: Randy J. Nebel
  - Vice President, Treasurer and Chief Financial Officer: Andrea K. Tarbox
  - Secretary: Kathryn D. Ingraham

**KapStone Charleston Kraft LLC**

- Type of entity: Delaware limited liability company
- Last change in officers: January 1, 2017
- Sole member: KapStone Kraft Paper Corporation (managed by members)
- Officers:
  - Executive Chairman: Roger W. Stone
  - Chief Executive Officer: Matthew Kaplan
  - President Randy J. Nebel
  - Vice President, Treasurer and Chief Financial Officer: Andrea K. Tarbox
  - Secretary: Kathryn D. Ingraham

# Exhibit C

# Organizational Chart




(Note: additional subsidiaries not shown)

# EXHIBIT B

Page 1

STATE OF SOUTH CAROLINA 09:41AM
COUNTY OF CHARLESTON
JACQUE LUCAS, SHIRLEY ANN ) IN THE COURT OF COMMON
LUCAS, and DANIEL SIMERLY, )
) PLEAS FOR THE NINTH
Plaintiffs, )
) JUDICIAL CIRCUIT
vs. )
) C/A NO: 2017-CP-10-838
KapStone PAPER AND )
PACKAGING CORPORATION, )
KapStone KRAFT PAPER )
CORPORATION, SAFWAY GROUP )
HOLDINGS, LLC, EASY WAY ) NOTICE OF 30(b)(6)
INSULATION CO., INC., ) DEPOSITION TO KAPSTONE
SYPRIS TECHNOLOGIES, INC. ) PAPER AND PACKAGING
f/k/a TUBE-TURNS ) CORPORATION
TECHNOLOGIES, INC., )
THOMPSON CONSTRUCTION )
GROUP, INC., and THOMPSON )
INDUSTRIAL SERVICES, LLC )
)
Defendants. )
)

The 30(b)(6) videoptaped discovery deposition of
KELLY HULSEMAN,
taken under oath on Tuesday, the 6th day of March, 2018 at One South Dearborn Street, 38th floor, Chicago, Illinois, pursuant to the Rules of the Supreme Court of Illinois and the Code of Civil Procedure, before Edna D. Stroud, a notary public in and for the County of Cook and State of Illinois, pursuant to notice commencing at 10:00 o'clock a.m.

Page 2

APPEARANCES:

ARNOLD & ITKIN LLP
BY: J. KYLE FINDLEY, ESQ.
and KALA SELLERS, Attorney at Law
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Email: jducayet@sidley.com
For the Plaintiffs;

BOWMAN AND BROOKE, LLP
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Phone: 803.726-7420
Email: richard.willis@bowmanandbrooke.com
For the Defendants - KapStone;

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For the In-house Counsel-Kapstone;

HAYNSWORTH SINKLER BOYD (Telephonically)
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Charleston, South Carolina 29401
Post Office Box 29402-0340
Phone: 843.720-4451
Email: jtillerghsblawfirm.com

For the Petitioner Intervenor -
Sentry Casualty;

Page 3

APPEARANCES CONTINUED: (ALL TELEPHONICALLY)

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MCANDUS GOUGELOCK COURIE
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Phone: 803.227.4929
Email: drew.richardson@mgclaw.com
For Easy Way Insulation Co., Inc.

ALSO PRESENT:

MR. GABRIEL MARTIN, Videographer

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INDEX

WITNESS

KELLY HULSEMAN

EXAMINATION BY: PAGE

MR. FINDLEY 12

EXHIBITS


| PLAINTIFF'S: | FOR IDENTIFICATION | PAGE |
|---|---|---|
| No. 1 | 2-12-18 Letter | 05 |
| No. 2 | Legal Contract Review | 06 |
| No. 3 | KPPC 2015 Tax Return | 09 |
| No. 4 | Articles of Incorporation for KPPC | 09 |
| No. 5 | Corporate Representative Topics | 15 |
| No. 6 | Affidavit | 29 |
| No. 7 | Chart | 98 |
| No. 8 | 2015 W2 for Jacque Lucas | 110 |
| No. 9 | Copy of a check | 112 |
| No. 10 | Deed | 115 |
| No. 11 | ? | |
| No. 12 | Binder | 123 |
| No. 13 | Bates label 0002 to 0004 | 151 |
| No. 14 | Poch Brief | 179 |
| No. 15 | Bates label 0001 Org. Chart | 230 |
| No. 16 | Bates label 00358 to 00362 | 295 |


10:23AM

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(Out of the presence of the deponent.) 09:41AM

MR. WILLIS: I am Dick Willis and I represent the KapStone defendants in this case. We are here for the 30(b)6 deposition of Kelly Hulseman of KapStone Paper and Packaging Corporation. I'd like to have marked as Exhibit 1 to the deposition my letter of February 12, 2018, with Exhibit A attachment responding to the deposition notice of the plaintiff. 10:17AM 10:17AM 10:17AM 10:18AM 10:18AM 10:18AM 10:18AM

(Plaintiff's Deposition Exhibit No. 1 was marked for identification.) 10:18AM 10:18AM

MR. WILLIS: And then I would like to make a couple of statements amending that notice or the response to the notice somewhat. After meeting with the witness, there are a number of topics that she has been designated for that she is not the person most knowledgeable within the corporation. There would be other company or other witnesses that we would need to designate to cover those topics if the plaintiff would prefer that. So I just wanted to go ahead and put that on the record before we get going. 10:18AM 10:18AM 10:18AM 10:18AM 10:18AM 10:18AM 10:18AM 10:19AM 10:19AM

So the topics that she is now going to be covering, Kyle, if you want to look at the list, would be topics 1 through 4, topics 6, 7, 18 through 19, 20A 10:19AM 10:19AM 10:19AM

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through J, 21, portions of 22 and 23 which we can talk about more if we need to, 24 through 32. 10:19AM 10:19AM

MR. FINDLEY: Hold on one second. 24 through 32 all portions? 10:19AM 10:19AM

MR. WILLIS: Yes. 37, 38, 49 through 60, 60 and 61. With regard to topics 8 through 13 which pertain to a company called Colgen, there really isn't any information responsive to that, so she will not be handling that topic. And then we have previously stated our objections to our topics that relate primarily to the merits. 10:19AM 10:19AM 10:20AM 10:20AM 10:20AM 10:20AM 10:20AM

So sort of to put all of these numbers in words, what we are essentially offering Ms. Hulseman to talk about is the sum and substance of the affidavit and the documents referred to in the affidavit, basically the corporate structure of the companies and how that corporate structure works and operates. And then anything beyond that is probably beyond the scope of her specialized knowledge although she may have some generalized knowledge of things and if she does, you are perfectly free to explore that. So we will probably be designating some additional witnesses and we can talk about that off the record and with that we are prepared to begin. 10:20AM 10:20AM 10:20AM 10:20AM 10:20AM 10:20AM 10:20AM 10:20AM 10:20AM 10:20AM 10:20AM 10:20AM 10:21AM

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MR. FINDLEY: Okay. And just to clarify for the record on some of these topics, Kelly Hulseman was designated as the corporate representative to testify I think dating back to September 17th. Today on March 6, morning of March 6th was the first time that we discovered that she would not be testifying to certain subjects, so we certainly reserve the right to ask for additional corporate representatives as well as additional topics with regard to things that she cannot cover, but we have got the list of it here. I will talk to her about some of those although I did want you to clarify something. 22 and 23 you say portions. 10:21AM 10:21AM 10:21AM 10:21AM 10:21AM 10:21AM 10:21AM 10:21AM

MR. WILLIS: Yeah, let me look at that. So 22 deals with, states, Documents that refer, relate or represent to the current officers, directors, committee members, board members or other management level individuals for KapStone Paper and Packaging Corporation, et cetera, and the duties or tasks thereof. She is prepared to talk about the officers and directors and what they do. 10:21AM 10:21AM 10:21AM 10:22AM 10:22AM 10:22AM 10:22AM 10:22AM

MR. FINDLEY: Is that something I should maybe explore with her at the beginning? 10:22AM 10:22AM

MR. WILLIS: Yes. So that's why I say portions of that. 10:22AM 10:22AM

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MR. FINDLEY: Okay. 10:22AM

MR. WILLIS: And then with regard to 23, 23 talks about contracting procedures. She is not the principal contracting officer, but she is familiar with the corporate procedures pertaining to contracting and we brought you a document that she reviewed yesterday with regard to that. And beyond that we would probably designate another witness who would be more knowledgeable about the details of the contracts with the third parties at the plant. 10:22AM 10:22AM 10:22AM 10:22AM 10:22AM 10:22AM 10:22AM 10:22AM 10:22AM

MR. FINDLEY: And just so we are clear, what we are talking about for the record, you are talking about the document when I read this letter, you are talking about the documents that was the Legal Contract Review, revised April 18, 2017. 10:22AM 10:22AM 10:22AM 10:22AM 10:22AM 10:22AM 10:22AM

MR. WILLIS: Correct. And just for the record two other documents that we provided today that were inadvertently omitted from the production. The first one is the Articles of Incorporation of KapStone Paper and Packaging. 10:23AM 10:23AM 10:23AM 10:23AM 10:23AM

MR. FINDLEY: You wanted this marked? 10:23AM

MR. WILLIS: Sure. 10:23AM

MR. FINDLEY: So let's mark this Legal Contract Review and the signing authority we just talked about, 10:23AM 10:23AM

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just mark this Exhibit 2. 10:23AM
(Plaintiff's Deposition Exhibit No. 10:23AM
2 was marked for identification.) 10:23AM
MR. FINDLEY: And then you can identify this. 10:23AM
MR. WILLIS: And Exhibit 3 would be part of the 10:23AM
KapStone Paper and Packaging Corporation 2015 tax return 10:23AM
relating that shows that KapStone Charleston Kraft LLC 10:23AM
is a disregarded entity for purposes of federal taxes 10:23AM
and their tax returns are there or their data would be 10:23AM
wrapped up in KapStone Kraft. And then finally Exhibit 10:23AM
3 -- 10:24AM
MR. FINDLEY: Four, that would be four. 10:24AM
MR. WILLIS: I got you. Exhibit 4 are the 10:24AM
Articles of Incorporation for KapStone Paper and 10:24AM
Packaging Corporation. 10:24AM
(Plaintiff's Deposition Exhibit Nos. 10:24AM
3 and 4 were marked for identification.) 10:24AM
MR. FINDLEY: Just one more thing I wanted clear 10:24AM
up before we get started, as far as documents she is 10:24AM
prepared to testify on and bind the company, those would 10:24AM
include documents 2, 3, and 4 that were just produced as 10:24AM
well as the documents you mentioned that were attached 10:24AM
to her Affidavit. 10:24AM
MR. WILLIS: Correct. 10:24AM

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MR. FINDLEY: Okay. All right. And I think the 10:24AM
Affidavit was A, B, and C. 10:24AM
MR. WILLIS: That's correct. 10:24AM
MR. FINDLEY: With that we can bring the witness 10:24AM
in and get started. 10:24AM
(The deponent is in the room.) 10:27AM
THE VIDEOGRAPHER: We are now on the record at 10:27AM
10:27 a.m. this is the videotaped deposition of Kelly 10:28AM
Hulseman in the matter of Jacque Lucas, Shirley Ann 10:28AM
Lucas, and Daniel Simerly. In the Court of Common Pleas 10:28AM
for the Ninth Judicial Circuit. 10:28AM
This deposition is being held at One 10:28AM
South Dearborn, Chicago, Illinois on March 6, 2018. My 10:28AM
name is Gabriel Martin and I am the videographer. The 10:28AM
court reporter is Edna Stroud, both representing Stratos 10:28AM
Legal. 10:28AM
For the record will counsel please 10:28AM
introduce yourselves and who do you represent. 10:29AM
MR. FINDLEY: Kyle Findley on behalf of 10:29AM
plaintiffs. 10:29AM
MS. SELLERS: Kala Sellers on behalf of the 10:29AM
plaintiffs. 10:29AM
MR. WILLIS: Richard Willis on behalf of Kapstone 10:29AM
capital. 10:29AM

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MS. SELTZER: Wendy Seltzer on behalf of Kapstone. 10:29AM
MR. WILLIS: You guys want to make an appearance 10:29AM
on the phone? 10:29AM
MR. RICHARDSON: Are we making an appearance again 10:29AM
on the phone? 10:29AM
MR. WILLIS: Yes. We are on the video record now. 10:29AM
MR. RICHARDSON: This is Drew Richardson on behalf 10:29AM
of Easy Way. 10:29AM
MR. HIGHFIELD: Duke Highfield on behalf of 10:29AM
Safway. 10:29AM
MR. WILSON: Joe Wilson on behalf of Thompson 10:29AM
Industrial. 10:29AM
MR. YOHO: Andy Yoho on behalf of Sypris 10:29AM
Technologies. 10:29AM
MR. TAYLOR: John Taylor on behalf of petitioning 10:29AM
intervener Sentry Casualty Company. 10:30AM
MR. FISHER: Doug Fisher on behalf of petitioning 10:30AM
intervener Sentry Casualty Company. 10:30AM
THE VIDEOGRAPHER: Now, the court reporter is 10:30AM
going to swear in the witness. 10:30AM
(Witness sworn.)
KELLY HULSEMAN,
called as a 30(b)(6) witness herein, having first been
duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION
BY MR. FINDLEY:
Q. Could you please introduce yourself for the 10:30AM
record? 10:30AM
**A. My name is Kelly Hulseman. 10:30AM**
Q. Okay. And, Kelly, have you given a 10:30AM
deposition before? 10:30AM
**A. I have not. 10:30AM**
Q. Okay, your first deposition? 10:30AM
**A. Yes. 10:30AM**
Q. Okay. You understand, well, I will get to 10:30AM
that in a second. We are here to take your deposition 10:30AM
in regards to various topics related to a lawsuit 10:30AM
involving my client, Jacque Lucas and Daniel Simerly, 10:30AM
various defendants including the few KapStone entities. 10:31AM
You understand that, correct? 10:31AM
**A. I do. 10:31AM**
Q. Okay. And you understand you took an oath 10:31AM
here today, correct? 10:31AM
**A. I do. 10:31AM**
Q. And that oath is to tell the whole truth? 10:31AM
**A. Yes. 10:31AM**
Q. Okay. And you understand that if you do not 10:31AM
tell the truth and we find out about it you could be 10:31AM

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subject to perjury? 10:31AM
**A. I do.** **10:31AM**
Q. Okay, and -- 10:31AM
MR. RICHARDSON: And, I'm sorry, I can hear you 10:31AM perfectly counsel, but I don't know about the other 10:31AM people on the phone. I can barely hear the witness. 10:31AM Thank you. 10:31AM
BY MR. FINDLEY: 10:31AM
Q. And, Ma'am let, me just go over a couple of 10:31AM ground rules with you here, okay? 10:31AM
**A. Uh-huh. Yes.** **10:31AM**
Q. Okay. That was my first one. I am going to 10:31AM ask you some various questions. If you can give me 10:31AM verbal answers such as yes and nos instead of uh-huhs 10:31AM and ug-ugns, it will make it a whole lot easier for the 10:31AM court reporter, okay? 10:31AM
**A. Okay.** **10:31AM**
Q. As well as when I ask you questions, if you 10:31AM can wait for me to finish my question and I will extend 10:32AM the same courtesy of letting you finish your answer 10:32AM before I ask you another question, is that fair? 10:32AM
**A. Yes.** **10:32AM**
Q. Okay. The other thing I want to talk to you 10:32AM about, well, you know you have been designated as a 10:32AM

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corporate representative, correct? 10:32AM
**A. Correct.** **10:32AM**
Q. And you have been designated as a corporate 10:32AM representative for KapStone Paper and Packaging 10:32AM Corporation, is that correct? 10:32AM
**A. Yes.** **10:32AM**
Q. Okay, that's the only entity, true, that you 10:32AM have been designated as a corporate representative for, 10:32AM correct? 10:32AM
**A. Yes.** **10:32AM**
MR. WILLIS: That's correct, Counsel. 10:32AM
**A. I am employed by KapStone Paper.** **10:32AM**
BY MR. FINDLEY: 10:32AM
Q. Fair enough. Your employer is KapStone Paper 10:32AM and Packaging Corporation? 10:32AM
**A. Yes.** **10:32AM**
Q. Okay. Now, you understand that you have been 10:32AM designated as a corporate representative. So what you 10:32AM testify to binds the company. Do you understand that? 10:32AM
**A. I do.** **10:32AM**
Q. Okay. And that's why if you don't know the 10:32AM answer to some of my questions or know of someone who 10:33AM would better be suited to answer that question, let me 10:33AM know, okay? 10:33AM

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**A. Okay.** **10:33AM**
Q. If you answer a question, I am going to 10:33AM assume you understood it for all purposes, okay? 10:33AM
**A. Okay.** **10:33AM**
Q. So what I am going to hand you is what have 10:33AM been marked as Exhibit No. 4 and this is corporate 10:33AM representative topics related to your notice for 10:33AM deposition. 10:33AM
MR. WILLIS: That is 5. 10:33AM
MR. FINDLEY: Oh, excuse me, 5. Let me have that 10:33AM back. 10:33AM
(Plaintiff's Deposition Exhibit No. 10:33AM 5 was marked for identification.) 10:33AM
BY MR. FINDLEY: 10:33AM
Q. Have you seen this document before? 10:33AM
**A. Yes, I have.** **10:33AM**
Q. First of all, let me ask you this, when did 10:33AM you find out you were giving a deposition? 10:33AM
**A. Last year.** **10:33AM**
Q. Okay. Do you know about what time frame? 10:33AM
**A. Fall Q4.** **10:34AM**
Q. Quarter four fall 2017? 10:34AM
**A. Yes.** **10:34AM**
Q. And what was your understanding of the 10:34AM

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deposition? What were you being asked to provide 10:34AM testimony on? 10:34AM
**A. The worker's comp claim for Lucas and Simerly.** **10:34AM**
Q. Okay. And when you say the worker's comp 10:34AM claim for Lucas and Simerly, do any of your duties 10:34AM involve worker's compensation? 10:34AM
**A. They do.** **10:34AM**
Q. And what is your current title? 10:34AM
**A. I am the VP of Shared Service.** **10:34AM**
Q. Okay. And how long have you held that 10:34AM position? 10:34AM
**A. I have held that position since January of 2017.** **10:34AM**
Q. Okay, prior to being the vice president of 10:34AM Shared Services in January of 2017, what did you do? 10:34AM
**A. I was the senior director of Treasury and Risk from January of 2014 to January of 2017.** **10:35AM**
Q. Senior director of Treasury and Risk? 10:35AM
**A. Yes.** **10:35AM**
Q. And that's for KapStone Paper and Packaging 10:35AM Corporation? 10:35AM
**A. Yes.** **10:35AM**
Q. Prior to that what did you do? 10:35AM

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**A. I was the director of Treasury and Risk for KapStone Paper and Packaging from 2008 forward.** 10:35AM 10:35AM

Q. Okay. Was 2008 the first time you were hired on to KapStone Paper and Packaging Corporation? 10:35AM

**A. Yes.** 10:35AM

Q. Prior to that where did you work? 10:35AM

**A. I worked for Tap Pharmaceuticals from 2005 to 2008.** 10:35AM 10:35AM

Q. What did you do for them? 10:35AM

**A. I was the senior manager of Treasury.** 10:35AM

Q. Okay, what does that mean? What does a senior manager of Treasury do? 10:35AM 10:36AM

**A. I was responsible for much of the same areas that I am today, accounts payable, accounts receivable, treasury, insurance.** 10:36AM 10:36AM 10:36AM

Q. Okay, do you have an accounting background? 10:36AM

**A. I have a certificate in accounting.** 10:36AM

Q. And so at Tap Pharmaceuticals you were in charge of accounts payable, accounts receivable, what else? 10:36AM 10:36AM

**A. Treasury, cash management, and insurance.** 10:36AM

Q. Okay. When you became -- well, let's talk about being the senior treasury director at KapStone Paper and Packaging Corporation. What did your duties 10:36AM 10:36AM 10:36AM

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include there from 2014 to 2017? 10:36AM

**A. As the senior director, I was responsible for accounts receivable, credit collections, insurance, and payroll.** 10:37AM 10:37AM 10:37AM

Q. Accounts receivable, credit collections, insurance, and payroll? 10:37AM 10:37AM

**A. Yes.** 10:37AM

Q. And then at some point you were given a new title of vice president of Shared Services in January 2017. 10:37AM 10:37AM 10:37AM

**A. Uh-huh.** 10:37AM

Q. Was that a new position that was created? 10:37AM

**A. Yes.** 10:37AM

Q. So prior to January 2017 there was no Shared Services department, fair? 10:37AM 10:37AM

**A. Not formally there was no Shared Service Department.** 10:38AM 10:38AM

Q. Okay. And when I say no, I know there are various Kapstone entities, so just to make sure we are on the same page, when I there is no Shared Service Department, we are saying there is no Shared Service Department at Kapstone Paper and Packaging Corporation, correct, prior to January 2017? 10:38AM 10:38AM 10:38AM 10:38AM 10:38AM 10:38AM 10:38AM

**A. The functions were the same before and after** 10:38AM

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**my title changed.** 10:38AM

Q. Okay, objection, nonresponsive. P. My question is pretty simple. Prior to January of 2017 at KapStone Paper and Packaging Corporation there was no Shared Services Department, correct? 10:38AM 10:38AM 10:38AM 10:38AM 10:38AM 10:38AM

**A. Correct.** 10:38AM

Q. In January of 2017, a position was created called the vice president of Shared Services at KapStone Paper and Packaging Corporation and you filled that role, true? 10:38AM 10:38AM 10:38AM 10:38AM

**A. True.** 10:38AM

Q. And in that role what is it that you do? 10:38AM

**A. Accounts receivable, accounts payable, credit collections, payroll, and insurance.** 10:39AM 10:39AM

Q. Okay. Does your job -- I am making sure I wrote them down right. Accounts receivable, accounts payable, credit collections, insurance, and payroll, is that correct? 10:39AM 10:39AM 10:39AM 10:39AM 10:39AM

**A. Correct.** 10:39AM

Q. Okay. Does your job duties at KapStone Paper and Packaging Corporation deal with any other aspects than those five we just mentioned? 10:39AM 10:39AM 10:39AM

**A. No.** 10:39AM

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Q. So as far as your roles everything you do with relation to KapStone Paper and Packaging Corporation would be dealing with accounts payable, accounts receivable, credit collection, insurance, and payroll for your employer, true? 10:39AM 10:39AM 10:39AM 10:39AM 10:39AM

**A. True.** 10:39AM

Q. All right, that will help me narrow some questions down. Let me give you an example. For instance, you have no idea about what goes on day-to-day duties at say Kapstone Charleston Kraft LLC in North Carolina. 10:40AM 10:40AM 10:40AM 10:40AM 10:40AM 10:40AM 10:40AM

MR. WILLIS: South. 10:40AM

MR. FINDLEY: Excuse me, South Carolina. 10:40AM

MR. WILLIS: I am sensitive about that. 10:40AM

MR. FINDLEY: That's understandable. I have heard a lot of people are. Let me start over. You can strike that whole question. 10:40AM 10:40AM 10:40AM

Q. As far as your role, none of your job duties have anything to do with the day-to-day operations at KapStone Charleston Kraft LLC in South Carolina, correct? 10:40AM 10:40AM 10:40AM 10:40AM

**A. I am not clear on the question.** 10:40AM

Q. Okay. Well, let's back up. Your employer is Kapstone Paper and Packaging Corporation, correct? 10:40AM 10:40AM

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A. Correct. 10:40AM
Q. You deal with KapStone Paper and Packaging 10:40AM
Corporation's accounts receivable, payable, credit 10:40AM
collections, insurance, and payroll, correct? 10:41AM
A. The whole company. I assume responsibility 10:41AM
for those areas for the whole company which includes 10:41AM
Kapstone Charleston. 10:41AM
Q. And we are going to get to that in a second. 10:41AM
But what we are talking about is your employer Kapstone 10:41AM
Paper and Packaging Corporation, that's who you deal 10:41AM
with, right? 10:41AM
A. I deal with all entities of Kapstone Paper. 10:41AM
Q. Okay. Do you have anything to do with the 10:41AM
day-to-day management at the plant? 10:41AM
MR. WILLIS: Objection, form of the question. 10:41AM
A. Can you repeat the question, please? 10:41AM
BY MR. FINDLEY: 10:41AM
Q. Sure. When I say the plant we are talking 10:41AM
about the Charleston mill, you understand that, correct? 10:41AM
A. I do. 10:41AM
Q. Okay. Do you have any interactions and I 10:41AM
know you have the overview that we will get into in a 10:41AM
second of dealing with Kapstone Paper and Packaging 10:41AM
Corporation as a whole. What I want to know about is do 10:41AM

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you have any knowledge regarding the day-to-day 10:41AM
operations at the Charleston mill? 10:41AM
A. As it relates to those areas, yes. 10:41AM
Q. Okay. So everyday you know exactly what's 10:41AM
going on in every mill throughout the United States? 10:42AM
MR. WILLIS: Objection to the form of the 10:42AM
question. 10:42AM
A. As it relates to those areas, customers, 10:42AM
vendors, yes. 10:42AM
BY MR. FINDLEY: 10:42AM
Q. Okay. What customers do you deal with in 10:42AM
KapStone Kraft, Charleston Kraft LLC, what customers do 10:42AM
you directly deal with? 10:42AM
A. I don't directly deal with customers. I 10:42AM
thought the question was am I aware of what goes on. 10:42AM
Q. What I am asking about is the day-to-day 10:42AM
operations, okay? There are lots of KapStone plants 10:42AM
throughout the United States, correct? 10:42AM
A. Yes. 10:42AM
Q. They all have different legal entity names, 10:42AM
correct? 10:42AM
A. Correct. 10:42AM
Q. They all are filed separately as far as legal 10:42AM
entities are concerned, some are corporations, some are 10:42AM

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limited liability companies, correct? 10:42AM
A. Correct. 10:42AM
Q. Okay, what I want to know is do you deal with 10:42AM
day-to-day operations regarding any of those entities, 10:42AM
customers, whatever it may be? 10:43AM
A. Not the operations, no. 10:43AM
Q. Okay. So as far as what goes on at Kapstone 10:43AM
Charleston Kraft LLC in Charleston, you would not be the 10:43AM
person who deals with the day-to-day operations there 10:43AM
related to those aspects, correct, that would be someone 10:43AM
else? 10:43AM
A. Related to what aspects? 10:43AM
Q. The aspects we talked about, accounts 10:43AM
payable, receivable, credit collections, insurance, and 10:43AM
payroll, the five aspects you deal with. There would be 10:43AM
some other person in your role at the local plant, 10:43AM
correct? 10:43AM
A. No. 10:43AM
Q. There would not be? 10:43AM
A. No. 10:43AM
Q. Okay. So having that question, since you 10:43AM
deal with accounts receivable, tell me what customers 10:43AM
you deal with at KapStone Charleston Kraft? 10:43AM
A. I am responsible for the collections. 10:43AM

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Q. Okay. 10:43AM
A. Of the sales, that's accounts receivable. 10:43AM
Q. So when you are responsible for the 10:43AM
collections, does that include contacting customers? 10:43AM
A. It does not. 10:43AM
Q. Okay. So when you say responsible for 10:44AM
collections, you don't actually do any collecting? 10:44AM
MR. WILLIS: Objection to the form of the 10:44AM
question. 10:44AM
A. People in my department do the collecting, 10:44AM
yes. 10:44AM
Q. Okay, in what department? 10:44AM
A. The credit and collections department. 10:44AM
Q. Okay, credit and collections department 10:44AM
where? 10:44AM
A. In Northbrook. 10:44AM
Q. Okay. How many people are in the credit and 10:44AM
collections department? 10:44AM
A. I am counting them. 12. 10:44AM
Q. Are they divided up how? 10:44AM
A. I don't understand the question. 10:44AM
Q. There is 12 of them. Are all 12 of them 10:44AM
responsible for what? 10:44AM
A. There are four for accounts receivable, four 10:44AM

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**for collections, two for credit and two for management.** 10:44AM
Q. Okay, and all of those individuals report to 10:44AM you? 10:45AM
**A. Indirectly.** 10:45AM
Q. Okay. Who do they report to directly? 10:45AM
**A. The credit manager.** 10:45AM
Q. Who is the credit manager? 10:45AM
**A. Olga Holovenko, H-o-l-o-v-e-n-k-o.** 10:45AM
Q. Okay. And who would you report to directly? 10:45AM
**A. Andrea Tarbox, the CFO.** 10:45AM
Q. Andrea Tarbox? 10:45AM
**A. Yes. T-a-r-b-o-x.** 10:45AM
Q. And that's the CFO? 10:45AM
**A. Yes.** 10:45AM
Q. CFO of Kapstone? 10:45AM
**A. Paper and Packaging.** 10:45AM
Q. Paper and Packaging, okay. 10:45AM
**A. Yes.** 10:45AM
Q. And then who reports -- do you have people 10:45AM underneath you? You mentioned those that report to you 10:45AM indirectly. Do you have anyone that reports to you 10:45AM directly? 10:45AM
**A. Olga Holovenko.** 10:45AM
Q. Besides her, anyone else? 10:46AM

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**A. I have a Kathy Macky who is the payroll** 10:46AM **manager, Minish Modi who is the accounts payable** 10:46AM **manager, and Hiep Phung who is the Risk Management.** 10:46AM **Hiep, H-i-e-p, Phung, P-h-u-n-g.** 10:46AM
Q. I have got Kathy Macky, Minish -- 10:46AM
**A. M-i-n-i-s-h, M-o-d-i.** 10:46AM
Q. And what was the last one? 10:46AM
**A. Hiep, H-i-e-p, Phung, P-h-u-n-g.** 10:46AM
Q. Okay. And Kathy Macky's title is what? 10:46AM
**A. Payroll manager.** 10:46AM
Q. And Minish is what? 10:46AM
**A. Accounts payable manager.** 10:46AM
Q. Okay, and Hiep Phung is what? 10:46AM
**A. Risk manager.** 10:46AM
Q. And all three of those report to you? 10:46AM
**A. Yes.** 10:46AM
Q. Okay. All right. Now before we got 10:47AM sidetracked on this, I handed you Exhibit No. 5, okay. 10:47AM
**A. Uh-hmm.** 10:47AM
Q. This is a notice of your deposition. Have 10:47AM you seen this document before? 10:47AM
**A. I have.** 10:47AM
Q. Okay. So let's start with, well, let's start 10:47AM with some of these. And I want to make sure that you 10:47AM

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understand you'd be the corporate representative 10:47AM testifying to these topics, okay? 10:47AM
**A. Okay.** 10:47AM
Q. And what I want to do is if you do not feel 10:47AM that you are the best person or feel comfortable binding 10:47AM the company related to those topics, let me know so I 10:47AM can mark it on here and save us some questions, okay? 10:47AM
**A. Okay.** 10:47AM
Q. Number one, when it talks about documents 10:47AM refer, relate or represent to the corporate structure of 10:47AM this defendant from 2006 through the date of the 10:47AM incident including any subsidiary in which the defendant 10:47AM has ownership, are you the person best suited to talk 10:47AM about all of that? 10:48AM
MR. WILLIS: And let me state an objection first. 10:48AM We limited the time frame to the time frame around the 10:48AM time of the accident which is what would be relevant to 10:48AM the jurisdiction question. 10:48AM
MR. FINDLEY: Okay. 10:48AM
MR. WILLIS: So to the extent that your question 10:48AM goes back to 2006, we haven't designated her for that, 10:48AM but you will notice, if you will note. 10:48AM
MR. FINDLEY: Well -- 10:48AM
MR. WILLIS: I think it's general objection two, 10:48AM

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so anyway, with that modification. 10:48AM
MR. FINDLEY: Okay. Well, that's what I am trying 10:48AM to figure out. 10:48AM
Q. So topic number one, would you be the person 10:48AM who could testify related as I have it written from 2006 10:48AM to now, you would not be? 10:48AM
**A. I would not be.** 10:48AM
Q. Now what about in relation to 2016 to the 10:48AM present? 10:48AM
**A. It would depend on the question.** 10:48AM
Q. Okay. But as the topic is written, you would 10:48AM not file comfortable being designated for the corporate 10:49AM representative to cover 2016 to the present for 10:49AM corporate structure of ownership including any 10:49AM subsidiary or entity in which this defendant has 10:49AM ownership interest? 10:49AM
**A. I am aware of the legal work chart and we** 10:49AM **have provided that.** 10:49AM
Q. Okay. And this is going to -- I think I know 10:49AM what you are talking about and just so we are, I want to 10:49AM make sure we are on the same page, okay. So I am going 10:49AM to hand you what I have marked as exhibit number, I 10:49AM think we are on six. 10:49AM
(Plaintiff's Deposition Exhibit No. 10:49AM

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6 was marked for identification.) 10:49AM
BY MR. FINDLEY: 10:49AM
Q. And as I understand it, this is your 10:49AM affidavit? 10:49AM
**A. It is. 10:49AM**
Q. Okay. So what I wanted to ask you about, you 10:49AM mentioned a work chart. Let's do it this way. This one 10:49AM is stapled. Does this one have all of the exhibits on 10:49AM it? Okay. All right, in that document, if you turn to 10:50AM the back and see that Exhibit number B or C is what you 10:50AM are on, okay? 10:50AM
**A. Yes. 10:50AM**
Q. Exhibit number C is that what you are talking 10:50AM about when you say you are familiar with that page? 10:50AM
**A. I am familiar with it. 10:50AM**
Q. And that's fair. And all I want to know is 10:50AM any documents that were used to create that page, you 10:50AM are not familiar with to testify on, true? 10:51AM
**A. True. 10:51AM**
Q. Okay. The only thing that you would be 10:51AM qualified to testify on as a corporate representative 10:51AM would be the actual demonstrative drawing that we have 10:51AM here on Exhibit C of your affidavit, fair? 10:51AM
**A. Fair. 10:51AM**

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MR. WILLIS: As well as Exhibit document 1, the 10:51AM overall flow chart. 10:51AM
MR. FINDLEY: Well, that's not in her affidavit, 10:51AM so. 10:51AM
MR. WILLIS: Right. 10:51AM
MR. FINDLEY: So if she wants to clarify it, but 10:51AM let's limit the talking for her. 10:51AM
Q. So back to what we are talking about 10:51AM organizational chart Exhibit C attached to the 10:51AM affidavit, you did not create that, true? 10:51AM
**A. I did not. 10:51AM**
Q. Okay. You didn't review any documents that 10:51AM went into creating it, fair? You weren't the person who 10:51AM did that? 10:51AM
**A. Created this document, I was not. 10:51AM**
Q. Okay. And you weren't the person, let me 10:51AM give you example, who went back and reviewed corporate 10:51AM filings or any of the other types of various documents 10:52AM that might go into creating an organizational chart, 10:52AM correct? 10:52AM
**A. I did not. 10:52AM**
Q. Okay. So as far as what those documents 10:52AM contain that were used to create this organizational 10:52AM chart, you don't have personal knowledge of those as we 10:52AM

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sit here today, fair? All you have personal knowledge 10:52AM of is what would be contained on this chart, true? 10:52AM
**A. True. 10:52AM**
Q. Okay. Now, as far as this chart, do you know 10:52AM if this chart was created specifically for this case? 10:52AM
**A. I'm not sure. 10:52AM**
Q. Okay. Do you know what years of documents 10:52AM regarding filings were reviewed in order to create this? 10:52AM
**A. I do not. 10:52AM**
Q. Okay. And so whether it was 2015, 2016 or 10:52AM 2018 sitting here today you couldn't tell us that, fair? 10:52AM
**A. Fair. 10:52AM**
Q. Okay. And the reason why I am asking that is 10:52AM because in this organizational chart it's got -- well, 10:52AM do you know who made it? 10:53AM
**A. I do not. 10:53AM**
Q. Okay. Did it just show up on your desk? 10:53AM
**A. As part of the affidavit, yes. 10:53AM**
Q. Okay. And is it fair to say the entire 10:53AM Exhibit 6 you did not have any part in making it, 10:53AM correct? 10:53AM
**A. No. 10:53AM**
Q. You didn't type any of the words in the 10:53AM affidavit, they came like that? 10:53AM

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**A. I did not type the words, no. 10:53AM**
Q. Okay. And as far as Exhibit A, well, let's 10:53AM go through the exhibits first. Exhibit number A to your 10:53AM affidavit this was a -- we might get more in depth in a 10:53AM second, but what I want to talk to you about is, number 10:53AM one, what is this? 10:53AM
**A. It's the worker's comp policy page that was 10:53AM in effect at the time of the accident. 10:54AM**
Q. Okay. And as far as going out and searching 10:54AM for this document, did you do that or did it come to you 10:54AM as part of this affidavit? 10:54AM
**A. It's within my group, so we provided the 10:54AM document. 10:54AM**
Q. Okay. Who did you provide the document to? 10:54AM
**A. To legal. 10:54AM**
Q. Okay. All right. So let's go on to the next 10:54AM one. Exhibit B, KapStone entity directors and officers, 10:54AM did you create this document? 10:54AM
**A. I did not. 10:54AM**
Q. Okay, where did it come from or do you know? 10:54AM
**A. I am not sure, but I have seen something 10:54AM similar on our Internet. 10:54AM**
Q. Okay. And fair enough. But as far as 10:54AM whether or not the one on the Internet is the same, you 10:54AM

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don't know, right? 10:54AM
**A. I don't know. 10:54AM**
Q. Okay. All I want to talk to you about is as 10:54AM far as reviewing any actual documentation in order to 10:54AM create this list, you didn't do that? 10:54AM
**A. I did not. 10:54AM**
Q. Okay. As far as having personal knowledge as 10:54AM to what paperwork is contained with filings regarding 10:55AM officers and directors, that wasn't research that you 10:55AM did in order to generate this, fair? 10:55AM
**A. Fair. 10:55AM**
Q. As far as having personal knowledge as to 10:55AM what is contained in those documents regarding directors 10:55AM and officers, you do not have any personal knowledge 10:55AM other than what is contained on Exhibit B, correct? 10:55AM
**A. Correct. 10:55AM**
Q. And Exhibit B, just so we are clear, if you 10:55AM look at the bottom it says updated on February 14, 2017, 10:55AM correct? 10:55AM
**A. Correct. 10:55AM**
Q. Okay. Did you review any documents as to who 10:55AM the officers and directors were in 2016? 10:55AM
**A. I did not. 10:55AM**
Q. Okay. As far as who they were at the time of 10:55AM

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this incident you have no idea, fair? 10:55AM
MR. WILLIS: Objection, to the form of the 10:55AM question. 10:55AM
BY MR. FINDLEY: 10:55AM
Q. As far as who the officers and directors were 10:55AM at the time of this incident whether or not they are the 10:56AM same or different, that wasn't something you looked 10:56AM into, is that accurate? 10:56AM
**A. Yes. 10:56AM**
Q. Okay. Who provided you with this Exhibit B? 10:56AM
**A. Legal. KapStone's legal department. 10:56AM**
Q. KapStone Paper and Packaging Corporation 10:56AM legal department? 10:56AM
**A. Yes. 10:56AM**
Q. Is this document in Exhibit B something you 10:56AM ever deal with as part of your day-to-day duties? 10:56AM
**A. Yes. 10:56AM**
Q. Okay. And what I am saying is was this list 10:56AM generated or where did it come from? 10:56AM
MR. WILLIS: Objection, form. 10:56AM
BY MR. FINDLEY: 10:56AM
Q. Or do you know? 10:56AM
MR. WILLIS: Do you understand the question? 10:56AM
BY MR. FINDLEY: 10:56AM

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Q. I can re-ask it if you need me to. 10:56AM
**A. As I said, I believe it's on our Internet. 10:57AM**
Q. Okay. When you say on your Internet what do 10:57AM you mean? 10:57AM
10:57AM
**A. Documents that are available to KapStone 10:57AM employees. 10:57AM**
Q. Okay, so you have an internal system? 10:57AM
**A. Yes. 10:57AM**
Q. And something the public wouldn't have access 10:57AM to, fair? 10:57AM
**A. I'm not sure. 10:57AM**
Q. Okay. Did you call it intranet? 10:57AM
**A. Yes. 10:57AM**
Q. Okay. Different than the Internet? 10:57AM
**A. Yes. 10:57AM**
Q. Intranet to my understanding would be a 10:57AM system within KapStone, an internal system as far as 10:57AM management and organizational documents? 10:57AM
**A. Yes. 10:57AM**
Q. As far as going on the intranet to find the 10:57AM officers and directors for what they were before January 10:57AM 1, 2017, you did not do that, fair? 10:57AM
**A. Fair. 10:57AM**

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Q. As far as do you have any idea as to what the 10:57AM officers and directors are for any other entities other 10:58AM than the three that are listed in this two-page document 10:58AM on Exhibit B? 10:58AM
**A. Could you repeat the question, please? 10:58AM**
Q. Okay. Yes. On this two-page document on 10:58AM Exhibit B it says Kapstone entity directors and 10:58AM officers. Do you see that? 10:58AM
**A. Yes. 10:58AM**
Q. Okay. And it has KapStone Paper and 10:58AM Packaging Corporation, KapStone Kraft Paper Corporation, 10:58AM and KapStone Charleston Kraft LLC. Do you see that? 10:58AM
**A. I do. 10:58AM**
Q. Okay. Do you have any idea what the other 10:58AM officers and directors are for any other entity that 10:58AM KapStone claims its ownership of? 10:58AM
**A. I can't tell you right now, but there is a 10:58AM similar list for those. 10:58AM**
Q. And that's what I wanted to know. As far as 10:58AM you being able to testify to that, you could not do that 10:58AM today? 10:58AM
**A. Correct. 10:58AM**
Q. As far as going to review that list prior to 10:58AM testifying here today, it wasn't something that you did 10:58AM

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to prepare, correct? 10:58AM
**A. Correct.** **10:58AM**
Q. Well, if you look at each one of these 10:59AM entities it says last change in directors and officers 10:59AM January 1, 2017. And for each one it says that there 10:59AM was a change on January 1 of 2017. Do you see that? 10:59AM
**A. I do.** **10:59AM**
Q. Okay. As far as what the officers and 10:59AM directors were in 2016, that is not listed in Exhibit B, 10:59AM fair? 10:59AM
**A. Fair.** **10:59AM**
Q. And that is not something you went back to 10:59AM look at prior to this deposition, fair? 10:59AM
**A. Fair.** **10:59AM**
Q. All right. Then Exhibit C is the 10:59AM organizational chart that we already talked about? 10:59AM
**A. Yes.** **10:59AM**
Q. And the reason why I asked you -- well, do 10:59AM you have any idea of when this document was made -- 10:59AM strike that. Do you have any idea when this document 10:59AM was made? 11:00AM
**A. I don't.** **11:00AM**
Q. Okay. The reason why I am asking you is 11:00AM because it says defendants on there and it's got the two 11:00AM

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defendants in this lawsuit. Was this document generated 11:00AM for the specific purpose of this litigation? 11:00AM
**A. I'm not sure.** **11:00AM**
Q. Okay. Would you agree with me that it says 11:00AM defendants, right? 11:00AM
**A. Yes.** **11:00AM**
Q. Defendants that are in this lawsuit, correct? 11:00AM
**A. Correct.** **11:00AM**
Q. Do you have any other lawsuits pending where 11:00AM those two corporations are defendants? 11:00AM
**A. I'm not sure.** **11:00AM**
Q. Are you aware of Kapstone Paper and Packaging 11:00AM Corporation, KapStone Kraft Paper Corporation being 11:00AM defendants in any other lawsuits other than this one? 11:00AM
**A. Could you please repeat.** **11:00AM**
Q. Sure. KapStone Paper and Packaging 11:00AM Corporation, and Kapstone Kraft Paper Corporation are 11:00AM listed as defendants on Exhibit C to your affidavit. 11:00AM Are you aware of any other lawsuits where they are 11:00AM defendants? 11:00AM
MR. WILLIS: Objection, form and scope. 11:00AM
**A. I'm not aware.** **11:01AM**
BY MR. FINDLEY: 11:01AM
Q. Is that something you would be privy to? 11:01AM

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**A. I would not be privy to all of them, no.** **11:01AM**
Q. Okay. All right. Does Exhibit C, what I 11:01AM have in Exhibit C it looks like just a one page similar 11:01AM to a, I guess a Power Point. Do you agree with that? 11:01AM
**A. I do.** **11:01AM**
Q. Okay, is it part of a larger Power Point or 11:01AM do you know? 11:01AM
**A. I don't know.** **11:01AM**
Q. Okay, as far as looking if there is any other 11:01AM pages associated with that Power Point sheet, that 11:01AM wasn't something you did? 11:01AM
**A. I did not.** **11:01AM**
Q. All right. Would you agree with me that 11:01AM KapStone Paper and Packaging does not manufacture or 11:02AM sell paper products? 11:02AM
**A. I agree.** **11:02AM**
Q. Do you agree with me that KapStone Charleston 11:02AM Kraft LLC does manufacture and sell paper products? 11:02AM
**A. I agree.** **11:02AM**
Q. In your affidavit on exhibit or excuse me and 11:03AM we will get into this more. But on point number 12, 11:03AM bullet point you said KapStone Kraft and KapStone 11:03AM Charleston share the same officers and you go through 11:03AM various officers and directors? 11:03AM

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**A. Yes.** **11:03AM**
Q. Okay. And where you got the information to 11:03AM make that statement in your affidavit was from where? 11:03AM
**A. From the list that's attached.** **11:03AM**
Q. From Exhibit B that was handed to you by your 11:03AM lawyers, correct? 11:03AM
MR. WILLIS: Objection to the form of the 11:03AM question. 11:03AM
BY MR. FINDLEY: 11:03AM
Q. Where did you get Exhibit B? 11:03AM
**A. It was handed to me from our legal group, but 11:03AM it's available and necessary in the scope of my 11:03AM responsibility.** **11:03AM**
Q. Okay. Fair enough. I will just object to 11:03AM the nonresponsive portion. I am just asking you a 11:04AM simple question. As far as Exhibit 12, oh, excuse me, 11:04AM point 12 of your affidavit, the sole place that you 11:04AM obtained the information to make that statement was 11:04AM Exhibit B which is a document that was given to you by 11:04AM the legal department, true? 11:04AM
**A. Not true.** **11:04AM**
Q. Okay. 11:04AM
**A. I have the complete document for the other 11:04AM areas of my responsibility for which I need it.** **11:04AM**

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Q. Okay, so why didn't you produce the complete document? 11:04AM
MR. WILLIS: Objection to the form of the question. 11:04AM
**A. I don't know.** **11:04AM**
Q. Okay. 11:04AM
MR. WILLIS: It is produced. It's in your stack. 11:04AM
MR. FINDLEY: Hold on. She can answer her question for herself, Dick. 11:04AM
Q. Do you as far as the document that you have attached to your affidavit, it's not a complete document, correct? 11:04AM
MR. WILLIS: Objection to form. 11:04AM
**A. Correct.** **11:04AM**
BY MR. FINDLEY: 11:04AM
Q. And as far as what we talked about earlier of how this document arrived to you was the affidavit came with the exhibits from your legal department, correct? 11:04AM
**A. Correct.** **11:05AM**
Q. So as far as what you looked at and what you provided as attached to your affidavit, you provided Exhibit B which is self admitted incomplete document? 11:05AM
MR. WILLIS: Objection to the form of the question. 11:05AM

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MR. DUCAYET: Mistakes the testimony. 11:05AM
MR. FINDLEY: I mean how many lawyers y'all got here, because I am only aware of one can make objection. 11:05AM
MR. DUCAYET: Oh, is that right? 11:05AM
MR. FINDLEY: Yeah. 11:05AM
MR. DUCAYET: Okay. 11:05AM
MR. FINDLEY: Do you know different? 11:05AM
MR. WILLIS: Yeah, my form objection covers that basis under our local rules or under the self binding rules, so. 11:05AM
BY MR. FINDLEY: 11:05AM
Q. So let's go back to my question, all right, number 12 to your affidavit, KapStone entity directors and officers is a two-page document that was updated on February 14, 2017, correct? 11:05AM
**A. Yes.** **11:05AM**
Q. Okay. That document you said there -- did you say that there is a more complete version of it that you deal with? 11:05AM
**A. Yes.** **11:05AM**
Q. Okay. And that version isn't attached to your affidavit, is that fair? 11:05AM
**A. Yes.** **11:06AM**
Q. Okay. But when we talk about number 12, you 11:06AM

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state that the officers and directors that you cite to of being shared come from information on Exhibit B is what it says, right? 11:06AM
**A. Right.** **11:06AM**
Q. Okay. And Exhibit B is incomplete? 11:06AM
MR. WILLIS: Objection to the form of the question. 11:06AM
**A. I believe that Exhibit B is complete for what I have stated here only referencing KapStone Kraft and KapStone Charleston.** **11:06AM**
BY MR. FINDLEY: 11:06AM
Q. Okay. Exhibit B has no officers and directors from 2016, fair? 11:06AM
**A. Fair.** **11:06AM**
Q. Well, let's just go back to the topics and we will come back to your affidavit. Going back to Exhibit No. 5, all right, so we talked about Exhibit No. 1 and you, or excuse me, point number one. Let's talk about number two. All documents that refer, relate, represent the business segments of the operating groups of this defendant from 2006 through to the date of the incident. I assume you cannot testify from 2006 to the date of the incident, is that fair? 11:07AM
**A. Yes.** **11:07AM**

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Q. Okay. As far as documents that refer or relate to the representation of business segments and operating groups of this defendant, as far as what those contain, those would be contained in your affidavit, the documents that you can testify to? 11:07AM
**A. Yes.** **11:07AM**
Q. Okay. Can you testify to any other documents that you have reviewed for that topic? 11:07AM
MR. DUCAYET: I'm sorry, can I get the question back, I'm not sure that I understand it. 11:07AM
MR. FINDLEY: You can just repeat the last two questions back to her. 11:07AM
(Questions and answers read.) 11:08AM
MR. WILLIS: So it's that last question that he is asking you. Any other documents that you have reviewed that are -- 11:09AM
MR. FINDLEY: Well, here, if you want me to rephrase the question. Can you answer the question as far as I phrased it or you need it rephrased? 11:09AM
**A. May I have it rephrased.** **11:09AM**
Q. Sure. Number two of the topics that I have given you, I wanted someone to testify regarding documents that refer, relate or represent the business segments of the operating group from 2006 to the 11:09AM

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present. We agree you can't do 2006 to the present, correct? 11:09AM
**A. Correct.** **11:09AM**
Q. Okay. Now what I am trying to figure out is as far as documents that refer, relate or represent the business segments of this operating group, the documents that you reviewed to be able to provide testimony on as we sit here today are the ones that we talked about in your affidavit, is that true? 11:09AM
**A. I cannot speak to all documents that refer to, relate, represent from 2016 to 2017.** **11:09AM**
Q. Cannot? 11:09AM
**A. Cannot.** **11:10AM**
Q. Okay. And that's all I wanted to know. As far as talk about those documents, the only documents that you can testify to or you would feel comfortable testifying to as we sit here today, would be those that were attached to your affidavit, fair? 11:10AM
**A. Fair.** **11:10AM**
Q. As far as documents that are not attached to your affidavit, you wouldn't feel comfortable testifying to those as we sit here today, fair? 11:10AM
**A. Fair.** **11:10AM**
Q. Okay. All right, let's go on to number three 11:10AM

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and the reason why I am asking you these questions, I am not trying to be rude. What I am trying to do is I don't know what you know and I am trying to narrow what we cover. So if you don't know about it, that's fine, it's just easier for me to know on the front end, okay? 11:10AM
**A. Okay.** **11:10AM**
Q. So if we go to number three, all documents that refer, relate, represent Kapstone Charleston Kraft LLC including all parties holding an interest directly or indirectly in KapStone Kraft LLC, from 2006 to present, based on your previous questions, you couldn't do 2006 to present, right? 11:11AM
**A. Right.** **11:11AM**
Q. Okay. As far as what you could testify to or documents that refer or relate to the representation of ownership would be the A, B, and C documents that we talked about in your affidavit, correct? 11:11AM
**A. Correct.** **11:11AM**
Q. Documents beyond the A, B, and C in your affidavit you would not be able to talk about as we sit here today? 11:11AM
**A. I cannot speak to all documents for any topic.** **11:11AM**
Q. Okay, and that is what I am trying to get an 11:11AM

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idea for. As far as the existence, creation or review of any documents related to this litigation or related to these topics, as far as what you would be prepared to testify to today would be the documents contained in your affidavit, correct? 11:11AM
**A. Correct.** **11:11AM**
Q. Okay. Any other documents outside of that, isn't something you reviewed to prepare for this deposition, fair, outside of your affidavit? 11:12AM
**A. Can you say that again, please?** **11:12AM**
Q. Sure. We know there is lots of documents out there, do you agree with me? 11:12AM
**A. I do.** **11:12AM**
Q. Okay. And you'd agree with me that KapStone maintains all sorts of documents, right? 11:12AM
**A. Yes.** **11:12AM**
Q. And you'd agree with me that some of those documents would probably fall under the scope of the topic as I have it written here, correct? 11:12AM
**A. Yes.** **11:12AM**
Q. Okay. And what you are saying is you didn't go back and look at those, so you wouldn't be prepared to testify as to the existence of those, fair? 11:12AM
**A. Fair.** **11:12AM**

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MR. DUCAYET: Hold on a second. Why don't you just ask her if she reviewed anything other than what's in her affidavit. 11:12AM
MR. FINDLEY: How about this, why don't you not instruct the witness. You are not a counsel of record. 11:12AM
MR. DUCAYET: I am not instructing the witness to do anything. I am asking you to ask a clear question, okay. 11:12AM
MR. FINDLEY: Okay. 11:12AM
Q. Did you understand my question? 11:12AM
**A. No.** **11:12AM**
MR. FINDLEY: Okay. Well, let's repeat it for you. 11:12AM
If you bring it up again, I am going to have to ask you to leave the room. You are not counsel of record. You are obstructing deposition testimony. 11:12AM 11:13AM
MR. DUCAYET: I am not going anywhere, Counsel. I am not obstructing anything. I am asking you to ask a clear question. 11:13AM
MR. FINDLEY: Okay, and I will ask it again. 11:13AM
MR. DUCAYET: That was not a clear question. If you are going to repeat the question, that was not a clear question. 11:13AM
MR. FINDLEY: We can play it for the video for the 11:13AM

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judge and you can get pro hac admitted and you can come 11:13AM
down there and explain why you keep interrupting my 11:13AM
deposition. 11:13AM
So let's go back to my question, if you could 11:13AM
read if for the lawyer, alleged. 11:13AM
MR. DUCAYET: Excuse me. 11:13AM
MR. FINDLEY: I said the alleged lawyer because I 11:13AM
haven't seen you enrolled. 11:13AM
MR. DUCAYET: Oh, okay, that's very professional. 11:13AM
Go ahead. 11:13AM
MR. FINDLEY: It's very professional for you to 11:13AM
talk during the deposition. 11:13AM
MS. SELZTER: Let's take a break. 11:13AM
MR. FINDLEY: I don't want to take a break if she 11:13AM
doesn't understand my question. I want my question 11:13AM
answered before he goes and talks to her in the hallway. 11:13AM
So let's go back up to the question. 11:13AM
(Three questions read.) 11:14AM
BY MR. FINDLEY: 11:14AM
Q. Okay. So that's my question. We talked 11:14AM
about there is a lot of documents out there, right? 11:14AM
**A. Yes.** **11:14AM**
Q. Okay. The documents you have attached to 11:14AM
your affidavits are four documents, are A, B, and C, 11:14AM

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three documents, right? 11:14AM
**A. Right.** **11:14AM**
Q. As far as what you are prepared to testify to 11:14AM
today in relation to my topics, it would be those 11:14AM
documents, correct, A, B, and C? 11:14AM
MR. WILLIS: Objection to the form of the 11:14AM
question. 11:14AM
MR. FINDLEY: Correct. You can answer. 11:14AM
**A. Correct.** **11:14AM**
Q. Okay. And that's all I am asking you. As 11:14AM
far as reviewing any of the other documents that are out 11:14AM
there that may exist or may not exist, that's not 11:14AM
something you came here today prepared to testify on, is 11:14AM
that an accurate representation? 11:14AM
MR. WILLIS: Objection to the form of the 11:14AM
question. 11:14AM
MR. FINDLEY: You can answer. 11:14AM
**A. Yes.** **11:14AM**
MR. FINDLEY: Okay. Thank you. We can take a 11:14AM
break down. 11:14AM
MR. WILLIS: Let's take a short break. 11:14AM
THE VIDEOGRAPHER: We are going off the record at 11:14AM
11:14 a.m. 11:15AM
(Off the record.) 11:15AM

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THE VIDEOGRAPHER: We are back on the record at 11:26AM
11:26 a.m. 11:26AM
BY MR. FINDLEY: 11:26AM
Q. All right, Ms. Hulseman, we took a short 11:26AM
break. Are you ready to continue? 11:26AM
**A. I am.** **11:26AM**
Q. Okay. When you received this affidavit and 11:26AM
exhibit, was it given to you by e-mail or mail? 11:26AM
**A. I don't recall.** **11:26AM**
Q. You didn't type all the words in it 11:26AM
obviously, right? 11:26AM
**A. I did not type the words, no.** **11:26AM**
Q. Did it come as a Word document with the 11:26AM
ability for you to edit it or do you not remember one 11:27AM
way or the other? 11:27AM
**A. I made edits, but I don't recall if I hand** **11:27AM**
**wrote them or typed them.** **11:27AM**
Q. Okay. Do you know who you received it from? 11:27AM
**A. The legal department.** **11:27AM**
Q. Who at the legal department? 11:27AM
**A. I don't recall.** **11:27AM**
Q. Do you know if it was a lawyer? 11:27AM
**A. It was a lawyer or a paralegal.** **11:27AM**
Q. And I assume you received it sometime like we 11:27AM

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talked about earlier quarter four of 2017, is that 11:27AM
right? 11:27AM
**A. Quarter three. I signed in September.** **11:27AM**
Q. And it looks like it was signed and notarized 11:27AM
on September 20, 2017, is that accurate? 11:28AM
**A. Yes.** **11:28AM**
Q. Okay. As far as how long of a time passed 11:28AM
from the time you received it until the time you signed 11:28AM
it, do you know? 11:28AM
**A. I don't.** **11:28AM**
Q. Okay. Do you remember if it was years? Do 11:28AM
you know if it was in the late part of the 2017 that you 11:28AM
received it and signed it? 11:28AM
**A. Yes.** **11:28AM**
Q. So if we said sometime in the fall of 2017 11:28AM
you received it and signed it, is that fair? 11:28AM
**A. That's fair.** **11:28AM**
Q. Before you signed it did you go look at any 11:28AM
other documents other than the ones that were attached? 11:28AM
**A. I did not.** **11:28AM**
Q. The only documents you have reviewed prior to 11:28AM
signing it was A, B, and C, right? 11:28AM
**A. Correct.** **11:28AM**
Q. All right, so let's go back to the document 11:28AM

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we were just talking about. Let me make sure, Exhibit 11:29AM
No. 5. And what I am trying to get an idea of when we 11:29AM
go through these topics is let's just go to topic four 11:29AM
regarding documents refer or relate to the ownership of 11:29AM
North Charleston plant including all parties holding an 11:29AM
interest indirectly or directly in North Charleston 11:29AM
plant from 2006 to present. Starting with from 2006 to 11:29AM
present like we talked about earlier, you wouldn't be 11:29AM
prepared to talk about that entire time frame, fair? 11:29AM
MR. WILLIS: The same objection as to the time 11:29AM
frame. 11:30AM
**A. I would not. 11:30AM**
BY MR. FINDLEY: 11:30AM
Q. Okay. As far as the time frame that you 11:30AM
could discuss, what would that be? 11:30AM
**A. I would not be the person to speak to that. 11:30AM**
Q. To any portion of it? 11:30AM
**A. Correct. 11:30AM**
Q. Okay. So that was topic number four. Let's 11:30AM
go to topic number -- 11:30AM
**A. Actually, could I -- may I add something? I 11:30AM**
**am saying that I would not be able to speak to all 11:30AM**
**documents related to that. 11:30AM**
MR. FINDLEY: Okay. 11:30AM

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MR. WILLIS: Right, and for the record let me say 11:30AM
we have objected to this notice to the extent that it 11:30AM
asks for documents. What we viewed this notice as is a 11:30AM
topic by topic notice. And so from a topic standpoint 11:30AM
she is here to talk about topics. 11:30AM
MR. FINDLEY: You made this statement six times. 11:30AM
You don't need to make it to the witness. The witness 11:30AM
can answer the questions that I asked. I will consider 11:30AM
anything beyond that an instruction. 11:31AM
Q. Okay. So let's go back to what we are 11:31AM
talking about. As far as topic number four, as far as 11:31AM
what you can testify to related to the ownership of 11:31AM
North Charleston plant, what is it? 11:31AM
MR. WILLIS: Let me finish my objection. We are 11:31AM
not offering her as a 30(b)6 witness to come in and talk 11:31AM
about documents. We are offering her as a 30(b)6 11:31AM
witness to come in and talk about the topics included in 11:31AM
your notice. 11:31AM
MR. FINDLEY: That's fine. You have already said 11:31AM
that three times. 11:31AM
MR. WILLIS: I just want to make that clear. 11:31AM
MR. FINDLEY: You have made it clear. Crystal 11:31AM
clear. I am tired of you making it in front of the 11:31AM
witness. 11:31AM

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Q. Back to my question on topic number four. 11:31AM
When we talk about ownership of the North Charleston 11:31AM
plant including all parties holding an interest directly 11:31AM
or indirectly in the North Charleston plant from 2006 to 11:31AM
the present, okay, let's talk about that for a moment. 11:31AM
Can you talk about the ownership in the plant directly 11:31AM
or indirectly from 2006 to the present? 11:32AM
MR. WILLIS: Objection to form. 11:32AM
**A. No. 11:32AM**
Q. Okay. As far as talking about the ownership 11:32AM
interest at the plant directly or indirectly, would you 11:32AM
agree with me that your knowledge to testify on would be 11:32AM
limited to the documents that you produced with your 11:32AM
affidavit A, B, and C? 11:32AM
MR. WILLIS: Objection to the form of the 11:32AM
question. 11:32AM
BY MR. FINDLEY: 11:32AM
Q. You can answer. 11:32AM
**A. KapStone Charleston is owned by KapStone 11:32AM**
**Kraft. 11:32AM**
Q. Okay. Objection, nonresponsive. 11:32AM
As far as your knowledge regarding who 11:32AM
owns KapStone Charleston or any of the entities we 11:32AM
talked about and let's strike the question. 11:32AM

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As far as your knowledge regarding the 11:32AM
ownership of the North Charleston plant including all 11:32AM
parties holding an interest directly or indirectly as 11:32AM
far as where you obtained that knowledge, okay, how you 11:32AM
know that knowledge, would you agree with me it came 11:33AM
from the documents listed in A, B and C in your 11:33AM
affidavit? 11:33AM
MR. WILLIS: Objection to the form of the 11:33AM
question. 11:33AM
**A. No. 11:33AM**
BY MR. FINDLEY: 11:33AM
Q. Okay, where did it come from? 11:33AM
**A. It came from ten years with the company. I 11:33AM**
**joined shortly after that acquisition. 11:33AM**
Q. Okay. Ten years with the company. As far as 11:33AM
ten years with the company are you talking about 11:33AM
conversations with people? 11:33AM
MR. WILLIS: Objection, to the form of the 11:33AM
question. 11:33AM
**A. Not solely conversations, no. 11:33AM**
BY MR. FINDLEY: 11:33AM
Q. What is it based on? Did you prepare the 11:33AM
filings? 11:33AM
**A. I did not. 11:33AM**

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Q. Okay. Have you reviewed them? 11:33AM
**A. I did not. 11:33AM**
Q. Have you reviewed any of the ownership documents? 11:33AM
**A. I'm not clear on what any means. 11:33AM**
Q. Okay. Here is what I am talking about, all right. You say that company A owns company B? 11:33AM
**A. Yes. 11:33AM**
Q. And I want to explore that and I am asking you how do you know that? Other than working at the company, what did you look at? 11:33AM 11:34AM
**A. The org chart. 11:34AM**
Q. Okay, Exhibit C to your affidavit. 11:34AM
**A. And the other, the larger org chart. 11:34AM**
Q. Okay, the larger org chart? 11:34AM
**A. Uh-huh. 11:34AM**
Q. Okay. Other than those two documents, anything else? 11:34AM 11:34AM
**A. I'm not sure on the question. 11:34AM**
Q. Okay. 11:34AM
**A. I need to know the ownership structure for my work. 11:34AM 11:34AM**
Q. Right. And I got you. You need to know the ownership structure for your work? 11:34AM 11:34AM

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**A. Right. 11:34AM**
Q. And at some point you were given the ownership structure. Someone told you about it, right? 11:34AM 11:34AM
**A. Right. 11:34AM**
Q. What did you do to go verify it, anything other than the organizational chart and the other chart you talked about which was, well, let's pull it out. It looks like it is Bates labeled KapStone 1. Is this the other chart you are talking about? 11:34AM 11:34AM 11:34AM 11:35AM 11:35AM
**A. It is. 11:35AM**
Q. And this is Bates labeled for the record, Kapstone 000001. Other than this chart as well as Exhibit C to your affidavit, no other documents that you have personal knowledge of to show ownership? 11:35AM 11:35AM 11:35AM 11:35AM
MR. WILLIS: Objection to form. 11:35AM
**A. The same structure is referenced in the K, it explains the ownership. 11:35AM 11:35AM**
Q. In what the what? 11:35AM
**A. The 10K. 11:35AM**
Q. Did you prepare the 10K? 11:35AM
**A. I do not. 11:35AM**
Q. Do you have personal knowledge of what is contained in the 10K? What I mean by that, do you do any portion of generating it? 11:35AM 11:35AM 11:35AM

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MR. WILLIS: Objection to form. 11:35AM
**A. I do not. 11:35AM**
BY MR. FINDLEY: 11:35AM
Q. Do you do any portion of checking it to verify its accuracy? 11:35AM 11:35AM
**A. I am asked to review it. 11:35AM**
Q. Okay. Do you have to sign the 10K where it says under penalty of perjury everything in here is true and correct? 11:35AM 11:35AM 11:36AM
**A. I do not. 11:36AM**
Q. Okay. Do you have to as other than reviewing it, do you make changes to it? 11:36AM 11:36AM
**A. If I find mistakes, I note them for the controller. 11:36AM 11:36AM**
Q. Okay. Have you found mistakes before? 11:36AM
**A. I have. 11:36AM**
Q. Okay. And who would you send them to? 11:36AM
**A. The controller. 11:36AM**
Q. And who is the controller? 11:36AM
**A. Mark Niehus. 11:36AM**
Q. Okay. And you would send them by e-mail? 11:36AM
**A. E-mail, handwritten. 11:36AM**
Q. Okay. Well, we have got an intra system at KapStone right? Intra system or Internet as you called 11:36AM 11:36AM

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it? 11:36AM
**A. Yes. 11:36AM**
Q. Okay. You have a KapStone e-mail address, right? 11:36AM 11:36AM
**A. I do. 11:36AM**
Q. What is it? 11:36AM
**A. Kelly.hulseman@kapstonepaper.com. 11:36AM**
Q. Okay. And do you know if the 10Ks are e-mailed to you? 11:36AM 11:36AM
**A. They are. 11:36AM**
Q. Okay. Do you edit them on your computer and then resend them? 11:37AM 11:37AM
**A. I do not. 11:37AM**
Q. Okay. Do you print them out, hand write them and then send them by fax? 11:37AM 11:37AM
MR. WILLIS: Objection to the form of the question. 11:37AM 11:37AM
**A. By phone call. 11:37AM**
BY MR. FINDLEY: 11:37AM
Q. Okay. Or just get on the phone and tell someone what the changes may be? 11:37AM 11:37AM
**A. Yes. 11:37AM**
Q. And the only person you would ever call related to those changes were the controller? 11:37AM 11:37AM

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A. The controller, the accounting manager, Debbie Michon. 11:37AM

Q. Now the changes you do make don't deal with ownership of subsidiaries, they would deal with one of the five categories we talked about, accounts payable, receivable, credit collection, insurance or payroll, true? 11:37AM

A. True. 11:37AM

Q. None of the changes that you would ever make to a 10K has to do with ownership, fair? 11:37AM

A. Fair. 11:37AM

Q. And the reason for that is because you don't have personal knowledge of ownership, you just have what you were told and what you see in Exhibit C and KapStone one, correct? 11:38AM

MR. WILLIS: Objection to the form of the question. 11:38AM

MR. FINDLEY: You can answer. 11:38AM

A. I don't understand personal knowledge. 11:38AM

Q. Okay. Personal knowledge would mean you have the knowledge. You either created the document. You are familiar with what's in there. You verified the document. Let me give you an example. Someone handing you a chart, Exhibit C, to your affidavit and you don't 11:38AM

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know where it was created, you don't know where it come from, you don't know who made it, you don't know what it was based on, that's not having personal knowledge, okay? 11:38AM

MR. WILLIS: Objection to the form of the question. 11:38AM

MR. FINDLEY: I am defining what I view personal knowledge is. Are you with me so far? 11:38AM

MR. WILLIS: I know, but that's not what the law defines personal knowledge. 11:38AM

MR. FINDLEY: Make your objection, Dick. 11:38AM

MR. WILLIS: I object to the question. 11:38AM

MR. FINDLEY: I have three lawyers in here all claiming to represent the same party. All three of you have spoken on the record. So let's keep it to objections and leave it there. 11:38AM

MR. WILLIS: I am stating my objection. That's not what personal knowledge is under the law. 11:39AM

MR. FINDLEY: How many times you want to say it? 11:39AM

MR. WILLIS: I have made it clear. 11:39AM

MR. FINDLEY: All right. How about an objection form, can we agree to that? 11:39AM

MR. WILLIS: Yes. 11:39AM

MR. FINDLEY: All right, so leave it at objection 11:39AM

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form, please. 11:39AM

Q. Back to my question, you want to know what personal knowledge is, so let me explain to you what I think personal knowledge is, okay. If you didn't create it, you didn't verify its accuracy, and you have no idea where it came from, I don't view that as personal knowledge. What do you -- what is your definition of personal knowledge? 11:39AM

A. I don't know how to answer that. 11:39AM

Q. Okay. Well, let's do it this way. As far as what the ownership requirements are directly or indirectly, excuse me, not requirements. Strike the question. 11:39AM

As far as ownership of the entity, okay, directly or indirectly, as far as documents that you are familiar with that you have looked at, the two documents that represent what you view as the ownership division would be KapStone Bates label 1 and Exhibit C, is that fair? 11:40AM

MR. DUCAYET: Objection, misstates the testimony. 11:40AM

MR. FINDLEY: I mean who are you and why do you keep making an objection? Hold on. Let me make this objection for the record. 11:40AM

MR. DUCAYET: You have completely, the record 11:40AM

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should reflect that you have completely mischaracterized her testimony. It's completely unfair. 11:40AM

MR. FINDLEY: You know what's unfair, having several lawyers in a deposition making speaking objections. Taking the witness out in the hallway. I mean talking to her. This is -- I don't know what the rules are in Illinois, but you can't do this in South Carolina. 11:40AM

MR. WILLIS: And we didn't talk to the witness offer the record, so let's put that on the record too. If you just ask this in a nonleading way, Kyle. She would give you the answers you need. 11:40AM

MR. FINDLEY: Dick, it's cross examination. I can lead the witness. Because we are going to take this whole transcript to the court and you can come answer for his sins of talking during my deposition. 11:40AM

Q. So let me ask you very clearly one more time Ma'am, okay, let's start here, what did you do out in the hallway? 11:40AM 11:41AM

A. I went to the restroom. 11:41AM

Q. Okay. 11:41AM

A. I sent a text or read a text. 11:41AM

Q. Did you speak with the lawyer who keeps talking during the deposition? 11:41AM

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**A. Not about this, no.** **11:41AM**
Q. Why did he carry out a whole stack of documents to you in the hallway? 11:41AM
MR. WILLIS: Objection. We didn't carry out documents to her in the hallway. 11:41AM
MR. FINDLEY: He did. 11:41AM
MR. DUCAYET: I carried out my notes and the exhibits that you have marked. 11:41AM
BY MR. FINDLEY: 11:41AM
Q. Did you talk to your lawyers at all? 11:41AM
**A. Just Wendy.** **11:41AM**
Q. Okay. You talked to Wendy out in the hallway during the break, correct? 11:41AM
**A. Correct.** **11:41AM**
Q. What did y'all talk about? 11:41AM
MR. WILLIS: And again it's to the extent that it's attorney/client privilege, right, I object and I am not going to let her answer that. 11:41AM
MR. FINDLEY: Okay. South Carolina you know the rules. You can't talk to a witness in the hallway during a deposition once she is sworn in. 11:41AM
MR. WILLIS: No, you can't talk about the substance of the testimony. 11:41AM
MR. FINDLEY: All right, so let me ask the 11:41AM

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questions. What did you talk about with her? 11:41AM
MR. WILLIS: Did we discuss the substance of your testimony. 11:42AM
MR. FINDLEY: Hold on, Dick, Dick, stop. I am asking the question. This is the most obstructive deposition I have seen. 11:42AM
MR. WILLIS: You don't need to raise your voice to me, Kyle, I can hear you. 11:42AM
MR. FINDLEY: I am not raising my voice. 11:42AM
MS. SELZTER: You are raising your voice. 11:42AM
MR. FINDLEY: Okay, another lawyer. Please. 11:42AM
MS. SELTZER: I am a human. Stop raising your voice. 11:42AM
MR. FINDLEY: One lawyer at a time. No. Hold on. Don't hamper the record with your self-serving comments, Ma'am. Back to my comments. 11:42AM
SELTZER: You are hampering the record with your self-serving comments. So you better lower your voice or we are going to stop the deposition until you can figure out how to control yourself. 11:42AM
MR. FINDLEY: Okay, if you want to stop the deposition, then stop it right now. I am going to ask my questions. 11:42AM
MS. SELTZER: If you badger the witness we will 11:42AM

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stop the deposition, you choose. 11:42AM
MR. WILLIS: Let's take a break. 11:42AM
MR. FINDLEY: No, I have a question pending. 11:42AM
MR. WILLIS: Ask the question, get the response and we are going to take a break. 11:42AM
MR. FINDLEY: Hold on. Can I get the record clear here, please. Enough talking from lawyers for one second. 11:42AM
MS. SELTZER: You are a lawyer too. 11:42AM
MR. FINDLEY: Okay. 11:42AM
MR. WILLIS: Finish your question. 11:42AM
MR. FINDLEY: Ma'am, what did you talk about with your lawyer in the hallway? Under penalty of perjury tell us what that was. 11:43AM
**A. I said how do you think it's going and will I go to jail. Laugh.** **11:43AM**
Q. Okay. What would you go to jail for, not telling the truth? I don't understand? 11:43AM
MR. WILLIS: She meant that in jest. 11:43AM
**A. I meant that in jest.** **11:43AM**
MR. FINDLEY: Okay, what was the response? 11:43AM
**A. She said I was not going to jail.** **11:43AM**
Q. Okay. What else did y'all talk about? 11:43AM
**A. Nothing.** **11:43AM**

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Q. Okay. What did you talk about in relation to documents? 11:43AM
**A. Nothing.** **11:43AM**
Q. Okay. That was one comment and that's it? 11:43AM
**A. Right, and then I went to the restroom.** **11:43AM**
Q. Okay. And when you got back from the restroom was there any other conversations? 11:43AM
**A. She said did you think I left again in jest.** **11:43AM**
Q. Okay. Other than those two comments, did you make any other comments? 11:43AM
**A. I did not.** **11:43AM**
Q. Did she make any other comments to you? 11:43AM
**A. No.** **11:43AM**
MR. FINDLEY: Okay. All right. 11:43AM
MR. WILLIS: All right, let's take a break. 11:44AM
MR. FINDLEY: Okay. Let's take a break. 11:44AM
THE VIDEOGRAPHER: Often the record at 11:43 a.m. 11:44AM
(Short recess.) 11:44AM
THE VIDEOGRAPHER: We are back on the record at 11:51 a.m. 11:51AM 11:52AM
BY MR. FINDLEY: 11:52AM
Q. Ma'am, are you ready to continue? 11:52AM
**A. I am.** **11:52AM**
Q. Okay. When we left off I believe we were 11:52AM

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talking about some of these topics, so let's go back to it. As far as the articles, number six, if you would follow along with me, Articles of Organization including subsequent filings for this defendant. As far as the Articles of Incorporation, are those documents you have reviewed or are prepared to testify regarding? 11:52AM

**A. I have not reviewed. 11:52AM**

Q. Okay. So that wouldn't be a good topic for you? That would be someone else as well? 11:52AM

**A. Correct. 11:52AM**

Q. Okay. And that's fair. I am just trying to get through some of these so we get to what you do know, okay. Number seven, I guess that's a kind of a repeat. Oh, excuse me, this one is for KapStone Charleston Kraft LLC, okay, the same would be true for that? 11:52AM 11:52AM 11:53AM 11:53AM 11:53AM

**A. Yes. 11:53AM**

Q. Someone else would testify to that? 11:53AM

**A. Yes. 11:53AM**

Q. Okay. All right, let's go to number 18, if you would. It's the next page. Documents refer, relate, represent the corporate relationship. So this topic is talking about the corporate relationship between KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, and KapStone 11:53AM 11:53AM 11:53AM 11:53AM 11:53AM 11:53AM 11:53AM

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Charleston Kraft LLC. Okay, you understand what that's in relation to, correct? 11:53AM

**A. Yes. 11:53AM**

Q. Okay. Now, as far as we talked about earlier as far as the organizational charts are concerned or how they are structured regarding ownership, those were the documents we talked about, Exhibit C in number one? 11:53AM 11:53AM 11:53AM 11:53AM

**A. Yes. 11:54AM**

Q. Okay, any other documents that you reviewed that you can talk to us about regarding the corporate relationship between the parties other than those two? 11:54AM 11:54AM 11:54AM

**A. No. 11:54AM**

Q. Okay. The same with 19 as far as the responsibilities and officers and directors of those various entities, are you a person who can testify to that? 11:54AM 11:54AM 11:54AM 11:54AM

**A. I am not. 11:54AM**

Q. Okay. So that would be for someone else as well? 11:54AM 11:54AM

**A. Yes. 11:54AM**

Q. Okay. All right. So number 20, all documents that represent internal corporate partnership structure, hierarchy, organization, policies and procedures of this defendant including, but not limited 11:54AM 11:54AM 11:54AM 11:54AM

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to and then I have got A through Q, okay, do you see that? 11:54AM 11:54AM

**A. I do. 11:54AM**

Q. Okay. As far as being able to testify under oath regarding the hierarchy, structure, policies and procedures related to directors, officers, employees for A, that would not be you, correct? 11:54AM 11:55AM 11:55AM 11:55AM 11:55AM

**A. Correct. 11:55AM**

Q. Okay. As far as property ownership regarding any of the property for KapStone, that would not be you either, correct? 11:55AM 11:55AM 11:55AM 11:55AM

**A. Correct. 11:55AM**

Q. Okay. C, business departments and divisions. You can talk about your department, but probably not the others, is that fair? 11:55AM 11:55AM 11:55AM 11:55AM

**A. I could not speak to all documents. 11:55AM**

MR. WILLIS: Objection to the form of the question. 11:55AM 11:55AM

BY MR. FINDLEY: 11:55AM

Q. Fair. What I am talking about -- I heard your objection. 11:55AM 11:55AM

What I am talking about, Ma'am, is a little bit different. What I am talking about is can you talk about the hierarchy, corporate partnership 11:55AM 11:55AM 11:55AM 11:55AM

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structure, organization or the policies and procedures of the business departments or divisions in KapStone Packaging or excuse me, KapStone Paper and Packaging Corporation? 11:55AM 11:55AM 11:56AM 11:56AM

**A. No, I cannot. 11:56AM**

Q. Okay. What about stock or unit interest ownership related to KapStone Paper and Packaging Corporation, can you testify and bind the company regarding that topic? 11:56AM 11:56AM 11:56AM 11:56AM

**A. I cannot. 11:56AM**

Q. Okay. What about regarding the financial statements and tax returns? 11:56AM 11:56AM

**A. I cannot. 11:56AM**

Q. Okay, what about the capital expenditures and budgeting? 11:56AM 11:56AM

**A. I cannot. 11:56AM**

Q. Okay. What about financing? 11:56AM

**A. I cannot. 11:56AM**

Q. What about testifying regarding computer communications and information technology systems at KapStone Paper and Packaging Corporation? 11:56AM 11:56AM 11:56AM

**A. I cannot. 11:56AM**

Q. Okay. What about accounting systems? 11:56AM

**A. I cannot speak to all documents again. 11:57AM**

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MR. WILLIS: And let me state, I think we have got a miscommunication as to the question. 11:57AM
BY MR. FINDLEY: 11:57AM
Q. Okay. What I am asking you is a little bit different. What I am asking you is can you testify and bind the company regarding the things that I have named, okay. We have already been through A through H. I assume that means that someone else would be better suited to testify to those topics, fair? 11:57AM
**A. To cover all documents related to them, yes. 11:57AM**
Q. Okay. And when I say all documents, what I want to talk about is I just want to know about corporate knowledge, okay. Let's put documents aside for a second. Let's just talk about corporate knowledge. Are you prepared to bind the company related to those A through H that you said no to? 11:57AM
**A. No. 11:57AM**
Q. Okay, so those would remain true, right, meaning you would not be the person who would want to sit here and be prepared to testify on behalf of the company under oath related to A through H, fair? 11:57AM
**A. Fair. 11:58AM**
Q. Okay. So let's go to I. As far as accounting systems, okay, let's just talk about 11:58AM

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accounting systems at KapStone Paper and Packaging Corporation. Would you feel comfortable testifying as the corporate representative on corporate knowledge relating to the accounting systems? 11:58AM
**A. No, I would not. 11:58AM**
Q. Okay. Would you be comfortable testifying as the corporate representative related to corporate knowledge of the payroll systems at KapStone Paper and Packaging Corporation? How payroll systems work, things of that sort. 11:58AM
**A. I am the person that manages payroll and the relationship. 11:59AM**
Q. Okay. So that one it might depend on the question you are asked, fair? 11:59AM
**A. Fair. 11:59AM**
Q. But you could testify to some of it? 11:59AM
**A. Fair. 11:59AM**
Q. Okay, so I am just going to put a plus next to that one and if at any point that I ask you something about the payroll system that you don't know the answer to, would you let me know so we can find out who to talk to regarding that? 11:59AM
**A. I will. 11:59AM**
Q. Now, as far as K through M, K, L, and M, 11:59AM

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okay, those all deal with policies and procedures, okay, I assume that you would not be the corporate person to testify regarding policies and procedures at the various entities, fair? 11:59AM
**A. I would not. 11:59AM**
Q. Okay. So that takes care of K, L, and M, do you agree? 11:59AM
**A. I do. 11:59AM**
Q. Okay. Now N it says director, member, officer, employee, and contractor policies and procedures. Okay, as far as being the corporate representative to testify regarding corporate knowledge of that topic, meaning director, member, officer, employer, and contractor policies and procedures, I assume that wouldn't be you as well, correct? 12:00PM
**A. Correct. 12:00PM**
Q. All right. Regulatory compliance, can you testify to KapStone Paper and Packaging Corporation's regulatory compliance? 12:00PM
**A. I could not. 12:00PM**
Q. Communication filings with the United States Secretary and Exchange Commissions, okay. As far as communications, filings with the SEC, could, you testify regarding corporate knowledge of that subject? 12:00PM

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**A. I could not. 12:00PM**
Q. Okay. As far as testifying with corporate knowledge related to communications with shareholders and/or unit interests owners, could you testify regarding that topic? 12:00PM
**A. I could not. 12:00PM**
Q. Okay. All right, 21 goes to documents Kelly Hulseman relied on, upon in drafting and formulating statements made in the Affidavit, that's 21, are you with me? 12:01PM
**A. I am. 12:01PM**
Q. Okay. So you could testify to what's contained in the Affidavit as well as the documents A, B and C is what I understand that topic to mean? 12:01PM
MR. WILLIS: Objection to the form of the question. 12:01PM
BY MR. FINDLEY: 12:01PM
Q. Well, let me ask it to you better then. Did you understand what I was asking? 12:01PM
**A. Can you repeat. 12:01PM**
Q. Sure. No problem. As far as topic 21 is just a topic for a corporate representative to testify regarding the Affidavit in drafting and the statements made in it as well as Exhibits A, B, and C, would you be 12:01PM

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able to testify to that? 12:01PM
**A. Yes. 12:01PM**
Q. Okay. All right. The next one deals with 12:01PM officers, committee members, board members or other 12:02PM management level individuals for KapStone Paper and 12:02PM Packaging Corporation, KapStone Kraft Paper Corporation 12:02PM and KapStone Charleston Kraft LLC and the duties and 12:02PM tasks of such individuals, I think we talked about that 12:02PM a little earlier, you couldn't be the corporate 12:02PM representative to testify to the topics related to the 12:02PM duties and tasks of officers, directors, committee 12:02PM members and board members, correct? 12:02PM
**A. Correct. 12:02PM**
Q. Okay, someone else? 12:02PM
**A. Correct. 12:02PM**
Q. All right. If we talk about contracts, okay, 12:02PM if I wanted to ask questions regarding contracts that 12:02PM were entered into by KapStone Paper and Packaging 12:02PM Corporation, KapStone Kraft Paper Corporation or 12:02PM KapStone Charleston Kraft, LLC, would you be prepared to 12:02PM testify for corporate knowledge related to KapStone 12:02PM Paper and Packaging Corporation regarding those 12:03PM contracts? 12:03PM
**A. Not all of the contracts, no. 12:03PM**

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Q. Okay, and that's fair. And do you know a 12:03PM category of contracts you might be able to testify to? 12:03PM
**A. The ones that are within my scope. 12:03PM**
Q. And those would include which ones? 12:03PM
**A. I am unable to list them all, but for example 12:03PM an 80P contract, they are our payroll provider. 12:03PM**
Q. Okay, a contract with the payroll company? 12:03PM
**A. Correct. 12:03PM**
Q. Okay. So you are saying you might, depending 12:03PM on the question, be able to talk about contracts as it 12:03PM relates to your job, right? 12:03PM
**A. Right. 12:03PM**
Q. Okay. All right, 24, regarding 12:03PM communications between Kapstone Charleston -- excuse me, 12:03PM strike that question. Communications between KapStone 12:04PM Kraft Paper and Packaging Corporation and KapStone 12:04PM Charleston Kraft LLC regarding worker's compensation 12:04PM insurance and any related benefits. Is that something 12:04PM you could bind the company on or would it be someone 12:04PM else? 12:04PM
**A. That would depend on the question. 12:04PM**
Q. Okay. So I am just going to put a plus or 12:04PM minus next to that one, okay. What about communications 12:04PM regarding the actual securing of the worker's 12:04PM

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compensation insurance, were you involved in that 12:04PM process? 12:04PM
**A. Insurance is in the scope of my 12:04PM responsibility. I procure for the company. 12:04PM**
Q. Uh-huh. Were you involved in procuring the 12:04PM worker's compensation? 12:04PM
**A. I was. 12:04PM**
Q. That is related to this incident? 12:04PM
**A. I was. 12:04PM**
Q. Okay. So I will put a plus or minus next to 12:04PM that one, is that fair for 25? 12:05PM
**A. Yes. 12:05PM**
Q. Okay. Copy of the worker's compensation 12:05PM insurance policy, that would be Exhibit A we looked at 12:05PM to your affidavit? 12:05PM
**A. Part of Exhibit A, yes. 12:05PM**
Q. Is there more? 12:05PM
**A. Or that is part of the policy. Yes, there is 12:05PM more. 12:05PM**
Q. There is a bigger policy out there, but what 12:05PM is attached here would be Exhibit A, right, to your 12:05PM affidavit? 12:05PM
**A. Right. 12:05PM**
Q. Okay. What about actual communications with 12:05PM

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the compensation carrier, planned administrator, is that 12:05PM you or someone else? 12:05PM
**A. Me or somebody in my group. 12:05PM**
Q. Okay. And that's what I was going to ask you 12:05PM about, is you have people who work underneath you, 12:05PM right? 12:05PM
**A. Yes. 12:05PM**
Q. And sometimes they might be tasked with, I 12:05PM guess, communicating with the worker's compensation 12:05PM administrator, fair? 12:05PM
**A. Correct. 12:05PM**
Q. Okay. As far as the communications related 12:05PM to this incident, Jacque Lucas and Simerly, you 12:05PM understand what this incident means, right? 12:06PM
**A. I do. 12:06PM**
Q. Who would be the person who was tasked with 12:06PM that in your group? 12:06PM
**A. At the time of the incident it would be me. 12:06PM**
Q. Okay. 12:06PM
**A. And now it would be Hiep. 12:06PM**
Q. Hiep. 12:06PM
**A. Hiep Phung, the risk manager. 12:06PM**
Q. Okay. And when did that change, January 12:06PM 2017? 12:06PM

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**A. No, Hiep joined in November of '16.** **12:06PM**
Q. When Hiep joined did he take over that role 12:06PM
of being the liaison, if you will, for communications 12:06PM
with the worker's compensation administrator related to 12:06PM
this incident? 12:06PM
**A. Related to the insurance and all incidents, 12:06PM**
**yes.** **12:06PM**
Q. Okay. So when he joined, you delegated that 12:06PM
duty to him, fair? 12:06PM
**A. That responsibility was his, yes.** **12:06PM**
Q. Okay. And that's all I am asking about. So 12:06PM
as far as the communications with the administrator and 12:06PM
related to the worker's compensation, you would be able 12:07PM
to testify as to what occurred prior to Hiep joining and 12:07PM
Hiep might have the most knowledge related to it from 12:07PM
that point on? 12:07PM
**A. Depending on the question, yes.** **12:07PM**
Q. Okay. All right, as far as checks and 12:07PM
payments or wires made by KapStone Paper and Packaging 12:07PM
Corporation related to insurance or benefits paid from 12:07PM
2006 to present, would you be able to testify as to that 12:07PM
and bind the company on behalf of KapStone Paper and 12:07PM
Packaging Corporation? 12:07PM
MR. WILLIS: Again the same objection on your 12:07PM

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date. 12:07PM
**A. I was not employed by KapStone in 2006, so** **12:07PM**
**no.** **12:07PM**
BY MR. FINDLEY: 12:07PM
Q. I am just doing it the way we did the other 12:07PM
ones. As far as the time frame you couldn't do it as 12:08PM
written, fair? 12:08PM
**A. Right.** **12:08PM**
Q. As far as whether you could do it at all, is 12:08PM
there any portion, any time frame that you'd be 12:08PM
comfortable testifying and binding the company on 12:08PM
related to payments, checks or wires for compensation, 12:08PM
insurance or benefits paid? 12:08PM
**A. I manage the worker's compensation insurance** **12:08PM**
**relationship.** **12:08PM**
Q. With Hiep? 12:08PM
**A. With Hiep, yes. So invoices come to us and** **12:08PM**
**we submit them for payment.** **12:08PM**
Q. Okay. All right. Now, do you -- is there 12:08PM
anyone else involved in that role other than you and 12:08PM
Hiep? 12:08PM
**A. Accounts payable would make the payment also** **12:08PM**
**in my group.** **12:08PM**
Q. Okay. All right. So we will put a plus or 12:08PM

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minus next to that one. I guess that would depend on 12:08PM
the question, fair, as far as whether it would be you or 12:09PM
Hiep to answer it? 12:09PM
**A. Okay, fair.** **12:09PM**
Q. I am not trying to put words in your mouth. 12:09PM
I am trying to make sure we are on the same page. Is 12:09PM
there anyone else other than you and Hiep that would be 12:09PM
exposed to talking about those things? 12:09PM
MR. WILLIS: You mean knowledgeable about those 12:09PM
things? 12:09PM
MR. FINDLEY: Yes, that's what I mean. 12:09PM
**A. Some people, employees of KapStone get** **12:09PM**
**invoices based on their relationship. We get invoices** **12:09PM**
**based on this one and we process them, yes.** **12:09PM**
Q. You get invoices based on the relationships, 12:09PM
what do you mean? 12:09PM
**A. For example, legal would get their own** **12:09PM**
**invoices and they would submit for payment. The same** **12:09PM**
**process is true for us in this area.** **12:09PM**
Q. And so the lawyers who are sitting here at 12:09PM
this table will submit a bill to you, correct? 12:09PM
**A. Yes, my group.** **12:09PM**
Q. And then you would pay that bill? 12:09PM
**A. Kapstone Paper would pay that bill, yes.** **12:09PM**

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Q. Okay. Right. When I say you I mean Kapstone 12:09PM
Paper. But as far as whether or not that bill is 12:09PM
approved or not approved, who would you have to go to? 12:10PM
**A. People are responsible for their own invoices** **12:10PM**
**approving based on the relationship, the budgets they** **12:10PM**
**have, et cetera.** **12:10PM**
Q. And that's what I am not following. When you 12:10PM
say people are responsible for approving their own 12:10PM
invoices, what does that mean? 12:10PM
**A. There are vendors that I engage. As part of** **12:10PM**
**my responsibility I approve their invoices and request** **12:10PM**
**payment.** **12:10PM**
Q. Okay. So whoever engages the vendor says pay 12:10PM
or don't pay, fair? 12:10PM
**A. In our office, yes.** **12:10PM**
Q. Okay. And what if someone secures a vendor 12:10PM
outside of your office, how is a determination made on 12:10PM
pay or be paid? 12:10PM
**A. Outside the office in the operations.** **12:10PM**
Q. Yes. 12:10PM
**A. They are largely PO based, so it's a totally** **12:10PM**
**different requisition process.** **12:10PM**
Q. Okay, fair enough. So as I understand it, as 12:10PM
far as invoices there would be two various categories, I 12:10PM

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guess, purchase order invoices that are generated and approved in some form or fashion and then vendors who are secured through your department, correct? 12:10PM 12:11PM 12:11PM

**A. Anybody's department that doesn't go through a PO would be processed the same.** **12:11PM 12:11PM**

Q. Okay. And who is required to go through a PO? 12:11PM 12:11PM

**A. It's based on that contract signing and the authorization policy.** **12:11PM 12:11PM**

Q. Okay, and what is that? 12:11PM

**A. It's right there (Indicating).** **12:11PM**

MR. WILLIS: Exhibit 2. 12:11PM

BY MR. FINDLEY: 12:11PM

Q. Okay, this document that was handed to us this morning dated April 18, 2017 is when that's generated? 12:11PM 12:11PM 12:11PM

**A. Yes.** **12:11PM**

Q. Okay, what was the policy prior to April 18, 2017, do you know? 12:11PM 12:11PM

**A. I don't.** **12:11PM**

Q. Okay. As far as, okay, and this was going to be my next question to you. As far as amounts would depend on what type of approval is needed, fair? 12:11PM 12:11PM 12:11PM

**A. Fair.** **12:12PM**

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Q. What's a capital expenditure, what's not a capital expenditure, those type of things? 12:12PM 12:12PM

**A. Correct.** **12:12PM**

Q. Okay. So it look likes to me -- if I have questions related to this document, are you able to answer those or can you only tell me what's written on here? 12:12PM 12:12PM 12:12PM 12:12PM

MR. WILLIS: Objection to the form of the question. 12:12PM

BY MR. FINDLEY: 12:12PM

Q. Let me ask it to you this way. I have got here Exhibit No. 2, a document produced to me this morning. Have you reviewed it before today? 12:12PM 12:12PM 12:12PM

**A. I have.** **12:12PM**

Q. Okay. Are you able to testify and bind KapStone Paper and Packaging Corporation for questions related to Exhibit No. 2? 12:12PM 12:12PM 12:12PM

**A. No. I am not.** **12:12PM**

Q. Okay. Do you know who that would be or do you just know that it would be someone else? 12:13PM 12:13PM 12:13PM

**A. It would be someone else.** **12:13PM**

Q. Okay. All right, number 29, we talked about this earlier and just to make sure we are covering it the same, KPPC, KapStone Paper and Packaging Corporation 12:13PM 12:13PM 12:13PM 12:13PM

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is a corporate parent and owner of a hundred percent of the stock of all KapStone entities including KK and KapStone Charleston and it says see defendant's Motion to Dismiss, okay. We talked about it earlier that your knowledge regarding that and what you know would be contained in Exhibit C and Bates labeled number 1 regarding ownership, correct? 12:13PM 12:13PM 12:13PM 12:13PM 12:14PM 12:14PM

MR. WILLIS: Objection to the form of the question. 12:14PM 12:14PM

**A. Yes.** **12:14PM**

BY MR. FINDLEY: 12:14PM

Q. Okay. So the same would be true for that topic, you could talk to it as far as what's contained in those two documents, right? 12:14PM 12:14PM 12:14PM 12:14PM

**A. Yes.** **12:14PM**

MR. WILLIS: Objection, form. 12:14PM

BY MR. FINDLEY: 12:14PM

Q. When I ask you, if I ask you questions about supporting the contention that KapStone Charleston relies on Kapstone Paper and Packaging Corporation for all of its business operations -- 12:14PM 12:14PM 12:14PM 12:14PM 12:14PM

MR. WILLIS: KapStone Kraft. 12:14PM

MR. FINDLEY: Excuse me, KapStone. 12:14PM

MR. WILLIS: KKPC. 12:14PM

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MR. FINDLEY: No, it's KPPC. 12:14PM

MR. WILLIS: 30 it says KKPC. 12:14PM

MR. FINDLEY: You are not looking at the one I am looking at. 12:15PM 12:15PM

Q. Anyway, back to my question, does it say KP -- what does yours say, KPPC? 12:15PM 12:15PM

**A. KPPC for number 30.** **12:15PM**

MR. WILLIS: My apologies. 12:15PM

BY MR. FINDLEY: 12:15PM

Q. All right, so it says as far as being able to talk about supporting the contention that KapStone Charleston relies on Kapstone Paper and Packaging Corporation for all of its business operations, can you bind the company regarding that topic? 12:15PM 12:15PM 12:15PM 12:15PM 12:15PM 12:15PM

**A. Can you say the question in a different way.** **12:15PM**

Q. Sure. I want to ask you some questions related to some statements that were made in filings with the court that KapStone Charleston relies on KapStone Paper and Packaging Corporation for its business operations? 12:15PM 12:15PM 12:15PM 12:15PM 12:15PM

**A. I can say that KapStone Paper provides oversight and support.** **12:15PM 12:15PM**

Q. Okay. You would agree with me and we talked about it earlier that KapStone Paper and Packaging 12:15PM 12:15PM 12:15PM

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Corporation does not manufacture paper products, it does not sell paper products, fair? 12:16PM

**A. Fair.** **12:16PM**

Q. They are different businesses, true? 12:16PM

MR. WILLIS: Objection to the form of the question. 12:16PM

BY MR. FINDLEY: 12:16PM

Q. Meaning one manufactures and sells paper products, the other doesn't, right? 12:16PM

**A. But one manages the ones that do.** **12:16PM**

Q. Okay. Objection, nonresponsive. 12:16PM

One is in the business of selling and manufacturing paper products and one is not, true? 12:16PM

MR. WILLIS: Object to the form of the question. 12:16PM

**A. True.** **12:16PM**

Q. All right, as far as talking about benefits, what about retirement, health insurance, life insurance, disability insurance and worker's compensation related to KapStone Charleston Kraft or KapStone Paper and Packaging Corporation, can you talk about that stuff? 12:16PM

**A. I cannot.** **12:17PM**

Q. Okay. Now, 32 talks about communications with Sentry Insurance Company regarding worker's compensation insurance policy benefits, distribution. 12:17PM

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Can you talk about that? 12:17PM

**A. It would depend on the question, but yes.** **12:17PM**

Q. Okay. 12:17PM

MR. FINDLEY: All right, so going forward and I am going to skip 39 through 40A, Dick, because you said she can't testify to those to save us some time. 12:17PM

MR. WILLIS: Correct. 12:17PM

BY MR. FINDLEY: 12:17PM

Q. All right, 49, outstanding stock, interest and shares of KapStone Charleston Kraft LLC, can you bind the company regarding that? 12:17PM

**A. I cannot.** **12:17PM**

Q. Okay. Outstanding stock, interest or shares regarding KapStone Kraft Paper Corporation, can you talk about that? 12:18PM

**A. I cannot.** **12:18PM**

Q. Copies of documents, the list, describe, refer, related to all management, managers, governing body or board of directors, can you talk about that? 12:18PM

**A. I cannot.** **12:18PM**

Q. What about location of each manager, member or board of director for KapStone Paper and Packaging Corporation? 12:18PM

**A. I cannot.** **12:18PM**

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Q. I assume you could not for the relevant years of 2016 either, fair, back when this incident happened? 12:18PM

**A. Fair.** **12:18PM**

Q. Okay. Documents that list describe refer or relate to all management, managers, governing bodies, board of directors, can you talk about that? 12:18PM

**A. Number 53?** **12:18PM**

Q. Yes. And let me see if I can -- 12:19PM

**A. I cannot.** **12:19PM**

Q. -- rephrase the question for you. We saw that document that listed the Board of directors, the managers attached as Exhibit B, right? 12:19PM

**A. Right.** **12:19PM**

Q. As far as being able to testify to any other years or anything other than what's written down in that document that we have attached there, you couldn't talk about that? I mean other than reading the same document I have, you don't have any additional information? 12:19PM

**A. I don't.** **12:19PM**

Q. Okay. All right. Let's talk about bank accounts. Do you know all the different bank accounts? 12:19PM

MR. WILLIS: Objection to the form of the question. 12:19PM

BY MR. FINDLEY: 12:19PM

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Q. Let me rephrase it. Can you bind the company related to the ownership or interest and location of bank accounts related to KapStone Paper and Packaging Corporation? 12:19PM

MR. WILLIS: And let me state an objection. I'm not sure she understands what you mean by bind the company. 12:19PM

MR. FINDLEY: Okay. 12:20PM

MR. WILLIS: I know what you mean by that, but that's not a common term that a witness would know. 12:20PM

MR. FINDLEY: All right. 12:20PM

BY MR. FINDLEY: 12:20PM

Q. And what I have been asking you about, I talked about it at the beginning of this deposition is that what you are here for is to be a corporate representative, okay, you understand that part? 12:20PM

**A. Yes. Yes.** **12:20PM**

Q. And what I am saying I talked about it earlier, you understand the instruction I said if you don't understand the question, I want you to tell me. 12:20PM If you do tell me the answer, I am going to assume that you understood it for all purposes. You remember that correct? 12:20PM

**A. I do.** **12:20PM**

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Q. And you remember how I talked about being designated as a corporate representative is if you understand the question and answer it, it would be binding the company because they have selected you as a person to testify on their behalf. You understand that, right? 12:20PM

**A. Yes.** **12:20PM**

Q. Okay. 12:20PM

MR. WILLIS: By binding the company you mean her acknowledging it, right? 12:20PM

MR. FINDLEY: Hold on. Dick, leave it. Dick, I am asking the questions. I will get to it, okay. This is the sixth time that you violated Rule 30. Let's leave it. 12:20PM

MR. WILLIS: I am not violating Rule 30. I don't understand your question. Bind the question -- bind the company is not a proper question. 12:21PM

MR. FINDLEY: I got it. I got it. 12:21PM

MR. WILLIS: Ask a proper question. 12:21PM

MR. FINDLEY: You are not the judge. Don't tell me what's proper and what's not. 12:21PM

MR. WILLIS: I am asking you to ask a proper question and explain to the witness what you mean by bind the company. 12:21PM

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MR. FINDLEY: Hold on. I heard you the first time is why I went down this line of questioning. What you continue to do is restate the same thing over and over. Let me ask the questions and get there and if you have an objection to make, let's talk about it before the judge, but I don't need to you to make rulings on what she understands and what she doesn't. 12:21PM

MR. WILLIS: I am not making rulings. 12:21PM

BY MR. FINDLEY: 12:21PM

Q. Ma'am, let's go back to my question. When I talked about binding the company, what I am talking about is you are testifying under oath, correct? 12:21PM

**A. Correct.** **12:21PM**

Q. Okay. And a corporation isn't a person, right? 12:21PM

**A. Correct.** **12:21PM**

Q. Meaning a corporation can't testify, right? 12:21PM

**A. Correct.** **12:21PM**

Q. They have to select someone to testify for them, correct? 12:21PM

**A. Correct.** **12:21PM**

Q. And what I am saying when I am understanding of binding a company, what I am saying is you'd be prepared to testify and that testimony would be sworn 12:21PM 12:22PM 12:22PM

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testimony that the corporation made, isn't that your understanding? 12:22PM 12:22PM

**A. Yes.** **12:22PM**

Q. Okay. 12:22PM

**A. I struggle between the bind and the personal knowledge. I don't know that I understand.** **12:22PM** **12:22PM**

Q. And that's fair. But what I have asked you so far when you have answered questions, what I appear to be truthful questions about how you would not be the best person, now knowing what I am talking about when I am saying bind the company, right, you don't want to go back and change any of those, you still would not feel comfortable testifying to those topics, correct? 12:22PM 12:22PM 12:22PM 12:22PM 12:22PM 12:22PM

**A. Correct.** **12:22PM**

Q. Okay. And that's all I am getting at. Is what I don't want to happen, you can understand my position is I am here to ask KapStone Paper and Packaging Corporation questions, you understand that, right? 12:22PM 12:22PM 12:22PM 12:22PM

**A. Yes.** **12:22PM**

Q. And if you give me an answer and then I later rely on that answer and someone else tells me it's not accurate, you see how the problem that causes? 12:22PM 12:22PM 12:23PM

**A. Yes.** **12:23PM**

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Q. And so all I want to know is and if you don't feel comfortable answering questions on behalf of KapStone Paper and Packaging Corporation, all I want you to do is tell me that so I don't ask you the questions, okay? 12:23PM 12:23PM 12:23PM 12:23PM

**A. Okay.** **12:23PM**

Q. And that's what I am talking about. When I talk about location of each member, board of director, manager related to KapStone Charleston Kraft LLC, would that be something that you could testify to on behalf of the corporation? 12:23PM 12:23PM 12:23PM 12:23PM

**A. No.** **12:23PM**

Q. Okay. So if we talk about bank accounts, all right, if we talk about the location and existence of all bank accounts related to KapStone Paper and Packaging Corporation, is that something that you would be prepared to testify to here today? 12:23PM 12:23PM 12:23PM 12:23PM

**A. I cannot speak to all documents, but I have knowledge of how it works.** **12:23PM** **12:23PM**

Q. Okay. And let's get to that. You have knowledge of how the banking system works, right? 12:23PM 12:24PM

**A. For KapStone, yes.** **12:24PM**

Q. KapStone, which one? 12:24PM

**A. All of them.** **12:24PM**

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Q. Okay. And I assume what you were going to talk about was Kapstone Receivable LLC, right? 12:24PM
**A. No. I used to manage the cash for KapStone as the director.** 12:24PM
Q. You used to manage the cash for KapStone Paper and Packaging Corporation? 12:24PM
**A. Yes.** 12:24PM
Q. In what years? 12:24PM
**A. 2008 to 2014.** 12:24PM
Q. And from 2008 to 2014 you managed the cash for KapStone Paper and Packaging Corporation, fair? 12:24PM
**A. Yes. KapStone Paper and Packaging does concentrate and manage the cash for all companies.** 12:24PM
Q. And as far as handling the duties of managing cash from 2014 forward, someone else took that role? 12:24PM
**A. Yes.** 12:24PM
Q. Okay. So from 2014 to 2018 you would defer those questions to someone else who is in that role now? 12:24PM
**A. It would depend on the question. The structure is not much different.** 12:25PM
Q. Okay, fair enough. And what I want to talk to you about is bank accounts now. As far as bank accounts are you -- well, before you sat here today to give this deposition, did you go back and look for or 12:25PM

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review any documents related to the location of all bank accounts that KapStone Paper and Packaging Corporation has an interest in? 12:25PM
**A. I did not review the location, but I reviewed the structure.** 12:25PM
Q. Okay. And when you say the structure are you talking about the chart? 12:25PM
**A. Yes.** 12:25PM
Q. Okay. And I assume you are talking about this chart? 12:25PM
**A. I am.** 12:25PM
Q. Okay. So I am going to mark this chart as Exhibit No. 7. 12:25PM
(Plaintiff's Deposition Exhibit No. 7 was marked for identification.) 12:25PM
BY MR. FINDLEY: 12:25PM
Q. As far as testifying related to bank accounts, what you did review was Exhibit No. 7, fair? 12:26PM
**A. Fair.** 12:26PM
Q. Anything else than Exhibit No. 7 did you review? 12:26PM
**A. No.** 12:26PM
Q. Okay. 12:26PM
MR. WILLIS: On the subject, right? 12:26PM

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BY MR. FINDLEY: 12:26PM
Q. On the bank account structure or bank account location, anything regarding bank accounts? 12:26PM
**A. No.** 12:26PM
Q. Is the totality of what you reviewed relating to bank accounts contained in Exhibit No. 7? 12:26PM
**A. Yes.** 12:26PM
Q. Okay. Now, as far as there is a bunch of blacked out deals on here. 12:26PM
**A. Yes.** 12:26PM
Q. Was your version blacked out? 12:26PM
**A. No.** 12:26PM
Q. Okay. Do you have the actual bank account? You could get that information for me if we requested it through your lawyers, right? 12:26PM
**A. Yes, if they say it's okay, yes.** 12:26PM
MR. WILLIS: We have blacked the -- it's the account numbers that are redacted just like you wouldn't give somebody your checking account number. 12:26PM
MR. FINDLEY: Okay. 12:26PM
Q. Well, as far as the accounts, if there are more accounts, okay, that exist other than what's contained in Exhibit No. 7, did you do anything to verify that? 12:26PM 12:27PM

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MR. WILLIS: Objection to the form of the question. 12:27PM
**A. There is a second page that I reviewed as well.** 12:27PM
Q. Okay. And what's it look like because I don't have a second page? 12:27PM
**A. The accounts on there are non U.S. dollar based.** 12:27PM
Q. International accounts? 12:27PM
**A. Correct.** 12:27PM
Q. Okay. And you are saying accounts that exist overseas? 12:27PM
**A. I'm not sure. I can't answer the Victory accounts because that happened after I was relieved of this responsibility.** 12:27PM
Q. And let's, putting Victory aside for a second, all I want to ask you about is there are other Kapstone Paper and Packaging Corporation bank accounts that are not listed in the document that I have as Exhibit No. 7, fair? 12:27PM
**A. Fair.** 12:27PM
MR. WILLIS: Objection to the form of the question. 12:27PM
BY MR. FINDLEY: 12:27PM

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Q. And you saw those bank accounts prior to you sat here for your deposition, fair? You looked at another document that had international bank accounts, right? 12:27PM 12:27PM 12:28PM

**A. Fair.** **12:28PM**

Q. Okay. All right, now, putting aside the second page, does the second page look similar to this? 12:28PM 12:28PM

**A. No.** **12:28PM**

Q. Okay. What does it look like? 12:28PM

**A. Individual accounts not -- the ones that I am aware of not related to Victory are individual accounts not a CBA structure like this.** **12:28PM 12:28PM 12:28PM**

Q. Okay. And is it, is it like multiple documents or a flow chart document, how does it look? 12:28PM 12:28PM

**A. Just --** **12:28PM**

Q. A list? 12:28PM

**A. Basically like this.** **12:28PM**

Q. Okay. So it would contain a list of additional bank accounts for KapStone Paper and Packaging Corporation, correct, is the list you looked at, right? 12:28PM 12:28PM 12:28PM 12:28PM

**A. Not all of the names of the accounts are KapStone Paper and packaging because they are related to Victory.** **12:28PM 12:29PM 12:29PM**

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Q. All right. So you are saying they are separate than Kapstone Paper and Packaging accounts? 12:29PM 12:29PM

**A. Yes.** **12:29PM**

MR. FINDLEY: Okay, how come we didn't get these documents, Dick? 12:29PM 12:29PM

MR. WILLIS: Because they weren't relevant to your subpoena. 12:29PM 12:29PM

MR. FINDLEY: Bank accounts. 12:29PM

MR. WILLIS: If they are not KapStone Paper and Packaging bank accounts. 12:29PM 12:29PM

MR. FINDLEY: All right. So what is it -- was this document, like where did you see it? You said you reviewed a second page to this document prior to the deposition. 12:29PM 12:29PM 12:29PM 12:29PM 12:29PM

**A. The treasurer has it.** **12:29PM**

Q. Okay. Did you go to the treasurer and get it or did someone retrieve it for you? 12:29PM 12:29PM

**A. I went to her to talk about it to make sure that I was still current.** **12:29PM 12:29PM**

Q. Okay. So you went to the treasurer to talk to her about what? 12:29PM 12:29PM

**A. The structure.** **12:29PM**

Q. Okay. Did you have the document in hand that would be the second page to Exhibit 7 before you went to 12:29PM 12:30PM 12:30PM

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talk to her? 12:30PM

**A. No, she had it.** **12:30PM**

Q. Okay. And she gave it to you? 12:30PM

**A. No.** **12:30PM**

Q. Okay. Did you ever, you just talked to her about it? 12:30PM 12:30PM 12:30PM

**A. We discussed it, yes.** **12:30PM**

Q. Okay. Did you go back and give any of that to your lawyers? 12:30PM 12:30PM 12:30PM

**A. I don't recall who, how it was given. I don't.** **12:30PM 12:30PM**

Q. Let me ask it to you just generally, all right. I have sent out a lot of requests for documents, okay. Did you take any part in looking at those requests and going to retrieve documents? Was that something you did or not? 12:30PM 12:30PM 12:30PM 12:30PM 12:30PM 12:30PM 12:30PM 12:30PM

**A. Not from your list, no.** **12:30PM**

Q. Okay, whose list did you use? 12:30PM

**A. Nobody's.** **12:30PM**

Q. Okay. Well, what did you do to go and retrieve documents? 12:30PM 12:30PM

**A. We met to discuss relevant topics to prepare the affidavit and I provided information around those.** **12:30PM 12:30PM 12:30PM**

Q. Okay, did you provide documents? 12:30PM

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**A. The insurance policy I did.** **12:31PM**

Q. Okay. Are you saying you provided Exhibit A to your affidavit? 12:31PM 12:31PM

**A. Right.** **12:31PM**

Q. Okay. Other than that document, did you go look for any other documents? 12:31PM 12:31PM 12:31PM

**A. I don't recall.** **12:31PM**

Q. Okay. Other than that document did you provide any other documents? 12:31PM 12:31PM 12:31PM

**A. Again, I don't recall how this got to legal.** **12:31PM**

Q. And that's what I am trying to figure out is, is I assume somebody was tasked with going to look for documents. Was that you or not you? 12:31PM 12:31PM 12:31PM 12:31PM

**A. I don't recall.** **12:31PM**

Q. Okay. So it could have been you, you are just not sure? 12:31PM 12:31PM 12:31PM

**A. Right. Did I ask someone to give this to legal, I don't recall.** **12:31PM 12:31PM 12:31PM**

Q. Okay. Well, let's see if we can break it down simpler. Have you ever reviewed my request for documents? 12:31PM 12:31PM 12:31PM 12:31PM

**A. I have not.** **12:31PM**

Q. Okay. Have you ever been provided a list of documents to look for from anybody? 12:31PM 12:31PM 12:31PM

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A. **I have not.** **12:31PM**
Q. Okay. Have you ever delegated to any person 12:31PM
in your department to look for documents related to this 12:32PM
lawsuit? 12:32PM
A. **I likely would have asked Hiep to provide 12:32PM**
**that policy, but I don't recall specifically. 12:32PM**
Q. Okay. Other than, when you say that policy 12:32PM
just so when I read this later I know what you are 12:32PM
talking about, you are talking about Exhibit A to the 12:32PM
affidavit? 12:32PM
A. **Yes.** **12:32PM**
Q. Other than Exhibit A to the affidavit, as we 12:32PM
sit here today do you have any memory of going to ask 12:32PM
someone to go and retrieve documents related to this 12:32PM
lawsuit? 12:32PM
A. **Last night I asked payroll to or HR to run a 12:32PM**
**similar report that's in there related to reporting, 12:32PM**
**employee reporting to familiarize myself with the 12:32PM**
**document because I had not seen it prior. 12:32PM**
Q. Okay. All right, so that's one instance and 12:32PM
we are going to talk about that one. Let me just ask 12:33PM
you this. Other than that one incidence where you 12:33PM
talked to payroll at HR, do you ever any memory 12:33PM
whatsoever of asking anyone in your department or 12:33PM

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otherwise to look for documents related to this lawsuit 12:33PM
other than Exhibit A and the payroll HR? 12:33PM
A. **I do not recall.** **12:33PM**
Q. And when you say I do not recall, just so I 12:33PM
have an understanding of what that means, that means 12:33PM
that you have no recollection of whether you did or 12:33PM
didn't or you don't remember doing it? 12:33PM
A. **Related to this I don't recall if I asked for 12:33PM**
**this or I mentioned it to someone that it was available, 12:33PM**
**I don't recall. 12:33PM**
Q. Okay. And I think I might be confused and I 12:33PM
apologize. You are talking about you don't recall if 12:33PM
you asked for what? 12:33PM
A. **This document.** **12:33PM**
Q. Exhibit 7? 12:33PM
A. **Yes.** **12:33PM**
Q. Okay. All right, Exhibit 7, other than that 12:33PM
exhibit, let's put it aside for a second, did you ever 12:34PM
at any point in time ask anyone to look for documents or 12:34PM
retrieve documents related to this lawsuit other than 12:34PM
what's contained in Exhibit A to your subpoena -- your 12:34PM
affidavit, Exhibit 7 or the payroll HR? 12:34PM
A. **I don't believe so.** **12:34PM**
Q. Okay. As far as tax returns did you review 12:34PM

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any tax returns related to the entities? 12:34PM
A. **I did not.** **12:34PM**
Q. Okay. As far as being able to testify as to 12:34PM
what's on contained in those tax returns, is that 12:34PM
something that you can testify on behalf of the 12:34PM
corporation for? 12:34PM
A. **I cannot.** **12:34PM**
MR. WILLIS: When do you think you are going to be 12:34PM
close to a break? 12:34PM
MR. FINDLEY: In about two minutes. I think he 12:34PM
has got to change the tape anyway. 12:34PM
MR. WILLIS: Okay. 12:34PM
BY MR. FINDLEY: 12:34PM
Q. Okay, payroll records, all right and books 12:35PM
and operating accounts. That's part of your department, 12:35PM
correct? 12:35PM
A. **I don't know what you mean by books. 12:35PM**
Q. Okay. Well, fair question. When I say 12:35PM
books, I am talking about, let's just go one by one. 12:35PM
Operating accounts, is that something you deal with? 12:35PM
A. **Bank accounts?** **12:35PM**
Q. Yeah. 12:35PM
A. **No, not any longer.** **12:35PM**
Q. Okay. What you deal with is accounts 12:35PM

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payable, accounts receivable, and credit collections, 12:35PM
right? 12:35PM
A. **Yes.** **12:35PM**
Q. As far as accounts payable, we talked about 12:35PM
that earlier. If it goes through a purchase order, 12:35PM
would it not go through you? 12:35PM
A. **Through my group to process, but I don't 12:35PM**
**manage the bank accounts anymore. 12:35PM**
Q. Okay. 12:35PM
A. **Checks are cleared on the bank accounts, but 12:35PM**
**I don't manage the bank accounts. 12:35PM**
Q. All right. So you don't manage the bank 12:35PM
accounts at all since 2014? 12:35PM
A. **Correct.** **12:36PM**
Q. So someone else would have to talk about that 12:36PM
subject? 12:36PM
A. **Correct.** **12:36PM**
MR. FINDLEY: All right, let's take a break. 12:36PM
THE VIDEOGRAPHER: I am going off the record, the 12:36PM
end of tape one at 12:35 p.m. 12:36PM
MR. WILLIS: Back at 1:00. 12:36PM
(Lunch break at 12:36 p.m.) 12:36PM
THE VIDEOGRAPHER: We are back on record at the 01:24PM
beginning of tape two at 1:24 p.m. 01:24PM

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BY MR. FINDLEY: 01:24PM
Q. All right, Ma'am, we took a lunch break. Are 01:24PM you ready to continue? 01:24PM
**A. I am. 01:24PM**
Q. Okay. Before we get started I wanted to ask 01:24PM you a few questions about, let's just start here, your 01:24PM employer is KapStone Paper and Packaging Corporation, 01:25PM correct? 01:25PM
**A. Yes. 01:25PM**
Q. Okay. KapStone Charleston Kraft LLC has its 01:25PM own employees as well, correct? 01:25PM
**A. Correct. 01:25PM**
Q. And KapStone Kraft Paper Corporation has its 01:25PM own employees as well, correct? 01:25PM
**A. Correct. 01:25PM**
Q. All are separate employers of individuals, 01:25PM true? 01:25PM
**A. Yes. 01:25PM**
Q. Now, your paychecks would, do your paychecks 01:25PM actually say KapStone Paper and Packaging Corporation, 01:25PM right? 01:26PM
**A. Yes. 01:26PM**
Q. And if people are employed by KapStone 01:26PM Charleston Kraft LLC, their paychecks would say KapStone 01:26PM

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Charleston Kraft LLC, correct? 01:26PM
**A. I would have to check. The W2s do. I'm just 01:26PM not sure about the stub. 01:26PM**
Q. Fair enough. What you are saying is that the 01:26PM W2s, if an individual is employed by KapStone Charleston 01:26PM Kraft LLC, his W2 will reflect that entity, correct? 01:26PM
**A. Yes. Yes. 01:26PM**
Q. The W2 will not say Kapstone Paper and 01:26PM Packaging Corporation, correct? 01:26PM
**A. Yes. 01:26PM**
Q. And Just to give you an example, I am going 01:26PM to mark I think we are on 8, is that right? 01:26PM
THE COURT REPORTER: Yes. 01:26PM
MR. FINDLEY: Okay. To make sure we are talking 01:26PM about the same things. 01:26PM
(Plaintiff's Deposition Exhibit No. 01:26PM
8 was marked for identification.) 01:26PM
BY MR. FINDLEY: 01:26PM
Q. 2016 W2 for Jacque Lucas as we see indicating 01:26PM KapStone Charleston Kraft LLC, correct? 01:27PM
**A. Yes. 01:27PM**
Q. Now, your W2 would say KapStone Paper and 01:27PM Packaging Corporation, fair? 01:27PM
**A. Yes. 01:27PM**

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Q. Okay. Now, there are other W2s out there 01:27PM that would say if someone is employed by that entity 01:27PM would say KapStone Kraft Paper Corporation, correct? 01:27PM
**A. Yes. 01:27PM**
Q. Okay. All three have their own I guess check 01:27PM writing ability for payroll? 01:27PM
**A. ADP processes our payroll and it's all drawn 01:27PM on a KapStone Paper account. 01:27PM**
Q. Okay. What account? 01:27PM
**A. Ending 9916. This one at the top. 01:27PM**
Q. All right. You are saying the one at the top 01:27PM of Exhibit 7 where it's blacked out, it says the last 01:27PM digits of it are 9916? 01:28PM
**A. Yes. 01:28PM**
Q. Okay. Now, as far as the actual -- hold on. 01:28PM The check itself does not say KapStone Paper and 01:28PM Packaging Corporation, right, or do you know? 01:28PM
**A. That's what I wanted to check. 01:28PM**
MR. WILLIS: That's not a payroll check. 01:28PM
MR. FINDLEY: Oh, that is not, correct. While she 01:29PM is looking for it, let me go on asking you questions. 01:29PM Well, let me just ask you do you know if putting 01:29PM KapStone Charleston Kraft LLC aside, do you know if 01:29PM KapStone Kraft Paper Corporation would have their own 01:29PM

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checks or do you not know one way or the other? 01:29PM
**A. Most of the payroll is through direct deposit 01:29PM and the checks are drawn on an ADP account. 01:29PM**
Q. Okay. When you say most of them, does that 01:29PM include all of them or do you know? 01:29PM
**A. We have some employees that prefer a check. 01:29PM**
Q. Okay. For the ones that prefer a check, 01:29PM well, let's just look at it right now. 01:29PM
(Plaintiff's Deposition Exhibit No. 01:29PM
9 was marked for identification.) 01:29PM
BY MR. FINDLEY: 01:29PM
Q. Exhibit No. 9 would be a, there is a copy of 01:29PM a check at the bottom, correct? 01:30PM
**A. Yes. 01:30PM**
Q. The entity listed on that check being paid to 01:30PM Jacque Lucas is KapStone Charleston Kraft, correct? 01:30PM
**A. Yes. 01:30PM**
Q. The same as his W2 KapStone Charleston Kraft, 01:30PM correct? 01:30PM
**A. Yes. 01:30PM**
Q. The check does not say KapStone Paper and 01:30PM Packaging Corporation, true? 01:30PM
**A. True. Both have the headquarter address 01:30PM though. 01:30PM**

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Q. Object to the nonresponsive portions. What I want to know about is the actual legal entity that is listed on the check. You understand what that means, right? 01:30PM

**A. I do.** **01:30PM**

Q. The legal entity listed on the check would be KapStone Charleston Kraft LLC, correct? 01:30PM

**A. Correct.** **01:30PM**

Q. And that would be true for, well, for Jacque Lucas, right? 01:30PM

**A. Correct.** **01:30PM**

Q. As well as other people who are actually employed by KapStone Charleston Kraft LLC? 01:30PM

**A. Correct.** **01:31PM**

Q. Now, when someone is -- are there any other employees that work for KapStone Charleston Kraft LLC at any other locations other than the Charleston mill or do you know? 01:31PM

**A. I don't know.** **01:31PM**

Q. Okay. Have you ever come across a KapStone Charleston Kraft LLC employee at any location other than the Charleston mill? 01:31PM

**A. We speak of it in terms of location numbers and acronym, so we do have employees. The question is** **01:31PM**

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**do we have Charleston employees at a different location?** **01:32PM**

Q. Correct. Is whether you have KapStone Charleston Kraft LLC employees at locations other than the plant in Charleston? 01:32PM

**A. I don't believe so.** **01:32PM**

Q. Okay. And just to be clear, the owner of the plant when this, well, you know about this plant being purchased from I think it's Meadwest Varco? 01:32PM

**A. Vaco, yes.** **01:32PM**

Q. Okay. Around 2008? 01:32PM

**A. Yes.** **01:32PM**

Q. And as far as the deed for the plant, that deed was transferred to Kapstone Charleston Kraft LLC, correct? 01:32PM

**A. Yes.** **01:32PM**

Q. The owner listed with the deeds in South Carolina is not Kapstone Paper and Packaging Corporation, true? 01:32PM

**A. Yes, based on the documents.** **01:32PM**

Q. And you know that based on your review of the documents, correct? 01:32PM

**A. Right, but based on your definition of personal knowledge, I, I didn't do anything with that deed.** **01:33PM**

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Q. Okay, and that's fair and we will get to that in a second, but what I want to show you is Exhibit No. 10. This is a deed that you had looked at, I assume, and I can hand you that copy. 01:33PM

(Plaintiff's Deposition Exhibit No. 10 was marked for identification.) 01:33PM

**A. Yes.** **01:33PM**

Q. Okay, and you have seen this before, correct? 01:33PM

**A. Yes.** **01:33PM**

Q. And what this deed indicates is that KapStone Charleston Kraft LLC is the owner of the plant that we are talking about, the one in Charleston, correct? 01:33PM

**A. Yes.** **01:33PM**

Q. So Jacque Lucas is employed by KapStone Kraft LLC, we know that, right? 01:33PM

**A. Yes.** **01:33PM**

Q. And he works at a plant that is at least according to the warranty deed owned by KapStone Charleston Kraft LLC, correct? 01:33PM 01:34PM 01:34PM

**A. Yes.** **01:34PM**

Q. The same with Jacque Lucas, I mean excuse me, the same with Daniel Simerly, your understanding is he is also an employee of KapStone Charleston Kraft LLC, true? 01:34PM 01:34PM 01:34PM

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**A. Yes.** **01:34PM**

Q. And he also works at the plant owned by KapStone Charleston Kraft LLC as shown in Exhibit 10, correct? 01:34PM 01:34PM

**A. Correct.** **01:34PM**

Q. Do you know who Ester Wilkins is? 01:34PM

**A. I know of her, yes.** **01:35PM**

Q. Okay, when you say know of her, who is she? 01:35PM

**A. An HR manager.** **01:35PM**

Q. Have you talked with her in preparation for your deposition? 01:35PM 01:35PM

**A. I have not.** **01:35PM**

Q. Have you talked to her at all in relation to this lawsuit? 01:35PM 01:35PM

**A. I have not.** **01:35PM**

Q. And she is part of human resources? 01:35PM

**A. It's my understanding, yes.** **01:35PM**

Q. Okay. And where does that understanding come from? 01:35PM 01:35PM

**A. Outlook.** **01:35PM**

Q. Oh, Outlook? 01:35PM

**A. Right.** **01:35PM**

Q. Okay. What I am trying to figure out is have you communicated with her, did you look that up on 01:35PM 01:35PM

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Outlook in relation to this? 01:35PM
**A. I did not. 01:35PM**
Q. And who does she work for or do you know? 01:35PM
**A. I am not sure, now. 01:35PM**
Q. Okay. 01:35PM
**A. I am not sure if she is at Charleston or 01:35PM Somerville. I don't want to confuse it. 01:35PM**
Q. Okay. And Somerville is where? 01:35PM
**A. A lumber mill in South Carolina. 01:35PM**
Q. Okay. And, but your belief based on your 01:36PM recollection and Outlook and your own dealings at your 01:36PM company is that she works at one of the South Carolina 01:36PM entities, correct? 01:36PM
**A. Correct. 01:36PM**
Q. Okay. And when I say entities, is the 01:36PM Somerville location, what is its entity, is it listed on 01:36PM here? Do you know? And that's fine if you don't. I 01:36PM don't want to put words in your mouth. Do you know what 01:36PM the Somerville entity, the lumber company's LLC is or 01:36PM corporation? 01:36PM
**A. I believe it's combined with Charleston. 01:36PM**
Q. Okay, you think it is KapStone Charleston 01:36PM Kraft LLC? 01:36PM
**A. I believe so. 01:36PM**

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Q. But you are not certain is what you are 01:36PM saying? 01:36PM
**A. Right. 01:36PM**
Q. Okay. Is she as far as her role, she lives 01:36PM in or offices out of South Carolina? 01:36PM
**A. I don't even know if she is a current 01:37PM employee anymore. I worked with her a while ago. 01:37PM**
Q. Okay. At one point in time she was a human 01:37PM resources person based on your belief employed by 01:37PM KapStone Charleston Kraft LLC, correct? 01:37PM
**A. Yes. 01:37PM**
Q. And based on your memory and belief and your 01:37PM recollection at one point in time was employed by 01:37PM KapStone Charleston Kraft LLC in relation to human 01:37PM resources located in South Carolina? 01:37PM
**A. Correct. 01:37PM**
Q. Okay. And that was my understanding as well. 01:37PM Have you reviewed the documents or seen documents before 01:37PM related to the offer of employment to my client Jacque 01:37PM Lucas? 01:37PM
**A. I did yesterday. 01:37PM**
Q. Okay. Yesterday was the first time you had 01:37PM seen that? 01:37PM
**A. Yes. 01:37PM**

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Q. Before yesterday had you seen what I am going 01:37PM to hand you as Exhibit 11? 01:37PM
**A. I had not. 01:38PM**
Q. Okay. Yesterday when you saw it I assume 01:38PM that was during a meeting with your attorneys? 01:38PM
**A. Yes. 01:38PM**
Q. Okay, so let's talk about that. Yesterday 01:38PM you met with your attorneys? 01:38PM
**A. Yes. 01:38PM**
Q. How long? 01:38PM
**A. I got here at 9:30. I left at 5:00. 01:38PM**
Q. Okay, from 9:30 a.m. to 5:00 o'clock p.m. you 01:38PM met here at Sidley Austin in Chicago? 01:38PM
**A. Yes. 01:38PM**
Q. And the purpose of that meeting was related 01:38PM to this deposition? 01:38PM
**A. Yes. 01:38PM**
Q. During that meeting you reviewed documents? 01:38PM
**A. Yes. 01:38PM**
Q. One of those documents was Exhibit 11 which 01:38PM you had seen for the first time, correct? 01:38PM
**A. That I saw for the first time yesterday. 01:38PM**
Q. Yesterday? 01:38PM
**A. Yes. 01:38PM**

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Q. So let's back up a second. We talked a 01:38PM little bit about the documents you reviewed -- 01:38PM
**A. Can I, can I back up? 01:38PM**
Q. Sure. 01:38PM
**A. I got a binder last Friday and skimmed 01:38PM through over the weekend. I didn't read, I just wanted 01:38PM to know what was in there because I had not seen it 01:38PM before. 01:38PM**
Q. Okay, fair enough. And I had appreciate that 01:38PM clarification. Friday, which would be, I don't know, is 01:39PM that the second, Friday, March 2nd you received a binder 01:39PM with documents in it, correct? 01:39PM
**A. Yes. Yes. 01:39PM**
Q. Prior to March 2nd you had not seen or 01:39PM reviewed any of the documents contained in that binder, 01:39PM fair? 01:39PM
MR. WILLIS: Objection to the form of the 01:39PM question. 01:39PM
BY MR. FINDLEY: 01:39PM
Q. Go ahead. 01:39PM
**A. Aside from the ones that we talked about that 01:39PM I, my affidavit, whatever. 01:39PM**
Q. Right. That was my next question. Aside 01:39PM from the documents A, B, and C listed to your affidavit 01:39PM

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which you had reviewed and signed in September of 2017, 01:39PM
right? 01:39PM
**A. Okay. 01:39PM**
Q. One of those documents contained that you saw 01:39PM
for the first time would be Exhibit 11, correct? 01:39PM
**A. Correct. 01:39PM**
Q. Other documents that you reviewed in relation 01:39PM
to this lawsuit for the purposes of your testimony in 01:39PM
this case would have been the affidavit and the 01:39PM
attachments from September 2017 all the way up until 01:40PM
March 2nd, right? 01:40PM
**A. Correct. 01:40PM**
Q. Okay. On March 2, 2018 for the first time 01:40PM
you received a binder containing additional documents 01:40PM
that you hadn't previously reviewed, fair? 01:40PM
**A. Fair. 01:40PM**
Q. Okay. Where did you get that binder from? 01:40PM
**A. Legal. 01:40PM**
Q. Okay. Was it delivered by mail, e-mail, 01:40PM
courier? 01:40PM
**A. My assistant picked it up. We are in 01:40PM**
**different buildings. 01:40PM**
Q. Okay. Your assistant picked it up from 01:40PM
legal? 01:40PM

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**A. Yes. 01:40PM**
Q. Where at, here? 01:40PM
**A. No. Our, in Northbrook. 01:40PM**
Q. Okay. Was it a binder like the one sitting 01:40PM
in front of your lawyer? 01:40PM
**A. Yes. 01:40PM**
MR. WILLIS: Not only like it, it is it. 01:40PM
BY MR. FINDLEY: 01:40PM
Q. Did you bring that binder you received here 01:40PM
today? 01:40PM
**A. Yes. 01:40PM**
Q. Where is it? 01:41PM
**A. (Pointing.) 01:41PM**
Q. That's it? 01:41PM
**A. Uh-huh. 01:41PM**
Q. Well, I am going to mark that binder as 01:41PM
Exhibit No. 12, okay. Exhibit No. 12 would be documents 01:41PM
you reviewed for the first time on March 2, 2018? 01:41PM
MR. WILLIS: Objection to the form of the 01:41PM
question. 01:41PM
BY MR. FINDLEY: 01:41PM
Q. Outside of the affidavit that is contained in 01:41PM
here, correct? 01:41PM
**A. I would like to qualify. There is benefit 01:41PM**

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**information in here. Obviously I wouldn't have seen 01:41PM**
**that before just as part of being an employee. 01:41PM**
Q. Okay. 01:41PM
**A. The 10K I would have seen before. 01:41PM**
Q. All right. So we will go through some of it 01:41PM
this in a second? 01:41PM
MR. WILLIS: And she brought you a CV. 01:41PM
MR. FINDLEY: All right, I am going to mark this 01:41PM
as Exhibit No. 12, okay. 01:41PM
(Plaintiff's Deposition Exhibit No. 01:41PM
12 was marked for identification.) 01:41PM
BY MR. FINDLEY: 01:41PM
Q. One of the things, the first thing I see, 01:41PM
it's got this affidavit that's September 20, 2017 with 01:41PM
Exhibit A, B, and C, correct? 01:41PM
**A. Yes. 01:42PM**
Q. Okay. Those are were the documents you 01:42PM
reviewed related to this litigation up until March 2, 01:42PM
2018, correct? 01:42PM
**A. Yes. 01:42PM**
MR. WILLIS: There was an index in the notebook as 01:42PM
well. 01:42PM
MR. FINDLEY: Okay. 01:42PM
Q. On March 2, 2018 you received the rest of 01:42PM

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these documents that are contained in this binder, 01:42PM
correct? 01:42PM
**A. Correct. 01:42PM**
Q. And you skimmed through them over the 01:42PM
weekend? 01:42PM
**A. Correct. 01:42PM**
Q. The first time you had skimmed through any 01:42PM
documents related to this binder other than maybe seeing 01:42PM
a 10K form before? 01:42PM
**A. And the benefit presentation. 01:42PM**
Q. Okay, let's talk about that. Where is the 01:42PM
benefit presentation? 01:42PM
**A. That power point. 01:42PM**
Q. This one right here, that one? 01:42PM
**A. Right. It's not the exact one. I have seen 01:42PM**
**something similar just as part of the normal course of 01:43PM**
**enrollment. 01:43PM**
Q. Okay. And that's fine. And that's kind of 01:43PM
what I am trying to get an understanding of. So this 01:43PM
one is labeled Kapstone 000149 to Kapstone 000192 you 01:43PM
might have seen either this before or a version of it 01:43PM
before? 01:43PM
**A. Correct. 01:43PM**
Q. Okay. Other than that there was also to be 01:43PM

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fair to what you talked about, there is also a 10K in 01:43PM
here that I saw flipping through here and it is Bates 01:43PM
labeled Kapstone 002 to Kapstone 000134, that's your 01:43PM
understanding of the 10K, right? 01:43PM
**A. Yes. 01:43PM**
Q. I can hand it to you. Can you see it? 01:43PM
**A. Yes. 01:44PM**
Q. Other than those two documents that I just 01:44PM
identified, one being the Benefit Package Power Point 01:44PM
and one being the 2016, is this the 2016 10K or do you 01:44PM
know? 01:44PM
**A. It should be. It's on the front page. 01:44PM**
Q. It says for the fiscal year ending in 01:44PM
December 31, 2016. So it would be filed in 2017, but 01:44PM
relate to 2016? 01:44PM
**A. Correct. 01:44PM**
Q. Okay. Other than that document and the 01:44PM
benefit document, had you seen any other documents 01:44PM
contained in this binder until Friday, March 2nd? 01:44PM
**A. The worker's comp file notes I would have had 01:44PM**
**access to. 01:44PM**
Q. That was the one that's Exhibit A? 01:44PM
**A. No, that's the policy. 01:44PM**
Q. Okay. 01:44PM

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MR. WILLIS: It's actually the debt page. 01:44PM
**A. Of the policy. 01:45PM**
MR. FINDLEY: Here, I will let you find it for me. 01:45PM
Do you know where it is in here? 01:45PM
**A. I will look. 01:45PM**
MR. WILLIS: Can I help her? 01:45PM
MR. FINDLEY: Sure. 01:45PM
MR. WILLIS: So what are you looking for 01:45PM
specifically? 01:45PM
MR. FINDLEY: The comp thing she said she had seen 01:45PM
before. 01:45PM
MR. WILLIS: All right. 01:45PM
**A. So it would be notes from Sentry related to 01:45PM**
**the claim. 01:45PM**
BY MR. FINDLEY: 01:45PM
Q. Okay. So if you could read me the Bates 01:45PM
label of, I think there is a blue page in between there, 01:45PM
keep going. 01:46PM
MR. WILLIS: So what I have done, I have checked 01:46PM
in blue the documents pertaining to worker's comp in 01:46PM
that folder. 01:46PM
MR. FINDLEY: I want to know what you reviewed is 01:46PM
what I am asking. What you had seen prior to March 2nd. 01:46PM
**A. I know what it looks like, I just have to 01:46PM**

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**find it. Can I do this on a break or do you want me -- 01:46PM**
**I know I saw them. 01:47PM**
Q. Yeah. I am just trying, what I am trying to 01:47PM
figure out is which documents you had seen before and 01:47PM
which ones that you hadn't? 01:47PM
**A. So anything related to the claim that -- 01:47PM**
MR. FINDLEY: Well, Dick, I don't need you to hand 01:47PM
her a document that you have written on to give her an 01:47PM
answer. 01:47PM
MR. WILLIS: I am just trying to shortcut your 01:47PM
time. It's fine with me if she flips through the paper. 01:47PM
MR. FINDLEY: I mean I have already told you twice 01:47PM
I didn't want you doing that. I mean it's getting out 01:47PM
of control. So let's stop coaching the witness. 01:47PM
MR. WILLIS: I was just trying to help you out. 01:47PM
MR. FINDLEY: I don't think so. 01:47PM
**A. So may I do this on a break? 01:47PM**
MR. FINDLEY: Sure. Let's just go off the record 01:48PM
right now and you can do it. 01:48PM
THE VIDEOGRAPHER: We are going off the record at 01:48PM
1:47 p.m. 01:48PM
(Off the record.) 01:50PM
THE VIDEOGRAPHER: We are back on the record at 01:50PM
1:50 p.m. 01:50PM

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BY MR. FINDLEY: 01:50PM
Q. During the break you were able to identify 01:50PM
some additional documents you reviewed and I want to 01:50PM
show them to you to make sure we are clear for the 01:50PM
record. Kapstone 000312 to Kapstone 00315 which looks 01:50PM
like to be a claim overview for Jacque Lucas. 01:51PM
**A. Correct. 01:51PM**
Q. Is that correct? 01:51PM
**A. Correct. 01:51PM**
Q. And then the other document you had seen 01:51PM
before March 2 was Kapstone 000316 to 000319 which is a 01:51PM
claim overview for Daniel Simerly, correct?. 01:51PM
**A. Correct. 01:51PM**
Q. Okay. The two claim overview documents, the 01:51PM
2016 10K, and the power point presentation are the only 01:51PM
documents contained in here that you had reviewed or 01:51PM
looked at prior to March 2, 2018, fair? 01:51PM
**A. I believe the handbook is in there too. I 01:51PM**
**would have to go through them all, but the rest would be 01:51PM**
**in the normal course of my employment. 01:51PM**
Q. Okay. Well let's just talk about the 01:51PM
handbook for a second. The handbook is dated January 01:51PM
27, 2017, correct? 01:51PM
**A. Correct. 01:51PM**

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Q. And you might have seen the handbook before too? 01:52PM
**A. Right.** **01:52PM**
Q. Okay. Handbook from January 27, 2017? The -- 01:52PM
**A. Code of conduct I would have seen again in the course of my employment. So I don't want to limit it to this without going through it because I didn't review it in detail.** **01:52PM**
Q. And you just flipped through it on March 2nd? 01:52PM
**A. Well, over the weekend, yes.** **01:52PM**
Q. Okay. Fair enough. Over the weekend you flipped through some documents -- Let me ask it to you this way. As far as what you saw in here, did you ever review it specific to your affidavit in 2017? 01:52PM
**A. I did not.** **01:52PM**
Q. Okay. And that's what I was trying to get at. As far as documents for your affidavit in 2017, it wasn't documents that were contained in this binder, fair? 01:52PM
**A. Fair.** **01:52PM**
Q. It was documents A, B, and C? 01:52PM
**A. Correct.** **01:52PM**
MR. WILLIS: Objection to the form. 01:52PM

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BY MR. FINDLEY: 01:53PM
Q. All right, so I believe you have your affidavit in front of you. Well, before we get to that affidavit, the KapStone Paper and Packaging Corporation, the handbook that we saw in there was dated January 27, 2017, had you ever reviewed one prior to this incident for the purposes of testifying in this lawsuit? 01:53PM
**A. I did not.** **01:53PM**
Q. Okay. Have you ever reviewed whether or not Kapstone Charleston Kraft LLC has their own policies and procedures? 01:53PM
**A. I have not reviewed their policies and procedures.** **01:54PM**
Q. Did you look into whether or not they maintain their own policies and procedures that are different from Kapstone Paper and Packaging Corporation? 01:54PM
MR. WILLIS: Objection to the form. 01:54PM
**A. I have not.** **01:54PM**
BY MR. FINDLEY: 01:54PM
Q. Okay. As far as who the managers are at Kapstone Charleston Kraft LLC -- well, let me back up. My understanding is there are managers at Kapstone Charleston Kraft LLC that are employed at the mill that do help transact business, is that right? 01:54PM

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**A. Yes.** **01:54PM**
Q. As far as who they are and what they do, is that something that you went and looked into? 01:54PM
**A. For the purpose of this, no.** **01:54PM**
Q. Okay. Yeah, for the purposes of your testimony in this case? 01:54PM
**A. I did not.** **01:54PM**
Q. Okay. You never spoke to any of the managers at the mill? 01:54PM
**A. I did not.** **01:54PM**
Q. Okay. Never spoke to any of the managers related to or reviewed documents related to the business they transact and how they transact their business, is that fair? 01:54PM 01:55PM 01:55PM
**A. Can you repeat the question?** **01:55PM**
Q. Sure. Let me put it this way, I assume there is managers over at KapStone Paper and Packaging Corporation as well? 01:55PM 01:55PM 01:55PM
**A. Yes.** **01:55PM**
Q. Okay. As far as talking to the KapStone Paper and Packaging Corporation or doing any type of review as far as what the managers do there, we already talked about that wasn't something you did prior to your testimony earlier, remember? 01:55PM 01:55PM 01:55PM 01:55PM

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**A. Right.** **01:55PM**
Q. And all I am trying to do is get the flip side of that. Did you go to Kapstone Charleston Kraft LLC and talk to any of those managers? 01:55PM 01:55PM 01:55PM
**A. I did not.** **01:55PM**
Q. Okay. Did you review any documents related to the business they transact or how they do it? 01:55PM 01:55PM
**A. In preparation for this, no.** **01:55PM**
Q. Okay. Or -- okay. You agree with me that Kapstone Charleston Kraft LLC operates exclusively in Charleston, correct? 01:55PM 01:56PM 01:56PM
MR. WILLIS: Objection to the form. 01:56PM
**A. Can you define operates?** **01:56PM**
Q. Okay. What I mean is they have one plant in Charleston, right? 01:56PM 01:56PM
**A. Correct.** **01:56PM**
Q. Okay. They have all of the employees of Kapstone Charleston Kraft LLC are located in Charleston or surrounding areas, right? 01:56PM 01:56PM 01:56PM
**A. Correct.** **01:56PM**
Q. They work at the plant in Charleston? 01:56PM
**A. Correct.** **01:56PM**
Q. As far as they might supply paper and packaging to other locations, but as far as where it's 01:56PM 01:56PM

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generated, it's generated there? 01:56PM
**A. Correct. 01:56PM**
Q. The work product they make related to -- the 01:56PM work product they make related to packaging and paper is 01:56PM there at that location for those employees at KapStone 01:56PM Kraft LLC, fair? 01:56PM
**A. Fair. 01:57PM**
Q. As far as any lease, are you familiar with 01:57PM any lease or purchase agreements they have related to 01:57PM equipment? 01:57PM
**A. I am aware, but I can't speak to the detail. 01:57PM**
Q. Okay. When you are referring to the people 01:57PM at the Charleston mill, what you would refer to them as 01:57PM is Kapstone Charleston Kraft employees, correct? 01:57PM
**A. We speak of all as Kapstone. 01:57PM**
Q. Well, if you wanted to be specific about whom 01:57PM my clients work for, you would refer to them by their 01:57PM employer? 01:57PM
**A. Charleston. 01:57PM**
Q. Right. The Charleston for short, correct? 01:57PM
**A. Correct. 01:57PM**
Q. And Charleston would mean Kapstone Charleston 01:57PM Kraft LLC, that's how you take Charleston to mean? 01:57PM
**A. We refer to location, so it holds true in 01:57PM**

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**this situation, but not across the company, no. 01:57PM**
Q. Let me give you an example. If you are 01:58PM working at your company within the payroll department 01:58PM and someone comes to you and says, hey, we have a 01:58PM Charleston employee that has XYZ problem, okay, are you 01:58PM with me so far? 01:58PM
**A. Yes. 01:58PM**
Q. That's problem happened before, right? 01:58PM
**A. Yes. 01:58PM**
Q. Maybe it happened with this lawsuit. We have 01:58PM some victims who were in Charleston who were burned. Is 01:58PM that how you first found out about it? 01:58PM
**A. No. I manage insurance, so I saw the claim. 01:58PM**
Q. Okay, fair enough. In any event there might 01:58PM be from time to time where someone comes to you and 01:58PM talks to you about an employee and refers to you as a 01:58PM Charleston employee, correct? 01:58PM
**A. Correct. 01:58PM**
Q. And what you would take that to mean is he is 01:58PM employed by Kapstone Charleston Kraft LLC, right, the 01:58PM same as what we talked about earlier? 01:58PM
**A. Correct. 01:58PM**
Q. Okay. And when you say a Charleston employee 01:58PM or a Kapstone Charleston Kraft LLC employee, a hundred 01:58PM

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percent of the time it's going to deal with someone in 01:58PM South Carolina for the Charleston area, right? 01:58PM
MR. WILLIS: Objection to form. 01:59PM
**A. I believe so. 01:59PM**
BY MR. FINDLEY: 01:59PM
Q. What I mean by that is you might own 01:59PM companies in Belgium, right. If you say Charleston guy, 01:59PM you know he is not in Belgium, don't you? 01:59PM
**A. Correct. 01:59PM**
Q. Okay. Just like you know he is not in 01:59PM Longview, Washington if they refer to him as Charleston 01:59PM Kraft, right? 01:59PM
**A. Correct. 01:59PM**
Q. Now, in each one of these locations there are 01:59PM managers that are specific for that mill, fair? 01:59PM
**A. Yes. 01:59PM**
Q. Okay, the same with Kapstone Charleston Kraft 01:59PM LLC there are managers specific to the mill there, 01:59PM correct? 01:59PM
MR. WILLIS: Objection to the form of the 01:59PM question. 01:59PM
MR. FINDLEY: I can re-ask it if you need 01:59PM clarification. Do you? 01:59PM
**A. I do. It seemed like the same question. 01:59PM**

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Q. Yeah, I think it was. I think I was just 02:00PM making sure we were on the same page. 02:00PM
**A. Okay. 02:00PM**
Q. What I am saying is there are managers whose 02:00PM sole purpose and sole function is to manage the 02:00PM Charleston mill, correct? 02:00PM
**A. I would like to follow-up because we do have 02:00PM employees that are in our mill headquarter group that 02:00PM are employed by KapStone Kraft that may be located 02:00PM there. 02:00PM**
Q. Okay. And that's fair and we can get to that 02:00PM in a second. My question is a little bit different. Is 02:00PM there are managers at the mill who are just sole 02:00PM Kapstone Charleston Kraft LLC employees, correct? 02:00PM
**A. Correct. 02:00PM**
Q. And what you are saying is there might also 02:00PM be some higher level individuals there who work at 02:00PM Kapstone Paper and Packaging? 02:00PM
**A. Kraft. KapStone Kraft. 02:00PM**
Q. Okay, might work at KapStone Kraft Paper 02:00PM Corporation? 02:00PM
**A. Be employed by KapStone Kraft, yes. 02:00PM**
Q. Okay. And we have got three different 02:00PM entities, so I just want to make sure we are using the 02:00PM

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terms right. As far as managers at the mill, we know 02:00PM
there are managers who are employed by Kapstone 02:01PM
Charleston Kraft LLC, correct? 02:01PM
**A. Correct. 02:01PM**
Q. And we also know that at mill location there 02:01PM
might also be Kapstone Kraft Paper Corporation? 02:01PM
**A. Some Kraft, yes. 02:01PM**
Q. Okay, but there are no managers that are part 02:01PM
of Kapstone Paper and Packaging Corporation located at 02:01PM
the Charleston mill, true? 02:01PM
**A. I believe the accounting person reports to 02:01PM**
**Kapstone Paper and Packaging which I would have to 02:01PM**
**check. 02:01PM**
Q. Okay. And I am not talking about reporting, 02:01PM
what I am talking about is employer. You know your 02:01PM
employer is -- 02:01PM
**A. Yes. Yes. 02:01PM**
Q. -- KapStone Paper and Packaging Corporation? 02:01PM
**A. Uh-huh. 02:01PM**
Q. Are you aware of any employees at the 02:01PM
Charleston Plant who are employed by Kapstone Paper and 02:01PM
Packaging Corporation? Can you name me one? 02:01PM
**A. I cannot. 02:01PM**
Q. Now, we have also talked about other 02:02PM

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locations in other mills, Longview, Washington is one 02:02PM
that comes to mind? 02:02PM
**A. Yes. 02:02PM**
Q. I think that y'all might have purchased one 02:02PM
in Texas at some point, Mesquite, is that right? 02:02PM
**A. It's a box plant. 02:02PM**
Q. Okay. Fair enough. What I am getting to, as 02:02PM
far as Kapstone Charleston Kraft LLC employees, we 02:02PM
already said there is no location you would find them at 02:02PM
other than the Charleston mill for KapStone Kraft, 02:02PM
excuse me, Kapstone Charleston Kraft LLC, correct? 02:02PM
MR. WILLIS: Objection to form. 02:02PM
**A. Again maybe Somerville. 02:02PM**
Q. Okay, but that's what I was going to ask you, 02:02PM
as far as KapStone Kraft Paper Corporation? 02:02PM
**A. Right. 02:02PM**
Q. Let me make sure I am saying that right. 02:02PM
Yes, KapStone Kraft Paper Corporation, okay, we talked 02:02PM
about that a second ago. You said they may have mill 02:03PM
managers at the Charleston plant, correct? 02:03PM
**A. Managers. 02:03PM**
Q. Okay. Would they also have like lower level 02:03PM
employees too or would it be strictly limited to 02:03PM
managers? 02:03PM

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**A. Potentially IT, and maybe others. I'd have 02:03PM**
**to check. 02:03PM**
Q. But as far as KapStone Kraft Paper 02:03PM
Corporation, as far as that employer entity, that would 02:03PM
be, deal with managers or IT individuals, fair? 02:03PM
**A. One portion of it. 02:03PM**
Q. Okay. 02:03PM
**A. KapStone Kraft also employs Roanoke Rapids. 02:03PM**
Q. Roanoke Rapids? 02:03PM
**A. The mill there, yes. 02:03PM**
Q. In Roanoke, Virginia? 02:03PM
**A. No. North Carolina. 02:03PM**
Q. North Carolina, okay. All right, now, as far 02:03PM
as Kapstone Kraft Paper Corporation, the managers in IT 02:04PM
department might either be at the Charleston mill or in 02:04PM
the Roanoke facility, correct? 02:04PM
**A. Correct. And maybe others. I would like to 02:04PM**
**confirm. 02:04PM**
Q. Okay. Well, how would you confirm that? 02:04PM
**A. I would run a report on location 850 and see 02:04PM**
**where their physical locations would be. 02:04PM**
Q. And what is location 850? 02:04PM
**A. This mill headquarters I was talking about. 02:04PM**
**People who have responsibilities for all mills not 02:04PM**

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**unique to a location. 02:04PM**
Q. Okay. And let me ask you another question 02:04PM
since we are talking about reports. You can run several 02:04PM
reports with your intra system technology, correct? 02:04PM
MR. WILLIS: Objection to the form of the 02:04PM
question. 02:04PM
MR. FINDLEY: Maybe I asked it wrong. Intranet 02:04PM
technology, you can run several reports regarding 02:04PM
employers? 02:04PM
**A. No. Payroll is one of my functions, so it's 02:04PM**
**in the payroll system. 02:05PM**
Q. Okay. So you would do it through the payroll 02:05PM
system? 02:05PM
**A. Yes. 02:05PM**
Q. Okay. If I wanted to know every single 02:05PM
location that has a Kapstone Charleston Kraft LLC 02:05PM
employee, could you run that? 02:05PM
**A. Yes. 02:05PM**
Q. Okay. It wouldn't be hard for you to do, 02:05PM
right? 02:05PM
**A. It should not be. 02:05PM**
Q. Okay. 02:05PM
**A. Maybe not me myself, but. 02:05PM**
Q. You might have someone else run it? 02:05PM

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A. **Yes.** **02:05PM**
Q. What I am trying to figure out is if you have the capabilities? 02:05PM
A. **Yes.** **02:05PM**
Q. Okay. It's not something that's over burdensome where it would take you too long to do, right? 02:05PM
A. **Right.** **02:05PM**
Q. You would understand what I mean when I'd say I want the locations of let's just say Kapstone Kraft Paper Corporation, if I wanted the location of every employee related to that entity you could also search that by payroll, correct? 02:05PM
A. **Yes.** **02:05PM**
Q. And the same with your employer, Kapstone Paper and Packaging, you could run a payroll report on which people are actually employed by that entity as well, correct? 02:05PM
A. **Yes.** **02:05PM**
Q. Okay. Now you could also go back in time. For instance, if I wanted to know what entities were paying which individuals as far back as 2015, you have the ability to search that, correct? 02:06PM
A. **Yes.** **02:06PM**

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Q. Okay. Just some clicks of a button, right? 02:06PM
MR. WILLIS: Objection to the form of the question. 02:06PM
A. **Figuratively speaking.** **02:06PM**
BY MR. FINDLEY: 02:06PM
Q. Maybe clicks of a button and -- 02:06PM
A. **Yes, yes.** **02:06PM**
Q. What I am saying you wouldn't have to go to some off-site location and pour through the information, I mean it's all automated, right? 02:06PM
A. **Correct.** **02:06PM**
Q. You talked about lease and purchase agreements when we got sidetracked. As far as lease or purchase agreements for equipment related to the Charleston mill, how are those stored or documented or do you know? 02:06PM 02:07PM
A. **I can't speak to all of them.** **02:07PM**
Q. Okay. And, look, I understand you are probably not in a position today to testify to all the lease and purchase agreements related to the Charleston mill equipment. 02:07PM
A. **Correct.** **02:07PM**
Q. What I am trying to figure out is more along the lines of if you wanted to find out that information, 02:07PM

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you could do it, right? 02:07PM
A. **Yes.** **02:07PM**
Q. Okay. And how would you go about doing that search? 02:07PM
A. **I would just, I would check first with legal and then the location. We are working toward a centralized repository, but we are not there yet.** **02:07PM**
Q. Okay. And what I understand is that at some point in time over the last year the thing started becoming more centralized, would you agree with that? 02:07PM
A. **By design, yes.** **02:08PM**
Q. Right, by design. Kind of like your role of being appointed to a vice president of a shared systems, correct? 02:08PM
A. **Correct.** **02:08PM**
Q. That was part of that process of moving to a centralized role, correct? 02:08PM
A. **To be an integrated company, integrated packaging.** **02:08PM**
Q. Yes. A perfect example of it would be the creation of your job that you have today, right, VP of Shared Services, is that right? I think we are saying the same thing. 02:08PM
A. **We are, but it was my same position with accounts payable added.** **02:08PM**

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Q. Well, maybe I am saying it wrong. My understanding was as far as your title that you have, it's VP of Shared Services, correct? 02:08PM
A. **Correct.** **02:08PM**
Q. And that title did not exist prior to January 2017, correct? 02:08PM
A. **Correct.** **02:08PM**
Q. And it was a title that was created for the first time in January 2017, correct? 02:09PM
A. **Correct.** **02:09PM**
Q. And you filled that role and the title of January of 2017 for the purposes of moving towards a more centralized role, correct? 02:09PM
A. **No. It was always centralized. It just changed reporting. So accounts payable, the last piece of the shared service that I assumed had been there.** **02:09PM**
Q. Okay. Well, you'd agree with me that, well, we will get to that. 02:09PM
As far as the, well, the Board of Directors' documents that you provided to me as part of your affidavit also has all types of changes and directors and officers for three different entities dated January 1, 2017, correct? 02:09PM

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A. **Correct.** **02:09PM**
MR. WILLIS: Objection to the form of the 02:09PM
question. 02:09PM
BY MR. FINDLEY: 02:10PM
Q. That's the same date of the date that you 02:10PM
filled the newly created role of VP of Shared Services, 02:10PM
fair? 02:10PM
A. **Fair.** **02:10PM**
Q. So is there some sort of memo or anything 02:10PM
that went out as to here is what we are doing, here is 02:10PM
how we are changing things to reflect all these changes 02:10PM
that are going on January 1, 2017? 02:10PM
MR. WILLIS: Objection to the form of the 02:10PM
question. 02:10PM
A. **Memo, e-mail, there was a big restructure.** **02:10PM**
Q. Okay. And that's what I am talking about 02:10PM
because I have seen some documents on the Internet 02:10PM
related to a restructure, okay. 02:10PM
A. **Right.** **02:10PM**
Q. I assume there were internal e-mails passed 02:10PM
around about a restructure, correct? 02:10PM
A. **Correct.** **02:10PM**
Q. Probably internal meetings related to that? 02:10PM
I'm sure there were. Maybe you weren't part of all of 02:10PM

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them? 02:10PM
A. **Agree.** **02:10PM**
Q. Okay. Were you part of any of the meetings 02:10PM
where there was talk about the restructure? 02:10PM
A. **I was not.** **02:10PM**
Q. Okay. Do you know who was part of say the 02:10PM
restructure committee that initiated in January 1st of 02:10PM
2017? 02:11PM
MR. WILLIS: Objection to the form. 02:11PM
A. **I don't.** **02:11PM**
BY MR. FINDLEY: 02:11PM
Q. Okay. As far as when we look through our 02:11PM
documents and start to see actual evidence in the 02:11PM
documentation related to this restructure, you would 02:11PM
agree with me titles and positions started changing on 02:11PM
January 1, 2017 along with yours, correct? 02:11PM
A. **Correct.** **02:11PM**
Q. Now, most of the updates, and I know 02:11PM
companies work differently, but most of the updates I 02:11PM
assume you receive are by way of e-mail blasts? 02:11PM
A. **Most, I would agree.** **02:11PM**
MR. WILLIS: Objection to the form of the 02:11PM
question. 02:11PM
BY MR. FINDLEY: 02:11PM

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Q. Do you get any type of, your department 02:11PM
receive any type of, like the old days when faxes would 02:11PM
come along about, hey, here is a fax memorandum or is it 02:11PM
all e-mail? 02:11PM
A. **I believe we get some faxes in accounts** **02:11PM**
**payable and accounts receivable related to credit** **02:12PM**
**applications and that type of thing.** **02:12PM**
Q. Okay. And what I am talking about is more 02:12PM
internal communications company wide? 02:12PM
A. **No.** **02:12PM**
Q. E-mail blasts? 02:12PM
A. **Yes.** **02:12PM**
MR. WILLIS: What do you mean by e-mail blasts? 02:12PM
BY MR. FINDLEY: 02:12PM
Q. You know what e-mail blast means? 02:12PM
A. **Everybody gets copied.** **02:12PM**
MR. WILLIS: I did not know that. You learn 02:12PM
something new everyday. 02:12PM
BY MR. FINDLEY: 02:12PM
Q. But as far as what you understand, you talked 02:12PM
about Outlook, okay, there are e-mail blasts that you 02:12PM
can send out to various groups on Outlook. Do you know 02:12PM
what I am talking about? 02:12PM
A. **Yes.** **02:12PM**

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Q. And what I mean by that is if you wanted to 02:12PM
send an e-mail to your department, okay, does it have 02:12PM
like an e-mail address that's a group e-mail address? 02:12PM
A. **It could, it doesn't, but it could.** **02:12PM**
Q. Okay. And that's what I wanted to know about 02:12PM
is if you wanted to e-mail all the Charleston Kraft LLC 02:12PM
employees who are paid by them, you have that ability on 02:12PM
Outlook to group it by that, correct? 02:13PM
A. **I believe there is the ability. I have not** **02:13PM**
**done it myself.** **02:13PM**
Q. And I am just talking about ability for now. 02:13PM
Whether you have done it, we will get to it in a second. 02:13PM
If I wanted to e-mail all the people at say the Kapstone 02:13PM
Belgium, you have the ability to do it through Outlook, 02:13PM
correct? 02:13PM
A. **I believe so.** **02:13PM**
Q. The same would be true for Kapstone Kraft 02:13PM
Paper Corporation, you have the ability to group those 02:13PM
as well? 02:13PM
A. **I believe so.** **02:13PM**
Q. And the same with your employer, KapStone 02:13PM
Paper and Packaging Corporation, correct? 02:13PM
A. **Isn't that the one you just said?** **02:13PM**
Q. I said KapStone Kraft and Paper? 02:13PM

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**A. Okay. Okay. So for both, yes. 02:13PM**

Q. Okay. And what I mean by that is, we have 02:13PM got the same thing at my firm. What I am trying to 02:13PM figure out is if I wanted to just e-mail KapStone Paper 02:13PM and Packaging Corporation, you have the ability to group 02:13PM that on Outlook, send it out and that means the other 02:13PM people who are employees of the other entities wouldn't 02:13PM receive it, right? 02:13PM

**A. Semantics, but I do not. It goes through IT. 02:14PM Nobody is allowed to create big groupings like that. 02:14PM**

Q. Well, fair enough. 02:14PM

**A. But it can be done. 02:14PM**

Q. What I am saying it has the ability to group 02:14PM that, right? 02:14PM

**A. Yes. 02:14PM**

Q. And the effect of those groupings would 02:14PM Kapstone Charleston Kraft LLC might not receive the same 02:14PM e-mail blast, fair, if you wanted to group it that way. 02:14PM

**A. Fair. 02:14PM**

Q. All right, as far as I saw in the 02:14PM documentation there was a corporate representative who 02:14PM testified in relation to worker's compensation. Was 02:14PM that you? 02:14PM

**A. I don't believe so. 02:14PM**

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Q. Okay. And I was just curious because it 02:14PM didn't say who it was, but on -- there is a corporation 02:14PM designee of Kapstone Paper and Packaging pursuant to 02:14PM Rule 30(b)6, well, here, I will show it to you. Have 02:15PM you seen this before? I think it's the same thing I 02:15PM just have three copies of it. 02:15PM

**A. I don't believe so. But it may have been 02:15PM accessible in the Sentry system if their name is on 02:15PM there. 02:15PM**

MR. WILLIS: And let me say if you have got a 02:15PM document that we haven't provided to you and that you 02:15PM haven't identified as an exhibit to the deposition I am 02:15PM entitled to talk to her about it. 02:15PM

MR. FINDLEY: Okay. This is a document that you 02:15PM provided to me. 02:15PM

MR. WILLIS: No, it is not. 02:15PM

MR. FINDLEY: It says your Bates label Kapstone 02:15PM 0002 to Kapstone 0004, it's got your Kapstone 02:15PM proprietary stamp that you put on stuff and we will just 02:16PM go ahead and mark it so we can identify it later. 02:16PM

MR. WILLIS: I'm sorry, yeah, we have provided 02:16PM this. This is part of the Daniel Simerly's worker's 02:16PM comp file. 02:16PM

(Plaintiff's Deposition Exhibit No. 02:16PM

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13 was marked for identification.) 02:16PM

BY MR. FINDLEY: 02:16PM

Q. So Exhibit No. 13 you said you don't know if 02:16PM you have seen that before? 02:16PM

**A. Well, if it's in the book, I skimmed through 02:16PM it. 02:16PM**

Q. Fair enough. It's not a memory test. It's 02:16PM just I am asking you if you know who was designated for 02:16PM those purposes? 02:16PM

**A. I do not. 02:16PM**

Q. Okay. I assume you had not reviewed her 02:16PM testimony from that deposition? 02:16PM

MR. WILLIS: Objection to the form. 02:16PM

BY MR. FINDLEY: 02:16PM

Q. Or his or her? 02:16PM

**A. I have not. 02:16PM**

Q. Have you reviewed any testimony, any other 02:16PM affidavits before you testifying here today? 02:16PM

**A. I have not. 02:17PM**

Q. Okay. So you dealt with benefits, correct, 02:17PM or did I misunderstand that earlier? 02:17PM

**A. Yes. I do not. 02:17PM**

Q. You do not? 02:17PM

**A. (Nodded.) 02:17PM**

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Q. Okay. And the reason I was asking was I 02:17PM understand that some of these individuals who work at 02:17PM Kapstone Charleston Kraft are union, correct? 02:17PM

**A. Yes. 02:17PM**

Q. And when they are union that changes the 02:17PM types of benefits they would receive from KapStone Paper 02:17PM and Packaging Corporation, correct? 02:18PM

**A. I believe so, but I can't speak to the 02:18PM detail. 02:18PM**

Q. Are you familiar at all with the Collective 02:18PM Bargaining Agreement between the North Charleston mill 02:18PM and the union there? 02:18PM

MR. WILLIS: Objection to the form. 02:18PM

**A. I am aware of it. 02:18PM**

Q. Okay. So you are aware that Kapstone 02:18PM Charleston Kraft LLC has entered into a Collective 02:18PM Bargaining Agreement with the union? 02:18PM

**A. Yes. 02:18PM**

MR. WILLIS: The same objection. 02:18PM

Q. As far as the details of what are stated in 02:18PM that Collective Bargaining Agreement, you are not 02:18PM familiar with those? 02:18PM

**A. I am not. 02:18PM**

MR. WILLIS: The same objection. My only 02:18PM

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objection is there are several. You are asking as if 02:18PM
it's just one. 02:18PM
BY MR. FINDLEY: 02:18PM
Q. Are you familiar with any of them? 02:18PM
**A. I am not. 02:18PM**
Q. Do you know who enters it on behalf of the 02:18PM
KapStone Kraft Paper Corporation? 02:18PM
**A. Enters it. 02:18PM**
Q. Enters into the agreement like an individual 02:18PM
who is in charge of it. Let me back up. Kapstone 02:19PM
Charleston LLC we are familiar so far, right? 02:19PM
**A. Yes. 02:19PM**
Q. It enters into a Collective Bargaining 02:19PM
Agreement with a union, correct? 02:19PM
**A. Yes. 02:19PM**
Q. There should be representatives on both sides 02:19PM
or people involved in that process, fair? 02:19PM
**A. Yes. 02:19PM**
Q. Do you know who that is? 02:19PM
**A. I believe Gary Pairfencik (Phonetically). 02:19PM**
Q. Pairfencik? 02:19PM
**A. Pairfencik, I don't know how to spell it. 02:19PM**
Q. And that's fine. Gary Pairfencik and he 02:19PM
would be the person on behalf of Kapstone Charleston 02:19PM

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Kraft LLC? 02:19PM
**A. He negotiated the agreement. 02:19PM**
Q. On behalf of Kapstone Charleston Kraft LLC? 02:19PM
**A. Yes. 02:19PM**
Q. Okay. And then do you know the name of the 02:19PM
union representative who negotiated on the other side? 02:19PM
**A. I do not. 02:19PM**
Q. Okay. Since you are in charge of payroll, 02:19PM
how many people actually receive checks from KapStone 02:20PM
Paper and Packaging Corporation? 02:20PM
**A. I would have to get that information. I 02:20PM**
**don't have it offhand. 02:20PM**
Q. You could look it up pretty easily, right? 02:20PM
**A. I could. 02:20PM**
Q. Is it fair to say that all of them reside in 02:20PM
Chicago? 02:20PM
**A. Fair to say that all the people that get 02:20PM**
**checks reside in Chicago? No. 02:20PM**
Q. Checks from KapStone Paper and Packaging 02:20PM
Corporation? 02:20PM
**A. Yes. 02:20PM**
Q. Okay. And the reason for that is because I 02:20PM
assume this is the -- well, strike that. 02:20PM
MR. WILLIS: And by getting checks you just mean 02:20PM

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being paid? It could be direct deposited or whatever, 02:20PM
you are not talking about literally getting a check 02:20PM
because she said earlier some people prefer checks. 02:20PM
MR. FINDLEY: Dick, what are we doing here? 02:20PM
MR. WILLIS: I am asking for a clarification of 02:20PM
your question. 02:20PM
MR. FINDLEY: Did you not understand my question? 02:20PM
I mean I don't know why you keep talking after the 02:21PM
question is gone and there is no question pending. 02:21PM
MR. WILLIS: Because I might have an objection to 02:21PM
it. I might not have understood it. 02:21PM
MR. FINDLEY: Then make your objection. 02:21PM
MR. WILLIS: I am trying to and you keep 02:21PM
interrupting me. By checks do you mean literally get a 02:21PM
check or do you mean paid by? Do you see the 02:21PM
distinction? 02:21PM
MR. FINDLEY: No, I don't. 02:21PM
**A. I do see a distinction. So a check is you 02:21PM**
**have to go to your bank and cash it in my understanding. 02:21PM**
BY MR. FINDLEY: 02:21PM
Q. And here is what I am talking about, okay. 02:21PM
What I am talking about as far as we know we have seen 02:21PM
checks that say Kapstone Charleston Kraft LLC, we know 02:21PM
they are in Charleston, right? 02:21PM

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**A. Yes. 02:21PM**
Q. The same thing with KapStone Paper and 02:21PM
Packaging Corporation, we know they would be in Chicago? 02:21PM
**A. Yes. 02:21PM**
Q. Okay. 02:21PM
MR. WILLIS: Object to the form of the question. 02:21PM
**A. And the direct deposits -- oh, can I add 02:21PM**
**that? No. Sorry. 02:21PM**
MR. WILLIS: Yes, go ahead, you can finish your 02:21PM
answer. 02:21PM
**A. The direct deposit stubs would be the same. 02:21PM**
BY MR. FINDLEY: 02:21PM
Q. Right. Just like the W2s would be the same? 02:21PM
**A. Yes. 02:21PM**
Q. The actual legal entity that is performing 02:21PM
the transaction is listed on there like we saw in 02:21PM
Exhibit No. 8, correct? 02:22PM
**A. Yes. Yes. 02:22PM**
Q. Your Exhibit No. 8 would say Kapstone Paper 02:22PM
and Packaging Corporation? 02:22PM
**A. Yes. 02:22PM**
Q. Okay. So we are on the same page, right? 02:22PM
**A. Yes. 02:22PM**
Q. Okay. All right, so let's move along to your 02:22PM

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affidavit. 02:22PM
MR. WILLIS: Kyle, would this be time for a 02:22PM
five-minute bathroom break? 02:22PM
MR. FINDLEY: Yeah, we can take a bathroom break. 02:22PM
THE VIDEOGRAPHER: We are going off the record at 02:22PM
2:22 p.m. 02:22PM
(Short recess.) 02:28PM
THE VIDEOGRAPHER: We are back on record at 2:28 02:28PM
p.m. 02:28PM
BY MR. FINDLEY: 02:28PM
Q. Ma'am, we took a short break. Are you ready 02:28PM
to continue? 02:28PM
**A. Yes. 02:28PM**
Q. Okay. Before we left off I just wanted to 02:28PM
touch on something else. We mentioned direct deposit. 02:28PM
Some people are old fashioned and like to pick up their 02:28PM
checks themselves, correct? 02:29PM
**A. Correct. 02:29PM**
Q. And let's just take Kapstone Charleston 02:29PM
Kraft, for instance. Okay, if you are employed by them 02:29PM
and you wanted to pick up a Kapstone Charleston Kraft 02:29PM
LLC check, you would drive to the Charleston location to 02:29PM
get it, correct? 02:29PM
**A. I would have to check what we are doing 02:29PM**

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**today. 02:29PM**
Q. I'm not -- well, today, when you did this job 02:29PM
in 2014, surely the people who are employed at Kapstone 02:29PM
Charleston Kraft LLC in Charleston could pick up their 02:29PM
checks at the Charleston mill, correct? 02:29PM
**A. Correct. 02:29PM**
Q. And you are saying with this restructure in 02:29PM
January 1, 2017, may be a change, but you don't know, is 02:29PM
that what you want to check? 02:29PM
MR. WILLIS: Objection to form. 02:29PM
**A. I don't know that it coincided with this 02:29PM**
**change, but we talked about changing the method of 02:29PM**
**distribution. 02:30PM**
Q. Okay. Whether as far as that has been 02:30PM
changed or not, you have no idea? 02:30PM
**A. I don't recall. 02:30PM**
Q. Okay. As far as if you wanted to pick up a 02:30PM
check for KapStone Paper and Packaging Corporation, your 02:30PM
employer, right, you would drive to the Chicago location 02:30PM
where you are employed, correct? 02:30PM
**A. Correct. 02:30PM**
Q. Do you know how many people are actually 02:30PM
employed like yourself by KapStone Paper and Packaging 02:30PM
Corporation in Chicago? 02:30PM

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**A. I don't know offhand. 02:30PM**
Q. Okay. Could you ball park it, under a 02:30PM
hundred? 02:30PM
**A. I believe so. 02:30PM**
Q. Do you know how many people are employed by 02:31PM
Kapstone Charleston Kraft LLC at the North Charleston 02:31PM
mill? 02:31PM
**A. I don't know the exact number, no. 02:31PM**
Q. All right. So the -- well, let's just say 02:31PM
and I want to be fair to you, you said you ball parked 02:31PM
it to over a hundred, okay. For KapStone Paper and 02:31PM
Packaging Corporation here in Chicago what I want to 02:31PM
know is ask you some questions about that hundred people 02:31PM
or so, give or take? 02:31PM
**A. I said under, you said over, but yes. 02:31PM**
Q. Okay. Well, is it under 200, under a 02:31PM
hundred, what is it, which one? 02:31PM
**A. Again, we speak of locations, right. So it 02:31PM**
**could be IT people that aren't located there and I know 02:31PM**
**it, so I can't speak to physical location how many are 02:32PM**
**there. 02:32PM**
Q. That's fair. So what you are saying you may 02:32PM
have an IT person somewhere else, maybe an IT person is 02:32PM
in Belgium or something? 02:32PM

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**A. That is employed by Kapstone Paper, yes. 02:32PM**
Q. Okay, but what you do know, how many 02:32PM
individuals are actually employed meaning receiving 02:32PM
paychecks or have them as their employer, it's KapStone 02:32PM
Paper and Packaging Corporation, would it be under 200? 02:32PM
**A. Yes. 02:32PM**
Q. Would it be under a hundred? 02:32PM
**A. I don't know. 02:32PM**
Q. Give or take around a hundred, is that fair? 02:32PM
**A. Again, I don't know the exact number. 02:32PM**
Q. Okay. Well, let's just say would you feel 02:32PM
comfortable using the term under 200? 02:32PM
**A. Sure. 02:32PM**
Q. Okay. Of the under 200 people that work at 02:32PM
actually employed by KapStone Paper and Packaging 02:32PM
Corporation, we are together so far? 02:32PM
**A. Yes. 02:32PM**
Q. You know what people I am talking about now? 02:32PM
**A. Kapstone Paper and Packaging employees. 02:32PM**
Q. Okay, right. Of those, under those 200 02:32PM
people, do any of them do, actually work the job that my 02:33PM
client works meaning a mechanic at a mill for the paper 02:33PM
manufacturing and selling? 02:33PM
**A. No. 02:33PM**

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Q. Okay. None of them do, right? 02:33PM
**A. Correct. 02:33PM**
Q. None of the people, the under 200 people that 02:33PM work at KapStone Paper and Packaging Corporation, you 02:33PM would agree with me that they have different job 02:33PM requirements than the people at Kapstone Charleston 02:33PM Kraft LLC? 02:33PM
**A. I can't speak to all the positions, no. 02:34PM**
Q. Okay. Can you name me a single person that 02:34PM works at KapStone Paper and Packaging Corporation that 02:34PM would actually be doing the, I guess, manual labor at a 02:34PM mill? 02:34PM
**A. Not manual labor, no, but there could be an 02:34PM office position that's comparable. 02:34PM**
Q. There could be an office position related to 02:34PM what we talked about earlier, IT or management, right? 02:34PM
**A. Right. 02:34PM**
Q. Nothing beyond that, meaning there is not a 02:34PM mechanic that you are aware of that's out there turning 02:34PM wrenches, right? 02:34PM
**A. Right. 02:34PM**
Q. Correct? 02:34PM
**A. Correct. 02:34PM**
Q. There is not a person out there who is 02:34PM

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actually pulling out the policies and procedures of how 02:34PM to open up an evaporator and getting out there and 02:34PM actually performing that work themselves, right? 02:34PM
MR. WILLIS: Objection to the form. 02:34PM
BY MR. FINDLEY: 02:34PM
Q. Just for using an example for you, more 02:34PM manual labor, performance of duties in the field, no one 02:35PM at KapStone Paper and Packaging Corporation, the under 02:35PM 200 people employees actually perform the work in the 02:35PM field, fair? 02:35PM
**A. Yes. 02:35PM**
Q. And because they don't perform the work in 02:35PM the actual field, it's safe to assume that they had 02:35PM different job requirements than people like my client 02:35PM who are employed at Kapstone Charleston Kraft LLC and 02:35PM their job duties are different, what they do day to day? 02:35PM
**A. Agree, not for all though. There are 02:35PM salaried people at Charleston. 02:35PM**
Q. Okay. Well, what I am saying is, when you 02:35PM say there are salaried people, we already talked about 02:35PM the earlier, when we say KapStone Paper and Packaging 02:35PM Corporation, we are talking about job requirements that 02:35PM would deal with two scopes of duties, management or IT, 02:35PM is that fair? 02:35PM

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MR. WILLIS: Objection to the form. 02:36PM
**A. KapStone Kraft employees, right. 02:36PM**
Q. Okay. 02:36PM
**A. But Charleston does have salaried employees 02:36PM that may have similar job responsibilities. 02:36PM**
Q. But do you know of any? Can you name me one 02:36PM as we sit here? You are saying it might exist, but you 02:36PM don't know. Is that fair? 02:36PM
**A. There is a finance group in Charleston, 02:36PM right. 02:36PM**
Q. Okay, finance group. You agree with me 02:36PM finance groups don't turn wrenches, right? 02:36PM
**A. Right, but you said all positions. I am just 02:36PM qualifying it. 02:36PM**
Q. Okay, that's fair. There is a finance group 02:36PM in Charleston? 02:36PM
**A. Right. There are sales people in Charl -- 02:36PM you know. 02:36PM**
Q. As far as who their employees are -- excuse 02:36PM me, as far as who their employers are for the finance 02:36PM people and sales people in Charleston at the mill, you 02:36PM don't know as we sit here today, fair? 02:36PM
**A. Could you say that again, please. 02:36PM**
Q. Sure. You mentioned two departments, finance 02:36PM

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department and sales department, okay. We are together 02:37PM so far? 02:37PM
**A. I mentioned two, but there are salaried 02:37PM groups in Charleston. 02:37PM**
Q. And I hear you. All I am trying to figure 02:37PM out is of the two you mentioned, all I want to know is 02:37PM this. Of the two you mentioned, the finance department 02:37PM or the sales department, as far as who those individuals 02:37PM are, their names is what I mean and the names of their 02:37PM employers at the Charleston mill location, you don't 02:37PM know as we sit here today, fair? 02:37PM
MR. WILLIS: Objection to the form. 02:37PM
MR. FINDLEY: You either have that information or 02:37PM are you don't. 02:37PM
**A. Can I name a person in finance, is that the 02:37PM question? 02:37PM**
Q. Sure. Name it? 02:37PM
**A. Yes, I can name. 02:37PM**
Q. Who? 02:37PM
**A. Cassandra Mallory is the controller. 02:37PM**
Q. Okay, who does she work for. Who is her 02:37PM employer or do you know? 02:37PM
**A. I don't know for her. 02:37PM**
Q. Okay. Of the finance or sales groups that 02:37PM

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you mentioned at the North Charleston mill, can you name 02:37PM
an individual and state for certain who their employer 02:38PM
is as we sit here today? 02:38PM
**A. I don't understand the question. I'm sorry. 02:38PM**
Q. Okay. Well, let's do it this way. KapStone 02:38PM
Kraft Paper Corporation, you mentioned they might have 02:38PM
employees at the Charleston mill or at Roanoke, correct? 02:38PM
**A. Right. 02:38PM**
Q. Okay. And those positions would be 02:38PM
management or IT, correct? 02:38PM
**A. Kapstone Kraft at Charleston would be. 02:38PM**
Q. Okay. 02:38PM
**A. Kapstone employees at Roanoke could be 02:38PM anybody. 02:38PM**
Q. Okay. Fair enough. I am just going through 02:38PM
to get a recap of what we talked about. Kapstone 02:38PM
Charleston Kraft LLC where my employer worked, those 02:38PM
individuals with that employer would work at the North 02:38PM
Charleston mill, correct? 02:39PM
**A. Yes. 02:39PM**
Q. They would have positions other than 02:39PM
management and IT. It could be things like mechanic 02:39PM
like my client was, right? 02:39PM
**A. Yes. 02:39PM**

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Q. The actual boots on the ground, turning the 02:39PM
wrenches in the field, correct? 02:39PM
**A. Correct. 02:39PM**
Q. KapStone Paper and Packaging Corporation is a 02:39PM
different entity, it's your employer, correct? 02:39PM
**A. Correct. 02:39PM**
Q. Okay. And your employer would have under 200 02:39PM
people that it employs, correct? 02:39PM
**A. I would like to confirm that, but yes. 02:39PM**
Q. Give or take a few, right? 02:39PM
**A. Yes. 02:39PM**
Q. And of those 200 give or take that your 02:39PM
employer employs including yourself, none of those job 02:39PM
duties or descriptions would include turning wrenches or 02:39PM
doing maintenance inside a plant, fair? 02:39PM
**A. I believe so, yes. 02:39PM**
Q. Okay. And that's all I am getting at, as far 02:40PM
as my client's employer and his job descriptions they 02:40PM
would be different than say your employers which is 02:40PM
KapStone Paper and Packaging Corporation, fair? 02:40PM
**A. Fair. 02:40PM**
Q. And they would also be different than 02:40PM
KapStone Kraft Paper Corporation, correct? 02:40PM
**A. Not necessarily. 02:40PM**

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Q. Okay. Well, I thought they were limited to 02:40PM
IT and managers? 02:40PM
**A. KapStone Kraft employees Roanoke Rapids Mill 02:40PM so I would assume, I believe that there are similar 02:40PM roles in both mills. 02:40PM**
Q. Okay, but in order to be employed by KapStone 02:40PM
Kraft, okay, Paper Corporation -- 02:40PM
**A. Yes. 02:40PM**
Q. -- it would be a job description such as 02:40PM
management or IT, correct? 02:40PM
**A. No. 02:40PM**
Q. It would not? 02:40PM
**A. No. 02:40PM**
Q. Okay, it could be anything? 02:40PM
**A. At Roanoke Rapids, it's a separate mill 02:40PM employed by KapStone Kraft. So they would have very 02:40PM similar, I believe they have potentially very similar 02:41PM roles. 02:41PM**
Q. Okay. 02:41PM
**A. The ones we were talking about in Charleston 02:41PM -- 02:41PM**
MR. WILLIS: Finish your answer. 02:41PM
**A. Are managers that span the mill as we 02:41PM described them. 02:41PM**

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BY MR. FINDLEY: 02:41PM
Q. Fair enough. The ones who would be at the 02:41PM
Charleston mill would have different job requirements, 02:41PM
is that what you are saying? 02:41PM
**A. I believe so, yes. 02:41PM**
Q. Okay. All right. Now there are various 02:41PM
subcontractors that might be employed by other entities 02:41PM
that the Charleston mill brings in from time to time to 02:41PM
do work. Are you familiar with that at all? 02:41PM
**A. I am not. 02:41PM**
Q. Okay. Do you know if that happens? I mean 02:41PM
I'm sure you have seen a purchase order before in the 02:42PM
past where a purchase order was issued for another 02:42PM
company to perform some task at the North Charleston 02:42PM
mill? 02:42PM
**A. I believe so. 02:42PM**
Q. Okay. Now as far as who actually deals with 02:42PM
setting up or entering into a contract with that person 02:42PM
or that entity, do you know who that would be at North 02:42PM
Charleston? 02:42PM
**A. I do not. 02:42PM**
Q. Okay. But it's fair to say it's not 02:42PM
something that you have knowledge of that you can 02:42PM
testify to hear today, fair? 02:42PM

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A. **Fair.** **02:42PM**
Q. All right. So let's go -- as far as W2s are 02:43PM
concerned, we talked about the different legal entities 02:43PM
between Kapstone Kraft Paper Corporation, Kapstone 02:43PM
Charleston Kraft LLC, and then your employer, Kapstone 02:43PM
Paper and Packaging Corporation. Are we on the same 02:43PM
page with those three entities so far? 02:43PM
A. **Yes.** **02:43PM**
Q. Each one of them has a different federal tax 02:43PM
I.D. number, correct? 02:43PM
A. **Correct.** **02:43PM**
Q. Each one of them issue separate W2s or 02:43PM
separate checks with their names on it, correct? 02:43PM
A. **Correct.** **02:43PM**
Q. As far as we were talking about I don't know 02:44PM
what exhibit this is on yours, but let me -- Exhibit 11, 02:44PM
okay. If we look at this document, we already talked 02:44PM
about Ester Wilkins, the employment coordinator. We see 02:44PM
Kapstone Charleston Kraft LLC at the top. Do you see 02:44PM
that? 02:44PM
A. **I do.** **02:44PM**
Q. Okay. And it's got a location in Charleston, 02:44PM
South Carolina. What I want to ask you about is 02:44PM
employment. When someone is hired such as this, there 02:44PM

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is an employment file I assume? 02:44PM
A. **I can't speak to HR.** **02:44PM**
Q. Okay. Fair enough. Well, if there was an 02:44PM
employment file, okay, that would be something that 02:44PM
would be at the Charleston location? Like I will give 02:45PM
you an example. Jacque Lucas, he was hired. He is at 02:45PM
Kapstone Charleston Kraft LLC. If he had an employment 02:45PM
file with, you know, reprimands, recommendations, 02:45PM
promotions, things of that sort, it would be a file 02:45PM
that's maintained at the mill location, correct? 02:45PM
MR. WILLIS: Objection to form. 02:45PM
A. **I can't speak to what they do locally. I can** **02:45PM**
**speak to our interest in automating much of this** **02:45PM**
**process.** **02:45PM**
Q. Okay. And I understand y'all have a newer 02:45PM
interest in automating the process. Okay. What I want 02:45PM
to talk to you about is let's talk about in 2010 when he 02:45PM
was hired, you were at KapStone Paper and Packaging 02:45PM
Corporation here in Chicago, correct? 02:45PM
A. **Correct.** **02:45PM**
Q. Okay. In 2010 as far as your understanding 02:45PM
if there was employment files, okay, that were 02:45PM
maintained, it would be locally at the Charleston mill, 02:46PM
not here, correct? 02:46PM

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MR. WILLIS: Objection to form. 02:46PM
MR. FINDLEY: Let me ask it a better way. I want 02:46PM
to get his employment file. Have you ever seen it? 02:46PM
A. **I have not.** **02:46PM**
Q. Okay. 02:46PM
MR. WILLIS: You have it. 02:46PM
MR. FINDLEY: Dick, Dick, please leave your 02:46PM
objections to whatever. 02:46PM
MR. WILLIS: Well, I object to the question 02:46PM
because it's misleading when you know you have got the 02:46PM
file sitting right there in that notebook. 02:46PM
MR. FINDLEY: I mean do you have to give speaking 02:46PM
objections? 02:46PM
MR. WILLIS: Yes, because that's a misleading 02:46PM
question. You know you have got it. 02:46PM
MR. FINDLEY: No, I don't. 02:46PM
MR. WILLIS: I will show it to you. 02:46PM
MR. FINDLEY: Dick, leave your objection to form. 02:46PM
MR. WILLIS: Ask her fair questions. 02:46PM
MR. FINDLEY: This is a fair question. 02:46PM
MR. WILLIS: No, it's not. 02:46PM
BY MR. FINDLEY: 02:46PM
Q. Have you seen his employment file? 02:46PM
A. **Yesterday in the book.** **02:46PM**

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Q. Okay, do you know if that contains everything 02:46PM
within his employment file? 02:46PM
A. **I do not.** **02:46PM**
Q. Okay. All you are saying is you saw some 02:46PM
documents that your lawyer sitting at this table handed 02:46PM
you for the first time March 2, 2018, correct? 02:46PM
MR. WILLIS: Objection to form. 02:46PM
A. **Correct.** **02:46PM**
Q. If I wanted to look to see if I had his 02:46PM
entire employment file, that's not something you could 02:47PM
tell me the answer to, correct? 02:47PM
MR. WILLIS: Objection to form. 02:47PM
A. **Correct.** **02:47PM**
Q. If I wanted to know where his entire 02:47PM
employment file was located based on your experience of 02:47PM
working there since 2008, would you say that it would be 02:47PM
at the Charleston mill location? 02:47PM
A. **I believe so, yes.** **02:47PM**
Q. Okay. And based on your experience of 02:47PM
working here for Kapstone Paper and Packaging 02:47PM
Corporation, employment files for all the various 02:47PM
entities over the United States are not located here, 02:47PM
correct? 02:47PM
MR. WILLIS: Objection to form. 02:47PM

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A. **I do not believe so.** **02:47PM**
Q. Okay. Just like Belgium wouldn't be located 02:47PM
here, it doesn't make any sense, right? 02:47PM
MR. WILLIS: Objection to the form of the 02:47PM
question. 02:47PM
A. **I don't know about Belgium.** **02:47PM**
MR. FINDLEY: Okay. Well, you would agree with me 02:47PM
it doesn't make any sense to locate them all here, 02:47PM
right, based on your understanding? 02:47PM
A. **I am waiting for my objection.** **02:48PM**
MR. WILLIS: No, I am not going to object to it. 02:48PM
Go ahead and answer. 02:48PM
A. **I am not making light. I don't know where they keep that.** **02:48PM** **02:48PM**
Q. Okay, fair enough. You haven't seen it in 02:48PM
relation to your role or any of your work located here 02:48PM
at KapStone Paper and Packaging Corporation in your work 02:48PM
from 2008 to the present, have never seen an employment 02:48PM
file storage for Kapstone Charleston Kraft LLC here in 02:48PM
Chicago, is that fair? 02:48PM
A. **Yes.** **02:48PM**
Q. Are you aware of the October 2016 alleged 02:49PM
violation from the Department of Health and 02:49PM
Environmental Control on Kapstone Charleston Kraft LLC? 02:49PM

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MR. WILLIS: Objection, beyond the scope of the 02:49PM
deposition. Goes to the merits of the case. 02:49PM
MR. FINDLEY: No, it doesn't. It has nothing to 02:49PM
do with the merits. It's about a department of a health 02:49PM
environmental violation that was issued directly to 02:49PM
Kapstone Charleston Kraft LLC. 02:49PM
Q. Are you familiar with that? 02:49PM
A. **I am not.** **02:49PM**
Q. Okay. The reason why I ask you that, is when 02:49PM
a plant receives a violation from the Department of 02:49PM
Health, the person that receives the violation would be 02:49PM
the entity where the plant is located, correct? 02:49PM
A. **I don't know.** **02:50PM**
Q. Okay. Have you ever reviewed a violation 02:50PM
made directly to KapStone Paper and Packaging 02:50PM
Corporation? 02:50PM
A. **What type of violation?** **02:50PM**
Q. Well, let's just go with this one. 02:50PM
Department of Health and Environmental Control for 02:50PM
emissions? 02:50PM
A. **Could you please repeat?** **02:50PM**
Q. Sure. Are you familiar with their being 02:50PM
environmental emissions that can violate industry 02:50PM
standards? 02:50PM

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A. **I am.** **02:50PM**
Q. Okay. And I'm sure from being in accounts 02:50PM
payable you have paid fines before, correct? 02:50PM
A. **I believe so.** **02:50PM**
Q. Okay. And when you pay a fine you need to 02:50PM
see who the fine was issued to, right? 02:50PM
A. **Correct.** **02:50PM**
Q. Okay. And you have seen fines that are 02:50PM
issued to Kapstone Charleston Kraft LLC, correct? 02:50PM
A. **I have not seen them myself.** **02:50PM**
Q. Well, you know they exist, right? 02:50PM
A. **Right.** **02:51PM**
Q. Okay. Have you ever seen a fine from any 02:51PM
government industry or government authority issued 02:51PM
directly to Kapstone Paper and Packaging Corporation? 02:51PM
A. **I have not.** **02:51PM**
Q. Have you ever heard of that? 02:51PM
A. **I have not.** **02:51PM**
Q. Okay. What you have heard of is the separate 02:51PM
legal entities receiving violations before, correct? 02:51PM
A. **Correct.** **02:51PM**
Q. You are familiar with the Department of 02:51PM
Labor? 02:51PM
A. **How do you define familiar?** **02:51PM**

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Q. Do you know who they are? 02:52PM
A. **I do.** **02:52PM**
Q. Okay. I assume have you in your role have 02:52PM
you had any communications with the Department of Labor? 02:52PM
A. **I have not.** **02:52PM**
Q. Okay. Not everybody receives the benefit 02:52PM
pension plan, correct? 02:52PM
A. **Define benefit. No.** **02:52PM**
Q. Okay. 02:52PM
A. **Define benefit. No, not everybody.** **02:52PM**
Q. Not everybody receives it and what I mean by 02:52PM
that is there are employees of Kapstone Charleston Kraft 02:52PM
LLC that do not receive the defined benefit plan, 02:52PM
correct? 02:52PM
A. **I can't speak to the detail.** **02:52PM**
Q. Less than 40 percent of what has been 02:52PM
classified in your mind as Kapstone when we talk about 02:52PM
all Kapstone entities, less than 40 percent of them 02:52PM
receive defined benefit plans, isn't that right? 02:52PM
A. **I don't know the percentage.** **02:52PM**
Q. Okay. You know it's not a hundred, right? 02:52PM
A. **Correct.** **02:52PM**
Q. You know it's less than half, don't you? 02:52PM
A. **I don't know.** **02:53PM**

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Q. As far as who enters into the receivable purchase agreements, do you have any knowledge regarding that? 02:53PM

**A. I do.** **02:53PM**

Q. Okay. So you are also familiar with lines of credit, correct? 02:53PM

**A. Yes.** **02:53PM**

Q. Well, let me back up for a second. There was also a defined 401K contribution plan, correct? 02:53PM

**A. There is, yes.** **02:53PM**

MR. WILLIS: Objection to the form. 02:53PM

MR. FINDLEY: And that was suspended in 2016, wasn't it? 02:53PM

**A. I would have to confirm the date.** **02:53PM**

Q. You know it was suspended at one point, right? 02:53PM

**A. Yes.** **02:53PM**

Q. Okay. If the documents reflect it was not in existence at the time of this incident, do you have any information to dispute that? 02:53PM

**A. I don't.** **02:53PM**

Q. Let's talk about credit, lines of credit. Does Kapstone Charleston Kraft, LLC, are you familiar with their lines of credit? 02:54PM

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MR. WILLIS: Objection to the form. 02:54PM

**A. I do not believe they have one.** **02:54PM**

Q. What did you do to find that out? 02:54PM

**A. I worked in that area before.** **02:54PM**

Q. What area? 02:54PM

**A. Treasury.** **02:54PM**

Q. Okay. You worked in the treasury when, 2008? 02:54PM

**A. To 2014.** **02:54PM**

Q. Okay. In 2008 to 2014 you are saying Kapstone Charleston Kraft LLC did not have its own line of credit? 02:54PM

**A. It had letters of credit potentially which is different for me.** **02:54PM**

Q. Okay. Had letters of credit issued in its name, correct? Yes? 02:54PM

**A. At the time of acquisition, yes.** **02:54PM**

Q. Okay. And as far as what transpired from 2014 to 2018 as far as we sit here today, you do not know what lines of credit or letters of credit? 02:55PM

**A. Letters of credit.** **02:55PM**

Q. Issue there is for Kapstone Charleston Kraft LLC, correct? 02:55PM

MR. WILLIS: Objection to form. 02:55PM

**A. I do not.** **02:55PM**

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Q. Okay, you are not current. 02:55PM

Are you familiar with the filings in the South Carolina Secretary of State? 02:55PM

**A. I am not.** **02:55PM**

Q. Do you have any idea why your employer, KapStone Paper and Packaging Corporation, forfeited its existence in 2015 with the Secretary of State in South Carolina? 02:55PM

MR. WILLIS: Objection to form. 02:55PM

**A. I don't.** **02:55PM**

MR. FINDLEY: All right. Now I am going to mark as Exhibit No. 14. 02:55PM

(Plaintiff's Exhibit No. 14 was marked for identification.) 02:55PM

BY MR. FINDLEY: 02:55PM

Q. This is your employer, correct, KapStone Paper and Packaging Corporation? 02:55PM

**A. Yes.** **02:56PM**

Q. Okay. And it says dissolved date June 16, 2015, do you see that on the right side? 02:56PM

**A. Yes.** **02:56PM**

Q. At least according to the Secretary of State based on this document your employer is not registered to do business in the State of South Carolina, fair? 02:56PM

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MR. WILLIS: Objection to form. 02:56PM

**A. I am not familiar with the form, but I believe so.** **02:56PM**

MR. FINDLEY: It says what it says, right? 02:56PM

**A. Yes. Yes.** **02:56PM**

Q. And based on your knowledge of what this document says, is they are not registered to do business there, correct? 02:56PM

MR. WILLIS: Objection to the form of the question. Yeah, let me take a break and talk to her about this. 02:56PM

MR. FINDLEY: No. You can answer the question. 02:56PM

MR. WILLIS: No. This is a new document. You didn't identify it. 02:56PM

MR. FINDLEY: It's a public record. 02:56PM

MR. WILLIS: It doesn't matter. 02:56PM

BY MR. FINDLEY: 02:56PM

Q. I mean, can you answer the question, please, Ma'am? 02:56PM

MR. WILLIS: No. We are going to take a break and have a talk about it. 02:56PM

MR. FINDLEY: Are you instructing her not to answer, Dick? Really. 02:57PM

MR. WILLIS: Yes.

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MR. FINDLEY: You are going to do your eighth violation of Rule 30? 02:57PM
MR. WILLIS: No, I am not violating anything. You have showed up with a new document that you didn't identify. 02:57PM
MR. FINDLEY: This isn't a new document. 02:57PM
MR. WILLIS: Listen -- 02:57PM
MR. FINDLEY: Hold on. 02:57PM
MR. WILLIS: I will let you finish what you are saying and then you let me finish what I am saying. 02:57PM
MR. FINDLEY: Dick, I have given you enough leeway on your speaking objections. This document I am not required to identify. 02:57PM
MR. WILLIS: Yes, you are. 02:57PM
MR. FINDLEY: It's a public record that I pulled this morning. When. Why am I required to identify it? 02:57PM
MR. WILLIS: Let's send the witness out of the room. 02:57PM
BY MR. FINDLEY: 02:57PM
Q. No. No. I want an answer to my question. My question is based on the document you have before you, okay, and I know you said you need additional knowledge, but based on what you have before you, the Secretary of State records, it doesn't appear your 02:57PM

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employer is authorized to do business in South Carolina, right? 02:57PM
MR. WILLIS: Objection. Beyond the scope of the 30(b)6 designation. I am entitled to talk to her about this document. 02:57PM
If you can answer the question, go ahead. But I am entitled to talk to her about it, before you question her. 02:58PM
BY MR. FINDLEY: 02:58PM
Q. Okay. Can you answer the question, Ma'am? 02:58PM
**A. I think I should wait. 02:58PM**
Q. Well, I don't think you should wait because -- let me do something better for you, okay? 02:58PM
MR. WILLIS: All right, she has answered your question. 02:58PM
MR. FINDLEY: No. No. 02:58PM
MR. WILLIS: She said she can't answer it. Now, we can take a break and we can talk about it. 02:58PM
MR. FINDLEY: I have got a different question then. 02:58PM
MR. WILLIS: You will withdraw the question, right? 02:58PM
MR. FINDLEY: No, I am not withdrawing anything, Dick. 02:58PM

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MR. WILLIS: All right. Well, we are going to take a break and talk about it. 02:58PM
MR. FINDLEY: No. Hold on. 02:58PM
MR. WILLIS: Ms. Hulseman, come with me, please. 02:58PM
MR. FINDLEY: Leave the record running. Leave the deposition video running. This is obstruction of all testimony. 02:58PM
MR. WILLIS: No, it's not. 02:58PM
MR. FINDLEY: Yes, it is. I have a different question for her. You are interrupting my deposition. You have done it several times. So let me read something for the witness. 02:58PM
MR. WILLIS: No. I am entitled -- 02:58PM
MR. FINDLEY: Dick, be quiet. 02:58PM
MR. WILLIS: No. 02:58PM
MR. FINDLEY: I have had it, Man. 02:58PM
MR. WILLIS: Alright, then stop the deposition. 02:58PM
MR. FINDLEY: Shut the deposition down. This is obnoxious. Leave the video running. Go talk to your lawyer and when you come back we are going to ask you everything he told you. So go ahead, Dick. Leave the video rolling. You have obstructed this deposition no less than 15 times. It has gotten obnoxious, Dick. 02:58PM 02:58PM 02:59PM 02:59PM 02:59PM
MR. WILLIS: I am not going to stand here and get 02:59PM

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yelled at by you, Kyle. And I am entitled to talk to her -- 02:59PM
MR. FINDLEY: Well, go talk to her. 02:59PM
MR. WILLIS: -- about a document that you haven't identified prior to the deposition, sir. 02:59PM
MR. FINDLEY: Identified in relation to what? Did you make a request to me? 02:59PM
MR. WILLIS: Rule 30. That is what is required. 02:59PM
MR. FINDLEY: Okay, let's read. Go ahead. 02:59PM
MR. WILLIS: There it is. I have got a copy of it. 02:59PM
MR. FINDLEY: I have got Rule 30, that's what I want to read to your witness. 02:59PM
MR. WILLIS: Come with me. 02:59PM
(Mr. Willis, Ms. Seltzer and the deponent exited the room.) 02:59PM
(Mr. Willis re-entered the room.) 02:59PM
MR. FINDLEY: Well, let the record reflect this is the eighth violation of Rule 30 which we will read for her. 02:59PM
MR. WILLIS: You are the one violating Rule 30. 02:59PM
MR. FINDLEY: How is that? Why don't you read it, Dick. 02:59PM
MR. WILLIS: "Counsel shall not make objections or 02:59PM

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statements which suggests an answer. Counsel's objection shall be stated concisely in nonargumentative nonsuggestive manner stating the basis. Counsel and witness shall not engage in private off-the-record conferences during depositions or during breaks or recesses regarding substance of the testimony except for the purpose of deciding whether to assert a privilege." 02:59PM 02:59PM 03:00PM 03:00PM 03:00PM 03:00PM

I mean you can read it out loud. Go down to eight. "Deposing counsel," that's you, "shall provide to opposing counsel," that's me, "a copy of all documents shown to the witness during the deposition." 03:00PM 03:00PM 03:00PM 03:00PM

MR. FINDLEY: I did provide you a copy. 03:00PM

MR. WILLIS: Keep reading, sir. "Either before the deposition begins or contemporaneously with the showing of each document to the witness." Keep reading, Kyle. "If the documents are provided or otherwise identified at least two business days before the deposition, then the witness and the witness' counsel do not have the right to discuss the documents privately before the witness answers questions about them. If the documents have not been so provided or identified, then counsel and the witness may have a reasonable amount of time to privately discuss the documents before the witness answers questions concerning the documents." 03:00PM 03:00PM 03:00PM 03:00PM 03:00PM 03:00PM 03:00PM 03:00PM 03:00PM 03:00PM 03:00PM 03:00PM 03:00PM 03:00PM 03:00PM 03:00PM 03:00PM 03:00PM 03:00PM 03:00PM 03:00PM 03:00PM 03:00PM 03:01PM

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MR. FINDLEY: Okay. 03:01PM

MR. WILLIS: You have shown her a document which she hadn't seen before that we didn't produce and you didn't identify, I am entitled to talk to her about it. 03:01PM 03:01PM 03:01PM

MR. FINDLEY: Dick, I have asked you for these documents. I have asked you for every single -- 03:01PM 03:01PM

MR. WILLIS: You did ask me for that document? 03:01PM

MR. FINDLEY: Hold on, let me finish. You have just gave your long nonwinded nonsense. 03:01PM 03:01PM

MR. WILLIS: Go ahead. It's not nonsense. 03:01PM

MR. FINDLEY: Listen, hold on. God, Lord. You can't help yourself. 03:01PM 03:01PM

MR. WILLIS: You don't quit. 03:01PM

MR. FINDLEY: You can't help yourself, can you. 03:01PM

MR. WILLIS: I have not insulted you a single time. I haven't said nonsense. I haven't insulted you in any way. I have been completely professional and you haven't been, Kyle. 03:01PM 03:01PM 03:01PM 03:01PM 03:01PM 03:01PM

MR. FINDLEY: Dick, this is insanity. The discovery games that you have played since this case has started is obnoxious. 03:01PM 03:01PM 03:01PM

MR. WILLIS: Your story is overbroad. 03:01PM

MR. FINDLEY: Hold on. Good Lord. I let you speak for know less than ten minutes. Stop interrupting 03:01PM 03:01PM 03:01PM

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me, okay. So, for the record, let's reflect. I have asked you for all SEC filings. You have not produced them. I have asked you for filings with the Secretary of State. You have not produced them. In fact, you have not produced a single document that covers 2016. The discovery games have gotten obnoxious while one lawyer is outside coaching the witness, the other one is in here making baseless speaking objections. You have done it 17 times during this deposition. I will count them up. The record will speak what the record speaks. You have played nothing but discovery games since this started this time last year, 12 months ago. It's obnoxious. To say that you are playing above board is a shock. You can go talk to your witness now. 03:01PM 03:01PM 03:01PM 03:01PM 03:01PM 03:02PM 03:02PM 03:02PM 03:02PM 03:02PM 03:02PM 03:02PM 03:02PM 03:02PM

Leave the record running, please. 03:02PM

MR. DUCAYET: All right, I am going to stay in here just to make sure nothing gets put on. 03:02PM 03:02PM

(Mr. Willis exited the room.) 03:02PM

(Mr. Willis, Ms. Seltzer, and the deponent re-entered the room.) 03:02PM 03:04PM

MR. WILLIS: All right, back on the record. 03:04PM

MR. FINDLEY: We have been on the record. 03:04PM

MR. WILLIS: Back in the room. 03:04PM

MR. FINDLEY: Back in the room. Got it. 03:04PM

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Q. Ma'am, while you were out in the hallway we kept the video rolling, so please look into the camera and tell the ladies and the gentlemen of the jury or the judge what it is you were out there talking about? 03:04PM 03:04PM 03:04PM 03:04PM

**A. Initially I asked Wendy if this is how all depositions go and she said no. And I sat down until Dick came out and asked if I knew anything about this form or could speak to it. 03:04PM 03:04PM 03:04PM 03:04PM**

BY MR. FINDLEY: 03:04PM

Q. Okay, and what was your answer? 03:04PM

**A. I have not seen it before and it's outside of my scope. 03:05PM 03:05PM**

Q. Okay, outside of what scope? 03:05PM

**A. I don't do filings. 03:05PM**

Q. Okay. And you know that you were designated and right before this deposition started your counsel told us and made representations that you were allowed to speak to business organization related to Kapstone Paper and Packaging, that it was part of your scope. Are you saying different? 03:05PM 03:05PM 03:05PM 03:05PM 03:05PM 03:05PM

**A. I have never seen this form before or filed it. 03:05PM 03:05PM**

Q. Okay. All I am asking you is very simple. Are you saying your scope is different than what I just 03:05PM 03:05PM

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told you your lawyer represented? 03:05PM
MR. WILLIS: Objection, form. 03:05PM
**A. I don't know how to answer that. 03:05PM**
Q. Okay. Ma'am, I am using your words. You 03:05PM said it was outside of your scope, okay. I don't know 03:05PM what that means. Explain it to me? 03:05PM
**A. I haven't filed something like this. I am 03:06PM not familiar with the form. 03:06PM**
Q. Okay. And when you were designated to 03:06PM testify, okay, there was some talk about what your scope 03:06PM of testimony is. Your lawyer sat in here today right 03:06PM before this deposition started on the record and went 03:06PM through topics with me of what you would testify to. Do 03:06PM you understand that? 03:06PM
**A. Yes. 03:06PM**
Q. Okay. And I understand you met with Dick 03:06PM Willis yesterday, correct? 03:06PM
**A. Yes. 03:06PM**
Q. And you discussed the testimony you would be 03:06PM giving today, correct? 03:06PM
MR. WILLIS: Object to the form of the question. 03:06PM
**A. It changed from the full scope to, well, the 03:06PM full list of questions to what I was comfortable with. 03:06PM**
Q. Okay. So the attorneys tried to have you 03:06PM

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testify to more topics than you were comfortable with 03:06PM and you informed them of that yesterday for the first 03:06PM time? 03:06PM
MR. WILLIS: Objection to that question. That 03:06PM calls for a privilege response and so I direct her not 03:07PM to answer. 03:07PM
MR. FINDLEY: I will rephrase my question. 03:07PM
Q. As far as you have seen your deposition 03:07PM designation before, correct? We were originally 03:07PM scheduled to take this deposition in November, do you 03:07PM remember? 03:07PM
**A. Yes. 03:07PM**
Q. Okay. And at that time you had seen the same 03:07PM topics, right? 03:07PM
**A. Not, not the list, no. 03:07PM**
Q. They didn't show you Exhibit No. 1? 03:07PM
**A. No. 03:07PM**
Q. Okay. So just to be clear about how this 03:07PM transpired is we issued a notice for deposition. When 03:07PM was the first time you saw it? 03:07PM
**A. Friday. 03:07PM**
Q. Okay. March 2nd was the first time you saw 03:07PM our notice for deposition? 03:07PM
**A. No, the first time I saw the list. 03:07PM**

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Q. March 2, 2018? 03:07PM
**A. Yes. 03:07PM**
Q. Okay. Before March 2, 2018 had anyone shown 03:07PM you these topics that you were designated to testify on? 03:07PM
**A. The list, no. 03:08PM**
Q. Okay. So what I am going to hand you is 03:08PM what's been marked as Exhibit No. 1. And there are 03:08PM various objections -- 03:08PM
**A. Oh, wait, I did see the objections. 03:08PM**
Q. Okay. You saw that on March 2nd, right? 03:08PM
**A. No. 03:08PM**
Q. Okay, you saw them prior to that? 03:08PM
**A. Right. Well, no, no, no, no, no, I am 03:08PM confused. I am confused. It's the other thing. 03:08PM**
Q. Okay. 03:08PM
**A. What is that other thing called? 03:08PM**
Q. Deposition notice? 03:08PM
**A. No, no, the one with Poch or whatever. 03:08PM**
Q. Oh, the Poch factors? 03:08PM
**A. Yes. 03:08PM**
Q. Okay. 03:08PM
**A. I saw that and my affidavit were together 03:08PM recently. 03:08PM**
Q. Okay, the Poch factors and your affidavit 03:08PM

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came together recently on March 2, 2018? 03:08PM
**A. No, in an e-mail prior. 03:09PM**
Q. Okay, in the an e-mail you received the Poch 03:09PM factors? 03:09PM
MR. WILLIS: Objection to the form of the 03:09PM question. 03:09PM
**A. I believe so. I need to check. 03:09PM**
Q. Okay. And what is your understanding of what 03:09PM the Poch factors are? 03:09PM
**A. It's precedence setting case related to 03:09PM worker's compensation. 03:09PM**
Q. Okay. The Poch factors is a way for KapStone 03:09PM Kraft Paper and Packaging Corporation to avoid 03:09PM responsibility for the burns to my clients, correct? 03:09PM
MR. WILLIS: Objection to the form. 03:09PM
MR. FINDLEY: Is that your understanding? 03:09PM
MR. WILLIS: Objection to the form of the 03:09PM question. 03:09PM
MR. FINDLEY: Okay, what is it? What are the Poch 03:09PM factors? 03:09PM
MR. WILLIS: Objection, asked and answered. 03:09PM
MR. FINDLEY: Clarification. You read the 03:09PM document, I didn't see it. What did it say? You 03:09PM received Poch factors. Was it a case? Was it typed out 03:09PM

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in a list? What was it? 03:09PM
MR. WILLIS: Do you recall? 03:09PM
**A. I don't recall. 03:09PM**
MR. FINDLEY: Dick, can you please stop coaching 03:09PM your witness. 03:10PM
MR. WILLIS: I am just asking if she recalls. 03:10PM Obviously she doesn't. 03:10PM
MR. FINDLEY: Dick, here is the problem, I ask the 03:10PM questions, you get to make objections. You have your 03:10PM rule book there, read Rule 30. 03:10PM
MR. WILLIS: Objection to the form of the 03:10PM question. 03:10PM
MR. FINDLEY: Okay, fair enough. 03:10PM
Q. Now, back to my question. You received a 03:10PM list of Poch factors? 03:10PM
MR. WILLIS: Object to the form of the question. 03:10PM
MR. FINDLEY: Is it in that binder, Exhibit 12? 03:10PM
**A. I don't know. 03:10PM**
Q. Take the binder out, let's look at it. 03:10PM
**A. You want me to go through the whole thing. 03:10PM**
Q. I haven't seen -- I was never produced any 03:10PM Poch factors that you reviewed and I understand it was a 03:10PM document that you reviewed, so do you have it? 03:10PM
MR. WILLIS: Let me ask the witness to step out. 03:10PM

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I don't want to coach her, but I think I can clear this 03:10PM up for you if you want to know the answer. 03:10PM
MR. FINDLEY: I want to know her answer, not your 03:10PM answer. 03:10PM
MR. WILLIS: All right. You are just wasting your 03:10PM time. 03:11PM
MR. FINDLEY: Dick, this deposition is going to be 03:11PM retaken. 03:11PM
Q. So let's go back. So what is your answer 03:11PM relating to the Poch factors? Is it contained in that 03:11PM notebook? 03:11PM
**A. I don't know and I would like to check the 03:11PM e-mail just to confirm if this is a big deal. I 03:11PM remember receiving two documents. 03:11PM**
Q. Okay. And what were those documents based on 03:11PM your recollection? 03:11PM
**A. I don't know. 03:11PM**
Q. Okay. Where did you learn the Poch factors? 03:11PM
**A. From whatever I read. I don't know when I 03:11PM read it. 03:11PM**
Q. Okay. So you read something about the Poch 03:11PM factors? 03:11PM
MR. DUCAYET: Dick, let's. 03:11PM
MR. WILLIS: Time out. Time out. She is getting 03:11PM

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upset and you are being a jackass, so. 03:11PM
MR. FINDLEY: Excuse me, a jackass. 03:11PM
MR. WILLIS: You are being a jerk to her. You are 03:11PM being rude to her. 03:11PM
MR. FINDLEY: A jackass. You are really out of 03:11PM the control, Dick. 03:11PM
MR. WILLIS: You're the one out of control, Kyle. 03:11PM
MR. FINDLEY: I've got the break, all right, keep 03:11PM the record running. 03:11PM
MR. DUCAYET: The record is going to show that you 03:11PM have now made the witness cry so let's stop. 03:11PM
MR. FINDLEY: I made the witness cry because I 03:11PM asked her about the Poch factors that you are trying to 03:11PM coach the witness on. This is silly. 03:11PM
MR. WILLIS: But you are browbeating her, Kyle. 03:11PM
MR. DUCAYET: Let's go. We are off the record. 03:11PM We are done. We are done. 03:11PM
MR. FINDLEY: You are calling the depo? 03:11PM
MR. DUCAYET: Yeah. We are done. 03:12PM
MR. FINDLEY: Mister not admitted in this case 03:12PM just called the depo. 03:12PM
MR. DUCAYET: I am not going to permit you to 03:12PM treat the witness like that. 03:12PM
MR. FINDLEY: This is insanity. 03:12PM

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MR. WILLIS: She read the brief. She is not a 03:12PM lawyer. She doesn't know it's a brief. She read the 03:12PM brief. 03:12PM
MR. FINDLEY: Dick, I asked her -- 03:12PM
MR. WILLIS: Why are you browbeating her about 03:12PM that? 03:12PM
MR. FINDLEY: What are you talking about? 03:12PM
MR. WILLIS: She read the brief. 03:12PM
MR. FINDLEY: Do you ever let someone else speak? 03:12PM
MR. WILLIS: I let you speak all the time. 03:12PM
MR. FINDLEY: I just asked her a very simple 03:12PM question, what is the paper you saw? What are the Poch 03:12PM factors? 03:12PM
MR. WILLIS: She doesn't know. 03:12PM
MR. FINDLEY: Because you have coached her so much 03:12PM and your Sidley Austin lawyers have coached her so much, 03:12PM she is scared to answer questions. 03:12PM
MR. WILLIS: I haven't coached her at all. I 03:12PM haven't coached her one bit. 03:12PM
MR. FINDLEY: It's obvious what's going on here. 03:12PM She is afraid to say the wrong thing. I don't know why 03:12PM she could not -- 03:12PM
MR. WILLIS: She doesn't know what a brief is 03:12PM because she is not a lawyer, so we sent her a copy of 03:12PM

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the brief. Listen, I am happy to sit here -- 03:12PM
MR. FINDLEY: I mean, I am entitled -- you think I 03:12PM
can't ask her? 03:12PM
MS. SELZTER: (Unclear statements.) 03:12PM
MR. WILLIS: I'm sorry, I can't hear you both at 03:12PM
the same time. 03:12PM
MR. FINDLEY: You don't think I am allowed to ask 03:12PM
her what the Poch factor list is? 03:13PM
MR. WILLIS: Yes. 03:13PM
MR. FINDLEY: Okay. And just because she cries 03:13PM
because she is terrified to violate what y'all have 03:13PM
given her. 03:13PM
MR. WILLIS: No, she is terrified of you because 03:13PM
you yell at her. 03:13PM
MR. FINDLEY: No, Dick, I am yelling at you 03:13PM
because I have never seen a lawyer perform so poorly. 03:13PM
MR. WILLIS: Oh, come on. 03:13PM
MR. FINDLEY: I really haven't. You have done it 03:13PM
through discovery through the get-go. 03:13PM
MR. WILLIS: I am not going to lose my cool with 03:13PM
you and I apologize for calling you a jackass, all 03:13PM
right. 03:13PM
MR. FINDLEY: It's the second time you have done 03:13PM
it. You did it after the hearing where you went before 03:13PM

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the court, misrepresented everything. 03:13PM
MR. WILLIS: You made her cry. You made a lady 03:13PM
cry. Way to go, Dude. 03:13PM
MR. FINDLEY: I didn't make anyone cry. 03:13PM
MR. WILLIS: I didn't make her cry. 03:13PM
MR. FINDLEY: No, here is what happened, Dick, 03:13PM
y'all have confused her so much on how to be honest that 03:13PM
she doesn't know what to say. 03:13PM
MR. WILLIS: This is a very honest witness. 03:13PM
MR. FINDLEY: The only one who is dishonest is you 03:13PM
and your cohorts sitting next to either other. 03:13PM
MR. WILLIS: No. No, absolutely not.
MR. FINDLEY: All right.
MR. WILLIS: Listen, we are not getting anywhere
doing this.
MR. FINDLEY: I am done talking to you. Let's
just leave it. The record can speak for itself. The 03:14PM
judge can watch the video and watch how many times this 03:14PM
has occurred. 03:14PM
THE VIDEOGRAPHER: Can we go off the record? 03:14PM
MR. FINDLEY: No, you can leave it on. 03:14PM
MR. WILLIS: I thought we are done. 03:14PM
MR. FINDLEY: I don't know. Are you letting an 03:14PM
attorney who is not enrolled in this case call the 03:14PM

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deposition? 03:14PM
MR. WILLIS: No. I am going to go talk to him. 03:14PM
Are we through? 03:14PM
MR. FINDLEY: I am waiting for the witness. 03:14PM
MR. WILLIS: All right. 03:14PM
(Mr. Willis exited the room.) 03:14PM
THE VIDEOGRAPHER: I need to change the tape. 03:14PM
Should I leave it on or -- 03:14PM
MR. FINDLEY: You can go ahead and change the 03:14PM
tape. 03:14PM
THE VIDEOGRAPHER: We are going off the record at 03:14PM
3:14 p.m. 03:14PM
(Off the record.) 03:25PM
THE VIDEOGRAPHER: We are back on record at the 03:25PM
beginning of tape three at 3:25 p.m. 03:26PM
BY MR. FINDLEY: 03:26PM
Q. And, Ma'am, we took a short break. Are you 03:26PM
ready to continue? 03:26PM
**A. I am.** **03:26PM**
Q. Okay. And I understand, well, during some of 03:26PM
these conversations and some of my questioning you are 03:26PM
getting pulled in a lot of directions with whether to 03:26PM
answer, not answer, instructions, things of that sort, 03:26PM
okay. Can we have an agreement moving forward that all 03:26PM

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I want to know is what you know, okay? 03:26PM
**A. Yes.** **03:26PM**
Q. Is that fair? 03:26PM
**A. Yes.** **03:26PM**
Q. And the only question I am asking you before 03:26PM
there was this interruption, okay, was you said you 03:26PM
looked at a Poch document that you received via e-mail 03:26PM
and I don't know what that was. Can you describe it for 03:26PM
us? 03:26PM
**A. It was a brief.** **03:26PM**
Q. Okay. And it was a brief. When you say 03:26PM
brief, brief written by attorneys I assume or purported 03:26PM
to be, what appeared to be a court filing? 03:26PM
**A. Yes.** **03:26PM**
Q. Okay. Now, other than that document are 03:26PM
there any other -- I mean did you read Poch's brief? 03:27PM
**A. I read the brief, yes.** **03:27PM**
Q. Okay. Was there another e-mail attached 03:27PM
giving a clear distinction of the factors within Poch? 03:27PM
**A. No.** **03:27PM**
Q. Okay. And what I am just trying to figure 03:27PM
out is you used the word Poch. And in my understanding 03:27PM
of the brief that was filed has the name Poch inside of 03:27PM
the brief. Its title does not say Poch, is that right? 03:27PM

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A. I don't know. 03:27PM
Q. Okay. Tell me about the document you 03:27PM
reviewed. What did it look like? Is it in exhibit -- 03:27PM
the binder? 03:27PM
A. I don't believe so. 03:27PM
Q. Okay, not contained in binder number 12, 03:27PM
fair? 03:27PM
A. I don't believe so. 03:27PM
Q. Okay. Now you do have an e-mail. When did 03:27PM
you receive this e-mail, March 2nd? 03:27PM
A. No. 03:27PM
Q. Before then? 03:27PM
A. Prior to March 2nd, yes. 03:27PM
Q. Do you have an idea when? 03:28PM
A. No. I believe I have it. I can check. 03:28PM
Q. Do you have the e-mail? 03:28PM
A. No, no, no, on my computer if you needed a 03:28PM
date. I don't have it with me and I don't know. 03:28PM
Q. Okay. Fair enough. You can get us that 03:28PM
e-mail? 03:28PM
A. I believe so, yes. 03:28PM
Q. And what I am trying to figure out is an 03:28PM
e-mail within the last say two weeks? 03:28PM
A. The e-mail is recent. I don't know if it's 03:28PM

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within the last two weeks. 03:28PM
Q. Okay. Certainly this year though? 03:28PM
A. Yes. 03:28PM
Q. Certainly within the last month? 03:28PM
A. Again, I prefer to check. 03:28PM
Q. And that's fair and I just want -- and I am 03:28PM
not going to hold you to this exact date if it's 35 days 03:28PM
or whether it's 24 days or whatever. All I am trying to 03:28PM
get a sense of we are sitting here on March 6th, was it 03:28PM
some time after January? 03:28PM
A. I believe so, yes. 03:28PM
Q. Who did you receive the e-mail from? 03:28PM
A. I believe from legal. 03:28PM
Q. And when you say legal, is that Dick Willis 03:28PM
who is sitting here? 03:29PM
A. No. 03:29PM
Q. Okay. It's a person within legal at KapStone 03:29PM
Paper and Packaging Corporation? 03:29PM
A. Yes. 03:29PM
Q. Okay. Does that person have a name? 03:29PM
A. I'm not sure if it was Wendy or Rebecca, the 03:29PM
paralegal. 03:29PM
Q. And Wendy who is sitting in this room? 03:29PM
A. Yes. 03:29PM

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Q. And Wendy sent you, it was either Wendy or 03:29PM
her paralegal who sent you the e-mail? 03:29PM
A. The paralegal, yes. 03:29PM
Q. The? 03:29PM
A. I'm not sure to whom she reports. 03:29PM
Q. Oh, okay. Fair enough. It was a paralegal 03:29PM
associated with her in-house department, right? 03:29PM
A. Yes. 03:29PM
Q. Not a paralegal at Dick Willis' office? 03:29PM
A. No. 03:29PM
Q. Okay. Now, as far as the Poch factors -- 03:29PM
well, as far as what was -- we talked about a document 03:29PM
that you were taken out in the hallway to look at. Do 03:30PM
you remember that document? 03:30PM
A. Yes. 03:30PM
Q. Okay. And what I want to know -- 03:30PM
MR. WILLIS: Did you mark that as an exhibit? 03:30PM
MR. FINDLEY: Yes. 14. 03:30PM
MR. WILLIS: Thank you. 03:30PM
BY MR. FINDLEY: 03:30PM
Q. What I want to know is this, you have -- 03:30PM
well, let's back up. On March 2nd -- I mean back up 03:30PM
totally. September of last year you issued an 03:30PM
affidavit, correct? 03:30PM

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A. Yes. 03:30PM
Q. Okay. And we are going to get to that in a 03:30PM
second. After that affidavit there was talk about 03:30PM
setting your deposition up some time in November or 03:30PM
December of 2017, are you familiar with that? 03:30PM
A. Yes. 03:30PM
Q. Okay. Your understanding is that deposition 03:30PM
was postponed, right? 03:30PM
A. Yes. 03:30PM
Q. And then when you found out about this 03:30PM
deposition taking place about a week ago? 03:30PM
A. It may have been longer. 03:30PM
MR. WILLIS: And again to the extent that 03:30PM
Mr. Findley is asking you about communications you had 03:30PM
with lawyers, that would be privileged and I would 03:30PM
direct you not to answer. But in terms of timing, I 03:31PM
have got no problem with that if you can respond. 03:31PM
BY MR. FINDLEY: 03:31PM
Q. All I am asking for is a time frame or when 03:31PM
you first became aware that you were going to give a 03:31PM
deposition here on March 6, 2018? 03:31PM
A. It was after, I mean in this current year. I 03:31PM
would like to check when that was. 03:31PM
Q. Okay. Fair enough. It was probably sometime 03:31PM

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before you received Exhibit No. 12? 03:31PM
**A. Yes. 03:31PM**
Q. Okay. Whether it was a week, two weeks, 03:31PM three weeks, you can't remember exactly, but somewhere 03:31PM reasonable time frame this year weeks before Exhibit 12? 03:31PM
**A. Yes. 03:31PM**
Q. Okay. As far as what you found out regarding 03:31PM that deposition, it was for scheduling purposes only? 03:31PM
**A. Yes. 03:31PM**
Q. Okay. When you received Exhibit 12 is the 03:31PM first time you started reviewing documents in 03:31PM preparation for your deposition, fair? 03:31PM
**A. Yes. 03:31PM**
Q. Okay. Yesterday you met with your attorneys? 03:31PM
**A. Yes. 03:31PM**
Q. Okay. And who all was at that meeting? 03:31PM
**A. The four of us. 03:32PM**
Q. Okay. You had three attorneys with you at a 03:32PM meeting regarding this deposition which took place 03:32PM yesterday? 03:32PM
**A. Yes. 03:32PM**
Q. Okay. And that meeting took place from the 03:32PM 9:30 in the morning till 5:00 p.m.? 03:32PM
**A. Roughly, yes. 03:32PM**

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Q. And you said during that time that there were 03:32PM some issues regarding the corporate representative 03:32PM topics that you didn't feel comfortable testifying to, 03:32PM correct? 03:32PM
MR. WILLIS: And again I would object to that on 03:32PM the grounds of privilege and direct her not to answer 03:32PM beyond what we have already talked about on the record. 03:32PM
BY MR. FINDLEY: 03:32PM
Q. All right, earlier you told me that you 03:32PM became aware that you were going to testify to topics 03:32PM and you informed or however you made it known there were 03:32PM certain topics that you could not cover. Is that a fair 03:32PM representation? 03:32PM
**A. Yes. I was not comfortable. 03:32PM**
Q. Fair enough. And that's what I am trying to 03:32PM get at. And you discovered that you were not 03:32PM comfortable talking about certain topics yesterday from 03:33PM 9:30 to 5:30 or at some point, correct? 03:33PM
**A. Yes. 03:33PM**
Q. Now, when this deposition started we went on 03:33PM the record before you walked in the room regarding some 03:33PM of those topics and it was represented that you would 03:33PM talk to and within your scope of testimony all, I will 03:33PM get it exactly, that you would be able to testify 03:33PM

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regarding all documents that refer, relate or represent 03:33PM the corporate structure of the defendant, okay, 03:33PM including any subsidiaries and ownership interest. What 03:33PM you are telling us now is you can't do that, right? 03:33PM
MR. WILLIS: Objection to the form of the 03:33PM question. 03:33PM
**A. I believe I said the same when we went 03:33PM through them, you know. 03:33PM**
BY MR. FINDLEY: 03:33PM
Q. No, I am not saying you said different, I am 03:33PM saying your lawyer said different. 03:34PM
MR. WILLIS: Object to the form of the question. 03:34PM
**A. I wasn't here. 03:34PM**
Q. Okay. And that's fine. What I am trying to 03:34PM figure out, is there any idea why your lawyer is saying 03:34PM you can cover things to testify that you are telling me 03:34PM that you can't? 03:34PM
MR. WILLIS: Objection to the form of the question 03:34PM and that would cover privilege, I would direct the 03:34PM witness not to answer. 03:34PM
BY MR. FINDLEY: 03:34PM
Q. I am not asking you about conversations with 03:34PM him. I am asking you if you have any information as to 03:34PM why it's being represented to me that you can testify to 03:34PM

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topics that you can't? 03:34PM
**A. I don't know. 03:34PM**
Q. Okay. What is your understanding of why you 03:34PM were forwarded the Poch factors? 03:34PM
**A. I don't know. 03:34PM**
Q. Okay. Did you understand it to have 03:34PM something -- you talked a little bit earlier that you 03:34PM understood based on reviewing the documents that the 03:34PM Poch factors dealt with something involving worker's 03:34PM compensation? 03:35PM
**A. Right. 03:35PM**
Q. Okay. Doesn't it deal with immunity for 03:35PM worker's compensation? 03:35PM
**A. My understanding, it's a case that supports 03:35PM worker's comp as sole remedy. 03:35PM**
Q. It's a case that supports my client not being 03:35PM able to recover from Kapstone, fair? 03:35PM
MR. WILLIS: Objection to the form of the 03:35PM question. 03:35PM
BY MR. FINDLEY: 03:35PM
Q. Is that your understanding? 03:35PM
**A. It has recovered under worker's comp. 03:35PM**
Q. Okay. And your understanding is the Poch 03:35PM factor stands for the premise that my client's sole 03:35PM

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recovery would be limited to worker's compensation, is that fair? 03:35PM

**A. My understanding of 30 years in insurance would say worker's comp is the sole remedy.** 03:35PM

Q. 30 years in insurance have shown you that? 03:35PM

**A. That's how we talk about worker's comp being sole remedy.** 03:35PM

Q. Well, why is the Poch factor case in 2013 if you have known about it for 30 years? 03:35PM

MR. WILLIS: Objection to the form of the question. 03:35PM

**A. I didn't say I knew about the Poch for 30 years.** 03:36PM

Q. Okay. Well that's what I am trying to figure out. The Poch case dealt with immunity, right? Is that what it deals with? 03:36PM

**A. I don't know.** 03:36PM

Q. Okay. So you said 30 years. 03:36PM

**A. I have been in insurance for a long time and worker's comp has always been sole remedy as my -- in my understanding.** 03:36PM

Q. Okay. For which companies? 03:36PM

**A. Solo Cup Company, Tap Pharmaceuticals and here.** 03:36PM

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Q. Did they have a different corporate structure or do you even know? 03:36PM

MR. WILLIS: Objection to form. 03:36PM

**A. I don't recall.** 03:36PM

BY MR. FINDLEY: 03:36PM

Q. Okay. As far as what factors the court considers as to whether or not KapStone Paper and Packaging Corporation is entitled to immunity, do you have any idea? 03:36PM

MR. WILLIS: Objection, beyond the scope and objection to form. 03:36PM

MR. FINDLEY: She is the one who said it's based on 30 years. What I am trying to figure out is what are you basing it off of. 03:36PM 03:37PM 03:37PM

Q. Do you have any knowledge regarding that? 03:37PM

**A. What is the question?** 03:37PM

MR. FINDLEY: Okay, read her the question again. 03:37PM

(Question read.) 03:37PM

**A. I don't understand the question.** 03:37PM

BY MR. FINDLEY: 03:37PM

Q. As far as what factors the courts consider when they determine whether or not worker's compensation is the exclusive remedy for my clients, do you have any idea of what they look at? 03:37PM 03:37PM 03:37PM

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**A. Right. The integrated business who pays the bills, that type of thing.** 03:37PM 03:37PM

Q. Okay. And why you know that is based on the briefing that you were provided? 03:37PM 03:38PM

**A. Why I know about Poch, yes.** 03:38PM

Q. Okay. And what I am trying to figure out is before you were given the briefing relating to Poch factors, you didn't know what those factors were, fair? 03:38PM 03:38PM 03:38PM

**A. Fair.** 03:38PM

Q. Okay. It wasn't like you had ever had someone else provide you with those factors as to what the courts considered prior to this lawsuit, correct? 03:38PM 03:38PM 03:38PM

**A. Correct.** 03:38PM

Q. So in the Poch factors that you were given, just so we are clear, those were in 2018, correct? 03:38PM 03:38PM

**A. Yes.** 03:38PM

Q. All right. Let's go to your affidavit. We know that you did not type out the words in this affidavit, fair? 03:38PM 03:38PM 03:39PM

**A. Yes.** 03:39PM

Q. Okay. We know that you did not pour through documents to formulate the paragraphs of this affidavit, correct? 03:39PM 03:39PM 03:39PM

**A. Correct.** 03:39PM

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Q. Okay. This affidavit was typed up by an attorney, correct? 03:39PM 03:39PM

MR. WILLIS: Objection to the form of the question. 03:39PM

BY MR. FINDLEY: 03:39PM

Q. Is that your understanding? 03:39PM

**A. Yes.** 03:39PM

Q. Do you know which attorney typed it up? 03:39PM

**A. I do not.** 03:39PM

Q. Did you receive it in an e-mail? 03:39PM

**A. You asked that before and I have to check.** 03:39PM

Q. Okay. Did you -- when you received it in the e-mail, did you ever make any changes to it that you are aware of? 03:39PM 03:39PM 03:39PM

**A. Yes.** 03:39PM

Q. Okay, what changes did you make? 03:39PM

**A. Right. I don't recall. The one I do recall is I confirmed the amount, but I believe there were two or three in total.** 03:39PM 03:39PM 03:39PM

Q. Okay. So just so -- let's go through this. Just so we are clear, there are six pages and 31 paragraphs for this affidavit, correct? 03:39PM 03:39PM 03:40PM

**A. Correct.** 03:40PM

Q. Of those 31 paragraphs how many paragraphs 03:40PM

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did you type out? 03:40PM
MR. WILLIS: Objection, asked and answered. 03:40PM
**A. I didn't type any. 03:40PM**
Q. Okay. Of the changes that you made to the 03:40PM affidavit after it was sent to you, you said there was 03:40PM two or three? 03:40PM
**A. Correct. 03:40PM**
Q. One of those was you went and confirmed the 03:40PM payout of three and a half million that's listed in 03:40PM paragraph three? 03:40PM
**A. Yes. 03:40PM**
Q. Okay. Any others that you remember? 03:40PM
**A. I don't recall. 03:40PM**
Q. Okay. None jump out at you, fair? 03:40PM
**A. Fair. 03:40PM**
Q. All right. So let's go to topic number four 03:40PM or paragraph number four. "Kapstone Paper produced, 03:40PM paid the premiums for and the policyholder of worker's 03:41PM compensation policy issued by Sentry that ensures 03:41PM Kapstone." Do you see that paragraph? 03:41PM
**A. Yes. 03:41PM**
Q. Okay. Did you -- you didn't -- we know you 03:41PM didn't type that paragraph, right? 03:41PM
**A. Correct. 03:41PM**

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MR. WILLIS: Objection. 03:41PM
BY MR. FINDLEY: 03:41PM
Q. What did you do to go verify it? 03:41PM
**A. I procured it. 03:41PM**
Q. You procured the worker's compensation 03:41PM insurance? 03:41PM
**A. All insurance, yes. 03:41PM**
Q. As far as going back and checking every 03:41PM single month of who paid the premium, you didn't do 03:41PM that, right? 03:41PM
MR. WILLIS: Objection to form. 03:41PM
**A. I have to approve the invoices related to my 03:41PM area, so, yes, I approved them. 03:41PM**
BY MR. FINDLEY: 03:41PM
Q. So you went back and checked who wrote the 03:41PM check for the premium? 03:41PM
MR. WILLIS: Objection to form. 03:41PM
**A. Kapstone Paper wrote the check. 03:41PM**
Q. Okay. So the answer would be, yes, you went 03:41PM back and checked to see who wrote the premium for every 03:41PM premium payment? 03:41PM
**A. As part of our process, I have to sign off on 03:41PM the premiums to be paid, yes. 03:42PM**
Q. Objection, nonresponsive. 03:42PM

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My question is when you received this 03:42PM affidavit and it contained the statement in Exhibit 4, 03:42PM did you go back and look at every single premium payment 03:42PM and verify that Kapstone Paper and Packaging Corporation 03:42PM did, in fact, pay the premiums? 03:42PM
**A. I did not. 03:42PM**
Q. Okay. Do you have copies of those checks? 03:42PM Have you seen them since you saw this affidavit for the 03:42PM first time? 03:42PM
**A. Have I seen copies of the checks? 03:42PM**
Q. Related to the premiums? 03:42PM
**A. I have not, but I believe that Marsh, our 03:42PM broker, is an ACH, so there would not have been no 03:42PM check, an electronic payment, because the vendor. 03:42PM**
Q. One more time, I'm sorry, I didn't 03:42PM understand. Who is a what? 03:42PM
**A. We would pay Marsh the premiums and they 03:42PM would in turn pay Sentry. 03:43PM**
Q. You would pay Marsh? 03:43PM
**A. Our broker. 03:43PM**
Q. Okay. Marsh who? 03:43PM
**A. Marsh U.S.A. 03:43PM**
Q. Okay, Marsh. Do you know the legal entity 03:43PM for it? 03:43PM

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**A. That is. 03:43PM**
Q. Okay, Marsh U.S.A.? 03:43PM
**A. Like AON, are you familiar with? 03:43PM**
Q. Yes. I am just trying to get clarity, Marsh 03:43PM U.S.A. is who? 03:43PM
**A. I don't know if that's the exact company 03:43PM that. 03:43PM**
Q. And what I am trying to get clarity on, in 03:43PM exhibit number, I'm sorry, what is your affidavit, the 03:43PM exhibit? 03:43PM
**A. Six. 03:43PM**
Q. In Exhibit No. 6 we have got a sworn to 03:43PM affidavit, paragraph number four, and it talks about who 03:43PM pays the premiums for the worker's compensation policy. 03:43PM And what you have testified to is you did not go back 03:43PM and look at the checks for the premiums. Your 03:43PM understanding is that you pay Marsh U.S.A., is that 03:43PM right? 03:43PM
**A. We pay Marsh. 03:43PM**
Q. Okay. How much? Did you go back and look? 03:44PM
**A. I did not. 03:44PM**
Q. Okay. Do you have any idea how often you pay 03:44PM Marsh? 03:44PM
**A. For the worker's comp policy it was monthly. 03:44PM**

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Q. Okay. Do you have any idea which entity paid 03:44PM
Marsh every single month? 03:44PM
**A. The money came out of the Kapstone Paper 03:44PM**
**account. 03:44PM**
Q. Okay. KapStone Paper and Packaging 03:44PM
Corporation? 03:44PM
**A. Yes. 03:44PM**
Q. Okay, was their name on the bank account that 03:44PM
issued the check or do you know? 03:44PM
**A. According to this document it's KapStone 03:44PM**
**Kraft Paper, but I would need to confirm. 03:44PM**
Q. KapStone Kraft Paper Corporation? 03:45PM
**A. Right. 03:45PM**
Q. Right here? 03:45PM
**A. Right. 03:45PM**
Q. So Exhibit No. 7, KapStone Kraft Paper 03:45PM
Corporation is your understanding of who paid Marsh, 03:45PM
correct? 03:45PM
**A. Right. So the payment would be initiated 03:45PM**
**from this account, but the funds to cover it would come 03:45PM**
**from Kapstone Paper because all of these are ZBA 03:45PM**
**accounts. 03:45PM**
Q. So let's just go take it one step at a time. 03:45PM
The actual payment would come from KapStone Kraft Paper, 03:45PM

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correct? 03:45PM
**A. From the KapStone Kraft Paper account, yes. 03:45PM**
Q. Okay. And as far as how much -- oh, excuse 03:45PM
me. As far as how much came from that actual account, 03:45PM
that wasn't something you looked at before signing this 03:45PM
affidavit, fair? 03:45PM
**A. Fair. 03:45PM**
Q. Okay. As far as whether or not that was the 03:45PM
same account that paid the premiums every month, that 03:46PM
wasn't something you looked at prior to signing this 03:46PM
affidavit, fair? 03:46PM
**A. Can you repeat that. 03:46PM**
Q. As far as whether or not those premiums did, 03:46PM
in fact, get paid out of that account every single 03:46PM
month, the same account for the entire existence of that 03:46PM
policy, that was not something you verified prior to 03:46PM
signing this affidavit, correct? 03:46PM
**A. Correct. 03:46PM**
Q. Okay. And what I mean by that is you relied 03:46PM
on someone else to do that research for you, I assume, 03:46PM
right? 03:46PM
**A. I approved the payment to be paid. 03:46PM**
Q. Okay. And what I am saying is when exhibit, 03:46PM
paragraph number four, okay, we already know you did not 03:46PM

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go back and verify that every single premium came from 03:46PM
that account, okay. When that statement was written 03:46PM
down, someone else wrote paragraph four and you assumed 03:46PM
that they had gone and verified that is what I assume, 03:47PM
right? 03:47PM
MR. WILLIS: Objection to the form of the 03:47PM
question. 03:47PM
**A. We had conversation before this was prepared. 03:47PM**
Q. Okay. 03:47PM
**A. And I explained the process. 03:47PM**
Q. Okay. As far as documents you relied on to 03:47PM
make the statement in paragraph number four, we have one 03:47PM
document which is the declaration page to Exhibit A, 03:47PM
correct? 03:47PM
**A. Correct. 03:47PM**
Q. There are no actual checks leaving any type 03:47PM
of bank account for the premium amounts attached in any 03:47PM
of the Exhibit 12 or Exhibit A, B, and C, correct? 03:47PM
MR. WILLIS: Objection to the form of the 03:47PM
question. 03:47PM
BY MR. FINDLEY: 03:47PM
Q. Is that correct? 03:47PM
**A. Correct. 03:47PM**
Q. Now the next one, paragraph five, says 03:47PM

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"Kapstone Paper paid a deductible under the policy in 03:47PM
the amount of 250,000." Are you talking about Kapstone 03:47PM
Paper and Packaging Corporation? 03:48PM
**A. Yes. 03:48PM**
Q. Okay. And did you go back and verify what 03:48PM
account that came from? 03:48PM
**A. I did not. 03:48PM**
Q. Okay. As far as what account that did come 03:48PM
from, you would agree with me that we don't have those 03:48PM
documents in front of us today or Exhibit No. 12? 03:48PM
MR. WILLIS: Objection to the form of the 03:48PM
question. 03:48PM
**A. What is the question? 03:48PM**
Q. It says the deductible under the policy, 03:48PM
$250,000, we already said that you did not go verify 03:48PM
what account it came from, fair? And what I am saying 03:48PM
is I also have not seen a document that says what 03:48PM
account that came from. Have you? 03:48PM
**A. I have not, but there is only one account and 03:48PM**
**I can get that information. 03:48PM**
Q. Okay. As far as, and I am going to ask for 03:48PM
it later, okay. And I will agree to you about that. I 03:48PM
will send a request to your lawyers to get that, but 03:48PM
what I want to know right now is when you signed this in 03:49PM

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September 20th, that wasn't something that you went and looked for? 03:49PM
**A. Correct. 03:49PM**
Q. Okay. It says number six, Kapstone Paper is a publicly traded corporation and it is the ultimate parent company of numerous direct and indirect wholly-owned subsidiaries including Kapstone Kraft and Kapstone Charleston. We already talked about this earlier? You are not the person at the company to talk to regarding that, correct? 03:49PM
MR. WILLIS: Object to the form of the question. 03:49PM
**A. Aside from my personal knowledge. 03:49PM**
Q. Okay. In your personal knowledge the only documents you have ever reviewed related to that was Kapstone Bates label 0001 and Exhibit B to your affidavit? 03:49PM
MR. WILLIS: Objection to the form of the question. 03:49PM
BY MR. FINDLEY: 03:49PM
Q. Fair? 03:49PM
**A. Fair. 03:49PM**
BY MR. FINDLEY: 03:49PM
Q. In fact, you were shown a document of the Secretary of State's registration to do business in 03:50PM

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South Carolina and you told us that was outside your scope, right? 03:50PM
**A. Right. 03:50PM**
Q. So as far as how these entities are set up or the legal documents related to them, that is -- you didn't go research or verify paragraph six when it was written to you in your affidavit to sign, fair? 03:50PM
**A. Fair. 03:50PM**
Q. Okay. "Number seven, Kapstone Charleston and KapStone Kraft manufacture and sell certain paper products including unbleached Kraft paper and container board." Where did you get that information? 03:50PM
**A. Personal knowledge and it's in the 10K. 03:50PM**
Q. Okay. Well, I know the statement is in the 10K, but do you have any idea of what processes are involved in unbleached Kraft paper and container board? 03:50PM
**A. I have been to the mills and seen the process. 03:51PM**
Q. And I have been to the mill too and I have seen the process, but I can't tell you the process. Can you tell me the process? 03:51PM
**A. Not in detail, no. 03:51PM**
Q. Can you tell me what is similar about those processes? 03:51PM

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MR. WILLIS: Objection to the form of the question. 03:51PM
**A. Between the mills, no. 03:51PM**
Q. When it says, "Both entities generally use similar processes and types of equipment to conduct these activities," that's not something that you know anything about other than you have been to them before, right? 03:51PM
MR. WILLIS: Objection to the form of the question. 03:51PM
**A. Right. 03:51PM**
Q. What I am saying is someone else wrote that paragraph, fair? 03:51PM
**A. We have already said someone else wrote it. 03:51PM**
Q. Right. And what I am trying to figure out now, I know someone else wrote the whole affidavit. What I am trying to figure out is when you swore to a statement that says, "both entities generally use similar processes and types of equipment to conduct these activities," you weren't entirely sure what they were talking about. You signed it because you were told to sign it, fair? 03:52PM
MR. WILLIS: Objection to the form of the question. 03:52PM

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**A. If you ask other Kapstone employees, this is what we know, this is what we say, right. 03:52PM**
Q. I understand it's what you say. That sentence is listed in a 10K or somewhere. I am talking about your knowledge. As far as the details of those processes between those two plants, you can't sit here under oath and tell the ladies and gentlemen of the jury how they are similar or how they are different, is that fair? 03:52PM
MR. WILLIS: Objection to the form of the question. 03:52PM
**A. I guess so. 03:52PM**
Q. So, number eight, we would agree that already earlier that Kapstone Paper and Packaging Corporation does not manufacture or sell paper products. We already talked about that, right? 03:53PM
**A. Yes. 03:53PM**
Q. And now it talks about provides support and oversight to the operations of certain subsidiaries, okay. What I want to talk to you about is what is the extent of support and oversight it provides? Do you know? 03:53PM
**A. Is that the whole question? 03:53PM**
Q. Yes. 03:53PM

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**A. Okay. So by support I can speak to my world. 03:53PM**
**We do all of the accounts payable, receivable, credit, 03:53PM**
**collections, payroll, and insurance. 03:53PM**
Q. Okay, fair enough. And so that's what I want 03:53PM
to talk to you about. Well, you have never worked for 03:53PM
Kapstone Charleston Kraft LLC, fair? 03:54PM
**A. Fair. 03:54PM**
Q. You have never worked for KapStone Kraft 03:54PM
Paper Corporation, correct? 03:54PM
**A. Correct. 03:54PM**
Q. The only entity you have worked for is 03:54PM
KapStone Paper and Packaging Corporation, true? 03:54PM
**A. True. 03:54PM**
Q. Okay. So as far as your role at KapStone 03:54PM
Paper and Packaging Corporation, the only information 03:54PM
you know related to what it provides is related to what 03:54PM
you talked about earlier, helping with accounting, 03:54PM
payroll. Tell me what it was. I have got accounts 03:54PM
payable, receivable? 03:54PM
**A. Credit, collections, payroll, and insurance. 03:54PM**
Q. Okay. 03:54PM
**A. Insured service group. The whole corporate 03:54PM**
**office does the same, they are just not in my 03:54PM**
**department. 03:54PM**

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Q. Okay. So when it says oversight to the 03:54PM
operations, okay, when we are talking about oversight to 03:54PM
the operations of the plant, you have no idea what they 03:55PM
provide oversight over? 03:55PM
MR. WILLIS: Objection to the form of the 03:55PM
question. 03:55PM
**A. Well, Matt Kaplan is the CEO, right, so 03:55PM**
**operations report to him and he is housed in Northbrook 03:55PM**
**and employed by Kapstone Paper. 03:55PM**
MR. FINDLEY: Objection, nonresponsive. 03:55PM
Q. My question is you have never at any point in 03:55PM
time in your life been exposed to the oversight or 03:55PM
operations of any of the subsidiaries other than what 03:55PM
you talked about in your role in the accounting 03:55PM
department? 03:55PM
**A. I participate on a leadership team. 03:55PM**
Q. Which one? 03:55PM
**A. The One Kapstone Leadership Team which has 03:55PM**
**the president, the mill system and the container system 03:55PM**
**VPs, executive teams that are in operations, so I am 03:55PM**
**aware of the conversations that they have. 03:55PM**
Q. Okay. And so let's talk about that for a 03:55PM
second. Matthew Kaplan, you mentioned him, remember? 03:56PM
**A. Yes. 03:56PM**

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Q. And you mentioned him as a Kapstone entity 03:56PM
director and officer that was attached to your 03:56PM
affidavit, correct? Exhibit, I believe it's Exhibit B, 03:56PM
is that right? 03:56PM
MR. WILLIS: Objection to form. 03:56PM
**A. Well, he is the CEO. President and CEO of 03:56PM**
**Kapstone Paper. 03:56PM**
Q. And what I am saying is, Exhibit B, all of 03:56PM
these people that you said that these would be people 03:56PM
who are on your management team or leadership team or 03:56PM
what? 03:56PM
**A. Right. So Randy Nebel, the executive VP, 03:56PM**
**Bill Kissinger, Pat Ortiz. 03:56PM**
Q. Okay. 03:56PM
**A. Mike Murphy and Tony Myers are all on the 03:56PM**
**same team. 03:56PM**
Q. Okay. And that's a leadership -- well, all 03:56PM
of those individuals are listed as officers on this 03:56PM
page, correct? 03:56PM
**A. Yes. 03:56PM**
Q. Okay. As far as if those people were listed 03:56PM
as officers prior to January 1, 2017, you have no idea, 03:57PM
fair? 03:57PM
MR. WILLIS: Objection to the form of the 03:57PM

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question. 03:57PM
**A. I can't speak to the details. A subset, I 03:57PM**
**can. 03:57PM**
Q. And the other question for that is as far as 03:57PM
if they were involved on the leadership team around the 03:57PM
type of this incident, Leadership One, you have no idea 03:57PM
either, correct? That is a new service? 03:57PM
**A. Correct. 03:57PM**
Q. Okay. Leadership One was this whole 03:57PM
centralized thing that came out with your new position 03:57PM
on January 1, 2017, correct? 03:57PM
**A. Yes. 03:57PM**
Q. Okay. Came out when they listed this new 03:57PM
list of officers and directors on January 1, 2017 as 03:57PM
well, correct? 03:57PM
**A. Correct. 03:57PM**
Q. It wasn't in existence prior to that, 03:57PM
correct? 03:57PM
MR. WILLIS: Objection to the form of the 03:57PM
question. 03:57PM
**A. Correct. 03:57PM**
Q. So really when we are talking about number 03:57PM
eight, we could add to that that oversight of operations 03:58PM
and certain subsidiaries as far as the operations and 03:58PM

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oversight since that information from you comes from 03:58PM
Leadership One, we can say your knowledge would be 03:58PM
limited to operations and oversight from January 1, 2017 03:58PM
and beyond, fair? 03:58PM
MR. WILLIS: Objection to the form of the 03:58PM
question. 03:58PM
**A. It may have been later than that, but yes, in 03:58PM**
**2017. 03:58PM**
BY MR. FINDLEY: 03:58PM
Q. Okay. Kapstone is a limited liability 03:58PM
company and is a wholly-owned by KapStone Kraft. 03:58PM
Kapstone is a sole managing member of Kapstone 03:58PM
Charleston. What documents did you look at -- well, 03:58PM
this might be a repeat of testimony earlier, but I 03:58PM
assume the document you looked at to come to that answer 03:59PM
was the one that we discussed in detail, the 03:59PM
organizational chart on Exhibit C? 03:59PM
MR. WILLIS: Objection to the form of the 03:59PM
question. 03:59PM
**A. Or the one in the book. 03:59PM**
BY MR. FINDLEY: 03:59PM
Q. Which was Kapstone Bates labeled 0001. Yeah, 03:59PM
I can get it for you. I am not trying to trick you or 03:59PM
anything. Hold up. 03:59PM

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**A. Right there. 03:59PM**
Q. This one (Indicating)? 03:59PM
**A. Yes. 03:59PM**
Q. So moving forward when I say Kapstone Bates 03:59PM
labeled 0001, we know we are talking about this 03:59PM
(Indicating)? 03:59PM
**A. Yes. 03:59PM**
Q. Okay. And I will leave it here. 03:59PM
MR. FINDLEY: Well, I will go ahead and mark it 03:59PM
15. 03:59PM
(Plaintiff's Deposition Exhibit No. 03:59PM
15 was marked for identification.) 03:59PM
BY MR. FINDLEY: 03:59PM
Q. That's the document we have been talking 03:59PM
about when we refer to Kapstone Bates labeled 0001 and 03:59PM
sometimes you refer to it as the other chart as well? 04:00PM
**A. Yes. 04:00PM**
Q. Okay. Just making sure we are on the same so 04:00PM
we know what we are talking about later. So 04:00PM
organizational chart would be Exhibit B to your 04:00PM
affidavit and Exhibit 15, correct? 04:00PM
**A. Yes. 04:00PM**
Q. Okay. Now, that's what you use to -- that's 04:00PM
what your understanding of where paragraph nine comes 04:00PM

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from, from Exhibit 15 and Exhibit C to your affidavit, 04:00PM
correct? 04:00PM
MR. WILLIS: Objection to the form. 04:00PM
**A. Correct, but it's also referenced in the list 04:00PM**
**of officers. 04:00PM**
Q. Okay, Exhibit B and C, is that fair? 04:00PM
**A. Yes. 04:00PM**
Q. Okay. You would agree with me that Exhibit 04:00PM
B, C and Exhibit 15 all have dates on them that are post 04:00PM
incident? Exhibit 15 has September 2016, that would be 04:00PM
beyond this incident involving Jacque Lucas and Daniel 04:00PM
Simerly, correct? 04:01PM
**A. Yes. 04:01PM**
Q. Exhibit C to your organizational chart has a 04:01PM
2017 date on it, correct? You can look. 04:01PM
**A. Yes. 04:01PM**
Q. And Exhibit B with the list of officers and 04:01PM
directors, that was again January 1, 2017 when there was 04:01PM
this new roll out of centralizing, correct? 04:01PM
**A. Yes. 04:01PM**
MR. WILLIS: Objection to the form of the 04:01PM
question. 04:01PM
BY MR. FINDLEY: 04:01PM
Q. As far as whether or not any of that existed 04:01PM

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before or how that was structured before that date, 04:01PM
that's not something you know about, fair? 04:01PM
MR. WILLIS: Objection to the form of the 04:01PM
question. 04:01PM
**A. No, this is always current on the Internet. 04:01PM**
Q. Okay. And I am just saying the only copy I 04:01PM
have one post dates this incident? 04:01PM
**A. Okay. 04:01PM**
Q. Okay. Did you look at a different one other 04:01PM
than that one? 04:01PM
**A. I have looked at many over the years. 04:01PM**
Q. Okay. Fair. The one you looked at in 04:01PM
preparation for your deposition testimony here today is 04:01PM
Exhibit 15? 04:01PM
**A. Yes. 04:01PM**
Q. The one you looked at in preparation for the 04:01PM
affidavit that you signed is Exhibit 15? 04:02PM
**A. Yes. 04:02PM**
MR. WILLIS: Objection to the form of the 04:02PM
question. 04:02PM
BY MR. FINDLEY: 04:02PM
Q. All right, the same with, well, exhibit 04:02PM
number, or excuse me, not exhibit, paragraph number 11, 04:02PM
there is a statement here that says, "Kapstone Paper, 04:02PM

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KapStone Kraft, and Kapstone Charleston are each headquartered at the same location." Did you do anything to verify that? 04:02PM

**A. The address on the W2s and it's referenced in the 10K. 04:02PM**

Q. Okay. 04:02PM

**A. Did I verify it before the affidavit, no. 04:02PM**

Q. Okay. And what I am saying is besides when you signed this affidavit did you take any steps on your own to go look at documents to verify the veracity of paragraph 11? 04:03PM

**A. No. 04:03PM**

Q. Okay. What you are saying is after the fact as we sit here today if someone were to ask you what supports that, you would say the address on the W2 as well as, what was the other one? 04:03PM

**A. It's in the 10K as the executive office, yes. 04:03PM**

Q. And as far as when it says "each are headquartered," when you signed this affidavit, what definition were you using for headquartered? 04:03PM

**A. We speak of Northbrook as our corporate headquarters. So personal knowledge, I guess. 04:03PM**

Q. Okay. And that's what I am trying to figure out. When you say headquartered, headquartered can mean 04:03PM

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different things to different people and it can have different legal definitions, okay. And what I am trying to figure out is what you based yours on is when you say headquartered at the Northbrook, Illinois address, why would you say that? 04:03PM 04:04PM

**A. That's how we speak of it, the corporate office, the headquarters. 04:04PM**

Q. Who, who speaks that way? 04:04PM

**A. Kapstone employees. 04:04PM**

Q. Do the Kapstone Charleston Kraft LLC employees like my guys speak that way? 04:04PM

MR. WILLIS: Objection to the form of the question. 04:04PM

BY MR. FINDLEY: 04:04PM

Q. Or do you know? 04:04PM

**A. People I know in remote locations consider us corporate. 04:04PM**

Q. Okay, and I understand that you are considered corporate. Okay. So you are saying -- when we talk about corporate, if you were to describe your employment, okay, you would say I work for corporate, would you agree? 04:04PM

**A. Yes. 04:04PM**

Q. Okay. And when people refer to corporate 04:04PM

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they are talking about Kapstone Paper and Packaging Corporation, correct? 04:04PM

**A. We are talking about Northbrook. 04:04PM**

Q. Okay. Well, you don't work for Northbrook, you work for KapStone Paper and Packaging Corporation? 04:05PM

**A. Yes. 04:05PM**

Q. Okay. And what I am trying to figure out is what information do you have that says that the Kapstone Charleston Kraft LLC is actually headquartered in Northbrook? I mean we already established way earlier that there are no Kapstone Charleston Kraft LLC employees in Chicago. Do you remember that? 04:05PM

MR. WILLIS: Objection to the form of the question. 04:05PM

**A. Yes. 04:05PM**

Q. Okay. And there is not a single employee that works for Kapstone Charleston Kraft LLC that's making decisions related to that entity here in Chicago, fair? 04:05PM

MR. WILLIS: Objection to form. 04:05PM

**A. I don't know. 04:05PM**

Q. Okay. Well, none that you are aware of, right? If I were to say to you, Mrs. Hulseman, name me a Kapstone Charleston Kraft LLC employee that is located 04:05PM 04:06PM

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in Chicago that is doing business on behalf of the plant in Charleston, can you name me one? 04:06PM

MR. DUCAYET: Are you making a distinction between officers and employees? 04:06PM

MR. FINDLEY: I'm sorry, are you packaging corporation go an objection. 04:06PM

MR. DUCAYET: I am asking a clarifying question. 04:06PM

MR. FINDLEY: Okay, and I am not responding to you. This is the fifth time you have spoken in the deposition. 04:06PM

Q. Ma'am, did you understand my question before I was interrupted by this gentleman who is sitting in here? 04:06PM

**A. Can you say it again, please? 04:06PM**

Q. Sure. And if you don't understand, feel free to let me know, okay. What I am asking you is can you name for me a single Kapstone Charleston Kraft LLC employee who is stationed here in Chicago at Northbrook making decisions on behalf of the plant? 04:06PM

MR. WILLIS: Objection to form. 04:06PM

**A. I would like to confirm and again based on location numbers in our system, I -- 04:06PM 04:07PM**

Q. And that's fair. You can go confirm. All I am asking you is, is can you name me one as we sit here 04:07PM

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today? 04:07PM
**A. I cannot. 04:07PM**
Q. Okay. Can you name me one KapStone Kraft 04:07PM
Paper Corporation employee who is located here in 04:07PM
Chicago that reports at the Northbrook office? 04:07PM
**A. Yes. 04:07PM**
Q. Who? 04:07PM
**A. Randy Nebel. N-e-b-e-l. 04:07PM**
Q. And Randy Nebel, what does he do? 04:07PM
**A. He is the EVP of Integrated Packaging. 04:07PM**
Q. He is the EVP of Integrated Packaging as of 04:08PM
January 1, 2017? 04:08PM
**A. Yes. 04:08PM**
Q. All right. So can you name me anyone besides 04:08PM
him? 04:08PM
**A. Yes. 04:08PM**
Q. Who? 04:08PM
**A. Tony Myers. I would like to refer to that 04:08PM**
**list of mill headquarter people who were similar to the 04:08PM**
**Charleston location, but -- 04:08PM**
Q. Okay. 04:08PM
**A. -- but there are more than those two. 04:08PM**
Q. Okay. Do you know if Randy Nebel or the 04:08PM
other gentleman you mentioned make any decisions here in 04:08PM

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Chicago related to the operations of the plant? Is that 04:08PM
something you are involved in and when I say plant I am 04:08PM
talking about Charleston? 04:08PM
**A. Charleston. 04:08PM**
Q. Do you know that one way or the other? 04:08PM
**A. Manufacturing ultimately reports to him, so I 04:08PM**
**believe, yes. 04:08PM**
Q. Okay. An objection, nonresponsive. 04:08PM
And, Ma'am, I am not trying to be rude. 04:09PM
I don't want you to speculate. I want to know what you 04:09PM
know, okay. And so what I understand is, what I am 04:09PM
trying to figure out is do you know one way or the other 04:09PM
what those two gentlemen you mentioned who work for 04:09PM
KapStone Kraft Paper Corporation who are located in 04:09PM
Chicago, if they make decisions related to the 04:09PM
operations of the plant in North Charleston? Do you 04:09PM
know that information or do you not know? 04:09PM
**A. Based on the leadership meetings, yes, he 04:09PM**
**sets strategic direction. 04:09PM**
Q. Okay. Based on the leadership meetings that 04:09PM
you are a part of? 04:09PM
**A. Yes. 04:09PM**
Q. The leadership meetings that did not start 04:09PM
until 2017? 04:09PM

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MR. WILLIS: Objection to form. 04:09PM
BY MR. FINDLEY: 04:09PM
Q. Correct? 04:09PM
**A. Yes. 04:09PM**
Q. Okay. So as far as having any information 04:09PM
related to anyone who was employed by Kapstone 04:09PM
Charleston Kraft Paper Corporation who were located in 04:09PM
Chicago making decisions regarding the North Charleston 04:09PM
plant, other than the meeting you talked about that 04:10PM
first started occurring in 2017, you don't have any 04:10PM
information relating to that, fair? 04:10PM
MR. WILLIS: Objection to the form of the 04:10PM
question. 04:10PM
**A. Yes. 04:10PM**
Q. Now, do the Secretary of State filings for 04:10PM
Kapstone Charleston Kraft LLC say that it is 04:10PM
headquartered in Chicago? 04:10PM
MR. WILLIS: Objection to the form of the 04:10PM
question. 04:10PM
**A. I don't know. 04:10PM**
BY MR. FINDLEY: 04:10PM
Q. Okay. Do any of the filings with the 04:10PM
Secretary of State, whether they be in Delaware or 04:10PM
Chicago or any location in the United States say that 04:10PM

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Kapstone Charleston Kraft LLC is headquartered in 04:10PM
Northbrook, Illinois, do you know? 04:10PM
**A. I don't. 04:10PM**
Q. Okay. The same question for KapStone Kraft 04:10PM
Paper Corporation, are you aware that any of their 04:10PM
filings say or any legal documents for that matter say 04:11PM
that they are headquartered in Northbrook Chicago? 04:11PM
**A. I don't know. 04:11PM**
Q. All right. Exhibit or excuse me, paragraph 04:11PM
number 12. This paragraph that was written says, 04:11PM
"KapStone Kraft and Kapstone Charleston share five 04:11PM
officers all of whom are officers of Kapstone Paper. 04:11PM
The five officers consist of executive, chairman, CEO, 04:11PM
president, vice president, treasurer, chief financial 04:11PM
officer and secretary." Do you see that? 04:11PM
**A. Yes. 04:11PM**
Q. Okay. Well, first of all, we know you didn't 04:11PM
write that, right? 04:11PM
MR. WILLIS: Objection, asked and answered. 04:11PM
BY MR. FINDLEY: 04:11PM
Q. Just to confirm you didn't write that or 04:11PM
generate that sentence, correct? 04:11PM
**A. Correct. 04:12PM**
Q. You didn't go out and get information to 04:12PM

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verify the accuracy of that sentence, correct? 04:12PM
MR. WILLIS: Objection to the form. 04:12PM
**A. Aside from Exhibit B? 04:12PM**
Q. Okay, and we are going to get to that. So if 04:12PM you could, just read the entire paragraph and then we 04:12PM will go to B. And the only question I have for you when 04:12PM you read the paragraph is other than Exhibit B, did you 04:12PM go out to verify any of the information contained that 04:12PM was already written for you in paragraph 12? 04:12PM
MR. WILLIS: Objection to form. 04:12PM
**A. I have personal knowledge. 04:12PM**
Q. Okay. 04:12PM
**A. I report to the VP, treasurer, and chief 04:12PM financial officer. I work closely with the secretary. 04:12PM**
Q. Okay. 04:12PM
**A. All right, do we want to start reading? 04:12PM**
Q. I want you to read all of 12? 04:12PM
**A. Read the whole thing, okay. Kapstone Kraft 04:13PM and Kapstone Charleston – 04:13PM**
Q. You don't have to read it out loud. I was 04:13PM just giving you an opportunity to read. I wanted to be 04:13PM fair to you and let you read the whole thing before 04:13PM asking you questions. 04:13PM
MR. WILLIS: Could we go off the record for a 04:13PM

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second? Is there a question for you? 2: 04:13PM
MR. FINDLEY: Yes, but can I just get an answer to 04:13PM this pending question, please. 04:13PM
MR. DUCAYET: There is no pending question. 04:13PM
What's the pending question? 04:13PM
BY MR. FINDLEY: 04:13PM
Q. I said read paragraph 12 and tell me if you 04:13PM have any other documents or information to verify that 04:13PM information other than Exhibit B? 04:13PM
MR. WILLIS: Objection asked and answered. Go 04:13PM ahead. 04:13PM
**A. And personal knowledge. 04:13PM**
Q. Okay. So Exhibit B and what you say was 04:13PM personal knowledge from working with the individuals you 04:14PM mentioned a second ago? 04:14PM
**A. Yes. 04:14PM**
Q. Okay. And we will come back to that. 04:14PM
MR. WILLIS: Kyle, I just want 30 seconds of your 04:14PM time. 04:14PM
MR. FINDLEY: Dick, you want to take a five-minute 04:14PM break and go to the restroom or anything? Let's go and 04:14PM do that now. 04:14PM
THE VIDEOGRAPHER: Off the record at 4:14 p.m. 04:14PM
(Off the record.) 04:14PM

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THE VIDEOGRAPHER: All right, back on record at 04:18PM 4:18 p.m. 04:18PM
BY MR. FINDLEY: 04:18PM
Q. Okay. Backing up for a second. Kapstone 04:18PM Charleston Kraft LLC, that's a limited liability 04:18PM company, correct? 04:18PM
**A. Yes. 04:18PM**
Q. Okay. As far as a limited liability company, 04:18PM as far as the documents showed of where they own 04:19PM property, it would be limited to the North Charleston 04:19PM mill, correct, as locations they own? 04:19PM
**A. Again I would like to confirm Somerville, but 04:19PM yes. 04:19PM**
Q. Okay. As far as documents I have shown you 04:19PM so far today or documents you have seen in the binder 04:19PM number 12, the property owned by Kapstone Charleston 04:19PM Kraft LLC would be the actual mill location in 04:19PM Charleston, correct? 04:19PM
**A. Yes. 04:19PM**
Q. Okay. Now, the Kapstone Charleston Kraft 04:19PM LLC, why would a limited liability company have a 04:19PM corporate headquarters, do you know? 04:19PM
**A. I don't. 04:19PM**
Q. So as far as whether a limited liability 04:19PM

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company is even allowed to have corporate headquarters 04:20PM or does, in fact, have a corporate headquarters, is it 04:20PM fair to say that you don't know one way or the another? 04:20PM
**A. Yes. 04:20PM**
Q. All right, so going back to what we were 04:20PM talking about before the break, exhibit -- paragraph 04:20PM number 12, the officers of each entity you are talking 04:20PM about Exhibit B, I assume? 04:20PM
**A. Yes. 04:20PM**
Q. Okay. And Exhibit B would be the officers of 04:20PM January 1, 2017, correct? 04:20PM
**A. Yes. 04:20PM**
Q. Okay. As far as where they are located and 04:20PM what business operations they perform for each entity 04:20PM prior to January 1, 2017, you don't know, fair? 04:20PM
**A. Can you say the question again. 04:21PM**
Q. Sure. My understanding of what you are 04:21PM saying or what was said for you in paragraph number 12 04:21PM dealt with various positions and various positions and 04:21PM identifies people located in Exhibit B in relation to 04:21PM Kapstone Paper Packaging Corporation, Kapstone Kraft 04:21PM Paper Corporation, and KapStone Charleston Kraft LLC? 04:21PM
MR. WILLIS: Objection to the form. 04:21PM
MR. FINDLEY: Correct? Is that what paragraph 12 04:21PM

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is talking about? 04:21PM
**A. Yes. 04:21PM**
Q. And that identity of those people are listed 04:21PM in Exhibit B? 04:21PM
**A. Yes. 04:21PM**
Q. Okay. As far as the identity of those people 04:21PM we already established you didn't know who they were 04:21PM prior to January of 2017, fair? 04:21PM
MR. WILLIS: Objection to the form of the 04:21PM question. 04:21PM
**A. No. 04:21PM**
Q. You do or don't? 04:21PM
**A. I do. 04:21PM**
Q. Okay. Who are they? 04:21PM
**A. Roger, Matt, Andrea, and Kathy. 04:22PM**
Q. Roger, Matt, Andrea and who? 04:22PM
**A. Kathy. Katherine. 04:22PM**
Q. Roger, Matt. I assume that means Matthew 04:22PM Kaplan? 04:22PM
**A. Yes. So on the two entities in question, 04:22PM right, Kapstone Kraft, Kapstone Charleston, four out of 04:22PM the five have been in Northbrook. 04:22PM**
Q. Okay. So let's go through them again. 04:22PM Roger, Matthew, Andrea and who? 04:22PM

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**A. Katherine Ingram. 04:22PM**
Q. Katherine Ingram? 04:22PM
**A. Yes. The second page has Kapstone Kraft and 04:22PM Kapstone Charleston. 04:22PM**
Q. All right. So let's start with Kapstone 04:22PM Paper and Packaging Corporation. For this list the 04:22PM directors are Roger and Matthew, correct, that you say 04:22PM existed prior to January 1, 2017? 04:22PM
**A. I would have to check the document, but more 04:23PM than that existed prior to 2017. 04:23PM**
Q. Okay. As far as, I guess, here is what I am 04:23PM trying to figure out. In paragraph number 12 you list 04:23PM KapStone Kraft has two directors who were both directors 04:23PM of Kapstone Paper, right? 04:23PM
**A. Yes. 04:23PM**
Q. Okay. As far as whether or not KapStone 04:23PM Kraft had two directors who were both directors of 04:23PM Kapstone Paper prior to January 1 of 2017, do you know 04:23PM that? 04:23PM
**A. I can't speak to the detail now, but I could 04:23PM get it. 04:23PM**
Q. Okay, and that's all I want to know is I know 04:23PM it probably exists out there somewhere and I am going to 04:23PM come get it eventually, but as far as at the time that 04:23PM

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this affidavit was signed, you weren't considering that 04:23PM information that's out there, fair? 04:23PM
MR. WILLIS: Objection to the form. 04:23PM
BY MR. FINDLEY: 04:23PM
Q. Prior you were considering Exhibit B? 04:23PM
**A. I have worked with these people prior to 04:24PM 2017. The titles may have changed, but the players did 04:24PM not. 04:24PM**
Q. Okay. And I understand as individuals or 04:24PM humans you might have worked with them before. As far 04:24PM as their roles, responsibilities and duties prior to 04:24PM January 1, 2017, wasn't something you considered when 04:24PM signing this affidavit? 04:24PM
MR. WILLIS: Objection to form. 04:24PM
BY MR. FINDLEY: 04:24PM
Q. Because I thought my understanding what you 04:24PM were testifying to was related to the leadership one 04:24PM meeting in 2017 and the identity and their roles related 04:24PM to operations on this document which is Exhibit B? 04:24PM
MR. WILLIS: Objection to form. 04:24PM
**A. I report to Andrea. 04:24PM**
Q. Okay. So you report to Andrea who is the 04:24PM CFO? 04:24PM
**A. Yes. 04:24PM**

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Q. Okay. 04:24PM
**A. And I work closely with Kathy who is the 04:24PM general counsel. 04:24PM**
Q. Okay, Kathy, general counsel, I see her. 04:24PM Okay. I guess there is no general counsel for KapStone 04:24PM Kraft Paper Corporation? 04:25PM
**A. She is the secretary. 04:25PM**
Q. Okay, but I don't see general counsel listed, 04:25PM right? They don't share a legal team? According to the 04:25PM document KapStone Kraft Paper Corporation does not have 04:25PM a general counsel listed underneath its officers that 04:25PM you are aware of, correct? 04:25PM
MR. WILLIS: Objection to the form of the 04:25PM question. 04:25PM
**A. Correct. 04:25PM**
BY MR. FINDLEY: 04:25PM
Q. Kapstone Charleston Kraft LLC does not have a 04:25PM general counsel listed underneath their officers, 04:25PM correct? 04:25PM
**A. Correct. 04:25PM**
Q. Okay. As far as what these individuals, what 04:25PM senior level management duties they do regarding the 04:25PM business operations of Charleston Kraft LLC, North 04:25PM Charleston mill, as far as what they do, what decisions 04:25PM

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they make related to that, is that something you were 04:25PM
privy to? 04:25PM
**A. It depends on the situation. 04:25PM**
Q. Okay. Give me an example of a situation that 04:26PM
you would be privy to. Would it always involve what we 04:26PM
talked about earlier, accounts receivable, accounts 04:26PM
payable type of information? 04:26PM
**A. Yes. M and A activity as well. 04:26PM**
Q. What was that? 04:26PM
**A. M and A, mergers and acquisitions. 04:26PM**
Q. Mergers and acquisitions activity. Okay, but 04:26PM
when we are talking about mergers and acquisitions 04:26PM
activity, you are talking about M and A for other -- 04:26PM
**A. Yes. 04:26PM**
Q. -- companies? 04:26PM
**A. Yes. 04:26PM**
Q. Okay. Like when KapStone Paper and Packaging 04:26PM
Corporation, your employer, goes out and purchases some 04:26PM
other asset, you might be involved in that? 04:26PM
**A. Yes. 04:26PM**
Q. Okay, what I am talking about is decisions 04:26PM
related to Kapstone Charleston Kraft LLC plant 04:26PM
operations, as far as being privy to that information, 04:26PM
you are not, fair? 04:26PM

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**A. Fair. 04:26PM**
Q. Okay. And as far as those officers and 04:26PM
directors' roles and responsibilities related to the 04:26PM
business operations at the North Charleston mill, you 04:26PM
are not privy to that either, fair? 04:27PM
MR. WILLIS: Objection to form. 04:27PM
**A. Can you say it again. 04:27PM**
BY MR. FINDLEY: 04:27PM
Q. Sure. As far as the officers and directors 04:27PM
that we talked about, as far as their roles and 04:27PM
responsibilities and their decisions related to business 04:27PM
operations of Kapstone Charleston Kraft LLC, unless it 04:27PM
deals with accounts payable or receivable that we talked 04:27PM
about earlier, your roles, you wouldn't be privy to the 04:27PM
information, is that fair? 04:27PM
MR. WILLIS: Objection the form. 04:27PM
**A. And aside from the leadership team, yes. 04:27PM**
Q. The Leadership One Team that you started to 04:27PM
become a part of and that first existed in January of 04:27PM
2017? 04:27PM
**A. Yes. 04:27PM**
Q. Okay, Kapstone Charleston does not have any 04:27PM
directors because it is a limited liability company and 04:27PM
instead has a sole managing member, okay. Where did 04:27PM

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you, where did you figure out that a LLC, limited 04:28PM
liability company, does not have directors? 04:28PM
**A. Exhibit B. 04:28PM**
Q. Okay. Exhibit B, a document that you were 04:28PM
shown that did not have any directors listed? 04:28PM
**A. In reference to a sole member, yes. 04:28PM**
Q. And the reason I ask that is it says Kapstone 04:28PM
Charleston does not have any directors because it is a 04:28PM
limited liability company. What about a limited 04:28PM
liability company makes it do not have any directors, do 04:28PM
you know? 04:28PM
MR. WILLIS: Objection to form. 04:28PM
**A. It's not a corporation is my understanding. 04:28PM**
Q. Okay. And where did you develop that 04:28PM
understanding? 04:28PM
**A. Personal knowledge. 04:28PM**
Q. Personal knowledge based on what? 04:28PM
**A. The corporations have a board of directors. 04:28PM**
Q. Okay. And you learned that from your role 04:28PM
that corporations have board of directors, LLCs do not? 04:28PM
Can an LLC have a board of directors if it wants one, do 04:29PM
you know? 04:29PM
**A. I don't know. 04:29PM**
Q. And that is all I am trying to figure out. 04:29PM

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As far as whether or not LLCs are allowed to have a 04:29PM
board of directors, whether they can or can't, that's 04:29PM
not something you know, right? 04:29PM
MR. WILLIS: Objection to form. 04:29PM
**A. Right. 04:29PM**
BY MR. FINDLEY: 04:29PM
Q. Okay. So that is someone else's conclusory 04:29PM
statement that Kapstone Charleston does not have a board 04:29PM
of directors because it's a limited liability company. 04:29PM
The reasons behind that is not something you discovered, 04:29PM
fair? 04:29PM
MR. WILLIS: Objection to form. 04:29PM
**A. Yes. 04:29PM**
Q. And it says instead has a sole managing 04:29PM
member which is KapStone Kraft, okay. What you are 04:29PM
basing that off of, its sole managing member is this 04:29PM
Exhibit C, organizational chart that we looked at at the 04:29PM
beginning of this deposition attached to your affidavit, 04:29PM
correct? 04:30PM
**A. Actually Exhibit B makes reference to it. 04:30PM**
Q. Okay. 04:30PM
MR. WILLIS: Objection to form. 04:30PM
BY MR. FINDLEY: 04:30PM
Q. Okay. So Exhibit B, sole member KapStone 04:30PM

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Kraft Paper Corporation managed by members, okay. 04:30PM
That's the document that made reference to that? 04:30PM
**A. Yes. 04:30PM**
Q. Okay. As far as any other legal filings made 04:30PM
with any Secretary of State or SEC whether it has more 04:30PM
members or board of directors or any of that, is that 04:30PM
something you ever went and verified? 04:30PM
**A. No. 04:30PM**
Q. So really what's going on here is someone 04:30PM
else is sending you information. And would it be fair 04:30PM
to say that because they came from your legal team you 04:30PM
thought it to be reliable? 04:30PM
**A. Yes. 04:30PM**
Q. Okay. And you didn't do any of your own 04:30PM
personal verification or your own input in it, you 04:30PM
simply received it from your legal team at KapStone 04:30PM
Paper and Packaging Corporation and assumed what was 04:31PM
contained in there was accurate without doing any 04:31PM
verification on your own, fair? 04:31PM
**A. We discussed what went into the affidavit 04:31PM before. That particular question, no. 04:31PM**
Q. Okay. Well, we are going through here and 04:31PM
the only things, the only documents that I know of that 04:31PM
you are using to support any of these paragraphs would 04:31PM

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be the ones that came attached to the affidavit, right? 04:31PM
**A. Both of which I have had access to for many 04:31PM years. 04:31PM**
Q. Many years. That document was created in 04:31PM
February of 20 -- let me finish, February 14, 2017 is 04:31PM
when Exhibit B was created, correct? 04:31PM
**A. Correct. 04:31PM**
Q. It would be impossible to have a document 04:31PM
titled Exhibit B for many years, fair? 04:31PM
MR. WILLIS: Objection to form. That's not what 04:31PM
she said. 04:31PM
**A. An earlier version of this document I had 04:31PM before. 04:31PM**
Q. And as far as the earlier versions, you did 04:31PM
nothing to compare that to this one, fair? 04:32PM
**A. Fair. 04:32PM**
Q. You did nothing to compare the officers and 04:32PM
directors of any of the entities regarding any earlier 04:32PM
versions of Exhibit B, fair? 04:32PM
**A. Fair. 04:32PM**
Q. Okay. So let's go to paragraph 14. 04:32PM
"Kapstone Charleston does not have the authority to sell 04:32PM
or dissolve itself." According to who? 04:32PM
**A. A board level decision. 04:32PM**

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Q. Okay. And so when it says Kapstone 04:32PM
Charleston LLC does not have the authority to sell or 04:32PM
dissolve itself, where did you -- do you even know that 04:32PM
to be accurate? 04:32PM
MR. WILLIS: Objection to the form of the 04:32PM
question. 04:32PM
**A. Based on personal knowledge. 04:32PM**
Q. Okay, what personal knowledge? 04:32PM
**A. Discussion, conversation. 04:32PM**
Q. Okay. With lawyers or with who? 04:33PM
**A. It was prior to this deposition based on the 04:33PM org chart. I don't recall who exactly. 04:33PM**
Q. Okay, and that's fair. What I want to know 04:33PM
is what you know. And I think as far as what you know 04:33PM
regarding whether or not they have the authority to sell 04:33PM
or dissolve itself, to be fair you don't know that to be 04:33PM
accurate or not, is that true? 04:33PM
MR. WILLIS: Object to the form of the question. 04:33PM
**A. Yes. 04:33PM**
BY MR. FINDLEY: 04:33PM
Q. Okay. In the sale or dissolution of Kapstone 04:33PM
Charleston would require the consent of KapStone Kraft 04:33PM
to take either action in Kapstone Paper, as the sole 04:33PM
shareholder of KapStone Kraft, possesses the right, but 04:33PM

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not the obligation to direct Kapstone to do so. You 04:33PM
don't know that to be true either, fair? 04:33PM
MR. WILLIS: Objection to the form of the 04:33PM
question. 04:33PM
**A. I did not validate, no. 04:33PM**
Q. You did not validate and not only that, the 04:34PM
statement as it's written, I mean, look, I am an 04:34PM
attorney. I can tell an attorney wrote that. 04:34PM
MR. WILLIS: Objection to the form of the 04:34PM
question. 04:34PM
BY MR. FINDLEY: 04:34PM
Q. Do you even know what that sentence means? 04:34PM
**A. Yes, that it needs board approval. 04:34PM**
Q. Okay. And what I want to know about that is 04:34PM
do you even know that to be true? 04:34PM
MR. WILLIS: Objection, asked and answered. 04:34PM
**A. That we need board approval to sell entities, 04:34PM yes, based on personal knowledge. 04:34PM**
BY MR. FINDLEY: 04:34PM
Q. No. Here is what I want to know, the sale or 04:34PM
dissolution of Kapstone Charleston would require the 04:34PM
consent of Kapstone Kraft to either take action, let's 04:34PM
start there, take what action? Do you even know what 04:34PM
that sentence is talking about? 04:34PM

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MR. WILLIS: Objection to the form. 04:34PM
**A. Sell or dissolution. 04:34PM**
Q. Okay, to either take action in Kapstone Paper 04:34PM as the sole shareholder of KapStone Kraft, they possess 04:34PM the right, but not the obligation to direct KapStone 04:35PM Kraft to do so. Okay. Where did you see that they 04:35PM possess the right, but not the obligation to direct 04:35PM KapStone Kraft to do so? Let's be honest, your job has 04:35PM nothing to do with what's stated in that sentence, 04:35PM correct? 04:35PM
MR. WILLIS: Objection to form. 04:35PM
**A. Correct. 04:35PM**
Q. Okay, your job deals with, doesn't deal with 04:35PM anything regarding the dissolution, sales, obligations 04:35PM or directions of any companies, that's not something you 04:35PM do in your role, fair? 04:35PM
**A. Fair. 04:35PM**
Q. And it refers to an organizational chart 04:35PM attached as Exhibit C. That's this one that looks like 04:35PM it came from some sort of Power Point, right? 04:35PM
MR. WILLIS: Objection to the form. 04:36PM
**A. Yes. 04:36PM**
Q. The one that has defendants listed in it, 04:36PM correct? 04:36PM

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**A. Yes. 04:36PM**
Q. And you'd agree with me that the 04:36PM organizational chart that was attached as Exhibit C 04:36PM appears to be based on what we know regarding this 04:36PM lawsuit made specifically for this lawsuit, correct? 04:36PM
**A. I believe so. 04:36PM**
Q. Prior to this lawsuit you had never seen a 04:36PM document that said KapStone Paper and Packaging 04:36PM Corporation in this type of format with defendants 04:36PM listed next to it, fair? 04:36PM
**A. Yes. 04:36PM**
Q. All right, paragraph number 15, approximately 04:36PM 20 of Kapstone Charleston report directly to managers at 04:36PM KapStone Kraft or Kapstone Paper. Okay, first of all 04:36PM what 20 employees at Kapstone Charleston Kraft LLC 04:37PM report directly to managers at the other locations? 04:37PM
**A. I explained that before, right, the mill 04:37PM headquarter people that are located at Kapstone 04:37PM Charleston. 04:37PM**
Q. All right. And here is what I want to know, 04:37PM 20 employees of Kapstone Charleston Kraft, LLC, that's 04:37PM what it says, paragraph 15, what are the names of those 04:37PM 20 employees? 04:37PM
**A. May I refer to a list in here? 04:37PM**

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Q. Sure, if you have one. Do you know the 04:37PM number? 04:38PM
MR. WILLIS: Uh-huh. Go to 373, 374, 375. 04:38PM
MR. FINDLEY: And, Dick, let's refrain from 04:38PM directing the witness. 04:38PM
MR. WILLIS: She just asked me if I had a number. 04:38PM
MR. FINDLEY: Okay, but we have already talked 04:38PM about this several times, coaching the witness. 04:38PM
MR. WILLIS: I am not coaching the witness. I am 04:38PM helping her find a document. 04:38PM
MR. FINDLEY: I disagree with it. 04:38PM
MR. DUCAYET: (Inaudible.) 04:38PM
MR. FINDLEY: I'm sorry, what was that? 04:38PM
MR. WILLIS: Nothing, nothing, nothing. 04:38PM
MR. FINDLEY: I keep hearing objections from 04:38PM people who are not enrolled in this case and coaching 04:38PM the witness. 04:38PM
MR. WILLIS: That was not an objection. 04:38PM
MR. DUCAYET: That was not an objection, that was 04:38PM a side comment. Withdraw. 04:39PM
BY MR. FINDLEY: 04:39PM
Q. All right, so, number 20, paragraph 20, you 04:39PM found the document, right, Ma'am? 04:39PM
**A. Yes. I am reading. 04:39PM**

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Q. All right. 04:39PM
**A. This document refers to 16, so. 04:39PM**
Q. So hold on, I want to stop on, oh, you think 04:39PM it's a different document. Go ahead. Let me see if I 04:39PM can ask it to you better. You have the documents in 04:39PM front of you. You are looking through documents that 04:39PM you think are relating to that, fair? 04:39PM
**A. Yes. 04:39PM**
Q. Okay, so even with those documents can you 04:39PM name me the identity of the 20 employees that you 04:40PM discovered at Kapstone Charleston that report directly 04:40PM to managers at KapStone Kraft and Kapstone Paper? 04:40PM
**A. I would like to follow-up. 04:40PM**
Q. Okay. And that's fine, you can follow-up, 04:40PM but what I am trying to figure out here as we sit here 04:40PM today, okay, as far as you at any point in time being 04:40PM able to identify 20 employees by name, paragraph 15, 04:40PM approximately 20 employees of Kapstone Charleston report 04:40PM directly to managers at KapStone Kraft or Kapstone Paper 04:40PM and approximately five employees of KapStone Kraft 04:40PM report to managers at Kapstone Paper. 04:40PM
Number one question to that is you can't 04:40PM identify me a single person who that is referencing to, 04:40PM correct? 04:41PM

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**A. I can identify four – 04:41PM**
Q. Okay. 04:41PM
**A. – that are employees of KapStone Kraft that 04:41PM report to Kapstone Paper. 04:41PM**
Q. Okay, what are they? 04:41PM
**A. Their titles are the executive VP. 04:41PM**
Q. No, I want their names? 04:41PM
MR. WILLIS: Let her finish her answer. 04:41PM
MR. FINDLEY: Okay, go ahead. 04:41PM
**A. The executive VP of Integrative Packaging, 04:41PM safety manager, fixed assets manager, and mill systems 04:41PM controller. 04:41PM**
Q. Okay. 04:41PM
**A. So the executive VP is Randy Nebel. The mill 04:41PM systems controller is Chelsea Ray. 04:41PM**
Q. Okay. 04:41PM
**A. And I would be guessing at the other two, but 04:41PM I can get the information. 04:41PM**
Q. Okay, and you are looking at page what, Bates 04:41PM label? 04:41PM
**A. 364. 04:41PM**
Q. 364, is that right? 04:41PM
**A. Yes. 04:41PM**
Q. Now, as far as you having conversations, 04:41PM

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well, first of all 364 is completely blacked out? 04:41PM
MR. WILLIS: Objection to the form of the 04:42PM question. 04:42PM
MR. FINDLEY: For the identity of their 04:42PM individuals, correct? 04:42PM
**A. Yes. 04:42PM**
Q. As far as who that document has listed there 04:42PM for the individuals that the affidavit purports to say 04:42PM purports directly by managers, it doesn't identify them 04:42PM by name, fair? 04:42PM
**A. Yes. 04:42PM**
Q. Okay, as far as whether you have seen that 04:42PM document in preparation for your affidavit, you didn't 04:42PM have that document at the time of your affidavit, 04:42PM correct, signing it? 04:42PM
**A. Right, but I have access to the information. 04:42PM**
Q. Okay. And that's what I want to figure out. 04:42PM Exhibit No. 16 (sic), did you go verify that statement 04:42PM that was drafted and handed to you? 04:42PM
**A. No. 04:42PM**
Q. Okay. So as far as its veracity regarding 04:42PM paragraph 15 as well as paragraph 16, we could agree 04:42PM that you did not do any independent searching to figure 04:43PM out whether or not those are accurate statements, fair? 04:43PM

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**A. Fair. 04:43PM**
Q. Okay. And as far as speaking to any Kapstone 04:43PM Charleston Kraft LLC's employees regarding who they 04:43PM report to, you didn't do that, fair? That's not even 04:43PM something you do with your job? 04:43PM
**A. Correct. 04:43PM**
MR. WILLIS: Objection to form. 04:43PM
BY MR. FINDLEY: 04:43PM
Q. That's something that you don't have any day 04:43PM to day dealings with is Kapstone Charleston Kraft LLC 04:43PM employees and who they report to and at what locations, 04:43PM that's not something you deal with on a day-to-day 04:43PM basis, fair? 04:44PM
**A. I am aware of all employees related to 04:44PM payroll. 04:44PM**
Q. Okay. I think we are saying the same thing. 04:44PM What I am saying is as far as who Kapstone Charleston 04:44PM Kraft LLC employees report to, okay, who they report to 04:44PM is not something you deal with at all, fair? 04:44PM
**A. Deal with, no. 04:44PM**
Q. Well, it's not something you see on a 04:44PM day-to-day basis, you are exposed to on a day-to-day 04:44PM basis, it has nothing to do with your job which is 04:44PM limited to payroll, right? 04:44PM

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MR. WILLIS: Objection to form. 04:44PM
**A. Right. 04:44PM**
Q. The same is true for 16, the paragraph 16 04:44PM which an attorney wrote for you, KapStone Kraft employs 04:44PM over 20 managers who work at or perform work at Kapstone 04:44PM Charleston. What 20 managers it's talking about and how 04:44PM often they work or what work they perform, you don't 04:44PM have any dealings with that on a day-to-day basis, fair? 04:45PM
MR. WILLIS: Objection to form. 04:45PM
**A. I have a list and there may be -- it's not on 04:45PM a daily basis, no. 04:45PM**
Q. And, Ma'am, what I am trying to figure out, I 04:45PM understand you got a binder that was given to you on 04:45PM March 2, 2018 and it has some documents in there. Those 04:45PM documents have the identity of those employees blacked 04:45PM out, fair? 04:45PM
**A. Yes. 04:45PM**
Q. Okay. And what I am trying to figure out is 04:45PM September 20, 2017 when you were asked to sign this 04:46PM affidavit, you didn't have any list of the employees, 04:46PM correct? 04:46PM
**A. Correct. 04:46PM**
Q. Okay. And you didn't do anything to verify 04:46PM whether or not the statements made in exhibit -- 04:46PM

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paragraph 15 or 16 were accurate or true, correct? You 04:46PM
relied on the lawyer who drafted it to be putting in 04:46PM
correct information, is that fair? 04:46PM
MR. WILLIS: Objection to the form of the 04:46PM
question. 04:46PM
**A. Fair. 04:46PM**
Q. And look, I understand you have a legal 04:46PM
department at KapStone Paper and Packaging Corporation, 04:46PM
fair? 04:46PM
**A. Yes. 04:46PM**
Q. And you have dealt with them as far as 04:46PM
working or in relation to this lawsuit, correct? 04:46PM
**A. To prepare the affidavit, yes. 04:46PM**
Q. Okay. And in the statements that were made 04:46PM
in here, you just assumed that they had done the proper 04:46PM
legal research or research to verify those paragraphs, 04:46PM
correct? 04:46PM
MR. WILLIS: Objection form. 04:46PM
**A. For some, yes. 04:47PM**
Q. Okay. Well, for every single one we have 04:47PM
gone through other than you stating otherwise so far, 04:47PM
correct? 04:47PM
**A. Yes. 04:47PM**
Q. And so for 16 the same would be true as far 04:47PM

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as you having any independent knowledge or being able to 04:47PM
verify or speak to and provide sworn testimony with 04:47PM
regard to the work at or performed at Kapstone 04:47PM
Charleston LLC in relation to those 20 managers, you 04:47PM
can't do it, fair? 04:47PM
MR. WILLIS: Objection to form. 04:47PM
**A. Details, no. 04:47PM**
Q. The next thing if we go to paragraph 17, 04:47PM
Kapstone managers have hiring and firing authority over 04:47PM
all of their direct reports, okay. Have you ever worked 04:47PM
as a Kapstone manager? 04:47PM
**A. Yes. 04:47PM**
Q. Okay. Where? Or you are talking about 04:48PM
Kapstone Paper and Packaging Corporation? 04:48PM
**A. Yes. 04:48PM**
Q. And when you are talking about management, 04:48PM
your management had dealt with the accounts payable, 04:48PM
receivable, and credit collections? 04:48PM
**A. Yes. 04:48PM**
Q. Have you ever worked as part of a Kapstone 04:48PM
Packaging and Paper Corporation manager in relation to 04:48PM
employees at KapStone Charleston Kraft LLC? That was a 04:48PM
lot of words. Let me see if I can rephrase that for 04:48PM
you. 04:48PM

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Your role as a KapStone Paper and 04:48PM
Packaging Corporation manager did not deal with managing 04:48PM
anyone at the local plant in Charleston, fair? 04:48PM
**A. Yes. 04:48PM**
Q. Okay. And it also didn't deal with managing 04:48PM
any employees who were employees of Kapstone Charleston 04:48PM
Kraft LLC, fair, you don't manage any of those 04:48PM
employees? 04:48PM
**A. I don't. 04:48PM**
Q. Okay. 04:48PM
**A. Actually, let me take that back. I do have a 04:48PM**
**time and attendance person in Charleston. 04:49PM**
Q. Who is a Kapstone Charleston Kraft LLC 04:49PM
employee? 04:49PM
**A. I would have to confirm, but maybe Kapstone 04:49PM**
**Paper. 04:49PM**
Q. What's her name? 04:49PM
**A. Suzanne Brown. 04:49PM**
Q. Suzanne Brown and she is a timekeeper? 04:49PM
**A. HR. Her title is time and attendance 04:49PM**
**analyst, but I believe her company would be Kapstone 04:49PM**
**Paper. I just would like to confirm. 04:49PM**
Q. Okay, so you are not certain who she works 04:49PM
for whether it's -- 04:49PM

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**A. No, she works for me, but the company name I 04:49PM**
**would like to confirm. 04:49PM**
Q. Fair enough. But as far as you sit here 04:49PM
today your understanding, best recollection is that she 04:49PM
works for KapStone Paper and Packaging Corporation? 04:49PM
**A. I believe so, yes. 04:49PM**
Q. Okay. Now as far as you ever having managed 04:49PM
anyone at KapStone Charleston Kraft LLC, as we sit here 04:49PM
today is it fair to say you have no recollection of ever 04:50PM
doing that? 04:50PM
**A. Yes. 04:50PM**
Q. Okay. As far as you ever having managed 04:50PM
anyone at KapStone Kraft Paper Corporation, as far as 04:50PM
having any recollection of that ever occurring as we sit 04:50PM
here today, you haven't down that as well, correct? 04:50PM
MR. WILLIS: Objection to form. 04:50PM
**A. Correct. 04:50PM**
Q. Okay. So as far as your day-to-day duties 04:50PM
don't deal with hiring, firing of anyone at Kapstone 04:50PM
Charleston Kraft LLC, fair? 04:50PM
**A. Yes. 04:50PM**
Q. Okay. As far as the details of who needs, 04:50PM
who actually does the hiring and firing at the North 04:50PM
Charleston plant, is it fair to say you have no personal 04:50PM

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knowledge regarding that? 04:50PM
**A. Yes, aside from managers, yes. 04:50PM**
Q. Okay, when you say managers, what do you 04:50PM
mean? 04:50PM
**A. As managers we are responsible for hiring and 04:50PM**
**firing, right. 04:50PM**
Q. Okay. And what you are saying your personal 04:50PM
knowledge that you have regarding what managers are 04:51PM
allowed to do is based on your experience as a KapStone 04:51PM
Paper and Packaging Corporation manager located here in 04:51PM
North Bridge (sic) Illinois, fair? 04:51PM
**A. Yes. 04:51PM**
Q. You don't have any experience or any exposure 04:51PM
as a Kapstone Paper and Packaging Corporation manager at 04:51PM
any other location than this one in Chicago, fair? 04:51PM
**A. Yes. 04:51PM**
Q. You have never hired or fired anyone at any 04:51PM
other location other than KapStone Paper and Packaging 04:51PM
Corporation, fair? 04:51PM
**A. Yes. 04:51PM**
Q. Okay. You have never hired or fired a 04:51PM
Kapstone Charleston Kraft LLC employee, true? 04:51PM
**A. True. 04:51PM**
Q. And as far as what goes into that or how it's 04:51PM

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done or who does it, that's never something that you 04:51PM
personally have been involved in, fair? 04:51PM
MR. WILLIS: Objection to form. 04:51PM
BY MR. FINDLEY: 04:51PM
Q. Yes? 04:51PM
**A. Yes. 04:51PM**
Q. Okay. So let's go on to paragraph 18, 04:52PM
Kapstone Paper provides strategic direction and Shared 04:52PM
Services including integrated accounting, cash 04:52PM
management, payroll management, employee benefit 04:52PM
services and insurance programs to KapStone Kraft and 04:52PM
Kapstone Charleston. Okay, do you see that paragraph? 04:52PM
**A. Yes. 04:52PM**
Q. First of all, we already know you didn't 04:52PM
write it, right? 04:52PM
MR. WILLIS: Objection, asked and answered. 04:52PM
MR. FINDLEY: Okay. Well, I will speed that part 04:52PM
up. We agree that you didn't write a single paragraph 04:52PM
in this affidavit. 04:52PM
MR. WILLIS: Objection, asked and answered. 04:52PM
MR. FINDLEY: The reason why I am asking that is 04:52PM
he said asked and answered earlier during this 04:52PM
deposition. I asked you and you said you couldn't 04:52PM
remember what paragraphs you changed. And what I am 04:52PM

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trying to verify is you didn't change paragraph 18, 04:52PM
right, based on your memory or recollection? 04:52PM
**A. I don't recall, but this would be the area 04:52PM**
**that I would know about if one was missing. 04:52PM**
Q. And that's fair. And all I am saying is you 04:52PM
didn't write, as far as you remember as we sit here 04:53PM
today, paragraph 18 came to you in the same format as we 04:53PM
see it today, correct? 04:53PM
**A. I don't recall, but. 04:53PM**
Q. Okay. Well, let's talk about it for a 04:53PM
second. Do you have any independent recollection about 04:53PM
changing or modifying, adding words or writing anything 04:53PM
contained in paragraph 18? 04:53PM
**A. No. 04:53PM**
Q. Okay. It came to you based on your best 04:53PM
recollection from a legal department at Kapstone in the 04:53PM
same format as we see it here, correct? 04:53PM
**A. Yes. 04:53PM**
Q. Okay. Now as far as strategic direction, 04:53PM
Shared Services included integrated accounting, cash 04:53PM
management, payroll management, employee benefit service 04:53PM
and insurance programs, this is all part of the Shared 04:53PM
Services role that we talked about earlier? 04:53PM
**A. Yes. Well, accounting is not in my area, 04:53PM**

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**accounting. I do accounts payable and accounts 04:53PM**
**receivable, but I have exposure to the accounting. 04:54PM**
Q. Okay. So we are going to come back to that. 04:54PM
But as far as what we talked about here, this is the 04:54PM
strategic direction you talked about that was 04:54PM
implemented January 1, 2017? 04:54PM
MR. WILLIS: Objection to the form of the 04:54PM
question. 04:54PM
BY MR. FINDLEY: 04:54PM
Q. As far as making things more centralized, is 04:54PM
that what this was dealing with? 04:54PM
**A. No. 04:54PM**
Q. Okay, what was this dealing with? 04:54PM
**A. This was all centralized before. 04:54PM**
Q. Okay. What was the strategic direction? 04:54PM
What does that even mean? 04:54PM
**A. Again, in the leadership meeting or in the 04:54PM**
**rules in Northbrook they set the strategy. 04:54PM**
Q. Okay, you are talking about the leadership 04:54PM
meeting that did not occur until 2017? 04:54PM
MR. WILLIS: Objection to the form of the 04:54PM
question. 04:54PM
**A. Prior to that people were in the roles that 04:54PM**
**did the same. 04:54PM**

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Q. Were you part of those meetings? 04:54PM
**A. Prior to 2017, no. 04:54PM**
Q. Okay, so prior to what they did in those 04:54PM
roles prior to 2017, you don't know, fair? 04:55PM
MR. WILLIS: Objection to form. 04:55PM
**A. Fair. 04:55PM**
Q. Okay. So when we are talking about strategic 04:55PM
direction, first of all, what is meant and what 04:55PM
strategic direction is supposed to encompass there, you 04:55PM
don't know because you didn't write the words, right? 04:55PM
MR. WILLIS: Objection to form. 04:55PM
**A. The strategy comes from Northbrook, I know 04:55PM**
**that based on personal experience. 04:55PM**
Q. Okay, and that's what I wanted to talk about. 04:55PM
You have no experience whatsoever regarding strategic 04:55PM
planning for any of the various entities that KapStone 04:55PM
Paper and Packaging Corporation is a parent company for? 04:55PM
Do you actually go to meetings at these mills and talk 04:55PM
about this stuff? 04:55PM
MR. WILLIS: Objection to form. 04:55PM
**A. No. 04:55PM**
Q. You don't to that, do you? 04:55PM
**A. No. 04:55PM**
Q. And as far as what you were talking about as 04:55PM

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far as leadership meetings is what you mentioned earlier 04:55PM
these meetings that you first became a part of in 2017, 04:55PM
correct? 04:56PM
**A. Yes. 04:56PM**
Q. As far as what occurred at any point in time 04:56PM
prior to that, you don't have any idea because you were 04:56PM
dealing with accounts payable, receivable, and credit 04:56PM
collections, fair? 04:56PM
**A. Yes. 04:56PM**
MR. WILLIS: Objection to form. 04:56PM
Q. You didn't deal with strategic direction or 04:56PM
integrated management at any of these other facilities 04:56PM
including Kapstone Charleston Kraft LLC, fair? 04:56PM
MR. WILLIS: Objection to form. 04:56PM
**A. As it relates to the balance of those, yes. 04:56PM**
Q. The balance, what do you mean? 04:56PM
**A. Accounting, cash management, payroll 04:56PM**
**management, employee benefit services and insurance -- 04:56PM**
Q. Okay. 04:56PM
**A. -- are all managed by Kapstone Paper. 04:56PM**
Q. Okay. So let's talk about it. You said 04:56PM
accounting you would be exposed to accounting, but not 04:56PM
involved in it. What did you mean by that? 04:56PM
**A. We have an accounting department. 04:56PM**

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Q. Okay, where? 04:56PM
**A. In Northbrook. 04:56PM**
Q. That covers what? 04:56PM
**A. The entire company. The corporate controller 04:56PM**
**is housed in Northbrook. 04:56PM**
Q. Are you talking about your accounting 04:57PM
department that we were speaking about earlier? 04:57PM
**A. No. 04:57PM**
Q. A different one? 04:57PM
**A. Right. 04:57PM**
Q. Okay, what do they do? 04:57PM
**A. The financials. 04:57PM**
Q. What -- 04:57PM
**A. They are responsible for preparing the 10K. 04:57PM**
Q. Okay. And who would be responsible for that? 04:57PM
**A. Mark Niehus is corporate controller. 04:57PM**
Q. Niehus? 04:57PM
**A. N-i-e-h-u-s. 04:57PM**
Q. And what do they do as far as accounting? Do 04:57PM
they help collect everything from the various locations 04:57PM
and put it into one? I am confused by what you mean. 04:57PM
**A. All locations are on the same accounting 04:57PM**
**system and they are responsible for the consolidation. 04:57PM**
Q. Okay. So they are responsible for taking the 04:57PM

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different -- well, let's back up for a second. 04:57PM
If I bought paper from the North 04:57PM
Charleston mill and I wrote a check to Kapstone 04:58PM
Charleston Kraft LLC, okay, that check has the ability 04:58PM
to be deposited in their bank account, true? 04:58PM
MR. WILLIS: Objection to the form of the 04:58PM
question. 04:58PM
**A. It's deposited in Kapstone receivable account 04:58PM**
**related to the securitization. 04:58PM**
Q. Okay. Well, my understanding is a little bit 04:58PM
different. So where did you get that information? 04:58PM
**A. I worked on the initial securitization 04:58PM**
**agreement. 04:58PM**
Q. Okay, the way I understand the way those 04:58PM
agreements work is I can transact business and put a 04:58PM
check with or money deposited with Kapstone Charleston 04:58PM
Kraft LLC and then what Kapstone Charleston Kraft LLC 04:58PM
can do is they can trade it to receivables for a 04:58PM
promissory note, is that your understanding? 04:58PM
MR. WILLIS: Objection to form. 04:58PM
BY MR. FINDLEY: 04:58PM
Q. Or do you know? 04:58PM
**A. I am not comfortable speaking to the details 04:58PM**
**of the transaction and talking about how the money 04:59PM**

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moves. 04:59PM
Q. Okay, and that's what I want to know about. 04:59PM
So is it fair to say that you are not comfortable or as 04:59PM
a corporate representative regarding the accounting 04:59PM
practices with Kapstone Charleston Kraft LLC how it 04:59PM
works, how it's transferred, at what points in time? 04:59PM
**A. Accounting is not in my scope, but it's 04:59PM**
**essentially managed from a consolidation basis in 04:59PM**
**Northbrook. 04:59PM**
Q. Okay. 04:59PM
MR. WILLIS: Can we take a short break? 04:59PM
MR. FINDLEY: Sure. I have one more question for 04:59PM
you before we take a break. 04:59PM
Q. Do you even know what the purpose is of 04:59PM
creating receivables LLC was for? 04:59PM
**A. Yes. 04:59PM**
Q. Okay, what was it? 04:59PM
**A. It's a way to borrow against receivables. We 04:59PM**
**use it as a way to borrow against receivables. 04:59PM**
Q. Borrow against receivables. And the way that 05:00PM
that would work is the entities themselves like Kapstone 05:00PM
Charles Kraft LLC could receive money and trade it to 05:00PM
receivables for a promissory note or do you know? 05:00PM
MR. WILLIS: Objection to form. 05:00PM

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**A. It's all done in accounting. 05:00PM**
Q. Not something that you do? 05:00PM
**A. Right, not that transaction. 05:00PM**
Q. So as far as the statements made regarding 05:00PM
the strategic direction and the integrated services for 05:00PM
accounting on paragraph number 18, that's not something 05:00PM
we can go into detail on as we sit here today, fair? 05:00PM
**A. Fair. 05:00PM**
Q. Okay. Thank you. 05:00PM
MR. FINDLEY: You want to take a break? 05:00PM
MR. WILLIS: Yes. 05:00PM
THE VIDEOGRAPHER: We are going off the record at 05:00PM
5:00 p.m. 05:00PM
(Off the record.) 05:10PM
THE VIDEOGRAPHER: We are back on the record at 05:10PM
the beginning of tape four at 5:10 p.m. 05:10PM
MR. WILLIS: And just for the record, let me put 05:10PM
on the record we are going to go to 5:30 and then we are 05:10PM
going to stop the deposition. I am not asking for 05:10PM
Mr. Findley's consent to that. I am telling you that's 05:10PM
what we are going to do. 05:11PM
MR. FINDLEY: Okay. So our response to that is 05:11PM
our deposition notice, we have waited 12 months to take 05:11PM
this deposition. We have a lot of topics to cover in an 05:11PM

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affidavit that was filed with a Motion to Dismiss. We 05:11PM
haven't been able to get through that topics yet. We 05:11PM
intend to stay until the deposition is over, day to day 05:11PM
until complete. And they got to choose their own 05:11PM
corporate representative and choose which topics and we 05:11PM
have a lot of topics to cover. So I understand what 05:11PM
Dick has said and he can do what he needs to, but our 05:11PM
position is the deposition continues. 05:11PM
MR. WILLIS: All right. Very good. 05:12PM
MR. FINDLEY: And we reserve all other rights that 05:12PM
we have. Go ahead. Are you ready? 05:12PM
MR. WILLIS: Yes. 05:12PM
Q. Ma'am, are you ready to continue? 05:12PM
**A. Yes. 05:12PM**
Q. Okay. So when we left off we were talking 05:12PM
about number 18, and I think we covered that. Is that 05:12PM
your memory? We talked about 18 last time and we are 05:12PM
going to 19. 05:12PM
**A. Only accounting. 05:12PM**
Q. So let's talk about payroll management for a 05:12PM
second, okay. You deal with accounts payable, accounts 05:12PM
receivable. Do you do deal with payroll at all? 05:12PM
**A. Yes. 05:12PM**
Q. As far as payroll is concerned, you deal with 05:12PM

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payroll for all entities under the Kapstone umbrella? 05:12PM
**A. Yes. 05:12PM**
Q. Okay. And when I say deal with them, I 05:12PM
assume you have someone underneath you who does work for 05:12PM
you in relation to that department? 05:12PM
**A. Yes. 05:12PM**
Q. What is her name or his name? 05:12PM
**A. Kathy Macky. 05:13PM**
Q. I think we mentioned her earlier. 05:13PM
**A. Yes. 05:13PM**
Q. And is she a Kapstone Paper and Packaging 05:13PM
Corporation employee? 05:13PM
**A. Yes. 05:13PM**
Q. So here is what I want to talk to you about, 05:13PM
as far as actual cutting of checks, there are the 05:13PM
various Kapstone employees -- well, there are many 05:13PM
different entities listed on checks that go out for 05:13PM
distribution, is that fair? 05:13PM
MR. WILLIS: Objection to the form of the 05:13PM
question. 05:13PM
BY MR. FINDLEY: 05:13PM
Q. And I can re-ask it if you need 05:13PM
clarification. 05:13PM
**A. Yes. 05:13PM**

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Q. Okay. Let's take these two, for instance. 05:13PM
KapStone Charleston Kraft LLC is the name on the check 05:13PM
that goes out to my clients, fair? 05:13PM
**A. Yes. 05:13PM**
Q. Now, there are other entities that we talked 05:13PM
about earlier. I think there is Kapstone -- well, there 05:13PM
is Kapstone Victory, right? Kapstone Longview, Kapstone 05:13PM
Container, and there is various legal entities, correct? 05:14PM
**A. Yes. 05:14PM**
Q. Okay. Those are separate legal entity 05:14PM
filings as well, correct, as far as your understanding? 05:14PM
**A. Payroll filings. 05:14PM**
Q. Well, let's start with Secretary of State 05:14PM
filings. You understand they are legally filed as 05:14PM
separate entities, right? 05:14PM
**A. I don't know. 05:14PM**
Q. Okay. You don't know. You do know that the 05:14PM
Kapstone Charleston Kraft LLC is a legal filing with a 05:14PM
separate entity? 05:14PM
**A. Yes. 05:14PM**
Q. Separate entity than your employer, correct? 05:14PM
**A. Yes. 05:14PM**
Q. And you do know that KapStone Kraft Paper 05:14PM
Corporation is a separate and distinct legal entity from 05:14PM

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your employer, correct? 05:14PM
**A. Yes. 05:14PM**
Q. Okay. Now, as far as other Kapstone 05:14PM
Container Corporation, for instance, are you familiar 05:14PM
with that company? 05:14PM
**A. Yes. 05:14PM**
Q. And that's a separate legal filing as well? 05:14PM
**A. Yes. 05:14PM**
Q. Okay. And they would have separate payroll 05:14PM
as well meaning they have payroll checks with their 05:14PM
entity name on it, correct? 05:15PM
**A. Yes. 05:15PM**
Q. Okay. It wouldn't say KapStone Paper and 05:15PM
Packaging Corporation, true? 05:15PM
**A. Yes. 05:15PM**
Q. Okay. For the four -- in regards to payroll, 05:15PM
for the people who receive checks that say KapStone 05:15PM
Paper and Packaging Corporation, your employer, we 05:15PM
talked about ball park 200 or less, give or take, fair? 05:15PM
**A. Yes. 05:15PM**
Q. And you know that because you are in charge 05:15PM
of the payroll management, right? 05:15PM
**A. And I said in Northbrook, yes. 05:15PM**
Q. Okay. And what I am trying to figure out is 05:15PM

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how many different entities are there that go on checks 05:15PM
for payroll? 05:15PM
**A. I would have to confirm. 05:15PM**
Q. And I don't know if this has it or some other 05:15PM
document has it. 05:15PM
**A. So Kapstone Paper, KapStone Kraft, Kapstone 05:16PM
Charleston, Longview, Kapstone Container and beyond that 05:16PM
I would have to confirm. 05:16PM**
Q. Okay. The ones you just named, all the 05:16PM
employee -- each one of those that you named has their 05:16PM
own set of the employees, fair? 05:16PM
**A. They have employees. 05:16PM**
Q. Okay. 05:16PM
**A. People are employed by those entities, yes. 05:16PM**
Q. And what I mean by that, they are employed by 05:16PM
those entities meaning not only do they work for those 05:16PM
entities, but they receive their paycheck from that 05:16PM
particular entity that you named, right? I believe you 05:16PM
named six or seven of them. 05:16PM
**A. Right. They receive a paycheck from ADP who 05:16PM
processes on Kapstone Paper's behalf. 05:16PM**
Q. Okay. Well, let's do it this way. We 05:16PM
already talked about payroll for Kapstone Charleston 05:16PM
Kraft LLC. They get a, if you want a hard check with 05:17PM

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KapStone Charleston Kraft LLC, you can receive it, 05:17PM
correct, receive a copy of it? 05:17PM
**A. Yes. 05:17PM**
Q. Okay. The same with their W2s, it has a 05:17PM
separate legal entity of Kapstone Charleston Kraft LLC, 05:17PM
correct? 05:17PM
**A. Yes. 05:17PM**
Q. Of those entities you just read, they are all 05:17PM
separate and distinct legal entities, correct? 05:17PM
**A. Correct. 05:17PM**
Q. Okay. Each one of those that you read the 05:17PM
employees for those particular entities receive a check 05:17PM
with their respective entity on there, their employer? 05:17PM
**A. Yes. 05:17PM**
Q. Okay. And that would be true whether it 05:17PM
comes as direct deposit or whether it comes as a hard 05:17PM
check because their W2s list their distinct employer as 05:17PM
well, correct? 05:17PM
**A. Correct. 05:17PM**
Q. Now, as far as employee benefit services, the 05:17PM
employee benefit services that are provided as far as 05:17PM
what types of, what makes someone eligible when we are 05:17PM
talking about -- do you know if different entities, what 05:18PM
eligibility requirements there are for the employee 05:18PM

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benefits? 05:18PM
**A. I can't speak to the detail. 05:18PM**
Q. Okay. So as far as whether or not they all 05:18PM share or have the same access to employee benefit 05:18PM services as we sit here today, you don't know, fair? 05:18PM
**A. The salary nonbargained is the handout that 05:18PM you have in the book, the benefits that relate to them. 05:18PM**
Q. That means their salary noncollective 05:18PM bargaining agreements, right? 05:18PM
**A. Salaried employees and nonbargained 05:18PM employees. 05:18PM**
Q. Okay. And when we talk about salaried 05:18PM employees, you are talking about KapStone Paper and 05:18PM Packaging Corporation employees, correct? 05:18PM
**A. Any exempt employees. 05:18PM**
Q. Okay. My clients, Jacque Lucas and Daniel 05:18PM Simerly, are not salaried employees, fair? 05:19PM
**A. Fair. 05:19PM**
Q. They are not covered by the employment 05:19PM benefit packages that you distribute, correct? 05:19PM
**A. I do not believe so. 05:19PM**
Q. So they would not receive the same employment 05:19PM benefit services as say you do at KapStone Paper and 05:19PM Packaging Corporation? 05:19PM

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**A. I can't speak to all of the benefits. 05:19PM**
Q. Okay. And that's fair. What I am saying is 05:19PM you do know that the employee benefit package you 05:19PM provided me would not apply to them? 05:19PM
MR. WILLIS: Objection to the form of the 05:19PM question. 05:19PM
**A. I don't know if all of it does not apply. 05:19PM There is many types of benefits in there. 05:19PM**
Q. Okay, but based on your understanding, the 05:19PM employee benefit package you gave to me would not apply 05:19PM to as you put it bargained employees or nonsalaried 05:19PM employees, correct? 05:19PM
**A. Yes. 05:19PM**
Q. Okay. So based on your understanding it 05:19PM would not apply to my clients? 05:19PM
**A. I don't believe so. 05:19PM**
Q. Okay. Okay, what is a special purpose 05:19PM receivable vehicle? 05:20PM
**A. Bankruptcy remote. 05:20PM**
Q. What? 05:20PM
**A. A bankruptcy remote entity. 05:20PM**
Q. What does that mean? 05:20PM
**A. That the receiver was protected. 05:20PM**
Q. It is a legal formation for the purposes of 05:20PM

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preventing bankruptcy? 05:20PM
MR. WILLIS: Objection to form. 05:20PM
**A. No. 05:20PM**
Q. Okay, what do you mean? Explain what you 05:20PM just said, a bankruptcy remote protection? 05:20PM
**A. I don't want to speak -- I don't know the 05:20PM detail of this. 05:20PM**
Q. Okay. And that's a fair answer. Going to 05:20PM paragraph 19, it says Kapstone and several subsidiaries 05:20PM including KapStone Kraft and Kapstone Charleston are 05:20PM parties to consolidated receivable securitization 05:20PM program in which the account receivables travel through 05:20PM a special purpose receivable vehicle and ultimately end 05:21PM up in Kapstone Paper account? 05:21PM
**A. Yes. 05:21PM**
Q. As far as what a special purpose receivable 05:21PM vehicle is or the purpose of it, you don't know, 05:21PM correct? 05:21PM
**A. My understanding is it's a way for us to 05:21PM borrow against the receivables. 05:21PM**
Q. Okay. A way for us to borrow against, who is 05:21PM us, KapStone Paper and Packaging Corporation? 05:21PM
**A. Yes. 05:21PM**
Q. Okay. And when you are saying -- 05:21PM

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**A. Actually, I don't want to respond to this. I 05:21PM don't know the detail of it. 05:21PM**
Q. Well, fair enough. But, Ma'am, you have to 05:21PM understand my position, you have an affidavit that's 05:21PM signed and notarized that says number 19 is true based 05:21PM on your information and belief and what I am just trying 05:21PM to figure out so that we can clarify this for later is, 05:21PM is it fair to say you have no idea and do not feel 05:21PM comfortable testifying to the contents of paragraph 19 05:21PM and we can move on to the next one? 05:21PM
MR. WILLIS: Object to form. 05:22PM
**A. Right. 05:22PM**
Q. Okay. So based on your response I am going 05:22PM to move to paragraph 20, fair? 05:22PM
**A. Yes. 05:22PM**
Q. Okay. Integrated accounting system and cash 05:22PM management system includes accounts receivable and 05:22PM accounts payable, okay. When we say integrated 05:22PM accounting system, where is that and what is it? 05:22PM
MR. WILLIS: Objection, form. 05:22PM
**A. All entities record their accounting, their 05:22PM journal entries into the same accounting system. 05:22PM**
Q. Okay. So what you are saying there is a 05:22PM centralized accounting system that's like a computer 05:22PM

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software program or what is it? 05:22PM
**A. Yes. 05:22PM**
Q. What's it called? 05:22PM
**A. Microsoft Dynamics AX. 05:22PM**
Q. And how long has that been around, for how 05:23PM long have y'all been using it? 05:23PM
**A. Since the beginning of 2007. 05:23PM**
Q. Okay. And Microsoft Dynamics AX, so are you 05:23PM saying that -- well, let's just talk about integrated 05:23PM accounting system, that specific term would be Microsoft 05:23PM Dynamics AX, is that fair, that's what you refer to as 05:23PM integrated accounting system, and it would allow you to 05:23PM keep detailed accounting at each one of the plant 05:23PM locations or mills? 05:23PM
MR. WILLIS: Objection to form. 05:23PM
**A. We use it to consolidate the financial 05:23PM information. 05:23PM**
Q. Okay. Consolidate the financial information 05:23PM for the purposes of the 10K? 05:23PM
**A. Yes. 05:23PM**
Q. Okay. And because when you perform your 10K 05:23PM what you are doing is you are consolidating financials 05:23PM for every entity, right? 05:23PM
**A. Everybody's information is in the same 05:24PM**

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**system, yes. 05:24PM**
Q. Okay, but what I am saying is that 05:24PM information before consolidation is broken down meaning 05:24PM Kapstone Charleston Kraft LLC, North Charleston plant 05:24PM has its own accounting information that is kept separate 05:24PM and apart, it can just later be consolidated, it has 05:24PM that function, true? 05:24PM
**A. There is P and L in the system, there is not 05:24PM an individual balance sheet for each location. 05:24PM**
Q. Okay. Well, let me put it this way, if I 05:24PM wanted to get the Microsoft Dynamics AX and all I wanted 05:24PM to do was know about accounts payable, accounts 05:24PM receivable and any kind of financials related to 05:24PM KapStone Charleston Kraft LLC, I have the ability to 05:24PM sort it by that location, fair? 05:24PM
**A. You have the ability to sort by location, 05:24PM yes. 05:24PM**
Q. Okay. And what I mean by that is you have 05:24PM the ability to sort by location is because each entry 05:24PM has a specific code for it, correct? 05:25PM
**A. Each location has -- 05:25PM**
Q. Right. 05:25PM
**A. -- and identifying number, yes. 05:25PM**
Q. Each location has an identifying number and 05:25PM

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that way if you wanted to, for instance, say I want to 05:25PM look at all, you know, locations in South Carolina, you 05:25PM can do that, right? Or let me break it down even 05:25PM simpler. I want to look at all cash management systems 05:25PM and integrating accounting system for Kapstone 05:25PM Charleston Kraft LLC, based on those specific 05:25PM identifying numbers I can identify that specific plan, 05:25PM fair? 05:25PM
**A. You cannot run a 10K on Charleston. 05:25PM**
Q. And I am not talking about a 10K. What I am 05:25PM talking about is if I wanted to know the financials, the 05:25PM P and L's or anything related to the accounting systems 05:25PM at Kapstone Charleston Kraft LLC, I can divide it by 05:25PM that, right, based on the identifier? 05:25PM
**A. For P and L's, yes. 05:26PM**
Q. Okay. And what you are saying is Microsoft 05:26PM Dynamics AX is for the purpose of taking all of these 05:26PM separate systems and consolidating them into one for the 05:26PM purposes of 10K filing, true? 05:26PM
MR. WILLIS: Objection to form. 05:26PM
MR. FINDLEY: That's my understanding of it, is 05:26PM yours different? 05:26PM
**A. No. 05:26PM**
Q. So our understanding would be the same, true? 05:26PM

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**A. Could you say your understanding again. 05:26PM**
Q. My understanding is that each, let's just 05:26PM take locations, for instance, okay, you said that 05:26PM earlier, each specific mill location has an identifier 05:26PM number? 05:26PM
**A. Yes. 05:26PM**
Q. What is it called? 05:26PM
**A. The location number. 05:26PM**
Q. Okay, the location number. And each 05:26PM accounting principal or P and L statement can be 05:26PM separated by identifier numbers, fair? 05:26PM
**A. Yes. 05:26PM**
Q. Yes? You got to say it for her not for me? 05:26PM
**A. Okay, the information is in there. Whether 05:26PM you could run a report, I am not clear. 05:27PM**
Q. Okay. The information is in there meaning 05:27PM each one can be separated by specific identifier number. 05:27PM Meaning if I wanted to pull all the identifier numbers 05:27PM for KapStone Charleston Kraft LLC, I could do it and 05:27PM know whether or not Belgium or Longview or any other 05:27PM place was included, right? 05:27PM
**A. Yes, based on the number. 05:27PM**
Q. Right. It has a specific identifier that 05:27PM separates it, fair? 05:27PM

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**A. Yes.** **05:27PM**
Q. Okay. Now what you are saying when you are 05:27PM
talking about integrated accounting system to 05:27PM
consolidate, what you are saying and what my 05:27PM
understanding is and I think we agree to is Microsoft 05:27PM
Dynamics AX allows you to take all of these separate 05:27PM
identifying numbers, P and L statements and consolidate 05:27PM
them together for the purpose of filing a 10K, is that 05:27PM
fair? 05:27PM
**A. Yes. There is a system that actually** **05:27PM**
**consolidates, but the data is in AX and I am not** **05:27PM**
**familiar with the process.** **05:28PM**
Q. But the data is recorded separately and the 05:28PM
data can be kept separately for the purposes of specific 05:28PM
identifier number per location? 05:28PM
**A. Yes.** **05:28PM**
Q. And that would be true for accounts payable 05:28PM
and receivable? 05:28PM
**A. Yes.** **05:28PM**
Q. Now, paragraph 21 has a long description 05:28PM
about how receivables are swept together and I am just 05:28PM
going to ask you off the bat to see if we can save 05:28PM
ourselves some questions, are you prepared to answer 05:28PM
questions in relation to paragraph 20? 05:28PM

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**A. Yes.** **05:28PM**
Q. Okay. 05:28PM
**A. 21 you mean?** **05:28PM**
Q. 21, excuse me. All right, so Kapstone Paper 05:28PM
Packaging Corporation is what that refers to when it 05:28PM
says Kapstone Paper, right? 05:28PM
**A. Yes.** **05:29PM**
Q. Receives collectibles or collects receivables 05:29PM
from the operation of KapStone Kraft and Kapstone 05:29PM
Charleston. Okay, just starting there with that 05:29PM
sentence, okay, the plan actually collects receivables 05:29PM
on its own first before it's passed to KapStone Paper 05:29PM
and Packaging Corporation, true? 05:29PM
MR. WILLIS: Objection to the form. 05:29PM
**A. The receivables are collected in these** **05:29PM**
**accounts the ZBA to this account.** **05:29PM**
Q. All right, so, I am going to mark for you -- 05:29PM
well, do you know about this document? 05:29PM
**A. I have seen it.** **05:29PM**
Q. Are you familiar with it? 05:29PM
**A. I cannot speak to the accounting behind it.** **05:30PM**
Q. Okay. So what is this document or your 05:30PM
understanding of the transaction structure chart? 05:30PM
**A. It's the accounting behind securitization.** **05:30PM**

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Q. Well, it would deal with accounts payable and 05:30PM
accounts receivable. It would deal with paragraph 21, 05:30PM
would it not? 05:30PM
**A. The cash is collected in these accounts and** **05:30PM**
**these ZBA everyday to this account.** **05:30PM**
Q. Okay. 2: 05:30PM
MR. WILLIS: Why don't you make this is your last 05:30PM
paragraph. 05:30PM
MR. FINDLEY: You are going to have to shut me 05:30PM
down. 05:30PM
MR. WILLIS: I am going to shut you down at 5:30, 05:30PM
but I want you to get to a stopping place. 05:30PM
MR. FINDLEY: All right, so let me go to this one. 05:30PM
MR. WILLIS: What is the next exhibit? 05:30PM
MR. FINDLEY: All right I am going to go with 16. 05:31PM
For the receivable securitization and just so that we 05:31PM
are clear for the record, what we are marking as Exhibit 05:31PM
16 would be Kapstone 00358 to 00362, okay. And you can 05:31PM
take this copy, Ma'am, and let me ask you some questions 05:31PM
in relation to it. 05:31PM
(Plaintiff's Deposition Exhibit No. 05:31PM
16 was marked for identification.) 05:31PM
BY MR. FINDLEY: 05:31PM
Q. First of all, this document as far as where 05:31PM

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it came from do you know? 05:31PM
**A. I don't.** **05:31PM**
Q. Okay, because it looks like it is part of 05:31PM
something bigger maybe. I don't know the larger 05:31PM
document that this is. 05:31PM
**A. I don't know.** **05:31PM**
Q. Okay, fair enough. Anyway, your 05:31PM
understanding is receivable securitization deals with 05:31PM
accounts receivables related to Kapstone Charleston 05:31PM
Kraft LLC, Kapstone Paper Corporation, and KapStone 05:32PM
Paper and Packaging Corporation, correct? 05:32PM
**A. It's all receivables.** **05:32PM**
Q. Okay. Well, let's go to glossary. It's got 05:32PM
a bunch of different entities listed, okay. All right, 05:32PM
so now I want to go to page three and it says current 05:32PM
structure. As far as when that became the current 05:32PM
structure, do you have any idea? 05:32PM
**A. Receivables, document or the start of it was** **05:32PM**
**2014.** **05:32PM**
Q. Okay. Is this the current structure or do 05:32PM
you know? 05:33PM
**A. I can't speak to the detail.** **05:33PM**
Q. Okay, fair enough. And you can't speak to 05:33PM
the detail of whether or not what is contained in 05:33PM

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Exhibit No. 16 is the current structure that is being utilized today, fair? 05:33PM

**A. Fair. 05:33PM**

Q. Despite being the vice president of Shared Services on behalf of Kapstone Paper and Packaging Corporation, true? 05:33PM

MR. WILLIS: Objection to form. 05:33PM

**A. Yes. 05:33PM**

Q. Okay. So now I want to ask you about page four just to clarify. If you could turn there. And it has four different entities listed as originators, Longview, Charleston, Container, and Victory. Do you see that? 05:33PM

**A. Yes. 05:33PM**

Q. Okay. And what I understand originators to mean in my mind would be originators of business, paper, manufacturing and selling, correct? 05:33PM

**A. Yes. 05:33PM**

Q. You would agree with me that those four entities are involved in the business of manufacturing and selling paper products, correct? 05:33PM

MR. WILLIS: Objection to form. 05:33PM

MR. FINDLEY: You can answer. 05:34PM

**A. Yes. 05:34PM**

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Q. Okay. The two entities above are not entities in the business of manufacturing and selling paper products as indicated in your affidavit we talked about earlier, right? 05:34PM

MR. WILLIS: Objection to form. 05:34PM

**A. Well, KapStone Kraft would be. 05:34PM**

Q. Okay. All right, in any event we know the gold section of this sheet is for originators, originators of they want to manufacture and sell product, fair, for these four? 05:34PM

**A. Yes. 05:34PM**

Q. Okay. So I want to start with these four and it says originators and it sells a hundred percent of its account receivable to an entity called a receivables LLC, okay, are you familiar with that? 05:34PM

**A. Yes. 05:34PM**

Q. Okay. And then a promissory note in the amount of 99 percent of the face value of the accounts is issued for the receivables sold to the receivable LLC, fair? 05:34PM 05:35PM 05:35PM

**A. That's what it says, yes. 05:35PM**

Q. Okay. So what I understand that to mean is the originator which would include Kapstone Charleston Kraft LLC would originate money by selling or 05:35PM 05:35PM

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distributing paper and packaging, correct? 05:35PM

**A. From an accounting perspective, yes. 05:35PM**

Q. Okay. And then what they would do is they would sell their account receivable to Receivables LLC who would issue them a promissory note, right? 05:35PM 05:35PM 05:35PM

**A. Yes. 05:35PM**

Q. Okay. And then, then only then would Kapstone Paper and Packaging Incorporation later would have to pay the purchase price for that promissory note, correct? 05:35PM 05:35PM 05:35PM

**A. These are monthly journal entries related to this agreement. It's not cash. 05:35PM 05:35PM**

Q. All right. My question is different. My question and I object to the nonresponsive portion. 05:36PM 05:36PM

My question is KapStone Paper and Packaging Corporation would later have to pay the purchase price for those receivables to pay for the promissory note, is that true or not true or do you know? 05:36PM 05:36PM 05:36PM 05:36PM 05:36PM 05:36PM

**A. There is no cash transaction -- 05:36PM**

Q. Okay. 05:36PM

**A. -- related to that. 05:36PM**

Q. It's a bunch of paper transaction, a bunch of IOUs being passed back and forth, right? 05:36PM 05:36PM

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MR. WILLIS: Objection to form. 05:36PM

Q. That's what it is, isn't it? 05:36PM

**A. It's accounting, yes. 05:36PM**

Q. Okay. It's IOUs passed back and forth for the purposes of you said it earlier, bankruptcy remote protection, true? 05:36PM 05:36PM 05:36PM

**A. I believe so, yes. 05:36PM**

Q. Okay. It has nothing to do with generating business or transacting business, it's a creation, well, it's an accounting structure created by lawyers, right? 05:36PM 05:37PM 05:37PM

MR. WILLIS: Objection to form. 05:37PM

**A. I believe so. 05:37PM**

Q. And for the purposes of protection of liability regarding bankruptcy or whatever that liability may be, is that your understanding? 05:37PM 05:37PM 05:37PM

**A. My understanding is it is a way to concentrate or consolidate AR to allow further borrowing, yes. 05:37PM 05:37PM 05:37PM**

Q. For the purposes of protection regarding liabilities, true? 05:37PM 05:37PM

MR. WILLIS: Objection, asked and answered. 05:37PM

**A. To protect the borrowing base. 05:37PM**

Q. Objection nonresponsive. 05:37PM

Your understanding of the structure of 05:37PM

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this and why it was created was for the specific purpose 05:37PM
of protecting Kapstone Packaging and Paper Corporation 05:37PM
from bankruptcy and liabilities, fair? 05:38PM
**A. No. 05:38PM**
Q. Okay, what was it created for? 05:38PM
**A. To consolidate receivables so we could borrow 05:38PM against them. It's a borrowing plan. 05:38PM**
Q. So to consolidate receivables so it can be 05:38PM
borrowed against. And why wouldn't Kapstone Charleston, 05:38PM
what you are saying it's to so that KapStone Paper and 05:38PM
Packaging Corporation can receive a bigger credit line? 05:38PM
**A. No. 05:38PM**
Q. Okay, well borrowing against what? 05:38PM
**A. An advance on receivables is how I understand 05:38PM it. 05:38PM**
Q. From who? Borrowing from who? 05:38PM
**A. The banks in the group that do this for us. 05:38PM**
Q. What banks are those? 05:38PM
**A. I am not current on the list, but I could get 05:38PM it. 05:38PM**
Q. Okay. As far as why it was created as far as 05:38PM
you having knowledge as to being involved in the 05:38PM
creation of this receivable sales agreement structure, 05:38PM
the purposes behind it, do you know, because earlier you 05:38PM

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told me it was bankruptcy remote protection? 05:39PM
**A. No, I said the entity. We weren't allowed to 05:39PM borrow against it if it wasn't protected, right. 05:39PM**
Q. Okay. So you are saying the receivable 05:39PM
entity is you are allowed to borrow against it, correct? 05:39PM
**A. I am saying that we borrow against the 05:39PM receivables. 05:39PM**
Q. Which entity are you referring to, KapStone 05:39PM
Paper and Packaging Corporation borrowing against? 05:39PM
**A. No, we borrow from banks. 05:39PM**
Q. Right. 05:39PM
**A. Yes. 05:39PM**
Q. Against what? What's the collateral? 05:39PM
**A. The receivables. 05:39PM**
Q. Okay. And the receivables would be the 05:39PM
receivables over here. Your line of credit as far as 05:39PM
what it comes from to be able to borrow against would be 05:39PM
solely limited to the Receivables LLC is what you are 05:39PM
saying? 05:39PM
**A. To our AR balance, yes. Combined AR balance. 05:39PM**
Q. Okay. All right. Now can Kapstone 05:39PM
Charleston Kraft LLC borrow against that same 05:39PM
receivables? It cannot, true? 05:40PM
MR. WILLIS: Objection to form. 05:40PM

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**A. I don't know. 05:40PM**
Q. Okay. Well, have you ever seen that happen? 05:40PM
**A. Have I seen Kapstone Charleston borrow 05:40PM against. 05:40PM**
Q. The receivables? 05:40PM
**A. It's a consolidated arrangement. All 05:40PM receivables are. 05:40PM**
Q. Objection, nonresponsive. Have you seen 05:40PM
Kapstone Charleston -- 05:40PM
MR. WILLIS: Hold on, she didn't finish her 05:40PM
answer. 05:40PM
MR. FINDLEY: Okay. Finish it for us, please. 05:40PM
MR. WILLIS: I thought you interrupted her before 05:40PM
she was finished explaining it. 05:40PM
MR. DUCAYET: He did. 05:40PM
MR. FINDLEY: We can re-read the question, I mean. 05:40PM
MR. DUCAYET: Yeah, let's do that. 05:40PM
MR. FINDLEY: Re-read the question for her please. 05:40PM
(Question read.) 05:41PM
MR. FINDLEY: Well, that's the question. 05:41PM
Q. Can you answer it? 05:41PM
**A. Can Kapstone Charleston borrow against this 05:41PM receivable arrangement, I believe not. 05:41PM**
Q. Okay. So the only person or the only entity 05:41PM

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that can receive a benefit from borrowing against any of 05:41PM
this related to the sale agreement structure would be 05:41PM
Kapstone Charleston Paper and Packaging Corporation, 05:41PM
fair? 05:41PM
MR. WILLIS: Kapstone Paper and Packaging 05:41PM
Corporation. 05:41PM
MR. FINDLEY: He is correct. Kapstone Paper and 05:41PM
Packaging Corporation. Let me restate the question. 05:42PM
Q. The only entity that can borrow against the 05:42PM
receivables as a result of this receivable sales 05:42PM
agreement would be Kapstone Paper and Packaging 05:42PM
Corporation, correct? 05:42PM
**A. I would like to confirm because they have 05:42PM KKPC, right, Kapstone Kraft Paper at the top. 05:42PM**
Q. Okay. Well, can Kapstone Paper Packaging and 05:42PM
Corporation do it? Do you know is what I am asking you? 05:42PM
**A. I am not sure if it's KapStone Kraft or 05:42PM Kapstone Paper, but it is meant for the consolidated 05:42PM entity to borrow against receivables, consolidated 05:42PM receivables. 05:42PM**
Q. Okay, and what I mean by that is Charleston 05:42PM
Longview, Container, Victory, they cannot borrow against 05:42PM
receivables according to the structural agreement? 05:42PM
**A. They cannot receive cash. 05:42PM**

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Q. Okay. Well, they can't borrow against the receivables, is that -- I think you are saying the same thing, I can't tell. Is that the same thing? 05:42PM 05:43PM 05:43PM

**A. They cannot receive cash from this, right. 05:43PM**

Q. Okay. They cannot borrow against Receivables LLC. They can't go to the bank and say hey bank, give me some money, look at my receivables? 05:43PM 05:43PM 05:43PM

**A. Correct. 05:43PM**

Q. Okay. And the only, well, the only entities that we see in page four of Exhibit 11 that are actually in the business of originating products, developing and implementing and selling products, paper products, are the Longview, Charleston, Container, and Victory contained in gold? 05:43PM 05:43PM 05:43PM 05:43PM 05:43PM 05:43PM

MR. WILLIS: Objection to form. 05:43PM

**A. And KapStone Kraft has receivables as well. 05:43PM**

Q. Okay. Well, it's not listed as an originator, true? 05:43PM 05:44PM

**A. I believe it should be. 05:44PM**

Q. Okay. Well, it's not in this document listed as an originator, fair? 05:44PM 05:44PM

**A. Yes. 05:44PM**

MR. WILLIS: All right, we are going to call an end to the deposition for today. We are going to leave 05:44PM 05:44PM

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the deposition open. 05:44PM

MR. FINDLEY: Can I ask her about this page before we call it? 05:44PM 05:44PM

MR. WILLIS: How much more do you have? 05:44PM

MR. FINDLEY: I just want to ask her if she knows about it. Before we go off let me ask you about that. 05:44PM 05:44PM 05:44PM

MR. WILLIS: Okay. I thought you were finished with the exhibit. 05:44PM 05:44PM

MR. FINDLEY: I thought I was. I didn't know there was one more page to it. 05:44PM 05:44PM

MR. WILLIS: Okay, go ahead. 05:44PM

BY MR. FINDLEY: 05:44PM

Q. Exhibit 11, this receivables purchases agreement structure, can you testify in regards to that or is that something you would need more information on before you could? 05:44PM 05:44PM 05:44PM 05:44PM 05:44PM

**A. I would need more information. 05:44PM**

Q. Okay. So as we sit here today you couldn't give me any information as to what purchaser's circle would contain, what that would cover? 05:44PM 05:44PM 05:44PM 05:44PM

**A. I need to follow-up. 05:44PM**

Q. Okay. 05:44PM

MR. FINDLEY: Okay. You are calling the deposition against my objection? 05:44PM 05:44PM

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MR. WILLIS: Yes. I am ending the deposition for today. We will leave it open and we will talk about rescheduling to finish. 05:45PM 05:45PM 05:45PM

MR. FINDLEY: Okay. So we are in Chicago. We flew to Chicago. We are here. Are we taking her or starting her deposition tomorrow? 05:45PM 05:45PM 05:45PM

MR. WILLIS: No, she is not available tomorrow. 05:45PM

MR. FINDLEY: Okay, when are you available again? 05:45PM

MR. WILLIS: I will have to confer with her on that. 05:45PM 05:45PM

MR. FINDLEY: Okay. Have you confirmed that she is unavailable? 05:45PM 05:45PM

MR. WILLIS: Yes. 05:45PM

MR. FINDLEY: Okay. Yeah, that's a good question. When did you confer with her about her availability for tomorrow? 05:45PM 05:45PM 05:45PM 05:45PM

MR. WILLIS: About 15 minutes ago. Whenever we took the last break. 05:45PM 05:45PM

MR. FINDLEY: So while we recess right now is there a way you can confer with her about a date that she is available. 05:45PM 05:45PM 05:45PM

MR. WILLIS: Yes. 05:45PM

MR. FINDLEY: So that we can get it on the record. 05:45PM

MR. WILLIS: Yes. 05:45PM

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MR. FINDLEY: Because it has taken me a long time to get this. 05:45PM 05:46PM

MR. WILLIS: Oh, today, no. I have got to talk with Wendy and I have got to talk with Jim and I have got to check my schedule. So, no, we can't do that on the record today. 05:46PM 05:46PM 05:46PM 05:46PM

MR. FINDLEY: Okay. Well, let the record show we object and we reserve all rights regarding costs and everything else related to the deposition. 05:46PM 05:46PM 05:46PM

THE VIDEOGRAPHER: We are going to go off the record at the end of the deposition of Kelly Hulseman at 5:46 p.m. 05:46PM 05:46PM 05:46PM

(Off the record.)

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JACQUE LUCAS, SHIRLEY ANN LUCAS, and DANIEL SIMERLY, ) IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Plaintiffs, )
vs. ) C/A NO: 2017-CP-10-838
KapStone PAPER AND PACKAGING CORPORATION, KapStone KRAFT PAPER CORPORATION, SAFWAY GROUP HOLDINGS, LLC, EASY WAY INSULATION CO., INC., SYPRIS TECHNOLOGIES, INC. f/k/a TUBE-TURNS TECHNOLOGIES, INC., THOMPSON CONSTRUCTION GROUP, INC., and THOMPSON INDUSTRIAL SERVICES, LLC
Defendants. )

This is to certify that I have read the transcript of my deposition taken on the 6th day of March 2017 in the foregoing cause and that the foregoing transcript accurately states the questions asked and the answers given by me, with the changes or corrections, if any, made on the Erratum Sheet(s) attached hereto.

_____
KELLY HULSEMAN

Subscribed and sworn to
before me this ____ day
of _____2018.

_____

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04:29PM

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REPORTER'S CERTIFICATE

I, EDNA D. STROUD, CSR NO. 084-002240, Certified Shorthand Reporter, certify;

THAT the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

THAT the testimony of the witness, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

THAT the foregoing is a true and correct transcript of my shorthand notes so taken. I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

THAT the deponent reserved signature.

I DECLARE under penalty of perjury under the laws of Illinois that the foregoing is true and correct.

DATED THIS day of March 2018.

EDNA D. STROUD, Notary Public
Cook County, IL

# EXHIBIT C

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF CHARLESTON | ) | FOR THE NINTH JUDICIAL CIRCUIT |
| | ) | |
| Jacque Lucas, Shirley Ann Lucas and Daniel Simerly, | ) | CIVIL ACTION #: 2017-CP-10-00838 |
| | ) | |
| *Plaintiffs*, | ) | |
| | ) | |
| vs. | ) | |
| | ) | |
| KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, Safway Group Holdings, LLC, Easy Way Insulation Co., Inc., Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc. and Thompson Industrial Services, LLC, | ) | **AFFIDAVIT OF MARK NIEHUS** |
| | ) | |
| *Defendants.* | ) | |
| | ) | |

1. I, Mark Niehus, having first been duly sworn according to law, makes the following oath upon his personal knowledge, or where noted, is providing information as to matters known or reasonably available to KapStone Paper and Packaging Corporation, having been informed of the sources of information and having reviewed copies of the documents listed herein on the attached Schedule (Exhibit "A").
2. I am the Vice President and Controller for KapStone Paper and Packaging Corporation, and in such capacity, I have the authority to verify on behalf of KapStone that the records provided in response to Plaintiff's discovery requests in this matter are authentic.
3. These attached records are copies of original records maintained by KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation that have been provided in response to discovery requests in connection with the above-captioned matter.

4. These records are maintained in the ordinary course and scope of regularly conducted business activities of KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation, and are prepared and maintained as a regular practice and custom.
5. The attached records were created, compiled and/or maintained by personnel of KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation, acting in the ordinary course of business, at or near the time of the activities reported thereon, by persons with knowledge of and a business duty to record and transmit accurate information pertaining to these matters.
6. To the extent that these documents include records provided by entities other than KapStone Paper and Packaging Corporation and/or KapStone Kraft Paper Corporation, such as KapStone's insurer, Sentry Insurance, or third-party vendors with whom the KapStone entities transact business, these records are received from these entities and maintained in the regular course of business by KapStone.
7. A schedule of said records I have reviewed and hereby declare to be authentic are appended hereto as Exhibit "A".

FURTHER AFFIANT SAITH NOT.

Mark Niehus

Sworn and subscribed to before me
This 13th day of July, 2018.

Renee Juvan
Notary Public
My commission expires: 7/29/2019

RENEE JUVAN
Official Seal
Notary Public - State of Illinois
My Commission Expires Jul 29, 2019

# EXHIBIT D

CIVIL ACTION #: 2017-CP-10-00838

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | § | |
| | § | |
| COUNTY OF CHARLESTON | § | |
| | § | |
| Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly, | § | |
| | § | |
| Plaintiffs, | § | |
| | § | |
| vs. | § | |
| | § | IN THE COURT OF COMMON |
| KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, Safway Group Holdings, LLC, Easy Way Insulation Co., Inc., Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc., and Thompson Industrial Services, LLC, | § | PLEAS FOR THE NINTH JUDICIAL CIRCUIT |
| | § | |
| Defendants. | § | |

**Affidavit of David N. Fuller, CFA, ASA**

| | | |
|---|---|---|
| STATE OF TEXAS | § | |
| | § | |
| COUNTY OF DALLAS | § | |

David N. Fuller, after first being duly sworn upon this oath, makes this affidavit and states the following:

1. My name is David N. Fuller, CFA, ASA. I am over the age of twenty-one (21). I am competent to testify to the matters stated herein, have personal knowledge of the facts and statements in this affidavit, and each of the facts and statements is true and correct.

2. I have been retained on behalf of Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly in the above-referenced litigation.

3. I am currently employed as the President of VALUE Incorporated, a financial

valuation consulting firm located in Irving, Texas. Prior to founding VALUE Incorporated, I held various positions within a national financial valuation firm and in the valuation practice of a global accounting and consulting firm.

4. I hold the Chartered Financial Analyst ("CFA") designation governed by the CFA Institute. I have also earned the Accredited Senior Appraiser ("ASA") designation governed by the American Society of Appraisers. My educational background includes a Master of Business Administration degree from Southern Methodist University with a concentration in Finance, and a Bachelor of Arts degree from Austin College with a concentration in Economics. My professional qualifications are set forth in my resume, which is included as Attachment A to my Rebuttal Report.

5. My observations and opinions resulting from my review and evaluation of the documents and report of Todd K. Lester are set forth in my Rebuttal Report, which has been attached as Exhibit A to this Affidavit. The information and statements made in my report are true and correct, and are based on my academic and professional education, financial valuation experience, and the work I have conducted in this case. I hold these opinions to a reasonable degree of accounting and financial analysis certainty.

**FURTHER, AFFIANT SAITH NOT.**

David N. Fuller, CFA, ASA

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, David Fuller, on this 24th day of September 2019, to certify which witness my official hand and seal of office.

Notary Public in and for the
State of Texas

CHERYL LYNN ROBNETT
Notary Public, State of Texas
Comm. Expires 01-10-2021
Notary ID 129260770

CIVIL ACTION #: 2017-CP-10-00838

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | § | |
| | § | |
| COUNTY OF CHARLESTON | § | |
| | § | |
| Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly, | § | |
| | § | |
| Plaintiffs, | § | |
| | § | |
| vs. | § | |
| | § | IN THE COURT OF COMMON |
| KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, Safway Group Holdings, LLC, Easy Way Insulation Co., Inc., Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc., and Thompson Industrial Services, LLC, | § | PLEAS FOR THE NINTH JUDICIAL CIRCUIT |
| | § | |
| Defendants. | § | |

# Rebuttal Report of David N. Fuller, CFA, ASA

## Introduction

1. I am David N. Fuller, CFA, ASA. I have been retained on behalf of Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly (collectively, "Plaintiffs") in the dispute styled *Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly, Plaintiffs vs. KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, Safway Group Holdings, LLC, Easy Way Insulation Co., Inc., Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc. and Thompson Industrial Services, LLC.* The purpose of my retention was to provide independent expert analysis related to the corporate form associated with the above-captioned litigation. Additionally, I was asked to examine the expert report styled *EXPERT REPORT OF TODD K. LESTER*, dated May 30, 2019, of FTI Consulting, Inc. ("FTI Consulting") and form rebuttal opinions as appropriate. I prepared this expert report to communicate my rebuttal opinions and observations regarding the analysis and conclusions presented by FTI Consulting.

Additionally, I was retained to offer expert testimony relating to this expert report in deposition and trial settings. No other use for my report is permitted without my express written consent.

2. I am currently employed as the President of VALUE Incorporated, a financial valuation consulting firm located in Irving, Texas. Prior to founding VALUE Incorporated, I held various positions within a national financial valuation firm and in the valuation practice of a global accounting and consulting firm.

3. For more than thirty years, I have provided financial valuation services to a wide variety of clients. During this time, I have performed thousands of valuations of common stock, preferred stock, derivative securities, intellectual property, and calculations of lost profits, economic losses, and damages. These engagements have been completed for purposes relating to transactions, financial reporting requirements, tax reporting requirements and tax disputes, management planning, and litigation.

4. I have been accepted as an expert and offered expert testimony relating to valuation and economic issues in numerous state district courts, federal district courts, the United States Bankruptcy Court, the United States Tax Court and in many arbitration proceedings. I have frequently served as a court-appointed expert in valuation disputes.

5. I hold the Chartered Financial Analyst ("CFA") designation governed by the CFA Institute. I have also earned the Accredited Senior Appraiser ("ASA") designation governed by the American Society of Appraisers. My educational background includes a Master of Business Administration degree from Southern Methodist University with a concentration in Finance, and a Bachelor of Arts degree from Austin College with a concentration in Economics. My professional qualifications are set forth in my resume, which is included as Attachment A to this report.

## Documents and Information Relied Upon

6. In forming my opinions, I have reviewed and relied upon information including, but not limited to, the following:

- The expert report of FTI Consulting styled *EXPERT REPORT OF TODD K. LESTER*, dated May 30, 2019 ("Lester Report");

- Certain legal pleadings related to the above-captioned litigation including, but not limited to, the following:
    i. Plaintiffs' First Amended Complaint ("Complaint") dated April 27, 2017;
    ii. Defendants KapStone Paper and Packing Corporation and KapStone Kraft Paper Corporation's AMENDED Rule 12(b)(6) Motion to Dismiss and Motion for Stay of Discovery dated July 27, 2017;
    iii. Defendants KapStone Paper and Packing Corporation and KapStone Kraft Paper Corporation's Supplemental Memorandum in Support of Rule 12(b)(1) Motion to Dismiss dated August 1, 2018;
    iv. Plaintiffs' Response in Opposition to Defendants KapStone Paper and Packing Corporation and KapStone Paper Corporation's Rule 12(b)(1) Motion to Dismiss dated May 24, 2019 ("Plaintiffs' Response");
    v. KapStone Defendants' Reply to Plaintiffs' Response in Opposition to the KapStone Defendants' Rule 12(b)(1) Motion to Dismiss; and,
    vi. Other legal pleadings and filings related to the above-captioned litigation.
- The videotaped deposition of Todd K. Lester ("Mr. Lester"), together with exhibits, dated September 5, 2019;
- The videotaped deposition of Kelly Hulseman ("Ms. Hulseman"), together with exhibits, dated March 6, 2018;
- The videotaped deposition of Mark Niehus ("Mr. Niehus"), together with exhibits, dated January 8, 2019;
- All documents produced during the course of litigation in this matter; and,
- Other relevant documents produced in discovery, public data regarding the industry, financial markets, and the overall economy in general.

7. I understand that the discovery process is ongoing and additional documents may be provided to me for review. I reserve the right to update my analysis should additional information be provided.

8. The facts and data I relied upon are of a type commonly and reasonably relied upon by experts in my profession in forming opinions on these subjects.

9. I currently have no expert opinions on the factual or liability issues in this case.

## Background of the Situation

10. The following reflects my understanding of the background of the situation. It should be noted that it is not my intention to repeat the facts and allegations contained in the pleadings in detail. The purpose of this section is simply to provide a brief description of the situation as a context for my analysis and opinions.

11. Plaintiffs Jacque Lucas ("Mr. Lucas") and Daniel Simerly ("Mr. Simerly") were working for KapStone Charleston Kraft, LLC, ("KapStone Charleston") at a paper mill in North Charleston, South Carolina. On May 24, 2016, it is my understanding the Messrs. Lucas and Simerly sustained severe burns after black liquor discharged from an overhead vessel onto their bodies while they were working on and around scaffolding underneath the vessel hatch. It is my understanding that as a result of the incident, Messrs. Lucas and Simerly have undergone extensive medical treatment.

12. Further, it is my understanding that Messrs. Lucas and Simerly have not received benefits from any Defendant other than KapStone Charleston.

13. Additionally, it is my understanding that as asserted in Plaintiffs' Response, Messrs. Lucas and Simerly were not, are not and have never been employees (of any kind) of Defendants KapStone Paper and Packing Corporation ("KapStone Paper") or KapStone Kraft Paper Corporation ("KapStone Kraft"). I also noted in Plaintiffs' Response, that it was asserted that Messrs. Lucas and Simerly were employed by KapStone Charleston, at the time of the incident as described above.

14. It is my understanding that Mr. Lester was retained on behalf of KapStone Paper and KapStone Kraft (collectively "KapStone") through Bowman and Brooke LLP, to provide consulting and litigation support services including, but not limited to, an expert report and expert

testimony regarding the economic substance of the relationship between the KapStone and KapStone Charleston.

## Scope of Opinions

15. The scope and purpose of my retention was to provide independent expert analysis related to corporate identity associated with the above-captioned litigation. Additionally, I was asked to examine the Lester Report and form rebuttal opinions as appropriate. I prepared this expert report to communicate my rebuttal opinions and observations regarding the analysis and conclusions presented by Mr. Lester. Additionally, I was retained to offer expert testimony relating to this expert report in deposition and trial settings.

16. While I do not offer any opinions related to the legal interpretations of certain agreements and data provided for my review in this matter, the agreements must be considered in the context of the opinions asserted by Mr. Lester. I have presented excerpts of certain agreements and data provided in this litigation to identify and contextualize the differences between the opinions of Mr. Lester and my opinions in this matter.

17. I have not performed an independent analysis to determine what amount of damages, if any, were incurred by the Plaintiffs or whether damages, if any, would be recoverable. Rather, I reviewed the methodology and conclusions contained within the Lester Report, and determined what data was used, what assumptions were made and how the conclusions were derived. The purpose of my analysis was to provide rebuttal analysis and opinions relating to the Lester Report, and to comment on the overall flaws with his assumptions, analysis and conclusions.

18. For purposes of this report, I offer no opinions regarding liability. It is my understanding that liability is a disputed question of law and fact in the case. In the event the trier of fact finds in favor of Plaintiffs on liability issues, my opinions may be summarized into the following categories:

- Mr. Lester's opinions regarding KapStone relative to KapStone Charleston as presented in the Lester Report as of May 30, 2019, were unreliable due to:
    i. Lack of framework, threshold or standards for determining "Economic Substance";

ii. KapStone Paper, KapStone Kraft and KapStone Charleston were not operated as integrated units;

iii. Lack of evidence supporting the opinion that KapStone Paper, KapStone Kraft and KapStone Charleston were engaged in similar business activities;

iv. Messrs. Lucas and Simerly were paid by KapStone Charleston and not KapStone Paper or KapStone Kraft;

v. The common Board of Directors did not affect day-to-day operations at KapStone Charleston;

vi. Separate books were kept for each company; and,

vii. Mr. Lester provides no evidence that filing consolidated financial reports and tax returns are indicative of integration or economic substance.

19. The scope of my opinions in this report was based on the data provided to me at the time of my report. My findings and conclusions are based on the information made available to me by counsel for the Plaintiffs. I understand that additional evidence or documents may become available that may lead me to supplement this report.

## Rebuttal Opinions

*Rebuttal Opinion 1 – Lack of Framework, Threshold, or Standards for Determining "Economic Substance"*

20. Mr. Lester stated that he was retained to "evaluate the financial, economic and structural relationship between KapStone Paper, KapStone Kraft and KapStone Charleston including the economic substance of the relationship relative to its corporate form."[1] Mr. Lester failed to provide an adequate framework to support his conclusion that the entities "operated with

[1] Expert Report of Todd K. Lester, p. 8, ¶ 22.

a high degree of financial and economic integration."[2] As shown in his deposition, Mr. Lester did not use a defined threshold to determine what constitutes a "high degree" of integration. The lack of a defined framework and his inability to explain his criteria in determining "economic substance" is a material flaw in the Lester Report, and a flaw in his conclusion.

21. The Lester Report lists certain factors that were considered in Mr. Lester's analysis, but the lack of a clearly defined framework for determining economic integration introduces a challenge to objectively assess Mr. Lester's conclusions. Mr. Lester testified to his uncertainty regarding the framework that he employed wherein he stated "I don't know if I weigh factors. I think I look at factors, and the facts and circumstances of the question dictate sometimes what factor is more relevant than others."[3] Mr. Lester himself was unable to articulate how he arrived at his conclusion.

*Rebuttal Opinion 2 – KapStone Paper, KapStone Kraft and KapStone Charleston were not Operated as Integrated Units*

22. Contrary to the Lester Report, several internal documents from KapStone clearly show that operations were not integrated. These documents, reflecting the way KapStone described itself at the time of the incident, show that internally, KapStone described themselves as not being integrated and were developing a plan to move towards integration. A January 18, 2017, KapStone document, titled *One KapStone*, concisely states, "We grew through acquisitions but have not integrated to capture the benefits of the combined Mill & Container business."[4] The statement indicates that KapStone did not view its own operations as integrated. The Lester Report did not take this document into consideration when arriving at its conclusion. This is supported by testimony given by Mr. Lester in his deposition, "But I have not had a chance to kind of review the document, if you don't mind—"[5]

23. As part of its integration initiative, KapStone hired the global accounting and consulting firm, Deloitte, to assist them with the integration process after the incident which gives rise to this litigation. Deloitte prepared the January 2017 Leadership Workshop presentation that

[2] Expert Report of Todd K. Lester, pp. 4-5.
[3] Lester Deposition, p. 87, lines 17-20.
[4] One KapStone, Integrating our Mill and Container Systems, p. 2. [KAPSTONE-002915-002922]
[5] Lester Deposition, p. 154, lines 22-23.

contains similar statements. Statements such as: "There is an urgent need for us to operate as a unified company" and "How we will work together reflects the urgency and breadth of this integration" illustrate that KapStone itself did not view its operations as integrated as late as January 2017.[6,7]

24. Numerous proposals and plans were being transmitted internally that support KapStone did not view itself as integrated. In fact, one of the documents contains an illustration that categorizes a target operating model on a range from decentralized to centralized as depicted in the illustration that follows below:[8]

**Target Operating Model**

← *Decentralized* ——— *Standardized* ——— *Centralized* →

| | |
|---|---|
| **Core Operations** | |
| ▪ Plant-level accountability | ▪ Common standards, best-practices; equipment specs |
| **Engineering, Technical, Continuous Improvement** | |
| ▪ Local engineer at most facilities | ▪ Centralized engineering / technical org<br>▪ Shared technical resources |
| **Quality, Safety, Environment** | |
| ▪ Distributed compliance and monitoring<br>▪ Increased local safety resources<br>▪ Contracted environmental monitoring | ▪ Standards and reporting centralized<br>▪ Common training of safety staff |
| **Sales, Marketing, and Scheduling** | |
| ▪ Local accounts | ▪ National accounts, customer service<br>▪ Common CRM, pricing tools<br>▪ SKU's and network job scheduling |
| **Procurement and Transportation** | |
| ▪ Local spend thresholds and categories<br>▪ Local services subject to master standards | ▪ Centralized master agreements, specifications<br>▪ Equip. and consumable vends. rationalized |
| **Support Functions (IT, Finance, HR, Legal)** | |
| ▪ Local break / fix support **(IT)**<br>▪ Cost accountants reporting into Finance org **(Fin)**<br>▪ Each site manages hiring and firing **(HR)**<br>▪ Regional HR support **(HR)**<br>▪ Temporary staff, subject to policies and training **(HR)** | ▪ Systems & standards **(IT)**<br>▪ Single finance organization **(Fin)**<br>▪ Corporate finance, tax, accounting **(Fin)**<br>▪ Programs, policies, payroll, and training standards **(HR)**<br>▪ Pensions and benefits providers **(HR)**<br>▪ Labor relations **(HR)** |

▼ KapStone current state ▽ KapStone future state

25. In the illustration above, KapStone clearly did not view itself as an integrated company. The Core Operations section notes that there is plant-level accountability, while the

[6] Deloitte Leadership Workshop, p. 8. [KAPSTONE-003536-003572]
[7] Ibid., p. 10.
[8] Ibid., p. 13.

Sales, Marketing, and Scheduling section shows that accounts are dealt with locally and not via integrated operations. In fact, of the six categories defined, not a single one is on the Centralized range of the spectrum as all are below a Standardized rating. Simply stated, the internal documents show that at the time of the incident involving Messrs. Lucas and Simerly, KapStone did not view itself as integrated.

26. Mr. Lester was never provided any of these internal documents and did not consider them in forming his opinions. Mr. Lester was also not provided with a copy of Ms. Hulseman's deposition and did not consider her deposition testimony in forming his opinions. The Lester Report was incorrect in its assertions that "in May 2016, KapStone Paper, KapStone Kraft, and KapStone Charleston operated with a high degree of financial and economic integration between the three entities."[9] The failure to consider relevant documents inconsistent with the conclusions reached by Mr. Lester indicates his conclusions to be flawed.

27. Additional evidence of KapStone's introspection was observed in a KapStone presentation titled *Becoming a More Integrated Company* in October 2016. The presentation includes the following statement "We are still less vertically integrated than many of our competitors." Additionally, KapStone states "Our current divisional structure creates organizational barriers to collaboration."[10] The preceding statements further reflect that KapStone did not consider its operations integrated and were freely communicating that fact throughout the company internally. In fact, the many assertions of KapStone represent those of an organization that is well aware of material deficiencies in integration in its operations across divisions. The many KapStone assertions are inconsistent with the representations as advanced in the Lester Report.

*Rebuttal Opinion 3 – Lack of Evidence Supporting the Opinion that KapStone Paper, KapStone Kraft and KapStone Charleston were Engaged in Similar Business Activities*

28. Mr. Lester provides no evidence that supports his claim that KapStone Charleston engaged in the same business activities as KapStone. Mr. Lester cites the 2016 Tax Return as

[9] Expert Report of Todd K. Lester, pp. 4,5.
[10] KapStone: Becoming a More Integrated Company, October 2016, pp. 24, 30. [KAPSTONE-003741-003775]

evidence that "KapStone Kraft and KapStone Charleston were both described with the same principal business activity (i.e., Paper Manufacturing – Pulp, Paper, and Paperboard Mills)."[11] Upon an examination of the 2016 Tax Returns filed for KapStone Paper & Packaging Corporation, KapStone Charleston was not specifically designated under a NAICS code.[12] In fact, KapStone Kraft is designated under NAICS 322100 which includes several sub-categories, each of which engages in a distinct business activity. The NAICS Code 322100 includes the business activities: Pulp Mills, Paper Mills, Newsprint Mills, and Paperboard Mills.[13] Merely citing a broad NAICS code is not sufficient to definitively establish that the entities were engaged in similar business activities. Mr. Lester provides no additional evidence to support the above-mentioned claim.

29. Further, upon review of the Deposition of the Corporate Representative of KapStone Paper and Packaging, Ms. Hulseman, the following exchanges were observed:[14]

Page 39

**Q. All right. Would you agree with me that KapStone Paper and Packing does not manufacture or sell paper products?**
**A. I agree.**
**Q. Do you agree with me that KapStone Charleston Kraft LLC does manufacture and sell paper products?**
**A. I agree.**

Page 166

Q. KapStone Paper and Packaging Corporation is a different entity, it's your employer, correct?
A. Correct.
Q. Okay. And your employer would have under 200 people that it employs, correct?
A. I would like to confirm that, but yes.
Q. Give or take a few, right?

[11] Expert Report of Todd K. Lester, p. 16, ¶ 49.
[12] U.S. Corporation Income Tax Return, year ending December 31, 2016, Form 851. [KAPSTONE-001642-001888]
[13] North American Industry Classification System, United States 2017, pp. 184-186.
[14] Hulseman Deposition, pp. 39, 166.

11 Yes.
12 Q. And of those 200 give or take that your
13 employer employs including yourself, none of those job
14 duties or descriptions would include turning wrenches or
15 doing maintenance inside a plant, fair?
16 A. I believe so, yes.
**17 Q. Okay. And that's all I am getting at, as far**
**18 as my client's employer and his job descriptions they**
**19 would be different than say your employers which is**
**20 KapStone Paper and Packing Corporation, fair?**
**21 A. Fair.**

30. As observed above in Ms. Hulseman's testimony, as Corporate Representative of KapStone Paper and Packaging, Ms. Hulseman clearly states that KapStone Paper does not manufacture or sell paper products. Further, Ms. Hulseman clearly states that KapStone Charleston Kraft LLC does manufacture or sell paper products. Thus, the business activities of KapStone Paper and KapStone Charleston are different business activities.

*Rebuttal Opinion 4 – Messrs. Lucas and Simerly were paid by KapStone Charleston and not KapStone Paper or KapStone Kraft*

31. KapStone Charleston, KapStone Kraft and KapStone Paper are all legally separate and distinct entities. In fact, KapStone Paper was not legally registered to do business in South Carolina at the time of the incident.[15,16,17] Contrary to what Mr. Lester's report states, Messrs. Lucas and Simerly's 2016 W-2 and Earnings Summary statements clearly state that the employer's name is KapStone Charleston Kraft, LLC, not KapStone Paper as Mr. Lester's report represents.[18,19,20] The businesses maintains separate payrolls, which is additional support that they

[15] Hulseman Deposition, pp. 179, 180.
[16] KAPSTONE-002509
[17] State of South Carolina, Secretary of State, Columbia, South Carolina, Certificate of Revocation of Authority, dated June 16, 2015.
[18] ADP Earnings Statements, Jacque L. Lucas. [KAPSTONE-000718]
[19] ADP Earnings Statements, Daniel J. Simerly. [KAPSTONE-000756]
[20] Expert Report of Todd K. Lester, p. 19, ¶ 58.

do not operate as an integrated unit. This is further confirmed in the deposition of Ms. Hulseman, yet another document that Mr. Lester neglected to consider before arriving at his conclusion.[21,22]

32. The notion that KapStone Charleston operated as a separate entity through the hiring, firing and paying of its own employees is further validated by the Workers' Compensation claim filed by Messrs. Lucas and Simerly. The claim clearly lists KapStone Charleston as the employer and makes no mention of KapStone Paper or KapStone Kraft.[23,24]

33. Additionally, there is evidence that KapStone Charleston maintained its own employee base. In the previously mentioned January 2017 Leadership Workshop presentation it specifically states that "Each site manages hiring and firing (HR)."[25]

34. Given that Messrs. Lucas and Simerly worked at KapStone Charleston's place of business, were carried on KapStone Charleston's payroll and KapStone Charleston managed the hiring and firing of its own employees are collectively indicative that the entities do not share as high a degree of "economic substance" as the Lester Report purports.

*Rebuttal Opinion 5 – The Common Board of Directors did not Affect Day-to-Day Operations at KapStone Charleston*

35. The Lester Report provides no evidence that the overlapping Board of Directors played any role in the day-to-day operations at KapStone Charleston. The deposition of Ms. Hulseman indicated that the common Board of Directors were involved in setting strategic direction and receiving reports.[26] Ms. Hulseman failed to mention or provide any evidence that the Board of Directors were involved in the day-to-day operations at KapStone Charleston.

36. It is my understanding that KapStone Charleston is operated by local management personnel, located in North Charleston, South Carolina. Further, Mr. Lester testified he did not interview anyone involved with the local management of the facility. He stated that he did not interview anyone at KapStone Paper, KapStone Kraft or KapStone Charleston. Accordingly, he

[21] Hulseman Deposition, pp. 281- 284.
[22] Lester Deposition, p. 142, lines 22-25.
[23] Workers' Compensation – First Report of Injury or Illness. [KCK-00840]
[24] Workers' Compensation – First Report of Injury or Illness. [KCK-00841]
[25] Deloitte Leadership Workshop, p. 13. [KAPSTONE-003536-003572]
[26] Hulseman Deposition, pp. 237-240.

was not provided with any information that could have been a basis for his conclusions regarding management of KapStone Paper, KapStone Kraft and KapStone Charleston.

37. Given the KapStone Paper Board of Directors were not actively involved in the operations suggests that KapStone Charleston could operate as a stand-alone company without suffering from any difficulties due to lost leadership.

*Rebuttal Opinion 6 – Separate Books were kept for each Company*

38. KapStone Paper, KapStone Kraft and KapStone Charleston consolidated their financials for reporting purposes, yet they prepared and maintained distinct financial records internally.[27,28,29] KapStone Paper, KapStone Kraft and KapStone Charleston were observed to maintain balance sheets and income statements. This is in direct contrast to statements in Ms. Hulseman's deposition wherein it was stated that balance sheets did not exist for the individual locations:

> *"Q. Okay, but what I am saying is that information before consolidation is broken down meaning KapStone Charleston Kraft LLC, North Charleston plant has its own accounting information that is kept separate and apart, it can just later be consolidated, it has that function, true?*
>
> *A. There is P and L in the system, there is not an individual balance sheet for each location."*[30]
>
> *"Q. And I am not talking about a 10K. What I am talking about is if I wanted to know the financials, the P and L's or anything related to the accounting systems at KapStone Charleston Kraft LLC, I can divide it by that, right, based on the identifier?*
>
> *A. For P and L's, yes"*[31]

[27] KPPC KKPC KCK 2016 P&L Sheets. [KAPSTONE-002651]
[28] 2017 Financial Statements. [KAPSTONE-003440]
[29] 2018 Financial Statements. [KAPSTONE-003442]
[30] Hulseman Deposition, p. 290, lines 2-9.
[31] Hulseman Deposition, p. 291, lines 10-15.

*Q. But the data is recorded separately and the data can be kept separately for the purposes of specific identifier number per location?*

*A. Yes.*

*Q. And that would be true for accounts payable and receivable?*

*A. Yes."*[32]

39. The above testimony clearly shows that separate books and records were kept for KapStone Charleston, and that it viewed itself internally as a separate entity. Based on these records, it would be easy to separate the assets and liabilities associated with KapStone Charleston from those of KapStone Paper and KapStone Kraft.

*Rebuttal Opinion 7 – Mr. Lester provides no evidence that filing consolidated financial reports and tax returns are indicative of integration or "Economic Substance"*

40. Consolidated tax returns are commonly filed by corporate groups, and the filing of a consolidated tax return is not necessarily an indication that any level of integration exists between the related companies. However, the Lester Report asserts that due to KapStone Paper having filed consolidated financial statements and tax returns, KapStone and KapStone Charleston were integrated. The reality is that consolidated financial statements and tax returns have little bearing on showing integration between companies.

41. In addition, KapStone Paper filing consolidated financial reports is not evidence of integration. Rather, it is simply evidence that the company follows U.S. generally accepted accounting principles ("U.S. GAAP"). The Financial Accounting Standards Board ("FASB") has issued the following guideline about the purpose of consolidated financial statements:

*"The purpose of consolidated financial statements is to present, primarily for the benefit of the owners and creditors of the parent, the results of operations and the*

[32] Hulseman Deposition, p. 293, lines 13-19.

*financial position of a parent and all its subsidiaries as if the consolidated group were a single economic entity."*[33]

42. Notably absent is any mention of integration between the companies. FASB guidelines continue:

*"A reporting entity shall apply consolidation guidance for entities that are not in the scope of the Variable Interest Entities Subsections (see the Variable Interest Entities Subsection of this Section) as follows:*

*a. All majority-owned subsidiaries—all entities in which a parent has a controlling financial interest—shall be consolidated."*[34]

43. Mr. Lester does not provide evidence or support for the claim that KapStone Paper consolidated its financial statements because operations were integrated. KapStone Paper's own audit statement supports the notion that the reports were consolidated simply to comply with U.S. GAAP by saying the statements were created "in conformity with U.S. generally accepted accounting principles."[35]

## Conclusion

44. As detailed above, in my opinion, KapStone Paper, KapStone Kraft and KapStone Charleston were not financially or operationally integrated on the date of the incident. This is clearly shown by the documents internally prepared by KapStone Paper, KapStone Kraft and KapStone Charleston after the incident occurred.

45. Mr. Lester's opinions are not supported by the evidence, which indicated that KapStone Paper, KapStone Kraft and KapStone Charleston were not operated from an economic and financial perspective as an integrated economic unit. Additionally, the evidence cited herein is indicative that KapStone Charleston was a distinct and separate entity relative to KapStone Paper and KapStone Kraft.

[33] ASC Guidance 810-10-10-1.
[34] ASC Guidance 810-10-15-8.
[35] SEC Form 10-K for KapStone Paper and Packaging Corporation, year ending December 31, 2016, p. F-4.

46. I base my opinions on my academic and professional education, financial valuation experience and the work I have conducted in this case. I am independent of the Plaintiffs and Defendants, and my compensation is in no way contingent on the outcome of the case.

47. I understand that additional discovery may be completed, and depositions may be taken. I expressly reserve the right to modify or revise my opinions based on additional information that becomes available in the future.



David N. Fuller, CFA, ASA

September 24, 2019

Date

**Attachment A**

# David N. Fuller, CFA, ASA

## Professional Experience

David Fuller founded VALUE Incorporated as a premier firm in the application of financial, valuation and economic theory. Drawing on the experience and knowledge gained through thousands of financial consulting engagements, David has a wide range of industry experience, as well as experience with a wide variety of situations and circumstances. He provides services to clients involved in mergers, acquisitions and corporate transactions. He works with clients addressing valuation-related financial and tax reporting requirements. He also provides expert analysis and testimony when engaged by clients involved in various sorts of litigation. In addition, Mr. Fuller frequently provides services relating to the determination of reasonable compensation. Mr. Fuller has performed analyses in many industries, including: aerospace, agri-business, banking and financial services, construction, data processing, distribution, energy, food and beverage, healthcare, hospitality, insurance, manufacturing, materials, media, pharmaceuticals, real estate, restaurant, retail, securities, services, software, technology, telecommunications, transportation and utilities.

Prior to forming VALUE Incorporated, Mr. Fuller consulted extensively in the financial and valuation fields, in various roles with a national financial valuation firm and in the valuation practice of a global accounting & consulting firm.

Mr. Fuller has been published on several occasions in a variety of industry and trade journals. David has lectured to groups of executives and professionals, and assisted with teaching undergraduate and graduate level courses relating to valuation issues. David has testified on numerous occasions in deposition and trial settings in a variety of Federal and state courts and has served numerous clients with valuations relating to tax disputes in United States Tax Court. He frequently serves as a neutral valuation expert in litigation matters, either by agreement of the parties or when appointed by courts.

## Formal Education

**Master of Business Administration** – 1989
Concentration in Finance
Southern Methodist University, Dallas, Texas
**Bachelor of Arts, Liberal Arts** – 1988
Concentrations in Economics and Finance
Austin College, Sherman, Texas

## Honors and Awards

Texas Business Hall of Fame, Scholarship Recipient – 1989
Dean's List, multiple occurrences
Eagle Scout

## Accreditations and Designations

Chartered Financial Analyst (CFA), designated by the CFA Institute (CFAI)
Accredited Senior Appraiser (ASA), designated by the American Society of Appraisers (ASA)

## Organizations and Professional Associations

Associate Board Member, Cox School of Business, Southern Methodist University
Member, Financial Executives International
Member, Association for Corporate Growth
Past President, DFW ACG Chapter
Member, CFA Institute
Member, Dallas Society of Financial Analysts
Member, American Society of Appraisers
Member, American Society of Appraisers, Dallas Chapter

## Publications

Mergers and Acquisitions in the Dallas/Ft. Worth Area. *Dallas Business Journal*, Spring 2003.

Integrating Valuation Services Saves Time and Money in Acquisitions. *Dallas Business Journal*, Spring 2003.

*Litigation Support Report Writing*. John Wiley & Sons, 2003. - Contributor

"What Should be in the Board Book" – Published in *Directors & Boards,* Spring 2001.

"Business Cycles: Simulating Solvency" – Publication pending

"Positioning Your Company for Sale" – Publication pending

"Value Creation: Theory and Practice" – Publication pending

"The 3 Jobs of Management" – Publication pending

"Conglomerate and Portfolio Discounts" – Position paper

"Investing in Troubled Companies" – Published in *Turnarounds and Workouts Survey,* September 1994.

"Break-even Analysis for the Amortization of Intangible Assets" – Published in *Journal of Accountancy,* June 1994.

"Purchase Price Allocation Break-even Analysis" – Position paper

## Lectures and Appearances

"Getting Information to Value a Business" – TexasBarCLE, April 2018

"Business Valuation Panel Discussion" – Tarrant County Family Bar Seminar, November 2017

"Valuation Demonstration" – Advanced Family Law 2017, TexasBarCLE, August 2017

"Deal Making Opportunities After the Downturn" – Bowne & Co., February 2009

"The Impact of Credit Markets on Valuations" – M&A Forum, CEO Netweavers, June 2008

Current Issues in Estate & Gift Tax Valuations" Malouf Estate Planning Study Group, June 2008

"Valuation of Intellectual Property" – CFO Forum of the AeA (American Electronics Association), May 2008

"Valuation Issues in Small Business" – Representing Small Business 2008, Texas Bar CLE, May 2007

"Business Valuation and the Business of Valuation" – Southern Methodist University, Cox School of Business, November 2005

"Business Valuation and the Business of Valuation" – University of Texas at Arlington, October 2005

"Valuation and Exit Strategies for Entrepreneurs" – Southern Methodist University, Cox School of Business, April 2005

"SFAS 123R – Valuation of Stock Based Compensation" – DFW SEC Reporting Group, April 2005

"Creating Shareholder Value in this Economic Environment" - Bank of America Regional Economic Seminar, April 2004

"Topics in Valuation" – Tarrant County Probate Bar, March 2004

"Valuation of Businesses" –Daedalian Society, March 2004

"Careers in the Consulting Industry" – panel participant, Cox School of Business, Southern Methodist University – September 2003

"Valuation Issues in Financial Reporting" – DFW SEC Reporting Group - January 2003

"Valuation of High-Technology Companies" – McCombs School of Business, University of Texas - September 2002

"Careers in the Consulting Industry" – panel participant, Cox School of Business, Southern Methodist University – September 2002

## Lectures and Appearances(continued)

"Current Topics in Valuation" – Internal Revenue Service Estate and Gift Tax Group -August 2002

"Exit Planning for Business Owners" – SMU Cox School of Business, MBA course, Planning & Control for Growing Businesses – November 2001

"Companies that Create and Destroy Value: Common Threads" – Chief Executive's Round Table – October 2001

"What Should be in the Board Book: The External Perspective" – American Society of Corporate Secretaries, Dallas, Texas – July 2001

"Value Extraction Strategies" – SMU Cox School of Business, MBA course, Planning & Control for Growing Businesses – Spring 2001

"Value Extraction Strategies" – SMU Cox School of Business, MBA course, two sections of Planning & Control for Growing Businesses – Fall 2000

"Valuation Issues in Divorce" - American Bar Association – Annual Family Law Conference, San Diego, CA – Spring 2000

"Daubert and Financial Experts" – South Texas College of Law CLE, Houston, Texas – Fall 1999

"Topical Issues and Tax Court Cases Relating to Gift and Estate Tax Valuation" – Internal Revenue Service, Dallas Texas – September 1997

"Current Approaches and Issues to the Valuation of Business and Investment Interests" – IRS Gift and Estates, Mid-States Region; Dallas Texas – May 1996

"Careers in Business Valuation" – SMU MBA Finance Association, Dallas Texas – September 1995

# EXHIBIT E

# Delaware

The First State



*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "KAPSTONE KRAFT PAPER CORPORATION", FILED IN THIS OFFICE ON THE TWENTY-FIFTH DAY OF MAY, A.D. 2006, AT 3:38 O`CLOCK P.M.*

Jeffrey W. Bullock, Secretary of State

4165052 8100
SR# 20177004700

Authentication: 203542473
Date: 11-08-17

You may verify this certificate online at corp.delaware.gov/authver.shtml

KAPSTONE-000260

State of Delaware
Secretary of State
Division of Corporations
Delivered 03:40 PM 05/25/2006
FILED 03:38 PM 05/25/2006
SRV 060505503 - 4165052 FILE

# CERTIFICATE OF INCORPORATION

# OF

# KAPSTONE KRAFT PAPER CORPORATION

**THE UNDERSIGNED,** in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the General Corporation Law of the State of Delaware, as amended to date, does hereby certify as follows:

**FIRST:** The name of the corporation is Kapstone Kraft Paper Corporation.

**SECOND:** The registered office of the corporation is to be located at 1209 Orange Street, Corporation Trust Center, in the City of Wilmington, in the County of New Castle, in the State of Delaware (19801). The name of its registered agent at that address is The Corporation Trust Company.

**THIRD:** The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware, as amended to date.

**FOURTH:** The total number of common shares of stock which the corporation is authorized to issue is 1,000 and the par value of each of such share is $.01.

**FIFTH:** The name and address of the Sole Incorporator are as follows:

Katharine E. Seidelman
7800 Sears Tower
Chicago, Illinois 60606

**SIXTH:** The number of directors of the corporation shall be such as from time to time shall be fixed by, or in the manner provided in, the by-laws. Election of directors need not be by ballot unless the by-laws so provide.

**SEVENTH:** To the fullest extent that the general corporate law of the State of Delaware, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of directors, no director of the corporation shall be liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. No amendment to or repeal of this Article shall apply to or have any effect on liability or alleged liability of any director of the corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

**EIGHTH:** The Board of Directors shall have power without the assent or vote of the stockholders to make, alter, amend, change, add to or repeal the by-laws of the corporation.

**NINTH:** The corporation is to have perpetual existence.

**IN WITNESS WHEREOF,** I have hereunto set my hand this 25th day of May, 2006.

/s/ Katharine E. Seidelman
Katharine E. Seidelman, Sole Incorporator

# EXHIBIT F




## KAPSTONE CHARLESTON KRAFT LLC

*Note:This online database was last updated on 6/1/2016 3:07:38 AM.*
*See our Disclaimer.*

| | |
|---|---|
| **DOMESTIC / FOREIGN:** | Domestic |
| **STATUS:** | RES |
| **STATE OF INCORPORATION / ORGANIZATION:** | SOUTH CAROLINA Profit |

## REGISTERED AGENT INFORMATION

| | |
|---|---|
| **REGISTERED AGENT NAME:** | NAME RESERVATION |
| **ADDRESS:** | |
| **CITY:** | |
| **STATE:** | SC |
| **ZIP:** | |
| **SECOND ADDRESS:** | |
| **FILE DATE:** | 04/25/2008 |
| **EFFECTIVE DATE:** | 04/25/2008 |
| **DISSOLVED DATE:** | // |

## Corporation History Records

| CODE | FILE DATE | COMMENT | Document |
|---|---|---|---|
| Reservation | 04/25/2008 | RESERVED BY-CORPORATION SERVICE COMPANY-IL | |

**Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.**

# EXHIBIT G

| CO. | FILE | DEPT | CLOCK | VCHR NO. | SEQ |
|---|---|---|---|---|---|
| FYN | 300107 | 003920 | 603 | 0000200409 | 1 |

# Earnings Statement

*KAPSTONE CHARLESTON KRAFT LLC*
*1101 SKOKIE BLVD.*
*SUITE 300*
*NORTHBROOK, IL 60062*

Period Beginning: 05/09/2016
Period Ending: 05/15/2016
Pay Date: 05/20/2016

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 0
SC: 0

00000000397
**JACQUE L LUCAS**
**1760 HWY 45**
**PINEVILLE SC 29468**

| Earnings | rate | hours | this period | year to date |
|---|---|---|---|---|
| Regular | | | [redacted] | |
| Overtime 1.50 | | | | |
| Floating Holidy | | | | |
| Ot Shift 3/C | | | | |
| Gift Card | | | | |
| Holdover | | | | |
| Holdover Guar | | | | |
| Holiday | | | | |
| Ot Shift 2/B | | | | |
| Reg Shift 2/B | | | | |
| Reg Shift 3/C | | | | |
| Vacation | | | | |
| Gross Pay | | | [redacted] | |

| Other | this period |
|---|---|
| Gift Card | |
| Purchase Nbr1 | |
| Net Pay | [redacted] |
| Checking 1 | |
| Checking 2 | |
| Checking 3 | |
| Net Check | |

* Excluded from federal taxable wag

Your federal taxable wages this peri [redacted]

| Deductions | Statutory | this period |
|---|---|---|
| | Federal Income Tax | [redacted] |
| | Social Security Tax | |
| | Medicare Tax | |
| | SC State Income Tax | |
| | **Other** | |
| | Dental | |
| | Medical | |
| | Rental Unif | |
| | Udues 508 | |
| | Union Ltd | |
| | Vision | |
| | 401-K | |

**Other Benefits and Information** this period

[redacted]

EXHIBIT
9
3-6-18

©1998, 2006, ADP, LLC All Rights Reserved.

TEAR HERE

VERIFY DOCUMENT AUTHENTICITY - COLORED AREA MUST CHANGE IN TONE GRADUALLY AND EVENLY FROM DARK AT TOP TO LIGHTER AT BOTTOM.

KAPSTONE CHARLESTON KRAFT LLC
1101 SKOKIE BLVD.
SUITE 300
NORTHBROOK, IL 60062

Advice number: 00000200409
Pay date: 05/20/2016

Deposited to the account of
JACQUE L LUCAS

account number transit ABA

[redacted]

Bank of America
101 West 6th St.
Los Angeles, CA 90057

VOID AFTER 180 DAYS

NON-NEGOTIA

THE ORIGINAL DOCUMENT HAS AN ARTIFICIAL WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW WHEN CHECKING THE ENDORSEMENT.

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF CHARLESTON | ) | FOR THE NINTH JUDICIAL CIRCUIT |
| | ) | |
| | ) | CIVIL ACTION #: 2017-CP-10-00838 |
| Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly, | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | |
| vs. | ) | |
| | ) | **CONFIDENTIAL REFERENCE LIST** |
| KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, Safway Group Holdings, LLC, Easy Way Insulation Co., Inc., Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc. and Thompson Industrial Services, LLC, | ) | |
| | ) | |
| Defendants. | ) | |
| | ) | |
| | ) | |

**The information on this form identifies the confidential documents submitted as exhibits with Plaintiffs' Motion to Reconsider the Order Granting Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation's Rule 12(b)(1) Motion to Dismiss being filed herewith on March 9, 2020. The sealed unredacted copies of which are being sent to the Clerk of Court pursuant to the Confidentiality Agreement between the parties.**

| PLEADING OR DOCUMENT | UNREDACTED IDENTIFIER | SUBSTITUTED IDENTIFIER |
|---|---|---|
| Exhibit G – Lucas Paystub dated 5/20/2016 | Payroll figures and financial information | n/a; redacted as containing confidential information |
| Exhibit H – Lucas 2016 W-2 identified by bates: KAPSTONE 000718-000719 | Payroll figures and financial information | n/a; redacted per Confidentiality Agreement |

**CONFIDENTIAL**

# EXHIBIT H

CONFIDENTIAL/PROPRIETARY
Subject to Confidentiality Agreement

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF CHARLESTON | ) | FOR THE NINTH JUDICIAL CIRCUIT |
| | ) | |
| | ) | CIVIL ACTION #: 2017-CP-10-00838 |
| Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly, | ) | |
| Plaintiffs, | ) | |
| vs. | ) | |
| | ) | **CONFIDENTIAL REFERENCE LIST** |
| KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, Safway Group Holdings, LLC, Easy Way Insulation Co., Inc., Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc. and Thompson Industrial Services, LLC, | ) | |
| Defendants. | ) | |

**The information on this form identifies the confidential documents submitted as exhibits with Plaintiffs' Motion to Reconsider the Order Granting Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation's Rule 12(b)(1) Motion to Dismiss being filed herewith on March 9, 2020. The sealed unredacted copies of which are being sent to the Clerk of Court pursuant to the Confidentiality Agreement between the parties.**

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| Exhibit H – Lucas 2016 W-2 identified by bates: KAPSTONE 000718-000719 | Payroll figures and financial information | n/a; redacted per Confidentiality Agreement |

**CONFIDENTIAL**

# EXHIBIT I

South Carolina Secretary of State Mark Hammond

# Business Entities Online

File, Search, and Retrieve Documents Electronically

# KAPSTONE PAPER AND PACKAGING CORPORATION

## Corporate Information

**Entity Type:** Corporation

**Status:** Forfeited

**Domestic/Foreign:** Foreign

**Incorporated State:** Delaware

## Important Dates

**Effective Date:** 04/16/2013

**Expiration Date:** N/A

**Term End Date:** N/A

**Dissolved Date:** 06/16/2015

## Registered Agent

**Agent:** CORPORATION SERVICE COMPANY

**Address:** 1703 LAUREL ST
COLUMBIA, South Carolina 29201

### Official Documents On File

| Filing Type | Filing Date |
|---|---|
| Forfeiture | 06/16/2015 |
| Authority | 04/16/2013 |

For filing questions please contact us at **803-734-2158**

Copyright © 2018 State of South Carolina

# EXHIBIT J

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE
Apr 24 2017
REFERENCE ID: 1704241453226
Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

150616-0297 Filed: 6/16/2015
KAPSTONE PAPER AND PACKAGING CORPORATION
Filing Fee: $0.00
Mark Hammond South Carolina Secretary of State

# STATE OF SOUTH CAROLINA
# SECRETARY OF STATE
# COLUMBIA, SOUTH CAROLINA

## CERTIFICATE OF REVOCATION OF AUTHORITY

KAPSTONE PAPER AND PACKAGING CORPORATION
1101 SKOKIE BLVD STE 300
NORTHBROOK , IL 60062-4124

Date of Revocation of Authority:
JUN 16, 2015

20516946

South Carolina Code of Laws §33-15-300 provides that the South Carolina Secretary of State's Office shall revoke the authority of a foreign corporation for the following reasons:

(1) The foreign corporation does not deliver its annual report to the Department of Revenue when it is due;

(2) The foreign corporation does not pay, when they are due, any franchisé taxes, taxes payable under Chapter 7, of Title 12, or penalties imposed by this act or other law;

(3) The foreign corporation is without a registered agent or registered office in this state;

(4) The foreign corporation does not inform the Secretary of State under §33-15-108 or §33-15-109 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued;

(5) An incorporator, director, officer or agent of the foreign corporation signed a document he knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or

(6) The Secretary of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporatoin is incorporated stating that it has been dissolved or disappeared as the result of a merger.

Based on the records provided by the South Carolina Department of Revenue, it appears that after proper statutory notice, the above named corporation has failed to meet the requirements of (1) and/or (2) as set forth above.

**Now therefore, under the authority of South Carolina Code of Laws §33-14-300, the certificate of authority for the above named foreign corporation is revoked as of the date of this Certificate of Revocation of Authority.**

Mark Hammond
South Carolina Secretary of State

**Inquiries concerning this administrative dissolution should be directed to the South Carolina Department of Revenue, Corporate Section, Columbia, SC 29214-0100 or call (803) 896-1730.**

ADM. DISSOLUTION (SS-04)

Form Revised by South Carolina Secretary of State, April 2008

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF CHARLESTON | ) | FOR THE NINTH JUDICIAL CIRCUIT |
| | ) | |
| | ) | CIVIL ACTION #: 2017-CP-10-00838 |
| Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly, | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | |
| vs. | ) | |
| | ) | **Plaintiffs' Supplement to Plaintiffs' Response in Opposition to Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation's Rule 12(b)(1) Motion to Dismiss** |
| KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, Safway Group Holdings, LLC, Easy Way Insulation Co., Inc., Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc. and Thompson Industrial Services, LLC, | ) | |
| | ) | |
| Defendants. | ) | |
| | ) | |

FILED
2019 SEP 26 PM 4:34
CLERK OF COURT

The plaintiffs, Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly (collectively, "Plaintiffs"), file this, Plaintiffs' Supplement to Plaintiffs' Response in Opposition to Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation's Rule 12(b)(1) Motion to Dismiss, requesting the Court deny Defendants' motion in its entirety, respectfully showing unto the Court the following:

## I.

## Summary

Plaintiffs file this supplement to Plaintiffs' response that was previously filed with this Court on May 24, 2019, as additional discovery materials and testimony have recently come to

light that further demonstrate the necessity of denying Defendants' Rule 12(b)(1) Motion to Dismiss. Specifically, Plaintiffs would show the following:

1. Defendants' last-minute disclosure of an expert witness to opine on the application of the *Poch* factors to the KapStone entities not only constitutes an improper ambush, but was undeniably withheld from Plaintiffs for nearly a year without good cause;

2. The documents that were only recently produced by the KapStone Defendants confirm that the companies were not operating as a single economic entity, and in fact, highlight KapStone's acknowledgement of the decentralized nature of the entities at the time of the incident that caused life-altering injuries to Plaintiffs in May 2016;

3. While Plaintiffs still urge this Court to strike the affidavit of Defendants' corporate representative, Kelly Hulseman, as outlined in Plaintiffs' response, it is further apparent that the affidavit should be disregarded for purposes of Defendants' motion, as Defendants' own expert admitted he did not need to rely on it in forming his opinions regarding economic integration;

4. The report and opinions of Defendants' expert, Todd Lester, do not pass muster as it was discovered during Mr. Lester's deposition that he was not provided with the breadth of relevant documents and testimony in this case, thereby making his opinions wholly unreliable;

5. Considering the nature of Defendants' continued nondisclosure of Mr. Lester's existence, report, and file, Plaintiffs would re-urge their previous motion to this Court to strike the designation of Todd Lester, and dismiss any proffered opinions from consideration in this matter; and

6. Dismissal is a harsh remedy that should not be entered lightly in this case. Based on the wealth of information demonstrating the lack of economic integration in May 2016, this Court should deny Defendants' motion to dismiss, and permit the commencement of merits discovery with the KapStone Defendants in this case.

## II.

## Supplemental Background and Procedural History

As this Court is aware, this case arises from a tragic accident that occurred on May 24, 2016, when Plaintiffs Jacque Lucas and Daniel Simerly were working for Kapstone Charleston Kraft, LLC, at a paper mill in North Charleston, South Carolina. On that date, Plaintiffs sustained

severe and horrific burns after black liquor discharged from an overhead vessel onto their bodies while they were working on and around scaffolding underneath the vessel hatch. As a result of the incident, Plaintiffs have undergone extensive medical treatment, including procedures for their painful burns, orthopedic injuries, and serious mental and psychological issues, including Post-Traumatic Stress Disorder.

Following the instigation of this lawsuit by Plaintiffs, Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation filed their Rule 12(b)(1) Motion to Dismiss claiming Plaintiffs are not entitled to recover from these separate and distinct entities because Plaintiffs are barred by the exclusivity provision of the South Carolina Workers' Compensation Act ("Act"). After several hearings and disputes regarding jurisdictional discovery, and the production thereof, Plaintiffs filed their response to Defendants' Motion to Dismiss on May 24, 2019. Subsequent to that filing, Defendants served a report from Todd Lester, purporting to provide expert opinions regarding the economic integration of the KapStone entities following a review of the *Poch* factors. Based on the improper legal opinions, and the untimely disclosure of Mr. Lester given the lengthy history of this case, Plaintiffs moved to strike Mr. Lester as an expert, and remove any of his opinions from consideration contemporaneously with Defendants' motion to dismiss. However, this Court made the Parties aware that the Court would consider Mr. Lester's designation and opinions, and provided Plaintiffs with additional time to depose Mr. Lester, and secure their own expert as they deemed necessary.

Following the Court's order, Plaintiffs sought and obtained the testimony of Mr. Lester on September 5, 2019. This testimony was taken, however, without the benefit of being able to review Mr. Lester's entire working file, as such was not produced prior to the deposition. Further, it became apparent in Mr. Lester's deposition that not only was he retained over a year earlier in July

of 2018, but that Mr. Lester had been working on a report, and provided a final draft of that report to Defendants on May 15, 2019, prior to the filing of Plaintiffs' response in opposition to Defendants' motion to dismiss. *See* Ex. A.

Despite this final report being provided to Defendants, it was not produced in advance of the hearing on May 24, 2019, and in fact, was not produced at all until *after* Mr. Lester's deposition. What is striking about this "final" report is not only the timing of its disclosure, but the additional language and opinions therein which were not included in the report that was eventually produced after Plaintiffs' response and after receiving further guidance from this Court regarding any potential expert.

Plaintiffs, therefore, provide this supplement to Plaintiffs' response to the Court to both re-urge their motion to strike Mr. Lester's opinions from consideration in this matter, and to further support their argument in opposition to Defendants' motion to dismiss based on recently produced evidence.

## III.

## Exhibits

**Exhibit A:** **Final Report of Todd Lester dated May 15, 2019**

**Exhibit B:** **Correspondence from Defendants' counsel dated September 12, 2019**

**Exhibit C:** **Correspondence between Defendants' counsel and Todd Lester**

**Exhibit D:** **Todd Lester's invoices**

**Exhibit E:** **KapStone's Memorandum of Law in Support of the Admissibility of the Affidavit of Todd K. Lester**

**Exhibit F:** **One KapStone: Integrating our Mill and Container Systems Presentation**

**Exhibit G:** **Leadership Workshop Presentation**

**Exhibit H:** **Deloitte/KapStone January Executive Workshop Preparation Material Draft**

**Exhibit I:** **Deloitte/KapStone Sample Synergy Report**

**Exhibit J:** **South Carolina Certificate of Revocation of Authority**

**Exhibit K:** **Application for Reinstatement**

**Exhibit L:** **DLL Financial Solutions Partner Equipment Lease Agreement**

**Exhibit M:** **Survey of Operating Conditions and Use of Equipment**

**Exhibit N:** **Correspondence regarding One KapStone**

**Exhibit O:** **Report of David Fuller**

**Exhibit P:** **Documents produced bates labeled J. Lucas 00286-00292**

**Exhibit Q:** **Deposition Transcript of Todd Lester**

**Exhibit R:** **P&L Sheets and Financial Statements**

## IV.

## Motion to Strike the Opinions of Todd Lester

In support of this additional motion to strike, Plaintiffs incorporate, as if fully reiterated herein, Plaintiffs' Response in Opposition to Defendants' Memorandum in Support of the Admissibility of the Affidavit of Todd K. Lester. For further response, Plaintiffs present the following facts:

- Plaintiffs filed suit in this matter on February 15, 2017. Defendants filed their Rule 12(b)(6) Motion to Dismiss and Motion for Stay of Discovery on June 6, 2017. Plaintiffs filed their response to Defendants' Motion to Dismiss on May 24, 2019. Thereafter, on May 31, 2019, Defendants filed the Affidavit of Todd K. Lester dated May 30, 2019.

- At no time prior to May 31, 2019, during the nearly two-years of discovery post-filing of Defendants' motion to dismiss, did Defendants formally disclose, or otherwise produce, any opinions or designation related to or identifying Mr. Lester as an expert witness in this case.

- Despite representations to Plaintiffs and the Court, Mr. Lester's working file – in its entirety – was not produced to Plaintiffs until *after* Mr. Lester's deposition took place on September 5, 2019. *See* Ex. B.

- Based on the invoices and correspondence provided to Plaintiffs' counsel on the morning of Mr. Lester's deposition, Defendants engaged Mr. Lester as an expert in July 2018, and Mr. Lester had been billing time for his work on this case since August 2018, including work drafting a report. *See* Exs. C and D.

- Even though Mr. Lester has been engaged and working on this matter since at least August 2018, the KapStone Defendants did not provide Mr. Lester with hundreds of documents produced in this litigation related to the jurisdictional question, or the deposition of Kelly Hulseman. *See* Ex. Q.

- Mr. Lester has never spoken with, interviewed, or otherwise communicated with any person employed by, or working at, any of the KapStone entities, outside of KapStone's legal counsel. *See id.*

As previously elaborated on in Plaintiffs' response to Defendants' brief on the admissibility of Mr. Lester's expert report, Plaintiffs have continuously been met with the untimely production of documents and materials in this case. Even more importantly for the pending motion, Plaintiffs were not provided with Mr. Lester's entire working file until after his deposition had concluded. Therefore, Plaintiffs have never been able to question Mr. Lester on the materials found in his file, despite the disclosure of Mr. Lester and representations to counsel and the Court regarding the production of the file materials in early June 2019.[1]

[1] The primary objective of discovery is to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed. *In re Anonymous Member of South Carolina Bar,* 346 S.C. 177, 552 S.E.2d 10, 18 (2001). "The entire thrust of discovery rules involves full and fair disclosure, 'to prevent a trial from becoming a guessing game or one of surprise for either party.'" *Samples v. Mitchell,* 329 S.C. 105, 495 S.E.2d 213, 217 (Ct. App. 1997)(quoting *State Highway Dep't v. Booker,* 260 S.C. 245, 252, 195 S.E.2d 615, 619 (1973)). In this respect, the discovery process is designed to "make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." *In re Anonymous Member of South Carolina Bar,* 346 S.C. 177, 552 S.E.2d 10, 18 (2001) *citing United States v. Procter & Gamble Co.,* 356 U.S. 677, 682, 78 S.Ct. 983, 986-87, 2 L.Ed.2d 1077 (1958).

Furthermore, and even more worrisome, is the "final" expert report of Mr. Lester that was provided to the KapStone Defendants on May 15, 2019, which is markedly different from the report that was produced and filed on May 31, 2019. *See* Ex. A. Put very simply, it is clear that significant changes were made to Mr. Lester's report between May 15th and May 31st – the precise time period in which this Court first heard of the potential designation of an economic expert witness. Most troublesome is the complete removal of an entire section in Mr. Lester's report in the version that was ultimately produced in this case. Specifically, on page ten of the "final" May 15th report, Mr. Lester admits that in his assessment of the financial and economic integration of KapStone Paper and its subsidiaries, he relied primarily on the *Poch* case, and the factors identified in that case. *See* Ex. A at 10-11. Essentially, Mr. Lester reviewed the *Poch* case, and used the factors and information in that case to come to his conclusions on whether the KapStone Defendants and KapStone Charleston were one economic entity. *Id.*

This is **precisely** the type of opinion and testimony that Plaintiffs warned would be forthcoming, and ultimately improper in the consideration of Defendants' motion to dismiss. The determination of the economic and operational integration of the KapStone entities, in line with the *Poch* case, is what the Court is being asked to find – not something that can be opined to by Defendants' retained expert. It is clear from the "final" report only recently produced that Mr. Lester was retained specifically for, and will be advocating a legal conclusion, and providing opinions as to the ultimate question this Court is being asked to decide.

In fact, the KapStone Defendants filed their brief on the admissibility of Mr. Lester's report, and represented that Mr. Lester does not "opine as to whether evidence satisfies *Poch*". *See* Ex. E at 5. What is clear from the report that was in KapStone's hands at the time of filing their brief, however, is that Mr. Lester was planning on doing exactly that – namely, conclude that "the

KapStone related entities, at and around the time of the Incident in 2016, were highly integrated and operating primarily as an integrated economic unit, rather than as separate and distinct businesses," after "evaluat[ing] the economic and financial relationship between KapStone Paper, KapStone Kraft and KapStone Charleston relative to the eight factors identified in Poch..." *See* Ex. A at 32.

Expert witnesses are not allowed to state legal standards **or to draw legal conclusions by applying law to the facts**. *See United States v. McIver*, 470 F.3d 550, 561-62 (4th Cir. 2006)(emphasis added); *see also Vigil v. Burlington N. & Santa Fc Ry. Co.*, 521 F. Supp. 2d 1185, 1205-06 (D.N.M. 2007) ("[A]n expert may not state his opinion as to legal standards, nor may he state legal conclusions drawn by applying the law to the facts.") (citing *Okland Oil Co. v. Conoco, Inc.*, 144 F.3d 1308, 1328 (10th Cir. 1998)). "The rule prohibiting experts from providing their legal opinions or conclusions is 'so well-established that it is often deemed a basic premise or assumption of evidence law--a kind of axiomatic principle.'" *In re: Initial Public Offering Sec. Litig.*, 174 F. Supp. 2d 61, 64 (S.D.N.Y. 2001) (collecting cases and quoting Baker The Impropriety of Expert Witness Testimony on the Law, 40 U. Kan. L, Rev. 325, 352 (1992)). It is not for an expert to "communicate 'a legal standard—explicit or implicit—to the jury,'" or in the instant case, this Court. *In re Rezulin Prods. Liab. Litis.*, 309 F. Supp. 2d 531, 541 (S.D.N.Y. 2004); *see also Dawkins*, 354 S.C. at 66-67 (rejecting expert affidavit which consisted largely of "legal argument as to why summary judgment should be denied").

Plaintiffs submit that the opinions presented by Mr. Lester are nothing more than improper legal conclusions, based solely on the *Poch* case and the limited information provided to him by the KapStone Defendants. Therefore, the opinions are inadmissible for any purposes, and should be excluded.

Furthermore, this Court should additionally refuse to give consideration to Mr. Lester's affidavit, report, or opinions, as Mr. Lester's opinions lack the proper foundation, and are therefore unreliable. Specifically, it became known in Mr. Lester's deposition that he had not been provided with a large collection of relevant documents that had been produced prior to the serving of his report in this case.

Specifically, Mr. Lester was not provided with and/or had not reviewed: (1) Documents produced by the KapStone Defendants bates labeled KapStone 002651-003828, the range of which includes, but is not limited to, documents related to One KapStone and the plan for company-wide integration *after* the date of the incident made the basis of this lawsuit; (2) Plaintiffs' Response in Opposition to Defendants' Rule 12(b)(6) Motion to Dismiss; and (3) the Deposition Transcript of Defendants' corporate representative, Kelly Hulseman. In fact, Mr. Lester was not provided with the following highly relevant documents, which would be essential for an expert to review prior to providing any opinions on economic integration in this case:

- Documents regarding One KapStone: Integrating our Mill and Container Systems dated January 18, 2017;[2]
- Documents related to the Leadership Workshop on January 11th through 12th, 2017;[3]
- Deloitte/KapStone January Executive Workshop Preparation Material Draft dated December 27, 2016;[4]
- Deloitte/KapStone Sample Synergy Report dated October 2016;[5]

[2] *See* Ex. F.
[3] *See* Ex. G.
[4] *See* Ex. H.
[5] *See* Ex. I.

- KapStone Paper and Packaging's South Carolina Certificate of Revocation of Authority dated June 16, 2015;[6]
- KapStone's Application for Reinstatement with the South Carolina Secretary of State;[7]
- Equipment lease agreements for KapStone Charleston Kraft, LLC;[8]
- Survey of Operating Conditions and Use of Equipment for KapStone Charleston Kraft, LLC;[9] and
- Email correspondence related to One KapStone.[10]

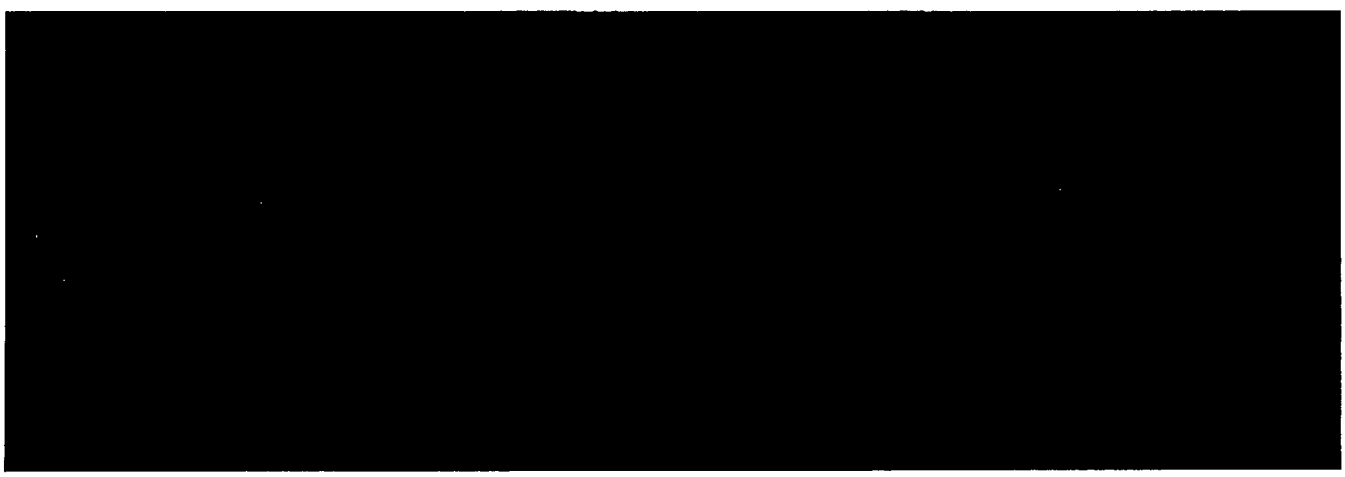
The above-referenced documents represent a fraction of the nearly 1200 pages produced on the jurisdictional issue that Defendants' expert did not review. Specifically, the last bates-labeled document produced by KapStone and identified in Mr. Lester's report appendix as having been provided and reviewed is KapStone 002650. *See* Lester's Report at Appendix A. Said another way, Mr. Lester either was not provided with, or simply chose to ignore, nearly a third of the documents produced by the KapStone Defendants in this case. The documents and testimony that Mr. Lester failed to review in preparing his report render his opinions unreliable and meritless.

Defendants should not be permitted to submit the affidavit and report of Mr. Lester for consideration in this jurisdictional matter as the probative value of such opinions are highly outweighed by their misleading nature regarding the issues at hand. Therefore, Plaintiffs respectfully request this Court strike the opinions of Mr. Lester, and disregard all reference to them in the pleadings and attachments provided to this Court for purposes of this case.

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[6] *See* Ex. J.
[7] *See* Ex. K.
[8] *See* Ex. L
[9] *See* Ex. M
[10] *See* Ex. N





## V.

## Arguments and Authorities

While Plaintiffs do not intend to, and will attempt to avoid entirely rehashing the prior briefing and arguments addressed in Plaintiffs' initial response to Defendants' motion, the additional evidence only recently provided in this case should be considered prior to ruling on this matter. Further, Plaintiffs incorporate the opinions provided by Plaintiffs' retained expert, David Fuller, as stated in his report attached hereto as Exhibit O, and rely upon them in supplementing the record.

### A. The KapStone Entities Were Not Economically Integrated at the Time of this Incident.

Defendants' reply claims that Plaintiffs simply ignore the business records that have been produced in this case. However, what is clear after deposing Mr. Lester is that the KapStone Defendants have failed to provide their expert, and this Court, with the full breadth of documentary evidence in this case. Specifically, a mountain of evidence exists to not only satisfy the *Poch* inquiry in favor of Plaintiffs, but to completely disprove any claim of economic integration at the time of the May 2016 incident.

In *Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 405 S.C. 359, 747 S.E.2d 757 (2013), the Supreme Court explained that, although a parent corporation is not immune from an action in tort by an injured employee of its subsidiary, immunity can extend to the parent when the two corporations operate as one economic entity. *Id.*, 405 S.C. at 370-75. The determination of "one economic entity" is central to the *Poch* analysis, and requires a finding of integration and unity through a list of non-exhaustive factors (as previously iterated for this Court). The additional documentation and deposition testimony in this case provide a wealth of evidence to support the

completely lack of economic unity in this case, and respectfully, mandate denial of Defendants' motion.

1. **KapStone Paper, KapStone Kraft, and KapStone Charleston did not start operating as integrated units until after the May 2016 incident.**

Contrary to Defendants' arguments and the opinions of Defendants' expert Mr. Lester, the KapStone entities did not operate – either externally or internally – as a single, integrated company. In fact, the documents in this case conclusively establish that the KapStone entities were separate and distinct, and only began working towards becoming integrated after Plaintiffs were horrifically injured on May 24, 2016.

To illustrate this fact, Plaintiffs provide the following non-exhaustive timeline of relevant events for the Court's consideration:

- On June 16, 2015, the Secretary of State for South Carolina issued a Revocation of Authority for KapStone Paper and Packaging Corporation, ending KapStone Paper's legal right to conduct business in the State of South Carolina. *See* Ex. J.

150616-0297 Filed: 6/16/2015
KAPSTONE PAPER AND PACKAGING CORPORATION
Filing Fee: $0.00
Mark Hammond South Carolina Secretary of State

**STATE OF SOUTH CAROLINA**
**SECRETARY OF STATE**
**COLUMBIA, SOUTH CAROLINA**

**CERTIFICATE OF REVOCATION OF AUTHORITY**

KAPSTONE PAPER AND PACKAGING CORPORATION
1101 SKOKIE BLVD STE 300
NORTHBROOK , IL 60062-4124

Date of Revocation of Authority:
JUN 16, 2015
20516946

**Now therefore, under the authority of South Carolina Code of Laws §33-14-300, the certificate of authority for the above named foreign corporation is revoked as of the date of this Certificate of Revocation of Authority.**

Mark Hammond
South Carolina Secretary of State

- On May 24, 2016, Plaintiffs Lucas and Simerly were burned at the KapStone Charleston Kraft, LLC plant located in Charleston, South Carolina. *See* Ex. P.





- In October 2016, KapStone hires Deloitte to help them develop a plan to create an integrated and unified KapStone company. This synergy plan was necessary because prior to October 2016, the KapStone entities were decentralized and unintegrated. Deloitte provided

KapStone with an approach (to take place in the future) to create an integrated KapStone. *See* Ex. I.

- On December 14, 2016, KapStone corresponds internally regarding the formulation of "One KapStone," and confirms that the team needs to discuss the scope of One KapStone, and where they should go to get help to lead a more structured process across data, processes, and systems. *See* Ex. N.

- On December 27, 2016, Deloitte provides KapStone with a draft presentation for the upcoming January Executive Workshop regarding One KapStone, and the move towards integration. *See* Ex. H.

- On January 11-12, 2017, Deloitte provides KapStone with a presentation for a Leadership Workshop which details certain goals for KapStone, including the guiding principles behind the integration program, and the need to prioritize integration. *See* Ex. G.

- On January 18, 2017, a presentation is provided regarding One KapStone, focused specifically on "Integrating our Mill and Container Systems." *See* Ex. F. This presentation details the One KapStone vision, and the "urgent" need for KapStone to pull together as a unified company. *Id.*

- On January 31, 2017, KapStone employees correspond regarding the name to choose for the integration plan, and the slogan behind it, tossing around ideas such as "together we can do more." *See* Ex. N.

- In January 2017, the Department of Shared Services is created, and Kelly Hulseman became the Vice President of Shared Services. *See* Hulseman's deposition at 16:9-14.

- On March 6, 2018, the deposition of Kelly Hulseman, as the corporate representative of the KapStone Defendants, is taken, and the revocation of authority to transact business in South Carolina is revealed.

- On February 20, 2019, KapStone Paper and Packaging applied for reinstatement in the State of South Carolina. *See* Ex. K.

Plaintiff submits this abbreviated timeline for the Court's consideration for at least one primary purpose, and to raise the following common sense inquiry: Why would the KapStone entities need to hire an outside firm (Deloitte) to create and implement an integration program and procedure in late 2016 and early 2017, if the companies were truly operated as "one economic entity" at the time of the incident in May 2016?

The simple answer is clear: Because the KapStone entities were not operating as a single, integrated economic entity at the time Plaintiffs were burned. For that reason, and the many others explained and described at length in Plaintiffs' prior briefing, Defendants' motion should be denied.

**2. The *Poch* factors, as a whole, weigh heavily in favor of denying Defendants' motion to dismiss.**

The wealth and breadth of information produced in this case makes the analysis under *Poch* very simple, and very straightforward. For the sake of clarity and brevity, Plaintiffs provide the following summary:

1. The KapStone Defendants maintained a separate corporate identity that was easily distinguished from KapStone Charleston Kraft, LLC. The testimony and documents in this case confirm that each KapStone company was a separate legal entity at the time of the incident in May 2016.

2. The KapStone companies transact business from different locations under different managers. In fact, KapStone Paper could not even legally conduct business in the State of South Carolina at the time of the underlying incident.

3. Further, the KapStone Defendants and KapStone Charleston Kraft hired, fired, and paid their own employees. Plaintiffs were hired by, employed by, and paid by KapStone Charleston Kraft, not the KapStone Defendants.

4. The KapStone Defendants and KapStone Charleston Kraft engaged in different business activities. KapStone Paper and Packaging is not in the business of manufacturing or selling paper products whatsoever. The sole business of KapStone Charleston Kraft was the business of manufacturing and selling paper products.

5. The KapStone Defendants maintained separate business records from KapStone Charleston Kraft. While the KapStone entities consolidated their financials for reporting purposes (as is highly usual), they prepared and maintained distinct and separate financial records internally. *See* Ex. R.

6. Finally, the KapStone entities were admittedly decentralized and unintegrated at the time of the May 2016 incident. *See* Exs. F – I.

Based on the testimony, documents, and other evidence presented in this case, as thoroughly outlined in the briefing and exhibits thereto, Defendants' motion to dismiss for lack of jurisdiction should be denied.

## VI.

## Conclusion

Wherefore, Plaintiffs request that the Court enter an order denying Defendants' Motion to Dismiss and such other and further relief the Court deems proper.

This 25th day of September, 2019.

Respectfully submitted,

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**RULE 11 AFFIRMATION**

[] In accordance with Rule 11 (SCRCP), I affirm that I have communicated with opposing counsel and have attempted in good faith to resolve the matter contained in this motion.

[X] I have not communicated with opposing counsel because of my belief consultation would serve no useful purpose.

Sign:

# EXHIBIT "A"

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | § | IN THE COURT OF COMMON PLEAS |
| | § | |
| COUNTY OF CHARLESTON | § | FOR THE NINTH JUDICIAL CIRCUIT |
| | § | |
| Jacque Lucas, Shirley Ann Lucas and Daniel Simerly, | § | CIVIL ACTION NO: 2017-CP-10-00838 |
| *Plaintiffs* | § | |
| vs. | § | |
| | § | |
| KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, Safway Group Holdings, LLC, Easy Way Insulation Co., Inc., Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc. and Thompson Industrial Services, LLC, | § | |
| *Defendants* | § | |

# EXPERT REPORT OF TODD K. LESTER

## I. INTRODUCTION

1. I am a Senior Managing Director at FTI Consulting, Inc. ("FTI Consulting") in the Forensic and Litigation Consulting Practice and a member of the Disputes Advisory Services segment. FTI Consulting is a management and business consulting firm that specializes in providing accounting, financial, economic and project management consulting services to clients and client companies, including providing assistance in resolving business problems and disputes, many of which involve parties in litigation.

2. In connection with the above captioned litigation, I have been retained by Bowman and Brooke LLP ("Bowman" or "Counsel") on behalf of KapStone Paper and Packaging Corporation ("KapStone Paper") and KapStone Kraft Paper Corporation ("KapStone Kraft") (collectively "KapStone" or the "KapStone Defendants") to provide consulting and litigation support services. More specifically, I have been asked to provide assistance to Counsel in evaluating the economic substance of the relationship between the KapStone Defendants and KapStone Charleston Kraft, LLC ("KapStone Charleston") (collectively the "KapStone related entities"). In addition, I have been asked to evaluate the

extent to which the governance, management, operational and financial aspects of the KapStone related entities are separate and distinct, or integrated, with emphasis on the relationship that existed in 2016.

3. Certain aspects of my review and analysis are ongoing. As such, the opinions expressed in this report and portions of the information presented in the accompanying exhibits are subject to amendments or additions as a result of additional discovery and / or production prior to or at the time of trial including further findings of facts, additional analyses, or through the reports or testimony of other witnesses in deposition or at trial.

4. This report is intended to be used solely in this litigation and should not be relied upon for any other purpose. FTI Consulting is not a public accounting firm and did not audit any financial statements or perform any attest procedures during this engagement, nor has FTI Consulting provided any legal advice to Counsel or the KapStone Defendants, including within this report.

## II. QUALIFICATIONS

5. I have over 30 years of general finance, economics, accounting and consulting experience in providing financial investigations, dispute analysis, and various forms of consulting services to counsel and client companies, including performing valuations and valuation analyses of both public and private entities. I have an undergraduate Bachelor of Business degree in Finance and International Business from The University of Texas and a Bachelor of Arts degree in Biology from the same university. I also have a Master of Business Administration degree (MBA) from The University of Texas. I am recognized as an Accredited Senior Appraiser (ASA) with the American Society of Appraisers in the Business and Intangible Asset valuation discipline and a Certified Fraud Examiner (CFE) by the Association of Certified Fraud Examiners.

6. Prior to joining FTI Consulting, I was a Managing Director in the Disputes, Investigations and Economics practice of Navigant Consulting, Inc. ("Navigant"). Before joining Navigant, I spent seven years in the financial advisory services practice of a then "Big 5" public accounting firm providing similar consulting services.

7. During the past 30 years I have consulted on numerous matters involving the analysis and determination of the economic reality and financial consequences of complex transactions, business structures and events including numerous litigation and investigative matters that have required extensive financial, economic and / or accounting analysis. I have performed this work for large and small companies in the private sector, as well as for state and federal agencies, and have provided expert

testimony in State and Federal courts.

8. In the area of dispute analysis I have provided assistance to counsel on numerous litigation and arbitration related matters involving such issues as breach of contract, breach of fiduciary duty, business interruption, business failure, construction delay and disruption, fraud and forensic investigations, and insurance claims, among others; and have managed projects involving many types of loss assessment (i.e., damages analysis) including lost profits, lost wages and earnings, incremental costs, diminution of value, lost competitive advantage, and theft / fidelity claims.

9. In addition, I have provided forensic and financial investigations for counsel and client companies including investigations into allegations of accounting irregularities, fraud, breach of fiduciary duty, regulatory compliance and other suspected misconduct in both domestic and international forums. Often my efforts have included the evaluation and assessment of internal processes, procedures and controls, operational performance, management decision-making, and the effectiveness of governance by Boards of Directors. My Curriculum Vitae is attached as **Appendix A.**

## III. COMPENSATION

10. FTI Consulting is billing time for my professional services in this matter at the rate of $575 per hour. FTI Consulting will be compensated at the same hourly rate if I am asked to testify in deposition or during arbitration. In addition, other professionals at my firm acting under my direct supervision have assisted me on this matter.

## IV. DOCUMENTS AND INFORMATION RELIED UPON

11. In preparing this report, I relied upon information from a variety of sources, each of which is of a type reasonably relied upon by experts in my field. The opinions and conclusions contained in this report are based on my independent and objective review of certain information obtained from Counsel and produced by the parties in this matter. That information includes electronic information and files containing copies of certain pleadings in this case, organizational documents for the respective KapStone related entities, information pertaining to the financial and operational management, as well as the overall management and governance, of the KapStone related entities, and certain information from the personnel files for Messrs. Jacque Lucas and Daniel Simerly. In addition, I conducted certain research and analyses into the background and financial reporting for KapStone and the KapStone related entities.

12. I also relied upon my own professional judgment and expertise gathered in over 30 years of consulting with businesses including the evaluation and analysis of complex claims, damages and

valuation issues in litigation and investigation related matters.

13. The information I have considered in developing this report is listed in Appendix B.

## V. Structure of this Report

14. The structure of this report is as follows:

- Section VI – Summary of Opinions
- Section VII – Background
- Section VIII – Scope of Work and Approach
- Section IX – KapStone Corporate Structure and Reporting
- Section X – KapStone Business Purpose and Focus
- Section XI – KapStone Corporate Locations and Identity
- Section XII – KapStone Corporate Governance and Management
- Section XIII – KapStone Business Operations
- Section XIV – KapStone Accounting and Financial Management Practices
- Section XV – KapStone Policies and Procedures
- Section XVI – Conclusion
- Section XVII – Expert Declaration

## VI. Summary of Opinions

- In May 2016, KapStone Kraft and KapStone Charleston were wholly-owned (100% owned) subsidiaries of KapStone Paper. Both KapStone Kraft and KapStone Charleston were created by KapStone in connection with KapStone's acquisition of certain assets of other companies in its efforts to expand its paper and paper manufacturing business. The process of creating companies for the purpose of holding the stock or assets purchased from another company (i.e., the use of special purpose acquisition vehicles) is not uncommon. Further, the existence of three different legal entities does not imply that the entities were engaged in separate and distinct businesses.

- In preparing this report, I evaluated the economic substance of the relationship between KapStone Paper, KapStone Kraft and KapStone Charleston, including such factors as corporate structure and reporting, business purpose and focus, corporate name, branding and marketing, governance and management, and accounting and financial management practices, among others high degree of financial and economic integration between the three entities.



[redacted]

- In May 2016, KapStone Paper, KapStone Kraft and KapStone Charleston operated as an integrated economic unit evidenced by a high degree of financial and economic integration between the three entities.

- KapStone Paper, as the parent / holding company to both KapStone Kraft and KapStone Charleston, did not manufacture paper products. However, KapStone Paper did provide a common platform for shared corporate services including various integrated organizational functions, financial reporting, and tax reporting for KapStone Kraft and KapStone Charleston. This is a common role for parent / holding corporations.

- In many respects, the KapStone name and logo were synonymous with KapStone Charleston, KapStone Kraft and KapStone Paper, including through the use of a common internet website and email exchange system, a shared corporate headquarters, and a common logo used by the KapStone related entities including on applicable internal and external corporate documentation.

- From a financial reporting and tax reporting perspective, the KapStone related entities were viewed as an integrated economic entity with KapStone Paper filing one consolidated financial statement with the Securities and Exchange Commission (SEC) and one consolidated U.S. Corporation Income Tax Return with the Internal Revenue Service (IRS).

- Similarly, in describing financial and operational results for KapStone in its Annual Reports and periodic Form 8-K reports filed with the SEC, as well as in connection with various earnings calls and investor presentations, KapStone Paper did not report or describe the operations of the KapStone related entities as separate and distinct. Both KapStone Kraft and KapStone Charleston were reported and described primarily in relation to, and as part of, KapStone's Mill Division.

- Further, the KapStone related entities were governed and managed with a high degree of integration with overlapping Directors, the same Executive Officers, and a common management group applicable to the Mill Division. KapStone was governed by a Board of Directors (where two members also served as Directors of KapStone Kraft), and a

common group of Executive Officers (e.g., CEO, CFO, General Counsel). KapStone's Mill Division also was managed by a common group of managers (e.g., VP of the Mill Division, etc.) that reported directly to Executive Officers at KapStone's headquarters.

- The KapStone related entities also abided by a common set of corporate policies and procedures, where applicable, as well as a common set of policies and procedures that were applicable primarily to KapStone's Mill Division.

- Employees of the KapStone related entities also shared benefit plans from a common provider (e.g., Group Health and Welfare Plan, 401(K) Plan, Defined Benefit Retirement Plan) and insurance from a common provider (i.e., Workers Compensation and Employers Liability), which were administered and paid for by KapStone Paper in relation to all employees. This included the payment of premiums in relation to Worker's Compensation and Employer's Liability insurance, as well as the payment of benefits to Messrs. Lucas and Simerly in relation to the Incident.

- The KapStone related entities also operated with a high degree of financial integration through a centralized purchase order system and an integrated accounting and cash management system that included a consolidated approach to managing cash through a master account maintained by KapStone Paper, as well as through a combined accounts receivables sale agreement and associated receivables purchasing agreement.

- While subsidiaries are created and maintained for a variety of reasons, in my evaluation I did not observe financial or economic reasons why either KapStone Kraft or KapStone Charleston should be viewed as separate and distinct businesses as opposed to a single integrated economic entity with KapStone Paper as it is currently being governed, managed and reported for financial reporting and tax purposes.

## VII. BACKGROUND

15. KapStone is a U.S. based company in the paper, packaging and distribution solutions business that produces mill products and lumber products including containerboard, kraft papers, corrugated

products and specialty paper.[1] KapStone operates through its parent holding company, KapStone Paper (established in 2005), and a number of wholly-owned subsidiaries acquired by KapStone from 2007 through the present including KapStone Kraft and KapStone Charleston, as well as KapStone Container Corp. ("KapStone Container"), Longview Fibre Paper & Packaging, Inc. ("Longview"), and Victory Packaging, L.P. ("Victory"), among other domestic and foreign subsidiaries.

A. KapStone Paper

16. KapStone Paper was originally incorporated in Delaware on April 15, 2005 as Stone Arcade Acquisition Corporation ("Stone Arcade") for the purpose of "effecting a merger, capital stock exchange, asset acquisition or other similar business combination with an unidentified operating business in the paper, packaging, forest products, and related industries."[2,3] Several months later on August 19, 2015 Stone Arcade had an initial public offering (IPO) to secure investment capital for the above described purpose and strategy.[4]

17. Stone Arcade made its first acquisition in 2007 through KapStone Kraft (a subsidiary incorporated by Stone Arcade) with the purchase of the Kraft Papers Business from International Paper Company ("International Paper").[5] Subsequent to the acquisition, Stone Arcade officially changed its name to KapStone Paper.[6]

18. KapStone continued to grow its paper and paper manufacturing business through other significant acquisitions in 2008, 2011, 2013 and 2015, as well as smaller acquisitions over the same period. KapStone's more significant acquisitions included the purchase of the Charleston Kraft Division from MeadWestvaco Corporation ("MeadWestvaco") in 2008 (which became KapStone Charleston), U.S. Corrugated, Inc. in 2011 (which was reorganized and renamed KapStone Container), Longview in 2013, and Victory in 2015. A timeline of the more significant acquisitions by KapStone during this period is provided in Exhibit 1.

19. In 2016, KapStone Paper was a publicly-traded holding company headquartered in Northbrook, Illinois that employed approximately 6,300 employees through the holding company and its

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1 Company Profile, KapStone Paper and Packaging Corporation at 3, MarketLine, May 4, 2018
2 KapStone Paper and Packaging Corporation, Form 10-K for the fiscal year ended December 31, 2016 [KAPSTONE-000002 – 134 at 5]
3 Certificate of Incorporation of Stone Arcade Acquisition Corporation, filed April 15, 2005 [KAPSTONE-000288 – 293]
4 Stone Arcade Acquisition Corporation, Securities and Exchange Commission, Form 8-K at 2, August 19, 2005
5 *Ibid. See also* Company Profile, KapStone Paper and Packaging Corporation at 8-9, MarketLine, June 30, 2015
6 KapStone Paper and Packaging Corporation, Securities and Exchange Commission, Form 8-K, December 29, 2006

various wholly-owned subsidiaries.[7] At the time, KapStone owned four paper mills, 23 corrugated products manufacturing plants, and 60 distribution facilities primarily across North America, Mexico and Canada; and reported operating results in two reportable segments: (1) Paper and Packaging; and (2) Distribution.[8] The Paper and Packaging segment manufactured and sold containerboard, corrugated products and specialty paper for industrial and retail customers. The Distribution segment provided packaging solutions and distribution services.[9]

B. KapStone Kraft

20. As described above, KapStone Kraft was created by Stone Arcade to acquire certain assets and liabilities associated with International Paper's Kraft Papers Business, which was consummated on January 1, 2007 for approximately $155 million in cash plus certain contingent earn-out payments.[10] The assets included an unbleached kraft manufacturing facility in Roanoke Rapids, North Carolina, Ride Rite Converting, an inflatable dunnage bag manufacturer in Fordyce, Arkansas, and certain trade accounts receivable and inventories.[11] The business acquired from International Paper became known as KapStone Kraft, a 100% wholly-owned subsidiary of KapStone Paper.

C. KapStone Charleston

21. On July 1, 2008, KapStone Paper acquired from MeadWestvaco certain assets and liabilities associated with its Charleston Kraft Division for $485 million.[12] The assets included an unbleached kraft paper manufacturing facility and cogeneration facility in North Charleston, South Carolina, chip mills located in Elgin, Hampton, Andrews and Kinards, South Carolina, and a lumber business located in Summerville, South Carolina. The business acquired from MeadWestvaco became known as KapStone Charleston, a 100% wholly-owned subsidiary of KapStone Kraft and its parent holding company, KapStone Paper.

D. Litigation and Dispute

22. On or around May 24, 2016, I understand that Plaintiffs Jacque Lucas and Daniel Simerly, as

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7 KapStone Paper and Packaging Announces Management Changes at 2, PRNewswire, September 21, 2016

8 KapStone Paper and Packaging Corporation, Form 10-K for the fiscal year ended December 31, 2016 [KAPSTONE-000002 – 134 at 6-7, and 9]

9 WestRock Completes Acquisition of KapStone, WestRock Shared Services, LLC Press Release at 1, November 2, 2018

10 KapStone Paper and Packaging Corporation, Securities and Exchange Commission, Form 8-K at 2, December 29, 2006; *see also* 30 (b) (6) Deposition of KapStone Paper and Packaging Corporation (Mark Niehus), dated January 8, 2019 at 60-61

11 Company Profile of KapStone Paper and Packaging Corporation at 2, Nexis Uni via Plus Media Solutions, September 2, 2016

12 KapStone Paper and Packaging Corporation, Securities and Exchange Commission, Form 8-K at 3, July 2, 2008

employees of KapStone Charleston, were injured while preforming maintenance work at KapStone Charleston's paper mill facility in North Charleston, South Carolina (the "Incident").[13,14] At the time of the Incident, KapStone Charleston was a 100% owned subsidiary of KapStone Kraft, which was 100% owned by their parent corporation, KapStone Paper.

23. Subsequent to the Incident, it is my understanding that Plaintiffs filed workers compensation claims to recover ongoing medical costs associated with the Incident.[15] As the parent corporation to KapStone Charleston and KapStone Kraft, and the policyholder to the workers compensation insurance covering employees of KapStone Charleston, KapStone Paper paid a $250,000 deductible to satisfy Plaintiffs' claims.[16] As of December 2017, it is reported that Plaintiffs have collectively been paid over $3.7 million in worker's compensation benefits.[17] Both claims remain open.

24. On February 17, 2017, as amended on April 1, 2017, Plaintiffs filed a Complaint against the KapStone Defendants in this matter, KapStone Paper and KapStone Kraft, as well as other entities including Safeway Group Holdings, LLC, Easy Way Insulation Co., Inc., Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc., and Thompson Industrial Services, LLC.[18]

## VIII. Scope of Work and Approach

### A. Objective

25. The objective of my efforts has been to evaluate the relationship between KapStone Paper, KapStone Kraft and KapStone Charleston including the economic substance of the relationship relative to its form, and whether the relationship was indicative of entities that operated as part of an integrated business (i.e., one economic unit).

26. More specifically, I have evaluated whether aspects of the corporate identity, governance and

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13 *Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al.* ("First Amended Complaint") at 3-4, February 17, 2017

14 Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation's Rule 12(b)(6) Motion to Dismiss and Motion for Stay of Discovery at 1, June 8, 2017

15 *Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al.*, Defendants KapStone Paper and Packaging Corporation's Brief in Support of Their Rule 12(b)(1) Motion to Dismiss and Motion for Stay of Non-Jurisdictional Discovery at 1, September 20, 2017

16 *Id.* at 4

17 KapStone Paper is the policyholder of the Company's workers' compensation plan, issued by Sentry Casualty Company ("Sentry"). Sentry has paid a total of $3,319,435.99 in benefits to Mr. and Mrs. Lucas, and $277,984.81 in benefits to Mr. Simerly. *Memorandum of Law in Support of Petitioner Sentry's Motion to Intervene*, Civil Action No. 2017-CP-10-838 at 2-3, December 21, 2017

18 *Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al.*, First Amended Complaint at 1, February 17, 2017; *Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al.*, ("Complaint") at 1, April 1, 2015

management structures, operations, accounting and financial management practices, and overall financial and economic integration between the three related companies demonstrates that the entities operated as part of an integrated economic unit.

B. Scope of Work

27. The scope of my evaluation included assessment and analysis of various factors relevant to the form and substance of the economic relationship between KapStone Paper, KapStone Kraft and KapStone Charleston including: (1) organizational structure; (2) articles of incorporation and bylaws; (3) corporate identity / trademark / logo; (4) office / facility locations; (5) corporate representations; (6) corporate formalities; (7) business purpose; (8) source of business; (9) corporate governance; (10) executive management; (11) financial reporting; (12) federal income tax returns; (13) hiring and payroll; (14) insurance / banking; (15) employee benefits; (16) shared services (e.g., information technology ("IT"), payroll); (17) contracts and leases; (18) policies and procedures; (19) accounting books and records; and (20) cash management and payments processing, among others.

28. For purposes of my evaluation, I primarily have focused on the corporate identity, governance and management structure, financial and federal tax reporting, operations, and accounting and financial management practices, among other areas, during 2016 when the described Incident occurred.

C. Assessment of Financial and Economic Integration of KapStone Paper and its Subsidiaries

29. In evaluating the relationship between the Kapstone Defendants and KapStone Charleston, I relied, in part, on guidance provided by South Carolina law in *Poch v. Bayshore Concrete Products/South Carolina, Inc.* 405 S.C. 359 (2013) ("Poch") and its identification of factors for consideration in determining whether related businesses should be viewed as separate and distinct for workers' compensation purposes.[19] In reaching its conclusion, the court enumerated eight factors, which included:[20]

1. Did the businesses maintain separate corporate identities?
2. Did the businesses maintain separate Board of Directors?
3. Did the businesses transact business from different locations under different managers?

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[19] *Poch*, 405 S.C. 359 (2013). *See also* Poch v. Bayshore Concrete Prods./S.C., Inc., Appellate Case No. 2010-149288, State of South Carolina in the Supreme Court, On Writ of Certiorari to the Court of Appeals; and *Monroe v. Monsanto*, 531 F. Supp. 426 (D.S.C.1982)

[20] When applying the eight factors in *Poch*, the Court emphasized that the eight factors were not the only relevant factors that could be considered, and that none of the factors alone provided immunity. *Poch*, 405 S.C. 359 (2013) at 8.

4. Did the businesses hire and pay their own employees?
5. Did the corporations hold themselves out to their employees as two separate identities?
6. Did the corporations engage in different business activities?
7. Did the corporations maintain separate books, bank accounts, and payroll records?
8. Did the corporations file separate tax returns?

30. I also relied on my over 30 years of experience in evaluating financial, economic and accounting characteristics of businesses and their respective parent companies, subsidiaries and special-purpose entities, as well as joint ventures and other relationships in relation to forensic accounting and fraud investigations, bankruptcy disputes, complex litigation matters and valuations.

31. My evaluation focused on addressing the following overarching questions:

- What was the economic substance (i.e., economic reality) of the relationship between KapStone Paper, KapStone Kraft and KapStone Charleston at the time of the Incident?
- Were the parent and subsidiaries operating as an integrated economic entity (e.g., did they integrate efforts to achieve a common business purpose)?

32. The factors I assessed in determining the degree to which the KapStone related entities were operating as an integrated economic entity are summarized below and more fully described in the following sections to this report:

- **Corporate Structure and Reporting** – how are the KapStone related entities structured and how do they report for financial reporting and tax purposes?
- **Business Purpose and Focus** – do the KapStone related entities share a common business purpose and have common business interests and / or activities?
- **Corporate Location and Identity** – do the KapStone related entities share a common external and / or internal corporate identity; do they share facilities and office locations?
- **Corporate Governance and Management** – are the KapStone related entities controlled by the same group of Directors and / or managed by the same Executive Officers?
- **Business Operations** – are the operations of the KapStone related entities separate or intertwined in relation to contract management, the provision of services, and the

provision of benefits to their employees, among other areas?

- **Accounting and Financial Management Practices** – do the KapStone related entities conduct business from a financial, accounting and / or operational perspective as a single economic unit (e.g., do they maintain separate books and records)?

- **Policies and Procedures** – are the employees of the KapStone related entities subject to the same set of internal controls and other corporate policies and procedures?

## IX. KAPSTONE CORPORATE STRUCTURE AND REPORTING

### A. KapStone Paper was created as an Acquisition Vehicle to hold KapStone Kraft

*KapStone Paper*

33. As described, KapStone Paper was originally incorporated in the State of Delaware on April 15, 2005 as Stone Arcade.[21] Stone Arcade was formed as a special purpose acquisition corporation on "for the purpose of effecting a merger, capital stock exchange, asset acquisition or other similar business combination with an unidentified operating business in the paper, packaging, forest products, and related industries."[22,23]

34. "Special purpose acquisition corporations" are generally created for the purpose of acquiring one or more companies typically in a designated market sector (e.g., paper and forestry products) and most often with funds raised through a public offering of the corporation's securities.[24] They are companies without any revenue or operating history that use investor funds to acquire or merge with another company.[25] As such, Stone Arcade was formed to serve as a vehicle for the acquisition of another business.[26]

35. On August 19, 2005, Stone Arcade completed its initial public offering (IPO) generating gross proceeds to be used for the acquisition of a yet to be identified business.[27] On June 23, 2006, Stone Arcade and International Paper announced they had signed a definitive agreement for Stone Arcade, "...through

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21 Certificate of Incorporation of Stone Arcade Acquisition Corporation, filed April 15, 2005 [KAPSTONE-000288 – 293]

22 *Ibid*

23 KapStone Paper and Packaging Corporation, Form 10-K, for the fiscal year ended December 31, 2016 [KAPSTONE-000002 – 134, at 5]

24 Legal Alert: The SPAC Phenomenon: A Discussion of the Background, Structure and Recent Developments Involving Special Purpose Acquisition Companies at 1, Sutherland Asbill & Brennan LLP, July 17, 2006

25 08-54 Guidance on Special Purpose Acquisition Companies at 1, FINRA, Regulatory Notice

26 Stone Arcade Acquisition Corporation, Form 10-Q/A at Note A, filed for the quarterly period ended September 30, 2005

27 Stone Arcade Acquisition Corporation, Securities and Exchange Commission, Form 8-K at 2, August 19, 2005

its newly-formed wholly-owned subsidiary KapStone Kraft Paper Corporation...." to acquire International Paper's Kraft Papers Business.[28] Stone Arcade's acquisition was completed on January 1, 2007, at which time Stone Arcade filed an amendment to its Certificate of Incorporation to change its name from Stone Arcade to KapStone Paper and Packaging Corporation (KapStone Paper), and International Paper's Kraft Papers Business became known as KapStone Kraft.[29]

*KapStone Kraft*

36. KapStone Kraft was incorporated in the State of Delaware on May 25, 2006 just prior to the announced agreement to purchase International Paper's Kraft Papers Business on June 23, 2006).[30] KapStone Kraft became a wholly-owned subsidiary of KapStone Paper.

37. Prior to the referenced acquisition, neither KapStone Kraft nor KapStone Paper had any operations.[31]

38. In connection with the acquisition, KapStone Paper obtained a senior secured credit facility with the ability to borrow up to $95 million that was secured by KapStone Paper's and KapStone Kraft's tangible and intangible assets, as well as a pledge of the capital stock of KapStone Kraft.[32]

*KapStone Charleston*

39. KapStone Charleston was initially incorporated as Oak Acquisition LLC ("Oak Acquisition"), a Limited Liability Company in the State of Delaware, on March 26, 2008.[33] KapStone Kraft was the sole member of Oak Acquisition (which later changed its name to KapStone Charleston).[34] KapStone Charleston was registered in the State of South Carolina on May 14, 2008.[35]

40. As the sole member of Oak Acquisition, KapStone Kraft had control over Oak Acquisition including "...the right to unilaterally act on behalf of the Company [KapStone Charleston] with or without a meeting...," control over the company's management rights, and the right to dissolve the

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28 Stone Arcade Acquisition Corporation, Securities and Exchange Commission, Form 8-K at 1, June 23, 2006

29 KapStone Paper and Packaging Corporation, Securities and Exchange Commission, Form 8-K, December 29, 2006

30 Certificate of Incorporation, State of Delaware, KapStone Kraft Paper Corporation, May 25, 2006 [KAPSTONE-000260 - 263]

31 KapStone Paper and Packaging Corporation, Securities and Exchange Commission Form 10-K at Note A: Organization and Business Operations, December 31, 2006

32 KapStone Paper and Packaging Corporation, Securities and Exchange Commission Form 10-K at 1, 27, December 31, 2007

33 State of Delaware, Certificate of Formation, Oak Acquisition LLC, March 26, 2008 [KAPSTONE-000271 – 272]; State of Delaware, Department of State, Division of Corporations – Filings, KapStone Charleston Kraft, LLC, March 26, 2008

34 Limited Liability Company Agreement of Oak Acquisition LLC, March 2008 [KAPSTONE-000340 – 341]; KapStone Paper and Packaging Corporation, Form 8-K at 7, dated July 2, 2008

35 South Carolina Secretary of State, Business Entities Online, KapStone Charleston Kraft, LLC, May 14, 2008; State of South Carolina Secretary of State, Application for a Certificate of Authority by a Foreign Limited Liability Company to Transact Business in South Carolina, May 14, 2008

company at its discretion.[36]

41. On April 7, 2008, MeadWestvaco issued a press release announcing a definitive agreement to sell its kraft paper mill in North Charleston, South Carolina to KapStone Paper.[37] The sale was concluded on July 1, 2008.[38] The sale also included a lumber mill in Summerville, South Carolina, chip mills in Elgin, Hampton, Andrews and Kinards, South Carolina, and the mill's on-site cogeneration facility (Cogen South, L.L.C.).[39]

42. KapStone Paper used the proceeds from the issuance of senior secured promissory notes (Senior Notes) and borrowings under its Senior Credit Agreement (dated as of June 12, 2008) to finance the acquisition from MeadWestvaco.[40] The Senior Notes and Senior Credit Agreement were guaranteed jointly by KapStone Paper, KapStone Kraft and KapStone Charleston, among other subsidiaries, and jointly secured by substantially all of the assets of KapStone.[41]

43. In summary, KapStone Kraft and KapStone Charleston, as well as various other entities, are wholly-owned subsidiaries of KapStone Paper. The chart below is an excerpt from KapStone Paper's Form 10-K Annual Report filed with the SEC for their fiscal year-ended December 31, 2015 listing KapStone Paper's wholly-owned subsidiaries.[42]

Exhibit 21.1

**KAPSTONE PAPER AND PACKAGING CORPORATION**
**SUBSIDIARIES OF THE COMPANY**

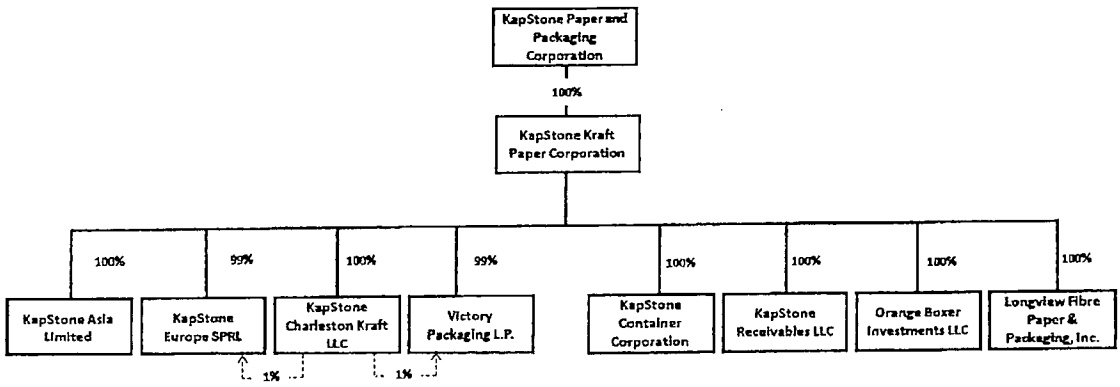
| Consolidated Subsidiaries | Organized Under Laws of | Percentage Ownership |
|---|---|---|
| KapStone Kraft Paper Corporation | Delaware | 100% |
| KapStone Charleston Kraft, LLC | Delaware | 100% |
| KapStone Container Corporation | Georgia | 100% |
| Longview Fibre Paper and Packaging, Inc | Washington | 100% |
| KapStone Receivable, LLC | Delaware | 100% |
| Victory Packaging L.P. | Texas | 100% |
| Victory Packaging Maquilla Dora LLC | Texas | 100% |
| Victory Packaging de Mexico, S. de R.L. de C.V | Mexico | 100% |
| Comercializadora Victory, S. de R.L. de C.V | Mexico | 100% |
| KapStone Europe SPRL | Belgium | 100% |
| KapStone Asia Limited | Hong Kong | 100% |

36 Limited Liability Company Agreement of Oak Acquisition LLC, March 2008 [KAPSTONE-000273 – 287]
37 MeadWestvaco Corporation, Securities and Exchange Commission, Form 8-K at 2, April 7, 2008
38 KapStone Paper and Packaging Corporation, Securities and Exchange Commission, Form 8-K at 1, July 2, 2008
39 MWV Agrees to Sell South Carolina Kraft Paper Mill to KapStone Paper and Packaging for $485 Million, MeadWestvaco Press Release, April 7, 2008
40 KapStone Paper and Packaging Corporation, Securities and Exchange Commission, Form 8-K at 2, July 2, 2008
41 *Ibid*
42 KapStone Paper and Packaging Corporation, Form 10-K at Exhibit 21.1 ("KapStone Paper and Packaging Corporation Subsidiaries of the Company"), for the fiscal year ended December 31, 2015

B. KapStone Kraft and KapStone Charleston are Wholly-Owned Subsidiaries of KapStone Paper

44. As described above, KapStone Kraft and KapStone Charleston are 100% wholly-owned subsidiaries of KapStone Paper. In general, a subsidiary is a business entity or corporation that is fully owned and controlled (or partially controlled) by another company (i.e., a parent company or holding company).[43] When one company acquires more than 50% of the voting control of another company (and thereby obtaining control of its operations), the acquired company becomes a subsidiary of the acquiring company.

45. More specifically, KapStone Charleston is wholly-owned (100%) by KapStone Kraft, which in turn is wholly-owned (100%) by KapStone Paper, and both are principally governed and under managerial control by KapStone Paper.[44] The organizational structure of KapStone Paper and its various subsidiaries is summarized in the chart below and provided in more detail in Exhibit 2.




46. In my experience, there are various reasons why companies form and maintain subsidiaries including the desire to maintain separate legal entities, capitalize on potential tax benefits, maintain existing contracts or relationships, increase operational efficiency, establish or maintain separate management, corporate identity or brand awareness, provide for easier financing and / or for an easier dissolution or sale of a business unit, among others.

47. In relation to KapStone Kraft and KapStone Charleston however, both companies were incorporated by KapStone Paper and then used to acquire the assets of other businesses (i.e., International Paper and MeadWestvaco's kraft papers businesses, respectively). As such, both KapStone

[43] Accounting Standard (AS) 21, Consolidated Financial Statements, Definitions
[44] KapStone Paper and Packaging Organization Chart, dated September 30, 2016 [KAPSTONE-000001]

Kraft and KapStone Charleston are wholly-owned (100%) subsidiaries of KapStone Paper and controlled by KapStone Paper.[45] As described further below, many of the general reasons for maintaining a subsidiary do not apply to KapStone as it has treated KapStone Kraft and KapStone Charleston as operating divisions (i.e., the Mill Division) and as part of a single economic unit with KapStone Paper.

### C. KapStone Paper, KapStone Kraft and KapStone Charleston Reported Consolidated Financial Statements (i.e., as One Economic Entity)

48. Financial reporting is one of the fundamental concepts underlying the role of financial accounting in our society, which is to "provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit, and similar decisions."[46] Financial statements are a primary means through which management reports the financial activities of a business or enterprise, as well as a fundamental requirement of publicly-traded companies operating pursuant to the rules and regulations of the Securities and Exchange Commission (SEC).

49. During the relevant period, KapStone Paper provided its Annual Report and financial statements on a consolidated basis (as one economic entity) with its subsidiaries including KapStone Kraft and KapStone Charleston.[47] "Consolidated financial statements are the financial statements of a group presented as those of a single enterprise."[48] In other words, KapStone Paper did not prepare and present financial statements and reports for each of its wholly-owned subsidiaries but, instead, presented financial statements for the entire company (i.e., on a consolidated basis).

> *"It is customary to consider a commonly-owned group of business entities to be a single entity for the purposes of creating consolidated financial statements for the group, so the principle could be considered to apply to the entire group as though it were a single unit."*[49]

50. Whether companies report financial statements of a parent holding company and its subsidiary companies on a consolidated basis or not is influenced by one of the basic assumptions that underlie the financial accounting structure used by businesses, which is the "economic entity assumption." The "economic entity assumption" assumes that "economic activity can be identified with

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[45] Control also exists when the parent "controls the composition of the board of directors" of a subsidiary or has the power to "remove all or a majority of directors" of that subsidiary. Accounting Standard (AS) 21, Consolidated Financial Statements, Scope of Consolidated Financial Statements, Section 9 and 10

[46] Accountants' Handbook, Eleventh Edition, Volume One: Financial Accounting and General Topics, Subsection 1.3(a)(v) – The Conceptual Framework

[47] KapStone Paper and Packaging Corporation, Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2016 [KAPSTONE-000002 – 134 at 61 and 122]

[48] Accounting Standard (AS) 21, Consolidated Financial Statements, Definitions

[49] The Economic Entity Principle, Accounting Tools, July 17, 2017

a particular unit of accountability."[50] More specifically, it assumes that the economic activity of an entity "can be kept separate and distinct" from the activity of its business owners or other business units.[51] As such, while a parent and its subsidiaries may be separate legal entities, activities can be merged together into one economic entity for accounting and financial reporting purposes.[52]

51. In general, consolidated financial statements are presented by a parent company (also known as a holding company) to provide financial information about the activities of the group (i.e., the economic entity). Consolidated financial statements are "...intended to present information about a parent and its subsidiary(ies) as a single economic entity to show the economic resources controlled by the group, the obligations of the group, and results the group achieves with its resources."[53]

> *"The prime purpose of consolidation is to present as one economic entity the financial position and operating results of a parent and subsidiaries. It shows the group as a single company (with one or more branches or divisions) rather than separate companies. It is an example of theoretical substance over legal form. The Companies constituting the consolidated group keep their individual legal identity."*[54]

**D. KapStone Paper, KapStone Kraft and KapStone Charleston Filed a Consolidated U.S. Corporation Income Tax Return**

52. Similar to its financial reporting with the SEC, KapStone Paper, KapStone Kraft and KapStone Charleston also filed their U.S. Corporation Income Tax Return (Form 1120) during the relevant period on a consolidated basis (under the name of the holding company, KapStone Paper).[55] For tax purposes, the parent company must own at least 80% of the voting stock and value in a subsidiary in order to be able to file a consolidated tax return. As previously described, KapStone Paper owns 100% of the voting stock of KapStone Kraft and KapStone Kraft is the sole or single member (i.e., owner) of KapStone Charleston.

53. For federal income tax purposes, Limited Liability Companies (LLCs) are treated "either as a corporation, partnership, or as part of the owner's tax return (a "disregarded entity")."[56] However, "[i]f the single-member LLC is owned by a corporation (as in the case of KapStone Charleston), the IRS

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50 Kieso and Weygandt, Intermediate Accounting, Sixth Edition, Chapter 2 | Conceptual Framework Underlying Financial Accounting, p. 33, John Wiley & Sons, 1989

51 *Ibid*

52 *Ibid*

53 Accounting Standard (AS) 21, Consolidated Financial Statements, Objective

54 The Vest-Pocket CFO, Chapter 7, Key Financial Accounting Areas, p. 125, Jae K. Shim and Joel G. Siegel, Prentice Hall, 1992

55 U.S. Corporation Income Tax Returns, for the tax year ended December 31, 2016, Form 8453-C [KAPSTONE-000338]; U.S. Corporation Income Tax Returns, for the tax year ended December 31, 2016, Form 1120 [KAPSTONE-001642 – 1888]

56 Single Member Limited Liability Companies, Internal Revenue Service, www.irs.gov

requires the LLC to "be reflected on its owner's federal tax return as a division of the corporation."[57] In other words, a single-member LLC is effectively "disregarded" as an entity separate from its owner, in this case KapStone Kraft and KapStone Paper.

## X. KapStone Business Purpose and Focus

### A. KapStone Paper, KapStone Kraft and KapStone Charleston Perform the Same Business Activity

54. The KapStone related entities reportedly perform the same principal business activity. While KapStone Paper serves as a holding company, KapStone Kraft and KapStone Charleston are both described with the same principal business activity (i.e., Paper Manufacturing – Pulp, Paper and Paperboard Mills) in their reporting to the Internal Revenue Service.[58,59]

55. In fact, KapStone Kraft and KapStone Charleston, as well as KapStone Paper's wholly-owned Longview subsidiary, were viewed and described by the company as part of the same division (i.e., the Mill Division), which included KapStone Kraft's paper mill in Roanoke Rapids, North Carolina, KapStone Charleston's paper mill in Charleston, South Carolina, and Longview's paper mill in Longview, Washington.[60] They also shared a common President during the relevant period, Mr. Randy Nebel.[61] The KapStone related entities also were described jointly in relation to their shared corporate goals.[62]

56. KapStone Paper served primarily as a parent holding company and did not manufacture or sell products itself but provided support and oversight to the operations of KapStone Kraft and KapStone Charleston, as well as support and oversight to the operations of its other subsidiaries.[63]

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[57] *Ibid*

[58] U.S. Corporation Income Tax Return, for the tax year ended December 31, 2016, Form 1120, Form 851, Affiliations Schedule, Part II – Principal Business Activity, Voting Stock Information, Etc. [KAPSTONE-001642 – 1888 at 1662]

[59] This list of Principal Business Activities and codes is designed to classify an enterprise by the type of activity in which it is engaged. The codes are based on the North American Industry Classification System (NAICS).

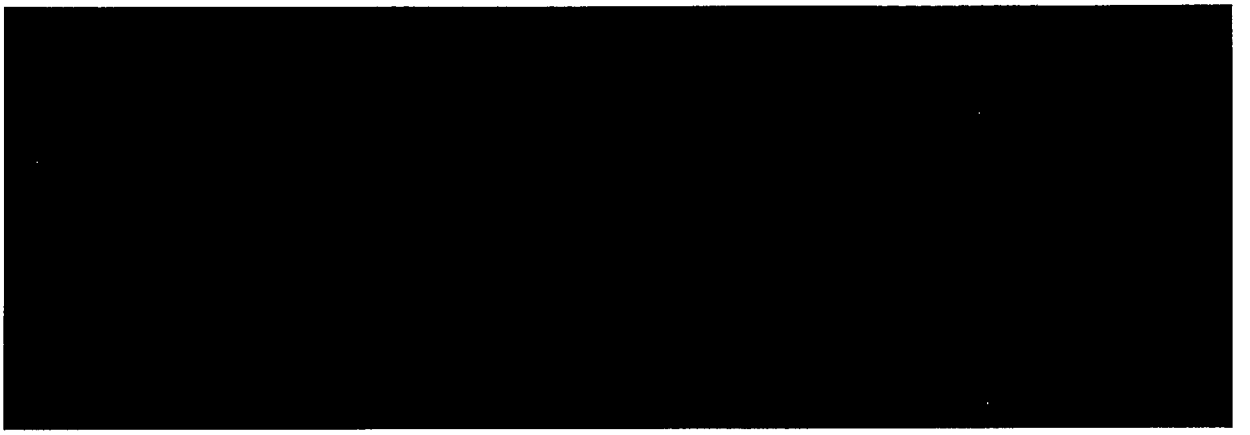
[60] KapStone Paper & Packaging Corp Form 8-K filed December 8, 2015, Exhibit 99.1 at 5; KapStone Paper & Packaging Corp Form 8-K filed August 9, 2016, Exhibit 99.1 at 5; 30 (b) (6) Deposition of Kapstone Paper and Packaging Corporation (Mark Niehus), January 8, 2019 at 57, 19:24

[61] See e.g., KapStone Paper & Packaging Corp Form 8-Kfiled March 15, 2013, Exhibit 99.1 at 10 and 20-25; Appendix; KapStone Paper & Packaging Corp Form 8-K filed December 8, 2015, Exhibit 99.1 at 5; and KapStone Paper & Packaging Corp Form DEF 14A filed March 28, 2016 at 22-23

[62] *See, e.g.*, 2015 KapStone Paper Sustainability Report; About KapStone, setting forth shared principles associated with safety, communication, incentive programs, promotional opportunities, among others; Message from Our President; and 2014 Kapstone Paper Sustainability Report

[63] *See e.g.*, 30 (b) (6) Deposition of Kapstone Paper and Packaging Corporation (Mark Niehus), January 8, 2019 at 64, 9:11, addressing an integrated accounting system, at 84, 6:8, addressing KapStone Paper's responsibility of processing cash payments of the KapStone related entities.





B. KapStone Kraft and KapStone Charleston were not identified as Distinct Businesses from KapStone Paper in its Financial Reporting

57. In 2016, KapStone Paper reported its operating results by two segments: (1) Paper and Packaging; and (2) Distribution.[64] KapStone's 10-K further described the Paper and Packaging segment as it "...manufactures and sells a wide variety of containerboard, corrugated products and specialty paper for industrial and consumer markets," which also was the general description often provided for KapStone Kraft and KapStone Charleston. In the same 10-K, the Distribution segment, through KapStone's Victory subsidiary, was described as "...a North American distributor of packaging materials, with more than 60 distribution centers located in the United States, Mexico and Canada, provid[ing] packaging materials and related products to a wide variety of customers."

58. Prior to the acquisition of Victory on June 1, 2015, KapStone reported the company's consolidated results as one segment (i.e., "Paper and Packaging"). Upon the acquisition of Victory however, KapStone began reporting its consolidated results in two segments (i.e., Paper and Packaging and Distribution) because it deemed these segments to each "... represent distinct businesses that are managed separately because of differing products and services" and requiring "... distinct operating and marketing strategies."[65] In other words, prior to the acquisition of Victory, KapStone did not view KapStone Paper, KapStone Kraft and KapStone Charleston as representing "distinct businesses" that needed to be "managed separately" or that required "distinct operating and marketing strategies."

59. While the KapStone related entities maintained separate financial statements for internal use (i.e., for managerial and financial accountability purposes), for external financial reporting purposes the KapStone related entities were presented as one economic unit.[66] In fact, in the year preceding the Incident KapStone presented itself as one economic unit in quarterly Form 8-K filings distinguishing only, at times, between certain product lines (e.g., containerboard, Kraft Paper), certain divisions (e.g., Mill Division, Container Division) or in relation to product segments (i.e., Paper and Packaging and Distribution).[67] The specific subsidiaries (i.e., KapStone Kraft and KapStone Charleston) were rarely

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64 KapStone Paper and Packaging Corporation, Securities and Exchange Commission, Form 10-K, for the fiscal year ended December 31, 2016 [KAPSTONE-000002 – 134 at 6]

65 KapStone Paper and Packaging Corporation, Securities and Exchange Commission, Form 10-K, Notes to Consolidated Financial Statements, Note 16, Segment Information, F-46, for the fiscal year ended December 31, 2015

66 *See also* 30 (b) (6) Deposition of KapStone Paper and Packaging Corporation (Mark Niehus) dated January 8, 2019 at 7-8

67 KapStone Paper and Packaging Corp Form 8-Ks, filed on the following dates: May 4, 2015, July 29, 2015, October 28, 2015, February 9, 2016, April 27, 2016, July 27, 2016 and August 15, 2016 (see Exhibits 99.2)

referenced.[68] KapStone also made similar presentations to investors or pursuant to presentations at conferences during this period.[69]

## XI. KapStone Corporate Locations and Identity

### A. The KapStone Related Entities Shared the Same Corporate Facilities

60. As a large corporation conducting business across the United States, Canada and Mexico, KapStone has many locations and offices, but shared a common corporate headquarters located at 1101 Skokie Blvd., Suite 300, Northbrook, Illinois, 60062.[70] While KapStone owned or leased a series of common facilities used by KapStone Paper and / or one or more of its subsidiaries, the KapStone related entities were jointly headquartered at the same facility in Northbrook, Illinois.[71]

61. KapStone Paper, KapStone Kraft and KapStone Charleston have significant overlap insomuch that managers and employees of one entity share and provide services to the other entities. At the time of the Incident, KapStone was operating four paper mills including the KapStone Charleston facility located in North Charleston, South Carolina.[72] However, approximately fifty-six (56) KapStone employees working at the KapStone Charleston location were actually working for, and reporting to, KapStone Paper (i.e., Corporate) and KapStone Kraft (i.e., Mill Headquarters).[73,74] See Exhibit 3 for a listing of personnel located at the KapStone Charleston mill that reported to the KapStone Paper (Corporate Northbrook) or the Mill Headquarters (KapStone Kraft).

62. In addition, approximately thirteen (13) individuals working for, and reporting to, KapStone Paper were listed as being located at the KapStone Kraft Roanoke Rapids, North Carolina location. See

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[68] *"Internally we really look at our entire – what we call our mill system as being one. So we look more – we look at it more horizontally than vertically..."* 30 (b) (6) Deposition of KapStone Paper and Packaging Corporation (Mark Niehus) dated January 8, 2019 at 64

[69] KapStone Paper and Packaging Corporation Form 8-Ks, filed on the following dates: June 4, 2015, September 1, 2015, December 8, 2015, and August 15, 2016 (see Exhibits 99.1); KapStone Paper & Packaging (KS) Quarterly Results – Earnings Call Transcripts, Seeking Alpha, for each quarter of FY2015-2016

[70] KapStone Paper and Packaging Corporate, Securities and Exchange Commission, Form 10-K, for the fiscal year ended December 31, 2016 [KAPSTONE-000002 – 134, at 2]; Receivables Sale Agreement by and among KapStone Kraft Paper Corporation, KapStone, Container Corporation, Longview Fibre Paper and Packaging, Inc., and KapStone Charleston, Kraft LLC, as the Originators, KapStone Paper and Packaging Corporation, as the Servicer, and KapStone Receivables, LLC, as the Buyer, Exhibit 2, dated September 26, 2014 [KAPSTONE-002405 – 2451 at 2442]

[71] KapStone Paper and Packaging Corporation U.S. Corporation Tax Return, Form 851 Affiliations Schedule, for the tax year ending December 31, 2015 [KAPSTONE-002511 – 2513 at 2511]

[72] www.kapstonepaper.com, The Internet Archive Wayback Machine (www.web.archive.org), April 20, 2016

[73] List of KapStone Kraft and KapStone Paper employees located at Charleston [KAPSTONE-001188 – 1189]; Mark Niehus noted that at the present time, "...there is about 160 employees at KapStone Paper and Packaging... about half work in North Brook [Illinois] and the other half work in other locations. Deposition of Mark Niehus, January 8, 2019, at 88, 7:13

[74] KapStone Active Employee Job List as of May, 24, 2016 [KAPSTONE-002596 – 2650]

Exhibit 4 for a listing of individuals working at KapStone Kraft (Roanoke Rapids) that were reporting to KapStone Paper (Corporate Northbrook) or Mill Headquarters.

63. Another example of the interrelationship between the entities is that, although Messrs. Lucas and Simerly worked at the KapStone Charleston mill, they received both their ADP Earning Statements and 2016 W-2 and Earnings Summary from KapStone with the registered address of the corporate headquarters (i.e., 1101 Skokie Blvd., Suite 300, Northbrook, Illinois, 60062).[75]

**B. The KapStone Related Entities Shared the Same Corporate Name and Brand**

64. For purposes of this report, I reviewed a series of documents related to the Company's structure, policies and procedures, history, business functions, and market scope, as well as the use of the corporate name, brand and trademark.

65. The "KAPSTONE" name, logo and other trademarks were used by KapStone Paper, KapStone Kraft and KapStone Charleston to denote a common identity, including through the use of a common internet site (www.kapstonepaper.com).[76] KapStone Paper, KapStone Kraft and KapStone Charleston represented themselves as "KapStone" both in name 

 and via two separate trademarked images in their daily business transactions.[77] The images were used in connection with corporate letterhead, internal policies and forms, invoices, and contracts and agreements, among others.[78]

66. These images also were routinely used in establishing the internal corporate brand of KapStone with its employees including, but not limited to, employment applications, employee handbooks, employee benefit documents, corporate policies and procedures, and other internal documents used with employees.[79] In fact, in the offer letter to Mr. Simerly, KapStone did not make a

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[75] ADP Earnings Statements, Jacque L. Lucas [KAPSTONE – 000708 – 711] and Daniel J. Simerly [KAPSTONE-000752 – 755]; 2016 W-2 and Earnings Summary, Jacque L. Lucas [KAPSTONE-000718 – 719] and Daniel J. Simerly [KAPSTONE-000756 – 757]

[76] KapStone Paper and Packaging Corporation Trademarks, Justia Trademarks

[77] KapStone Paper and Packaging Corporation Trademark Acknowledgement, dated February 1, 2016

[78] *See e.g.*, Representative Copy of Corporate Letterhead for KapStone Paper and Packaging Corporation [KAPSTONE-000342]; KapStone Organizational Chart [KAPSTONE-000001]; KapStone Contract for Services with Thompson Industrial Services, LLC [KAPSTONE-002140 – 2159 at 2140]; 2015 Labor Agreement By and Between The International Association of Machinists and Aerospace Workers and its Charleston Local Lodge No. 183 [KAPSTONE-000819 – 996 at 821]

[79] *See e.g.*, KapStone offer letter to Jacques Lucas, February 4, 2010 [KAPSTONE-000344]; KapStone offer letter to Daniel J. Simerly, August 31, 2012 [KAPSTONE-000345 – 346 at 345]; KapStone Job Description for Charleston location [KAPSTONE-000376 – 383]; KapStone Paper and Packaging Corporation Employee Handbook, January 27, 2017 [KAPSTONE-000216 – 259 at 216 and KAPSTONE-000414 – 427 at 414]; KapStone Environmental Policy [KAPSTONE-002103]; KapStone IT Policies [KAPSTONE-

distinction between KapStone Paper and KapStone Charleston (i.e., "on behalf of KapStone Paper and Packaging Corporation, I am delighted to extend an offer of employment to you...")[80]

## XII. KapStone Corporate Governance and Management

### A. The KapStone Related Entities were Governed by an Overlapping Board of Directors

67. During the relevant period, the KapStone related entities were governed by an overlapping Board of Directors that governed KapStone Paper and its wholly-owned subsidiaries KapStone Kraft and KapStone Charleston.[81] The common governance was further evidenced by a set of corporate internal controls and policies and procedures, which are described further below.[82]

68. While KapStone Charleston was organized as a Limited Liability Company, it was governed and managed by its single member, KapStone Kraft.[83] KapStone Kraft, on the other hand, was organized as a corporation with two Directors: Roger W. Stone and Matthew Kaplan, who were Chairman of the Board and Chief Executive Officer, and President and Chief Operating Officer of KapStone Paper, respectively. In other words, KapStone Charleston was solely governed and managed by KapStone Kraft who, in turn, was governed and managed by a two Directors who were a subset of KapStone Paper's larger Board of Directors; and who essentially were governed and managed by KapStone Paper. This structure is common in parent / holding company and subsidiary relationships.

69. In addition to an overlapping Board of Directors, the business of the KapStone related entities also was conducted by a common group of Executive Officers during the relevant period. As further illustrated below, certain Executive Officers had responsibilities for KapStone Paper and the consolidated KapStone related entities as a whole (i.e., Roger W. Stone, Matthew Kaplan, Andrea K. Tarbox, Michael J.

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001997 – 2081]; KapStone Paper and Packaging Corporation Defined Benefit Retirement Plan, Charleston Bargained Employees, January 1, 2015 [KAPSTONE-001117 – 1143 at 1117]; KapStone Paper and Packaging 401(K) Plan, Summary Plan Description, Charleston Union, January 1, 2015 [KAPSTONE-001144 – 1174 at 1144]; Example of Payments of Accounts Receivable by KapStone Paper on behalf of KapStone Charleston [KAPSTONE-000349 – 354]

80 *See e.g.*, Excerpts from Employer File Materials, KapStone Application for Employment form (Daniel Simerly), August 30, 2012 [KAPSTONE-000439 - 578 at 449 – 460]; KapStone Hourly Payroll Change Notice (D. Simerly), April 20, 2015 [KAPSTONE-000469 – 471]; KapStone offer letter to Daniel J. Simerly, August 31, 2012 [KAPSTONE-000345 – 346]; KapStone Personal Data Change Form (Jacque Lucas), January 2, 2012 [KAPSTONE-000684], KapStone Travel and Entertainment Reports, from the period from May 26, 2016 through June 17, 2016 [KAPSTONE-000712 – 715]

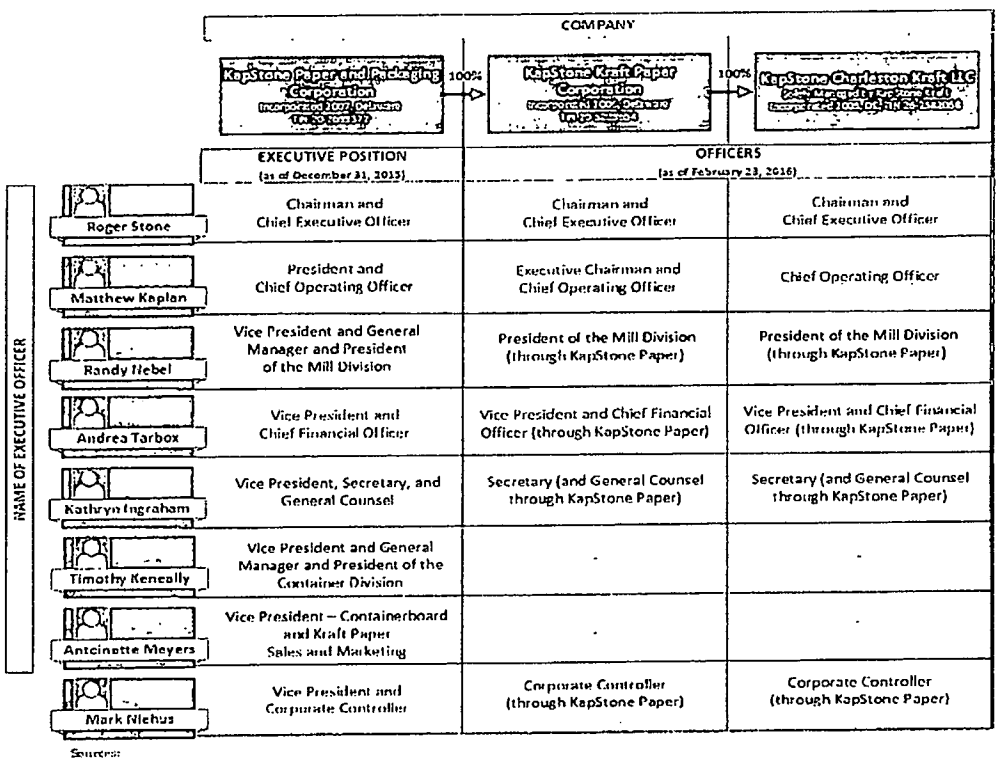
81 KapStone Entity Directors and Officers as of February 23, 2016 [KAPSTONE-001184 – 1187] and as of February 14, 2017 [KAPSTONE-000266 – 270]

82 *See e.g.*, KapStone Paper and Packaging Corporation Employee Handbook, January 27, 2017 [KAPSTONE-000216 - 259, KAPSTONE-000414 – 427]; KapStone Environmental Policy [KAPSTONE-002103]; KapStone IT Policies [KAPSTONE-001997 – 2081]; KapStone Paper and Packaging Corporation Defined Benefit Retirement Plan, Charleston Bargained Employees, January 1, 2015 [KAPSTONE-001117 – 1143]

83 Limited Liability Agreement of Oak Acquisition LLC, March 2008 [KAPSTONE-000273 – 287 at 276]

Murphy, Kathryn D. Ingraham and Mark Niehus), while other officers also had primary responsibility for certain divisions of the consolidated operations (e.g., Randy Nebel, Vice President and General Manager and President of the Mill Division, Timothy P. Keneally, Vice President & General Manager and President of the Container Division).

KapStone Executive Officers [a][b][c]




Sources:

[a] KapStone Paper and Packaging Corporation, Form DEF 14A, Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934, at pgs. 22-23 (setting forth Executive Officer positions as of December 31, 2015), filed March 28, 2016.
[b] KapStone Entity Directors and Officers as of February 23, 2016 [KAPSTONE-001184 – 1187].
[c] KapStone Paper and Packaging Corporation, Form DEF 14A, Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934, at pgs. 23-24 (setting forth Executive Officer positions as of December 31, 2016), filed April 5, 2017.

70. While the corporate structure was different between KapStone Kraft and KapStone Charleston, both were ultimately governed by KapStone Paper's overlapping Board of Directors and managed by the same group of Named Executive Officers designated by the Board.[84]

## XIII. KapStone Business Operations

71. The management and operations of the KapStone related entities also were integrated, including in their dealings with various contractual matters, financing of acquisitions and operations,

[84] KapStone Paper & Packaging Corp Form DEF 14A filed March 28, 2016 (at 22-23) and May 16, 2017 (at 23-24)

insurance, financial interactions among the entities, and the provision of other corporate services (e.g., IT, human resources, etc.).

> *"KapStone uses a company-wide management approach to continuously monitor all internal and external aspects of the business."*[85]

72. As described, while KapStone Paper did not manufacture and sell paper products, it provided a range of shared services and oversight from the corporate headquarters including management and oversight of the overall company through the CEO and CFO. In addition, the financial and accounting operations of the company (i.e., Corporate Controller, Accounts Payable, Credit and Collection, Payroll), the legal affairs of the company, the Information Technology (IT) operations, and Human Resources, as well as the Internal Audit function were managed through the corporate headquarters by KapStone Paper. KapStone Paper also was responsible for procuring and sponsoring employee benefit plans, insurance and payroll services, as well as providing an integrated purchase order, accounting and cash management system, among other services.[86] See Exhibit 5 for a listing of employees and departments providing shared services through the KapStone Corporate Headquarters.

**A. The KapStone Related Entities were Under the Same Workers Compensation Plan**

73. Sentry Casualty Company provided Workers Compensation and Employers Liability Insurance to KapStone Paper and through KapStone Paper to KapStone Kraft and KapStone Charleston during the relevant period.[87] While KapStone Paper was the first named insured under Policy Number 90-16567-04, both KapStone Kraft and KapStone Charleston were named insurers and received insurance coverage through the same policy.

74. In addition, the Workers' Compensation and Liability Insurance policy premium was billed to, and paid by, KapStone Paper on behalf of itself and its subsidiaries.[88] Likewise, the claims filed by

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[85] KapStone 2014 Sustainability Report, p. 42

[86] 30 (b) (6) Deposition of KapStone Paper and Packaging Corporation (Mark Niehus), January 8, 2019 at 64, 9:11, addressing an integrated accounting system, at 84, 6:8, addressing KapStone Paper's responsibility of processing cash payments of the KapStone related entities.

[87] KapStone Paper & Packaging Corporation, Confirmation of Coverage, Prepared by Sentry Insurance, Policy No. 90-16567-04, Workers' Compensation Deductible, effective July 1, 2015 – July 1, 2016 [KAPSTONE-000320 – 321]; Kapstone Paper and Packaging Corporation Workers Compensation and Employers Liability Insurance Policy Information Page, effective July 1, 2015 – July 1, 2016, dated July 9, 2015 [KAPSTONE-000322 – 327]; *See also* 30 (b) (6) Deposition of KapStone Paper and Packaging Corporation (Mark Niehus) dated January 8, 2019 at 20

[88] Premium Billing, from Sentry National Accounts to KapStone Paper and Packaging Corporation, Account Name: KapStone Paper and Packaging, Account No. 90-16567 KAP, for Policy Term July 1, 2015 through July 1,2016 [KAPSTONE-000328]

Messrs. Lucas and Simerly were under the same policy (i.e., Policy Number 90-16567-04).[89]

**B. The KapStone Related Entities had the Same Group Health and Welfare Plan**

75. KapStone Kraft and KapStone Charleston were both covered by the "KapStone Paper and Packaging Corporation Group Health and Welfare Plan", which was sponsored and self-funded, in part, by KapStone Paper.

> *"This booklet provides a summary description of the health and welfare benefits available to you under the KapStone Paper and Packaging Corporation Group Health and Welfare Plan, or Plans, as an eligible employee of KapStone Paper and Packaging Corporation, the "Company"..."* [90]

76. A summary of the various health and welfare benefit programs offered to employees of KapStone (i.e., KapStone Paper, KapStone Kraft, KapStone Charleston and Longview) through KapStone Paper sponsored plans and plan administration during the relevant period is summarized below:[91,92]

**PLAN SPONSOR**

The benefit plans described in this booklet are sponsored by: KapStone Paper and Packaging Corporation, 1101 Skokie Boulevard, Suite 300, Northbrook, IL 60062. EIN:20-2699372.

**ADMINISTRATIVE INFORMATION**

| Plan Name | KapStone Paper & Packaging Corporation Group Health and Welfare Plan |
|---|---|
| Employer Identification Number (EIN) | 20-2699372 |
| Plan Number | 501 |
| Type of Plan | Welfare Plans |
| Plan Year | January 1 – December 31 |
| Plan Administrator | KapStone Paper and Packaging Corporation |
| Medical Plan Administration | Self-Funded by KapStone Paper and Packaging Corporation |
| Health Savings Account Administration | Funded by KapStone Paper and Packaging Corporation and Employee Pre-Tax Contributions |
| Dental Administration | Self-Funded by KapStone Paper and Packaging Corporation |
| Vision Administration | Insured |
| Wellness Program Administration | Self-Funded by KapStone Paper and Packaging Corporation |
| Flexible Spending Accounts / Transportation Spending Accounts Administration | Accounts Funded By Employee Pre-Tax Contributions |
| EAP Administration | Self-Funded by KapStone Paper and Packaging Corporation |
| Critical Illness Administration | Self-Funded by KapStone Paper and Packaging Corporation |
| Legal Administration | Self-Funded by KapStone Paper and Packaging Corporation |
| Life & AD&D Administration | Self-Funded by KapStone Paper and Packaging Corporation |
| Salary Continuation / Short Term Disability Administration | Self-Funded by KapStone Paper and Packaging Corporation |

77. Likewise, employees of the KapStone related entities also were eligible to participate in the "KapStone Paper and Packaging Corporation 401(K) Plan," the "KapStone Paper and Packaging

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89 Sentry, Coverable Deductible Losses Billed thru August 31, 2017 for KapStone Paper and Packaging, Policy Number 9016567-04, for Claimants Jacque Lucas and Daniel Simerly, Loss Date: May 24, 2016 [KAPSTONE-000333 – 334]

90 KapStone Paper and Packaging Corporation Group Health and Welfare Plan, Effective January 1, 2015 (Plan No. 501) [KAPSTONE-000384 – 402 at 400-401], Summary Plan Description, KapStone Paper and Packaging Corporation, Group Health & Welfare Plan for Charleston Union Employees, effective January 1, 2016 [KAPSTONE-000997 – 1116 at 998]

91 KapStone Paper and Packaging Corporation, Group Health & Welfare Plan, effective January 1, 2015 [KAPSTONE-000384 – 000406 at 400 and 404]; KapStone Paper and Packaging Corporation, Group Health & Welfare Plan for Charleston Union Employees, effective January 1, 2016 [KAPSTONE-000997 – 1116 at 1100]

92 Victory is not included in the above described plans. It is my understanding that Victory continued to maintain its existing health and welfare benefit plans subsequent to its acquisition by KapStone.

Corporation Deferred Compensation" plan, and the "KapStone Paper and Packaging Corporation Defined Benefit Retirement Plan," all of which were sponsored by KapStone Paper.[93,94]

### C. The Labor Agreement between KapStone Charleston and its Union was Originated by KapStone Kraft and Executed by KapStone Paper

78. The 2015 Labor Agreement between The International Association of Machinists and Aerospace Workers and KapStone Charleston in relation to the Charleston mill was signed (i.e., executed) by a senior manager in the Human Resources department of KapStone Paper (i.e., Gary Parafinczuk, Senior Direct Human Resources with KapStone Paper and Deborah Lightfoot, Mill Director Human Resources with KapStone Paper).[95]

### D. The KapStone Related Entities Operated Under Some of the Same Contracts and Master Services Agreements

79. Certain agreements relevant to the operations of KapStone Charleston were originated and executed by KapStone Kraft on behalf of itself and other KapStone related entities, including agreements with other named Defendants in this matter (i.e., Safway Group Holdings, LLC, Easy Way Insulation Co., Inc. and Thompson Industrial Services, LLC).[96] The following examples include instances where a KapStone employee executed an agreement for the benefit of KapStone Kraft and its affiliates ("KapStone") where the third-party supplier also was providing services to the mill operations at KapStone Charleston:

- *Contract Amendment by and between KapStone Kraft Paper Corporation on behalf of itself and its affiliates ("KapStone") and Thompson Industrial Services, LLC ("Contractor") dated September 19, 2014 – signed by Bruce Hoffman, VP – Mill Operations Services*
- *Master Services Agreement by and between KapStone Kraft Paper Corporation on behalf of itself*

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93 KapStone Paper and Packaging Corporation 401(K) Plan [KAPSTONE-000403 – 406 at 404]; KapStone Paper and Packaging Corporation Defined Benefit Retirement Plan, Charleston Bargained Employees, January 1, 2015 [KAPSTONE-001117 – 1143]

94 Certain of the KapStone Paper sponsored plans were tailored for union employees of KapStone Charleston who were represented for collective bargaining purposes by applicable unions. [*See e.g.*, KAPSTONE-001117 – 1143 at 1120]

95 2015 Labor Agreement By and Between The International Association of Machinists and Aerospace Workers, and its Charleston Local Lodge No. 183, and KapStone Charleston Kraft LLC, effective June 29, 2015 [KAPSTONE-00819 – 996 at 928], Gary Parafinczuk, Senior Director Human Resources at KapStone Paper and Packaging Corporation, LinkedIn, Debbie Lightfoot, SPHR, Director Human Resources, KapStone Paper and Packaging Corporation, LinkedIn; *see also* 30 (b) (6) Deposition of KapStone Paper and Packaging Corporation (Mark Niehus) dated January 8, 2019 at 98

96 KapStone Contract for Services between KapStone Kraft Paper Corporation and Thompson Industrial Services, LLC, effective January 1, 2014 through December 31, 2014 [KAPSTONE-002140 – 2175]; Master Services Agreement between KapStone Kraft Paper Corporation on behalf of itself and its Affiliates ("KapStone") and Safway Services, LLC ("Supplier"), dated February 19, 2016 [KAPSTONE-002176 – 2199]; Master Services Agreement between KapStone Kraft Paper Corporation on behalf of itself and its Affiliates ("KapStone") and Easy Way Insulation ("Supplier"), effective June 1, 2014 [KAPSTONE-002222 – 2241]

*and its Affiliates ("KapStone") and Safway Services LLC ("Contractor") dated February 19, 2016 – signed by Eric Choltco, Director, Strategic Sourcing*

- *Master Services Agreement by and between KapStone Kraft Paper Corporation on behalf of itself and its Affiliates ("KapStone") and Easy Way Insulation ("Supplier") dated June 1, 2014 – signed by John Davis, Regional Procurement Manager*

80. Messrs. Hoffman, Choltco and Davis all reported to Mill Headquarters in Roanoke Rapids, North Carolina in 2016 (i.e., the location of KapStone Kraft).[97]

81. Further, KapStone Paper had an integrated (and centralized) contract management system where most contracts and purchases were required to be reviewed and approved in accordance with a prescribed *Contract Review and Signing Authority Policy*.[98] In essence, most customer contracts, procurement contracts, consultant contracts, purchase orders and leases entered into with regard to KapStone Charleston were required to be approved by someone at either Corporate Headquarters (KapStone Paper) or Mill Headquarters (KapStone Kraft) depending on the type and size of the contract. A similar policy existed with the regard to the approval of capital funding requests (i.e., *KapStone Paper and Packaging Capital Funding Requests Approval Levels*).[99] A summary of KapStone's Legal Contract Review and Signing Authority Policy with applicable reporting locations and descriptions is provided in Exhibit 6.

82. The process of delegating signing authority relative to the type and size of a contract or purchase is common and is generally considered good governance and a good internal control procedure.

## XIV. KapStone Accounting and Financial Management Practices

83. The KapStone related entities conducted business from a financial, accounting and / or operational perspective as a single economic unit. While some separation of books and records, bank accounts and other is expected as KapStone is comprised of many different operational units and divisions, ultimately KapStone managed the accounting and financial aspects of its business as one economic entity.

### A. While Other Bank Accounts Exist, KapStone Operates Primarily through One Master Account

84. The bank account structure in use by KapStone during the relevant period included separate

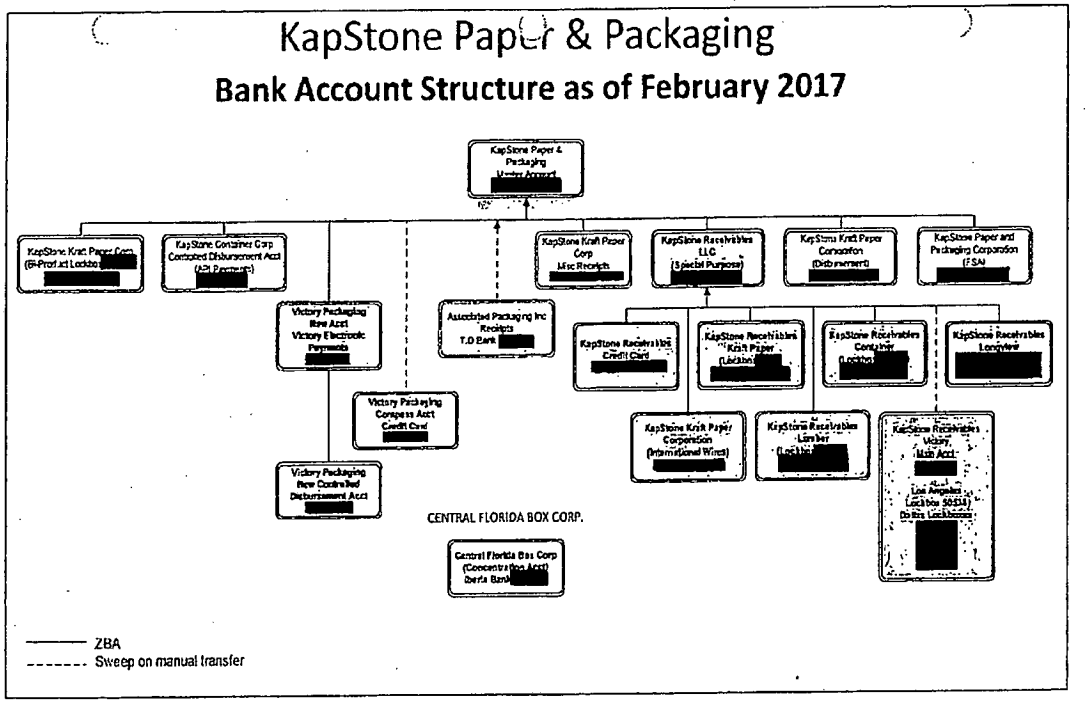
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[97] KapStone Active Employee Job List as of May 24, 2016 [KAPSTONE-002596 – 2650]

[98] KapStone Paper and Packaging Corporation and its subsidiaries Legal Contract Review and Signing Authority Policy, dated November 2, 2015 [KAPSTONE-001969 – 1975], and dated April 18, 2017 [KAPSTONE-002514 – 2519]

[99] KapStone Paper and Packaging Capital Funding Requests Approval Levels, Revision: 03/15/2015 [KAPSTONE-001976 – 1979]

accounts for KapStone Kraft and other KapStone Paper subsidiaries including different accounts for different purposes (i.e., Receivables, Disbursement, Special Purpose, etc.).[100] However, while certain separate bank accounts existed under the names of KapStone Charleston and KapStone Kraft, as well as other KapStone Paper subsidiaries, in reality KapStone Paper managed the receipts and disbursements of funds through one Master Account. An overview of the bank account structure for KapStone Paper and its subsidiaries (as of February 2017) is provided in the diagram below:




85. As indicated in the diagram, all accounts flowed into, and were controlled by, the KapStone Paper "Master Account." The majority of the other accounts listed were denoted as "ZBA" or "Zero Balance Accounts." Zero Balance Accounts are accounts where a day-ending balance of zero dollars is maintained each day by means of automatic transfers of funds between the subsidiary accounts and the Master Account to eliminate excess balances (i.e., any balance) in the separate accounts.[101] In other, all funds received or available in the separate subsidiary accounts are transferred to the Master Account at the end of each day. Zero Balance Accounts allow for greater control over disbursements and a greater

[100] KapStone Paper & Packaging Bank Account Structure as of February 2017 [KAPSTONE-000339]
[101] Zero Balance Account – ZBA, Investopedia, updated August 9, 2018

amount of funds available for use in the Master Account (i.e., the KapStone Paper Master Account). In other words, KapStone Paper concentrates its funds into one master operating account from which it controls the funds including the funds transferred back to the subsidiary accounts for the purposes of disbursements.

86. Even with separate subsidiary accounts, the KapStone related entity accounts were still identified as KapStone Paper accounts with funds originating from "KapStone Paper and Packaging Corp., 1101 Skokie Blvd, Suite 300, Northbrook, Illinois, 60062.[102]

### B. KapStone Also Consolidates the Securitization of Accounts Receivables from the KapStone Related Entities

87. In addition to managing its disbursements primarily through a KapStone Master Account, the KapStone related entities, as well as KapStone Container and Longview, also operate under a joint Receivables Sale Agreement, where any receivables (i.e., from the sales of goods and services) are sold to KapStone Receivables, LLC ("KapStone Receivables").[103] The Receivables Sale Agreement effectively transfers ownership of account receivables generated through business conducted by KapStone Kraft and KapStone Charleston, as well as other subsidiaries, to an entity formed (and 100% owned) by KapStone Kraft called KapStone Receivables. In general, and as is the case here, this type of financial transaction is financed with the collateral of the obligation.

88. Immediately after acquiring receivables pursuant to the Receivables Sale Agreement, KapStone Receivables sells the receivables to certain "Purchasers" pursuant to a Receivables Purchase Agreement.[104] In other words, KapStone Receivables, in turn, sells the receivables to certain outside purchasers (e.g., Wells Fargo Bank, PNC Bank, etc.).[105,106] Diagrams of the receivables sale and receivables purchase process are provided in Exhibit 7.

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[102] *See e.g.*, KapStone invoices related to work involving KapStone Charleston but with checks written on accounts under the name of KapStone Paper [KAPSTONE-002123 – 2139]

[103] Receivables Sale Agreement by and amount KapStone Kraft Paper Corporation, et al. as the Originators, KapStone Paper and Packaging Corporation, as the Servicer, and KapStone Receivables, LLC, as the Buyer, dated September 26, 2014 (and as amended) [KAPSTONE-002405 – 2490]

[104] *Id.* at [KAPSTONE-002408 – 2409]; Receivables Purchase Agreement, dated as of September 26, 2014 among KapStone Receivables, LLC, *et al.* and Wells Fargo Bank, N.A., as Administrative Agent (and as amended) [KAPSTONE-002243 – 2403]

[105] *See e.g.*, Amendment No. 2 to Receivables Purchase Agreement, dated as of June 8, 2016 [KAPSTONE-002384 – 2394]

[106] The "Principal Place of Business, Chief Executive Office and Location of Records" for KapStone Kraft, KapStone Charleston, KapStone Container and Longview was listed as the corporate headquarters at 1101 Skokie Blvd., Suite 300, Northbrook, Illinois, 60062. *Id.* at [KAPSTONE-002442]

C. The KapStone Related Entities were Principally Supported by one Debt / Credit Agreement

89. KapStone Paper secured primarily one senior secured credit facility for use by the KapStone related entities that consisted of both term loans (often used for purpose of making acquisitions) and a revolving credit facility (i.e., more for working capital purposes).[107] Although KapStone Paper was the borrower, the KapStone related entities were all guarantors of the credit facility pledging the collateral of their tangible and intangible assets. In each of the referenced credit agreements, Andrea K. Tarbox, Chief Financial Officer, executed the agreement on behalf of KapStone Paper, KapStone Kraft and KapStone Charleston.[108]

D. The Mill Division of KapStone had a Centralized Purchase Order System

90. Both KapStone Kraft and KapStone Charleston, as a part of the Mill Division, were a part of KapStone's centralized purchase order system that would determine where (i.e., what mill) a product should be produced.[109]

XV. KAPSTONE POLICIES AND PROCEDURES

91. The KapStone related entities are also subject to the corporate handbook, code of ethics and other internal controls and policies and procedures, where applicable.

A. The KapStone Related Entities had the Same Corporate Handbook

92. The KapStone Paper and Packaging Employee Handbook is the same handbook applicable to employees of KapStone Kraft and KapStone Charleston.

> *"This Handbook is designed to provide a summary of certain policies and procedures of KapStone Paper and Packaging Corporation, its divisions and subsidiaries ("KapStone" or "Company") to all employees not subject to a collective bargaining agreement ("CBA")."* [110]

93. While incorporated as a part of the Employee Handbook, various other policies also specifically spell out their applicability to the employees of the KapStone related entities including: the Anti-Bribery Policy (i.e., applies to all officers, employees, agents or other intermediaries action on

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[107] KapStone Paper and Packaging Corp Form 8-K filed July 18, 2013, Exhibit 10.1 Amended and Restated Credit Agreement Dated as of July 18, 2013 and Form 8-K filed June 3, 2015, Exhibit 10.1 Second Amended and Restated Credit Agreement Dated as of June 1, 2015; *see also* 30 (b) (6) Deposition of KapStone Paper and Packaging Corporation (Mark Niehus) dated January 8, 2019 at 67-68 and 118

[108] *Id.*

[109] 30 (b) (6) Deposition of KapStone Paper and Packaging Corporation (Mark Niehus) dated January 8, 2019 at 85-86 and 119-122

[110] Employee Handbook, KapStone Paper and Packaging Corporation, January 27, 2017 [KAPSTONE-000216 – 259]; *see also* 30 (b) (6) Deposition of KapStone Paper and Packaging Corporation (Mark Niehus) dated January 8, 2019 at 116

KapStone's behalf); and the Code of Conduct and Ethics (i.e., applies to all directors, officers and employees of KapStone Paper and its subsidiaries).[111]

> *"KapStone adopted a code of ethics that applies to its CEO and CFO, as well as all other officers and employees of the Company and its affiliates."*[112]

**B. The KapStone Related Entities were also Subject to Other Consistent Policies and Procedures**

94. In addition to those policies and procedures directed primarily at employees, the KapStone related entities are also subject to the same operating controls and policies and procedures in various respects including the following:[113]

- Legal Contract Review and Signing Authority Policy (Rev. November 2, 2015) [KAPSTONE-001969 – 1979]
- Financial Accounting and Approval of Leases Policy [KAPSTONE-001994 – 1996, KAPSTONE-002104 – 2106]
- Antitrust Policy and Guidelines [KAPSTONE-001964 – 1968]
- Service Organization Control [KAPSTONE-001980 – 1983]

95. Various other identified policies applicable to employees of the KapStone related entities are summarized in Exhibit 8.[114]

96. The KapStone related entities were also supported by the same IT department, operating under the same IT policies and procedures, working off the same general IT system framework and network infrastructure, and essentially the same email exchange / extension.[115]

97. The IT-1 Account Management Policy was applicable to "All KapStone Paper and Packing, and subsidiaries, employees" and addressed the management of all user accounts, which include the creation…transfer and termination of access to computer facilities for KapStone employees and business associates."[116] Various other IT policies were applicable across KapStone.[117]

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[111] Employee Handbook, KapStone Paper and Packaging Corporation, January 27, 2017, Anti-Bribery Policy [KAPSTONE-000414 – 427 at 415-419-]; KapStone Paper and Packaging Corporation, Code of Conduct and Ethics [KAPSTONE-002082 – 2094]

[112] KapStone Paper and Packaging Corporate, Securities and Exchange Commission, Form 10-K, for the fiscal year ended December 31, 2015 at 42

[113] *See also* 30 (b) (6) Deposition of KapStone Paper and Packaging Corporation (Mark Niehus) dated January 8, 2019 at 7-8

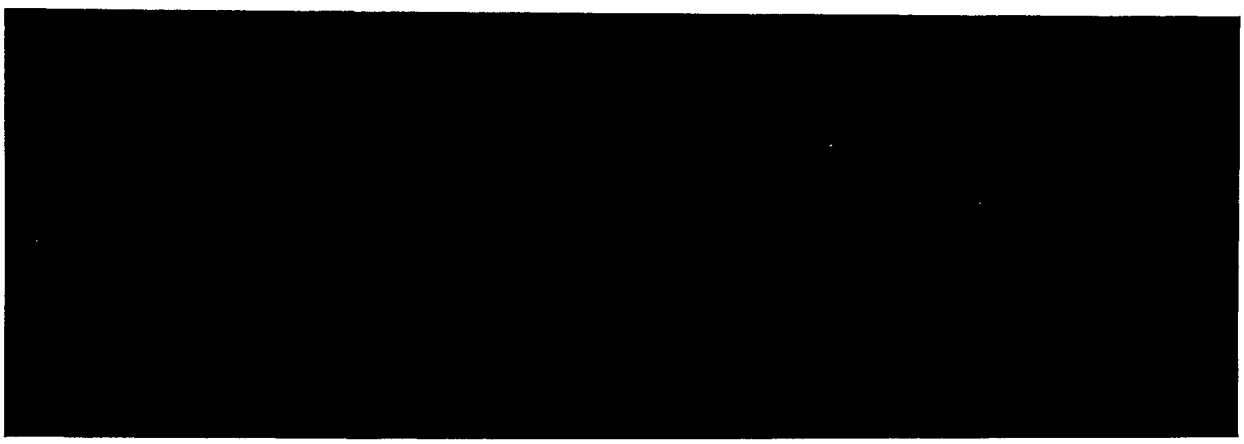
[114] All sourced material addressing KapStone's integrated policies are set forth in Exhibit 7.

[115] KapStone Paper and Packaging Corporation Consolidated IT Director Users and Computers [KAPSTONE-000357]; KapStone Paper and Packaging Corporation Consolidated IT Budget, for the 2016 budget year [KAPSTONE-000356]; Example of Corporate IT Communication for All KapStone, dated September 15, 2017 [KAPSTONE-00355]

[116] IT-1 Account Management Policy, and other affiliated policies [KAPSTONE-000428]

[117] KapStone IT Policies Portfolio [KAPSTONE-001985 – 1993, and KAPSTONE-001997 – 2081]





## XVI. CONCLUSION

98. As described throughout this report, I evaluated the economic and financial relationship between KapStone Paper, KapStone Kraft and KapStone Charleston relative to the eight factors identified in Poch, as well as other factors I deemed relevant. Based on my evaluation of the identified factors, I observed that the KapStone related entities, at and around the time of the Incident in 2016, were highly integrated and operating primarily as an integrated economic unit, rather than as separate and distinct businesses.

99. The KapStone related entities were engaged in the same business activities, filed consolidated financial statements and tax returns (as a single economic entity), were managed by the same Executive Officers (from the same corporate headquarters location), and were ultimately governed by the same Board of Directors. In addition, while the KapStone related entities maintained some separateness in their books and records for managerial reporting and accountability purposes, the entities were managed through an integrated purchase order, accounting and cash management system including the management of payroll, lending / credit agreements, and banking. Further, throughout the relevant period, the KapStone related entities identified themselves primarily through one unifying name "KapStone" and trademarked image, as well as in their representations of KapStone in the public domain (e.g., website, press releases, investor presentations, etc.). The factors that I evaluated and observed are indicative of a parent holding company and its subsidiaries that were operating from an economic and financial perspective as a highly integrated economic unit rather than as separate and distinct businesses.

## XVII. EXPERT DECLARATION

100. I reserve the right to revise the opinions, assumptions and calculations set forth herein upon consideration of the reports of any other testifying expert, the testimony of, or new documents produced by, any witness, any information or documents that any testifying expert produces or upon which he or she relies, and other material that may be presented to me prior to or at trial that I may properly consider under the governing rules or guidelines set by the court.

Dated: May __, 2019

By: _____
Todd K. Lester

# Todd K. Lester

**APPENDIX A**

Senior Managing Director
Financial and Litigation Consulting – Dispute Advisory Services

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**CERTIFICATIONS**

Accredited Senior Appraiser
Certified Fraud Examiner

**PROFESSIONAL AFFILIATIONS**

Assoc. of Certified Fraud Examiners

American Society of Appraisers

ABA Section of Litigation – Former Liason to Energy, and Business and Commercial Litigation Committees

National Association of Corporate Directors – Former Advisory Director

Energy Bar Association – Energy Professionals Council

**EDUCATION**

Master of Business Administration
*Sord Scholar,* 1993
The University of Texas at Austin

Bachelor of Business Administration
Finance, *High Honors,* 1987
The University of Texas at Austin

Bachelor of Arts
*Biology, Phi Beta Kappa,* 1987
The University of Texas at Austin

FTI CONSULTING

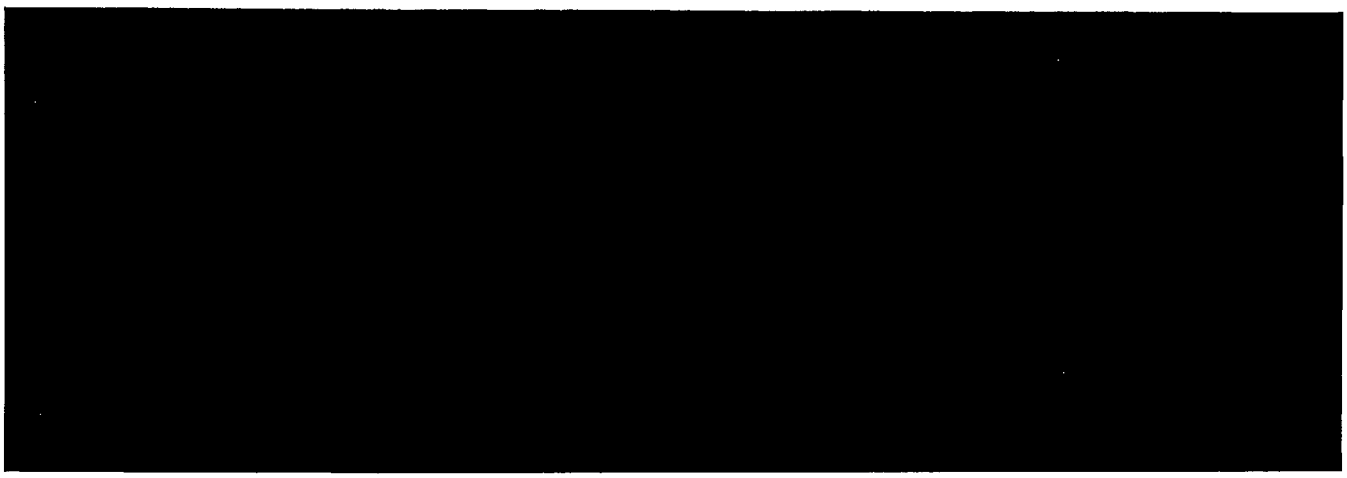
Mr. Lester is a Senior Managing Director with FTI Consulting's Dispute Advisory Services practice and a member of the Energy, Power & Products segment. He has over 30 years of experience providing forensic accounting, financial investigations and advising clients in complex litigation and disputes on the quantification and analysis of multifaceted damages calculations, especially where complex transactions and business systems are involved, including performing financial due diligence and valuation analyses on both public and private entities.

During his career, Mr. Lester has been retained on numerous matters to analyze, evaluate and determine the financial and economic consequences from a wide variety of complex business structures, transactions and events and has analyzed and quantified losses due to lost profits, incremental costs, diminution of value, lost competitive advantage, business failure, price erosion and unjust enrichment, among others. He also has significant experience in relation to cost justification/validation matters including cost audits, contract prudence reviews, construction delay/disruption claims, and failed software implementations.

In addition, Mr. Lester has provided forensic accounting and financial investigations consulting in relation to allegations of accounting irregularities, breach of fiduciary duty, falsified books/records, fraud, employee theft, and regulatory compliance, among other areas of suspected misconduct, in both domestic and international forums, including analyzing the economic consequences (damages) of fraud and/or the reliance on inaccurate financial information. He has performed this work for the U.S. Department of Justice, Office of the Attorney General, local law enforcement, regulatory bodies, and other public and private entities and their counsel.

Prior to joining FTI Consulting, Mr. Lester was a Managing Director in the Disputes and Investigations practice of Navigant Consulting, Inc., and a former Director in the Financial Advisory Services practice of PricewaterhouseCoopers. His work history includes significant international experience for both U.S. and foreign clients, primarily in Brazil and Eastern Europe. Mr. Lester earned a BBA in Finance/ International Business, a BA in Biology, and a MBA from The University of Texas. He holds the Accredited Senior Appraiser (ASA) professional certification in Business and Intangible Asset Valuation from the American Society of Appraisers and the Certified Fraud Examiner (CFE) designation from the Association of Certified Fraud Examiners.

Mr. Lester has prepared reports and provided opinions and expert testimony on litigation and investigation related matters in state and federal courts, as well as for matters in arbitration, mediation, and other claim resolution processes.



REPRESENTATIVE EXPERIENCE

LITIGATION AND COMMERCIAL DISPUTES

» Economic Analysis of Failed Joint Development Agreement – Retained by Counsel to assess the underlying causes and economic impact of a failed joint development agreement (joint venture) between two companies in the oil & natural gas services industry. Efforts include the analysis of current and historical financial condition of the parties during the relevant periods, the value of the enterprise at various points in time including the solvency of the company as of a specific point in time, and the calculation and amount of Plaintiffs' economic damages. Evaluated the financial and economic substance of the capital invested pursuant to a joint development agreement, the facts and circumstances surrounding the provision of funds, and the economic reality of the transactions between the parties. Further evaluated the capital structure, financial condition and creditworthiness of the entity, as well as the economic reasonableness of proposed deal valuation and certain promised payments pursuant to the joint development agreement.

» Economic Assessment and Analysis of Post-Acquisition Dispute – Engaged to assess the value of the acquisition consideration provided in connection with an Asset Purchase Agreement ("APA") related to the sale of a large energy and environmental services company to a private equity-backed fund, as well as the relative impact of changes in the APA terms relative to cash, stock and future (i.e., contingent or earn out) consideration from the initial letters of intent exchanged between the parties to the final terms included in the APA. Further asked to evaluate the reasonableness of the projected financial performance of certain aspects of the business subject to a contingent earn-out clause and what impact, if any, subsequent changes in the regulatory environment, market conditions, and the terminations of key individuals may have had on the value of the stock and future consideration payable to Sellers.

» Asset Management Fund Investigation / Breach of Fiduciary Duty – Conducted an independent evaluation and investigation into various questions and concerns raised regarding the management of receipts and disbursements from an operating account used by a capital and asset management fund, which comprised an investment portfolio containing a secured group of income-producing assets. Analyzed and reconciled the flow of funds into and out of the operating account maintained by the former fund advisor in relation to the principal assets held in the fund's investment portfolio. Further evaluated the cash management practices of the previous fund advisor and asset servicing agent with regard to the fund and to determine if any discrepancies existed between the expected and actual balance of cash in the operating account. More specifically, reconciled and evaluated the flow of funds into and out of the operating account to the expected receipts and disbursements of funds relative to activity in the fund's principal assets.

» Cost Audit / Schedule Analysis / Project Controls Assessment – Retained by the Public Utility Commission of Texas to conduct an independent assessment and evaluation of a large-scale IT system implementation at a regulated utility. The entity experienced significant challenges, delays and inefficiencies in the development of various software systems that ultimately pushed the launch of new customer information management, billing and other systems two years beyond their original go-live date and actual costs to in excess of $500 million (i.e., approximately $250 million over the program's original budget. Conducted in-depth schedule and cost-related analyses, interviews, and other assessments to provide transparency into the reasons for the significant schedule delays and cost overruns, to identify questionable and / or potentially inappropriate payments, and to assess whether the nature and amount of the costs (and program controls), were prudent and reasonable in light of the circumstances and challenges faced.

» Breach of Contract / Fraud / Financial Due Diligence Assessment – Retained by counsel to provide consulting and expert testimony in relation to allegations of asset misappropriation and fraud in relation to a Forward Purchase and Sale Agreement between the developer of a large mixed-use retail development and a real-estate investment trust (REIT). Evaluated the respective participation and ownership structure of various entities related to the developer, as well as their respective contributions to the development. Reconciled the original construction estimates to the actual costs

incurred on the project (and the primary basis of the contract price), and traced / reconciled the various sources and uses of funds. Further evaluated the information made available to the REIT's representatives in the pre-acquisition due diligence / valuation process with respect to the sale of the development and whether such information was accurate, complete and faithfully represented the costs incurred on the project.

» Economic Assessment / Cost Justification Analysis – Led an independent economic assessment and evaluation of a long-term Power Purchase Agreement ("PPA") entered into by a large municipal utility based on questions and expressed concerns regarding the terms of the PPA and the events surrounding the negotiations and decision-making leading to the execution of the PPA. Evaluated the projected operational and financial performance of the utility and its cost of service in connection with the PPA relative to known and forecasted economic conditions, shifting industry dynamics, and the changing regulatory environment. Analyzed the resulting decline in project performance and expected profitability relative to what was known and evaluated at the time of the contract (which served as the primary basis for the PPA) versus changed conditions or other significant risks that may not have been properly assessed and / or mitigated

» Lending / Loan Servicing Evaluation and Underwriting Review – Retained by a large financial institution to evaluate their International Trade Finance Group's multi-billion dollar portfolio of Variable Rate Demand Obligations (VRBO's) and the underlying credit facilities. Worked with bank personnel to identify and extract over 10 years of servicing history of the bank's VRBO portfolio and developed a detailed financial model to analyze the accuracy of the servicing based on the underlying contact documentation, as well as the potential impact of the identified discrepancies to the institution.

» Joint Venture Dispute / Breach of Fiduciary Duty / Investigation – Engaged jointly by plaintiff and defense counsel at the request of a large automobile manufacturer to perform an independent assessment and evaluation into allegations of questionable finance and insurance practices in the sale of new and used automobiles, as well as concerns regarding the past and future operational and financial performance of the dealership. Analyzed the dealership's historical financial performance (i.e., front-end and back-end sales and profits) relative to changing market dynamics and the influence of broader regulatory and compliance efforts by the Consumer Finance Protection Bureau (CFPB). Compared trends in the dealership's new and used vehicle sales, trade-in, reserve and F&I product sales margins to industry benchmarks.

» Breach of Contract / Business Failure / Enterprise Valuation – Engaged by the U.S. Department of Justice to assist in the economic assessment and forensic accounting review of a $100 million dollar breach of contract, lost profits and diminution in value claim related to a failed joint venture between an industrial steel complex in Ukraine and a U.S. Investor. Analyzed the formation of the joint venture, relative business plans and projections, sources and uses of capital, and historical and projected operating results, against the general economic, competitive, regulatory and logistical challenges faced by companies trying to do business in the former Soviet Union. Assessed the causal factors for the enterprise's failure and their respective relationships to plaintiff's claims for damages.

» Economic Assessment / Commercial Loan Review / Fraud Investigation – Hired by the U.S. Department of Justice to investigate certain improprieties involving the commercial lending practices and underwriting standards of a large failed financial institution. Evaluated the commercial lending practices applied to numerous commercial loans and investigated certain officers and directors with respect to various allegations of kickbacks, undisclosed interests in transactions, and whether or not certain loans were intentionally under-funded to extort illegal payments. Evaluated the underwriting practices employed by the institution against those of best performing financial institutions and investigated various ownership interests in third party entities including tracing assets through various corporations, partnerships and trusts set up to disguise ownership and shield the assets.

» Breach of Contract / Fraud / Damages – Engaged jointly by Counsel for a large multinational provider of specialty gases and chemicals and Counsel for its retained real estate services company in a dispute over the relocation of the company's U.S. based corporate headquarters to a new office complex. Evaluated plaintiff's claims for damages including "stigma"

or reputational damages resulting from the company's decision to terminate lease negotiations and pursue office space elsewhere. Analyzed the underlying general economic and market conditions affecting commercial real estate in the area including factors most likely to influence the property company's ability to secure tenants, as well as the economic basis for the property company's early termination of certain leases, claims for out-of-pocket costs, and claims for lost rent.

» Economic and Market Analysis / Theft of Trade Secrets / Enterprise Valuation – Retained to analyze the alleged misappropriation of trade secrets and claimed damages for lost profits, unjust enrichment, and the assessed value of certain intellectual property in a dispute between two digital solutions providers. Analyzed Plaintiff's allegations and claimed unjust enrichment by the Defendant including Plaintiff's claimed development costs (e.g., R&D, marketing), and historical financial performance, as well as various factors contributing to its lack of success in the market. Evaluated the alleged information shared pursuant to a non-disclosure agreement between the parties, as well as Defendant's revenues and gross profits claimed by Plaintiff to have resulted from the trade secrets in question. Further analyzed the Defendant's subsequent acquisition by a large digital technology and the relative basis of value attributed to the trade secrets in question including the purchase price allocation and other valuation analyses prepared by the Defendant.

» Loan Review and Reamortization – Engaged by a $50 billion financial institution to review a statistically valid sample of variable and fixed rate commercial loans to identify and estimate the frequency and potential impact of loan servicing discrepancies. Created a stratified loan population and sampling protocol of the $4 billion loan portfolio (*~21,000 loans*) using the probability-proportional-to-size sampling approach. Performed a detailed document-to-data review of the loan documentation and loan servicing systems and extrapolated the impact back to the respective loan population. Certain loans were then reamortized on a life-of-loan basis.

» Breach of Contract / Lost Profits Analysis / Contract Valuation – Engaged by the Department of Housing and Urban Development (HUD) and the Department of Justice to evaluate a $30 million claim for lost profits and diminution in value in relation to a $300 million contract between HUD and a government contractor. Analyzed the marketing and management of 60,000 HUD-owned properties (FHA insured) over the 6 year contract in relation to trends in FHA loans in foreclosure, median sales price of homes, and general economic factors. Estimated additional sales, management costs and projected net profit percentages for the contract periods in question.

» Breach of Fiduciary Duty / Fraud / Mismanagement – Assisted counsel for an electric distribution utility with $400 million in revenues and over $600 million in assets in the evaluation and analysis of claims made pursuant to a class-action lawsuit regarding various management and past business practices. Performed a detailed review and analysis of the complainant's claims for breach of fiduciary duties and fraud including evaluating the utilities financial performance, various management practices, alleged conflicts of interest, questionable compensation and expense items, and questionable investments in non-core businesses. The evaluation included an analysis of the current, historical and projected financial condition of the utility including its cost of service, capital structure and equity management plan.

» Oil & Gas / Securities Lawsuit / Internal Investigation – Retained by Counsel for a special committee of the Board of Directors of a publicly-traded energy company to evaluate allegations of improper stock-based compensation to certain officers of the company. Evaluated historical awards of restricted stock and options relative to the company's applicable stock compensation plans and evaluated the impact to the company's quarterly financial results including results on an earnings per share basis, and on the company's reportable income for tax reporting purposes.

» Damages Analysis / Data Validation – Retained by Counsel for a large international conglomerate to compile, quantify and validate over twenty years of historical costs incurred in defending and settling claims, including claims of double-recovery, resulting from ongoing tort litigation. Identified and extracted data from various financial / accounting systems and verified/validated the data against historical invoices, settlements and other financial / accounting information.

» Breach of Fiduciary Duty / Theft of Trade Secrets / Unjust Enrichment – Retained by counsel for a software development company in relation to alleged self-dealing and usurpation of corporate opportunity by one of the company's officers and directors. Evaluated funds, assets and other resources invested by the company and the relative personal benefit received by the defendant including ownership interests in other companies. Quantified the plaintiff's losses including diminution of company value and alleged unjust enrichment received by the defendant.

» Securities Fraud / White Collar Crime / Audit Malpractice – Assisted counsel in a large securities fraud matter following a multi-year financial restatement of a publicly traded healthcare company. Investigated various accounting errors (misstatements/omissions) and alleged irregularities including allegations of inflated earnings, false regulatory disclosures, concealment of payments and transactions, and the company's acquisition of a large distributor, as well as efforts by the company's independent audit firm to evaluate such information. Evaluated the restatement relative to applicable GAAP guidance and the company's organizational, operational, accounting and auditing policies and procedures. Analyzed claimed losses / damages to the market / shareholders resulting from a significant drop in the company's stock price. Also provided eDiscovery support and maintained a hosted Relativity site containing over one terabyte in data accumulated during the investigation.

» Tortious Interference / Business Failure / Economic Damages Analysis – Identified the key factors responsible for the failure of a services company in the oil and gas industry. Evaluated the company's claims for tortious interference and lost enterprise value with respect to various factors influencing the company's operations during the relevant period. Analyzed the company's strategic plan, operating results and access to capital. Prepared a competitive analysis given existing industry and market demographics, economic conditions, and competitors relative to the company's specific strengths and weaknesses.

» Forensic Accounting / Investment Portfolio Evaluation – Retained by counsel for a private financial services company related to a dispute over the purchase of a $100 million distressed consumer debt portfolio. Evaluated the representations and disclosures made with respect to the character, quality and collection history of assets (i.e., charged-off rental agreements) sold pursuant to the respective purchase and sale contract. Analyzed electronic customer information provided in connection with the pre-acquisition due diligence and compared to sample rental purchase agreements for completeness, accuracy and consistency in relation to the calculation of unpaid balances. Extrapolated results of the assessment to the overall portfolio.

» Fraud / Asset Tracing / Bank Failure – Retained by the U.S. Department of Justice in a $430 million breach of contract and fiduciary duty claim to assist in the investigation of alleged improprieties perpetrated by the officers, directors and certain institution-affiliated parties of a large financial institution. Investigated real estate settlement fees charged on tens of thousands of loans over a 5-year period and traced payments to various affiliated entities used as conduits to provide kickbacks to the institution's chief executive.

» Internal Investigation / Corporate Abuse, Waste / Mismanagement – Conducted an independent internal investigation and operational / corporate governance assessment into various allegations of corporate abuses and potential wrongdoing at the largest electric distribution cooperative in the country with $500 million in revenues and $1 billion in assets. Analyzed and evaluated a wide range of compensation and expense items, business arrangements, interrelationships, processes and transactions involving company personnel and certain outside parties, as well as investigated allegations or the appearance of fraud, corporate misconduct, conflicts of interest and other potential financial impropriety. Further evaluated the cooperative's financial performance relative to its trended cost of service in comparison to other benchmarked utilities and its business processes, behaviors and relevant internal controls in relation to those of best-performing companies.

» Breach of Contract / Fraud – Engaged in an multi-million dollar dispute between a cellular telecommunications company and an independent dealer to analyze claims that customers enrolled by the dealer were fraudulently transferred out of the dealer's compensation base. Analyzed Oracle and SQL Server based databases containing over 200 million records for enrolled customers and traced those subscribers through the cellular provider's dealer commission and residual payment system. Prepared a comprehensive accounting of transactions between the cellular service provider and the dealer including analysis of post and pre-paid activation commissions, commission charge backs and monthly subscriber management fees.

» Breach of Contract / Unfair Competition / Dealer Valuation – Retained by a cellular communications company to evaluate the company's competitive position relative to the industry and to determine the economic effect of alleged unfair competition. Evaluated the company's operating history and projected revenues, assessed factors contributing to its failure, and analyzed the company's alleged lost market share, sales and profits resulting from the alleged unfair competitive practices.

» Oil & Gas Refinery / Joint Venture Contract Audit / Fraud Investigation – Analyzed a $55 million breach of contract / license agreement between a major oil company and a strategic investor involving certain proprietary refining processes. Investigated allegations of fraud and mismanagement regarding a shared cost / revenue agreement between the parties. Analyzed/ reconciled costs incurred by the parties during the term of the contract and assessed their respective contributions to the overall profitability of the enterprise. Further analyzed revenue throughputs in determination of the proportionate split under the revenue sharing agreement.

» Petroleum Fuels / Evaluation of Regulatory Assessment – Retained by the Office of the Attorney General of Texas to evaluate certain regulatory findings with regard to periodic inspections of fuel dispensing devices at certain business in Texas. My analysis included evaluating claims in litigation regarding the regulatory practices in use, and the significance of the observed measuring device failures of a large retail fuel provider relative to the industry in Texas.

» Business Interruption – Evaluated a Fortune 500 petro-chemical company's $70 million business interruption loss due to the brief shutdown of a primary manufacturing facility. Determined effects to the company's worldwide operations and overall competitiveness. Quantified lost sales, lost market share, saved expenses and incremental variable and fixed costs given the existing economic conditions and trends.

» Oil and Gas / Investor Dispute – Retained in a dispute between certain working interest investors and the project owner over how investments were apportioned between various oil and gas properties, some of which were significantly more successful than others. Analyzed the accounting for each of the investments and properties, as well as payments to both royalty and working interest owners, and quantified damages to the investors.

» Patent Infringement / Valuation / Damages Analysis – Managed the economic assessment and valuation of certain intellectual property owned by a Fortune 500 petro-chemical company. Quantified damages due to a patent infringement by a competitor. Prepared financial models supporting improved operational efficiency, yields and cost reductions resulting from the patented technology. Assessed a reasonable royalty through a hypothetical license negotiation.

» Breach of Fiduciary Duty / Business Failure – Engaged by Counsel for the court appointed bankruptcy Trustee of a failed business-to-business dot.com startup to provide assistance in the analysis of various claims made against management for breach of fiduciary duty, gross negligence and waste. Analyzed the rapid disposition of the company's investment capital including millions in questionable corporate expenditures and expense account reimbursements. Further analyzed the debtor's business plans and overall financial performance from inception through insolvency and assessed causal factors for the business failure.

» Defamation / Libel / Slander / Damages Analysis – Retained by Counsel for an individual defendant to evaluate plaintiff's claims for economic damages / losses at various businesses resulting from alleged intentional interference. Evaluated economic, market and industry trends and variables along with specific-company historical performance to assess what impact, if any, certain claimed events may have had on the revenues and earnings of the businesses in question, as well as other extrinsic factors influencing the historical performance of the respective businesses.

» Breach of Contract / Fraud / Business Failure – Engaged in an $8 million dispute between a cellular telecommunications company and an independent dealer to analyze claims that customers enrolled by the dealer were fraudulently transferred out of the dealer's compensation base. Analyzed over 200 million records for enrolled customers and prepared a comprehensive accounting of transactions between the service provider and dealer including analysis of post and pre-paid activation commissions, charge backs, and monthly subscriber management fees.

» Breach of Representations and Warranties / Loan Portfolio / Underwriting Standards Review – Retained by counsel for a large financial institution with regard to a claim for breaches of representations and warranties to assist in the review of a multi-million dollar sub-prime residential mortgage loan portfolio (*~5,300 loans*) purchased from the FDIC. Evaluated the representations and warranties in the purchase contract and reviewed a statistically valid sample of loans to identify any occurrence of fraud, negligence, dishonesty or misrepresentation during the underwriting, packaging and sales process.

» Failed IT System Implementation / Damages Analysis – For a property and casualty insurance provider, performed an assessment of a failed software implementation to determine the root causes with focus on the claims made by the software vendor as compared to functionality provided by the software solutions as delivered. Quantified the costs incurred and overall damages to the insurer because of the failed implementation including costs associated with the lost efficiency expected with the new software solution.

» Class-Action Lawsuit / Loan Portfolio Review – Retained by counsel for a large commercial bank to assist in the defense of a class-action lawsuit alleging improper calculation of monthly interest amounts due on a $41 billion Libor and Prime variable rate commercial loan portfolio. Developed a detailed model to analyze the impact and potential exposure from the bank's alleged improper use of a projected billing period and "look back" provision alleged to be inconsistent with the language in applicable loan documentation, as well as questions regarding the bank's use of other questionable factors when making applicable interest rate changes.

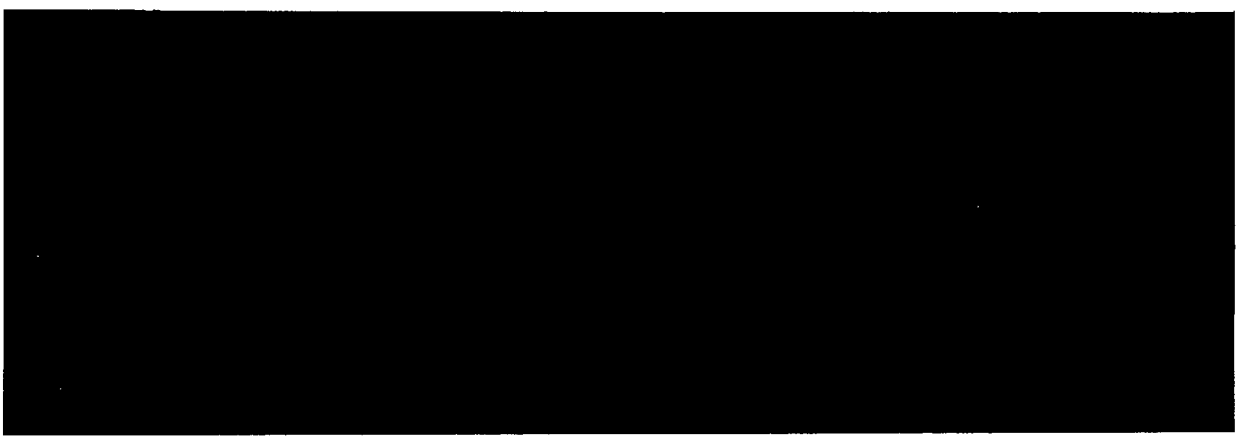
» Patent Infringement / Damages Analysis – Quantified lost profits and evaluated factors related to the negotiation of a reasonable royalty in a dispute between a large university and the inventor of a medical device patent. Performed overall market study for the technology at issue including evaluation of acceptable non-infringing alternatives.

**OTHER CORPORATE AND SPECIAL INVESTIGATIONS**

Mr. Lester has assisted clients and counsel on numerous accounting, financial and special purpose investigations ranging from DOJ and SEC inquiries to operational assessments, fraud and employee theft investigations, and joint venture contract audits. His efforts often include the identification, preservation, recovery, and evaluation and analysis of extensive volumes of electronic data and records maintained in large complex business systems, database archives and email systems.

» Regulatory Assessment – Evaluation of Advanced Meter System (AMS) Deployment in Texas – Retained by the largest electricity transmission and distribution service providers in Texas (i.e., Oncor, CenterPoint, and AEP Texas) at the request of the Public Utility Commission of Texas to conduct an independent investigation and evaluation of various issues, questions and concerns raised regarding the deployment of advanced meters (i.e., smart meters) and advanced metering systems in Texas. During the investigation, I directed the independent accuracy testing of over 5,600 advanced meters; investigated complaints from customers; conducted an evaluation of the systems responsible for measuring, recording,





and communicating electricity usage; performed statistical analysis of the historical electricity usage to identify unexpected variances; and assessed the costs incurred in relation to the cost recovery anticipated by each provider.

» Pipeline, Transmission Systems Company / Cost Audit / Investigation – Retained by a pipeline systems company to investigate potential improprieties related to a contractor's methods of acquiring rights-of-way for a new interstate pipeline system. A computer forensics team recovered computer hard drives and analyzed email traffic for evidence of impropriety. Also utilized complex payment pattern analytics to identify potentially fraudulent payments to landowners. The results did not identify any wrong-doing but did highlight gaps in the company's internal controls and its ability to effectively track the progress of the contractor relative to contractually agreed metrics and milestones.

» Employee Stock Option Investigations – Engaged to conduct internal investigations by management and / or special committees of a number of companies (primarily in the high-tech industry) related to employee stock option issues under investigation by the SEC. Investigations included the identification, collection and preservation of relevant electronic information and the analysis of historical stock option grants and granting practices, as well as an assessment of management practices, internal controls and corporate governance at the respective entities. Provided assistance in relation to financial restatements where warranted. Further supported efforts by other companies in defense of securities class action shareholder derivative complaints.

» Oil and Gas / Royalty Audit – Retained to evaluate applicable books, accounts and reports including lease, oil and gas purchase, marketing, transporting and gathering agreements, as well as well production and sales volume data from oil and gas production reports. Analysis, comparison and reconciliation of applicable oil and gas production, sales, reporting and payment of royalty due amounts to royalty paid amounts including analysis of applicable costs applied to or deducted from royalty payments in relation to a portfolio of oil and gas leases.

» International Medical Device Manufacturer / Investigative Accounting Review – Engaged on behalf of the Audit Committee of the Board of Directors of $3.2 billion medical device manufacturer to perform an independent investigation of certain revenue recognition, reserve and other accounting issues relating to the financial statements of both its U.S. and international operations that were subject to an SEC inquiry. Performed a detailed email review and data mining with a broad focus to identify potential accounting issues that may have been the basis for the SEC inquiry. Subsequently dispersed multiple teams within the U.S. and abroad to perform an analytical review of targeted financial accounts for the period in question.

» Chemical Manufacturer / Fraud Investigation – Retained by a large insurance carrier to perform a fraud and investigative accounting review and lost profits analysis of an alleged $45 million embezzlement, price fraud and kick-back scheme claimed by the Brazilian subsidiary of a Fortune 500 chemical manufacturer. Evaluated various components of the insured's claimed loss including investigating various affiliated and third party entities. Traced commission and other payments through these entities to a number of fictitious companies and individuals in question. Analyzed sales relative to overall market determinants of price.

» Operational Assessment / Performance Improvement / Restructuring / Valuation – Managed a team of Russian and Ukrainian professionals in the restructuring and potential spin-off of certain divisions of a large steel (i.e., pipe-rolling) complex in Ukraine. Developed integrated financial models of the restructured company, investigated legal and tax implications, and evaluated capital needs. Created a reorganization plan for the core business units including applicable cost realignment and asset redeployment, and performed prospective valuations for the new entities.

» Loan Portfolio Review and Re-amortization – Retained by counsel for a large bank holding company to assist in identifying, evaluating and quantifying the impact of potential discrepancies in the bank's multi-billion dollar consumer and commercial loan portfolios. Selected and reviewed a statistically significant subset of variable and fixed rate

consumer and commercial loans for the purpose of identifying and estimating the frequency and potential impact of errors in the institution's loan processing system.

» Fraud / Misappropriation of Assets – Engaged by a large insurance carrier to evaluate a multi-million dollar insurance claim from the Brazilian subsidiary of a large consumer appliance manufacturer. Investigated overall allegations of fraud and analyzed claimed losses at the insured's foreign subsidiary as a result of asset misappropriation through manipulation of the company's scrap metal accounts, various unauthorized sales transactions and bid rigging with certain dealers. Interviewed management and various employees at the company and reconciled raw material inventories with purchases, production use and scrap reports.

**Select Speaking Engagements / Presentations**

Mr. Lester has developed, moderated and/or made presentations on the following subjects:

» Drowning in Data: *Dealing with a Deluge of Data in Complex Litigation, Houston Bar Association -Securities and Litigation Section*, February 2014

» Snomaggedon: *Will your sensitive data make the front page news...and are you prepared?*, Texas Lawyer CLE Roundtable and Event, November 21, 2013

» *Cross-Examining the Financial Expert*, Travis County Women Lawyers Association, October 16, 2013

» *Trying and Complex Case in a Sound Bite World*, ABA Section of Litigation Annual Conference, Technology and Litigation, April 19, 2012

» *Managing Risk and the Role of Forensic Investigations in Data Breaches* – Association of Certified Fraud Examiners – Austin Chapter, January 9, 2012

» *Managing Risk in a Changing Environment* – ISACA December Meeting, December 13, 2011

» Potential Pitfalls, Perils and Regulatory Challenges – *Insights from Navigant's Recent Public Power Work* – Executive Lunch Briefing, Texas Public Power Association (TPPA), July 2011

» The Smart Meter Debate: *Key Challenges and Risks in the Move toward a Smart Grid,* Edison Electric Institute, EEI Transmission, Distribution and Metering Conference, October 2010

» Evaluation of Advanced Metering System Deployment in Texas – Meter Accuracy Assessment, Gulf Coast Power Association (GCPA), August 2010

» Information Security Breaches: *Detection, Response and Management*, Austin Bar Association, October 2009

» Risk Management for Public & Private Companies – *The Board's Role in Oversight of Risk Management*, National Association of Corporate Directors, Texas TriCities Chapter, Sept. 2009

» Litigation and Enforcement – *A Year into the Credit Crisis*, Austin Bar Association, Sept. 2008

Other presentations on the following general subjects:

» Business valuation / valuation of intellectual property and intangible assets

» Effective use of experts in analyzing business disputes / when to engage a financial expert

» Aspects of crisis management, operational turnarounds and profit review

» Effective communication of complex economic and financial models

» Effective data management in complex litigation

» Discovery of financial and accounting information in litigation matters

» Risk management for public and private companies

» Litigation and enforcement activities following the subprime / credit crisis

» Information Security Breaches: Detection, Responses and Management

- Corporate investigations and ethical pitfalls
- View from the box – cross examining expert witnesses

**Publications**

- FEDERAL SENTENCING FOR ECONOMIC CRIMES – *ARE WE THERE YET? Calculating Loss in Securities Fraud—Does the Modified Rescissory Method Fix the Broken Federal Sentencing Guidelines?* 2014.
- Mr. Lester is a contributing author to Hacking Exposed Computer Forensics, Second Edition, published by The McGraw-Hill Companies. Copyright 2010.
- The Smart Meter Debate: *A Few Bumps in the Road in Texas*, by Todd Lester and Michael Rutkowski, Metering International, Issue 4, 2010.
- What Happened in Texas – *Evaluating smart meters and public backlash*, by Todd Lester and Michael Rutkowski, Public Utilities Fortnightly, December 2010.

# APPENDIX B

## LIST OF DOCUMENTS CONSIDERED

### Legal Filings

Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al., Civil Action No. 2017-CP-10-00838:

- Complaint
  - Complaint, dated February 15, 2017.
  - First Amended Complaint, dated April 27, 2017.
- Motions
  - Defendants' Rule 12(b)(6) Motion to Dismiss and Motion for Stay of Discovery, dated June 6, 2017.
  - Defendants' Brief in Support of Their Rule 12(b)(1) Motion to Dismiss and Motion for Stay of Non-Jurisdictional Discovery, dated September 20, 2017.
  - Defendants' Second Amended Rule 12(b)(1) Motion to Dismiss and Motion for Stay of Discovery, dated September 20, 2017.
  - Memorandum of Law in Support of Petitioner Sentry's Motion to Intervene, dated December 21, 2017.
- Briefs
  - Pre-Hearing Brief and Notice of Witnesses and Written Report(s) or Other Evidence To Be Introduced on Behalf of the Claimant, dated March 8, 2017 (KAPSTONE 000433-438).
- Responses and Replies
  - KapStone Charleston's Response and Objection to Plaintiffs' Subpoena, dated February 23, 2016.
  - KapStone Defendants' Reply to Plaintiffs' Response to KapStone's Motion for Protective Order Re: Plaintiffs' 30(b)(6) Deposition Notice, and KapStone Charleston Kraft LLC's Reply to Plaintiff's Response to KapStone Charleston Kraft, LLC's Motion to Quash for Production of Documents, dated October 18, 2017.
- Affidavits, Depositions and Exhibits
  - Kelly Hulseman Affidavit and Exhibits, dated September 20, 2017 (KAPSTONE 000294-311).
  - Mark Niehus Affidavit and Exhibits, dated September 22, 2017.
  - 30 (b)(6) Deposition of KapStone Paper and Packaging Corporation (Mark Niehus), dated January 8, 2019.

Legal Precedent

- *Monroe v. Monsanto*, 531 F. Supp. 426 (D.S.C.1982).
- *Poch v. Bayshore Concrete Products*, 405 S.C. 359, 747 S.E.2s 757, August 2013.
- *Poch v. Bayshore Concrete Prods./S.C., Inc.*, Appellate Case No. 2010-149288, State of South Carolina in the Supreme Court, On Writ of Certiorari to the Court of Appeals.

### Organizational Structure

Organizational Documents

- List of KapStone Kraft Paper employees located in Charleston, effective May 2016 (KAPSTONE 001188).
- List of KapStone Paper and Packaging employees located in Charleston, effective May 2016 (KAPSTONE 001189).
- List of KapStone Charleston Kraft, LLC employees located in Northbrook, IL, effective May 2016 (KAPSTONE 001190).
- Kapstone Paper and Packaging Corporation Organization Chart, dated September 30, 2016 (KAPSTONE 000001).
- Kapstone Entity Directors and Officers, dated February 14, 2017 (KAPSTONE 000266-270).
- Kapstone Kraft Paper Corporation KPM Reporting Roster, n.d. (KAPSTONE 000364-372).
- Kapstone Paper and Packaging Corporation, Employees Located at Charleston, n.d. (KAPSTONE 000373).
- Kapstone Kraft Paper Corporation Employees, Located at Charleston, n.d. (KAPSTONE 000374-375).
- Active Employee Job List, effective May 24, 2016 (KAPSTONE 002596-2650).

Bylaws

- Amended and Restated By-Laws of KapStone Paper and Packaging Corporation, effective May 2016 (KAPSTONE 001191-1207).
- By-Laws of KapStone Kraft Paper Corporation, effective May 2016 (KAPSTONE 001208-1222).
- Kapstone Paper and Packaging Corporation Bylaws, dated August 11, 2016 (KAPSTONE 000193-215).

Articles of Incorporation

- Certificate of Incorporation of Stone Arcade Acquisition Corporation, filed April 15, 2005 (KAPSTONE 000288-293).
- Kapstone Paper and Packaging Corporation Certificate of Incorporation, dated May 25, 2006 (KAPSTONE 000260-262).
- Restated Certificate of Incorporation of KapStone Paper and Packaging Corporation, incorporates all amendments through January 2, 2007 (KAPSTONE 002520-2522).
- Oak Acquisition LLC Articles of Organization, dated March 26, 2008 (KAPSTONE 000271-272).
- South Carolina Secretary of State Office Registered Agent Information for KapStone Charleston Kraft, LLC, dated April 25, 2008 (KCK 00133).
- Kapstone Paper and Packaging Corporation Charleston Mill Deed, dated July 7, 2008 (KAPSTONE 000135-148).
- South Carolina Secretary of State Online Corporate Information for KapStone Paper and Packaging Corporation, effective April 16, 2013 (KAPSTONE 002509).
- KapStone Paper and Packaging Corporation, Opencorporates. Retrieved at https://opencorporates.com/companies/us_de/3955792, dated June 8, 2018.
- KapStone Kraft Paper Corporation, Opencorporates. Retrieved at https://opencorporates.com/companies/us_de/4165052, dated June 11, 2018.
- KapStone Charleston Kraft LLC, Opencorporates. Retrieved at https://opencorporates.com/companies/us_de/4525470, dated June 15, 2018.
- Cogen South, L.L.C., South Carolina Secretary of State – Business Entities Online. Retrieved at https://businessfilings.sc.gov/BusinessFiling/Entity/Profile/ec100e5b-65bf-4f5a-8453-1d506e57e597, various dates.

Corporate Logo / Trademarks

- United States Patent and Trademark Office Registration, dated January 1, 2007 (KAPSTONE 000432).
- Kapstone Paper and Packaging Corporation Trademark Acknowledgement, dated February 1, 2016 (KAPSTONE 000431).
- Representative Copy of Corporate Letterhead for Kapstone Paper and Packaging Corporation, n.d. (KAPSTONE 000342).
- Kapstone Paper and Packaging Webpage, Retrieved from www.kapstonepaper.com/corporate-overview/history/, n.d. (KAPSTONE 000758-762).

**Financial Documents**

SEC Filings

- Stone Arcade Acquisition Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated August 19, 2005.
- Stone Arcade Acquisition Corporation, Form 10-Q/A, Note A – Organization, Business Operations and Subsequent Events, p. 7, filed September 30, 2005.
- Stone Arcade Acquisition Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated June 23, 2006.
- Stone Arcade Acquisition Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated December 15, 2006.
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated December 29, 2006.
- KapStone Paper and Packaging Corporation, Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2006.
- KapStone Paper and Packaging Corporation, Form S-1, Registration Statement Under the Securities Act of 1933, dated January 12, 2007.
- KapStone Paper and Packaging Corporation, Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2007.
- KapStone Paper and Packaging Corporation, Form 10-K/A, Amendment No. 1, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2007.
- MeadWestvaco Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated April 7, 2008.
- MeadWestvaco Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated July 1, 2008.
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated July 2, 2008.
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated December 29, 2008.
- KapStone Paper and Packaging Corporation, Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2008.
- KapStone Paper and Packaging Corporation, Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2009.
- KapStone Paper and Packaging Corporation, Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2010.

- KapStone Paper and Packaging Corporation, Financial Overview, dated April 28, 2011.
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated March 15, 2013.
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, filed June 11, 2013.
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated July 18, 2013.
- KapStone Paper and Packaging Corporation, Form 8-K/A, Amendment No. 1 to Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated September 25, 2013.
- KapStone Paper and Packaging Corporation, Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2014.
- Stone Arcade Acquisition Corporation, Form S-1, Registration Statement Under the Securities Act of 1933, dated May 3, 2015.
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated May 4, 2015.
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated June 4, 2015.
- Stone Arcade Acquisition Corporation, Form S-1, Registration Statement Under the Securities Act of 1933, dated July 18, 2015.
- KapStone Paper and Packaging Corporation, Form 8-K/A, Amendment No. 1 to Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, filed August 6, 2015.
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, filed August 10, 2015.
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated September 1, 2015.
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated October 28, 2015.
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated December 8, 2015.
- KapStone Paper and Packaging Corporation, Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2015.
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated February 9, 2016.
- KapStone Paper and Packaging Corporation, Form DEF 14A, Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934, filed March 28, 2016.
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated April 27, 2016.
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated June 8, 2016.
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated July 27, 2016.
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated August 15, 2016.
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated November 1, 2016.

- KapStone Paper and Packaging Corporation, Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2016 (KAPSTONE 000002-134).
- KapStone Paper and Packaging Corporation, Form 10-K Title Page, for the fiscal year ended December 31, 2016 (KAPSTONE 000347).
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated February 8, 2017.
- KapStone Paper and Packaging Corporation, Form DEF 14A, Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934, filed April 5, 2017.
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, dated May 8, 2017.
- KapStone Paper and Packaging Corporation, Form 10-Q Title Page, for the quarterly period ended June 30, 2017 (KAPSTONE 000348).
- KapStone Paper and Packaging Corporation, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, Exhibit 99.1, dated February 29, 2018.

IRS Filings

- Summary Page form 8453-C, United States Corporation Income Tax, Declaration for IRS e-file Return, for the tax year ending December 31, 2015 (KAPSTONE 000338).
- KapStone Paper and Packaging Corporation Form 1120, for the tax year ending December 31, 2015 (KAPSTONE 001642-1888).
- KapStone Paper and Packaging Corporation Affiliations Schedule, for the tax year ending December 31, 2015 (KAPSTONE 002511-2513).

Contracts and Agreements

- Oak Acquisition LLC Operating Agreement, dated March 26, 2008 (KAPSTONE 000273-287).
- Limited Liability Company Operating, Agreement of Oak Acquisition LLC, dated March 2008 (KAPSTONE 000340-341).
- Long-Term Fiber Supply Agreement by and between MeadWestvaco Forestry, LLC and KapStone Charleston LLC, dated July 1, 2008.
- Longview Fibre Paper and Packaging, Inc. Supplier Confidentiality Agreement with Safway – Agreement No. 3576 CA, effective January 22, 2012 (KAPSTONE 002194-2199).
- Labor Agreement between KCK & International Association of Machinists & Aerospace Workers, dated September 28, 2012 (KAPSTONE 000763-818).
- 2015 Labor Agreement By and Between The International Association of Machinists and Aerospace Workers and its Charleston Local Lodge No. 183 effective June 29, 2015 (KAPSTONE 000819-996).
- KapStone Contract for Services with Thompson Industrial Services, LLC, dated January 1, 2014 (KAPSTONE 002140-2159).
- KapStone Kraft Paper Corporation Contract for Services with Thompson Industrial Services, dated May 27, 2014 (KAPSTONE 002160-2169).
- KapStone Charleston Kraft LLC Master Services Agreement with Safway Services, LLC, effective June 1, 2014 (KAPSTONE 002200-2221).
- KapStone Kraft Paper corporation on behalf of itself and its Affiliates Master Services Agreement with Easy Way Insulation, effective June 1, 2014 (KAPSTONE 002222-2241).
- KapStone Kraft Paper Corporation Contract for Services with Thompson Industrial Services, dated September 19, 2014 (KAPSTONE 002170-2175).

- Receivables Sale Agreement by and among KapStone Kraft Paper Corporation, KapStone, Container Corporation, Longview Fibre Paper and Packaging, Inc., and KapStone Charleston, Kraft LLC, as the Originators, KapStone Paper and Packaging Corporation, as the Service, and KapStone Receivables, LLC, as the Buyer, dated September 26, 2014 (KAPSTONE 002405-2451).
- Receivables Purchase Agreement Among KapStone Receivables, LLC, as the Seller, KapStone, Paper and Packaging Corporation, as the servicer, The Purchasers from Time to Time Party, Hereto, and Wells Fargo Bank, N.A., as Administrative Agent, dated September 26, 2014 (KAPSTONE 002243-2362).
- Amendment No. 1 to Receivables Purchase Agreement, dated June 10, 2015 (KAPSTONE 002363-2383).
- Amendment No. 1 to Receivables Sale Agreement, dated June 10, 2015 (KAPSTONE 002452-2464).
- Discount Factor Agreement made and entered by KapStone Receivables, LLC, "Buyer", KapStone Kraft Paper Corporation, KapStone Container Corporation, Longview Fibre Paper, & Packaging, Inc., KapStone Charleston LLC, and Victory Packaging, LP, "Originators", dated January 1, 2016 (KAPSTONE 002489-2490).
- KapStone Kraft Paper corporation on behalf of itself and its Affiliates Master Services Agreement with Safway Services LLC – Agreement No. 0010243, effective February 18, 2016 (KAPSTONE 002176-2193).
- Amendment No. 2 to Receivables Sale Agreement, dated June 1, 2016 (KAPSTONE 002465-2474).
- Amendment No. 2 to Receivables Purchase Agreement, dated June 1, 2016 (KAPSTONE 002384-2394).
- Amendment No. 3 to Receivables Sale Agreement, dated February 21, 2017 (KAPSTONE 002475-2488).
- Amendment No. 3 to Receivables Purchase Agreement, dated January 1, 2017 (KAPSTONE 002395-2404).
- Limited Liability Company Agreement of Oak Acquisition LLC Excerpts, n.d. (KAPSTONE 000429-430).

Payroll and Benefit Plans

- Kapstone Paper and Packaging Corporation Workers Compensation and Employers Liability
- Kapstone Paper and Packaging Corporation, Group Health and Welfare Plan, effective January 1, 2015 (KAPSTONE 000384-402).
- KapStone Paper and Packaging Corporation Defined Benefit Retirement Plan for Charleston Bargained Employees, dated January 1, 2015 (KAPSTONE 001117-1143).
- KapStone Paper and Packaging Corporation 401 (K) Plan – Summary Plan Description for Charleston Union Employees, dated January 1, 2015 (KAPSTONE 001144-1174).
- Kapstone Paper and Packaging Corporation 401(k) Plan, effective January 1, 2015 – December 31, 2015 (KAPSTONE 000403-406).
- Insurance Policy Information Page, effective July 1, 2015 – July 1, 2016, dated July 9, 2015 (KAPSTONE 000322-327).
- Kapstone Paper and Packaging Corporation Confirmation of Coverage, effective July 1, 2015 – July 1, 2016 (KAPSTONE 000320-321).
- KapStone Paper & Packaging Corporation Group Health & Welfare Plan – Summary Plan Description for Charleston Union Employees, effective January 1, 2016 (KAPSTONE 000997-1116).
- Daniel Simerly Earnings Statement, dated May 1, 2016 (KAPSTONE 000752-755).

- Active Employee Job List as of May 24, 2016 (KAPSTONE-002956-2650).
- Daniel Simerly Personnel File, dated July 16, 2016 (KAPSTONE 000720-751).
- Jacque Lucas' W-2 and Earnings Summary, for the tax period ending on December 31, 2016 (KAPSTONE 000718-719).
- J. Lucas Benefits Coverage, effective December 31, 2016 (KAPSTONE 001175-1177).
- D. Simerly Benefits Coverage, effective December 31, 2016 (KAPSTONE 001178-1183).
- Daniel Simerly's W-2 and Earnings Statement, for the tax period ending December 31, 2016 (KAPSTONE 000756-757).
- KapStone Pay Group Listing Organizational Chart, effective 2016 (KAPSTONE 002510).
- Kapstone Paper and Packaging Corporation Benefits Overview, n.d. (KAPSTONE 000149-192).
- Kapstone Paper and Packaging Corporation, Health Coverage Payment Ledger, n.d. (KAPSTONE 000409-411).

Insurance

Workers Compensation

- Kapstone Paper and Packaging Corporation Insurance Loss Payments, effective 2013-2016 (KAPSTONE 000329-332).
- Sentry Insurance Invoice to Kapstone Paper and Packaging Corporation regarding Insurance Coverage, dated October 19, 2015 (KAPSTONE 000328).
- Sentry Workers Compensation and Employers Liability Insurance Policy—Entire Policy, effective May 2016 (KAPSTONE 001223-1515).
- KapStone Paper and Packaging Corporation Workers Compensation Payment Schedule Reports, Policy Term July 1, 2016 – July 1, 2017 (KAPSTONE 001618-1619).
- Workers Compensation and Employers Liability Insurance Policy, effective July 1, 2016 – July 1, 2017 (KAPSTONE 001516-1617).
- Kapstone Paper and Packaging Corporation Record of Payment to ADP, as of December 7, 2016 (KAPSTONE 000335-337).

Policies and Procedures

Employee Handbook

- Kapstone Paper and Packaging Corporation Handbook, dated January 27, 2017 (KAPSTONE 000216-259).
- Kapstone Paper and Packaging Corporation Employee Handbook, dated January 27, 2017 (KAPSTONE 000414-427).

Code of Conduct and Governing Guidelines:

- KapStone Paper and Packaging Corporation Code of Conduct and Ethics Approved by Audit Committee & Nominating & Governance Committee, dated March 2015 (KAPSTONE 002082-2094).
- KapStone Paper and Packaging Roles and Responsibilities Corporate Governance Guidelines, n.d. (KAPSTONE 002095-2102).

Accounting and / or Financial

- Conceptual Framework Underlying Financial Accounting, p. 33, John Wiley & Sons, 1989.
- The Vest-Pocket CFO, Chapter 7, Key Financial Accounting Areas, p. 125, Jae K. Shim and Joel G. Siegel, Prentice Hall, 1992.
- Company Policy No. 31040 for Wood Fiber Procurement and Transfer, effective February 20, 2004

(KAPSTONE 001937-1939).

- Global Sourcing Policy and Procedures No. 1006P-3 – Physical Inventory Procedures, effective April 30, 2004 (KAPSTONE 002107-2108).
- Company Policy No. 30310 for Accounting, Controlling, and Reporting of Inventories Stored Off-Site Warehouse Locations, effective May 21, 2004 (KAPSTONE 001897-1898).
- Company Policy No. 30300 for Standard Costs for U.S. Pulp and Paper Mills, effective May 24, 2004 (KAPSTONE 001896).
- Company/ Corporate Policy No. 31290 for Asset Retirement Obligations, effective June 4, 2004 (KAPSTONE 001940-1942).
- Company Policy No. 20115 for Travel and Entertainment, effective July 1, 2004 (KAPSTONE 002109-2122).
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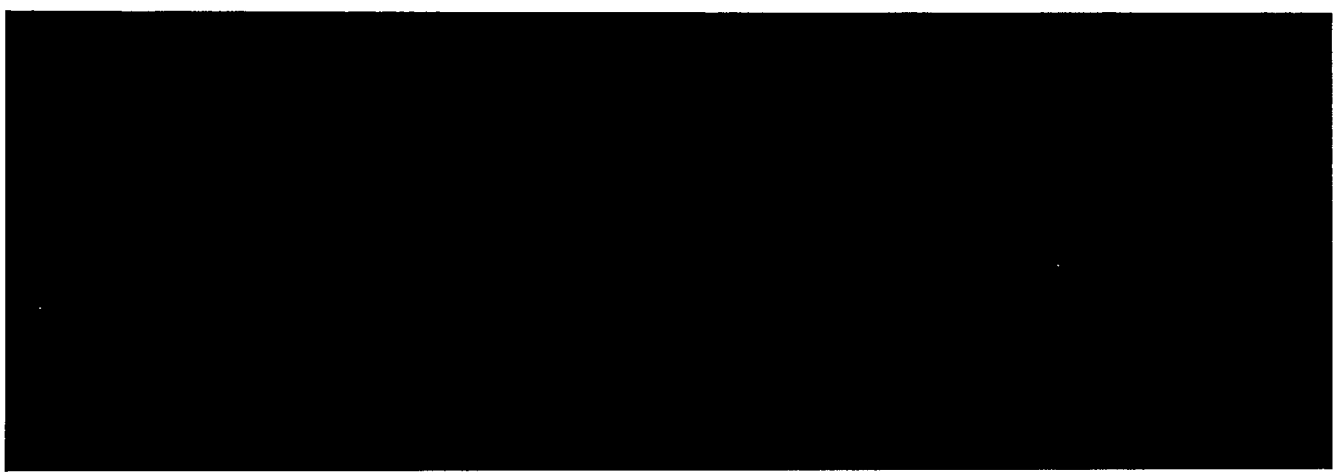
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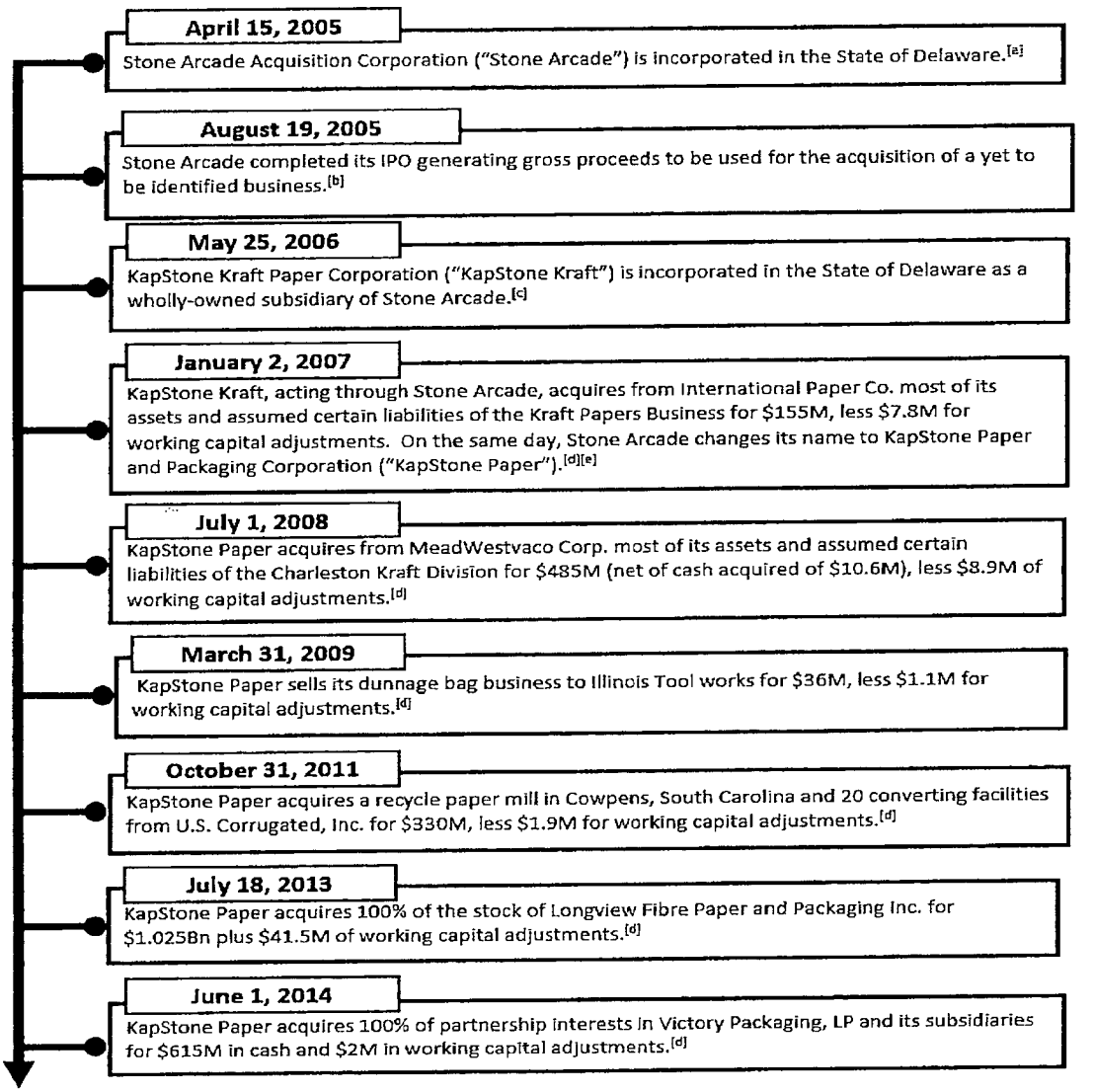
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- Debbie Lightfoot, SPHR, Director Human Resources, KapStone Paper and Packaging Corporation, LinkedIn, n.d.

Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al.
KapStone Paper's Acquisition Timeline

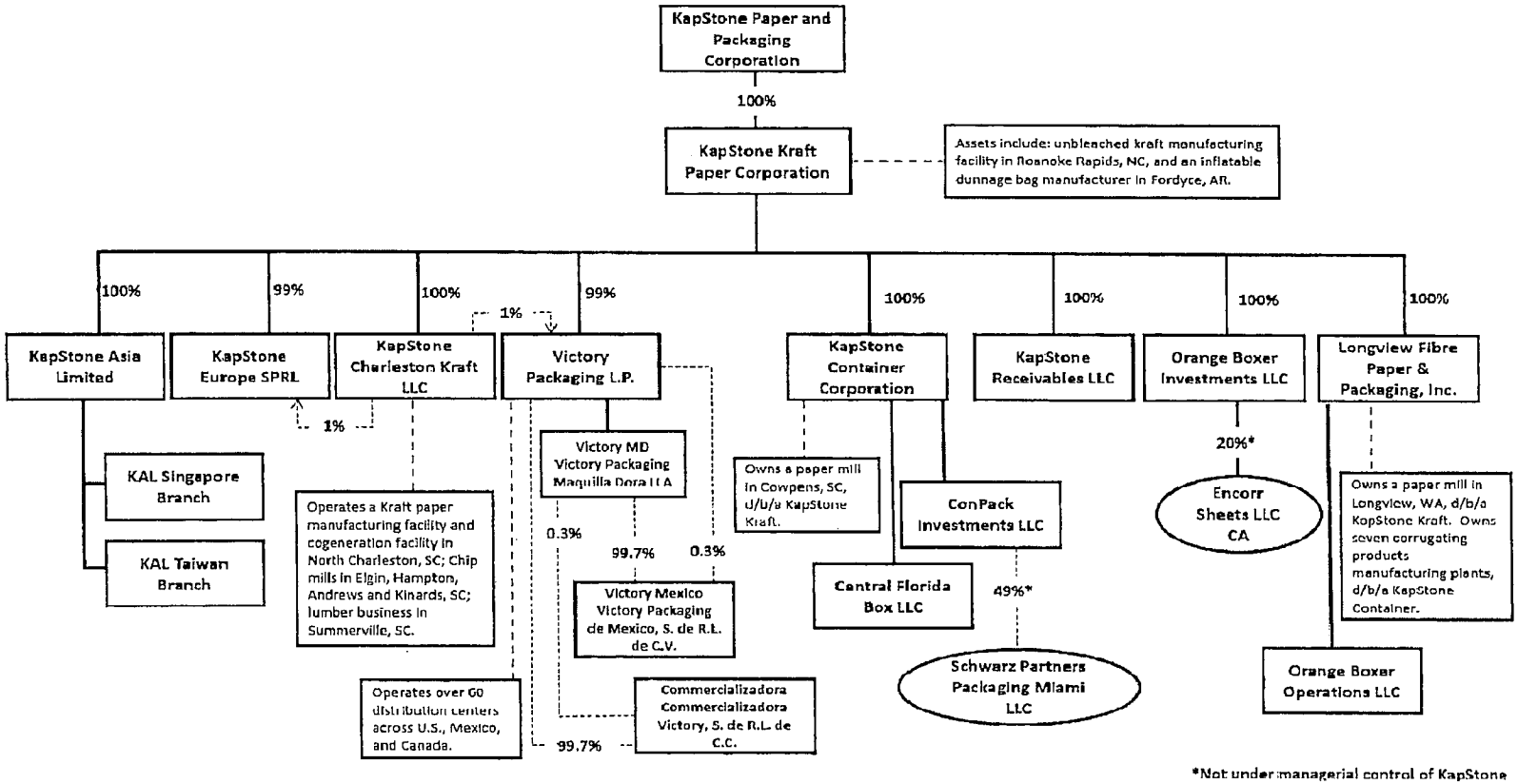



Sources:

[a] Certificate of Incorporation of Stone Arcade Acquisition Corporation, filed April 15, 2005 [KAPSTONE-000288-293]
[b] Stone Arcade Acquisition Corporation, Securities and Exchange Commission, Form 8-K at 2, August 19, 2005
[c] Certificate of Incorporation, State of Delaware, KapStone Kraft Paper Corporation, dated May 25, 2006 [KAPSTONE-000260 – 263]
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[e] KapStone to Acquire U.S. Corrugated, Retrieved from https://www.packaginginsights.com/news/kapstone-to-acquire-us-corrugated.html, dated September 23, 2011

Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al.

KapStone Paper's Organizational Chart[a],[b],[c]




Sources:

[a] Kapstone Paper and Packaging Corporation Organization Chart [KAPSTONE-000001]

[b] KapStone Paper and Packaging Corporation, Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at Exhibit 21.1 ("KapStone Paper and Packaging Corporation Subsidiaries of the Company"), for the fiscal year ended December 31, 2015

[c] KapStone Paper and Packaging Corporation, Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2016 [KAPSTONE-000002 – 134 at 61 and 122]

Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al.

KapStone Employees Located in Charleston that were Reporting to KapStone Kraft (Mill Headquarters) or KapStone Paper (Corporate)[a]

| Summary of Reporting: | | | |
|---|---|---|---|
| Corporate Container | 2 | KCC | 2 |
| Corporate Northbrook | 22 | COR | 22 |
| Mill Headquarters | 36 | KPM | 34 |
| Total | 60 | KCK | 2 |
| | | Total | 60 |

Job Information - Effective Date 5/24/2016 Job Information - Effective Sequence

| Employee ID Number | Employee Name | Location Code | Location Descr | Reports Location Code | Reports Location Descr | System | Company | Pay Group | Pay Group Descr | Employee Type | Payroll Dept No. | Payroll Dept Descr | Union Code | Union Code Descr |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 011324 | Neill,Frank R | 803 | Charleston | 109 | Corporate Container | Container | KCC | FYR | Container Salary | S | 006000 | Admin - General | 001 | Salaried |
| 208920 | Lannie,Randall | 803 | Charleston | 109 | Corporate Container | Container | KCC | FYR | Container Salary | S | 006000 | Admin - General | 001 | Salaried |
| 016907 | Cobb,William L | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007680 | Communications | 001 | Salaried |
| 300104 | Brown,Courtney Marie | 803 | Charleston | 850 | Mill Headquarters | Mills | KCK | FYA | Charleston/Summerville Salary | S | 007680 | Communications | 001 | Salaried |
| 100538 | Stoehr,Tanya Ann | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007200 | Customer Service | 001 | Salaried |
| 300026 | Vann,Sharon Linette | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007200 | Customer Service | 001 | Salaried |
| 300114 | Mintz,Elizabeth Ann | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007200 | Customer Service | 001 | Salaried |
| 100911 | Henderson,Teia Chevell | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007620 | Enterprise Sales Analysis | 001 | Salaried |
| 225251 | Dallon,Jeffrey S | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007620 | Enterprise Sales Analysis | 001 | Salaried |
| 100303 | Baldwin,Jennifer Sue | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005950 | Finance - Local Ops | 001 | Salaried |
| 717307 | Cook,Thomas Brock | 803 | Charleston | 850 | Mill Headquarters | Mills | KCK | FYA | Charleston/Summerville Salary | S | 005950 | Finance - Local Ops | 001 | Salaried |
| 100762 | Luhn,Cary Reams | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006650 | Internal Audit | 001 | Salaried |
| 100506 | Chapman,James Dennis | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006380 | IT - Business Intelligence | 001 | Salaried |
| 100511 | Grimes,Paul Larry | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006380 | IT - Business Intelligence | 001 | Salaried |
| 037765 | Gehlken,David H | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006370 | IT - ERP | 001 | Salaried |
| 013513 | Roberson,Lee A | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 017821 | Hickerson,Jeffery S | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 030111 | McAhon,Robin R | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 038880 | Cochran,Suzanne M | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 100196 | Lang,David Marcus | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 100504 | Coston,Erin C | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006340 | IT - Mill System Ops | 001 | Salaried |
| 100514 | Jones,Jeffrey H | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006340 | IT - Mill System Ops | 001 | Salaried |
| 300031 | Downer,Gilbert Howard | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 500053 | St. Arnauld,Jean Caprice | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006340 | IT - Mill System Ops | 001 | Salaried |
| 030112 | Hamm,Steven Ackerman | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006310 | IT - PMO | 001 | Salaried |
| 100833 | Taylor,Erin Whitney | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006310 | IT - PMO | 001 | Salaried |
| 100505 | Santaw,Daniel L | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006350 | IT - Support | 001 | Salaried |
| 100508 | Hicks,Samuel Dennis | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006350 | IT - Support | 001 | Salaried |
| 100512 | Vawter,James E | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006350 | IT - Support | 001 | Salaried |
| 100513 | Williams,Bradley Simpson | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006350 | IT - Support | 001 | Salaried |
| 100691 | Yaun,Christopher Kennedy | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006350 | IT - Support | 001 | Salaried |
| 101163 | Hogan,Allen Michael | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006350 | IT - Support | 001 | Salaried |
| 500051 | Adams,Stephen Foreman | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006350 | IT - Support | 001 | Salaried |
| 110086 | Benson,John D | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007600 | Marketing | 001 | Salaried |
| 012985 | Hoffman,Bruce W | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 006100 | Mill HQ Admin | 001 | Salaried |
| 016926 | Jarrell,Donna D | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 006100 | Mill HQ Admin | 001 | Salaried |
| 017819 | Sydow,Stephen D | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 006100 | Mill HQ Admin | 001 | Salaried |
| 100540 | Lawson,Thomas J | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 006100 | Mill HQ Admin | 001 | Salaried |
| 179495 | West,David E | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 006100 | Mill HQ Admin | 001 | Salaried |
| 300048 | Pusillo,Deborah E | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 006100 | Mill HQ Admin | 001 | Salaried |
| 100910 | Wetter,Kimberly Joyce | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005400 | Process Optimization and Control | 001 | Salaried |
| 132691 | Burns,Gregory A | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005400 | Process Optimization and Control | 001 | Salaried |
| 013147 | Zehner,Brian G | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005300 | Procurement | 001 | Salaried |
| 017233 | Christensen,Marlene B | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005300 | Procurement | 001 | Salaried |

Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al.

KapStone Employees Located in Charleston that were Reporting to KapStone Kraft (Mill Headquarters) or KapStone Paper (Corporate)[a]

| Summary of Reporting: | | | |
|---|---|---|---|
| Corporate Container | 2 | KCC | 2 |
| Corporate Northbrook | 22 | COR | 22 |
| Mill Headquarters | 36 | KPM | 34 |
| Total | 60 | KCK | 2 |
| | | Total | 60 |

Job Information - Effective Date 5/24/2016 Job Information - Effective Sequence

| Employee ID Number | Employee Name | Location Code | Location Descr | Reports Location Code | Reports Location Descr | System | Company | Pay Group | Pay Group Descr | Employee Type | Payroll Dept No. | Payroll Dept Descr | Union Code | Union Code Descr |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 100835 | Hein,Brian T | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005300 | Procurement | 001 | Salaried |
| 100879 | Gunderson,Julia S | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005300 | Procurement | 001 | Salaried |
| 100896 | Green,Danny W | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005300 | Procurement | 001 | Salaried |
| 300156 | Wolfe,Janet O | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005300 | Procurement | 001 | Salaried |
| 650120 | Davis,John Christopher | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005300 | Procurement | 001 | Salaried |
| 017275 | Trader,Holly P | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005000 | Production Planning | 001 | Salaried |
| 022821 | Gibbs,Anthony E | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005000 | Production Planning | 001 | Salaried |
| 030087 | Fletcher,Nancy A | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005000 | Production Planning | 001 | Salaried |
| 042095 | Evans,Scott M | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005000 | Production Planning | 001 | Salaried |
| 300025 | Vaughns,Michelle Elaine | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005000 | Production Planning | 001 | Salaried |
| 020167 | Pritchard,James L | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007640 | R and D | 001 | Salaried |
| 036896 | Paulsen,Fritz G | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007640 | R and D | 001 | Salaried |
| 016540 | Walker,Benjamin K | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007000 | Sales - Kraft and Containerboard | 001 | Salaried |
| 016825 | Jenkins Jr,Terence T | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007000 | Sales - Kraft and Containerboard | 001 | Salaried |
| 017846 | McCants,Thomas D | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007000 | Sales - Kraft and Containerboard | 001 | Salaried |
| 003626 | Bailey,Trina L | 803 | Charleston | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005470 | Training Department | 001 | Salaried |

Source:

[a] Active Employee Job List, effective May 24, 2016 [KAPSTONE-002956 - 2650]

Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al.

KapStone Employees Located in Roanoke Rapids that were Reporting to Mill Headquarters (in Roanoke Rapids) or KapStone Paper (Corporate)[a]

Summary of Reporting:

| | |
|---|---|
| Corporate Container | 0 |
| Corporate Northbrook | 13 |
| Mill Headquarters | 17 |
| Total | 30 |

Job Information - Effective Date 5/24/2016 Job Information - Effective Sequence

| Employee ID Number | Employee Name | Location Code | Location Descr | Reports Location Code | Reports Location Descr | System | Company | Pay Group | Pay Group Descr | Employee Type | Payroll Dept No. | Payroll Dept Descr | Union Code | Union Code Descr |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 100510 | Gray,Angelia Moore | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006340 | IT - Mill System Ops | 001 | Salaried |
| 100601 | Williams,Tyler O | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 100758 | Smith,Crystal G | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 100921 | Holt,Kevin Dunne | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 005520 | Safety | 001 | Salaried |
| 115505 | Tomlinson,Daniel T | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006320 | IT - Infrastructure | 001 | Salaried |
| 116245 | Wardlaw,James T | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 134326 | Blackmon Jr,Charles D | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006320 | IT - Infrastructure | 001 | Salaried |
| 136174 | Griffies,Jeffery S | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006375 | IT - Enterprise Applications | 001 | Salaried |
| 172384 | Gums,Sophia J. | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006375 | IT - Enterprise Applications | 001 | Salaried |
| 185001 | Lyles,Samuel T | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 200004 | Lamm,Tammy J | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006375 | IT - Enterprise Applications | 001 | Salaried |
| 400003 | Avent,Christopher | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 400007 | Smith,Kelly Anne | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006310 | IT - PMO | 001 | Salaried |
| 100060 | Disney,Jennifer Pope | 609 | Roanoke Rapids | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007200 | Customer Service | 001 | Salaried |
| 100140 | Livingston,Nicole M | 609 | Roanoke Rapids | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007200 | Customer Service | 001 | Salaried |
| 100693 | Lockamon,Jeffrey T | 609 | Roanoke Rapids | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005300 | Procurement | 001 | Salaried |
| 115544 | Meyers,Antionette T | 609 | Roanoke Rapids | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007000 | Sales - Kraft and Containerboard | 001 | Salaried |
| 115618 | Long,Michelle D | 609 | Roanoke Rapids | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007000 | Sales - Kraft and Containerboard | 001 | Salaried |
| 115661 | Hammack,Deborah M | 609 | Roanoke Rapids | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007640 | R and D | 001 | Salaried |
| 116214 | Wall,Sandy K | 609 | Roanoke Rapids | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005300 | Procurement | 001 | Salaried |
| 116433 | Hudson,Stephen R | 609 | Roanoke Rapids | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005000 | Production Planning | 001 | Salaried |
| 116599 | Kendrick,Lisa M | 609 | Roanoke Rapids | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007200 | Customer Service | 001 | Salaried |
| 116681 | Mckeel,Melissa H | 609 | Roanoke Rapids | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005000 | Production Planning | 001 | Salaried |
| 116812 | Patterson III,Robert B | 609 | Roanoke Rapids | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005300 | Procurement | 001 | Salaried |
| 116843 | Williams,Rebecca B | 609 | Roanoke Rapids | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005300 | Procurement | 001 | Salaried |
| 116955 | Wray,Chelsy Livingston | 609 | Roanoke Rapids | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007620 | Enterprise Sales Analysis | 001 | Salaried |
| 119308 | Blunt,Dorothy | 609 | Roanoke Rapids | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007200 | Customer Service | 001 | Salaried |
| 137320 | Brown,Timothy L | 609 | Roanoke Rapids | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007200 | Customer Service | 001 | Salaried |
| 192181 | Clark,Sheryl N | 609 | Roanoke Rapids | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 007200 | Customer Service | 001 | Salaried |
| 717393 | Best,Erica Martin | 609 | Roanoke Rapids | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 005950 | Finance - Local Ops | 001 | Salaried |

Source:

[a] Active Employee Job List, effective May 24, 2016 [KAPSTONE-002956 - 2650]

EXHIBIT 5

Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al.

KapStone Employees Providing Certain Shared Services (*based on Payroll Dept Descr*) and their Respective Physical and Reporting Locations[a]

Summary of Reporting:

| | |
|---|---|
| Total - Shared Services | 175 |
| Corporate Northbrook | 151 |
| Corporate CEO-CFO Office | 4 |
| Other | 20 |

Job Information - Effective Date: 5/24/2016 - Job Information - Effective Sequence

| Employee ID Number | Employee Name | Location Code | Location Descr | Reports Location Code | Reports Location Descr | System | Company | Pay Group | Pay Group Descr | Employee Type | Payroll Dept No. | Payroll Dept Descr | Union Code | Union Code Descr |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 100064 | Shah,Dilipkumar Shantilal | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006220 | Accounts Payable | 001 | Salaried |
| 100492 | Holovenko,Olga | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006220 | Accounts Payable | 001 | Salaried |
| 100586 | Gheewala,Dhwal Y | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006220 | Accounts Payable | 001 | Salaried |
| 100828 | Shah,Apurva Dilip | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006220 | Accounts Payable | 001 | Salaried |
| 500020 | Miller,Denise K. | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006220 | Accounts Payable | 001 | Salaried |
| 500021 | Pardiwala,Rashmita Mareshchandra | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006220 | Accounts Payable | 001 | Salaried |
| 500029 | Modi,Manish V | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006220 | Accounts Payable | 001 | Salaried |
| 500049 | Clarke,Dane Douglas | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006220 | Accounts Payable | 001 | Salaried |
| 500061 | Blume-Gutierrez,Cassandra Sue | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006220 | Accounts Payable | 001 | Salaried |
| 500069 | Bien,Sofia E | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006220 | Accounts Payable | 001 | Salaried |
| 500087 | Shusterman,Luda | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006220 | Accounts Payable | 001 | Salaried |
| 717170 | Hoeft,Samantha Aimee | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006220 | Accounts Payable | 001 | Salaried |
| 717200 | Patrick,Cynthia | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006220 | Accounts Payable | 001 | Salaried |
| 500001 | Stone,Roger | 853 | Corporate Northbrook | 879 | Corporate CEO-CFO Office | Corporate | COR | FYH | Corporate Salary | S | 006150 | CEO | 001 | Salaried |
| 500003 | Kaplan,Matthew | 853 | Corporate Northbrook | 879 | Corporate CEO-CFO Office | Corporate | COR | FYH | Corporate Salary | S | 006150 | CEO | 001 | Salaried |
| 500004 | Strugalla,Nancy C. | 853 | Corporate Northbrook | 879 | Corporate CEO-CFO Office | Corporate | COR | FYH | Corporate Salary | S | 006150 | CEO | 001 | Salaried |
| 500056 | Schnitzer,Christine Marie | 853 | Corporate Northbrook | 879 | Corporate CEO-CFO Office | Corporate | COR | FYH | Corporate Salary | S | 006150 | CEO | 001 | Salaried |
| 100789 | Murphy,Michael John | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006210 | CFO | 001 | Salaried |
| 101190 | Plocharsky,Kaitlyn Corrine | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006210 | CFO | 001 | Salaried |
| 500002 | Tarbox,Andrea | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006210 | CFO | 001 | Salaried |
| 500005 | Hadley,Patra | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006210 | CFO | 001 | Salaried |
| 500025 | Juvan,Renee L. | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006210 | CFO | 001 | Salaried |
| 500028 | Hulseman,Kelly M. | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006210 | CFO | 001 | Salaried |
| 500039 | Jackson,Quanda S | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006210 | CFO | 001 | Salaried |
| 100732 | Halani,Seema S | 853 | Corporate Northbrook | 109 | Corporate Container | Container | KCC | FYR | Container Salary | S | 006215 | Corporate Controller | 001 | Salaried |
| 101159 | Panjwani,Alvita Aslam | 853 | Corporate Northbrook | 109 | Corporate Container | Container | KCC | FYR | Container Salary | S | 006215 | Corporate Controller | 001 | Salaried |
| 717175 | Zahid,Ahsan - | 853 | Corporate Northbrook | 109 | Corporate Container | Container | KCC | FYR | Container Salary | S | 006215 | Corporate Controller | 001 | Salaried |
| 600620 | Robertson,James | SGA | Statewide Georgia | 109 | Corporate Container | Container | KCC | FYR | Container Salary | S | 006215 | Corporate Controller | 001 | Salaried |
| 100003 | Michaud,Debra L | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006215 | Corporate Controller | 001 | Salaried |
| 100065 | Malevany,Vladislav | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006215 | Corporate Controller | 001 | Salaried |
| 100247 | Sparreo,John J | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006215 | Corporate Controller | 001 | Salaried |
| 100537 | Zombo,Robert D | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006215 | Corporate Controller | 001 | Salaried |
| 101095 | Moore,Alexander Justin | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006215 | Corporate Controller | 001 | Salaried |
| 101178 | Baar,Alan John | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006215 | Corporate Controller | 001 | Salaried |
| 190625 | Jones,Matthew B | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006215 | Corporate Controller | 001 | Salaried |
| 500009 | Niehus,Mark A | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006215 | Corporate Controller | 001 | Salaried |
| 500032 | Harrison,Stephanie Carrie | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006215 | Corporate Controller | 001 | Salaried |
| 003604 | Sidwell,Brad C | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006215 | Corporate Controller | 001 | Salaried |
| 221106 | Stanton,Philip A | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006215 | Corporate Controller | 001 | Salaried |
| 500068 | Soloway,Wayne Scott | SGA | Statewide Georgia | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006215 | Corporate Controller | 001 | Salaried |
| 100462 | Boscapomi,Stephen A | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006225 | Credit and Collection | 001 | Salaried |
| 101120 | Recto,Garrett | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006225 | Credit and Collection | 001 | Salaried |
| 101125 | Patel,Meera Vinodchandra | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006225 | Credit and Collection | 001 | Salaried |
| 101183 | Foley,Kelsey Colleen | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006225 | Credit and Collection | 001 | Salaried |
| 500013 | Mendez,Mariana | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006225 | Credit and Collection | 001 | Salaried |
| 500019 | Laskowski,Jadwiga Maria | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006225 | Credit and Collection | 001 | Salaried |

Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al.

KapStone Employees Providing Certain Shared Services (*based on Payroll Dept Descr*) and their Respective Physical and Reporting Locations[a]

Summary of Reporting:

| | |
|---|---|
| Total - Shared Services | 175 |
| Corporate Northbrook | 151 |
| Corporate CEO-CFO Office | 4 |
| Other | 20 |

Job Information - Effective Date: 5/24/2016 - Job Information - Effective Sequence

| Employee ID Number | Employee Name | Location Code | Location Descr | Reports Location Code | Reports Location Descr | System | Company | Pay Group | Pay Group Descr | Employee Type | Payroll Dept No. | Payroll Dept Descr | Union Code | Union Code Descr |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 500042 | Nute,Eric F | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006225 | Credit and Collection | 001 | Salaried |
| 500046 | Palchik,Inessa | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006225 | Credit and Collection | 001 | Salaried |
| 500076 | Russell,Aidan Renardo | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006225 | Credit and Collection | 001 | Salaried |
| 717174 | Reyes,Alex Christopher | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006225 | Credit and Collection | 001 | Salaried |
| 717385 | Miller,Catherine Marie | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006225 | Credit and Collection | 001 | Salaried |
| 717414 | Ruiz,Victoria E | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006225 | Credit and Collection | 001 | Salaried |
| 600493 | McManimie,Beverly | 161 | Bowling Green | 109 | Corporate Container | Container | KCC | FYR | Container Salary | S | 006410 | Human Resources | 001 | Salaried |
| 100045 | Rickels,Daniel Lee | 163 | Cedar Rapids | 109 | Corporate Container | Container | KCC | FYR | Container Salary | S | 006410 | Human Resources | 001 | Salaried |
| 500018 | Belyak,Victoria | 853 | Corporate Northbrook | 109 | Corporate Container | Container | KCC | FYR | Container Salary | S | 006410 | Human Resources | 001 | Salaried |
| 500079 | Feldman,Irina | 853 | Corporate Northbrook | 109 | Corporate Container | Container | KCC | FYR | Container Salary | S | 006410 | Human Resources | 001 | Salaried |
| 209896 | Terry,James A | 320 | Seattle | 109 | Corporate Container | Container | KCC | FYR | Container Salary | S | 006410 | Human Resources | 001 | Salaried |
| 100415 | Rozman,Roxanne Marie | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006410 | Human Resources | 001 | Salaried |
| 100578 | Zrobeck,Jeffrey K | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006410 | Human Resources | 001 | Salaried |
| 100986 | Hohl-Perrie,Alanna Tedianne | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006410 | Human Resources | 001 | Salaried |
| 101009 | Wessel,Cynthia Lynn | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006410 | Human Resources | 001 | Salaried |
| 101189 | Harrison,Scott E | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006410 | Human Resources | 001 | Salaried |
| 500006 | Lowry,Therese Marie | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006410 | Human Resources | 001 | Salaried |
| 500030 | Talenti,Tania L. | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006410 | Human Resources | 001 | Salaried |
| 001454 | Clapp,Gatha L | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006410 | Human Resources | 001 | Salaried |
| 001581 | Culbertson,Susan L | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006410 | Human Resources | 001 | Salaried |
| 002982 | Olsen,Stephanie J | 200 | Longview Mill | 200 | Longview Mill | Mills | LFP | FYE | Longview Salary | E | 006410 | Human Resources | 001 | Salaried |
| 089037 | Tastad,Connie J | 200 | Longview Mill | 200 | Longview Mill | Mills | LFP | FYE | Longview Salary | E | 006410 | Human Resources | 001 | Salaried |
| 109178 | Bundrock,William J | 200 | Longview Mill | 200 | Longview Mill | Mills | LFP | FYE | Longview Salary | S | 006410 | Human Resources | 001 | Salaried |
| 001914 | Gaston,Matthew A | 200 | Longview Mill | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 006410 | Human Resources | 001 | Salaried |
| 004008 | Johnston,Danielle M | 200 | Longview Mill | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 006410 | Human Resources | 001 | Salaried |
| 133705 | Campbell,Nicole D | 200 | Longview Mill | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | E | 006410 | Human Resources | 001 | Salaried |
| 208557 | Case,Patricia | 200 | Longview Mill | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 006410 | Human Resources | 001 | Salaried |
| 218689 | Parafinczuk,Gary A | 200 | Longview Mill | 850 | Mill Headquarters | Mills | KPM | FYJ | Roanoke Rapids Salary | S | 006410 | Human Resources | 001 | Salaried |
| 003690 | Powell,Amber D | 300 | Longview Box | 320 | Seattle | Container | LFP | FYE | Longview Salary | S | 006410 | Human Resources | 001 | Salaried |
| 700642 | Anderson,Neal E | 350 | Spanish Fork | 350 | Spanish Fork | Container | LFP | FYE | Longview Salary | S | 006410 | Human Resources | 001 | Salaried |
| 717497 | Bisbee,Renee Marie | 330 | Yakima | 330 | Yakima | Container | LFP | FYE | Longview Salary | E | 006410 | Human Resources | 001 | Salaried |
| 100762 | Luhn,Cary Reams | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006650 | Internal Audit | 001 | Salaried |
| 100973 | GHINEA,ELENA | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006650 | Internal Audit | 001 | Salaried |
| 101026 | Prager,Anne M | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006650 | Internal Audit | 001 | Salaried |
| 101126 | Hauptmann,Nicholas Charles | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006650 | Internal Audit | 001 | Salaried |
| 101204 | Walthers Von Alten,Andrew David | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006650 | Internal Audit | 001 | Salaried |
| 500016 | Connor,Colin J | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006650 | Internal Audit | 001 | Salaried |
| 717347 | Ukpere,Oscar | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006650 | Internal Audit | 001 | Salaried |
| 717465 | Terrell,Katyann | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006650 | Internal Audit | 001 | Salaried |
| 717471 | Liow,Siew Ying | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006650 | Internal Audit | 001 | Salaried |
| 717472 | Xia,Jin | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006650 | Internal Audit | 001 | Salaried |
| 717522 | Ajayi,Ivabowaleola Wuraola | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006650 | Internal Audit | 001 | Salaried |
| 717561 | Odunsi,Olamide Ehi | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006650 | Internal Audit | 001 | Salaried |
| 100506 | Chapman,James Dennis | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006380 | IT - Business Intelligence | 001 | Salaried |
| 100511 | Grimes,Paul Larry | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006380 | IT - Business Intelligence | 001 | Salaried |
| 085390 | Tyagi,Vikas | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006380 | IT - Business Intelligence | 001 | Salaried |

Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al.

KapStone Employees Providing Certain Shared Services (*based on Payroll Dept Descr*) and their Respective Physical and Reporting Locations[a]

Summary of Reporting:

| | |
|---|---|
| Total - Shared Services | 175 |
| Corporate Northbrook | 151 |
| Corporate CEO-CFO Office | 4 |
| Other | 20 |

Job Information - Effective Date: 5/24/2016 - Job Information - Effective Sequence

| Employee ID Number | Employee Name | Location Code | Location Descr | Reports Location Code | Reports Location Descr | System | Company | Pay Group | Pay Group Descr | Employee Type | Payroll Dept No. | Payroll Dept Descr | Union Code | Union Code Descr |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 500047 | Cuttino,Carole Glen | SSC | Statewide South Carolina | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006380 | IT - Business Intelligence | 001 | Salaried |
| 100384 | Weber,Christine M | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006335 | IT - Container Applications | 001 | Salaried |
| 100841 | Williams,Charles Cleveland | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006335 | IT - Container Applications | 001 | Salaried |
| 001416 | Conner,Kathy D | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006335 | IT - Container Applications | 001 | Salaried |
| 002069 | Hanna,Linda J | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006335 | IT - Container Applications | 001 | Salaried |
| 106483 | Hurse,Todd S | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006335 | IT - Container Applications | 001 | Salaried |
| 101184 | Zhao,Hong | SGA | Statewide Georgia | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006335 | IT - Container Applications | 001 | Salaried |
| 003442 | Helsley,Michael R | 340 | Twin Falls | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006335 | IT - Container Applications | 001 | Salaried |
| 100406 | Jackson,Shawn Jermaine | SGA | Statewide Georgia | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006330 | IT - Container System Ops | 001 | Salaried |
| 600772 | Weir,Joseph K | SGA | Statewide Georgia | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006330 | IT - Container System Ops | 001 | Salaried |
| 001092 | White,Alicia L | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006375 | IT - Enterprise Applications | 001 | Salaried |
| 002937 | Noble,Peggy S | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006375 | IT - Enterprise Applications | 001 | Salaried |
| 210959 | Bayne,Troy R | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006375 | IT - Enterprise Applications | 001 | Salaried |
| 136174 | Griffies,Jeffery S | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006375 | IT - Enterprise Applications | 001 | Salaried |
| 172384 | Gums,Sophia J. | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006375 | IT - Enterprise Applications | 001 | Salaried |
| 200004 | Lamm,Tammy J | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006375 | IT - Enterprise Applications | 001 | Salaried |
| 037765 | Gehlken,David H | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006370 | IT - ERP | 001 | Salaried |
| 001406 | Carter,Michael S | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006370 | IT - ERP | 001 | Salaried |
| 100703 | Willders,Ricky L | SSC | Statewide South Carolina | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006370 | IT - ERP | 001 | Salaried |
| 003944 | Tomlinson,Trena P | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006320 | IT - Infrastructure | 001 | Salaried |
| 004029 | Wakefield,Jayanne M | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006320 | IT - Infrastructure | 001 | Salaried |
| 198833 | Hopkins,Jeffrey S | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006320 | IT - Infrastructure | 001 | Salaried |
| 115505 | Tomlinson,Daniel T | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006320 | IT - Infrastructure | 001 | Salaried |
| 134326 | Blackmon Jr,Charles D | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006320 | IT - Infrastructure | 001 | Salaried |
| 195685 | Isom,Jason S | SAZ | Statewide Arizona | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006320 | IT - Infrastructure | 001 | Salaried |
| 141526 | Doyle,Ashley | SNC | Statewide North Carolina | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006320 | IT - Infrastructure | 001 | Salaried |
| 038805 | Mueller,Joseph V | SSC | Statewide South Carolina | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006320 | IT - Infrastructure | 001 | Salaried |
| 204315 | Sherlock,Everett D | SSC | Statewide South Carolina | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006320 | IT - Infrastructure | 001 | Salaried |
| 500037 | Barlow Jr,Kenneth A | SSC | Statewide South Carolina | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006320 | IT - Infrastructure | 001 | Salaried |
| 002641 | Lynch,Gregory L | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006385 | IT - Integration Architecture | 001 | Salaried |
| 211475 | Wagner,Michael J | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006385 | IT - Integration Architecture | 001 | Salaried |
| 500043 | Dopiparti,Kishore B | SNC | Statewide North Carolina | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006385 | IT - Integration Architecture | 001 | Salaried |
| 500057 | Simmerman Jr,John Kenneth | SNC | Statewide North Carolina | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006385 | IT - Integration Architecture | 001 | Salaried |
| 044577 | Villa,Elisabeth A | SSC | Statewide South Carolina | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006385 | IT - Integration Architecture | 001 | Salaried |
| 013513 | Roberson,Lee A | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 017821 | Hickerson,Jeffery S | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 030111 | McAhon,Robin R | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 038880 | Cochran,Suzanne M | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 100198 | Lang,David Marcus | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 100504 | Coston,Erin C | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006340 | IT - Mill System Ops | 001 | Salaried |
| 100514 | Jones,Jeffrey H | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006340 | IT - Mill System Ops | 001 | Salaried |
| 300031 | Downer,Gilbert Howard | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 500053 | St. Arnauld,Jean Caprice | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006340 | IT - Mill System Ops | 001 | Salaried |
| 100523 | Dizon,Phillip Victor | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 500031 | Burns,Brian Andrew | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 001148 | Courser,Karlita R | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |

Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al.

KapStone Employees Providing Certain Shared Services (*based on Payroll Dept Descr*) and their Respective Physical and Reporting Locations[a]

Summary of Reporting:

| | |
|---|---|
| Total - Shared Services | 175 |
| Corporate Northbrook | 151 |
| Corporate CEO-CFO Office | 4 |
| Other | 20 |

Job Information - Effective Date: 5/24/2016 - Job Information - Effective Sequence

| Employee ID Number | Employee Name | Location Code | Location Descr | Reports Location Code | Reports Location Descr | System | Company | Pay Group | Pay Group Descr | Employee Type | Payroll Dept No. | Payroll Dept Descr | Union Code | Union Code Descr |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 003394 | Jackson,Courtney J | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 004054 | Warren,Daryl R | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 088288 | Bork,Joe A | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 165669 | Fuller,Scott J | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 199122 | Ruiz,Marcel G | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006340 | IT - Mill System Ops | 001 | Salaried |
| 219746 | Foltz,Richard J | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006340 | IT - Mill System Ops | 001 | Salaried |
| 223326 | Mason,Robert A | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 224474 | McCormick,Keith D | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006340 | IT - Mill System Ops | 001 | Salaried |
| 100510 | Gray,Angelia Moore | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006340 | IT - Mill System Ops | 001 | Salaried |
| 100601 | Williams,Tyler O | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 100758 | Smith,Crystal G | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 116245 | Wardlaw,James T | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 185001 | Lyles,Samuel T | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 400003 | Avent,Christopher | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 003906 | Thomas,DeNise M | SMI | Statewide Michigan | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006340 | IT - Mill System Ops | 001 | Salaried |
| 030112 | Hamm,Steven Ackerman | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006310 | IT - PMO | 001 | Salaried |
| 100833 | Taylor,Erin Whitney | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006310 | IT - PMO | 001 | Salaried |
| 002518 | LaBerge,Valerie A | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006310 | IT - PMO | 001 | Salaried |
| 400007 | Smith,Kelly Anne | 609 | Roanoke Rapids | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006310 | IT - PMO | 001 | Salaried |
| 100505 | Santaw,Daniel L | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006350 | IT - Support | 001 | Salaried |
| 100508 | Hicks,Samuel Dennis | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006350 | IT - Support | 001 | Salaried |
| 100512 | Vawter,James E | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006350 | IT - Support | 001 | Salaried |
| 100513 | Williams,Bradley Simpson | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006350 | IT - Support | 001 | Salaried |
| 100691 | Yaun,Christopher Kennedy | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006350 | IT - Support | 001 | Salaried |
| 101163 | Hogan,Allen Michael | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006350 | IT - Support | 001 | Salaried |
| 500051 | Adams,Stephen Foreman | 803 | Charleston | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006350 | IT - Support | 001 | Salaried |
| 001225 | Bogdon,Lisa K | 200 | Longview Mill | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006350 | IT - Support | 001 | Salaried |
| 101058 | Labedz,Patrycja A | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006360 | IT Admin | 001 | Salaried |
| 184769 | Zimmerman,Richard E | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006360 | IT Admin | 001 | Salaried |
| 100633 | Seltzer,Wendy L | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006615 | Legal | 001 | Salaried |
| 100946 | Ingraham,Kathryn D | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006615 | Legal | 001 | Salaried |
| 601218 | Schmidt,Timothy William | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006615 | Legal | 001 | Salaried |
| 717467 | Risteska,Rebeka | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006615 | Legal | 001 | Salaried |
| 500014 | Macke,Kathleen A | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006230 | Payroll | 001 | Salaried |
| 717492 | Herman,Linda Louise | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006230 | Payroll | 001 | Salaried |
| 717590 | Stanczak,Thomas | 853 | Corporate Northbrook | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | E | 006230 | Payroll | 001 | Salaried |
| 101140 | Brown,Suzanne Lee | SSC | Statewide South Carolina | 853 | Corporate Northbrook | Corporate | COR | FYH | Corporate Salary | S | 006230 | Payroll | 001 | Salaried |

Source:

[a] Active Employee Job List, effective May 24, 2016 [KAPSTONE-002956 - 2650]

Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al.
Summary of Legal Contract Review and Signing Authority Policy[a],[b]

| Confidentiality Agreements | | | | |
|---|---|---|---|---|
| **Type of Contact** | **Persons Authorized to Sign** | **Payroll Dept** | **Location** | **Reports to** |
| IT | Christophe Deslandes | N/A | N/A | N/A |
| IT | Rick Zimmerman | IT Admin | Corporate Northbrook | Corporate Northbrook |
| Mergers, acquisitions and | Roger Stone | CEO | Corporate Northbrook | Corporate CEO-CFO Office |
| Mergers, acquisitions and | Matt Kaplan | CEO | Corporate Northbrook | Corporate CEO-CFO Office |
| Engineering/Technical (mill and | Pat Ortiz | Mill HQ Admin | Longview Mill | Mill Headquarters |
| Engineering/Technical (mill and | Paramjit Singh | Mill HQ | Longview Mill | Mill Headquarters |
| Engineering/Technical (mill and | Theron Lambert | N/A | N/A | N/A |
| Engineering/Technical (mill and | Keith Wilhelm | Admin Engineering | Corporate Northbrook | Corporate Container |
| Manufacturing (mill and container) | Bill Kessinger | Mill Operations General | Roanoke Rapids | Roanoke Rapids |
| Manufacturing (mill and container) | Jeff Yoder | Manufacturing Office | Charleston | Charleston |
| Manufacturing (mill and container) | Jeff Volker | Plant Burden | Cowpens | Cowpens |
| Manufacturing (mill and container) | Paul Duncan | Plant Burden | Longview Mill | Longview Mill |
| Manufacturing (mill and container) | Tim Keneally | Admin - General | Corporate Northbrook | Corporate Container |
| Manufacturing (mill and container) | Dan Blakely | N/A | N/A | N/A |
| Manufacturing (mill and container) | Scott Emslie | Admin - General | Longview Box | Longview Box |
| Financial disclosure | Andrea Tarbox | CFO | Corporate Northbrook | Corporate Northbrook |
| Financial disclosure | Mike Murphy | Asitrade | Spanish Fork | Spanish Fork |
| Sales (mill and container) | Tonie Meyers | Sales - Kraft and Containerboard | Roanoke Rapids | Mill Headquarters |
| Sales (mill and container) | Mark Favre | Admin - General | Corporate Northbrook | Corporate Container |
| Sales (mill and container) | Terry Jenkins | Sales - Kraft and Containerboard | Charleston | Mill Headquarters |
| Sales (mill and container) | Frank Neill | Admin - General | Charleston | Corporate Container |
| Sales (mill and container) | John Caplice | Sales - Corrugated | Statewide Virginia | Corporate Container |
| Sales (mill and container) | Kirk Matchey | Admin - General | Twin Cities | Corporate Container |
| Sales (mill and container) | Matt Peerboom | Admin - General | Longview Box | Corporate Container |
| Sales (mill and container) | Ben Walker | Sales - Kraft and Containerboard | Charleston | Mill Headquarters |
| Procurement (mill and container) | Eric Choltco | Procurement | Longview Mill | Mill Headquarters |
| Roll Stock & Containerboard | Frank Neill | Admin - General | Charleston | Corporate Container |
| Fiber Supply | David West | N/A | N/A | N/A |
| Transportation (mill and container) | Steve Sydow | Mill HQ Admin | Charleston | Mill Headquarters |
| Victory Packaging sales and purchases | Bob Egan | N/A | N/A | N/A |

| Customer Contracts | | | | |
|---|---|---|---|---|
| Container Division, Mill Division | | | | |
| **Type of Contact** | **Persons Authorized to Sign** | **Payroll Dept** | **Location** | **Reports to** |
| ≥ $30 million | Roger Stone | CEO | Corporate Northbrook | Corporate CEO-CFO Office |
| ≥ $30 million | Matt Kaplan | CEO | Corporate Northbrook | Corporate CEO-CFO Office |
| < $30 million (container only) | Tim Keneally | Admin - General | Corporate Northbrook | Corporate Container |
| < $30 million (mills only) | Randy Nebel | Mill HQ Admin | Longview | Mill Headquarters |
| ≤ $15 million (containerboard and kraft paper) | Tonie Meyers | Sales - Kraft and Containerboard | Roanoke Rapids | Mill Headquarters |
| ≤ $15 million (DuraSorb and Kraftpak) | Terry Jenkins | Sales - Kraft and Containerboard | Charleston | Mill Headquarters |
| ≤ $15 million (converting plants, paper trading and purchasing) | Frank Neill | Admin - General | Charleston | Corporate Container |
| ≤ $15 million (Summerville) | Donnie Bigham | Plant Burden | Summerville | Summerville |
| ≥ $15 million (Multiple converting plants) | Matt Kaplan | CEO | Corporate Northbrook | Corporate CEO-CFO Office |
| ≥ $15 million (Multiple converting plants) | Tim Keneally | Admin - General | Corporate Northbrook | Corporate Container |
| < $10 million (Multiple converting plants) | John Caplice | Sales - Corrugated | Statewide Virginia | Corporate Container |
| < $10 million (Multiple converting plants) | Kirk Matchey | Admin - General | Twin Cities | Corporate Container |
| < $10 million (Multiple converting plants) | Mark Favre | Admin - General | Corporate Northbrook | Corporate Container |
| < $10 million (Multiple converting plants) | Matt Peerboom | Admin - General | Longview Box | Corporate Container |
| > $5 million (single converting plant) | Tim Keneally | Admin - General | Corporate Northbrook | Corporate Container |
| ≤ $5 million (single converting plant) | John Caplice | Sales - Corrugated | Statewide Virginia | Corporate Container |
| ≤ $5 million (single converting plant) | Kirk Matchey | Admin - General | Twin Cities | Corporate Container |
| ≤ $5 million (single converting plant) | Mark Favre | Admin - General | Corporate Northbrook | Corporate Container |
| ≤ $5 million (single converting plant) | Matt Peerboom | Admin - General | Longview Box | Corporate Container |

Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al.
Summary of Legal Contract Review and Signing Authority Policy[a],[b]

| | | | | |
|---|---|---|---|---|
| ≤ $5 million - kraft paper | Ben Walker | Sales - Kraft and Containerboard | Charleston | Mill Headquarters |
| ≤ $5 million - containerboard | Tom McCants | Sales - Kraft and Containerboard | Charleston | Mill Headquarters |
| ≤ 1 year and ≤ $1 million | Kris Bohme | Sales - Kraft and Containerboard | Longview Mill | Mill Headquarters |
| ≤ 1 year and ≤ $1 million | Joe Poole | Sales - Kraft and Containerboard | Longview Mill | Mill Headquarters |

| Victory Packaging | | | | |
|---|---|---|---|---|
| **Type of Contact** | **Persons Authorized to Sign** | **Payroll Dept** | **Location** | **Reports to** |
| ≥ $20 million | Roger Stone | CEO | Corporate Northbrook | Corporate CEO-CFO Office |
| ≥ $20 million | Matt Kaplan | CEO | Corporate Northbrook | Corporate CEO-CFO Office |
| < $20 million | Ben Samuels | N/A | N/A | N/A |
| < $20 million | Bob Egan | N/A | N/A | N/A |
| < $20 million | Leah Borello | N/A | N/A | N/A |
| < $500,000 | Rick Bruns | N/A | N/A | N/A |
| < $500,000 | Brandon Egan | N/A | N/A | N/A |
| < $500,000 | Pat Higgins | N/A | N/A | N/A |
| < $500,000 | Pepe Fernandez | N/A | N/A | N/A |
| < $500,000 | Jeremy Samuels | N/A | N/A | N/A |
| < $500,000 | John Kaiser | N/A | N/A | N/A |
| < $500,000 | Sarah Koehl | N/A | N/A | N/A |
| < $500,000 | Fred Brown | N/A | N/A | N/A |
| < $500,000 | Rob McAuley | N/A | N/A | N/A |
| < $500,000 | Umar Abbas | N/A | N/A | N/A |

| Leases (Real, Personal) | | | | |
|---|---|---|---|---|
| Container Division, Mill Division | | | | |
| **Type of Contact** | **Persons Authorized to Sign** | **Payroll Dept** | **Location** | **Reports to** |
| Cost of lease > $5 million | Roger Stone | CEO | Corporate Northbrook | Corporate CEO-CFO Office |
| Cost of lease > $5 million | Matt Kaplan | CEO | Corporate Northbrook | Corporate CEO-CFO Office |
| Cost of lease < $5 million | Andrea Tarbox | CFO | Corporate Northbrook | Corporate Northbrook |
| Cost of lease < $5 million | Mike Murphy | Asitrade | Spanish Fork | Spanish Fork |
| Master Lease Agreements | Andrea Tarbox | CFO | Corporate Northbrook | Corporate Northbrook |
| Master Lease Agreements | Mike Murphy | Asitrade | Spanish Fork | Spanish Fork |
| Master Equipment Lease Schedule < $5 million | Eric Choltco | Procurement | Longview Mill | Mill Headquarters |

| Victory Packaging | | | | |
|---|---|---|---|---|
| **Type of Contact** | **Persons Authorized to Sign** | **Payroll Dept** | **Location** | **Reports to** |
| Cost of lease > $5 million | Roger Stone | CEO | Corporate Northbrook | Corporate CEO-CFO Office |
| Cost of lease > $5 million | Matt Kaplan | CEO | Corporate Northbrook | Corporate CEO-CFO Office |
| Cost of lease < $5 million | Andrea Tarbox | CFO | Corporate Northbrook | Corporate Northbrook |
| Cost of lease < $5 million | Mike Murphy | Asitrade | Spanish Fork | Spanish Fork |

| Procurement Contracts, Purchase Orders, Statements of Work, Consulting Contracts | | | | |
|---|---|---|---|---|
| Corporate | | | | |
| **Type of Contact** | **Persons Authorized to Sign** | **Payroll Dept** | **Location** | **Reports to** |
| ≥ $10 million | Roger Stone | CEO | Corporate Northbrook | Corporate CEO-CFO Office |
| ≥ $10 million | Matt Kaplan | CEO | Corporate Northbrook | Corporate CEO-CFO Office |
| < $10 million | Andrea Tarbox | CFO | Corporate Northbrook | Corporate Northbrook |
| < $10 million | Kathryn Ingraham | Legal | Corporate Northbrook | Corporate Northbrook |
| < $10 million | Michael Murphy | Asitrade | Spanish Fork | Spanish Fork |
| < $100,000 and ≤ 1 year | Colin Connor | Internal Audit | Corporate Northbrook | Corporate Northbrook |
| < $100,000 and ≤ 1 year | Christophe Deslandes | N/A | N/A | N/A |
| < $100,000 and ≤ 1 year | Patra Hadley | CFO | Corporate Northbrook | Corporate Northbrook |
| < $100,000 and ≤ 1 year | Jeff Huckestein | Mill HQ Admin | Longview Mill | Mill Headquarters |
| < $100,000 and ≤ 1 year | Kelly Hulseman | CFO | Corporate Northbrook | Corporate Northbrook |
| < $100,000 and ≤ 1 year | Therese Lowry | Human Resources | Corporate Northbrook | Corporate Northbrook |
| < $100,000 and ≤ 1 year | Mark Niehus | Corporate Controller | Corporate Northbrook | Corporate Northbrook |
| < $100,000 and ≤ 1 year | Rick Zimmerman | IT Admin | Corporate Northbrook | Corporate Northbrook |

| Victory Packaging | | | | |
|---|---|---|---|---|
| **Type of Contact** | **Persons Authorized to Sign** | **Payroll Dept** | **Location** | **Reports to** |
| ≥ $20 million | Roger Stone | CEO | Corporate Northbrook | Corporate CEO-CFO Office |
| ≥ $20 million | Matt Kaplan | CEO | Corporate Northbrook | Corporate CEO-CFO Office |
| < $20 million | Ben Samuels | N/A | N/A | N/A |
| < $20 million | Bob Egan | N/A | N/A | N/A |
| < $20 million | Leah Borello | N/A | N/A | N/A |
| < $500,000 | Rick Bruns | N/A | N/A | N/A |
| < $500,000 | Brandon Egan | N/A | N/A | N/A |
| < $500,000 | Sarah Koehl | N/A | N/A | N/A |

Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al.
Summary of Legal Contract Review and Signing Authority Policy[a],[b]

| | | | | |
|---|---|---|---|---|
| < $500,000 | Pat Higgins | N/A | N/A | N/A |
| < $500,000 | Pepe Fernandez | N/A | N/A | N/A |
| < $500,000 | Jeremy Samuels | N/A | N/A | N/A |
| < $500,000 | Fred Brown | N/A | N/A | N/A |
| < $500,000 | Rob McAuley | N/A | N/A | N/A |
| < $500,000 | Umar Abbas | N/A | N/A | N/A |
| < $500,000 | John Kaiser | N/A | N/A | N/A |

| Merger, Acquisition, Divestiture | | | | |
|---|---|---|---|---|
| **Type of Contact** | **Persons Authorized to Sign** | **Payroll Dept** | **Location** | **Reports to** |
| Merger, Acquisition, Divestiture | Roger Stone | CEO | Corporate Northbrook | Corporate CEO-CFO Office |
| Merger, Acquisition, Divestiture | Matt Kaplan | CEO | Corporate Northbrook | Corporate CEO-CFO Office |

| Treasury Related Contracts | | | | |
|---|---|---|---|---|
| **Type of Contact** | **Persons Authorized to Sign** | **Payroll Dept** | **Location** | **Reports to** |
| Credit Agreements, Security Agreements, Guaranties, Insurance Policies, Loans | Andrea Tarbox | CFO | Corporate Northbrook | Corporate Northbrook |

| Procurement Contracts, Purchase Orders, Statements of Work, Consulting Contracts | | | | |
|---|---|---|---|---|
| Container Division, Mill Division | | | | |
| **Type of Contact** | **Persons Authorized to Sign** | **Payroll Dept** | **Location** | **Reports to** |
| Rail | Randy Nebel | Mill HQ Admin | Longview | Mill Headquarters |
| | | | | |
| Ocean - Master Agreement | | | | |
| **Type of Contact** | **Persons Authorized to Sign** | **Payroll Dept** | **Location** | **Reports to** |
| > $5 million | Randy Nebel | Mill HQ Admin | Longview | Mill Headquarters |
| > $5 million | Bruce Hoffman | Mill HQ Admin | Charleston | Mill Headquarters |
| > $5 million | Steve Sydow | Mill HQ Admin | Charleston | Mill Headquarters |
| Schedule or Amendment to Master Agreement | Steve Sydow | Mill HQ Admin | Charleston | Mill Headquarters |
| Motor Carrier, Broker | Steve Sydow | Mill HQ Admin | Charleston | Mill Headquarters |
| Motor Carrier, Broker | Mark Favre | Admin - General | Corporate Northbrook | Corporate Container |
| Motor Carrier, Broker | Kirk Matchey | Admin - General | Twin Cities | Corporate Container |
| Motor Carrier, Broker | Matt Peerboom | Admin - General | Longview Box | Corporate Container |
| Warehouse Services (Mill) | Steve Sydow | Mill HQ Admin | Charleston | Mill Headquarters |
| Warehouse Services (Converter Plants) | Kirk Matchey | Admin - General | Twin Cities | Corporate Container |
| Warehouse Services (Converter Plants) | Mark Favre | Admin - General | Corporate Northbrook | Corporate Container |
| Warehouse Services (Converter Plants) | Matt Peerboom | Admin - General | Longview Box | Corporate Container |

| Environmental Permit Applications | | | | |
|---|---|---|---|---|
| **Type of Contact** | **Persons Authorized to Sign** | **Payroll Dept** | **Location** | **Reports to** |
| Environmental Permit Applications | Jeff Yoder | Manufacturing Office | Charleston | Charleston |
| Environmental Permit Applications | Duane Mummert | N/A | N/A | N/A |
| Environmental Permit Applications | Donnie Bigham | Plant Burden | Summerville | Summerville |
| Environmental Permit Applications | Michael Knudson | Environmental Services | Roanoke Rapids | Roanoke Rapids |
| Environmental Permit Applications | Jack Gillen | Admin - Safety | Statewide Indiana | Corporate Container |

| Wood Procurement, Land Management | | | | |
|---|---|---|---|---|
| Master Wood Purchase and Service Agreement | | | | |
| **Type of Contact** | **Persons Authorized to Sign** | **Payroll Dept** | **Location** | **Reports to** |
| ≤ 3 years | Dave West | N/A | N/A | N/A |
| ≤ 3 years | Bernard Rose Forester | Fiber Supply | Roanoke Rapids | Roanoke Rapids |
| ≤ 3 years | Jeff Marthaller | N/A | N/A | N/A |
| ≤ 3 years | Mike Chodnicki | N/A | N/A | N/A |
| | | | | |
| Addendums and Purchase Orders to Master | | | | |
| **Type of Contact** | **Persons Authorized to Sign** | **Payroll Dept** | **Location** | **Reports to** |
| ≤ 3 years (Roanoke) | Bernard Rose Forester | Fiber Supply | Roanoke Rapids | Roanoke Rapids |
| ≤ 3 years (Longview) | Jeff Marthaller | N/A | N/A | N/A |

Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al.
Summary of Legal Contract Review and Signing Authority Policy[a],[b]

| Sale of Timber Products | | | | |
|---|---|---|---|---|
| Type of Contact | Persons Authorized to Sign | Payroll Dept | Location | Reports to |
| > 3 years | Jeff Yoder | Manufacturing Office | Charleston | Charleston |
| > 3 years | Bill Kessinger | Mill Operations General | Roanoke Rapids | Roanoke Rapids |
| > 3 years | David West | N/A | N/A | N/A |
| > 3 years | Bernard Rose Forester | Fiber Supply | Roanoke Rapids | Roanoke Rapids |
| ≤ 3 years | Jeff Marthaller | N/A | N/A | N/A |
| | | | | |
| Stumpage purchase contracts and bids – Longview | | | | |
| Type of Contact | Persons Authorized to Sign | Payroll Dept | Location | Reports to |
| Stumpage purchase contracts and bids | Randy Nebel | Mill HQ Admin | Longview | Mill Headquarters |
| Stumpage purchase contracts and bids | David West | N/A | N/A | N/A |
| Stumpage purchase contracts and bids | Jeff Marthaller | N/A | N/A | N/A |
| Stumpage purchase contracts and bids | Kathy Troupe | Fiber Supply | Longview Mill | Longview Mill |
| | | | | |
| Recycled Fiber - Purchases | | | | |
| Type of Contact | Persons Authorized to Sign | Payroll Dept | Location | Reports to |
| Recycled Fiber - Purchases | Randy Nebel | Mill HQ Admin | Longview | Mill Headquarters |
| Recycled Fiber - Purchases | David West | N/A | N/A | N/A |
| Recycled Fiber - Purchases | Jan Cleiland | Fiber Supply | Longview Mill | Longview Mill |
| | | | | |
| Recycled Fiber – Sales | | | | |
| Type of Contact | Persons Authorized to Sign | Payroll Dept | Location | Reports to |
| Recycled Fiber – Sales | Randy Nebel | Mill HQ Admin | Longview | Mill Headquarters |
| Recycled Fiber – Sales | David Van Swol | Admin Finance | Corporate Northbrook | Corporate Container |
| Recycled Fiber – Sales | Jan Cleiland | Fiber Supply | Longview Mill | Longview Mill |
| Sale and Surplus Equipment | | | | |
| Type of Contact | Persons Authorized to Sign | Payroll Dept | Location | Reports to |
| ≥ $500,000 (Mills) | Randy Nebel | Mill HQ Admin | Longview | Mill Headquarters |
| ≥ $500,000 (Converting Plants) | Tim Keneally | Admin - General | Corporate Northbrook | Corporate Container |
| < $100,000 and < $500,000 (Mills) | Pat Ortiz | Mill HQ Admin | Longview Mill | Mill Headquarters |
| < $100,000 and < $500,000 (Converting Plants) | David Van Swol | Admin Finance | Corporate Northbrook | Corporate Container |
| < $100,000 | Eric Choltco | Procurement | Longview Mill | Mill Headquarters |

| Employee-related Contracts | | | | |
|---|---|---|---|---|
| Type of Contact | Persons Authorized to Sign | Payroll Dept | Location | Reports to |
| Employee-related Contracts | Andrea Tarbox | CFO | Corporate Northbrook | Corporate Northbrook |
| Employee-related Contracts | Matt Kaplan | CEO | Corporate Northbrook | Corporate CEO-CFO Office |

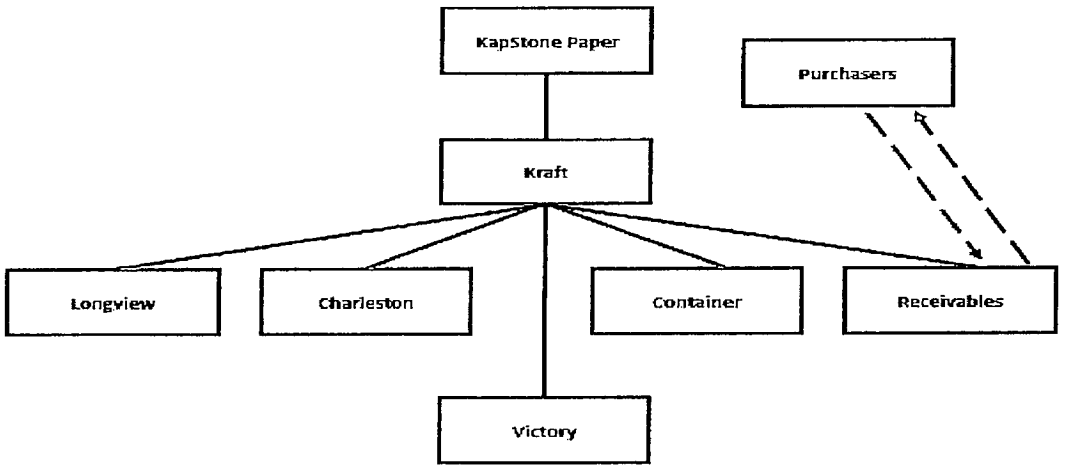
Sources:

[A] KapStone Paper and Packaging Corporation and its subsidiaries Legal Contract Review and Signing Authority Policy, revised November 2, 2015 [KAPSTONE - 001969-1979

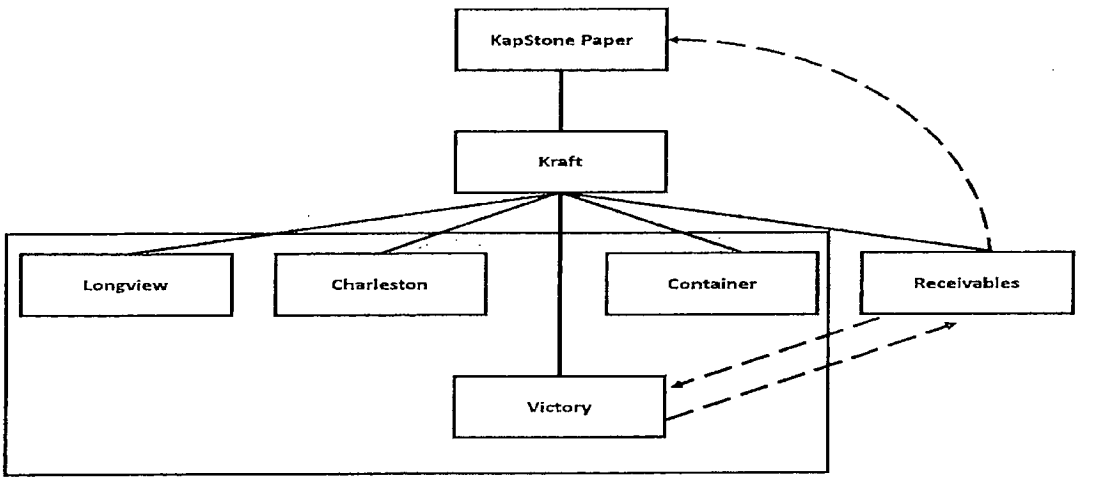
[B] Active Employee Job List, effective May 24, 2016 [KAPSTONE - 002596-2650]

Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al.
Receivables Purchase Agreement and Receivables Sale Agreement Structure - Intercompany Transfers[a]

Receivables Purchase Agreement[1]




Receivables Sale Agreement[2]




Notes:

[1] Each Purchaser purchases its "Percentage" of the accounts receivable offered from time to time, up to the "Facility Limit" in the aggregate.

[2] Each of the "Originators" sells 100 percent of its accounts receivable to Receivables in exchange for cash and/or a promissory note in the amount of 99 percent of the face value of the accounts receivables sold. Receivables pays purchase price for the accounts receivable purchased to KapStone Paper for the benefit of the Originators. If cash is insufficient to pay, then the balance of the Originator's promissory note increases.

Source:

[a] Kapstone Paper and Packaging Corp. Receivables Securitization Transaction Structure Chart [KAPSTONE-000358-362]

Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, et al.
Example KapStone Policies and Procedures

| Corporate Policies and Procedures | | | | |
|---|---|---|---|---|
| **Accounting Controls** | | | | |
| Bates No. (Source) | Description | Purpose | Applies to | Issued By |
| KAPSTONE-001889-001892 | Credit Policy | Managing credit limits and payment terms for KapStone's customers. | All product sales and affects any KapStone employee/agent responsible for the sale, contract approval, order acceptance, scheduling and shipment of a product. | Corporate Controller |
| KAPSTONE-001893-001896 | Collection Policy | Managing KapStone's collections and determining uncollectible accounts. | All product sales and affects any KapStone employee/agent responsible for the sale, contract approval, order acceptance, scheduling and shipment of a product. | The title page refers to "KapStone Paper and Packaging Corporation" |
| KAPSTONE-001943-001944 | Financial Derivatives Policy | Requirements on: (1) using financial derivatives to manage KapStone's business risk; and (2) compliance with ASC 815. | Any KapStone employee/agent responsible for financial derivatives. | The title page refers to "KapStone Paper and Packaging Corporation" |
| KAPSTONE-001945-001946 | Investment Policy | Investing KapStone's excess cash. | Any KapStone employee/agent responsible for cash management. | The title page refers to "KapStone Paper and Packaging Corporation" |
| KAPSTONE-001994-001996 | Financial Accounting and Approval of Lease Policy | Securing and recording leases for KapStone and/or its subsidiary[ies]. | Any KapStone employee/agent responsible for the procurement, review, approval and accounting of leases. | The title page refers to "KapStone Paper and Packaging Corporation" |
| **Employee Conduct** | | | | |
| Bates No. | Description | Purpose | Applies to | Issued/ Approved/ Adopted by |
| KAPSTONE-000414-000427 | Employee Handbook | Includes Anti-Bribery Policy, Code of Conduct, Corporate Governance guidelines. | Officers, employees, agents, or other intermediaries acting on KapStone's behalf. | Issued by KapStone Paper and Packaging Corporation, Office of the General Counsel. |
| KAPSTONE-002082-002094 | Code of Conduct and Ethics | Business practices and procedures. | All directors, officers and employees of the Company. | Approved by Audit Committee and Nominating and Governance Committee. |
| KAPSTONE-002095 | Roles and Responsibilities | Corporate governing guidelines for the Board, Chairman, CEO and management. | KapStone's Board of Directors, Committee members. | Adopted by KapStone's Board of Directors. |
| **Employee Benefits** | | | | |
| Bates No. | Description | Purpose | Application | Issued By |
| KAPSTONE-000149-000192 | Benefits Overview | Description of the health and welfare benefits. | KapStone Paper and Packaging salaried and non-bargained hourly employees. | The "KapStone" logo is displayed on each page of the presentation. KapStone Benefit Center is listed as the contact. |
| KAPSTONE-000322-000327 | Insurance Policy | Workers Compensation, Employers Liability Insurance. | KapStone Paper, KapStone Kraft, KapStone Receivables, KapStone Charleston, KapStone Container, Longview Fibre Paper & Packaging, and any subsidiary, corporation, JV, partnership, LLC or entity owned/operated/managed or financially controlled by any of the above. | Sentry Casualty Company, KapStone Paper and Packaging Corporation (Insured Name). |
| KAPSTONE-000997-001004 | Group Health & Welfare Plan | Description of the health and welfare benefits. | Charleston Union Employees | KapStone Paper and Packaging Corporation / KapStone Benefit Center |
| KAPSTONE-001117-1143 | Benefit Retirement Plan | Description of available benefit plans, eligibility, enrollment. | Charleston Bargained Employees (title page); "Current employees of KapStone" (page 3) | KapStone Paper and Packaging Corporation |
| KAPTSONE-001144-001151 | 401(k) Plan | Summary plan description of retirement options, eligibility, enrollment. | Charleston Union Employees | KapStone Paper and Packaging Corporation |
| **IT** | | | | |
| Bates No. | Description | Purpose | Application | Issued By |
| KAPSTONE-001997-2081 | IT Policies Portfolio | Management of user accounts. | All KapStone Paper and Packaging, and subsidiaries, employees | KapStone Paper and Packaging Corporation |
| KAPSTONE-001921-001923 | Computer Software Policy | Account for the costs of internal-use computer software. | All units of the Company | Corporate Accounting |
| **Physical Inventory** | | | | |
| Bates No. | Description | Purpose | Application | Issued By |
| KAPSTONE-001902-001909 | Storeroom Assets Policy | Procedures to account for and verify Storeroom Assets. | All Mills of the Company | Corporate Controller |
| KAPSTONE-001901 | Liquor Inventory Policy | GAAP-compliant procedures for liquid inventory. | Charleston and Roanoke Rapids paper mills | Corporate Controller |
| KAPSTONE-001899 | Cycle Counts and Physical Inventories Policy | Procedures for annual verification of physical inventories. | All Mills of the Company | Corporate Controller |

# EXHIBIT "B"

## Kristina McDonald

**From:** Kala Sellers
**Sent:** Wednesday, September 25, 2019 9:04 AM
**To:** Kristina McDonald
**Subject:** FW: Lester appendix materials

-----Original Message-----
From: Richard Willis [mailto:Richard.Willis@bowmanandbrooke.com]
Sent: Thursday, September 12, 2019 5:58 PM
To: Kyle Findley <KFindley@Arnoldltkin.com>; Kala Sellers <ksellers@arnolditkin.com>; Reece Williams <ReeceWilliams@callisontighe.com>; landuggan@callisontighe.com
Cc: Derek Tarver <Derek.Tarver@bowmanandbrooke.com>; Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
Subject: Lester appendix materials

Kyle, tried to reach you by cell.

On the Lester Appendix documents, we have drilled down into this, and it turns out that we were mistaken. I appears that we sent you guys the footnote materials twice.

The 6/4/19 accellion link that we thought was the appendix has expired, but in checking with other counsel, no one else has the appendix either. So it has to be our error.

You got the appendix materials at his depo - on the thumb drive we provided.

Our mistake. Embarrassing, etc. We owe you guys an apology. You were correct.

We are of course willing to provide Lester for additional questioning on these materials at our expense, if you want this.

Let us know when we can pick up his working file if you have had a chance to go through it.

Best,

Dick Willis
8035538585

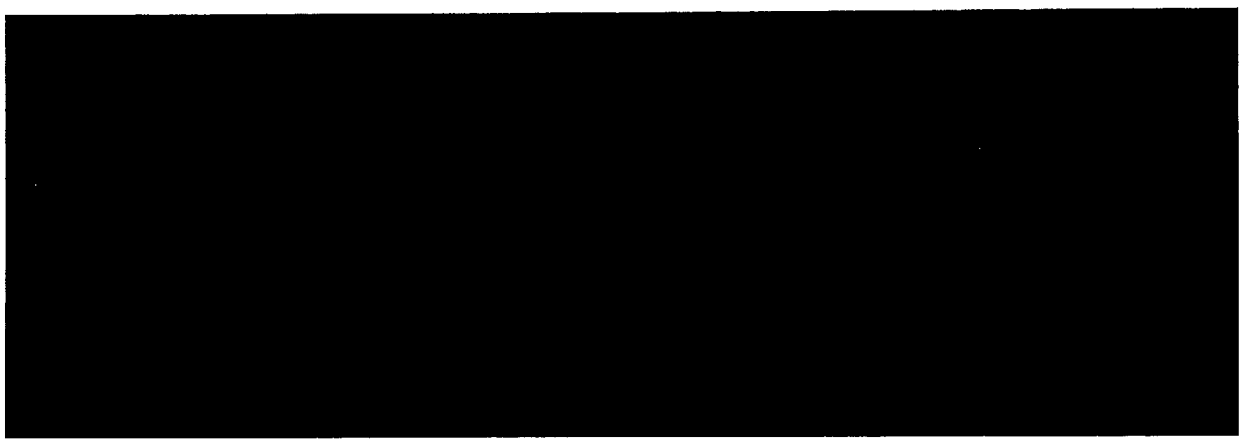
Sent from my iPhone

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delete both the message and reply. Thank you.

# EXHIBIT "C"



**Lester, Todd**

**From:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Sent:** Tuesday, September 4, 2018 12:33 PM
**To:** Lester, Todd
**Cc:** Booker, Samantha
**Subject:** RE: FTI-Bowman-KapStone Letter of Engagement - LUCAS v KS

Good afternoon –

I actually have that on my calendar for today. I needed to make sure I had everything together for your review. I will be sending shortly!

Thank you for following-up.

**Sara M. Rothell**
Bowman and Brooke LLP
Direct: 1.803.726.7429




**From:** Lester, Todd <Todd.Lester@fticonsulting.com>
**Sent:** Tuesday, September 04, 2018 1:32 PM
**To:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Cc:** Booker, Samantha <Samantha.Booker@fticonsulting.com>
**Subject:** RE: FTI-Bowman-KapStone Letter of Engagement - LUCAS v KS

Hi Sara,

After your email last week I assumed some information on this matter would be forthcoming. However, I have yet to receive anything. I just wanted to make sure you hadn't sent something already.

Thanks.

**Todd K. Lester**
Senior Managing Director
*Dispute Advisory Services*

713.353.5420 T | 512.893.1100 M
todd.lester@fticonsulting.com

**From:** Sara Rothell [mailto:Sara.Rothell@bowmanandbrooke.com]
**Sent:** Wednesday, August 29, 2018 2:56 PM
**To:** Lester, Todd
**Cc:** Booker, Samantha
**Subject:** RE: FTI-Bowman-KapStone Letter of Engagement - LUCAS v KS

Perfect. I look forward to working with you both!

**Sara M. Rothell**
Bowman and Brooke LLP
Direct: 1.803.726.7429

**From:** Lester, Todd <Todd.Lester@fticonsulting.com>
**Sent:** Wednesday, August 29, 2018 3:51 PM

**To:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Cc:** Booker, Samantha <Samantha.Booker@fticonsulting.com>
**Subject:** RE: FTI-Bowman-KapStone Letter of Engagement - LUCAS v KS

Thanks Sara,

Please cc my assistant, Samantha Booker. I have added her to this email exchange.

**Todd K. Lester**
Senior Managing Director
*Dispute Advisory Services*

713.353.5420 T | 512.893.1100 M
todd.lester@fticonsulting.com

**From:** Sara Rothell [mailto:Sara.Rothell@bowmanandbrooke.com]
**Sent:** Wednesday, August 29, 2018 2:39 PM
**To:** Lester, Todd
**Subject:** FW: FTI-Bowman-KapStone Letter of Engagement - LUCAS v KS

Good afternoon,

Richard Willis has asked for me to send some case materials in the Lucas matter for your review. I wanted to give you a heads up that I will be sending those via our "safe file transfer" system. Would you like for me to cc an assistant or any other individual so they can access the documents as well?

Just let me know and I will get those to you shortly.

Thanks in advance!

**Sara M. Rothell**
Bowman and Brooke LLP
Direct: 1.803.726.7429

**From:** Sara Rothell
**Sent:** Friday, August 17, 2018 3:49 PM
**To:** 'Lester, Todd' <Todd.Lester@fticonsulting.com>
**Cc:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>; Richard Willis <Richard.Willis@bowmanandbrooke.com>
**Subject:** RE: FTI-Bowman-KapStone Letter of Engagement

Good afternoon,

Attached please find the executed retention letter in the Lucas matter for your file.

Please let me know if you need anything further.

Sincerely,

**Sara M. Rothell**
Bowman and Brooke LLP
Direct: 1.803.726.7429

**From:** Lester, Todd <Todd.Lester@fticonsulting.com>
**Sent:** Thursday, August 16, 2018 6:50 PM
**To:** Richard Willis <Richard.Willis@bowmanandbrooke.com>

**Cc:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>; Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Subject:** RE: FTI-Bowman-KapStone Letter of Engagement

Richard,

See attached with the edit related to the indemnification provision. I also slightly modified the second paragraph to address the potential for expert testimony in this matter.

Please let me know if you have any other questions. I look forward to working with you and your associates on this matter.

Regards,

**Todd K. Lester**
Senior Managing Director
*Dispute Advisory Services*

713.353.5420 T | 512.893.1100 M
todd.lester@fticonsulting.com

**From:** Richard Willis [mailto:Richard.Willis@bowmanandbrooke.com]
**Sent:** Tuesday, August 14, 2018 6:36 PM
**To:** Lester, Todd
**Cc:** Sara Rothell; Derek Tarver
**Subject:** RE: FTI-Bowman-KapStone Letter of Engagement

Todd, one additional request from KapStone re: the engagement letter.

Page 5 of standard T&Cs – both Sentry and KS balked at indemnity sentence – beginning "the client shall indemnify..." – we typically don't agree to that either, but I can't imagine a circumstance with this narrow assignment where that might come up.

Please delete that sentence and resend the engagement letter and we will get you going on this.

Yes, need an estimate on the asset search. Let me get you what we have so you won't have to start from scratch.

**Richard H. Willis**
Bowman and Brooke LLP
Direct: 1.803.726.7433

**From:** Lester, Todd <Todd.Lester@fticonsulting.com>
**Sent:** Tuesday, August 14, 2018 5:29 PM
**To:** Richard Willis <Richard.Willis@bowmanandbrooke.com>
**Subject:** RE: FTI-Bowman-KapStone Letter of Engagement

Dick,

Just following up on this matter. We also discussed another asset tracing related matter that I told you we would be happy to do some preliminary work on.

Let me know if you would like to discuss.

Regards,

**Todd K. Lester**
Senior Managing Director
*Dispute Advisory Services*

713.353.5420 T | 512.893.1100 M
todd.lester@fticonsulting.com

**From:** Lester, Todd
**Sent:** Thursday, July 19, 2018 3:50 PM
**To:** Richard Willis
**Subject:** FTI-Bowman-KapStone Letter of Engagement

Dick,

Please find the attached engagement letter that I have signed. I made the requested changes including the adjustment to the referenced paragraph in the Standard Terms and Conditions. Let me know if you have any other question or concerns. I look forward to your execution of the letter of engagement and getting started on this matter.

Regards,

**Todd K. Lester**
Senior Managing Director
Energy, Power and Products Group

512.256.8098 T | 512.893.1100 M
todd.lester@fticonsulting.com

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## Lester, Todd

**From:** sara.rothell@bowmanandbrooke.com
**Sent:** Tuesday, September 4, 2018 2:00 PM
**To:** Lester, Todd
**Cc:** Booker, Samantha
**Subject:** Lucas v Kapstone et al

**You have received 1 secure file from sara.rothell@bowmanandbrooke.com.**
Use the secure link below to download.

---

Good afternoon,

Below please find a link to the materials for your review. If you have any questions or concerns, please do not hestiate to let me know.

**Instructions for downloading documents:

Please click on the link and enter your e-mail address. (If you have used this site previously please enter your password from the previous time.) If this is your first time using Accellion, please enter your e-mail address and the site will then send you a verification link. Once you have clicked the verification link, please create a password of your choosing, and you will be able to access and download the documents.

Sincerely,

Sara Rothell
Paralegal

### Secure File Downloads:
Available until: **11 September 2018**

Click link to download:

2018-09-04 Review Materials.zip
709.57 MB

You have received attachment link(s) within this email sent via the Bowman and Brooke Secure File Service. To retrieve the attachment(s), please click on the link(s).

Secure email by Accellion

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## Lester, Todd

**From:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Sent:** Tuesday, December 4, 2018 10:42 AM
**To:** Lester, Todd
**Subject:** RE: Lucas; Touching Base

Todd,

Thanks for your quick response. Let's aim for 2 p.m., CST (3 p.m. EST), if that still suits you. Should I call your line directly, or would you prefer a dial-in?

**Derek D. Tarver**
Bowman and Brooke LLP
Direct: 1.803.726.7471

**From:** Lester, Todd <Todd.Lester@fticonsulting.com>
**Sent:** Tuesday, December 4, 2018 11:01 AM
**To:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Subject:** RE: Lucas; Touching Base

Derek,

I am available this afternoon at 2:00 or 3:00 CST. Please let me know if one of those times works for you or if there is alternate time you would like to propose.

Regards,

**Todd K. Lester**
Senior Managing Director
*Dispute Advisory Services*

713.353.5420 T | 512.893.1100 M
todd.lester@fticonsulting.com

**From:** Derek Tarver [mailto:Derek.Tarver@bowmanandbrooke.com]
**Sent:** Tuesday, December 04, 2018 9:41 AM
**To:** Lester, Todd
**Subject:** Lucas; Touching Base

Todd,

Hope you're well and ready for the upcoming holidays. I'm writing to touch base regarding the *Lucas* matter. If you have time for a quick call today, we'd like to schedule a day or two during the next three weeks where we can get you here to Columbia to discuss your report on the integration of the KapStone entities. Please let me know if and when you're available for a call to discuss.

Best,

**Derek D. Tarver**
Associate
Direct: 1.803.726.7471 | Email: Derek.Tarver@bowmanandbrooke.com

**Bowman and Brooke** LLP

1441 Main Street, Suite 1200 | Columbia, SC 29201-2897

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**Lester, Todd**

**From:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Sent:** Tuesday, December 4, 2018 9:41 AM
**To:** Lester, Todd
**Subject:** Lucas; Touching Base

**Follow Up Flag:** Follow up
**Flag Status:** Completed

Todd,

Hope you're well and ready for the upcoming holidays. I'm writing to touch base regarding the *Lucas* matter. If you have time for a quick call today, we'd like to schedule a day or two during the next three weeks where we can get you here to Columbia to discuss your report on the integration of the KapStone entities. Please let me know if and when you're available for a call to discuss.

Best,

**Derek D. Tarver**
Associate
Direct: 1.803.726.7471 | Email: Derek.Tarver@bowmanandbrooke.com

**Bowman and Brooke** LLP

1441 Main Street, Suite 1200 | Columbia, SC 29201-2897

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**Lester, Todd**

**From:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Sent:** Friday, December 28, 2018 9:56 AM
**To:** Lester, Todd
**Cc:** Richard Willis
**Subject:** Lucas; Report Status

Hi Todd,

I hope you and your family had a great holiday, and happy birthday to you, as well.

I'm writing to check on the status of the report we discussed in our last couple of phone calls, regarding the Lucas matter. When you have a minute, please let us know how the report is coming along and when we should expect to see a draft.

Thanks,

**Derek D. Tarver**
Associate
Direct: 1.803.726.7471 | Email: Derek.Tarver@bowmanandbrooke.com

***Bowman and Brooke*** LLP

1441 Main Street, Suite 1200 | Columbia, SC 29201-2897

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**Lester, Todd**

**From:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Sent:** Friday, August 23, 2019 9:16 AM
**To:** Lester, Todd
**Subject:** [EXTERNAL] Lucas; Deposition dates

Todd,

Just a heads up – Plaintiffs' counsel has informed us that he may be able to depose you on 8/30, but has requested us to hold 8/30 and 9/4. He claims he'll confirm the date today.

**Derek D. Tarver**
Associate
Direct: 1.803.726.7471 | Email: Derek.Tarver@bowmanandbrooke.com

***Bowman and Brooke*** LLP

1441 Main Street, Suite 1200 | Columbia, SC 29201-2897

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**Lester, Todd**

**From:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Sent:** Friday, August 23, 2019 9:26 AM
**To:** Lester, Todd
**Subject:** [EXTERNAL] RE: Lucas; Deposition dates

Thanks for being accommodating. I'm sorry for the late notice.

**Derek D. Tarver**
Bowman and Brooke LLP
Direct: 1.803.726.7471

**From:** Lester, Todd <Todd.Lester@fticonsulting.com>
**Sent:** Friday, August 23, 2019 10:24 AM
**To:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Subject:** RE: Lucas; Deposition dates

Ok. Let me know. My preference is still 9/4 as I had not originally been holding 8/30. I can make it work but that will significantly change my week next week.

**From:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Sent:** Friday, August 23, 2019 9:16 AM
**To:** Lester, Todd <Todd.Lester@fticonsulting.com>
**Subject:** [EXTERNAL] Lucas; Deposition dates

Todd,

Just a heads up – Plaintiffs' counsel has informed us that he may be able to depose you on 8/30, but has requested us to hold 8/30 and 9/4. He claims he'll confirm the date today.

**Derek D. Tarver**
Associate
Direct: 1.803.726.7471 | Email: Derek.Tarver@bowmanandbrooke.com

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**Lester, Todd**

**From:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Sent:** Monday, August 26, 2019 10:19 AM
**To:** Lester, Todd
**Cc:** Sara Rothell
**Subject:** [EXTERNAL] Lucas; Deposition Prep

Todd,

Hope you're well. Touching base on the deposition prep set to go forward this week.

(1) I've reached out to Plaintiffs' counsel – no word on date of deposition. Sorry we can't get him to answer more quickly. I'll keep you posted on that. Still aiming for 8/30 or 9/4.

(2) Sara is packing up prep materials to ship to your offices. Is the following address correct?

Todd Lester
FTI Consulting
1301 McKinney St Suite 3500,
Houston, TX 77010

**Derek D. Tarver**
Associate
Direct: 1.803.726.7471 | Email: Derek.Tarver@bowmanandbrooke.com

**Bowman and Brooke** LLP

1441 Main Street, Suite 1200 | Columbia, SC 29201-2897

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**Lester, Todd**

**From:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Sent:** Wednesday, September 4, 2019 11:32 AM
**To:** Cramer, Nicole
**Cc:** Lester, Todd
**Subject:** [EXTERNAL] Lucas; flight delayed

Todd,

Just a head's up, our flight got delayed by half an hour. We will be about half an hour late to your office. I'll let you know when we land.

Derek

Get Outlook for iOS

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| | |
|---|---|
| **From:** | Heene, Nora |
| **To:** | richard.willis@bowmanandbrooke.com |
| **Cc:** | Derek.Tarver@bowmanandbrooke.com; Lester, Todd |
| **Subject:** | FTI Invoice 7501370 - Lucas v. KapStone Paper and Packaging Corporation |
| **Date:** | Friday, June 14, 2019 9:13:46 AM |
| **Attachments:** | Invoice_7501370_009143.0052_Lucas v. KapStone_Bowman_FTI.pdf |

Good morning Mr. Willis:

On behalf of Todd Lester, attached please find the above-referenced invoice for services rendered from January 1, 2019 through April 30, 2019.

Should you have any questions, please do not hesitate to contact our office.

Kind Regards,

Nora Heene

**Nora Heene**

**FTI Consulting**
713.353.5430 T | 713.806.2251 M
nora.heene@fticonsulting.com

1301 McKinney, Suite 3500
Houston, TX 77010
www.fticonsulting.com

**From:** Derek Tarver
**To:** Lester, Todd; Cramer, Nicole
**Cc:** Sara Rothell
**Subject:** [EXTERNAL] Scheduling a call
**Date:** Wednesday, May 1, 2019 4:09:43 PM

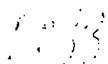
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Hi Todd,

Hope things are going well. Do you have time for a call tomorrow? If so, let me know a couple of times that work for you and I'll try to get it set up on everyone's schedule.

Thanks.

**Derek D. Tarver**
Associate
Direct: 1.803.726.7471 | Email: Derek.Tarver@bowmanandbrooke.com



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**From:** Lester, Todd
**To:** Derek Tarver; Cramer, Nicole
**Cc:** Sara Rothell
**Subject:** RE: Scheduling a call
**Date:** Wednesday, May 1, 2019 4:26:05 PM

---

I am at a conference tomorrow morning but can step out if necessary. Otherwise, I plan to be back in my office around 2:30 EST.

**From:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Sent:** Wednesday, May 1, 2019 4:10 PM
**To:** Lester, Todd <Todd.Lester@fticonsulting.com>; Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Cc:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** [EXTERNAL] Scheduling a call

Hi Todd,

Hope things are going well. Do you have time for a call tomorrow? If so, let me know a couple of times that work for you and I'll try to get it set up on everyone's schedule.

Thanks.

**Derek D. Tarver**
Associate
Direct: 1.803.726.7471 | Email: Derek.Tarver@bowmanandbrooke.com

**Bowman and Brooke**
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| | |
|---|---|
| **From:** | Derek Tarver |
| **To:** | Lester, Todd; Cramer, Nicole |
| **Cc:** | Sara Rothell |
| **Subject:** | [EXTERNAL] RE: Scheduling a call |
| **Date:** | Wednesday, May 1, 2019 4:27:22 PM |

Let's aim for 3:00 pm, if that's okay with you.

**Derek D. Tarver**
Bowman and Brooke LLP
Direct: 1.803.726.7471

**From:** Lester, Todd <Todd.Lester@fticonsulting.com>
**Sent:** Wednesday, May 1, 2019 5:26 PM
**To:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>; Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Cc:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** RE: Scheduling a call

I am at a conference tomorrow morning but can step out if necessary. Otherwise, I plan to be back in my office around 2:30 EST.

**From:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Sent:** Wednesday, May 1, 2019 4:10 PM
**To:** Lester, Todd <Todd.Lester@fticonsulting.com>; Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Cc:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** [EXTERNAL] Scheduling a call

Hi Todd,

Hope things are going well. Do you have time for a call tomorrow? If so, let me know a couple of times that work for you and I'll try to get it set up on everyone's schedule.

Thanks.

**Derek D. Tarver**
Associate
Direct: 1.803.726.7471 | Email: Derek.Tarver@bowmanandbrooke.com

**Bowman and Brooke** LLP
1441 Main Street, Suite 1200 | Columbia, SC 29201-2897

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**From:** Lester, Todd
**To:** Derek Tarver; Cramer, Nicole
**Cc:** Sara Rothell
**Subject:** RE: Scheduling a call
**Date:** Wednesday, May 1, 2019 4:27:59 PM

---

Ok.

**From:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Sent:** Wednesday, May 1, 2019 4:27 PM
**To:** Lester, Todd <Todd.Lester@fticonsulting.com>; Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Cc:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** [EXTERNAL] RE: Scheduling a call

Let's aim for 3:00 pm, if that's okay with you.

**Derek D. Tarver**
Bowman and Brooke LLP
Direct: 1.803.726.7471

**From:** Lester, Todd <Todd.Lester@fticonsulting.com>
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**To:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>; Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Cc:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** RE: Scheduling a call

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**To:** Lester, Todd <Todd.Lester@fticonsulting.com>; Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Cc:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** [EXTERNAL] Scheduling a call

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Direct: 1.803.726.7471 | Email: Derek.Tarver@bowmanandbrooke.com

Bowman and Brooke LLP
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**From:** Derek Tarver
**To:** Lester, Todd; Cramer, Nicole
**Cc:** Sara Rothell; Kim Rothrock
**Subject:** [EXTERNAL] RE: Scheduling a call
**Date:** Wednesday, May 1, 2019 4:51:11 PM

---

Great. We'll send out an invite tonight.

**Derek D. Tarver**
Bowman and Brooke LLP
Direct: 1.803.726.7471

**From:** Lester, Todd <Todd.Lester@fticonsulting.com>
**Sent:** Wednesday, May 1, 2019 5:28 PM
**To:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>; Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Cc:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** RE: Scheduling a call

Ok.

**From:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Sent:** Wednesday, May 1, 2019 4:27 PM
**To:** Lester, Todd <Todd.Lester@fticonsulting.com>; Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Cc:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** [EXTERNAL] RE: Scheduling a call

Let's aim for 3:00 pm, if that's okay with you.

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Bowman and Brooke LLP
Direct: 1.803.726.7471

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**To:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>; Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
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**Subject:** RE: Scheduling a call

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**From:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Sent:** Wednesday, May 1, 2019 4:10 PM

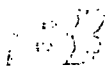
**To:** Lester, Todd <Todd.Lester@fticonsulting.com>; Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Cc:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** [EXTERNAL] Scheduling a call

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**From:** Lester, Todd
**To:** Derek Tarver; Cramer, Nicole
**Cc:** Sara Rothell; Kim Rothrock
**Subject:** RE: Scheduling a call
**Date:** Wednesday, May 1, 2019 4:53:14 PM

---

Thanks

**From:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Sent:** Wednesday, May 1, 2019 4:51 PM
**To:** Lester, Todd <Todd.Lester@fticonsulting.com>; Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Cc:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>; Kim Rothrock <Kim.Rothrock@bowmanandbrooke.com>
**Subject:** [EXTERNAL] RE: Scheduling a call

Great. We'll send out an invite tonight.

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Bowman and Brooke LLP
Direct: 1.803.726.7471

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**Cc:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** RE: Scheduling a call

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**Cc:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** [EXTERNAL] RE: Scheduling a call

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**Derek D. Tarver**
Bowman and Brooke LLP
Direct: 1.803.726.7471

**From:** Lester, Todd <Todd.Lester@fticonsulting.com>
**Sent:** Wednesday, May 1, 2019 5:26 PM

**To:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>; Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Cc:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** RE: Scheduling a call

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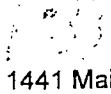
**From:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Sent:** Wednesday, May 1, 2019 4:10 PM
**To:** Lester, Todd <Todd.Lester@fticonsulting.com>; Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Cc:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** [EXTERNAL] Scheduling a call

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Thanks.

**Derek D. Tarver**
Associate
Direct: 1.803.726.7471 | Email: Derek.Tarver@bowmanandbrooke.com




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**From:** Derek Tarver
**To:** Cramer, Nicole; Lester, Todd
**Cc:** Sara Rothell
**Subject:** [EXTERNAL] RE: Affidavit draft
**Date:** Friday, May 31, 2019 8:29:52 AM

---

Thanks, Nicole. I appreciate y'all's help and expediency on all this. We will be submitting this today.

Enjoy your weekend!

**Derek D. Tarver**
Bowman and Brooke LLP
Direct: 1.803.726.7471

**From:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Sent:** Thursday, May 30, 2019 5:35 PM
**To:** Lester, Todd <Todd.Lester@fticonsulting.com>; Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Cc:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** RE: Affidavit draft

Derek,

Attached please find Todd's Expert Report, incorporating the edits we discussed. If you have any questions, please do not hesitate to ask.

Thanks,
Nicole

Nicole Cramer
Dispute Advisory Services

**FTI Consulting**
713.353.5453 direct
713.353 5456 fax
Nicole.Cramer@fticonsulting.com

**From:** Lester, Todd
**Sent:** Thursday, May 30, 2019 2:42 PM
**To:** Derek Tarver <Derek.Tarver@bowmanandbrooke.com>
**Cc:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>; Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** RE: Affidavit draft

Derek,

Please find my Affidavit and Expert Report attached as discussed. Let me know if you have any questions or would like to discuss.

Best regards,

**Todd K. Lester**

Senior Managing Director
Forensic & Litigation Consulting

713.353.5420 (Houston) | 512.256.8098 (Austin)
todd.lester@fticonsulting.com




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**From:** Sara Rothell
**To:** Cramer, Nicole
**Subject:** [EXTERNAL] RE: Lucas v KapStone et al. - Proposed Deposition Dates
**Date:** Friday, May 31, 2019 11:08:18 AM

---

Thank you! Is there anyway you can organize by the heading he has? So like Legal Filings: then those materials? You don't have to do all his bullets separately but just an idea!

Thank you!

**Sara M. Rothell**
Bowman and Brooke LLP
Direct: 1.803.726.7429

**From:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Sent:** Friday, May 31, 2019 12:02 PM
**To:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** RE: Lucas v KapStone et al. - Proposed Deposition Dates

Hi Sara,

With regard to the Documents Considered, Todd is OK with me sending them. I am going to do some quick organization on my end and will send them early afternoon if that's OK. I'm still waiting to hear back on deposition dates.

Thanks!
Nicole

**Nicole Cramer**
Dispute Advisory Services

**FTI Consulting**
713.353.5453 direct
713 353.5456 fax
Nicole.Cramer@fticonsulting.com

**From:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Sent:** Friday, May 31, 2019 10:30 AM
**To:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Subject:** [EXTERNAL] RE: Lucas v KapStone et al. - Proposed Deposition Dates

Thank you -- definitely appreciate it.

**Sara M. Rothell**
Bowman and Brooke LLP
Direct: 1.803.726.7429

**From:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>

**Sent:** Friday, May 31, 2019 11:29 AM
**To:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** RE: Lucas v KapStone et al. - Proposed Deposition Dates

Absolutely. I apologize for the delay on my end – Todd is out of the office today, but I left him a voicemail and emailed him. I will keep you updated.

Thanks!
Nicole

Nicole Cramer
Dispute Advisory Services

**FTI Consulting**
713.353.5453 direct
713.353.5456 fax
Nicole.Cramer@fticonsulting.com

**From:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Sent:** Friday, May 31, 2019 10:28 AM
**To:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Subject:** [EXTERNAL] Lucas v KapStone et al. - Proposed Deposition Dates

Hey Nicole,

I know we just spoke on the phone but I have one other follow-up task regarding the Lucas matter. Could you get me some dates within the next two weeks that Mr. Lester would be available for a possible deposition?

Maybe 6/5 – 6/17? We would travel to Houston for prep and deposition to make it more convenient.

Thank you in advance,

**Sara M. Rothell**
Paralegal
Direct: 1.803.726.7429 | Email: Sara.Rothell@bowmanandbrooke.com

**Bowman and Brooke** LLP
1441 Main Street, Suite 1200 | Columbia, SC 29201-2897

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**From:** Sara Rothell
**To:** Cramer, Nicole
**Subject:** [EXTERNAL] RE: Lucas v KapStone et al. - Proposed Deposition Dates
**Date:** Friday, May 31, 2019 11:14:16 AM

---

That is perfect. I have my case assistant already pulling the bates documents so we have a head start on that anyway! This would be great.

Thank you so much Nicole!

**Sara M. Rothell**
Bowman and Brooke LLP
Direct: 1.803.726.7429

**From:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Sent:** Friday, May 31, 2019 12:10 PM
**To:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** RE: Lucas v KapStone et al. - Proposed Deposition Dates

Yes, no problem. Todd asked if we can do the bulk of the documents today and add a supplemental early next week (to include the Bates production, etc).

Nicole Cramer
Dispute Advisory Services

**FTI Consulting**
713.353 5453 direct
713 353 5456 fax
Nicole.Cramer@fticonsulting.com

**From:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Sent:** Friday, May 31, 2019 11:08 AM
**To:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Subject:** [EXTERNAL] RE: Lucas v KapStone et al. - Proposed Deposition Dates

Thank you! Is there anyway you can organize by the heading he has? So like Legal Filings: then those materials? You don't have to do all his bullets separately but just an idea!

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**Sara M. Rothell**
Bowman and Brooke LLP
Direct: 1.803.726.7429

**From:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Sent:** Friday, May 31, 2019 12:02 PM
**To:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** RE: Lucas v KapStone et al. - Proposed Deposition Dates

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Thanks!
Nicole

Nicole Cramer
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713.353 5453 direct
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Nicole.Cramer@fticonsulting.com

**From:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Sent:** Friday, May 31, 2019 10:30 AM
**To:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Subject:** [EXTERNAL] RE: Lucas v KapStone et al. - Proposed Deposition Dates

Thank you – definitely appreciate it.

**Sara M. Rothell**
Bowman and Brooke LLP
Direct: 1.803.726.7429

**From:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Sent:** Friday, May 31, 2019 11:29 AM
**To:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** RE: Lucas v KapStone et al. - Proposed Deposition Dates

Absolutely. I apologize for the delay on my end – Todd is out of the office today, but I left him a voicemail and emailed him. I will keep you updated.

Thanks!
Nicole

Nicole Cramer
Dispute Advisory Services

**FTI Consulting**
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Nicole.Cramer@fticonsulting.com

**From:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Sent:** Friday, May 31, 2019 10:28 AM
**To:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Subject:** [EXTERNAL] Lucas v KapStone et al. - Proposed Deposition Dates

Hey Nicole,

I know we just spoke on the phone but I have one other follow-up task regarding the Lucas matter. Could you get me some dates within the next two weeks that Mr. Lester would be available for a possible deposition?

Maybe 6/5 – 6/17? We would travel to Houston for prep and deposition to make it more convenient.

Thank you in advance,

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Paralegal
Direct: 1.803.726.7429 | Email: Sara.Rothell@bowmanandbrooke.com

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**From:** Sara Rothell
**To:** Cramer, Nicole
**Cc:** Brianna Arnone
**Subject:** RE: [EXTERNAL] RE: Lucas v KapStone et al. - Proposed Deposition Dates
**Date:** Friday, May 31, 2019 12:58:36 PM

---

Great – thank you so much!

**Sara M. Rothell**
Bowman and Brooke LLP
Direct: 1.803.726.7429

**From:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Sent:** Friday, May 31, 2019 1:58 PM
**To:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Cc:** Brianna Arnone <Brianna.Arnone@bowmanandbrooke.com>
**Subject:** Re: [EXTERNAL] RE: Lucas v KapStone et al. - Proposed Deposition Dates

Yes, no problem. We have initiated the FTP process with IT and I hope to have this completed in the next hour.

Thanks!
Nicole

On May 31, 2019, at 12:55 PM, Sara Rothell <Sara.Rothell@bowmanandbrooke.com> wrote:

> Nicole – when you send over the materials would you please include Brianna Arnone (cc'ed to this email). She will be helping with this project while I am out of the office early next week.
>
> Thank you.
>
> **Sara M. Rothell**
> Bowman and Brooke LLP
> Direct: 1.803.726.7429
>
> **From:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
> **Sent:** Friday, May 31, 2019 12:10 PM
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> **Subject:** RE: Lucas v KapStone et al. - Proposed Deposition Dates
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> Yes, no problem. Todd asked if we can do the bulk of the documents today and add a supplemental early next week (to include the Bates production, etc).
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> Nicole Cramer
> Dispute Advisory Services
>
> FTI Consulting

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**From:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Sent:** Friday, May 31, 2019 11:29 AM
**To:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** RE: Lucas v KapStone et al. - Proposed Deposition Dates

Absolutely. I apologize for the delay on my end – Todd is out of the office today, but I left him a voicemail and emailed him. I will keep you updated.

Thanks!
Nicole

Nicole Cramer
Dispute Advisory Services

**FTI Consulting**
713.353.5453 direct
713.353.5456 fax
Nicole.Cramer@fticonsulting.com

**From:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Sent:** Friday, May 31, 2019 10:28 AM
**To:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Subject:** [EXTERNAL] Lucas v KapStone et al. - Proposed Deposition Dates

Hey Nicole,

I know we just spoke on the phone but I have one other follow-up task regarding the Lucas matter. Could you get me some dates within the next two weeks that Mr. Lester would be available for a possible deposition?

Maybe 6/5 – 6/17? We would travel to Houston for prep and deposition to make it more convenient.

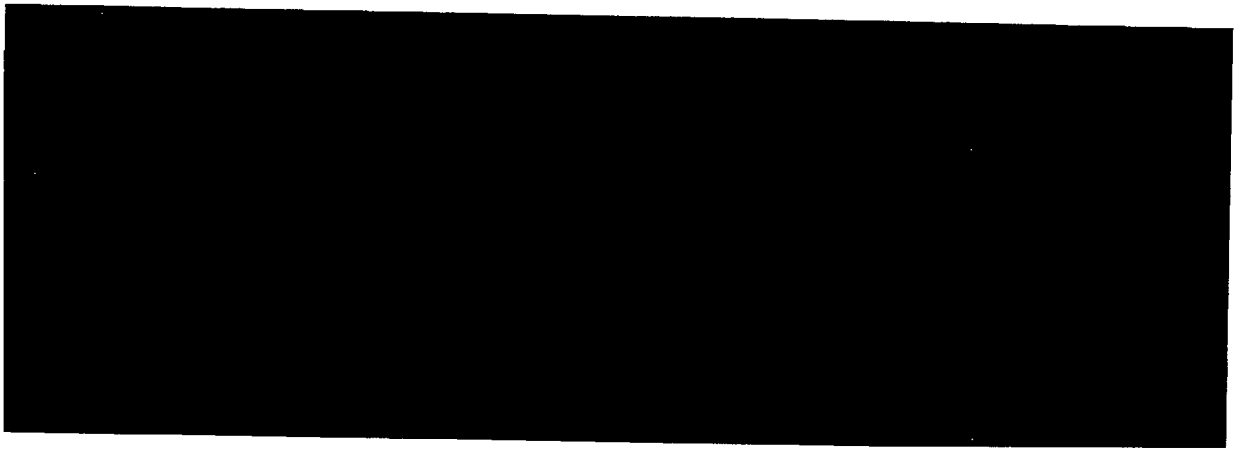
Thank you in advance,

**Sara M. Rothell**
Paralegal
Direct: 1.803.726.7429 | Email: Sara.Rothell@bowmanandbrooke.com

<image001.jpg>
1441 Main Street, Suite 1200 | Columbia, SC 29201-2897

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| | |
|---|---|
| **From:** | Sara Rothell |
| **To:** | Cramer, Nicole |
| **Cc:** | Brianna Arnone |
| **Subject:** | RE: [EXTERNAL] RE: Lucas v KapStone et al. - Proposed Deposition Dates |
| **Date:** | Friday, May 31, 2019 4:04:01 PM |

Nicole – thank you so much, huge help – will you be supplementing anything on Monday?

I will get with Derek and Dick on the below possible deposition dates. I am out of the office Monday – Wednesday but will be checking emails. I may have Brianna work with you some on getting the deposition scheduled!

**Sara M. Rothell**
Bowman and Brooke LLP
Direct: 1.803.726.7429

**From:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Sent:** Friday, May 31, 2019 3:40 PM
**To:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Cc:** Brianna Arnone <Brianna.Arnone@bowmanandbrooke.com>; Lester, Todd <Todd.Lester@fticonsulting.com>
**Subject:** RE: [EXTERNAL] RE: Lucas v KapStone et al. - Proposed Deposition Dates

Hi Sara,

You should be receiving an email providing you access to the documents considered. The link will direct you to set up a password. I have provided read/write access to yourself, Briana Arnone, Dick Willis, Derek Tarver, and Todd Lester.

Regarding the deposition, Todd is fairly flexible the week of the June 10th. He has a deposition scheduled for the week of June 17, and may be able to do the end of next week (i.e., prep on Thursday, June 6, deposition on Friday, June 7).

Thank you for your patience with the file transfer, I apologize for the delay on my end. Should you have any additional questions, do not hesitate to ask.

Thank you!
Nicole

**Nicole Cramer**
Dispute Advisory Services

**FTI Consulting**
713 353.5453 direct
713 353.5456 fax
Nicole.Cramer@fticonsulting.com

**From:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Sent:** Friday, May 31, 2019 12:58 PM
**To:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Cc:** Brianna Arnone <Brianna.Arnone@bowmanandbrooke.com>
**Subject:** RE: [EXTERNAL] RE: Lucas v KapStone et al. - Proposed Deposition Dates

Great – thank you so much!

**Sara M. Rothell**
Bowman and Brooke LLP
Direct: 1.803.726.7429

**From:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Sent:** Friday, May 31, 2019 1:58 PM
**To:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Cc:** Brianna Arnone <Brianna.Arnone@bowmanandbrooke.com>
**Subject:** Re: [EXTERNAL] RE: Lucas v KapStone et al. - Proposed Deposition Dates

Yes, no problem. We have initiated the FTP process with IT and I hope to have this completed in the next hour.

Thanks!
Nicole

On May 31, 2019, at 12:55 PM, Sara Rothell <Sara.Rothell@bowmanandbrooke.com> wrote:

> Nicole – when you send over the materials would you please include Brianna Arnone (cc'ed to this email). She will be helping with this project while I am out of the office early next week.
>
> Thank you.
>
> **Sara M. Rothell**
> Bowman and Brooke LLP
> Direct: 1.803.726.7429
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> **From:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
> **Sent:** Friday, May 31, 2019 12:10 PM
> **To:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
> **Subject:** RE: Lucas v KapStone et al. - Proposed Deposition Dates
>
> Yes, no problem. Todd asked if we can do the bulk of the documents today and add a supplemental early next week (to include the Bates production, etc).
>
> Nicole Cramer
> Dispute Advisory Services

**FTI Consulting**
713 353.5453 direct
713.353.5456 fax
Nicole.Cramer@fticonsulting.com

**From:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Sent:** Friday, May 31, 2019 11:08 AM
**To:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Subject:** [EXTERNAL] RE: Lucas v KapStone et al. - Proposed Deposition Dates

Thank you! Is there anyway you can organize by the heading he has? So like Legal Filings: then those materials? You don't have to do all his bullets separately but just an idea!

Thank you!

**Sara M. Rothell**
Bowman and Brooke LLP
Direct: 1.803.726.7429

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**Subject:** RE: Lucas v KapStone et al. - Proposed Deposition Dates

Hi Sara,

With regard to the Documents Considered, Todd is OK with me sending them. I am going to do some quick organization on my end and will send them early afternoon if that's OK. I'm still waiting to hear back on deposition dates.

Thanks!
Nicole

**Nicole Cramer**
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713 353.5456 fax
Nicole.Cramer@fticonsulting.com

**From:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Sent:** Friday, May 31, 2019 10:30 AM
**To:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Subject:** [EXTERNAL] RE: Lucas v KapStone et al. - Proposed Deposition Dates

Thank you – definitely appreciate it.

**Sara M. Rothell**
Bowman and Brooke LLP
Direct: 1.803.726.7429

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Absolutely. I apologize for the delay on my end – Todd is out of the office today, but I left him a voicemail and emailed him. I will keep you updated.

Thanks!
Nicole

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**Subject:** [EXTERNAL] Lucas v KapStone et al. - Proposed Deposition Dates

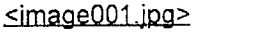
Hey Nicole,

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Maybe 6/5 – 6/17? We would travel to Houston for prep and deposition to make it more convenient.

Thank you in advance,

**Sara M. Rothell**
Paralegal
Direct: 1.803.726.7429 | Email: Sara.Rothell@bowmanandbrooke.com



1441 Main Street, Suite 1200 | Columbia, SC 29201-2897

---

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**From:** Sara Rothell
**To:** Cramer, Nicole
**Cc:** Derek Tarver; Kim Rothrock
**Subject:** [EXTERNAL] Lucas v KapStone - Lester Affidavit
**Date:** Thursday, June 6, 2019 9:24:45 AM

---

Good morning Nicole,

I hope you are doing well. I am officially back in the office!

We just heard from the court that they need Mr. Lester's original affidavit. Is there any way you could overnight FedEx the affidavit to our attention?

Let me know if you have any questions.

Thanks in advance,

**Sara M. Rothell**
Paralegal
Direct: 1.803.726.7429 | Email: Sara.Rothell@bowmanandbrooke.com

**Bowman and Brooke** LLP
1441 Main Street, Suite 1200 | Columbia, SC 29201-2897

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**From:** Sara Rothell
**To:** Cramer, Nicole
**Subject:** RE: [EXTERNAL] RE: Lucas v KapStone et al. - Proposed Deposition Dates
**Date:** Thursday, June 6, 2019 1:00:51 PM

Hey Nicole – do you have any more information for possible deposition dates the week of the tenth or maybe the next week? Before the 21st.

**Sara M. Rothell**
Bowman and Brooke LLP
Direct: 1.803.726.7429

**From:** Cramer, Nicole <Nicole.Cramer@fticonsulting.com>
**Sent:** Friday, May 31, 2019 3:40 PM
**To:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Cc:** Brianna Arnone <Brianna.Arnone@bowmanandbrooke.com>; Lester, Todd <Todd.Lester@fticonsulting.com>
**Subject:** RE: [EXTERNAL] RE: Lucas v KapStone et al. - Proposed Deposition Dates

Hi Sara,

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Regarding the deposition, Todd is fairly flexible the week of the June 10th. He has a deposition scheduled for the week of June 17, and may be able to do the end of next week (i.e., prep on Thursday, June 6, deposition on Friday, June 7).

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Dispute Advisory Services

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Great – thank you so much!

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Direct: 1.803.726.7429

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**Sara M. Rothell**

Bowman and Brooke LLP
Direct: 1.803.726.7429

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Nicole Cramer
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| | |
|---|---|
| **From:** | Lester, Todd |
| **To:** | Richard Willis |
| **Subject:** | FTI-Bowman-KapStone Letter of Engagement |
| **Date:** | Thursday, July 19, 2018 3:50:00 PM |
| **Attachments:** | FTI-Bowman-KapStone-LOE-7-19-18.pdf |

Dick,

Please find the attached engagement letter that I have signed. I made the requested changes including the adjustment to the referenced paragraph in the Standard Terms and Conditions. Let me know if you have any other question or concerns. I look forward to your execution of the letter of engagement and getting started on this matter.

Regards,

**Todd K. Lester**
Senior Managing Director
Energy, Power and Products Group

512.256 8098 T | 512.893.1100 M
todd.lester@fticonsulting.com

| | |
|---|---|
| **From:** | Lester, Todd |
| **To:** | Richard Willis |
| **Cc:** | Sara Rothell; Derek Tarver |
| **Subject:** | RE: FTI-Bowman-KapStone Letter of Engagement |
| **Date:** | Thursday, August 16, 2018 5:50:00 PM |
| **Attachments:** | FTI-Bowman-KapStone-LOE-8-16-18.pdf |

Richard,

See attached with the edit related to the indemnification provision. I also slightly modified the second paragraph to address the potential for expert testimony in this matter.

Please let me know if you have any other questions. I look forward to working with you and your associates on this matter.

Regards,

**Todd K. Lester**
Senior Managing Director
*Dispute Advisory Services*

713.353.5420 T | 512.893.1100 M
todd.lester@fticonsulting.com

---

**From:** Richard Willis [mailto:Richard.Willis@bowmanandbrooke.com]
**Sent:** Tuesday, August 14, 2018 6:36 PM
**To:** Lester, Todd
**Cc:** Sara Rothell; Derek Tarver
**Subject:** RE: FTI-Bowman-KapStone Letter of Engagement

Todd, one additional request from KapStone re: the engagement letter.

Page 5 of standard T&Cs – both Sentry and KS balked at indemnity sentence – beginning "the client shall indemnify..." – we typically don't agree to that either, but I can't imagine a circumstance with this narrow assignment where that might come up.

Please delete that sentence and resend the engagement letter and we will get you going on this.

Yes, need an estimate on the asset search. Let me get you what we have so you won't have to start from scratch.

**Richard H. Willis**
Bowman and Brooke LLP
Direct: 1.803.726.7433

**From:** Lester, Todd <Todd.Lester@fticonsulting.com>
**Sent:** Tuesday, August 14, 2018 5:29 PM
**To:** Richard Willis <Richard.Willis@bowmanandbrooke.com>
**Subject:** RE: FTI-Bowman-KapStone Letter of Engagement

Dick,

Just following up on this matter. We also discussed another asset tracing related matter that I told you we would be happy to do some preliminary work on.

Let me know if you would like to discuss.

Regards,

**Todd K. Lester**
Senior Managing Director
*Dispute Advisory Services*

713.353 5420 T | 512.893.1100 M
todd.lester@fticonsulting.com

---

**From:** Lester, Todd
**Sent:** Thursday, July 19, 2018 3:50 PM
**To:** Richard Willis
**Subject:** FTI-Bowman-KapStone Letter of Engagement

Dick,

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Regards,

**Todd K. Lester**
Senior Managing Director
Energy, Power and Products Group

512.256.8098 T | 512.893.1100 M
todd.lester@fticonsulting.com

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## Lester, Todd

**From:** Lester, Todd
**Sent:** Friday, January 4, 2019 12:48 PM
**To:** Richard Willis
**Subject:** Accepted: Lucas: Conference call with Dick Willis & Todd Lester / 11:30 EST / 10:30 CST

**From:** Lester, Todd
**To:** Ducayet, Jim; Richard Willis; Derek Tarver; Sara Rothell
**Cc:** Kim Rothrock
**Subject:** RE: Lucas: Conference call with Dick Willis, Jim Ducayet & Todd Lester / 11:30 EST / 10:30 CST
**Date:** Thursday, January 10, 2019 8:15:00 AM

---

That is convenient for me

Todd K. Lester
Senior Managing Director
*Dispute Advisory Services*

713.353.5420 T | 512.893.1100 M
todd.lester@fticonsulting.com

**From:** Ducayet, Jim [mailto:jducayet@sidley.com]
**Sent:** Thursday, January 10, 2019 7:42 AM
**To:** Richard Willis; Derek Tarver; Sara Rothell; Lester, Todd
**Cc:** Kim Rothrock
**Subject:** RE: Lucas: Conference call with Dick Willis, Jim Ducayet & Todd Lester / 11:30 EST / 10:30 CST

Any chance we might be able to move our call by a half hour to noon eastern?

JIM DUCAYET

SIDLEY AUSTIN LLP
+1 312 853 7621 (office)
+1 312 315 2908 (mobile)
jducayet@sidley.com

-----Original Appointment-----
**From:** Richard Willis <Richard.Willis@bowmanandbrooke.com>
**Sent:** Monday, January 7, 2019 1:52 PM
**To:** Richard Willis; Derek Tarver; Sara Rothell; 'todd.lester@fticonsulting.com'; Ducayet, Jim
**Cc:** Kim Rothrock
**Subject:** Lucas: Conference call with Dick Willis, Jim Ducayet & Todd Lester / 11:30 EST / 10:30 CST
**When:** Friday, January 11, 2019 11:30 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:**

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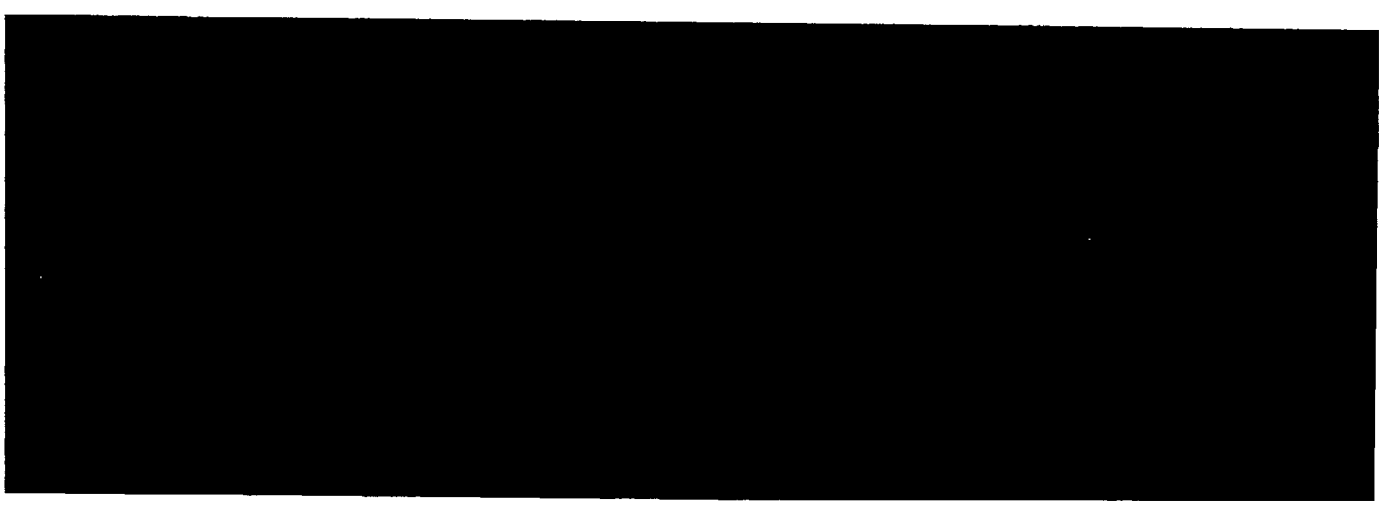
**Todd K. Lester**

*Senior Managing Director*
*Disputes Advisory Services*

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If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.



| | |
|---|---|
| **From:** | Kim.Rothrock@bowmanandbrooke.com on behalf of Richard Willis |
| **To:** | Derek Tarver; Sara Rothell; Lester, Todd; Ducayet, James W. <jducayet@sidley.com> (jducayet@sidley.com) |
| **Cc:** | Kim Rothrock |
| **Subject:** | Lucas: Conference call with Dick Willis, Jim Ducayet & Todd Lester / 11:30 EST / 10:30 CST |
| **Start:** | Friday, January 11, 2019 10:30:00 AM |
| **End:** | Friday, January 11, 2019 11:00:00 AM |

--> Join Skype Meeting <https://meet.lync.com/bowmanandbrooke-com/richard.willis/KJ1D1V0M>

Trouble Joining? Try Skype Web App <https://meet.lync.com/bowmanandbrooke-com/richard.willis/KJ1D1V0M?sl=1>

Join by phone

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|---|---|---|
| Toll-free number: | +1 (844) 601-3985,,7983302# (Dial-in Number) | English (United States) |
| Toll number: | +1 (803) 369-8138,,7983302# (Dial-in Number) | English (United States) |

Find a local number <https://dialin.lync.com/355e2f2a-1a0e-4d9a-9df2-35925420fe6?id=7983302>

Conference ID: 7983302

Forgot your dial-in PIN? <https://mysettings.lync.com/pstnconferencing> |Help <https://support.office.com/en-us/article/Join-a-Skype-for-Business-meeting-3862bef6-758a-4064-a016-67e0febf2ed5?ui=en-US&rs=en-US&ad=US>

For an audio only conference, please dial a phone number and enter the access code. For a full online conference, participants from outside of our firm should use the Try Skype Web App link

[:OC([1033]):]

Todd K. Lester

Senior Managing Director

Dispute Advisory Services

713.353.5420 T; 512.893.1100 M

todd.lester@fticonsulting.com <mailto:todd.lester@fticonsulting.com>

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| | |
|---|---|
| **From:** | Cramer, Nicole |
| **To:** | Richard.Willis@bowmanandbrooke.com |
| **Cc:** | Derek Tarver; Lester, Todd |
| **Subject:** | Invoice for the KapStone Paper and Packaging Corp. Matter |
| **Date:** | Wednesday, January 30, 2019 6:06:17 PM |
| **Attachments:** | Bowman and Brooke Invoice_7501370_009143.0052.pdf |

Good evening Dick,

My name is Nicole Cramer, and I am working with Todd Lester on the KapStone Paper and Packaging Corp matter. Please find enclosed an invoice for the professional services and expense billed for the period between September 20, 2018 and December 31, 2018. The invoice includes an overview of the work performed by FTI. Should you have any questions, please do not hesitate to reach out to Todd or myself.

Thanks,

Nicole Cramer

FTI Consulting
Forensic and Litigation Consulting
713.353.5453 (Office) | 240.672.5203 (Cell)
Nicole.Cramer@FTIConsulting.com

| | |
|---|---|
| **From:** | Heene, Nora |
| **To:** | richard.willis@bowmanandbrooke.com |
| **Cc:** | Derek.Tarver@bowmanandbrooke.com; Lester, Todd |
| **Subject:** | FTI Invoice 7507610 - Lucas v. KapStone Paper and Packaging Corp. |
| **Date:** | Friday, March 29, 2019 2:09:30 PM |
| **Attachments:** | Invoice_7507610_009143.0052_Lucas v KapStone.pdf |

Good afternoon Mr. Willis:

On behalf of Todd Lester, attached please find the above-referenced invoice for services rendered from January 1, 2019 through March 15, 2019.

Should you have any questions, please do not hesitate to contact our office.

Kind Regards,

Nora Heene

**Nora Heene**

**FTI Consulting**
713.353.5430 T | 713.806.2251 M
nora.heene@fticonsulting.com

1301 McKinney, Suite 3500
Houston, TX 77010
www.fticonsulting.com

| | |
|---|---|
| **From:** | Lester, Todd |
| **To:** | Derek Tarver (Derek.Tarver@bowmanandbrooke.com); Kim Rothrock (Kim.Rothrock@bowmanandbrooke.com); Richard Willis (Richard.Willis@bowmanandbrooke.com); Cramer, Nicole |
| **Subject:** | Conference Call - Kapstone |
| **Start:** | Wednesday, April 3, 2019 12:30:00 PM |
| **End:** | Wednesday, April 3, 2019 1:30:00 PM |
| **Location:** | Dial-in: 1-866-398-2885, Guest Passcode: 4413945535 |

| | |
|---|---|
| **From:** | Kim Rothrock on behalf of Richard Willis |
| **To:** | Lester, Todd |
| **Subject:** | Accepted: Conference Call - Kapstone |
| **Start:** | Wednesday, April 3, 2019 12:30:00 PM |
| **End:** | Wednesday, April 3, 2019 1:30:00 PM |
| **Location:** | Dial-in: 1-866-398-2885, Guest Passcode: 4413945535 |

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**From:** Lester, Todd
**To:** Richard Willis (Richard.Willis@bowmanandbrooke.com)
**Cc:** Derek Tarver (Derek.Tarver@bowmanandbrooke.com)
**Subject:** Aged Invoices
**Date:** Friday, July 5, 2019 10:56:00 AM

---

Hi Dick,

I hope you had a great 4th. Would you please check with KapStone again regarding our outstanding invoices. They're getting to a point where my accounting department is going to want to start establishing reserves against them if we don't receive payment soon.

Thanks,

**Todd K. Lester**

Senior Managing Director
Forensic & Litigation Consulting

713.353.5420 (Houston) | 512.256.8098 (Austin)
todd.lester@fticonsulting.com

*Investigations, Forensic Accounting*
FIRM OF THE YEAR 2018
WWL AWARDS

**From:** Richard Willis
**To:** Lester, Todd
**Cc:** Sara Rothell
**Subject:** [EXTERNAL] Re: Aged Invoices
**Date:** Monday, July 8, 2019 7:35:34 AM

---

Todd, thanks. I will check with Sentry and let you know the status. These should have been paid long ago. My apologies.

Sent from my iPhone

On Jul 5, 2019, at 11:58 AM, Lester, Todd <Todd.Lester@fticonsulting.com> wrote:

> Hi Dick,
>
> I hope you had a great 4th. Would you please check with KapStone again regarding our outstanding invoices. They're getting to a point where my accounting department is going to want to start establishing reserves against them if we don't receive payment soon.
>
> Thanks,
>
> **Todd K. Lester**
> Senior Managing Director
> Forensic & Litigation Consulting
>
> 713.353.5420 (Houston) | 512.256.8098 (Austin)
> todd.lester@fticonsulting.com
>
> <image001.jpg>
>
> **Confidentiality Notice:**
> This email and any attachments may be confidential and protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the e-mail or any attachment is prohibited. If you have received this email in error, please notify us immediately by replying to the sender and then delete this copy and the reply from your system. Thank you for your cooperation.

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| | |
|---|---|
| **From:** | Lester, Todd |
| **To:** | Richard Willis |
| **Cc:** | Sara Rothell |
| **Subject:** | RE: Aged Invoices |
| **Date:** | Wednesday, July 10, 2019 7:48:00 AM |

Thanks Dick

**From:** Richard Willis <Richard.Willis@bowmanandbrooke.com>
**Sent:** Monday, July 8, 2019 7:35 AM
**To:** Lester, Todd <Todd.Lester@fticonsulting.com>
**Cc:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
**Subject:** [EXTERNAL] Re: Aged Invoices

Todd, thanks. I will check with Sentry and let you know the status. These should have been paid long ago. My apologies.

Sent from my iPhone

On Jul 5, 2019, at 11:58 AM, Lester, Todd <Todd.Lester@fticonsulting.com> wrote:

> Hi Dick,
>
> I hope you had a great 4th. Would you please check with KapStone again regarding our outstanding invoices. They're getting to a point where my accounting department is going to want to start establishing reserves against them if we don't receive payment soon.
>
> Thanks,
>
> **Todd K. Lester**
> Senior Managing Director
> Forensic & Litigation Consulting
>
> 713.353.5420 (Houston) | 512.256.8098 (Austin)
> todd.lester@fticonsulting.com
>
> <image001.jpg>

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---

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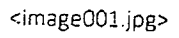
| | |
|---|---|
| **From:** | Richard Willis |
| **To:** | Lester, Todd |
| **Cc:** | Sara Rothell |
| **Subject:** | [EXTERNAL] Re: Aged Invoices Update |
| **Date:** | Monday, July 22, 2019 1:26:26 PM |

I expect both you and us to be paid by Sentry this month.

Sent from my iPhone

On Jul 10, 2019, at 8:48 AM, Lester, Todd <Todd.Lester@fticonsulting.com> wrote:

> Thanks Dick
>
> **From:** Richard Willis <Richard.Willis@bowmanandbrooke.com>
> **Sent:** Monday, July 8, 2019 7:35 AM
> **To:** Lester, Todd <Todd.Lester@fticonsulting.com>
> **Cc:** Sara Rothell <Sara.Rothell@bowmanandbrooke.com>
> **Subject:** [EXTERNAL] Re: Aged Invoices
>
> Todd, thanks. I will check with Sentry and let you know the status. These should have been paid long ago. My apologies.
>
> Sent from my iPhone
>
> On Jul 5, 2019, at 11:58 AM, Lester, Todd <Todd.Lester@fticonsulting.com> wrote:
>
> > Hi Dick,
> >
> > I hope you had a great 4th. Would you please check with KapStone again regarding our outstanding invoices. They're getting to a point where my accounting department is going to want to start establishing reserves against them if we don't receive payment soon.
> >
> > Thanks,
> >
> > **Todd K. Lester**
> >
> > Senior Managing Director
> > Forensic & Litigation Consulting
> >
> > 713.353.5420 (Houston) | 512.256.8098 (Austin)
> > todd.lester@fticonsulting.com



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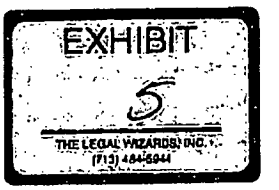
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# EXHIBIT "D"

FTI CONSULTING

Todd K. Lester
FTI Consulting, Inc.
1301 McKinney Street | Suite 3500
Houston, Texas 77010
(713) 353-5420

*Forensic & Litigation Consulting*




August 13, 2019

Richard H. Willis, Esq.
Bowman and Brooke LLP
1441 Main Street, Suite 1200
Columbia, South Carolina 29201

Re: *Jacque Lucas, et al. vs. KapStone Paper and Packaging Corporation, et al.*
FTI Job No. 009143.0052

Dear Mr. Willis:

Attached please find FTI Consulting, Inc's ("FTI") invoice for professional services rendered in connection with the above-referenced matter. This invoice covers professional fees for the period May 1, 2019 through July 31, 2019. Also enclosed is a brief description of the work performed during this period and a summary of total hours, professional fees and out-of-pocket expenses incurred by FTI professionals.

We appreciate the opportunity to work with the Bowman and Brooke LLP. Please do not hesitate to call me at (713) 353-5420 with any comments or questions about this invoice.

Sincerely yours,

Todd K. Lester
Senior Managing Director

Enclosures

FTI CONSULTING

*Invoice Summary*

Richard H. Willis, Esq.
Bowman & and Brooke LLP
1441 Main Street, Suite 1200
Columbia, South Carolina 29201

August 13, 2019
FTI Invoice No. 7520335
FTI Job No. 009143.0052
Terms NET 30
FEDERAL I.D. NO. 52-1261113

Re: *Jacque Lucas, et al. vs. KapStone Paper and Packaging Corporation, et al.*

Current Invoice Period: Charges Posted from May 1, 2019 through July 31, 2019

## *PROFESSIONAL SERVICES*

| | | | | | |
|---|---|---|---|---|---|
| 38.80 | Hours at | $575.00 | per hour / | Todd Lester | $22,310.00 |
| 49.80 | Hours at | $375.00 | per hour / | Nicole Cramer | $18,675.00 |
| 0.50 | Hours at | $260.00 | per hour / | Samuel Glass | $130.00 |
| | | | | | $41,115.00 |

**Total Due This Period** **$41,115.00**

## *OUR RECORDS INDICATE THE FOLLOWING INVOICES REMAIN UNPAID*

| Invoice Number | Date | Amount |
|---|---|---|
| 7501370 | January 25, 2019 | $65,403.04 |
| 7507610 | March 29, 2019 | $33,813.50 |
| 7514890 | June 13, 2019 | $37,480.00 |
| | **Total Outstanding Invoices** | $136,696.54 |

| 0 - 30 Days | 31 - 60 Days | 61 - 90 Days | 91 - 120 Days | 121 + Days |
|---|---|---|---|---|
| $0.00 | $37,480.00 | $0.00 | $0.00 | $99,216.54 |

**Total Amount Due**..... **$177,811.54**

FTI CONSULTING

*Invoice Remittance*

Richard H. Willis, Esq.
Bowman and Brooke LLP
1441 Main Street, Suite 1200
Columbia, South Carolina 29201

August 13, 2019
FTI Invoice No. 7520335
FTI Job No. 009143.0052
Terms NET 30
FEDERAL I.D. NO. 52-1261113

Re: *Jacque Lucas, et al. vs. KapStone Paper and Packaging Corporation, et al.*

Current Invoice Period: Charges posted from May 1, 2019 through July 31, 2019

| | |
|---|---|
| Professional Services | $41,115.00 |
| Expenses | $0.00 |
| Total Amount Due this Period | $41,115.00 |
| Previous Balance Due | $136,696.54 |
| **Total Amount Due** | **$177,811.54** |

REMITTANCE

*Please Remit Payment To: FTI Consulting, Inc.*
*P.O. Box 418005*
*Boston, MA 02241-8005*

*Wire Payment To: Bank of America, NA*
*New York, New York 10001*
*Account # 002001801422*
*ABA # 026009593*

*ACH Payments To: Bank of America, NA*
*San Francisco, CA 94109*
*Account # 002001801422*
*ABA # 052001633*

## Description of Work Performed

- Various discussions with Counsel to discuss case status, requested documentation, work performed to date, and additional work to be performed.
- Researched KapStone Paper and Packaging Corporation's ("KapStone Paper") process for securitizing its subsidiaries' accounts receivables pursuant to a Receivables Sale Agreement and a Receivables Purchase Agreement.
- Tracked the business and acquisition history of KapStone Paper by extracting and reviewing information from SEC filings, certificates of incorporation, as well as applications for a certificate of authority. Utilized this information to provide a detailed overview of KapStone Paper's organizational history in the Expert Report.
- Incorporated additional information into the exhibits depicting KapStone Paper's organizational and management structure, shared policies and procedures, and receivables agreements.
- Researched KapStone Paper's Form 8-K's and investor presentations to understand the Company's strategic vision, management structure, day-to-day operations, and corporate initiatives, among other matters. Used this information to develop my understanding on the extent to which KapStone Paper's financial reporting and daily operations were integrated with, or separate and distinct from the KapStone related entities.
- Revised the KapStone Paper Organizational Chart exhibit to incorporate all of KapStone Paper's subsidiaries, and to identify the assets owned by KapStone Kraft Paper Corporation ("KapStone Kraft"), KapStone Charleston Kraft LLC ("KapStone Kraft"), Victory Packaging L.P., KapStone Container Corporation, and Longview Fibre Paper & Packaging, Inc. Created a condensed version of the organizational chart for inclusion in the Expert Report.
- Revised the KapStone Policies and Procedures exhibit to specify the purpose and application of each policy, as well as the division and / or entity that issued the policy. Identified instances in which a policy issued by one KapStone entity was applied to and / or adopted by all KapStone subsidiaries.
- Created a series of pivot tables using data from KapStone Paper's active employee list (as of May 24, 2016) to identify the extent to which managers and employees located at one KapStone entity reported to and provided services to other KapStone entities. Consolidated information into two exhibits to illustrate KapStone personnel: (1) located at the KapStone Charleston mill that reported to the KapStone Paper (Corporate Northbrook) or the Mill Headquarters (KapStone Kraft); and (2) located at KapStone Kraft (Roanoke Rapids) and reporting to KapStone Paper (Corporate Northbrook) or Mill Headquarters.
- Used KapStone's Summary of Legal Contract Review and Signing Authority Policy to identify which employees were authorized to sign contracts on behalf of KapStone for matters related to customer contracts, procurement contracts, consultant contracts, purchase orders and leases, among others. Identified whether contracts related to KapStone Charleston required authorization from personnel at either Corporate Headquarters (KapStone Paper) or Mill Headquarters (KapStone Kraft). Summarized findings in an exhibit to the Expert Report.

- Continued preparation of Mr. Lester's Expert Report including revisions and additions to exhibits referenced in Mr. Lester's report, as well as the list of the documents in his analysis, which was included as an Appendix in the Expert Report.

- Continue providing general support in the drafting of Mr. Lester's Expert Report by researching and summarizing: (1) the applicability of KapStone Paper's Collective Bargaining Agreement and Employee Handbook; (2) common policies and procedures in KapStone Paper's Labor Agreement and Employee Handbook; (3) KapStone Paper's logos and trademarks; and (4) Victory Packaging's relation to KapStone Paper on a tax- and benefit- basis.

- Analysis of employee physical locations and reporting locations across KapStone Paper, KapStone Charleston and KapStone Kraft. Review of KapStone organizational chart.

- Incorporate additions to the KapStone Paper organizational chart to: address the facilities owned and/or operated by KapStone Kraft, KapStone Charleston, Victory Packaging, KapStone Container, and Longview Fibre; identify KapStone Paper's ownership percentage of each of its subsidiaries; and incorporate general formatting changes.

- Quality check all dates, citations, and facts set forth in the Expert Report to ensure accuracy and completion of objectives set forth by Client. Ensure that all citations are sufficiently supported by documentation provided to by Counsel, or by FTI-sourced information.

- Created deposition binders for Mr. Lester, including his expert report, exhibits, appendices, and footnote citations.

- Organize and upload documents for submission to opposing Counsel.

FTI CONSULTING

Todd K. Lester
FTI Consulting, Inc.
1001 Fannin Street | Suite 3950
Houston, Texas 77002
713-353-5420

*Forensic & Litigation Consulting*

January 25, 2019

Richard H. Willis, Esq.
Bowman and Brooke LLP
1441 Main Street, Suite 1200
Columbia, South Carolina 29201

Re: *Jacque Lucas, et al. vs. KapStone Paper and Packaging Corporation, et al.*
FTI Job No. 009143.0052

Dear Mr. Willis:

Attached please find FTI Consulting, Inc's ("FTI") invoice for professional services rendered in connection with the above-referenced matter. This invoice covers professional fees for the period August 16, 2018 through December 31, 2018. Also enclosed is a brief description of the work performed during this period and a summary of total hours, professional fees and out-of-pocket expenses incurred by FTI professionals.

We appreciate the opportunity to work with the Bowman and Brooke LLP. Please do not hesitate to call me at (713) 353-5420 with any comments or questions about this invoice.

Sincerely yours,

Todd K. Lester
Senior Managing Director

Enclosures

FTI CONSULTING

*Invoice Summary*

Richard H. Willis, Esq.
Bowman and Brooke LLP
1441 Main Street, Suite 1200
Columbia, South Carolina 29201

January 25, 2019
FTI Invoice No. 7501370
FTI Job No. 009143.0052
Terms NET 30
FEDERAL I.D. NO. 52-1261113

Re: *Jacque Lucas, et al. vs. KapStone Paper and Packaging Corporation, et al.*

Current Invoice Period: Charges Posted from August 16, 2018 through December 31, 2018.

## *PROFESSIONAL SERVICES*

| | | | | | |
|---|---|---|---|---|---|
| 50.40 | Hours at | $575.00 | per hour / | Todd Lester | $28,980.00 |
| 97.00 | Hours at | $375.00 | per hour / | Nicole Cramer | $36,375.00 |
| | | | | | $65,355.00 |

## *EXPENSES*

| | |
|---|---|
| Postage/Fedex/Courier | $48.04 |
| Total Expenses | $48.04 |

| | |
|---|---|
| **Total Due This Period** | $65,403.04 |

*FTI Consulting, Inc.* *P.O. Box 418005* *Boston, MA 02241-8005*

FTI CONSULTING

*Invoice Remittance*

Richard H. Willis, Esq.
Bowman and Brooke LLP
1441 Main Street, Suite 1200
Columbia, South Carolina 29201

January 25, 2019
FTI Invoice No. 7501370
FTI Job No. 009143.0052
Terms NET 30
FEDERAL I.D. NO. 52-1261113

Re: *Jacque Lucas, et al. vs. KapStone Paper and Packaging Corporation, et al.*

Current Invoice Period: Charges Posted from August 16, 2018, through December 31, 2018.

| | |
|---|---|
| Professional Services | $65,355.00 |
| Expenses | $48.04 |
| Total Amount Due this Period | $65,403.04 |
| Previous Balance Due | $0.00 |
| **Total Amount Due** | **$65,403.04** |

REMITTANCE

*Please Remit Payment To: FTI Consulting, Inc.*
*P.O. Box 418005*
*Boston, MA 02241-8005*

*Wire Payment To: Bank of America, NA*
*New York, New York 10001*
*Account # 002001801422*
*ABA # 026009593*

*ACH Payments To: Bank of America, NA*
*San Francisco, CA 94109*
*Account # 002001801422*
*ABA # 052001633*

## Description of Work Performed

- Various discussions with Counsel to discuss case status, case objectives, available information, work performed to date, and additional work to be performed.
- Review of legal documents pertaining to the proceeding including the Complaint and Amended Complaint, pre-hearing briefs, and motions filed with the court.
- Review, evaluation and assessment of all discoverable documents, direct testimony, and associated exhibits, filed in relation to Affidavits by Kelly Hulseman and Mark Niehus.
- Research, review and analysis of publicly available and subscription-based documents addressing the Defendants': (1) strategic management; (2) accounting practices; (3) financial management; (4) people management; (5) marketing; (6) sales; (7) operations management; and (8) acquisition history.
- Independent research and analysis to evaluate the economic reality of the relationship between KapStone Paper and Packaging Corporation ("KapStone Paper") and two of its subsidiaries, KapStone Kraft Paper Corporation ("KapStone Kraft") and KapStone Charleston Kraft, LLC ("KapStone Charleston") (collectively "KapStone" or "the KapStone related entities"). Utilized research and analysis for purposes of addressing whether the KapStone related entities were operating as separate and distinct corporations or as one economic unit during the relevant period.
- Application of evaluation criteria to identify whether KapStone Paper, KapStone Kraft, and KapStone Charleston operated as a single economic unit. The evaluation metrics included a review of the parties; (1) corporate identity; (2) business purpose and focus; (3) economic integration; (4) management and governance; (5) legal agreements and identity; (6) corporate policies and procedures; and (7) information technology.
- Review of KapStone's bank account structure to determine: (1) the number of KapStone related entities conducting business under the bank account(s); (2) the location and type of bank account(s) used; and (3) whether the bank account(s) were under joint management. Further examination of KapStone's accounting policies and procedures, as well as its contractual agreements providing for a consolidated securitization of accounts receivables from the KapStone related entities. Consideration of this information in identifying the extent to which the KapStone related entities conducted business from a financial, accounting, and/or operational perspective as a single economic unit.
- Produce summaries of KapStone's acquisition timeline, organizational and management structure, shared policies and procedures, and receivables agreements for inclusion as exhibits in the Expert Report.
- Preparation of an Expert Report setting forth Mr. Lester's independent evaluation of KapStone Paper's multi-entity corporate structure during the relevant period.

FTI CONSULTING

Todd K. Lester
FTI Consulting, Inc.
1301 McKinney Street | Suite 3500
Houston, Texas 77010
(713) 353-5420

*Forensic & Litigation Consulting*

March 29, 2019

Richard H. Willis, Esq.
Bowman & and Brooke LLP
1441 Main Street, Suite 1200
Columbia, South Carolina 29201

Re: *Jacque Lucas, et al. vs. KapStone Paper and Packaging Corporation, et al.*
FTI Job No. 009143.0052

Dear Mr. Willis:

Attached please find FTI Consulting, Inc's ("FTI") invoice for professional services rendered in connection with the above-referenced matter. This invoice covers professional fees for the period January 1, 2019 through March 15, 2019. Also enclosed is a brief description of the work performed during this period and a summary of total hours, professional fees and out-of-pocket expenses incurred by FTI professionals.

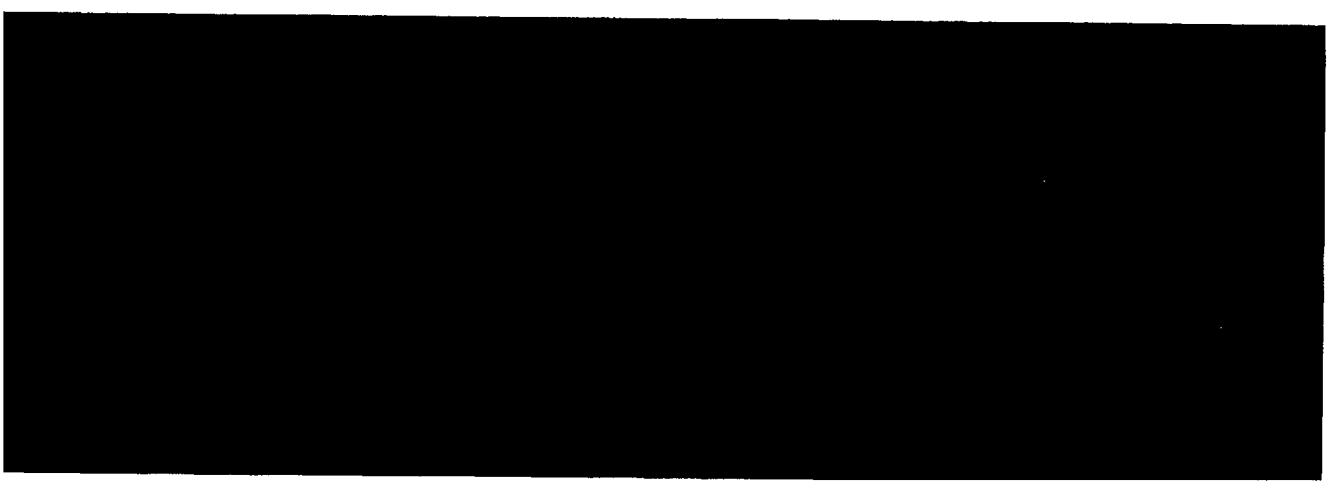
We appreciate the opportunity to work with the Bowman and Brooke LLP. Please do not hesitate to call me at (713) 353-5420 with any comments or questions about this invoice.

Sincerely yours,

Todd K. Lester
Senior Managing Director

Enclosures





FTI CONSULTING

*Invoice Summary*

Richard H. Willis, Esq.
Bowman & and Brooke LLP
1441 Main Street, Suite 1200
Columbia, South Carolina 29201

March 29, 2019
FTI Invoice No. 7507610
FTI Job No. 009143.0052
Terms NET 30
FEDERAL I.D. NO. 52-1261113

Re: Jacque Lucas, et al. vs. KapStone Paper and Packaging Corp.

Current Invoice Period: Charges Posted through March 15, 2019

## *PROFESSIONAL SERVICES*

| | | | | | |
|---|---|---|---|---|---|
| 27.70 | Hours at | $575.00 | per hour / | Todd Lester | $15,927.50 |
| 47.50 | Hours at | $375.00 | per hour / | Nicole Cramer | $17,812.50 |
| | | | | | $33,740.00 |

## *EXPENSES*

| | |
|---|---|
| Online Research – Internet Archives | $25.00 |
| South Carolina Secretary of State Documents re: KapStone Charleston Kraft, LLC | $24.50 |
| South Carolina Secretary of State Documents re: Cogen South, L.L.C. | $18.50 |
| South Carolina Secretary of State Documents re: KapStone Charleston Kraft, LLC | $5.50 |
| Total Expenses | $73.50 |

| | |
|---|---|
| **Total Due This Period** | **$33,813.50** |

## *OUR RECORDS INDICATE THE FOLLOWING INVOICES REMAIN UNPAID*

| Invoice Number | Date | Amount |
|---|---|---|
| 7501370 | January 25, 2019 | $65,403.04 |
| | Total Outstanding Invoices | $65,403.04 |

| 0 - 30 Days | 31 - 60 Days | 61 - 90 Days | 91 - 120 Days | 121 + Days |
|---|---|---|---|---|
| $0.00 | $0.00 | $65,403.04 | $0.00 | $0.00 |

**Total Amount Due**..... **$99,216.54**

FTI CONSULTING

*Invoice Remittance*

Richard H. Willis, Esq.
Bowman & and Brooke LLP
1441 Main Street, Suite 1200
Columbia, South Carolina 29201

March 29, 2019
FTI Invoice No. 7507610
FTI Job No. 009143.0052
Terms NET 30
FEDERAL I.D. NO. 52-1261113

Re: Jacque Lucas, et al. vs. KapStone Paper and Packaging Corp.

Current Invoice Period: Charges Posted through March 15, 2019

| | |
|---|---|
| Professional Services | $33,740.00 |
| Expenses | $73.50 |
| Total Amount Due this Period | $33,813.50 |
| Previous Balance Due | $65,403.04 |
| **Total Amount Due** | $99,216.54 |

REMITTANCE

*Please Remit Payment To: FTI Consulting, Inc.*
*P.O. Box 418005*
*Boston, MA 02241-8005*

*Wire Payment To: Bank of America, NA*
*New York, New York 10001*
*Account # 002001801422*
*ABA # 026009593*

*ACH Payments To: Bank of America, NA*
*San Francisco, CA 94109*
*Account # 002001801422*
*ABA # 052001633*

## Description of Work Performed

- Various discussions with Counsel to discuss case status, requested documentation, work performed to date, and additional work to be performed.
- Researched KapStone Paper and Packaging Corporation's ("KapStone Paper") process for securitizing its subsidiaries' accounts receivables pursuant to a Receivables Sale Agreement and a Receivables Purchase Agreement.
- Tracked the business and acquisition history of KapStone Paper by extracting and reviewing information from SEC filings, certificates of incorporation, as well as applications for a certificate of authority. Utilized this information to provide a detailed overview of KapStone Paper's organizational history in the Expert Report.
- Incorporated additional information into the exhibits depicting KapStone's organizational and management structure, shared policies and procedures, and receivables agreements.
- Composed a list of the documents considered in Mr. Lester's analysis, included as an Appendices in the Expert Report.
- Prepared an Expert Report setting forth Mr. Lester's independent evaluation of KapStone Paper's multi-entity corporate structure during the relevant period.

FTI CONSULTING

*Forensic & Litigation Consulting*

June 13, 2019

Richard H. Willis, Esq.
Bowman & and Brooke LLP
1441 Main Street, Suite 1200
Columbia, South Carolina 29201

Re: *Jacque Lucas, et al. vs. KapStone Paper and Packaging Corporation, et al.*
FTI Job No. 009143.0052

Dear Mr. Willis:

Attached please find FTI Consulting, Inc's ("FTI") invoice for professional services rendered in connection with the above-referenced matter. This invoice covers professional fees for the period January 1, 2019 through April 30, 2019. Also enclosed is a brief description of the work performed during this period and a summary of total hours, professional fees and out-of-pocket expenses incurred by FTI professionals.

We appreciate the opportunity to work with the Bowman and Brooke LLP. Please do not hesitate to call me at (713) 353-5420 with any comments or questions about this invoice.

Sincerely yours,

Todd K. Lester
Senior Managing Director

Enclosures

FTI CONSULTING

*Invoice Summary*

Richard H. Willis, Esq.
Bowman & and Brooke LLP
1441 Main Street, Suite 1200
Columbia, South Carolina 29201

June 13, 2019
FTI Invoice No. 7514890
FTI Job No. 009143.0052
Terms NET 30
FEDERAL I.D. NO. 52-1261113

Re: *Jacque Lucas, et al. vs. KapStone Paper and Packaging Corporation, et al.*

Current Invoice Period: Charges Posted from January 1, 2019 through April 30, 2019

## *PROFESSIONAL SERVICES*

| | | | | | |
|---|---|---|---|---|---|
| 35.90 | Hours at | $575.00 | per hour / | Todd Lester | $20,642.50 |
| 44.90 | Hours at | $375.00 | per hour / | Nicole Cramer | $16,837.50 |
| | | | | | $37,480.00 |

**Total Due This Period** **$37,480.00**

## *OUR RECORDS INDICATE THE FOLLOWING INVOICES REMAIN UNPAID*

| Invoice Number | Date | Amount |
|---|---|---|
| 7501370 | January 25, 2019 | $65,403.04 |
| 7507610 | March 29, 2019 | $33,813.50 |
| | **Total Outstanding Invoices** | $99,216.54 |

| 0 - 30 Days | 31 - 60 Days | 61 - 90 Days | 91 - 120 Days | 121 + Days |
|---|---|---|---|---|
| $0.00 | $33,813.50 | $0.00 | $0.00 | $65,403.04 |

**Total Amount Due..... $136,696.54**

FTI CONSULTING

*Invoice Remittance*

Richard H. Willis, Esq.
Bowman & and Brooke LLP
1441 Main Street, Suite 1200
Columbia, South Carolina 29201

June 13, 2019
FTI Invoice No. 7514890
FTI Job No. 009143.0052
Terms NET 30
FEDERAL I.D. NO. 52-1261113

Re: *Jacque Lucas, et al. vs. KapStone Paper and Packaging Corporation, et al.*

Current Invoice Period: Charges Posted from January 1, 2019 through April 30, 2019

| | |
|---|---|
| Professional Services | $37,480.00 |
| Expenses | $0.00 |
| Total Amount Due this Period | $37,480.00 |
| Previous Balance Due | $99,216.54 |
| **Total Amount Due** | **$136,696.54** |

REMITTANCE

*Please Remit Payment To: FTI Consulting, Inc.*
*P.O. Box 418005*
*Boston, MA 02241-8005*

*Wire Payment To: Bank of America, NA*
*New York, New York 10001*
*Account # 002001801422*
*ABA # 026009593*

*ACH Payments To: Bank of America, NA*
*San Francisco, CA 94109*
*Account # 002001801422*
*ABA # 052001633*

*PROFESSIONAL SERVICES*

- Various discussions with Counsel to discuss case status, requested documentation, work performed to date, and additional work to be performed.
- Researched KapStone Paper and Packaging Corporation's ("KapStone Paper") process for securitizing its subsidiaries' accounts receivables pursuant to a Receivables Sale Agreement and a Receivables Purchase Agreement.
- Tracked the business and acquisition history of KapStone Paper by extracting and reviewing information from SEC filings, certificates of incorporation, as well as applications for a certificate of authority. Utilized this information to provide a detailed overview of KapStone Paper's organizational history in the Expert Report.
- Incorporated additional information into the exhibits depicting KapStone Paper's organizational and management structure, shared policies and procedures, and receivables agreements.
- Researched KapStone Paper's Form 8-K's and investor presentations to understand the Company's strategic vision, management structure, day-to-day operations, and corporate initiatives, among other matters. Used this information to develop my understanding on the extent to which KapStone Paper's financial reporting and daily operations were integrated with, or separate and distinct from the KapStone related entities.
- Revised the KapStone Paper Organizational Chart exhibit to incorporate all of KapStone Paper's subsidiaries, and to identify the assets owned by KapStone Kraft Paper Corporation ("KapStone Kraft"), KapStone Charleston Kraft LLC ("KapStone Kraft"), Victory Packaging L.P., KapStone Container Corporation, and Longview Fibre Paper & Packaging, Inc. Created a condensed version of the organizational chart for inclusion in the Expert Report.
- Revised the KapStone Policies and Procedures exhibit to specify the purpose and application of each policy, as well as the division and / or entity that issued the policy. Identified instances in which a policy issued by one KapStone entity was applied to and / or adopted by all KapStone subsidiaries.
- Created a series of pivot tables using data from KapStone's active employee list (as of May 24, 2016) to identify the extent to which managers and employees located at one KapStone entity reported to and provided services to other KapStone entities. Consolidated information into two exhibits to illustrate KapStone personnel: (1) located at the KapStone Charleston mill that reported to the KapStone Paper (Corporate Northbrook) or the Mill Headquarters (KapStone Kraft); and (2) located at KapStone Kraft (Roanoke Rapids) and reporting to KapStone Paper (Corporate Northbrook) or Mill Headquarters.
- Used KapStone's Summary of Legal Contract Review and Signing Authority Policy to identify which employees were authorized to sign contracts on behalf of KapStone for matters related to customer contracts, procurement contracts, consultant contracts, purchase orders and leases, among others. Identified whether contracts related to KapStone Charleston required authorization from personnel at either Corporate Headquarters (KapStone Paper) or Mill Headquarters (KapStone Kraft). Summarized findings in an exhibit to the Expert Report.

- Continued preparation of Mr. Lester's Expert Report including revisions and additions to exhibits referenced in Mr. Lester's report, as well as the list of the documents in his analysis, which was included as an Appendix in the Expert Report.

# EXHIBIT "E"

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF CHARLESTON<br><br>Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly,<br><br>Plaintiffs,<br><br>vs.<br><br>KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, Safway Group Holdings, LLC, Easy Way Insulation, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc., and Thompson Industrial Services, LLC,<br><br>Defendants. | IN THE COURT OF COMMON PLEAS<br><br>FOR THE NINTH JUDICIAL CIRCUIT<br><br>CIVIL ACTION NO: 2017-CP-10-00838<br><br>**KapStone's Memorandum of Law in Support of the Admissibility of the Affidavit of Todd K. Lester** |

KapStone Paper and Packaging Corporation ("KapStone Paper") and KapStone Kraft Paper Corporation ("KapStone Kraft") (collectively, the "KapStone Defendants") submit this memorandum of law in support of the admissibility of the Affidavit of Todd K. Lester, as an expert witness in accounting, on economic and operational integration between parent corporations and their subsidiaries. To the extent that the facts and opinions set forth in his affidavit and attached report are helpful to the Court's role as fact finder on this issue, his affidavit should be admitted.

## INTRODUCTION

As the Court is aware, Plaintiffs seek recovery against the KapStone Defendants for personal injuries incurred during an accident in the course of their employment with KapStone Charleston, the KapStone Defendants' subsidiary, on May 24, 2016. The KapStone Defendants have filed a Rule 12(b)(1) motion to dismiss, based on the Supreme Court of South Carolina's

holding in *Poch v. Bayshore Concrete Products/South Carolina, Inc.*, that a parent entity which is economically integrated with its subsidiary is treated as a "single entity" for workers' compensation purposes, and is thereby immune to tort claims brought by the subsidiary's employees. *See* 405 S.C. 359, 370-71, 747 S.E.2d 757, 763 (*Poch II*). In *Poch II*, the Supreme Court adopted eight factors to be considered when determining whether a parent and its subsidiary are economically integrated for purposes of workers'-compensation immunity. *See id.*, 405 at 372-73, 747 S.E.2d at 764.

Over the course of this litigation, the KapStone Defendants have authenticated and placed into the record nearly 3,000 pages of financial records and related materials that demonstrate the nature of the economic and operational integration between the KapStone Defendants and KapStone Charleston. Whether this evidence is sufficient to satisfy the *Poch* factors is the question before this Court. Because this evidence is voluminous and relates to potentially complex financial accounting issues, the KapStone Defendants seek to offer into the record the affidavit of an expert economist and financial analyst, Todd K. Lester, pursuant to Rule 702, SCRE, to assist the Court in understanding how these records relate to the *Poch* factors.

## I. An expert affidavit is generally admissible to assist the fact finder's understanding of the evidence

The affidavit of Mr. Lester is intended to assist the Court in navigating the large volume of financial, structural, and operational records submitted in support of the pending Rule 12(b)(1) motion to dismiss, as well as to explain how this evidence demonstrates economic integration between the KapStone Defendants and KapStone Charleston. Mr. Lester's affidavit does not opine as to whether this evidence satisfies the factors set forth in *Poch*, or whether the Court has jurisdiction over this matter. These are legal questions within the purview of the Court.

Expert opinion is generally admissible if the expert's "technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue[.]" Rule 702, SCRE. Further, "[t]estimony in the form of opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Rule 704, SCRE. While an expert's affidavit in support of a dispositive motion may contain opinions on the ultimate issue, it may not contain "legal arguments and conclusions" in an attempt to "inappropriately . . . usurp the trial court's role" in determining the legal issue at hand. *See Dawkins v. Fields*, 354 S.C. 58, 65, 580 S.E.2d 433, 437 (2003) (citing *O'Quinn v. Beach Assocs.* 272 S.C. 95, 106-07, 249 S.E.2d 734, 739-40 (1978)).

While "expert testimony **on issues of law** is inadmissible", *Dawkins*, at 65, 580 S.E.2d at 437 (citing Note, *Expert Legal Testimony*, 97 Harv. L. Rev. 797, 797 (1984) (emphasis in original)), Mr. Lester's affidavit does not express legal opinions or make legal arguments. The question of law in this case is whether the degree of economic and operational integration between the KapStone entities satisfies *Poch*. Mr. Lester does not opine as to this. Rather, his affidavit and report explain how the documents cited in his report demonstrate financial integration, from a financial analyst's perspective. Understanding what these documents are and what they show is beyond the knowledge of a lay person. As such, evidence of this nature falls within the scope of Rule 702, SCRE.

In *Poch I*, the Court of Appeals of South Carolina held that an affidavit submitted by an attorney on the subject of "statutory employer" should not have been considered by the trial court. *See Poch v. Bayshore Concrete Prods./S.C., Inc.*, 386 S.C. 13, 30, 686 S.E.2d 689, 698 (Ct. App. 2009) (*Poch I*). However, they found this to be of no consequence, because the trial court's holding was amply supported by other evidence. *See id.* The expert affidavit in *Poch* was submitted by

"an attorney who attested to the statutory employer status of the corporations" – which was the ultimate legal conclusion.[1] *See Poch II*, 405 S.C. 359, 365 n.2, 747 S.E.2d 757, 760 n.2 (2013). The Court of Appeals, relying on *Dawkins*, held that the affidavit should not have been admitted because it "primarily contained legal arguments and conclusions. . . . [that] addressed the ultimate issue of the case." *Poch I*, at 30, 686 S.E.2d at 698. This holding, like in *Dawkins* and its progeny, is meant to preclude expert opinion only as to legal conclusions, not expert testimony regarding facts underlying the Court's conclusion.

Conversely, in *Vortex Sports & Entertainment, Inc. v. Ware*, the Court of Appeals of South Carolina held that while the existence of a fiduciary duty was a legal conclusion for the court to make, expert testimony as to "specific acts . . . and how those acts constituted a breach of [the] fiduciary duty" was admissible. 378 S.C. 197, 207, 662 S.E.2d 444, 450 (Ct. App. 2008). There, the expert[2] opined as to the defendant's self-dealing and deceptiveness, which he testified amounted to breach of fiduciary duty. *See id.* The Court of Appeals explained this testimony was admissible because the expert "did not make improper legal conclusions or instruction but simply opined regarding acts [the defendant] committed that breached his fiduciary duty." *See id.* at 208, 662 S.E.2d at 450.

The relationship between Mr. Lester's affidavit and the Court's role in weighing the *Poch* factors is analogous to *Vortex Sports*. As in *Vortex Sports*, there are two questions: a factual question and a legal question. The fact question is whether the KapStone entities were financially integrated. The legal question is whether such integration, if shown, satisfies *Poch*. Inarguably,

[1] While the Supreme Court of South Carolina later held that the "statutory employer" test was not the proper approach for purposes of extension of workers' compensation tort immunity between related entities, the KapStone Defendants acknowledge that the primary issue regarding admissibility of the expert affidavit here does not turn on the applicable test, but rather on the substance of the affidavit.

[2] Interestingly, the expert at issue in *Vortex Sports* was also Professor Freeman – the same expert at issue in *Dawkins*.

it is the Court's province to determine whether the KapStone entities' integration satisfies *Poch*. As to the fact question, like the expert in *Vortex Sports*, Mr. Lester's affidavit goes only to whether certain evidence shows such integration, how, and to what degree.

Unlike the expert affidavit in *Poch*, Mr. Lester is neither a lawyer, nor does he opine as to whether the evidence satisfies *Poch*. Mr. Lester's affidavit does not "usurp" the Court's authority to decide whether the KapStone Defendants and KapStone Charleston are essentially one economic entity for the purposes of workers' compensation. While Mr. Lester provides his opinion as a financial analyst as to the nature of the economic and operational integration of the KapStone entities, he does not attempt to argue how the Court should rule. To the extent Mr. Lester's affidavit reflects his expert opinion as a financial analyst based on the evidence the KapStone Defendants have submitted in support of their motion to dismiss, his opinion should be admitted, and given whatever consideration the Court deems appropriate.

## CONCLUSION

The KapStone Defendants respectfully request the Court consider the Affidavit of Todd K. Lester in making its determination. Mr. Lester's affidavit does not advocate any legal conclusions. The affidavit fits within the scope of Rule 702, SCRE, because it is designed to assist the trier of fact to understand the evidence.

Respectfully submitted,

BOWMAN AND BROOKE LLP

By: _____

Richard H. Willis
S.C. Bar No. 6159
Richard.Willis@bowmanandbrooke.com
Derek D. Tarver
S.C. Bar No. 103289
Derek.Tarver@bowmanandbrooke.com
1441 Main Street, Suite 1200
Columbia, SC 29201

Tel.: 803-726-7420
Fax: 803-726-7421

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

June 7, 2019

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FOR THE NINTH JUDICIAL CIRCUIT |
| COUNTY OF CHARLESTON | ) | |
| | ) | CIVIL ACTION #: 2017-CP-10-00838 |
| Jacque Lucas, Shirley Ann Lucas and Daniel Simerly, | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | |
| vs. | ) | |
| | ) | |
| KapStone Paper and Packaging Corporation, KapStone Kraft Paper Corporation, Safway Group Holdings, LLC, Easy Way Insulation Co., Inc., Sypris Technologies, Inc. f/k/a Tube-Turns Technologies, Inc., Thompson Construction Group, Inc. and Thompson Industrial Services, LLC, | ) | |
| | ) | |
| Defendants. | ) | |
| | ) | |

**CERTIFICATE OF SERVICE**

I, the undersigned Legal Secretary of Bowman and Brooke LLP, attorneys for Defendants, KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation, hereby certify that I served all known counsel in this action with a copy of the pleading herein below specified by mailing a copy of the same by U.S. Mail, postage prepaid, to the following:

**Pleadings:** Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation's Memorandum of Law in Support of the Admissibility of the Affidavit of Todd K. Lester

*[Counsel Served and signature block on the following page.]*

**Counsel Served:**

| | |
|---|---|
| Richard C. Detwiler, Esq.<br>D. Reece Williams, III, Esq.<br>Ian Duggan, Esq.<br>Callison Tighe & Robinson, LLC<br>P.O. Box 1390<br>Columbia, SC 29202<br><br>*And*<br><br>Kurt Arnold, Esq.<br>J. Kyle Findley, Esq.<br>Adam Lewis, Esq.<br>Kala Flittner Sellers, Esq.<br>Arnold & Itkin, LLP<br>6009 Memorial Drive<br>Houston, TX 77007<br><br>**Counsel for Plaintiffs** | John H. Tiller, Esq.<br>Haynsworth Sinkler Boyd, PA<br>134 Meeting Street, Third Floor<br>Charleston, SC 29401<br><br>*And*<br><br>Robert M. Caplan, Esq.<br>Brian Gelnett, Esq.<br>White and Williams, LLP<br>1650 Market Street<br>One Liberty Place, Suite 1800<br>Philadelphia, PA 19103-7395<br><br>**Counsel for Sentry Casualty Company** |
| Andrew L. Richardson, Jr., Esq.<br>Sterling G. Davies, Esq.<br>J. Adam Ribock, Esq.<br>McAngus Goudelock & Courie, LLC<br>P.O. Box 12519<br>Columbia, SC 29211-2519<br><br>**Counsel for Defendant, Easy Way Insulation Co., Inc.** | Sonaly Kirkley Hendricks, Esq.<br>Carl Pierce, Esq.<br>Carson Parker, Esq.<br>Pierce, Herns, Sloan & Wilson, LLC<br>P.O. Box 22437<br>Charleston, SC 29401<br><br>**Counsel for Defendants, Thompson Construction Group, Inc. and Thompson Industrial Services, LLC** |
| Duke Raleigh Highfield, Esq.<br>William Sweeny, IV, Esq.<br>Brandt R. Horton, Esq.<br>Victoria L. Anderson, Esq.<br>Young Clement Rivers<br>P.O. Box 993<br>Charleston, SC 29402<br><br>**Counsel for Defendant, Safway Group Holdings, LLC** | Kent Taylor Stair, Esq.<br>J. Patrick Norris, Esq.<br>J. Andrew Yoho, Esq.<br>Carlock Copeland & Stair, LLP<br>40 Calhoun Street, Suite 400<br>Charleston, SC 29401<br><br>**Counsel for Defendant, Sypris Technologies, Inc., f/k/a Tube-Turns Technologies, Inc.** |

Kim Rothrock
Legal Secretary

June 7, 2019

Columbia, South Carolina

# EXHIBIT "F"

## CONFIDENTIAL

# EXHIBIT "G"

## CONFIDENTIAL

# EXHIBIT "H"

## CONFIDENTIAL

# EXHIBIT "I"

## CONFIDENTIAL

# EXHIBIT "J"

150616-0297 Filed: 6/16/2015

KAPSTONE PAPER AND PACKAGING CORPORATION Filing Fee: $0.00

Mark Hammond South Carolina Secretary of State

# STATE OF SOUTH CAROLINA
# SECRETARY OF STATE
# COLUMBIA, SOUTH CAROLINA

## CERTIFICATE OF REVOCATION OF AUTHORITY

KAPSTONE PAPER AND PACKAGING CORPORATION
1101 SKOKIE BLVD STE 300
NORTHBROOK , IL 60062-4124

Date of Revocation of Authority:
JUN 16, 2015

20516946

South Carolina Code of Laws §33-15-300 provides that the South Carolina Secretary of State's Office shall revoke the authority of a foreign corporation for the following reasons:

(1) The foreign corporation does not deliver its annual report to the Department of Revenue when it is due;

(2) The foreign corporation does not pay, when they are due, any franchise taxes, taxes payable under Chapter 7, of Title 12, or penalties imposed by this act or other law;

(3) The foreign corporation is without a registered agent or registered office in this state;

(4) The foreign corporation does not inform the Secretary of State under §33-15-108 or §33-15-109 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued;

(5) An incorporator, director, officer or agent of the foreign corporation signed a document he knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or

(6) The Secretary of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporatoin is incorporated stating that it has been dissolved or disappeared as the result of a merger.

Based on the records provided by the South Carolina Department of Revenue, it appears that after proper statutory notice, the above named corporation has failed to meet the requirements of (1) and/or (2) as set forth above.

**Now therefore, under the authority of South Carolina Code of Laws §33-14-300, the certificate of authority for the above named foreign corporation is revoked as of the date of this Certificate of Revocation of Authority.**

Mark Hammond
Mark Hammond
South Carolina Secretary of State




**Inquiries concerning this administrative dissolution should be directed to the South Caroli Department of Revenue, Corporate Section, Columbia, SC 29214-0100 or call (803) 896-1730.**

ADM. DISSOLUTION (SS-04)

Form Revised by South Carolina Secretary of State, April 2008

KAPSTONE-002933

# EXHIBIT "K"

File ID: 190227-1318305
Filing Date: 02/21/2019

**STATE OF SOUTH CAROLINA**
**SECRETARY OF STATE**

**APPLICATION FOR REINSTATEMENT OF A CORPORATION WHEN CERTIFICATE OF AUTHORITY HAS BEEN REVOKED**
Corporation – Foreign

Pursuant to Section 33-15-330 of the 1976 S.C. Code of Laws, as amended, the undersigned hereby applies to the Secretary of State for reinstatement of a corporation whose certificate of authority has been revoked, and for that purpose, submits the following information:

1. The name of the corporation at the time of revocation was:

KapStone Paper and Packaging Corporation

Date certificate of authority was issued: 04/16/2013

Date of administrative revocation: 06/16/2015

EXHIBIT 12
THE LEGAL WIZARDS, INC.
(713) 484-5944

2. Complete either "a" or "b", whichever is applicable:

a. ☐ Grounds for administrative dissolution did not exist.

b. ☒ The grounds for administrative dissolution have been eliminated. The grounds for administrative dissolution were:

Failure to deliver its annual report to the Department of Revenue when due, and failure to pay taxes or penalties

3. The corporation's name satisfies the requirements of Section 33-4-101 of the 1976 S.C. Code of Laws, as amended.

Date: 2/20/2019

Name of Corporation

KapStone Paper and Packaging Corporation

(Signature)

Kevin A. Maxwell
(Print Name)

Assistant Secretary
(Office)

Form Revised by South Carolina Secretary of State, August 2016
F0043

SC Secretary of State
Mark Hammond
KAPSTONE-002913