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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
Appellate Case No. 2020-001210

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.

RECORD ON APPEAL
VOLUME II

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STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214-0785

February 20, 2019

Robert Zombo
1101 Skokie Blvd., Ste. 300
Northbrook IL 60062

Re: Federal Identification Number: xx-xxx9372

Certificate of Tax Compliance

Pursuant to South Carolina Code of Laws §12-6-5510, this certifies that **KAPSTONE PAPER AND PACKAGING CORPORATION** has filed all returns required to be filed with the South Carolina Department of Revenue (SCDOR) for the tax types and periods listed below. All returns and taxes required to be filed and payable to the South Carolina Department of Revenue are current.

This letter does not include taxes that may become due if the taxpayer is issued a proposed assessment, selected for audit, currently under audit, in appeals or litigation with the South Carolina Department of Revenue, or tax liens that may not be collected by levy or proceedings in court. The South Carolina Department of Revenue provides this Certificate of Compliance only for returns required to be filed and only for payments made directly to SCDOR.

Taxes	File Number	Period Covered
Corporate	205169468	12/31/2017
Withholding	255856595	12/31/2018

This certificate is valid for thirty (30) days with the Secretary of State following the above date. A new request must be submitted once the time has expired.

****If this certificate is required due to an administrative dissolution, a copy of this certificate and an "Application for Reinstatement of a Corporation Dissolved by Administrative Action" (for domestic corporations) or "Application for Reinstatement of a Corporation When Certificate of Authority Has Been Revoked" (for foreign corporations) must be mailed within 30 days of the date of this letter to the Secretary of State's Office. This application can be obtained from the Secretary of State's website at www.scsos.com.**

Sincerely,

Courtenay McCloud

Courtenay McCloud
Government Services/Tax Compliance
(803) 898-5381
cocrequests@dor.sc.gov

KAPSTONE-002914

EXHIBIT "L"

CONFIDENTIAL

EXHIBIT "M"

CONFIDENTIAL

EXHIBIT "N"

CONFIDENTIAL

EXHIBIT "O"

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.

CHERYL LYNN ROBNETT
Notary Public, State of Texas
Comm. Expires 01-10-2021
Notary ID 129260770

Notary Public in and for the
State of Texas

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

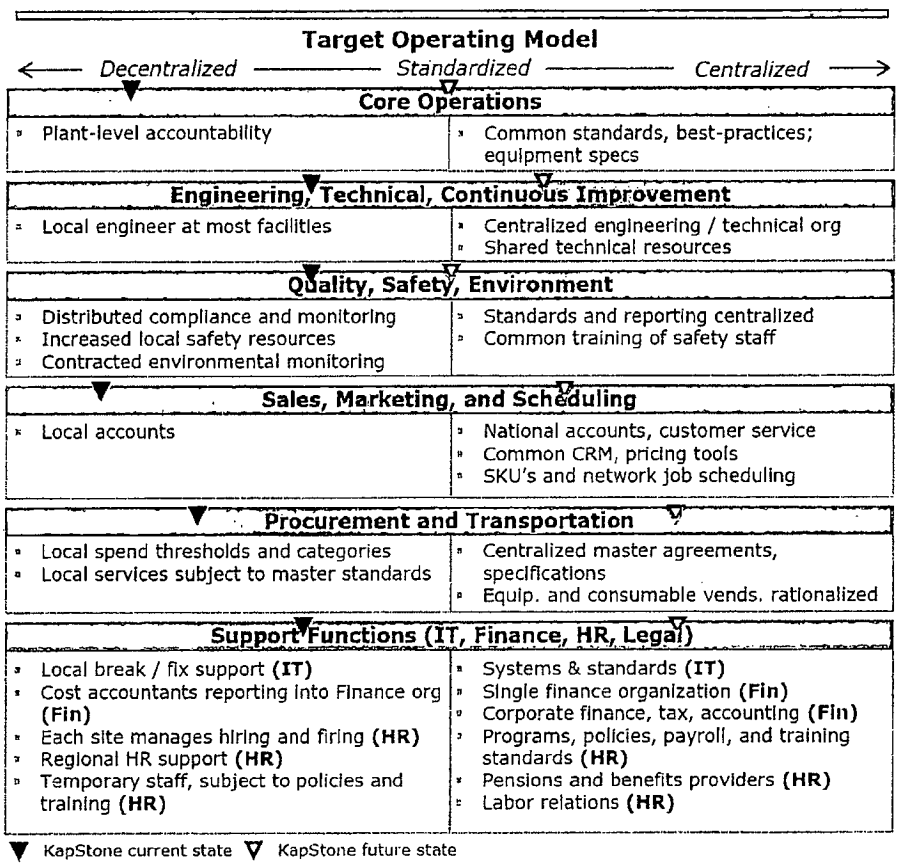
22. Contrary to the Lester Report, several internal documents from KapStone clearly show that operations were not integrated. These documents, reflecting the way KapStone described itself at the time of the incident, show that internally, KapStone described themselves as not being integrated and were 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]



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 "P"



J. Lucas
000286



J. Lucas
000287



J. Lucas
000288



J. Lucas
000289



J. Lucas
000290



J. Lucas
000291



J. Lucas
000292

EXHIBIT "Q"

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,	§	
	§	
vs.	§	C/A NO.: 2017-CP-10-838
	§	
KAPSTONE PAPER AND	§	
PACKAGING CORPORATION,	§	
KAPSTONE KRAFT PAPER	§	
CORPORATION, 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,	§	
	§	
Defendants	§	

ORAL VIDEOTAPED DEPOSITION

MR. TODD K. LESTER

September 5, 2019

ORAL VIDEOTAPED DEPOSITION OF MR. TODD K. LESTER, produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above-styled and numbered cause on the 5th day of September, 2019 from 9:41 a.m. to 7:35 p.m., before Michelle Hartman, Certified Shorthand Reporter in and for the State of Texas and Registered Professional Reporter, reported by computerized stenotype machine at the offices of Arnold & Itkin LLP, 6009 Memorial Drive, Houston, Texas, 77007, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

APPEARANCES

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Charleston, South Carolina 29401
Telephone: 843-574-4000
E-mail: bsweeny@ycrlaw.com

ALSO PRESENT:
Mr. Rob, videographer

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THE VIDEOGRAPHER: Good morning. Today is Thursday, September 5th, 2019. The time is 9:41 a.m. We are on the record. This is the videotaped deposition of Todd Lester in the matter of Jacque Lucas, et al. versus KapStone Paper and Packaging Company Corporation, et al. in the -- in the Court of Common Pleas for the 9th Judicial Court, Charleston County, South Carolina.

Counsel will now state their appearance and firm affiliation for the record.

MR. FINDLEY: Kyle Findley on behalf of plaintiffs.

MS. SELLERS: Kala Sellers on behalf of plaintiffs.

MR. WILLIS: Richard Willis, KapStone.

MR. TARVER: Derek Tarver, KapStone.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness, and then we can proceed.

MR. TODD K. LESTER,

having been first duly sworn, testified as follows:

EXAMINATION

Q. (BY MR. FINDLEY) Can you please state your full name for the record.

A. Todd Kevin Lester.

EXHIBITS (cont.)

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Exhibit 25	*Not marked/not attached	
Exhibit 26	*Not marked/not attached	
Exhibit 27	*Not marked/not attached	
Exhibit 28	*Not marked/not attached	
Exhibit 29	*Not marked/not attached	
Exhibit 30	*Not marked/not attached	
Exhibit 31	KapStone April 2016 Financial Statements dated 5/11/16, KAPSTONE-003462 to 3480	424
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Q. Okay. And, Mr. Lester, I know you've given a deposition many times, correct?

A. I wouldn't say many times, but yes, I have given a deposition before.

Q. How many times?

A. 12, 15, perhaps.

Q. Well, I assume you know the ground rules, so I'm not going to go over them too in depth, but I'm here to ask you some questions in connection with a report that you generated in this underlying matter that's pending in South Carolina.

You understand that, correct?

A. I do.

Q. And you're doing a great job of it now, but as time goes on, this might turn into a conversation. So if you can give -- wait until I finish my question, and I will extend the same courtesy of waiting until you finish answer. That way we don't talk over each other.

A. Understood.

Q. The other part is if you can give me verbal yeses or nos instead of uh-huhs or huh-uh or shakes of the head, it will make the court reporter's life a lot easier.

A. Understood.

Q. The last thing is you understand you took an oath today, correct?
A. Yes.
Q. And you understand that that oath subjects you to the rules of perjury, just like you if you were in front of the Court?
A. I do.
Q. All right. What do you do?
A. I work for --
Q. What is your -- go ahead.
A. I work for a company called FTI Consulting.
Q. Okay.
A. We are a financial, accounting, economic, and services firm providing, you know, accounting, financial, and economic analysis to, you know, parties involved in a number of different matters, but including parties involved in disputes.
Q. All right. And you said it was an FT Consulting?
A. FTI Consulting.
Q. FTI. You own that company?
A. No, I do not.
Q. You work at -- you're an employee of that company?

A. I am an employee of FTI as a publically traded company.
Q. I got you. How many people work there -- or I guess you're in Houston.
Is there an office in Houston?
A. I work in Houston and Austin. I actually live in Austin.
Q. Okay.
A. And yes, there is an office here in Houston.
Q. How many people are in the office in Houston?
A. I would say we probably have close to 130, 120 assigned to our office in Houston.
Q. And what do you -- do you have a title there?
A. My title is senior managing director.
Q. How many years have you worked there?
A. I have been with FTI about two and a half years.
Q. Okay. Let's do it this way: I saw -- I think you went to the University of Texas; is that right?
A. That's correct.
Q. Okay. When did you graduate from

there?
A. I graduated with my first degree in May of 1987, and my second degree in December of '87.
Q. So May of '87, what degree?
A. That was a bachelor of arts and biology.
Q. Okay. And then in December '87, what was that degree in?
A. It was a bachelor in business administration with a double major in finance and international business.
Q. And then what did you go do?
A. Then I joined a small boutique consulting firm doing mostly forensic accounting, forensic investigations, and dispute analysis, i.e., you know, they weighting -- quantifying damages.
Q. What was -- what was the name of that firm and what year was that?
A. That was -- that would have been January of 1988. The name of the company was Peterson -- Peterson Consulting & Company at that point.
Q. And you did that for how long?
A. I was with Peterson Consulting for about five years, but I continued working for them

almost full-time while I was in grad school, which started in 1991.
Q. '91, you went to grad school for what?
A. Went to grad school for an MBA, masters of business administration, and I was at the University of Texas for that.
Q. And I had your résumé somewhere, but I seem to have lost that. There it is.
(Exhibit 1 marked)
Q. (BY MR. FINDLEY) I am having to make this process go quicker for me, but I have got two documents here.
The first thing I want to hand you is Exhibit Number 1. Have you seen this before?
A. I recognize it as a notice of my deposition. But I'm not sure I have actually seen the document.
Q. Okay. So you're not sure if you have seen it before, but you've seen a notice of a deposition before?
A. Yes.
Q. Okay. And you see that that's a notice of your deposition which was served in August of 2019, if you look at the back page at the signature?
A. Yes, August 29th.

Q. Got it. I want you to turn to the last page. There is a subpoena attached to it, a request for documents.

Do you see that?

A. Yes.

Q. Okay. Have you ever seen that list before?

A. No. But I've communicated with Counsel about, you know, what they have, you know, asked me to produce, you know, in connection with my report.

Q. Okay. I understand. But my question's a little bit different.

Have you ever actually reviewed that list?

A. No.

Q. Okay. Have you reviewed that list and gone through your files to make sure you complied with the subpoena?

A. Well, as I said, I hadn't seen the list, but I have gone through my files to produce everything that Counsel requested for me to produce.

Q. And I hear you, and we'll got to that in a second. And -- and I don't really want to know about what y'all talked about.

My question is more: As far as my

understanding, as far as taking that list and looking through your own files to make sure you comply with that list, you haven't personally done that, fair?

A. I have not personally seen this list.

Q. Right. And that would mean if you haven't personally seen the list, you haven't taken that list and compared it to your own file, correct?

A. No. I have produced everything from my file.

Q. Not asking you that question.

MR. FINDLEY: So object as nonresponsive.

THE WITNESS: Well --

Q. (BY MR. FINDLEY) My question's different. We already established you haven't seen the list. So that would mean that because you have not seen the list, you did not have the opportunity to take that list and compare it to your own files, correct?

A. That's correct.

Q. All right. Now, you did go through your files and produce -- brought with -- well, let me back up.

You went through your files after some conversation with Counsel and what was requested; is

that right?

A. Yes, there were a number of conversations with Counsel.

Q. Okay. Did you bring those with you here today?

A. No. All of the information that I produced was produced to Counsel, so I don't know what Counsel kind of did with that information.

Q. Fair enough. And I guess what I'm trying to figure out is: At what point -- well, here we are sitting here today in September the 5th; is that right?

A. Yes.

Q. At what point in time did you have that conversation and turn over those documents?

A. I think shortly after I produced my report, I produced all the electronic files of information that was considered -- that I considered in preparation of that report.

Q. Okay. Fair enough. And I believe, if I'm not mistaken, your report was --

A. Dated sometime at the end of May.

Q. Right. And that was my thought, too. I think around the end of May?

A. I believe so, yes.

Q. Okay. So at the end of May when you produced this report would be around the same timeframe when you had the conversation to produce the materials in your file?

A. I think so. I don't -- I don't recall specifically, but I know it was, you know, some -- sometime, you know, a couple of months ago.

Q. Okay. Fair enough. Here's Exhibit 2. That's a copy of your résumé.

(Exhibit 2 marked)

Q. (BY MR. FINDLEY) Or is that an up-to-date copy of your résumé?

A. Um --

Q. It is one I have.

A. Yeah, as -- as of the date of my report, sure.

Q. Okay. Fair enough. All right. So -- and I think -- what I'm gathering is a lot of the work that you've done in this case would have been generating that report of one portion of what you did, right?

A. That's correct.

Q. But as far as the documents produced and the reports produced and the résumé produced, all of that was done sometime in let's call it end of

May, early June, somewhere in that range?
A. Well, the report was produced at the end of May. The -- you know, the work was done sort of in the preceding six months, and then there may have been kind of a limited amount of work, you know, after that point.
MR. FINDLEY: Okay. Let me take a short second. You don't have to go off the record.
(Discussion off record)
MR. FINDLEY: Let's go off the record for a second.
THE VIDEOGRAPHER: The time is 9:51 a.m. We're off the record.
(Recess taken)
THE VIDEOGRAPHER: The time is 9:56 a.m. We're on the record.
Q. (BY MR. FINDLEY) All right. Sir, we took a short break. Are you ready to continue?
A. Yes.
Q. Okay. And so what we were discussing is that your -- Exhibit 2 is a up-to-date copy of your résumé as of May 2019, fair?
A. Yes.
Q. Okay.
A. Assuming this is the copy that was

attached to my report, yeah.
MR. FINDLEY: Did someone else just join?
TODD: Yeah. Hey, sorry, this is Todd. I'm getting prepared to get hit with a hurricane down here --
MR. FINDLEY: That's fine.
TODD: -- in Cypress.
MR. FINDLEY: Cypress. All right. I was just letting you do it for the court reporter.
Q. (BY MR. FINDLEY) All right, sir. And so we talked a little bit about it, but you've -- you've had some file materials throughout the course of this case that have been sent to you, correct?
A. Yes.
Q. Okay. And those -- during your conversations with Counsel back in May or early June, you produced what was requested of -- of your documents, correct?
A. You know, and again, I don't think it necessary -- it was after I submitted my report, so it would not have been in May. So it would have been in June, or it could have been in sometime early July.
Q. Fair enough. We'll call it late

June/early July. Could be sometime in that timeframe?
A. Sometime in that timeframe.
Q. Okay. But as far as any other, I guess, additional round of production beyond that late June/early July, that hadn't happened, right?
A. No. There was some additional requests for e-mail communications, and then I think the kind of copies when I think of my Engagement Letter or the invoices, you know, that we had incurred, and I think some of those requests came in through my assistant, so -- but I think those followed kind of the initial production of documents.
Q. Fair enough. And I'm just trying to get a timeline of events. And so --
A. Sure.
Q. -- what we have, we have the production of a report, followed by some production of documents in June/early July, and then at a later date there was an additional request for invoices and correspondence.
Is that fair?
A. Uh-huh, best of my recollection, yes.
Q. Okay. Do you know when those were produced?

A. Well, I think there were some documents that were produced this morning.
Q. Right, I got them this morning.
A. Yeah, you know, of my understanding. So I think there were some e-mails that may have been several weeks ago that -- that there was a request, or it may have been several week ago now/early part of August, I think there may have been a request for some information and e-mails.
Q. And that could have been sent to your -- what you're saying is, I guess, your assistant would gather them?
A. Right, right. And one of the consultants was assisting me on this matter.
Q. Okay. But to the best of your recollection, invoices and correspondence are what was included as the request for this in the last few weeks or so production, correct?
A. Well, I think just the -- I think in the last few weeks, I think those were some of the outstanding items. I think, as we were talking about, I had produced everything, all the list -- you know, everything that I considered in preparation of the report was -- was produced earlier than that.
Q. When was that?

A. Well, that's what I am saying: That's that June timeframe, that June or July timeframe. Everything -- everything, you know, in relation to the information that I considered in connection with the report, you know, we produced back to Counsel or at least provided a detailed list of -- kind of Counsel of that information.

To the extent it was information that we received from Counsel, that's the information that was produced after the report sometime I think it was June or July. You know, my recollection could be wrong on that. But then the most recent information over the last three or four weeks was -- dealt more specifically with e-mails and e-mail communication, as well as kind of the invoices and things like that.

Q. Right. And that's what kind of where my question started was I'm just trying to narrow this down.

As far as I understand, the correspondence and production over the last few weeks would have been in -- and related to invoices and e-mail correspondence, correct?

A. That's -- that's my recollection, right.

Q. Okay. Fair enough. The previous

production to Counsel would have been your report and materials that you felt you reviewed that were relevant to the report sometime back in June/early July, fair?

A. Fair assessment.

Q. Okay. So we were going -- that is the only copy of your résumé?

A. Sure.

Q. I assume -- and you know it, I don't, so let me look at it real quick --

A. (Complies).

Q. -- but -- and I know you have categories of things that you sort of worked on as a consulting basis.

Is there like a list on here of employers you had?

A. It's going to be on that left-hand kind of margin, I think to some extent, plus a little bit in the paragraph.

Q. So I've got education you're talking about over here, (indicates)?

A. Yeah. Or is it just in the paragraph in the third -- the third paragraph on the front?

Q. It might be in there. Let me see.

Well, let's just do it this way: You

worked for Peterson and Company Consultants and then went and got your graduate degree in '91?

A. Correct, I joined Peterson Consulting in January 1988 as a consultant. I was based here in Houston. I worked for them until 1991. In the fall of '91, went back to University of Texas for an MBA, continued to work for Peterson in their Austin office at that point from, you know, mid '91 through mid '93.

Q. Got you. And you got your MBA in '91?

A. '93.

Q. '93.

A. Yeah.

Q. You worked at Peterson Consultants. What did you -- did you continue to work there for a period of time?

A. Yes, well, from 1988 through sometime mid 1993.

Q. Okay. And then what did you go do?

A. Then I joined -- after grad school and a little bit of time off, I joined Pricewaterhouse.

Q. Okay. And what were -- or, well, what did you do at Pricewaterhouse, what was your title?

A. You know, Pricewaterhouse, when I joined, I believe my title was manager. I joined in

the Houston office and I worked primarily in our dispute advisory services practice, or at this point in time it might have been called disputes and investigation practice.

Q. And as far as Pricewaterhouse, you -- you started working there in what year?

A. 1993.

Q. And you worked there from 1993 to what point?

A. Almost the end of 1999.

Q. Okay. And during that 19 -- or during that six-year period, you worked in the disputes and investigation department?

A. It had several different acronyms or titles during that period of time. I think at one point it was disputes and corporate recovery and another time it was disputes and investigations. I think when I left, it was financial advisory services.

Q. Okay. I see that here, managing director and disputes and investigation practice -- oh, wait.

A. Yeah.

Q. That is at Navigant.

A. Correct, yeah.

Q. But it says former director and financial advisory service practice at Pricewaterhouse Coopers. That is the six-year period?

A. That is the six-year period.

Q. Got you. '99 you went and worked for Navigant?

A. That's correct. So I worked for Navigant Consulting, joined them in December 1999.

Q. And then in that role, you were the managing director of disputes and investigations?

A. That's correct.

Q. And how long did you hold that role?

A. I was with Navigant for 16 years.

Q. Okay. Moving right along then, so roughly 2015 or so?

A. Until -- or yeah, end of '15/early part of '16, really. I think it was early part of '16.

Q. And then you worked at FTI Consulting?

A. I joined them at some point in 2016 or 2000 -- actually, it was some point in 2017.

Q. Okay. Maybe took some time off to relax?

A. No.

Q. In any event, Navigant Consulting for

16 years. And then the next job you held was FTI Consulting?

A. That's correct.

Q. And at FTI Consulting is where you work now as well, correct?

A. That's correct.

Q. And did you get hired on as a senior managing director?

A. I did.

Q. And you've been in that role all the way from your joining in 2016 or '17 to the present?

A. That's correct.

Q. And your role as the managing director -- senior managing director of FTI Consulting, what do you do?

A. I have been the dispute advisory -- well, you know, essentially I am senior managing director. And FTI's forensics and litigation consulting practice, we have a couple of different service lines in that practice. One is called dispute advisory services and the other is called Forensic accounting advisory services. And I co-lead kind of our FLC practice in Houston and then in the dispute advisory service side of that practice.

Q. And I'm just trying to get a feel for

what all this means. I don't work in the financial world, but you said, what was it, FR -- FLC?

A. Forensic and litigation consulting --

Q. Okay.

A. -- is the name of the practice group.

Q. FLC stands for forensic and litigation, consulting, which would be the group you're in, fair?

A. That's correct.

Q. Okay. And when we say forensic and litigation consulting, what we're talking about is you actually do things like I guess -- well, litigation work, right?

A. That's correct. We're -- I mean, we are essentially a group of financial analysts, accountants, economists that we do assist counsel, you know, with regard to litigation matters, mostly in the arena of damage calculation, quantification, or assessment, also in valuation issues.

The other half of our practice is on the investigative side. So we provide the, you know -- again, the financial accounting and economic analysis and, you know, when we are conducting forensic investigations and it could be negotiations in everything from fraud embezzlement, white collar crime, accounting irregularities and so forth.

Q. Right. And all of those matters under your department would come in after -- after there is some sort of dispute or disagreement, fair?

A. I would -- I would agree with that, it's either a dispute or it could be some kind of event.

Q. Right.

A. You know, a triggering event doesn't necessarily have to be a dispute, it could be a regulatory-related issue. You know, it could be an internal investigation and, you know, it could -- it could be an SEC notice in terms of, you know, that a company is not in compliance or, you know, being questioned by the SEC as to whether their, you know, financial statements are in compliance with SEC guidelines.

Q. Right. And what I'm just trying to get a feel for: There's businesses all over the world that run day to day and have their accounting department and run the actual business.

Do you know what I'm saying?

A. Yes, uh-huh.

Q. And y'all don't do that, right, you come in after the fact?

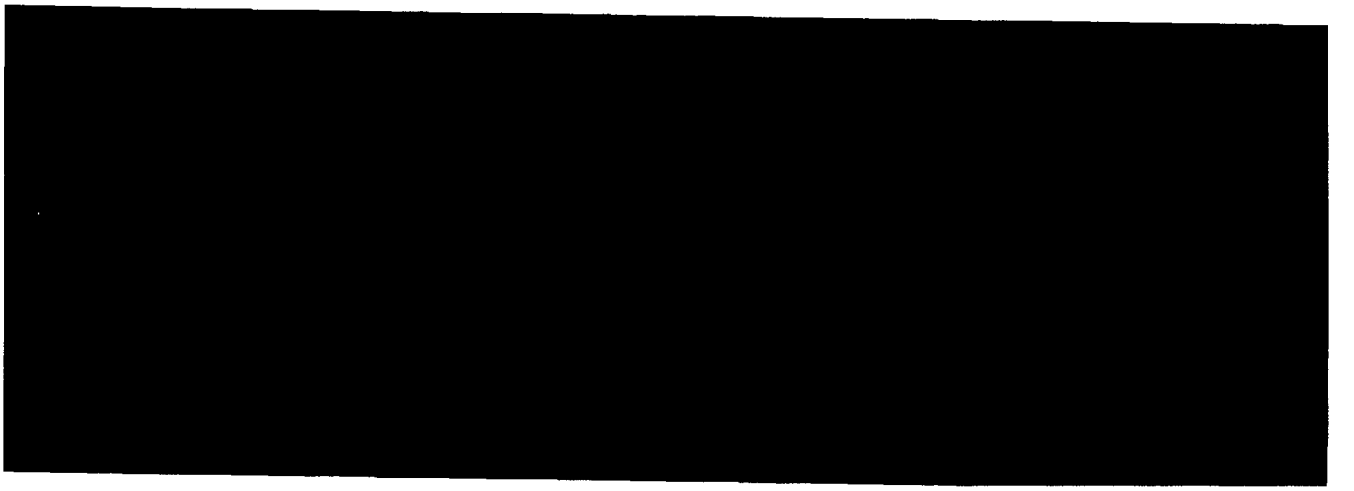
A. I guess I don't understand your

question.
Q. Sure. You're not a CFO at a company, right?
A. I'm not a CFO of a company. But -- but we do provide -- you know, FTI does provide interim CFOs and, you know, was part of -- part of one of our practices.
Q. Right. And I'm sure FTI, publically traded, they probably do lots of things. I'm talking about what you do.
A. Well, what I do is not interim CFO-type work.
Q. Right. And what I'm saying: Just to get a feel for what you do on a day-in/day-out basis, how you hold yourself out to the world would be in the department of FLC group, which is forensic accounting and litigation consulting basically, correct?
A. That's correct, basically.
Q. And so what I mean by that is: You don't help a company run their business, you would come in if there were requests for things like an audit or some sort of detailed forensic analysis or for litigation consulting, right?
A. I think I would want to make one

clarification: You know, we don't do financial statement audits, okay? So we're -- so we're sensitive about the use of the term "audit."
But -- but often we are, you know, retained to come in and work with companies in a dispute, you know, litigation setting or other, but often a lot of our work does involve looking at internal controls, policies and procedures. It could be a regulatory review where we're evaluating, yes, financially, you know, costs incurred on a product -- excuse me, costs incurred on a project or questionable transactions changes, things like that.
Q. Okay. How -- how often would you say you generate reports?
A. Fairly often.
Q. Right.
A. Yeah.
Q. I would imagine that probably the majority, if not all of your work, would be someone comes to you, says they want some sort of forensic request or some sort of litigation consulting request, you would then take materials, review materials, and then either generate advisory services or a report.
Is that fair?

A. That's correct.
Q. Okay. And really I guess going through your work history, it seems like to me since you've graduated from your MBA, various companies, Pricewaterhouse Coopers, Navigant Consulting, and FTI Consulting, all of them were a role of consulting basis for dispute and forensic type of work?
A. I wouldn't say all around forensic and dispute. A significant amount of my work early in my career was in a bankruptcy context, so working with court-appointed receivers, trustees, you know.
Q. That is part of litigation, isn't it?
A. Yeah, it is part of -- it can be part litigation. But it's really part of the bankruptcy process. I mean, there can be a litigation associated with it, but the bankruptcy process and stepping in and actually running a company that is in Chapter 11 or Chapter 7 and then providing the financial analysis.
Q. You have been appointed as a receiver?
A. I have not. But I have worked for receivers, kind of consultants that work for companies that I work for, you know, appointed receivers or appointed liquidating agents or appointed trustees.

Q. Right. But you yourself in any of your roles have never been appointed a receiver or a trustee, fair?
A. No, that's correct.
Q. And the two contexts where we kind of got sidetracked there is: Over the last three jobs you've held were a forensic and litigation nature, with the subpart of you saying also a bankruptcy nature, correct?
A. Correct. Right.
Q. Okay. You've never worked at a paper mill, correct?
A. No, I haven't.
Q. You've never worked for -- well, prior to this -- well, strike that. Let me start over.
You were hired by KapStone, correct?
A. That's correct.
Q. Do you know which KapStone entity hired you?
A. KapStone Paper, KapStone Kraft.
Q. All three of --
A. Yeah.
Q. I understand. Okay. And when did that occur?
A. The best of my recollection was



sometime toward the end of 2018.
Q. Okay.
A. It would have been November timeframe, possibly October.
Q. And November -- October -- we'll just call it October/November of 2018, and to the best of your recollection is when you first were engaged in this matter, fair?
A. That's fair.
Q. And is that the first time you've ever been hired by KapStone, any of the KapStone entities?
A. Yes.
Q. Before that, did you even know who they were?
A. No.
Q. Okay. And so the first time you'd ever been exposed to KapStone was in 2018, November or December I assume, that would be the first time you ever did any type of forensic or dispute work into their financial records, correct?
A. That's correct.
Q. Okay. All right. And we might go through your résumé in a second, but is there -- you said that this was up-to-date as of May.
Is there anything that you saw that

should be added that you've done since May?
A. I don't -- I don't think so. I think my résumé is not comprehensive of all the engagements or all the projects I've worked on throughout my career. So I have completed another project since -- since May. So, you know, is that product -- project on here? No, it is not. So --
Q. Okay.
A. -- as well as --
Q. Well, let me put it this way --
A. Sure.
Q. -- nothing that would change your education or --
A. No.
Q. -- I guess qualification type of additions, right?
A. No.
Q. And then did you bring an extra copy of your report with you?
A. I did.
Q. Okay. Do you have it?
A. It's in my briefcase.
Q. Would you mind getting it?
THE WITNESS: Or -- or do you guys have a copy?

MR. TARVER: Yeah.
Q. (BY MR. FINDLEY) Well, mine has writing all over it, so --
MR. TARVER: (Complies).
Q. (BY MR. FINDLEY) All right. This looks like the same thing. We'll just mark it and that way you can have a copy to look on. I might point you to the screen.
And let's just put this over here. That way you don't have to --
(Exhibit 3 marked)
Q. (BY MR. FINDLEY) Exhibit Number 3, if you could look through that in a moment.
My understanding is that is the totality of what your -- would constitute your report -- or portions of your report in it.
Just to direct you, it's got a copy of your affidavit, I think a copy of your résumé, as well as a report that you've generated; is that right?
A. Yeah, just a minute. Let me take a look at it. Yes, appears to be.
Q. All right, sir. And is that -- just so I'm clear, you don't have any other reports other than that one, right?

A. No.
Q. Okay. And we're going to go through this report, but let's start with: This is -- this has a list of materials on it, right?
A. Yes.
Q. Okay. Is that material -- well, who all worked on this file, other than you?
A. Myself and my assistant, Nicole Kramer.
Q. Okay. And what does Nicole Kramer do?
A. Nicole Kramer is a senior consultant in the same group, the forensic and litigation consulting practice for FTI.
Q. And when you say "senior consultant," I guess that means she's sort of like an associate that works for you?
A. Yes, uh-huh.
Q. Okay. And did she work on this matter with you?
A. Yes, she did.
Q. Okay. What did she do?
A. Sort of a variety of tasks under my supervision, you know, everything from helping organize documents to reviewing certain information, you know, assisting with the preparation of some of the exhibits, things of that nature.

Q. Administrative work?
A. No.
Q. Actually substantive work?
A. No, she's a -- she is a consultant. And -- and I don't know if I would argue substantive work, because ultimately it is all my substantive work, but it is substantive work to the extent that I'm relying upon her to put together certain information for my review and to kind of assist in getting information organized, as well as preparing some of the exhibits.
Q. Now, I hear you. I guess what I'm saying is: That report contains a lot of opinions. Are those your opinions?
A. Yes.
Q. Are any of them her opinions?
A. No.
Q. So that report is -- states all of your opinions related to this matter and none of those would come from her?
A. Yes.
Q. Okay. And the -- the documents you utilized to formulate those opinions, I see a number of citations and a footnote. Wherever you relied on something, you would cite it with a footnote?

A. Generally I would try to be fairly comprehensive on citing things with footnotes. I wouldn't say that -- that it's -- that I cite every example in support but try to identify the reasonable basis for my opinions. You know, this isn't saying that each footnote is kind of exhaustive support for that opinion or point.
Q. I mean, I guess what I'm trying to figure out -- let's do it this way -- is: There is a list of documents on there. Did you, yourself, review all of them?
A. Yes.
Q. And you reviewed the totality of those documents that were attached to this report to generate your opinions, fair?
A. Yes.
Q. Okay. Did she also review all of the documents?
A. Yes.
Q. Okay. So both of you would have reviewed all of those documents, fair?
A. Yes.
Q. Okay. All right. And then would y'all have conversations about what those documents contained, what she sort of presents to you after her review about ones she thought was important or what -- what?
A. I don't remember those conversations. I think I would -- we would review documents. I would ask her to do something. She would bring the information back to me.
Q. Okay. Just so we're clear, so there is no confusion: You, yourself, didn't rely on her to review documents, you reviewed them on your own?
A. Yes, that's correct.
Q. Okay. And then she independently also took those documents and reviewed them on their own, correct?
A. At my direction, that's right.
Q. Right, at your direction. You told her to review the documents?
A. Right.
Q. And after you both independently reviewed these documents, was there any subsequent communications regarding what those documents contained?
A. Not that I recall.
Q. Okay. And when I say "documents," what I'm talking about, I am not just talking about the footnote documents, I'm talking about the -- all the documents in the appendix.
A. Understood, yeah.
Q. Right. And that -- just so I'm clear on the record, so no confusion later, you, yourself, independently reviewed all the documents in the appendix, correct?
A. That's correct.
Q. And then she herself independently reviewed all the documents in the appendix, correct?
A. Yes, uh-huh.
Q. Okay. Because there are some documents that are in the appendix that aren't cited, but those would still have been reviewed by you?
A. That's correct.
Q. And those still would have been reviewed by her?
A. I assume she reviewed kind of all -- all of these documents, you know, as well.
Q. Well, at least it was represented to you she did?
A. Yeah.
Q. Okay.
A. No, I mean, she had access to all of the documents. So, you know, when you say "review" to the extent that I don't know what the extent of

her review was, but I know that she was looking at the documents to kind of provide some feedback to me in terms of -- in terms of kind of how the -- you know, getting the information organized in a way that I requested.

Q. Right. And here's what I'm getting at -- I'm not trying to be tricky with it -- is: There is a lot of documents in this case and the appendix, obviously you reviewed all of those and then you would select after -- or during or after your review, you would select documents out of there that you felt that needed a citation in your report.

Is that fair?

A. Yes, that's fair.

Q. Okay. So in order to come up with what documents you were going to cite, obviously you would need to review all of them in the appendix yourself, correct?

A. Yes, uh-huh.

Q. And then you have her there as senior consultant to assist you and at least it was your impression that she had access to the documents and would also review all the documents and the appendix on her own because she knew the types of things you were looking for?

A. Yes, I think that's fair.

Q. And then she might also -- and whether she did or didn't, we can get to in a second, but to the extent she would find something important in her own independent review that she thought would be helpful to issues you may be looking for, she had the ability to bring those to your attention?

A. Absolutely.

Q. And that's kind of what I'm getting at is how this report gets generated, right?

A. Right.

Q. Is after the re -- first there's a review of the documents and then things start to come together, you start to make citations, pick out the hot documents you think are important and start to formulate a report, correct?

A. I think that's generally the process, right.

Q. Okay. All right. Now, tell me about the actual report.

Do you type it up?

A. Yes.

Q. Okay. And that's -- I figured that was the case, but that would mean you would sit at a computer and you would actually construct your own

report; that wasn't something she did for you?

A. I think she put the initial outline together and -- and I think started -- may have started some of the background information, but then I took it over fairly quickly and essentially rewrote the portions that she had written and, you know, wrote the remaining parts of the report.

Q. Fair enough. Sort of one of these deals where you get the format together, you know, put who it's to, a little bit of the background facts, maybe an outline of what you're going for, and then you -- the actual substantive opinions you would enter yourself?

A. Absolutely.

Q. Okay. As well as the footnotes you relied on, those would be entered by you?

A. Right. No, I pretty much write almost all of my reports.

Q. Okay. And -- and I know you write pretty much all of them, but let's limit it to this one exclusively, Exhibit Number 3.

A. I wrote this report. There is not a word in this report that hasn't been reviewed or kind of agreed to or, you know, that I kind of typed in there.

Q. Okay. All right. And do you have an idea of when you actually started, I guess, putting pen to paper, so to speak, on that report?

A. I think -- I think I likely started in the early part of this year. Maybe in January at some point I started putting the framework of the report together at that point.

Q. Okay. And you mentioned earlier that you were hired and at least your recollection was October or November of 2018?

A. That's correct.

Q. Okay. I saw some correspondence that went back to July of 2018.

A. Okay.

Q. Is that com --

A. Well, then I -- I -- you know, I think I would look at my Engagement Letter, but I just don't -- I don't recall. Maybe there was some correspondence back at that point and I didn't get started on it really -- really until sort of December or January of this year.

Q. That's fair. What I'm trying to figure out, though, is: Whatever the Engagement Letter set as far as the date of hire would be your date of hire?

A. Correct.
Q. And as far as what you were originally hired to do, what was that?
A. I was specifically asked to evaluate the relationship between KapStone Paper, KapStone Charleston, and KapStone Craft, and more specifically the economic and financial relationship between the three entities.
Q. And that would have been instruction you were given back in July of 2018, if that's the date that's reflected in the Engagement Letter?
A. Yes. I mean, typically that's -- you know, what I'm asked to do is in -- is in -- no, I -- you know, I take that back. I think it's included in the Engagement Letter, but our Engagement Letters are more general than that. But yes, that would have been the discussions that -- that -- that we had, you know, at that point in time when the Engagement Letter was signed.
Q. Okay.
MR. WILLIS: Off the record for a second. It might be time for a break, too, since we lost this guy off the line.
MR. FINDLEY: Yes.
MR. WILLIS: I just e-mailed you the

Engagement Letter.
MR. FINDLEY: Yeah.
THE VIDEOGRAPHER: This is the end of media one. The time is 10:27 a.m. We're off the record.
(Recess taken)
THE VIDEOGRAPHER: This is the beginning of media two. The time is 10:34 a.m. We're on the record.
Q. (BY MR. FINDLEY) All right, sir. Let's take a short break -- we just took a short break.
Are you ready to continue?
A. Yes.
Q. All right. So kind of switching gears for a second, going back to your résumé.
So if I understand your education and training background is you do not have any degrees in economics, correct?
A. I do not have a degree in economics.
Q. You do not have any education-related -- or a degree in accounting, correct?
A. I do not have a degree in accounting.
Q. Your degrees are limited to business degrees, one in undergrad and one in graduate,

correct?
A. Well, in business degrees which -- which are inclusive of finance, accounting, and economic-related portions, certainly in the master's degree. My undergraduate degree was primarily in finance but international business as well, which has some other components to it, including both economics and finance but --
Q. Right. You have two undergraduate degrees, I guess a liberal arts degree in biology and -- correct?
A. Yes.
Q. And then a business administration undergraduate degree focused on international business, correct?
A. It's a double major in finance and international business, too, so two separate tracks within the business program.
Q. Okay. I don't see international business on your résumé. Well, here is what I've got: A bachelor of arts in biology, a bachelor of business administration in finance, and then an MBA.
Is that accurate?
A. It doesn't include the double major in international business.

Q. Okay.
A. So --
Q. But no accounting degree, right?
A. I do not have a degree in accounting.
Q. No, I guess, forensic accounting education, correct?
A. I don't think there is -- or there certainly wasn't an educational thing on forensic accounting.
Q. Right, I hear you.
A. I'm not sure they offered that at this point, either.
Q. Not my question.
A. Yeah.
Q. My question is: No education in forensic accounting, formal education, correct?
A. Yeah, there is no -- there is no formal education.
Q. So that means you wouldn't have it, right?
A. Well, anybody has it.
Q. Well, that is a broad statement. And I'm not asking you about everybody. I am asking you about Todd Lester.
Does Todd Lester have any education in

forensic accounting?
A. Formal education from a university?
Q. Any school.
A. No.
Q. Okay.
A. So --
Q. All right. You've never worked as a CFO, true?
A. No.
Q. You've never worked in an accounting department at any business, correct?
A. Not per se.
Q. You've never worked for any business as far as I guess doing operations at all, right?
All your --
A. Well, none of -- none of these things. I mean, I've been in consulting, you know, most of my career. So most of my work has been in relation to all of these different entities. But have I worked for a company doing, you know, accounting or operations? No.
Q. Right. And that's -- that's my question: Have you ever worked for a company doing accounting and operations?
A. No. You've --

Q. Okay.
A. -- you've gone through my résumé. It is all consulting based.
Q. I hear you, but I'm getting things for the record, okay?
And I understand I can read a lot of documents and come to the same conclusion, but that's not what I'm here to do. I'm here to get testimony, okay?
So your entire career has been spent on -- in a consulting role, fair?
A. Just about.
Q. Okay. And a consulting role on a -- with a focus on what we characterized earlier as disputes and forensic litigation consulting, correct?
A. Disputes, forensic litigation consulting. I would characterize it broadly as financial and economic analysis of complex transactions, events and so forth.
Q. Well, hold on. You do a lot more than finance -- well, let me do it this way: How many times have you been hired to generate a report on economic integration?
A. On economic integration?
Q. Yeah.

A. Can you define "economic integration" for me?
Q. You define it. Didn't you tell me you were hired to look at economic integration in this case?
A. I was hired to look at the degree to which the three entities are financially and economically integrated.
Q. Right.
A. Okay.
Q. Obviously if you make that statement, you should know what the definition of economic integration is.
A. Well --
Q. And that's my question is what -- how many times have you done that?
A. I've done it on a number of cases and components with various cases throughout my career.
Q. Okay. What are their names?
A. I don't recall specifically on the cases but each -- each case I get involved in involves looking at kind of the financial conditions, the financial operations of the company.
It can involve everything from governance-related issues to management issues to

operational issues and looking at the financial and economic impacts to a company that result from some event.
Q. Okay.
MR. FINDLEY: And objection: Nonresponsive.
Q. (BY MR. FINDLEY) I didn't really ask you any of those questions, so let me repeat it for you one more time.
In this case, you stated you were hired to look at financial integration between the companies and generate an opinion.
How many times before this have you done that?
A. I don't recall how many times.
Q. Have you ever generated a report in your career on an opinion related to financial integration between the companies?
A. I'm recently engaged on another matter that I have been engaged for a couple of years that's dealing with the financial and economic integration between a couple of entities.
Q. Okay. What are the names of those entities?
A. I can't disclose those. It is an

ongoing matter.
Q. It -- so, aren't you hired for litigation?
A. Yes.
Q. Okay. So it's discoverable.
A. It's -- I have a confidentially agreement in my Engagement Letter. I can't disclose, you know, the confidentiality of my clients.
Q. Okay. So let's do it this way: That is a recent hire, right?
A. No.
Q. Okay. How long has that been going on?
A. Several years.
Q. Okay. Is it involved in litigation?
A. Yes.
Q. There is a lawsuit pending?
A. Yes.
Q. What is the name of the lawsuit that you're been hired for?
A. I'm not -- I'm not going to disclose that pursuant to the terms of the confidentiality and my Engagement Letters.
MR. FINDLEY: Dick, can you tell him to answer the question. He is an expert in another matter that is on file in litigation. I need to know

the name of it.
MR. WILLIS: We will talk about it off record. I'm not sure what the terms of the confidentially agreement are.
MR. FINDLEY: Okay.
MR. WILLIS: We will discuss it.
Q. (BY MR. FINDLEY) Okay. So let me put it this way: You've been hired in what you call a lawsuit to determine financial integrations of the company but you're stating that you can't tell me what the name of it is, at least right now?
A. I have never disclosed the names of any parties in ongoing matters --
Q. Okay. Sir, and I --
A. -- you know, in relation to a report or a deposition or anything.
Q. Sir, and I appreciate you like giving me an answer, but like, that's nothing that I asked you. My understanding --
A. No, I think it goes to the bases of what you're asking. And I'm saying that pursuant to the terms of the confidentiality requirements in my Engagement Letter, that that's not -- that's not my right to disclose that information, that's my client's.

MR. FINDLEY: Objection: Nonresponsive.
Q. (BY MR. FINDLEY) Listen to my question very carefully. And I can write it down for you if you need to read it, but my question is: The only other time you've been hired for financial integration would be dealing with a current, ongoing lawsuit that as of right now you can't tell me what the name of it is.
Is that a fair statement of what you told me?
A. No, it's not.
Q. Okay. So which part of it is wrong?
A. First of all, it is not the only other time that I have been engaged.
Q. Okay. Well --
A. Okay. Secondly, I said I can't disclose the names but I didn't say I couldn't disclose anything in relation to what I've been hired to do.
Q. Okay. So you can talk all about the case but you just can't tell me the names of the parties in the lawsuit?
A. I can tell you the general nature of what I have been asked to do in that case.

Q. Okay. So that would mean you can tell me the general nature, but you can't tell me the names of the parties in the lawsuit, fair?
A. That's correct.
Q. Okay. So let's go back to what my original question was: Did you generate a report in that case?
A. Not yet.
Q. Okay. So how many times have you generated a report that states an opinion regarding economic integration?
A. You know, I would have to go back. There are so many different cases I've worked on over 30 years that deal with the financial relationship and economic relationships between parties.
Q. We got all day.
A. Okay.
Q. Take your time.
A. All right. There is a case that I was engaged in where I rendered a report. It was in relation to a lawsuit over a forward purchase and sale agreement between two parties. One of the parties was in -- you know, it was a construction-related matter in the development of a large, what I will call, a power center. It's a

commercial real estate development with large box stores, multiple retail stores, restaurants, and so forth.

The party that the dispute was between, the acquiring party and parties involved in kind of constructing the center. The parties involved were a number of different entities, and I was retained to evaluate kind of the relationship between the entities and including what the -- kind of where the significant cash flows or the capital for the investment, you know, went between those parties.

So it was -- there were a number of different issues involved, but that's, you know, in a sense, kind of a -- you know, that's a case that I was involved in in relation to that matter.

Q. Is that the only one you can think of?

A. No.

Q. Okay.

A. Okay.

Q. So let's go -- we'll start with this one since you can think of more.

You said that dealt with a purchase and sale agreement where you looked into it from a forensic standpoint. What I can tell from what you

said is you looked at it from the matter of seeing where money went?

A. Well, I looked at it -- there were a number of parties involved, there -- in the development of the project and there were questions about the relationships between the parties and whether or not there were related entity-type relationships between the parties and -- and who was responsible for certain kinds of costs or disbursements between the parties.

Q. So let me ask you the question again.

The report you generated in this case dealt with, as you put it in your words, analyzing the -- and generating an opinion on the financial and economic integration between these companies.

How many times have you generated a report with that opinion? Because as far as I can tell, it's zero. And if you --

A. Well, I just gave you kind of a couple of examples.

Q. Okay. And I'm not asking you for --

A. This is what I was retained for, dealing with financial and economic issues.

Q. Sir, and, you know, if we've got to subpoena you to the hearing and get an answer there

I'm happy to do that, but I'm here just to get answers to my questions, okay?

How many reports do you have where you have rendered an opinion on economic integration between companies?

A. And I'm telling you I don't recall --

Q. Okay.

A. -- because a lot of the engagements that I get involved with involve economic and financial integration issues, because we are evaluating relationships between parties, and inherently, those relationships are financial or economic in nature.

Q. Sir, I don't think you're listening to my question. This case you were hired to render an opinion as to specifically economic integration.

My question is: How many times have you been asked to generate an opinion reaching a conclusion on economic integration?

A. And, again, I don't recall --

Q. Okay.

A. -- because I've been involved in --

Q. Since you don't, I have got to --

A. -- so many different engagements.

MR. WILLIS: Well, let's -- let's not

talk over one another.

THE WITNESS: Yeah.

Because I have been involved in so many engagements where I am evaluating the financial and economic relationships between entities, and to the extent that those reports that I wrote in relation to those matters dealt with financial and economic integration issues, i.e. the relationship between parties, I don't recall.

Q. (BY MR. FINDLEY) Sir, and I appreciate the roundabout answer, but this is -- I'm not asking you if during the course of your forensic work you were required or had to look at the economic integration between the companies. That's not my question at all.

You were hired, in your words, in this case to generate an opinion as to whether or not the companies were economically integrated.

Are you with me so far?

A. Yes.

Q. Okay. My question is: How many times have you rendered a report, generated a report that says, "Here's your opinion on whether or not there is financial integration"?

A. Dealing solely with this issue?

Q. Yes.
A. None that dealt specifically and solely with this issue.
Q. Okay. Thank you.
A. They have all dealt with numerous issues including this issue.
Q. Okay.
MR. FINDLEY: And objection: Nonresponsive to everything after "none."
Q. (BY MR. FINDLEY) You -- also your work in the past has been -- dealt with -- well, you've been hired to actually do, like, damage calculations for people involved in lawsuits, correct?
A. That's correct.
Q. Okay. And that's part of your work as a, I guess, financial and litigation consultant --
A. Right.
Q. -- correct?
A. It is the financial and economic assessment of the impact of some of that.
Q. Okay. Have you ever been struck or limited?
A. No.
Q. Have you ever been accepted by the Court, to your knowledge, as an expert that can

render an opinion to the Court on the ultimate conclusion of economic integration?
A. I was trying to think back through kind of my testimony in rendering to the Court and, you know, what I was tendered as an expert in, and I don't recall specifically on that issue. It likely would have been, you know, a number of different issues.
Q. Okay. Fair enough.
As far as sitting here today, you cannot recite for us a case in which you were tendered as an expert in the ultimate conclusion of financial integration, correct?
A. Generally I'm tendered as an expert in financial and economic issues.
Q. And, sir, I -- that's not my question at all.
MR. FINDLEY: So objection: Nonresponsive.
Q. (BY MR. FINDLEY) Sitting here today, you can't tell me a case in which you were tendered as an expert on the ultimate conclusion of financial integration, fair?
A. Again, you're asking me to go back 30 years. And again, I don't -- there's not a case

where I was tendered specifically on just that issue.
Q. Okay. So --
A. My expertise has always tendered the Court in relation to financial and economic assessment of kind of any number of events, including kind of the investigative nature or of kind of, you know, investigations in relation to entities and so forth.
Q. Okay.
MR. FINDLEY: Objection: Nonresponsive.
Q. (BY MR. FINDLEY) My question is just a very simple question.
As far as you either have been tendered as an expert to render an opinion on the ultimate conclusion of financial integration or you have not. So as far as I can tell --
A. And I don't -- I'm sorry, I didn't mean to interrupt you.
Q. As far as I can tell, you say you don't know, all right?
A. Or I said I don't recall.
Q. Okay. So fair enough. So that would mean, sitting here today, September 5th, 2019, in this chair giving testimony, you cannot tell me a

case in which you were designated and offered or tendered to render opinions related to the ultimate conclusion of financial integration, fair?
A. You know, and I'm going to answer yes to your question, but I'm going to provide it -- again, I mean these are inherently financial and economic issues that deal with a lot of different factors, and I've been retained and offered reports and testimony that deal with financial and economic issues including the issues related to the relationships between parties.
Q. Right. And I got that. And you've said it now maybe 10 times, but my question is not that at all. It's --
MR. FINDLEY: Objection: Nonresponsive.
Q. (BY MR. FINDLEY) You've already told me you can't recall a case. My follow-up question is to that: Sitting here today, you can't name for me a case in which you were tendered as an expert in rendering an opinion regarding ultimate financial integration between entities.
Fair statement?
A. You --
Q. You can't -- you can't say one?

A. You know, and again, you know, my answer's going to be, I don't recall one. I don't recall an entity that was specifically focused on that issue, but there were numerous times I've been retained to evaluate financial and accounting-related issues and economic-related issues --
Q. Sir --
A. -- including the relationship between parties.
Q. Right, I know you've done -- you do a lot of financial and litigation work, but it's not my question at all. And it's a very simple question.
You -- have you ever heard of a -- well, you're an expert, right?
A. And designated so in different matters, yes.
Q. Right. An expert designated in different matters, some of them related to financial matters where you look into companies and things of that sort, correct?
A. That's correct.
Q. To your knowledge, you can't tell me a case that I can go look at where a Court -- where you have either been tendered or a Court has accepted you as an expert to render an opinion on --

Q. Okay.
A. So the answer to that is no, it is not attached to my expert report or this kind of version of the report.
Q. Right. So you don't have one for me here today?
A. I do not have one --
Q. Okay.
A. -- right now.
Q. But you do keep a current, up-to-date list?
A. Yes.
Q. And that would have all the matters in which you've testified in?
A. Should have all the matters I've testified in. My current one does not have a couple of matters that I have testified in the last few weeks.
Q. Okay. When -- when can I get that list?
A. Well, I was speaking to Counsel. We will try to get it to you as soon as we can.
Q. Okay. You realize I issued a subpoena requesting that list, correct?
A. Based on the notice I saw today, yes.

A. No.
Q. -- the conclusion of financial integration. Is that fair?
A. As -- as we're using the term -- as you're using the term or we're using the term here, I don't recall --
Q. Okay.
A. -- a case.
Q. Right. So don't recall one, meaning you can't tell me one as we sit here today?
A. I can't recall one as we're sitting here today.
Q. You are what is called in many cases a retained expert in litigation purposes, correct?
Well, let me do it this way: Have you ever testified in federal court?
A. Yes.
Q. Okay. So you keep a case list of your testimony over the last 10 years?
A. Yes.
Q. Okay. And did you bring it with you today?
A. Normally it is -- or always attached to my report, so I don't see it attached to this report here.

Q. Okay. When you review documents, do you consider yourself to be thorough or one of these experts that just flips through them?
A. I try to be thorough.
Q. And when I say "thorough," making sure we have the same words, that would mean you actually hold yourself out as one of those experts that -- which actually reads the words on the document?
A. Yes, when review, you know, a document and typically trying to review and read all of the document.
Q. Right. And what I'm trying to get at is: I've seen experts in lots of cases over the years and there are some experts that just have a file and say they review them, but they don't actually read every document.
You, according to you being as thorough as you are, is that you actually read every document, correct?
A. I try to read every document.
Q. Well, try to and doing it are two different things.
A. Well, I think, you know, in a lot of cases there are a significant amount of information that can be produced and I try to go through all the

information I deem relevant in forming my opinions.
Q. I'm not talking about other cases.
In this case --
A. In this case --
Q. -- you reviewed every document?
A. -- I have reviewed every document that's been provided to me.
Q. Okay. And you were thorough in reviewing every document?
A. Well, I review the documents, okay?
Q. What is --
A. I was thorough in my review.
Q. Okay. And you bill how much for your time?
A. On this matter, I believe its $595 per hour.
Q. And that doesn't matter if you're reviewing documents, giving testimony, whatever it is, it's $595 an hour?
A. It's -- the same rate applies.
Q. The same if you're typing a report, the same if you're searching on the Internet, everything?
A. That's correct.
Q. Okay. And this -- your associate you talked about Nicole Kramer, how much does she charge?

A. I -- I don't recall. So it's probably in the high 200 or 300 range.
Q. I think I can help you out here: Nicole Kramer --
A. Yes.
Q. -- I've got her listed at $375 per hour.
A. Okay.
Q. Does that sound right?
A. Yes.
Q. And the same for her, $375 an hour, no matter what the work is, it is just an hourly basis?
A. It is an hourly basis.
Q. Okay. And then who is Samuel Glass?
A. Samuel Glass is a consultant, so a relatively new consultant with the firm.
Q. And, like, works at FTI?
A. Yes, he does.
Q. Is he like an intern or something?
A. No. He is a full-time employee and hired in at our starting levels, which is known as a consultant.
Q. Does Nicole Kramer -- how old is she?
A. That's a good -- that is a good question. She has eight, nine years experience. So

I would -- I would put her probably in the 30 range.
Q. Well, what I'm trying to figure out is: Does she come from the same background type that you do?
A. Somewhat, yes.
Q. Does -- what does she have degree-wise?
A. She has an undergraduate degree in economics --
Q. Okay.
A. -- and then an MBA, but her work experience is different.
Q. Okay. And what does that mean?
A. She spent a number of years with the Federal Energy Regulatory Commission being a policy analyst.
Q. Okay. A policy analyst before she came over to FTI?
A. That's correct.
Q. And then her work at FTI would still fall in that same range of dispute and FLC?
A. Yes.
Q. All right. So let's start here, going to your report. So let's do it this way: Let's start -- you've got your affidavit in front of you, correct?

A. Yes.
Q. If you go to page three, you've got compensation and it has got 575 an hour, but I saw 595 on the bills, I believe.
Is it 575 or 595?
A. I thought it was 595, but -- but I think I would refer back to the Engagement Letter and then to the bill for that. So you said page three of my affidavit?
Q. I think this is your affidavit. It said Bates label -- do you have Bates at the bottom of yours?
A. No, I don't.
Q. Let's do it this way -- oh, excuse me, this is your expert report, page three.
A. Yeah. So page three says 575 per hour.
Q. Right. And that's what I was getting at: Did you recently change your rate or --
A. No, I mean, you know, my rates, it varies a little bit.
Q. Okay. Well, we can figure that out.
So what I want to point you to next is page eight. Are you with me?
A. Yes.
Q. Okay. If we go to paragraph 22.

Are you there?
A. Yes.
Q. Okay. It says, "I was tasked to evaluate financial and economic structural relationships between KapStone Paper, KapStone Craft, and KapStone Charleston."
Do you see that sentence?
A. I do.
Q. Okay. And I'm going to do this so we can read along together. You can see where I'm pointing here, "Objective."
You see what I was reading?
A. Yes, I do.
Q. Okay. And you're welcome to look on with your document or on here, I don't know, whatever's easier for you.
A. It's probably easier to look at the document, but yeah, there is --
Q. 22 is what you were hired to do in this case?
A. Yes.
Q. That's an accurate representation of what you were hired to do?
A. Yes. In addition to paragraph 23, 24, yeah.

Q. Well, 24 is the scope of your work.
A. The objective is paragraphs 22 and 23.
Q. Okay. And so when we look at paragraph number 22, this is my question: How many times have you rendered a report when your objective was task 22?
Is it still I don't recall?
A. Well, I think you -- I think that's a little bit of a different question, but I think my answer is still I am often, if not always, you know, engaged where my objective is to evaluate the financial economic relationships between parties.
Q. Okay. So here's how I read it, "The economic substance of the relationship relative to its corporate form and evaluate the degree to which the relationship was indicative of entities that operated as part of an integrated business."
That is a focused objective, would you agree?
A. It is a focused objective.
Q. How many times have you had that focused objective to testify solely?
A. Solely on just this focused objective, I don't recall.
Q. Okay. As far as sitting here today,

the only case that you can recall to recite for me would be the -- this case, correct?
A. Well, I would say that I -- it's -- it's -- it's a little uncommon to have a very focused objective because my objective is -- is typically broader and -- but with regards to -- yeah, I'm sorry, would you mind repeating the question?
Q. I was about to ask you if you remembered what it was.
MR. FINDLEY: Could you read that question for him, please.
(The record was read as requested)
THE WITNESS: And I think my answer to that question was no, because I am typically retained --
Q. (BY MR. FINDLEY) Okay.
A. -- to evaluate the financial and economic relationship between parties.
Q. Right. And so let me ask it to you differently.
The only case that you can recall here today that has this focused objective that you recited, which you admitted is very focused, to evaluate the degree as to which the relationship was indicative of entities that operated as an integrated

business, naming a case for me, you can name this one and you can't recall another, fair?
A. I said I don't recall how many have had this objective. But to the extent you're asking how many cases have I had where this was the sole objective?
Q. Yeah.
A. Then I would argue -- then I would say that this is likely the only case that's had this focused of objective.
Q. Okay. Fair enough. And I've got another question for you on -- let's see here -- well, you say in your affidavit -- and I don't know what -- I think it's page two and three, paragraph eight.
Are you there?
A. Yes.
Q. Okay. You say that you were retained to evaluate economic substance.
Do you see that?
A. Yes, I do.
Q. Okay. What is your definition of "economic substance"?
A. Well, economics deals primarily with the flow of goods and services.

Q. Well --
A. And specifically when you're dealing with a company, kind of the business that the company's in, from the purchase of inputs and raw materials to the processing of those materials and production of output. So when you're looking at the economic relationship, you're typically looking at the substance of that relationship relative to, you know, what the form of the transaction may be.
(Discussion off record)
Q. (BY MR. FINDLEY) Let me do it this way: Here is page two of your affidavit, okay?
A. Okay.
Q. You say you were "hired to do consulting and litigation support services," but you say, "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, the KapStone entities."
Let's stop there, okay?
A. Okay.
Q. What is your definition of "economic substance" in the context of this sentence?
A. Economic reality.

Q. Okay. And what does "economic reality" mean?
A. That means what is the true nature of the relationship between the parties relative to or in comparison to how that relationship may be represented in its form or represented to others.
Q. So it would be the economic reality of how that relationship is on an economic level relative to how it is represented to others.
Is that fair?
A. Well, represented to others or the actual structure of the transaction of the relationship itself.
Q. Okay. So I want to make sure as we move forward we're using the same terms.
So economic substance in this context, your definition would be the economic relationship of the parties with how it's shown or represented to others is one part, correct?
A. What is the true nature of the relationship or if you're talking about a transaction, the true nature of the transaction.
Q. Okay. So listen to my question, okay? Because you're saying a lot of words and I want to make sure we're very specific so the Judge can

understand what we're talking about.
Economic substance in the context of this sentence for this litigation, part of the definition that you gave me was the economic relationship of the parties and how it's represented to others is one part, and the other part is what you characterized the true nature of the relationship?
A. Well, I think -- and I think those are all kind of relevant definitions, meaning, you know, economic substance, what is the true kind of the economic reality of the relationship between the parties.
Q. Okay. Sir, I'm just -- I'm just asking for a -- a definition.
And so economic substance, what you've said is now three different things, okay? You said true nature of the parties, you said the economic reality, you said economic relationship internally. So all I'm looking for is a definition, okay? So --
A. Yeah, and I don't think that was characterizing my testimony correctly. But -- but economic substance of the relationship deals with what is the economic reality of the relationship as opposed to the legal form or structure of that transaction or relationship.

Q. Good point. You're not a lawyer, right?
A. I am not a lawyer.
Q. Okay. You can't provide legal expertise, correct?
A. No, I cannot.
Q. You don't provide legal conclusions, correct?
A. I do not.
Q. You cannot provide any opinions relative to the legal context and the meaning of words --
A. Correct.
Q. -- from a legal standpoints?
A. Clearly -- clearly I would not be offering an opinion as to, you know, the legal definition or terms or meanings, so --
Q. Okay. And that's why I'm asking you these questions. You state a -- a term, said economic -- "I was retained to evaluate economic substance," which you've also called "economic reality," right?
A. Right.
Q. Okay. And so all I'm asking you is: What is your definition of economic substance or

economic reality?
A. Now, it's a -- and I have given you my definition.
Q. What is it?
A. Okay. Economic reality is what is the economic reality as opposed to the legal structure or legal term of a relationship. Economic reality deals with how the -- the true financial and economic transactions or relationship between the parties are -- you know, what the true nature of those relationships are.
Q. Okay. So the true financial relationships of those parties, correct?
A. Financial and economic relationship, true.
Q. And when you say "true financial and economic relationships of the parties", you're saying what -- how their income is derived or what?
A. Well, I think, you know, the economic substance question is a fundamental, you know, accounting principle, which is to accurately record and define the relationships between parties at an economic level. Okay?
Regardless of whether it's a -- regardless of how it may be structured from a legal

perspective or regardless of how complex it may be, you know, the focus of preparing financial statements and presenting financial information is intended to be at the level of the -- kind of the -- kind of the economically reality of that transactional relationship.
Q. Okay. And I keep asking you a definition of economic substance and economic reality and you keep giving me a definition that includes the word I'm asking you for the definition of.
So what does "economic reality" mean?
A. Economic --
Q. You said it is a fundamental word in accounting. Most fundamental words in accounting have a definition. What is yours?
A. Economic -- economic -- you can use economic substance of a transaction. Economic reality of the transaction is the actual kind of relationship between the parties on a financial and economic standpoint, a business standpoint, okay?
So what is the nature of the transaction and what is the nature of the relationship?
Q. Okay. Did you speak with anyone at KapStone?

A. I don't recall. Yeah, I don't think so.
Q. Okay. You spoke with lawyers, correct?
A. That's correct.
Q. And we have got some lawyers here sitting at the table from South Carolina. You have spoken with them, correct?
A. Yes.
Q. You've also spoken with a Sidley -- Sidley Austin Law Firm?
A. Yes.
Q. Okay. Based out of Chicago?
A. Yes.
Q. Okay. Other than the lawyers, have you spoke to anyone that you recall that was employed at KapStone?
A. No.
Q. Okay. So that would mean that you have not spoken to anyone at KapStone Charleston Kraft LLC, correct?
A. No, not that I recall.
Q. You have not spoken to anyone at KapStone Craft Paper Corporation, correct?
A. Not that I recall.
Q. And you haven't spoken to anyone at

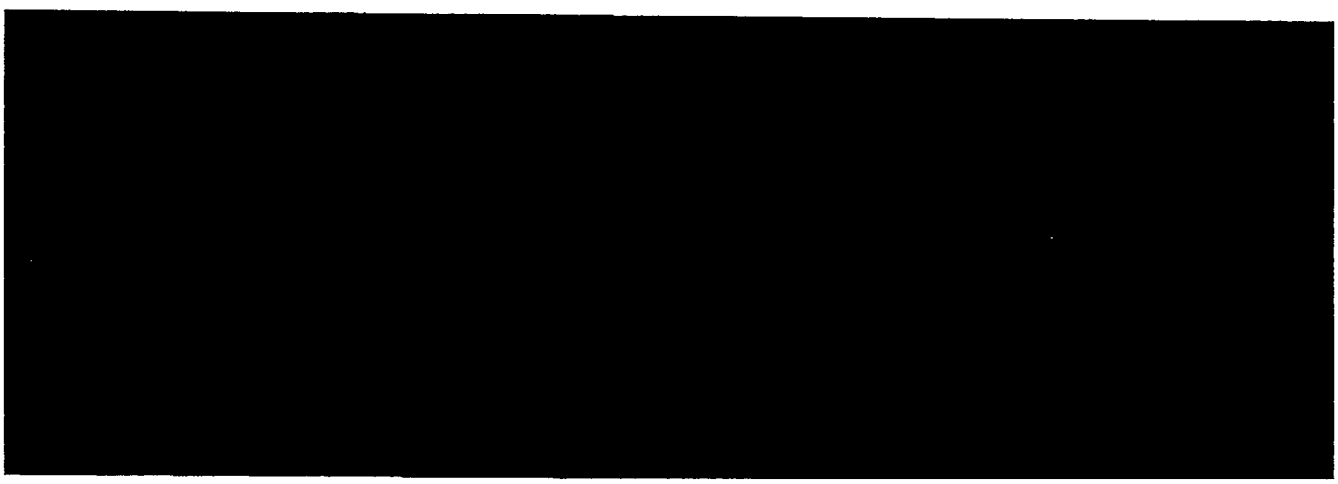
KapStone Paper and Packaging Corporation, correct?
A. Not that I recall.
Q. Okay. The -- this was the first time you've worked for KapStone, correct?
A. That's correct.
Q. And the only people you have talked to to get guidance from is the attorneys, true?
A. That's correct.
Q. And as far as how you determined what the economic reality was in this case, you looked at the documents that were provided to you?
A. As well as the information I obtained myself.
Q. Okay. So two sources: The information provided to you by the attorneys and the information you provided yourself, correct?
A. Exactly, yes.
Q. And all of those are listed in your appendix?
A. Yes.
Q. The information you provided for yourself you had to go out on your own and look for?
A. And research that information, that's correct.
Q. At the same rate of $595 an hour or

$575 an hour?
A. That's correct. Or one of my associates.
Q. And you gave -- we sort of talked about the definition of economic substance, okay. You also said more specifically, I was tasked -- "asked to evaluate various aspects of corporate identity, governance and management structures, operations and accounting and financial management practice of the respective KapStone related entities and to the extent" the entity -- "if any of the entities were financially and economically integrated."
Do you see that, paragraph 23?
A. I'm sorry, yeah, let me catch up with you. That's correct.
Q. Okay. How does your definition of economic substance relate to your evaluation of governance, management, operational, and financial aspects of the KapStone-related entities?
A. All of those factors can be indicative of the true nature of the relationship between parties.
Q. Okay. So, in other words, does your opinion weight on certain factors?
A. I don't know if it weights on certain

specific factors. I think it's a facts and circumstance-driven, you know, assessment and analysis.
Q. All right. Do you weigh certain factors to come to that evaluation?
A. You know, I don't know if I would weigh one factor more than the other, but certainly corporate identity, governance and management structures, how the business is run. The accounting financial and accounting operations, those are more broad-based factors to deal with an entire corporation, and in certain circumstances, that may be more important than some other factors.
Q. Right. And that's what I am trying to figure out. You obviously look at factors and weigh those factors, right?
A. I don't know if I weigh factors. I think I -- I think I look at factors, and the facts and circumstances of the question dictate sometimes what factor is more relevant than others.
Q. Okay. And what factors are those?
A. Well, they are the factors I've listed here and kind of in the scope of my work in 24, I mean, we look at all of those factors.
Q. Okay.

A. And -- and the relevance, not all of those factors are necessarily relevant to each case that I get involved in where I'm looking at kind of the financial and economic relationship between the parties.
Q. Right. And you said those are the factors, and we've got them listed here: "Corporate identity, governance, and management structures", right?
A. Uh-huh.
Q. "Operations and accounting and financial management practices," those are the three factors you listed there?
A. I list "corporate identity," I list "government and management structures, operations, accounting and financial management practices."
I mean, those are all very encompassing terms in -- with regard to how a company manages its business --
Q. Right.
A. -- and its relationships with, you know, in this case its subsidiaries.
Q. Okay. So 23, we have got four different factors, okay?
A. Okay.

Q. So you said the details will sometimes make you weigh those factors more than the others, correct?
A. That's correct.
Q. So which ones did you give more weight to based on the details?
A. Well, and I would -- I would take a step back and say I list four very broad factors in 23 and then I list 20 factors in paragraph 24.
Q. Okay. So which one in paragraph 24, which one of those did you fit -- felt gave the most weight based on the details?
A. You know, I actually cannot put a weight on these because I considered all of these factors and would have looked into all of these factors.
Q. Where did you get all of them?
A. Experience.
Q. Okay. Experience in what?
A. In looking at financial and economic analysis of relationships between parties and transactions.
Q. Right, and you've got 20 factors and I guess what I'm saying: Did you reach an ultimate conclusion based on those 20 factors?



A. I guess I'm not understanding your question, because those factors form the basis of my opinions in the report.
Q. Right. And in order -- you get factors and you look at all the factors and you come to a conclusion, right?
A. That's right.
Q. And in order to do that, you have to weigh the factors, right?
A. No, you don't --
Q. Okay.
A. -- not necessarily.
Q. So you didn't have to weigh them?
A. You don't necessarily have to weigh the factors.
Q. I didn't --
A. Some factors may not be relevant.
Q. Okay. So which ones are not relevant?
A. I'm not going to argue which one or --
Q. Sir --
A. -- or discuss which ones are not relevant to this. We can walk through each one of the individual factors and I will -- can tell you my observations and, you know, from those factors and how they ultimately support my opinions. But I'm not

going to walk through the list and say, "This isn't relevant or this is weighted, you know, very low." Because in any case, one factor or another may -- may have more importance or more relevance than another one.
Q. Sir, that is the second time you've used "argument." You understand I'm not here to argue with you, I'm just here to get answers to questions, correct?
A. I understand.
Q. And I know you've been hired to be an advocate and part of what experts like to do is like to argue their position, but I'm not here to do that.
A. Yeah.
Q. Can we have that agreement?
A. No, we can't, because experts are not hired to be advocates.
Q. Can we have --
A. It is a fundamental principle of being an expert, of being in this business about being independent and objective of how we approach things.
Q. Can we have an agreement moving forward that instead of trying to argue your opinions, you will provide me substantive answers to my specific question?

A. Well, and I think I'm not attempting to argue, and I would agree with you I don't want to argue with you on this, and I think I have been providing substantive answers to your questions.
Q. I didn't ask you your opinions on what you've been doing or not been doing. Let me ask it to you again.
Can we get an agreement moving forward that you will answer my specific questions?
A. Absolutely, I will try to --
Q. Okay.
A. -- answer your specific questions, and I think that's what I've been trying to do.
Q. Okay. Fair enough.
Are you familiar with an economic reality test?
A. An economic reality test? From there generally, but in the context you're using, I'm not sure.
Q. Okay. Do you know that "economic realities" is a legal term?
A. Not specifically, no.
Q. Okay. The definition of "economic realities" is "a judicial method of determining the nature of a business transaction or situation."

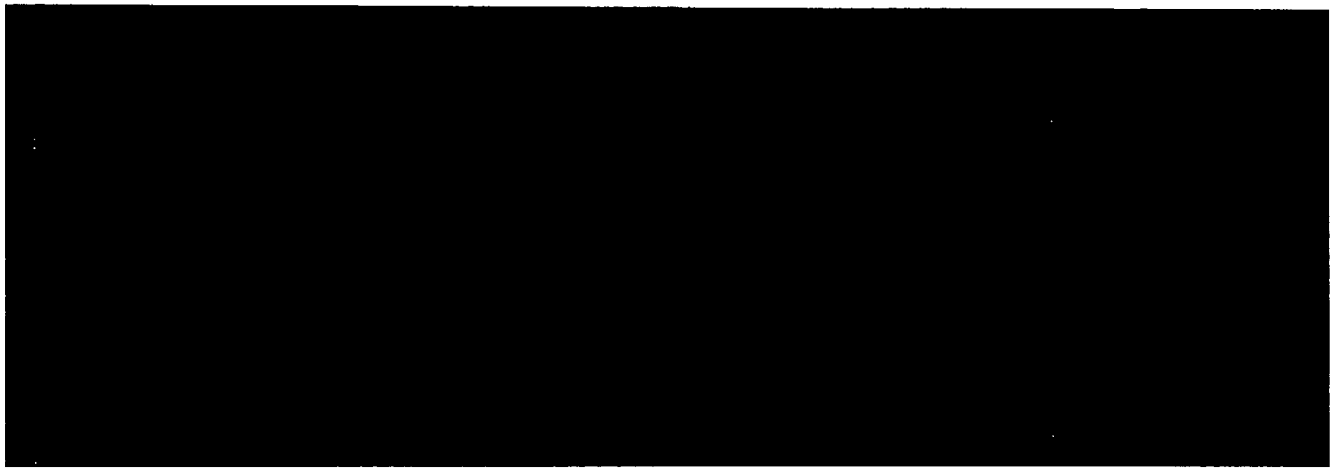
Were you aware of that?
A. I think I'm familiar with it. But clearly my use of the term "economic reality" is in an accounting or financial issue.
Q. Okay. And it says, "A test used by Courts for the purpose of determining if a person is an employee by considering such things as the extent of the alleged employer's ability to control, hire, fire, and discipline the person, the nature of the person's duty, and the payment of the wages."
Have you -- are you familiar with that?
A. That -- that -- that is familiar, yes.
Q. Okay. Did you talk to anyone about any of the employer's abilities to control, hire or fire or discipline my clients?
A. That wasn't the focus of my use of the term "economic reality." It is from an accounting perspective, which is, again, understanding the true nature of the relationship between the parties.
Q. Sir --
A. The fundamental principle in accounting is to provide the economic substance of the transaction.
MR. FINDLEY: Okay. Object as

nonresponsive.
Q. (BY MR. FINDLEY) That wasn't my question at all. And we have this agreement, remember? So listen --
A. I thought you were asking me -- you were asking me a question about something that was outside the scope of my report.
Q. So then it should be an easy answer.
I said: Did you, Todd Lester, talk to anyone at KapStone about my clients' employer's ability to control, hire, fire or discipline them?
A. I didn't speak with anybody at KapStone.
Q. Okay. So that would mean no one provided you with that information about any of the entity's abilities to control, hire, fire or discipline my clients, fair?
A. No one at KapStone provided information specifically with regard to those entities.
Q. Did anyone anywhere?
A. Well, I think it's inherent in some of the employment-related information that was produced, but I mean, I'm not trying to be difficult in your question, I mean, or in answering your question, but that wasn't the focus of my work, you know, was not

to evaluate whether or not, you know, or what, you know, powers or authority that KapStone had in relation to your clients.
Q. Okay. Do you remember what my question was?
A. You asked me whether or not I had spoken with anybody at KapStone in relation to their authority or powers in relation to your clients.
Q. Right. And my question then expanded to: Have you spoken with anyone?
A. And I have not spoken with anyone.
Q. Okay. So as far as anyone providing you with information relative to the employer's ability to control, hire, fire or discipline my clients, that's information you did not obtain?
A. That specific information, no.
Q. Okay. And we will -- well, do you know what my clients do?
A. Not specifically.
Q. Okay. Do you know what my clients -- what their duties are relative to this lawsuit?
A. Just in a very general way.
Q. Okay. What is the general terms?
A. Well, just generally in terms of what the information was communicated in their offer

letters and some of the other information, but -- but I don't understand kind of their specific roles or duties.
Q. Okay. Do you know what my clients' title is?
A. I don't recall.
Q. Do you know who their manager was?
A. I don't recall.
Q. Do you know who they reported to?
A. I don't recall that either.
Q. Do you know where they received their job duties?
A. Received their job duties?
Q. Yeah, who assigns them work.
A. Oh, no, I don't recall.
Q. Okay. Do you know who -- okay. And I asked you this earlier, but you didn't bring your complete work file with you here today, correct?
A. It's my understanding my complete work file has been produced.
Q. And I didn't ask you that.
You, Todd Lester, did not bring your complete work file with you here today, fair?
A. I did not bring anything with me today because I understand it's already been produced.

Q. Okay. So the answer -- is that a yes or a no?
A. Well, I guess I'm trying to understand -- I'm trying to understand your question, because the answer is: I wasn't aware that I was required to bring something.
Q. Okay. And I understand you -- I didn't ask you whether you were aware, not aware, none of that. All I asked you is a simple question.
When you showed up at this office, did you have in your possession your complete work file?
A. No.
Q. You do have a work file for this case, correct?
A. That's correct.
Q. And I assume it's stored on servers at your office?
A. Servers and some in hard copy form, yes.
Q. Okay. And do you have -- and what I mean is when I say "complete work file", you keep it all together to be easily located, correct?
A. Yes, uh-huh.
Q. Okay. And that would include any notes you've made, things of that sort?



A. I think generally, yes. I mean, we try to keep all of our information organized and together.
Q. Okay. Did you make notes, highlights when you reviewed these documents?
A. Typically I don't make notes. I mean, yes, there may be documents that I highlight or kind of tag for, you know, for my subsequent review.
Q. And those would be contained in your complete work file?
A. Yes.
Q. Okay. And the same with the associate, Nicole Kramer I believe is her name, if she -- she might tag or flag a document from time to time, correct?
A. She might. But ultimately the -- the work file becomes -- becomes mine and so any tags or flags she may have put on there if it weren't ones that I kind of agreed with, then they wouldn't necessarily remain.
Q. Fair enough. What I'm saying is --
A. Okay.
Q. -- you would have possession -- anything that she would have tagged or flagged, you would have possession in your complete work file?

A. Yes.
Q. She didn't have a separate work file?
A. No, it's one work file.
Q. And I know in this day and age when you have a work file, a lot of stuff may be stored on a server, right?
A. Yes.
Q. And that's accessible to her?
A. Yes, it is.
Q. Okay. And it has the ability to flag documents on there, I assume.
A. No, it doesn't.
Q. Okay. Your work file would also include all the stuff that you found from other sources on your own?
A. Yes.
Q. Okay. So if you find something, you would actually print it out or save it in some manner?
A. Try to, yes.
Q. Okay. All right. So moving forward, before we get to your opinions I wanted to ask you another question. I have got the appendix to your report.
(Discussion off record)

Q. (BY MR. FINDLEY) And, well, let's start here: You -- this deposition, we're here on September 5th, 2019, what did you do to get ready for the deposition?
A. Reviewed my report, I reviewed the work file and at least some of the hard copy documents we produced and had a couple of discussions with Counsel.
Q. Okay. And when did those discussions take place?
A. One of those discussions occurred yesterday afternoon, and then one of those discussions occurred approximately two weeks ago.
Q. Okay. Two weeks ago, who was that discussion with?
A. That was with Mr. Tarver.
Q. Okay. Mr. Tarver, you said?
A. Well, the attorneys present here.
Q. Tarver and Willis?
A. Mr. Tarver and Mr. Willis.
Q. Okay.
A. Yeah, and Mr. Willis was available by phone.
Q. And Mr. Tarver was in person?
A. Yes.

Q. Or here in Houston?
A. Yes.
Q. How long was that meeting?
A. That meeting was approximately five hours, six hours.
Q. And during that meeting, did you review any documents that you had not seen before?
A. Not that I recall.
Q. Okay. What did you talk about for five to six hours?
A. Oh, we talked about, you know, in general to the status of the case, you know, my report, my opinions in the report, and the documents that I relied upon.
Q. Okay. And then you had another meeting. When did that take place?
A. That was yesterday afternoon.
Q. How many hours was that?
A. That was approximately two and a half hours.
Q. So somewhere between seven and a half and eight and a half hours of meetings with lawyers prior to this deposition?
A. Yes.
Q. Okay. Seven and a half to eight and a

half hours of, I guess, preparation for the deposition with attorneys?
A. Yes.
Q. Okay. And I assume in addition to those meetings, you also did some review on your own?
A. Some review, yes.
Q. Okay. When was that?
A. Most of that review would have occurred yesterday and day before.
Q. Do you know how many hours?
A. I would say yesterday, prior to the meeting, I would say several hours. Let's say three hours, two and a half to three hours, and then maybe an hour the day before that.
Q. And when that -- those four hours are separate and apart from the seven and a half to eight and a half hours of preparation meeting with lawyers, correct?
A. Yes.
Q. So that's roughly I guess 12 and a half hours of total preparation for deposition?
A. Yeah, I think that's -- if your math is right, but yes.
Q. And before that, when was the last time you did any work on this case?

A. Let me think. In terms of looking specifically at my report, on my report it would have been -- likely would have been when the report was filed.
Q. Back in the -- late May?
A. Yes.
Q. So from late May, you did not pick up the file or communicate with any lawyers until a few weeks ago?
A. No. I think there was some communication with the attorneys, but it would not have been about, you know, my report or the substance of my report.
Q. Well, what communication was it?
A. You know, it was in relation to questions on producing our file, you know, my work file, and it may have been in relation to, you know, looking ahead at potential deposition dates.
Q. Okay. How many hours?
A. Oh, like, I --
Q. One or two?
A. Yeah, I don't think it would have been significant --
Q. Okay.
A. -- from what I recall.

Q. More of a logistical standpoint?
A. That's what I recall, yes.
Q. And encompassing all of that would be an additional hour, I guess?
A. I -- I don't know. I -- you know, I don't even know if it was an hour that I recorded or not. So again, I don't recall, so --
Q. Okay. Well, fair enough.
It wasn't anything longer than an hour. Is that fair?
A. I don't recall.
Q. Okay. If it was, you would have billed for it, right?
A. I think I would have tried to bill for it, yes, but I don't recall.
MR. FINDLEY: I have got Appendix A that I want to mark as an exhibit, Number 4.
(Exhibit 4 marked)
Q. (BY MR. FINDLEY) And before we get to this appendix, during those -- I guess after your report was generated, as far as I can tell, you've done additional 12 and a half hours of work with preparation of lawyers or review.
Is there any specific documents you went back and reviewed during that time?

A. I went back and reviewed most of the documents on --
Q. Most -- when you say "documents," you reviewed the documents --
A. Most of the documents in my work file I went back and reviewed at least to -- you know, at least at high level.
Q. Okay. So I'm just making sure I understand you correctly.
When you first got involved in this case or during the course of being involved, you would have reviewed Exhibit A, which is now Exhibit 4 -- excuse me, Appendix A, which is Exhibit 4, in a thorough manner, correct?
A. Right.
Q. And then in preparation after your report, you would have reviewed them again at -- at -- but more of a high-level review to where you focused more on the stuff that you deemed important?
A. Yeah --
Q. Okay.
A. -- I would say that. But -- but again, a lot of this financial information that was pulled, I would not necessarily have gone back to all of the 10-Ks or -- or the 14As or so forth.

Q. Okay.
A. I mean, I would have reviewed most of the documents produced, you know, from -- from Counsel or specific to --
Q. All right. So let's do this: I have gone through and taken the time to number the documents, and just so I'm clear, let's look at -- if you turn to the first page of Appendix A --
A. Okay.
Q. -- these documents are listed in groupings. Do you see that?
A. Yes.
Q. Okay. And you would agree with me that almost all of them are multiple pages?
This one, for instance --
A. Yes.
Q. -- is, I don't know, 12 pages, right?
A. Okay.
Q. Is -- you understand what I'm saying, right?
A. Which -- I mean, which documents are you referring to?
Q. Oh, on the screen. I'm sorry.
A. Okay.
Q. This one, it says, "294 to 311." That

indicates it's I guess, I don't know, 17 pages?
A. I'm sorry, I'm not understanding you.
Q. So KapS --
A. Oh, okay.
Q. -- KapStone 294 to 311 -- it might be easier to look here.
A. Yeah.
Q. -- that document's 11 pages?
A. Okay, yes.
Q. My only possible point is: The list of documents you have doesn't necessarily correlate with how many page numbers are in it, correct?
A. That's correct.
Q. Okay. But we would agree with that almost all of -- I mean, all of the ones I can tell, there are multiple pages in each.
A. Yes, uh-huh.
Q. Okay. Well, this document list, and I've gone through, that's 395 different groupings of documents?
A. Okay.
Q. And you can check my math if you need to, but I have numbered them all here in Exhibit 5.
And all of them are multiple pages?
A. Uh-huh.

Q. All of them from what I can tell are over four pages. Do you -- does that sound about right? Some even go up to 20 or 30 pages?
A. You know, I -- I don't know. I mean, yes, there are lots of documents, and yes, there are some that have a few pages and some that may have a hundred pages.
Q. Okay.
MR. FINDLEY: I lost my phone.
Q. (BY MR. FINDLEY) All right. So let's do it this way, okay: That is 395 documents that you reviewed yourself independently at $575 an hour, okay? If they're just -- let's just call them three pages each, okay? That's 1,200 pages approximately of documents, okay?
A. (Nods.) Okay.
Q. And how long does it take you to read a page?
A. I don't know. It depends on kind of the document, the time I spent on the page, whether it is something relevant to what I'm looking for.
Q. Right. Well, we know you reviewed every one. So at least a minute?
A. I said I reviewed all the documents, so --

Q. Yeah.
A. So -- so I don't know if it is a page or not, you know. I don't -- and I'm not saying I reviewed every single page, but I certainly reviewed the documents.
Q. Okay. Well, it would take you -- if just a minute a page, it would take you about, I don't know, at least 20 hours to review all those documents.
Does that sound about right?
A. Does your math sound about right?
Q. Sure. You're the economic guy.
So let's do it this way: If there are 1,200 pages of documents and you do a minute a page, how many hours is that?
A. Well, if I -- if 1,200 pages a document and I read all 1,200 pages and it took me a minute to read each one, then that's 1,200 minutes.
Q. And that's $595 an hour, how much is that?
A. I'll let you do the math, so --
Q. You're the economic guy --
A. Uh-huh.
Q. -- I want you to do it.
A. You want me to pull out my calculator,

the 6600?
Q. Sure. You got it.
A. So -- so 1,200 -- so 12 -- 1,200 minutes into, what's that, 20 hours? 20 hours times $575 is, what, $12,000? Somewhere around there.
Q. That's about right, 11 -- $11,500.
And then your -- so if it -- if you spent three minutes per page --
A. Then it would be a multiple of three.
Q. It would be $34,000. $34,500, just for your review of the documents. We've got $11,500 if you did a minute per page. If you did three minutes per page, it's $34,500.
And then we also -- Ms. Nicole Kramer independently reviewed her documents at $375 an hour. So let's do it again.
What did we say it was? 20 hours times $375, that would be -- if she did a minute a page, that's $7,500. If she did three minutes a page, $22,500.
So that would be -- just if both of you reviewed them three minutes per page, that's $57,000 before we actually do any creation of the report.
Does that math sound right?

A. Mr. Findley, I'm really not sure what you're doing.
Q. I just asked you if the math was right. I recited it all out loud.
A. Well --
Q. Do you have any dispute to the math I just gave you?
A. Well -- well, I have a dispute to the extent you're trying to attribute kind of the amount of time that my associate and I spent on this, so --
Q. Sir, we haven't gotten to that. I'm just asking you -- I gave you a variance --
MR. WILLIS: Let him finish his answer.
MR. FINDLEY: I mean --
MR. WILLIS: You interrupted him.
THE WITNESS: I --
Q. (BY MR. FINDLEY) Sir, my question is simple: I --
A. The math is correct.
Q. Okay. Thank you. The math is correct?
A. Or generally correct.
Q. And how much have you totally billed for this case?
A. I don't know the total on that right

now.
Q. Okay. The bills that I have --
MR. FINDLEY: I will just mark them all as Exhibit Number 5.
(Exhibit 5 marked)
Q. (BY MR. FINDLEY) -- I have got a bill from March -- let's get June 13th -- well, January 25th, 2019, June 13th, 2019, March 29th, 2019, and August 13th, 2019.
Does that encompass all your bills?
A. I think so.
Q. Okay.
A. What's the last date on the invoice you have there?
Q. The last date -- August is the last date; is that right?
(Discussion off record)
Q. (BY MR. FINDLEY) So you billed -- at least according to these bills -- and I can show them to you to make sure they're right -- but $177,811, and it says that's through July 31st, 2019.
Does that sound right?
A. If that's what it says on the bill, yes.
Q. Okay. And we know that you did an

additional 12 and a half hours of preparation after July 31st, correct?
A. Based on the -- the estimates we were working through, right.
Q. Okay. So at least according to the bills, 12.5 times -- an additional $7,000 or so before this deposition, correct?
A. Yeah --
Q. Okay.
A. -- I think so.
Q. So roughly $185,000 before you sat for the deposition, according to the bills?
A. According to the bills.
Q. Solely to do an opinion as to economic integration, correct?
A. Right, to connect the work that we did in relations to this report, yes.
Q. Okay. And are these the bills you sent to Counsel?
A. I don't know what you're looking at, but I assume so, yes.
Q. Well, I can hand them to you.
A. Yes, thanks.
Q. Okay. And are those accurate, as far as the bills?

A. They appear to be accurate, so --
Q. Okay. Have you been paid?
A. Not to my knowledge.
Q. Okay. So you haven't been paid at all for the work?
A. I don't know. So the last time I checked, we hadn't, but I received some communication from my associate yesterday that she thought we had been paid on some of the bills.
Q. Okay. Before yesterday, you had not been paid at all?
A. I don't know. If -- if payment came in, it hasn't been reported in the kind of standard weekly reporting that I get.
Q. Okay. And the last -- well, you said it, and the last time you checked, other than yesterday, was when?
A. Well, I get a kind of a weekly report.
Q. On what you've been paid on?
A. On what I've been paid on or what -- what invoices are outstanding.
Q. Okay.
A. Yeah.
Q. And so from July of 2018 when you were retained all the way to July of 2019, you did not

have a recollection, as we sit here today, of receiving any payment, fair?
A. No.
Q. What I'm saying is true?
A. What you're saying is true only to the extent that I had a conversation with my associate yesterday and she had some information that accounting had received payment, but --
Q. Is your --
A. -- but I have not seen that reported in kind of the e-mails that I receive on kind of outstanding invoices.
Q. Any reason as to why you weren't paid for a year's worth of work?
A. No specific reason.
Q. Okay. Is your rate -- or is the reason because your payment's contingent upon this outcome?
A. Absolutely not.
Q. Okay. Do you reduce your bills at all?
A. Sometimes, yes.
Q. Okay. When, at the end of your work?
A. No. Sometimes maybe at the beginning of the work where we make an agreement to, you know, adjust our rates or -- yeah, you know, we may fix certain portions of our type of fees.

Q. Okay. Do you have any plans to reduce your bills in this lawsuit?
A. Not at this time.
Q. Okay. All right. So this -- going through this list of documents, okay, there is a section -- I thought there was a section of, like, documents that you sort of found on your on -- or subscription-based research.
Do you see that, page 15?
A. Yes.
Q. That's -- that's what you were talking about earlier, that you would have gone out and found on your own?
A. No, I think it starts --
Q. Before that?
A. No, I think it may be spread out in to a couple of different areas. So I think, if you don't mind I will glance through it quickly.
Q. Yeah, look through it.
What I want to know is what documents you went out and found on your own.
A. It would have been -- okay, let me start from the beginning and I'll just do --
Q. Sure that's probably better.
A. And I'll walk-through.

Q. I can kind of help you.
A. Okay.
Q. So let's go to page one the, "Complaint motions, briefs, responses, affidavits, and exhibits and, legal precedent," on page one, I assume would have been provided to you?
A. I assume so, too.
Q. Okay.
A. You know it's not uncommon for me to necessarily go out, you know, to look at filings in a particular case.
Q. Okay. And it says here, "Legal precedent", you were providing case law?
A. Yes.
Q. Did you read them?
A. Yes.
Q. And you read them for purposes of generating your opinion?
A. No, I read them just for purposes of understanding the relevant case law.
Q. Okay. Were you given any depositions?
A. Deposition to read?
Q. Yeah.
A. Mr. Niehus and -- and Ms. Hulseman.
Q. Where do you see that?

A. Under, "Legal filings: Affidavits, depositions, and exhibits."
Q. Right. And what I see is Ms. Husleman's affidavits and exhibits dated June -- September 2017; Mark Niehus' affidavit and exhibits dated 22nd, 2017, correct?
A. Yes.
Q. And then depositions of Mark Niehus?
A. Yes.
Q. Do you see that?
A. Yes.
Q. So the only deposition you've read in this case would be Mark Niehus?
A. I had an opportunity to review Ms. Hulseman's deposition briefly.
Q. When?
A. Yesterday.
Q. Okay. Oh, okay. So before yesterday, you had never seen her deposition, correct?
A. No, no.
Q. Okay. And the first time you were shown it was yesterday during your two-and-a-half-hour meeting with Counsel?
A. Yes. Well, and then I had access to it, I had a copy provided to me.

Q. Yesterday?
A. Yes.
Q. Okay. But when you generated your report, one of the things you did not consider was her deposition, fair?
A. That's -- that's correct.
Q. So all of the opinions you have rendered in this case came without review of Kelly Husleman's sworn testimony, correct?
A. I had access to her affidavit, but did not have access to her deposition.
Q. Fair enough. And that's a -- that's a good point.
What you relied on in formulating your opinion from KapStone employees would be an affidavit for Mrs. Husleman, correct?
A. That's correct.
Q. An affidavit for Mark Niehus, correct?
A. That's correct.
Q. And the deposition of Mark Niehus, correct?
A. That's correct.
Q. And that would be the total from KapStone?
A. Yes.

Q. Okay. One of the things that you did not rely on in formulating your opinions that you generated in your report was what Kelly Husleman actually said with regards to her affidavit?
A. That is correct.
Q. All right. So we were going through page two. So page one, just so I'm on the same page, and I don't mean to be repetitive --
A. Uh-huh.
Q. -- but page one we know was provided by Counsel, not found on your own?
A. Yes.
Q. Okay. So page two, "Organizational Documents, Bylaws," and "Articles of Incorporation," we will start with these organizational documents.
I assume because these have Bates labels -- and when I say "Bates labels," if you look up real quick --
A. Yes, uh-huh.
Q. -- do you see that what I'm saying?
A. Oh, yes, uh-huh.
Q. I assume if these are Bates labeled, that means they were provided by Counsel?
A. Yes, that's correct.
Q. Okay. So we know organizational

documents, bylaws were provided by Counsel.
And then we have got Articles of Incorporation here or on page two, Documents 28 through 38, some of them have Bates labels and some of them don't.
A. Right.
Q. I would assume if it has Bates labels, that means it's provided by Counsel?
A. That's a good assumption, yes.
Q. Okay. So the ones that do not have Bates labels, we know that that would have been documents found on your own?
A. Yes.
Q. Okay. And so what I'm going to do so we make sure we're on on the same page so when I read this later, I know what we're talking about, if you look at the screen for me --
A. Uh-huh.
Q. -- I have got -- as far as on this page, we have got 35, 36, 37, and 38 without Bates labels. Those highlights would be documents you found on your own?
A. Yes.
Q. Okay. Going to the next page, page three, again we see "Corporate Logos/Trademarks."

Those are 39 through 42.
They have Bates labels, correct?
A. Yes, they do.
Q. And then we have SEC filings under the "Financial Documents" section, which is 43 through 58, and I did not see Bates labels on those.
I assume those are something you pulled on your own?
A. Yes.
Q. Okay. So I'm going to -- if you look at the screen, make sure I'm being accurate -- highlight those as documents you found on your own, okay? Is that correct?
A. Yes.
Q. All right. Go to page four. Again, no Bates label, more SEC filings.
These would be found on your own?
A. Yes.
Q. 59 through 81?
A. Yes.
Q. Okay. And then 82 through 88, I see on number 82 and 83, if you look at the screen to follow me along --
A. Okay.
Q. -- those have Bates labels, correct?

A. Correct.
Q. And then we've got 84, 85, and 86 and 88 do not?
A. Right, 87 docs.
Q. Okay.
A. Or by the way you're numbering them.
Q. Is that right?
A. Yes.
Q. All right. And then we've got, moving forward, "IRS filings." Those are KapStone label?
A. Okay.
Q. Are you with me here (indicates)?
A. Yes.
Q. All right. And then over here, under "Contracts and Agreements," we have got more Bates labels. That means provided by Counsel, correct?
A. Yes.
Q. All right. And I don't see any that don't have Bates.
A. There's one, "Long-Term Fiber Supply Agreement by and between MeadWestvaco and KapStone.
Q. What number is that one?
A. It looks like 80 -- 94.
Q. Ah, good call. You are very thorough reading document.

So let me go to the next -- is there any others?
A. No, not that I see here.
Q. All right. 103 starting on page six, are you with me?
A. Yes, uh-huh.
Q. Okay. So 103 through 113, as far as I can tell, all have Bates labels.
A. That appears to be the case, yes.
Q. Then we have got 114 does not. 115 --
A. No.
Q. 115?
A. 114 does not. But as I'm looking at that, I'm wondering why it doesn't have a Bates label. I'm not sure that's something I would have been able to source --
Q. Well --
A. -- through public information filings, but --
Q. Well, this one, 121 doesn't have a -- oh, yeah, it does. Never mind. Scratch that out.
A. Yeah.
Q. My apologies. 114, as we sit here today, you don't know if that's a document you found or was produced, but we do know it doesn't have a

Bates label to identify it, correct?
A. It does not have a Bates label to identify it.
Q. Okay.
A. So what I recall, this is something that -- that I pulled or something that had a Bates label that for one reason or another didn't -- it did not make it to this list.
Q. Okay. Fair enough. The next page, as far as Documents 123 to 141, according to my review appear to all have Bates numbers?
A. Yes.
Q. The Accounting or Financial" 142, 143 and 144 do not.
A. Yeah, sorry.
Q. I'm sorry, I didn't --
A. Yeah, that's correct.
Q. That's something you found on your own?
A. Yes, uh-huh.
Q. What are those?
A. I think the "Conceptual Framework Underlying Financial Accounting" is from a textbook, John Wiley & Sons and it really describes the four basic accounting principles, one: One being the economic kind of substance principle that we were

discussing earlier.
Q. Okay. And I think we made a mistake on this one. 144 actually has a Bates label on the next page.
A. Okay.
Q. Going through more documents what we have got here is -- I believe all of them on page eight, Documents 145 through 167, all have Bates.
A. No, there 's one stuck right in the middle there.
Q. Oh, 154?
A. Yes.
Q. Okay.
A. And that again is just an excerpt from an intermediate accounting book, so --
Q. Okay. The next page 174 through 175, no Bates, those are documents you found?
A. Yes.
Q. Okay. 177, a document you found?
A. Yes.
Q. Any others on that page?
A. Not that I see.
Q. The next page, page 10, I see that all documents have a Bates number.
A. No. Which page? At the very top,

under "Information Technology," KapStone -- oh, okay, no. No, you're correct. I'm sorry. So under "IT," they all have a Bates number on them.
Q. All right. Let's go to page 11.
All have Bates labels as far as I can tell?
A. Yeah, let me catch up with you here. Yes.
Q. The next page, all have Bates labels?
A. Appear to, yes.
Q. The next page, page 13, all provided by Counsel, the Bates label?
A. It appears to be, yes.
Q. Okay. Page 14.
A. Also, all appear to have Bates labels.
Q. Okay. Page 15. I see --
A. When you get to the "Subscription-based" actually, then they start.
Q. Is -- all the subscription-based would be something you found on your own?
A. Yes.
Q. So that would be 370 to -- or no, 320 through 340.
A. It probably continues on through the end of page 18, but I'll double check.

Q. I think you're right, but double check them.
A. Yes, appears to be the case.
MR. TARVER: Kyle, after you get done with this one, take a short break?
MR. FINDLEY: Yeah. Hold on one second.
Q. (BY MR. FINDLEY) And you confirmed that from your look through?
A. Yes, it appears from where we were discussing, that last kind of grouping appears to have been all information that -- that -- that we kind of identified and pulled.
Q. Okay.
A. So it doesn't have a Bates label on it.
Q. So I counted up 130 -- of the 395 documents, 130 of them you found on your own generating your report --
A. (Nods).
Q. -- according to what we have gone through?
A. Yeah.
Q. Fair?
A. Yeah, I will take your word for it. Yeah.

Q. And that was -- when I say you found own your own, those are things you found during your report which you cited and produced at the end of May 2019?
A. Yeah, or some -- some, yeah, that were produced that we found that were reviewed by me in connection with the report, yes.
Q. And then you put them in your appendix and put it as part of your report at the end of May?
A. Yes.
Q. All right. And as far as the -- I know we have got a lot of documents produced by counsel.
I assume you put more focus on some than the others, correct?
A. Yes.
Q. Okay. But we have got here "Motions" on page one. Do you see that?
A. Yes, uh-huh.
Q. Okay. And I see a Motion to Dismiss from KapStone, Defendant's Brief in Support, Defendant's Second Amended Rule 312, Memorandum of Law, are those things you read and analyzed?
A. I think they're things I read to gain an understanding of the background of the case and issues involved.

Q. Okay.
(Discussion off record)
Q. (BY MR. FINDLEY) Okay. And -- but this would contain all legal documents you've had with filings with the Court, correct?
A. I'm sorry, I don't understand.
Q. Excuse me. Motion and things of that sort, motions, briefs, responses and replies, all those are filed -- documents I know that are filed with the court. Is that your understanding as well?
A. That's my understanding.
Q. Okay. All I'm asking you is: This would contain all of the ones that aren't documents generated outside of litigation but generated in litigation would be on page one?
A. I guess I'm not understanding your question, but let me answer it and just say these are documents that I understand are -- are involved in litigation prepared and produced by the attorneys.
Q. Okay. One of the things -- you did not receive or review plaintiff's response to any of these motions, correct?
A. If it's not listed on here, then I am -- then -- then yes.
Q. Okay.

A. No.
MR. FINDLEY: Okay. Yeah, we can take a break.
THE VIDEOGRAPHER: This is the end of media two. The time is 12:06 p.m. We're on -- off the record.
(Recess taken)
THE VIDEOGRAPHER: This is the beginning of media three. The time is 12:42 p.m. We're on the record.
Q. (BY MR. FINDLEY) Okay. Sir, during the break, Mr. Will -- we had a short conversation I am going to put on the record.
MR. FINDLEY: Well, Dick, why don't you state what you were saying on the record so we can get it on here.
MR. WILLIS: Yeah, I will let Derek do it, since he's technically the --
MR. TARVER: Sure. So during the break, we had an off-the-record conversation with Mr. Lester about this case; that he is uncomfortable disclosing because he's not aware of the status of the confidentiality or protective order. He's not entirely clear right now whether he's a designated expert or just a consulting expert. He can find that

A. Yeah, I haven't read it.
Q. And you don't have any independent recollection -- well, I know it's not on there.
But you don't have any independent recollection sitting here today of reading plaintiff's response to KapStone's Motion to Dismiss, correct?
A. I do not --
Q. Okay.
A. -- as I'm sitting here today.
Q. And that was not provided to you at any point, correct?
A. I assume if it was provided to me, it would have been on --
Q. Fair enough.
A. -- on my Appendix A.
Q. And prior to yesterday, you had never -- and we also know prior to yesterday, you had not reviewed Kelly Husleman's deposition with regards to her affidavit, correct?
A. I have not reviewed her deposition, that is, correct, prior to yesterday.
Q. Right. And you did not have any knowledge about what she said about her affidavit prior to yesterday?

out for you shortly and get back to you about that.
Q. (BY MR. FINDLEY) Okay. So, sir, who's the lawyer?
A. The lawyer's with -- you know, it's Eric Nichols with Butler Snow.
Q. Okay. And can you call Eric Nichols at Butler Snow at a break and ask him if you're consulting or retained?
A. Yes.
Q. Okay. Well, we're going to do that at our next break, okay?
A. Okay.
Q. Well, let me do it this way: Is there a way you can contact your office right now and ask them to call Eric Nichols?
A. No, I would prefer to have that conversation with Mr. Nichols myself.
Q. Well, I'm sorry that's your preference, but we're finding out a simple answer to a simple question is: Whether or not you have been designated as consulting or retained, correct?
A. My question for Mr. Nichols will be if he's comfortable with me disclosing that I've been retained on his matter in this deposition.
Q. Well, unfortunately that's not what the

rules dictate is what -- what he's comfortable with.
I'm entitled to know what you've been designated as an expert in and what cases, and to the extent he's retained you as an expert, I need to know that. Okay?
So I think the conversation with him should go along like, "Have I been retained and designated?" That's what I need an answer to. Okay?
A. I need to understand whether my retention has been disclosed. I also want to make sure that I -- to the extent that there are protective orders in this case that they haven't extended to something in relation to my designation, if I have been at this point.
Q. Fair enough.
A. So those -- those are the questions that I want to ask. And I'm fine to make that call and to provide that information.
Q. Got you. The other thing we talked about was -- before the break was you got a -- a file at your office, a complete work file which would have -- at least the hard portions of that file would have flags on them, correct?
A. Yes.
Q. Okay. During the break, I want you to

call your office and have them deliver it to my office today. Okay?
A. Yeah. If -- if that's fine with Counsel, yes, uh-huh.
MR. FINDLEY: Is that fine with y'all in its current state with markings and everything else?
MR. WILLIS: Yeah, I want -- I want to take a look at it, but it -- I shouldn't -- we shouldn't have an objection to that.
Q. (BY MR. FINDLEY) Okay. All right. So let's get started back where we were talking about, and one of the things we were talking about was -- well, one of the objectives in your case we talked about extensively was ec -- well, economic integration, right?
A. Yes.
MR. FINDLEY: Okay. I've got here what I'm going to mark as Exhibit Number 6.
(Exhibit 6 marked)
Q. (BY MR. FINDLEY) This is a case list that your attorneys provided me.
Is that an up-to-date case list?
A. With the exception of the most recent testimony.

Q. Which was what?
A. Was a -- it's an ongoing matter involving a dispute between two parties, the theft of trade secrets and an unfair competition matter.
Q. Are nothing to do with economic integration?
A. It -- doesn't necessarily deal with the economic integration or relationship between two parties, but it does deal with -- with certain factors relative to corporate entity and things of those nature.
Q. Right. Not the same objective you had here, fair?
A. I -- I think it flows into I think some of the same things I was working -- working on with regard to that case are the same kind of matters I've looked at in relation to this case.
Q. Well, hold on, sir. Just because you look at tax returns in both matters doesn't mean it's the same objective, right?
A. It doesn't mean it's the same objective, right. But some of the same things that I've been looking at here I'm also looking at in regard to that case.
Q. Like what?

A. What's that?
Q. Give me an example.
A. Corporate identity.
Q. Okay. Meaning what their filing states?
A. No. Corporate identity is more than just what their filing states, but the brand of the company, the name, the logo, how that -- how that corporate identity is established by the company, as well as the -- you know, the company that has, you know, alleged to have stolen that identify, stolen their trademarks, stolen their image and so forth.
So all the factors that go into kind of the -- the corporate entity -- the corporate entity of two -- or a couple of different entities and the economic value that the company derives from that.
Q. Right. The other one you said is dealing with a trademark infringement, correct?
A. This is the same case. So it's dealing with trademark and it's theft of trade secrets, trademark infringement, and unfair competition.
Q. Right. But you understand there is no trademark infringement allegations made in this case or unfair competition, correct?

A. I understand that.
Q. Okay. So let's do this way: Corporate identity, okay? KapStone Charleston -- well, all of these are separate -- all of these KapStone entities are separate entities, correct?
A. They're separate legal entities --
Q. Yeah.
A. -- that's right.
Q. They're separate and distinct legal entities, correct?
A. I would say they're separate legal entities in -- in the sense that they are kind of, you know, incorporated separately and one is an Ellis.
Q. Right. Okay. One of the things you looked at you said was, according to your report, brand name or logo.
Do you remember that?
A. Yes.
Q. Okay. One of the things you did not do during the course of this case was talk to any of the workers of how the different entities hold themselves out to each other, correct?
A. I didn't speak to any individual workers.

Q. Right. And you didn't obtain any information related to any employees with how they hold themselves out to each other?
A. With how employees hold themselves out to each other?
Q. Internally, correct.
A. No.
Q. Okay. You also -- everything you know about how they hold themselves out would be -- what you did was review their website, right?
A. I know I reviewed their website, I reviewed all the documentation, the internal documentation or correspondence, which would include employee-to-employee communications.
Q. Okay. For what timeframe?
A. Well, the timeframe kind of -- I guess the timeframe going back to 2015, 2016, and -- and to the extent that there were documents sort of around that different period.
Q. Okay. What was the date of this incident?
A. May of 2016.
Q. Okay. Did you -- did you limit your economic integration analysis to before this incident?

A. I focused on the timeframe around this incident --
Q. Okay.
A. -- but a lot of my analysis dated kind of, you know, the significant period prior to that, you know as well as also kind of subsequent to that point.
Q. And I'm not sure what that means.
I guess what I am saying is: This accident happened on May 24, 2016. When you were looking at financial integration of these companies, was your end date May 24, 2016 and you looked at everything that they had done before that date?
A. My focus was on the timeframe around this --
Q. Well, was what I said accurate or not?
A. My focus was on the time period around May 2016 --
Q. Okay.
A. -- but to the extent that information was available and prior and after that point, then I also focused on that information.
Q. Well, let me give it to you a different way: One of the things you did not do was make May 24, 2016 the end date and look at integration prior

to that date, correct?
A. No. No, I focused on that. But some of the information that was available about the company would have been both before and after that date.
Q. Yeah. And you keep saying the same things again, man. I really just want an answer to my question. I'm going to let you talk all day, okay? You'll be able to say all the talking points you want to.
And we'll just do it this way: When you look at financial integration, you encompassed all dates available. Is that fair?
A. That's fair.
Q. Okay. And that means that you looked at it from what the documents at least you had before May 24, 2016, and looked at them after May 26th, 2016, all the way into 2017 or '18 or even '19, correct?
A. Some of my documents definitely go to that point, yes.
Q. So it would be an accurate statement for me to say that one of the things you did not do was limit your focus on the end date, being May 24, 2016, and looking at everything before that, correct?

A. No, no. I would agree that my focus wasn't limited to everything that existed as of May 24, 2016.
Q. That's my question. Thank you.
Okay. So one of the things that's important -- well, and in regards to that, you mentioned something called "integrated services" in your report. Do you remember that?
A. "Integrated or shared services" I believe is the term I used.
Q. Okay. You did not read any Kelly Husleman's deposition testimony prior to rendering your opinions about what she said regarding integrated services and when it started, fair?
A. I certainly read her affidavit, which is sworn testimony.
Q. Okay.
A. And -- and -- and I did review some of the sections in her report -- well, you know, her deposition last night, but you're correct, not prior to my report.
Q. Right. So let's just get it clean for the record.
Prior to rendering opinions in this case, you did not review her deposition testimony as

A. Uh-huh.
Q. -- but as far as this being one of your hot documents that you flagged, as we sit here today, it's not?
A. I don't recall --
Q. Okay. So this --
A. -- kind of the summary of those documents.
Q. -- this isn't one that stands out in your mind as something that you relied on and reviewed on, at least as one of the more relevant documents that you have seen, correct?
A. I don't recall this, yeah, this specific document as I'm sitting here right now.
Q. Okay. Well, let's look at this document, starting on the first page.
January 18th, 2017, do you see that?
A. Yes.
Q. Okay. That would be after this incident, true?
A. Yes.
Q. Okay. And it says, "Integrating our mill and container systems."
Do you see that?
A. I do.

to what she said regarding shared services or integrated services, correct?
A. That's correct.
Q. Okay. Are -- well, did you review what I'm going to mark as a -- I think this had -- was listed, but --
(Discussion off record)
Q. (BY MR. FINDLEY) Okay. Exhibit 7, Bates labeled KapStone 002915 to 2922, this document, (indicates.)
(Discussion off record)
Q. (BY MR. FINDLEY) I can hand this document to you.
A. Thank you.
Q. I've got one here.
That is a document you have listed. Does it look familiar?
A. It does not look familiar.
Q. Okay. So you haven't seen it before to your recollection?
A. Yeah, as I'm sitting here right now, I don't -- you know, don't recall. I recall some of the information from it, but not --
Q. Well, let me ask it to you this way: And I know you've reviewed a lot of documents --

Q. Okay. And one -- before we start looking through documents, just so I'm clear, one of the things that you look at when you look at integrated -- or you should look at when you look at economic integration is how the company existed prior to the date my clients were injured, correct?
A. I think that's the relevant time point, yes.
Q. Okay. And it's relevant because that's how the company existed at the time of the event as you understand it's important, correct?
A. Yes.
Q. Okay. And if we go to page two, in 2017, if you look at the top it says, "There is an urgent need for us to pull together as a unified company," correct?
A. Yes.
Q. Okay. If there's an urgent need to pull together as unified company, then that means prior to January 2017 they had not been pulled together as a unified company, correct?
A. I don't know if that -- I don't know if I would necessarily draw that conclusion.
Q. Well, we can draw this conclusion: That in January of 2017, KapStone said there was an

urgent need to pull together as unified company, correct?
A. I think they stated this as specifically with regard to, you know, reference to their mill and container divisions, right? Or container systems.
Q. Okay. So isn't that what KapStone said, pull together as a unified company, urgent need?
A. I assume. I assume this was prepared by KapStone, I don't know, but yes.
Q. Okay.
A. And that's what the document says.
Q. And it says, "What? Integrate the operations and support functions of our mill and container system. Do you see that?
A. It does. Yes, I do.
Q. And what they're saying what they want to do is integrate and support functions in January of 2017, pushing this agenda, correct?
A. That's what this says.
Q. And it says in January of 2017, what they want to do is "run the integration -- integration effort as a single process across the organization" correct?

A. 2016.
Q. Okay. And the third quarter of 2016 would be October?
A. The call was in relation to the third quarter of 2016 and operating results. I think the transcript from the one I'm recalling was -- may have been early November.
Q. Okay. So the first trans -- the only other document you recall talking -- that you've reviewed regarding an integration prior to January of 2017 would have been a November third quarter 2016 transcript of an analyst' call, correct?
A. Correct. The analyst's call transcript was talking about, you know, the need to integrate the mill and container systems better --
Q. Okay. So in the --
A. -- the one I recall.
Q. Right. And sitting here today, that's the only other document you recall reviewing that talked about a push for integrated services prior to January 2017, fair?
A. I'm trying to recall if there was other references in this analyst's call or a prior analyst's call that there was -- you know, the talk came in conjunction with sort of the step down of

A. That's what that says.
Q. And this says that's one of their objectives in January of 2017, correct?
A. Yes.
Q. You haven't seen any documents that say that was an objective prior to this incident, correct?
A. Yes, I have.
Q. You have?
A. Yes.
Q. Where are they? Because I haven't seen them.
A. Yeah, they're in the -- they're in the documents produced, which would have related to some of the -- the analyst's call.
Q. The what?
A. The notes from the analyst's calls, the transcripts from the analyst's calls discussed kind of the integration effort. And I think it was in relation to the third quarter call. So it would have been kind of, you know, at least a few months before this.
Q. Your -- your testimony is that you reviewed a document in the third quarter of what year?

Mr. Stone, I believe, and then some of the kind of the executive office restructuring.
Q. Okay. Do you remember what my question was?
A. I do. You were asking me if I had seen any other references to this, and my answer was I'm trying to recall --
Q. Other than that call?
A. Other than that call. And I'm trying to say that the reference in -- with regard to this call came in conjunction with other discussions about restructuring and I'm trying to recall whether or not there were other documents I saw that talked about the broader restructuring that was taking place.
Q. Okay. And so let's talk about that for a second. All right?
The call that -- the one document you can identify sitting here today was a restructuring phone call -- or, excuse me, strike that.
The document you do recall sitting here today that occurred prior to January 2017 was a transcript from a third quarter 2016 call that took place in November with an analyst.
That part's true, correct?
A. It's an analyst's call. So there were

a lot of analysts on those calls, but that's what I recall.
Q. Okay. Fair. I'm just making sure we're on the same page.
A. And I'm just trying to be precise.
Q. I agree. And during that phone call -- or the call -- I'm sure there were multiple people on the call, right?
A. Yes.
Q. -- there's a transcript of that call?
A. Yes.
Q. And your recollection is during that transcript in November of 2016, there was a talk about a push for restructuring, fair?
A. Yes.
Q. Okay. And the talk about the push from (sic) restructuring, do you have any documents to show that implementation had began at any point in 2016?
A. I don't recall the specific language about, you know, when the restructuring was starting.
Q. Okay.
A. And by "restructuring," again, meaning that, you know, the changeover in some of the senior -- the change in the executive officer

positions.
Q. Okay. And fair enough, and we'll -- all I'm asking you, though, is: During this phone call, the discussion -- that there's a transcript for, there was a discussion about the need for or the desire to restructure to become more integrated, correct?
A. Well, and again, the restructuring came on the heels of -- and by the use of "restructuring," I'm saying from the standpoint of the executive officers. So, you know, when one executive officer stepped down, there was a shuffling of some of the positions in relation to the other executive officers.
(Discussion off record)
Q. (BY MR. FINDLEY) Okay. And I've looked through your list of documents you reviewed and I think you're correct, number -- Exhibit Number 7 in front of you has never been provided to you.
Were you aware of that?
A. Oh, okay. Oh, well, it's what I thought. I mean, I was not familiar with this.
Q. Okay. But you don't control what documents you review, you're at the mercy of what counsel gives you, fair?

A. To the extent that I don't find it myself, you know, I rely on Counsel to provide me information relevant -- kind of relevant to what I need to do my review.
Q. Right. And my point is: Putting aside the documents we highlighted that you found on your own --
A. Right.
Q. -- okay, those are documents you found on your own through subscription-based or Internet-based searches that you felt were relevant, correct?
A. Correct.
Q. But the documents in this litigation that were produced to you, it's not like you got to sit down and look at all the documents in this case and determine what's relevant on your own, you were -- the lawyers selected them and sent them to you, correct?
A. Yes.
Q. Okay.
A. And based on what I might have -- may have requested, you know, in response to what I requested.
Q. Right. And the document you have in

front of you is Exhibit Number 7. And this November has been produced in litigation, and as far as I can tell, and I think you've in agreement with, you don't recall ever it being provided, fair?
A. That's correct.
Q. You would agree with me when doing a analysis, it's important that from your standpoint you would -- you -- one of your desires would be that you were given all documents, right?
A. Yes.
Q. Okay. Unfortunately you don't control what documents you get. That's dependent on who sent them to you, fair?
A. True.
Q. Okay. You would agree with me that there could be -- and you don't know this, but there could be documents out there that might change your opinion?
A. There could be.
Q. Okay. All right. So we go on to this document from January 18, 2017 and it says, "Why? Why is there an urgent need for us to pull together a unified company? And it says, "We grew through acquisitions but have not integrated to capture the benefits."

Do you see that?
A. Yes.
Q. Okay. And so in January of 2017, KapStone is internally saying, we have grown through acquisitions but we have not integrated, and that's why they're making this push, correct, according to the document?
A. Yes. I mean, if -- you know, I'm sorry, I was reading when your -- when you made your question, but if your question was, yeah, you know, just citing this point, we agree through acquisitions, but have not integrated to capture the benefits, then yeah, that -- that's -- this is what the document states.
Q. Okay. Turning to another page, page 2919, okay, it says, "Integration Behaviors." It says, "How will we work together" --
A. Would you mind if I take a few minutes to look at the document?
Q. Sure. But I want to point you to a -- to a single point of it.
A. Okay. But I have not had a chance to kind of review the document, if you don't mind --
Q. Well, sir, honestly, that's not my fault. So I'm here to ask you questions. I got a

limited amount of time. If -- if someone felt it was important for you to review it, I assume they would have given it to you.
MR. TARVER: Well, this was produced after his report. I mean --
MR. FINDLEY: It's not my problem.
MR. TARVER: All right.
Q. (BY MR. FINDLEY) So let's go on to the --
(Discussion off record).
MR. TARVER: Yeah. Yeah.
MR. FINDLEY: What's that?
MR. TARVER: Yeah, I mean, he's entitled to look at the document.
MR. FINDLEY: Sure, he's entitled to. When you -- when you're charged $180,000, you should have seen it to him. I mean, I'm not here to provide him with documents to review. I'm here to perform a cross-examination.
MR. TARVER: That's fine.
MR. FINDLEY: So I'm going to conduct my cross-examination, and to the extent you want to walk him back through and go to the Judge and explain why again y'all have not given your documents to experts, you can. But I'm doing a cross.

Q. (BY MR. FINDLEY) So page number 002919, "Stay aligned: How well we work together reflects the urgency and breadth of integration." And it says, "Stay aligned: Drive to a single, integrated end state version and goals."
Do you see that?
A. Yes.
Q. And this is a document that -- well, this is a document that was written in January 28th, 2017, which we know is post-incident, correct?
A. It is post-incident, at least that's the date on the document.
Q. And just so we're clear, the date of your report is May 30th, 2019, correct?
A. That's correct.
Q. The date of this document is January 28, 2017, correct?
A. January 18th.
Q. January 18th, 2017. And this document was produced to me prior to your report being issued. Did you know that?
A. I don't know one way or the other.
Q. Okay. It was produced to me on May 28th, 2019. Do you have any reason to dispute that?
A. I don't have any reason to dispute it.

Q. Okay.
(Discussion off record)
Q. (BY MR. FINDLEY) All right. I have got another document for you.
(Discussion off record)
Q. (BY MR. FINDLEY) And I have looked through the list of documents you've reviewed --
(Exhibit 8 marked)
Q. (BY MR. FINDLEY) -- and what I have here is Exhibit Number 8, and this is a document dated -- "Leadership Workshop January 11th through 12th, 2017."
Have you seen this document?
A. I don't recall seeing this document.
Q. I have looked through your list and it doesn't look like a document you relied on and reviewed. Do you have any information to dispute that?
A. No, I do not.
Q. Okay. So let's turn to page 003548. Okay? "Adapting the KapStone operating model."
Do you see that?
A. Not yet.
Q. You see the top line? You can look at the screen of where I'm pointing.

A. Okay.
Q. Do you see that, "Adapting KapStone Operating Model"?
A. I'm sorry, I think I'm behind you a little bit. What -- what page?
Q. 3548.
A. 3548. Okay.
Q. Are you there with me?
A. Yes.
Q. Okay. And I'm just going to kind of skip around, so it might be helpful to look up here.
But we see "Adapting the" current -- "the KapStone Operating Model," correct?
A. Yes.
Q. And we see "Target Operating Model," correct?
A. Yes.
Q. And we see two terms here: Decentralized and centralized, correct?
A. Yes.
Q. And those are two operating models you're familiar with: A centralized model and a decentralized model, correct?
A. That's correct.
Q. Said another way, unintegrated and

integrated, correct?
A. No, I think that's -- yes, I think you can use those terms --
Q. Okay.
A. -- together.
Q. And so this says -- we have got a little key to go with. In 2017, it says, "KapStone's Current State."
Do you see that?
A. Yes.
Q. Right here (indicates)?
A. Uh-huh.
Q. "Current state: Decentralized."
Unintegrated, right?
A. Yes.
Q. And it says, "Core operations: Decentralize, plan accounta -- level accountability," correct? Do you see?
A. Yes.
Q. It says, "Decentralized: Engineering, technical, continuous improvement, local engineer at most facilities."
Do you see that?
A. Yes.
Q. And it says, "Quality, safety, and

environment: Distributed client compliance and monitoring, increase local safety resources, contract environmental monitoring, decentralized," correct?
A. Yes, I see that.
Q. "Sales, marketing, and scheduling, decentralized."
A. Right.
Q. Do you see that?
A. No. Exactly, the arrows are on the decentralized side of the -- of the table.
Q. Right. And -- and local spend thresholds and categories, local services subject to master standard, decentralized, correct?
A. I'm sorry, let me see where you're focusing on.
Q. Right here, (indicates).
A. Oh, okay, yes.
Q. And that's KapStone's current state, correct, according to the keys at the bottom?
A. Yeah, according to the keys, yes.
Q. Okay.
A. Yeah, uh-huh.
Q. Okay. And then it says, "Fix support, IT, cost accountants, reporting, finance organizations, each site manages, hiring and firing,

regional HR support, temporary staff, subject to policies and training."
All decentralizing KapStone's current state, correct?
A. They're all showing up on the decentralized line of the chart, yes.
Q. And it's -- that is for support functions, IT, finance, HR and legal, correct?
A. Certainly with what's referenced here --
Q. Okay.
A. -- you know, one of the specifics of support function.
Q. And then it says, "KapStone's future state." "Future state" would mean beyond the date of this document, correct?
A. Let me -- let me back up for a second.
Q. I need an answer to my question first.
A. I -- well --
Q. Does "future state" in your mind mean beyond the date that the document was rendered?
A. Yeah, future state would imply the condition that the company wants to be at at some point in the future.
Q. Right. And it says future state would

be moving to the centralized, correct?
A. Yes.
Q. All right.
A. That's -- that's what I take from the -- the -- kind of the indication of the regular roles.
Q. And it goes on. If we look at the right side of the column, we have got "Changes."
And these are changes that they're going to go through and to get to the future state.
Do you see this? It's got changes being made for each column.
A. Yes, uh-huh.
Q. Okay. For the core operation, it says, "Changes that are going to take place post-2017 are established common standards, process, and specs."
Do you see that?
A. I see it.
Q. Okay.
(Discussion off record)
Q. (BY MR. FINDLEY) Okay. And then we have got for engineering technical and continuous improvement, which we already identified current state of decentralized, the change is going to be "establish a centralized organization and

capabilities - Center of Excellence."
Do you see that?
A. I see it.
Q. Okay. That is a change they are going to make in the future, right, moving forward, correct?
A. I haven't read the document, so I'm not sure what that's stating.
Q. Well --
A. So I'm -- I'm agreeing that that's what it says, but I'm not sure that that's how I would interpret it.
Q. Well, sir, to be fair, we know that document was written in 2017, correct?
A. I think that's when it was presented at the workshop was in 2017.
Q. Okay. And usually you, being someone who you are, know when you put a date and have a presentation, that's when you're going to communicate it to leadership or whoever's there, right?
A. That's when it was communicated apparently at this leadership workshop --
Q. Okay.
A. -- but that, you know, again doesn't mean that's when it was written or necessarily when

it was originally communicated.
Q. Sir, when they presented it at the leadership workshop, do you have any information to support that it would not have been given on the date that the document says?
A. No. I'm just saying that this one document in a -- you know, in what's obviously a very large process within the company, you know, indicates when it was pro -- provided -- presented to leadership.
Q. Okay. In any event, that -- that presentation, according to your review of documents, how they work, the presentation would have taken place on the date on the cover of the presentation.
Is that fair?
A. Based on how I would read this document, this was a presentation that was intended to be presented to the leadership workshop on -- on these dates.
Q. On what date?
A. On the dates -- I said "these dates," but January 11th through 12th, 2017.
Q. Okay. And if we go along, let's go on to "Quality, safety, and environment." Its current state we went through of a decentralized. The

changes that they're going to make is centralized standards policies and training requests.
Do you see that?
A. Yes.
Q. And then it says requests, "Establish standards for local market -- local monitoring, reporting, and contracting."
Do you see that? That's a change to get to a centralized quality, safety, and environment, correct?
A. Well, I think the -- I think the change that's denoted there is to get to a standardized kind of model is what their -- you know, if I read the red arrows correctly.
Q. Right. We have got a current state decentralized. We want to go to future KapStone state of centralized. Here's a change we're going to make.
A. No, that one doesn't say go to centralized. It says, "We want to go to standardized."
Q. Well, the changes for that section say centralized standards, policies, and training, fair?
A. Yes.
Q. And it says, "Changes being made:

Establish standards for local monitoring, reporting, and contracting," correct?

A. Yes, under the column "Changes, it says establish standards for local monitoring, reporting, and contracting."

Q. All right. Going down to "Procurement and Transportation," okay? To get to the changes that are going to be made to get to the KapStone's future state here would be -- I want to point you to the second one -- "centralized intercompany logistics."

Do you see that?

A. So under the "Changes" column for "Procurement and Transportation, centralize intracompany logistics," yes.

Q. And then it says, "Establish common" practice -- "common processes, MSAs, approved vendors, spin thresholds and local standards."

Do you see that?

A. Yes.

Q. That is a change that they were implementing, at least in this presentation, to get to the centralized future KapStone state, correct?

A. I don't know if these changes were being implemented or not. I think this is a -- kind

of a presentation -- as I read it, as a presentation to -- in a leadership workshop of what might be being discussed or promoted or presented. I'm not sure.

Q. Well, if they don't make the -- well, we -- it's identified through the columns of what KapStone's current state is and it lists changes to get to KapStone's future state.

Do you see that?

A. I see what you're referencing in current state and future state.

Q. Right.

A. But without reading the whole document and understanding the purpose of the document, you know, I can't really agree that it meant to do one thing or another.

Q. Well, when you make a change -- if you're in a current state and your goal is to get to a different state, you would agree with me you need to make changes to get there, right?

A. No, I would agree that, yes, there are changes that need to get there, but that doesn't mean that that is what was agreed by the leadership workshop that those changes need to be made.

Q. Sir, I understand you weren't there and you didn't see it, right? I understand you didn't

talk to anyone from KapStone. We agree, right?

A. You asked me whether they were making changes and they're making these changes and I said, I don't know that. I don't know they're making these changes --

Q. I'm not --

A. -- I don't know if they decided to make these changes.

Q. I'm not asking you if they decided to, had a conversation about it or anything.

All I'm asking you is at the January 2017 presentation, they identified a current state and a future state and then changes, correct?

A. Some --

Q. That part's true?

A. There is a slide that identifies a current state and a future state and some recommendation, I presume, with regard to changes.

Q. Okay. And just putting this document aside, just in reality, if you're in a current state in order to get to a future state, you have to make changes to get there, correct?

A. Typically, yes.

Q. And if you don't make the changes, you'd stay where you were before, right?

A. Assuming that where the -- where you are before is -- is not where you want to be.

Q. Right. If your desire is to get to a -- somewhere else, then changes aren't -- those changes to get there aren't made, you would stay where you currently are.

Is that fair?

A. I would say if we're talking just hypotheticals here, you know, if I identified a future state that I wanted to be at and identified where I was in the current state, then yes, you know, there would likely be changes for me to get from current to future state.

Q. Right. And if those changes aren't actually done and communicated and followed through with, you would stay in your current state, fair?

A. Assuming I assessed my current state correctly.

Q. Yes?

A. Yes.

Q. Okay. So the next one, "Support functions, IT, finance, HR and legal," are you with me?

A. Yes.

Q. The changes that were presented in this

PowerPoint in January of 2017 say, "Consolidate support functions into central organizations with consistent processes and policies."

Do you see that?

A. I do.

Q. Okay. "Look for third-party solutions," and "high grade capabilities of staff," do you see that?

A. Yes.

Q. Okay.

(Discussion off record)

Q. (BY MR. FINDLEY) Okay. All right. So putting that document aside --

(Exhibit 9 marked)

Q. (BY MR. FINDLEY) -- I have got another document, and this is Bates 2923, and this is another presentation preparation material for a January executive workshop draft December 27th, 2016.

Do you recall that one?

A. I do not recall this document.

Q. Okay. And I did not see it on your list either. So I assume that would mean that was not a document provided to you by Counsel that you relied on in formulating your opinions, correct?

A. Like I said, I do not recall seeing

this document.

Q. And therefore, if it's not on your list, it would not have been a document you reviewed in formulating your opinion, fair?

A. That's correct.

Q. All right. If we go to page 2925, "Program Guidelines," okay? Are you with me?

A. Yes.

Q. It says, "These guidelines describe how we will run this integration program."

Do you see that?

A. I do.

Q. Okay. And when you say it's "how we will run," that means future tense, fair?

A. Yes, it does.

Q. Okay. And when you speak in the future, that means it's something you are going to do in the future, correct?

A. Not necessarily.

Q. Well, if you're going to say you're going to go somewhere tomorrow, would you say, "I went there yesterday"?

A. No. But my point being that just because someone says, "This is how we will run this integration program," doesn't mean it's -- you know,

it still could be in a proposal stage at this point.

Q. Right, it could be in a proposal stage.

A. Right.

Q. But in any event, it's either implementing to go forward or proposing to be implemented to go forward, correct?

A. That's correct.

Q. It's not past tense?

A. That's correct.

Q. And it says keep --

A. But it doesn't -- I'm sorry. But I -- I mean, it does not state when the integration program was developed, but --

Q. It says at "Keep the pace. Level of urgency high."

This is the second time we have seen a document in 2017 where it says "integration program urgency high," correct?

A. Yes. I believe. I am --

Q. Okay.

A. I will take your word for it.

Q. And it says -- if we just go down, I want to point you to a few things. It says, "Be a leader of change. Demonstrate to your people your dedication and commitment," right?

A. Okay.

Q. Do you see that?

A. Focus on the people section? Yes.

Q. Yes. And what that's talking about is we have got some changes, I want you to be a leader, be dedicated and committed to it, correct?

A. Yes.

Q. Okay. And it says, "Communicate consistent and centrally agree messages openly to keep people calm and focused during integration. Frequently communicate wins and successes."

Do you see that?

A. I do.

Q. So it's saying in the future and how we are going to run this integration program, one of the things we want is to do -- communicate consistent and send centrally agreed messages to keep people calm and focused during integration in the future, correct?

A. That's -- that's generally what it says, yes.

(Discussion off record)

Q. (BY MR. FINDLEY) And this document, at the front it's got a company on the front.

Do you know who Deloitte is?

A. Deloitte's one of the big accounting firms.
Q. Okay. One of the big five?
A. The big four now.
Q. Big four now, that's right. Dating myself.
The big four accounting firms in the country, correct?
A. Yes.
Q. Okay. They provide services, all types of services, right?
A. They do.
Q. What types?
A. Audit, tax consulting, you know a testament, likely consulting-related services as well in a variety of different areas.
Q. Okay. And do you know why they were hired by KapStone?
A. I do not.
Q. Okay. Would it surprise you that they were -- it's been testified to that they were hired for the purposes of integrating the companies within KapStone?
A. I would not be surprised based on reviewing these documents that Deloitte had some role

in change integration and consulting.
(Discussion off record)
Q. (BY MR. FINDLEY) Okay. And what I'm saying is: My understanding is Deloitte was hired for the purposes of integrating to a shared system services program within KapStone to be implemented in 2017.
Do you have any information to dispute that?
A. I'm sorry, would you rephrase it?
Q. Sure. My understanding is Deloitte was hired by KapStone to help the company on a consulting basis and provide services to move the company to an integrated state in a shared program services to be rolled out in January 2017.
Do you have any information to say what I'm saying is untrue?
A. I have no information one way or the other.
Q. Okay. But if you wanted to move to integrated services and you wanted to move to financially integrating or whatever the case may be, Deloitte, your understanding, is a company who can proved that service, fair?
A. It's my understanding that Deloitte

docs have some change integration services that they provide.
Q. All right. I have got another document --
(Exhibit 10 marked)
Q. (BY MR. FINDLEY) Are you familiar with the term "synergy"?
A. Yes.
Q. What does that mean?
A. Synergy -- synergy is often referred to when you combine two different companies and the outcome of the combination of the companies is greater than the individual parts.
Q. Okay. So the synergy definition that we can agree to would be combining two different companies to make them greater than their individual parts, fair?
A. And in the sense of the -- of like an acquisition, yes.
Q. Okay. Well, I have got another document that I'm going to show to you.
This is Exhibit Number 10. Have you seen this document before?
A. I don't recall seeing this document.
(Discussion off record)

MR. FINDLEY: Got you.
Q. (BY MR. FINDLEY) So if we just want to -- I'm going to walk through it with you.
The first page, Exhibit 10, do you see where it says "Deloitte sample synergy report"?
A. Yes.
Q. Okay.
MR. WILLIS: Can you identify the Bates label.
Q. (BY MR. FINDLEY) And it's Bates labeled 003814. Do you see that?
A. Yes, I do.
Q. And it says, "Deloitte, here is a sample synergy report," correct, on the front?
A. Yes.
Q. And it's not uncommon in Deloitte's world that when you are getting bidding or contract negotiations that one of the things you do is provide a sample of the services, correct?
Is that right?
A. I don't know if I would agree with that.
Q. Okay. Have you ever worked for Deloitte?
A. No, I have not.

Q. Okay. And if you hire a consulting firm, is -- is it your testimony that you don't believe that in certain situations, they provide a sample report to show what their projections are or what they can do to help assist you?

A. Yeah, I think I might use a different term. Instead of a sample report, would -- would be more of -- a kind of proposed scope of work.

Q. Okay. So we can agree to a sample -- a sample synergy report would be a proposed scope of work report for the synergy definition we described, correct?

A. Yeah.

Q. All right.

A. Without looking at the document, I'm not sure, you know, what this relates to, but --

Q. But the document dated is October 2016?

A. Okay.

Q. Is that right?

A. Yes, it is.

Q. Okay. And that would be right around the call of this analyst's transcript that you remember reading, correct?

A. Yeah, yes, generally around the time.

Q. Where they were talking about

restructuring?

A. Well, I think, you know, "restructuring" was my word, and -- and I don't recall if it was in that analyst's call or not, but I think they were talking about some changes being made at the leadership level and -- and with different individuals stepping down, and then also some discussion about working to integrate the mill and container kind of units or divisions more closely.

Q. Right. I guess all I'm getting at is: Did they mention during this call that they were hiring Deloitte?

A. I do not recall whether it was mentioned in that analyst's call or not.

Q. In any event, it -- let's assume for a second that Deloitte was hired to help achieve these objectives, okay? The timeframe on this document would be consistent with the phone call transcript that you saw, correct, October 16?

A. Yes, ex -- so the date of the call that I recall, if I'm recalling correctly, I think was early November. So it would have been around this time.

Q. Okay. Have you ever heard the term "One KapStone"?

A. Yes, I have.

Q. When did you hear that?

A. I think I -- I think I heard it or read it in connection with the case.

Q. Okay. Did you know One KapStone was something they were going to implement in 2017?

A. I don't know the specifics around when it was being implemented or designed or -- or anything.

Q. Okay. I remember, you didn't read Kelly Husleman's deposition, but I will tell you that she said One KapStone was something that was going to be implemented in 2017.

Have you seen any documents to dispute that?

A. Not that I recall.

Q. Okay. In this synergy report provided by Deloitte, I want to go to page 3815. All right?

And what we have here is a timeline on -- we have got "Phase 1 strategy, Phase 2, diligent, Phase 3 alignment."

Do you see that?

A. Yes.

Q. Okay. And the way that things work is before you want to make changes, you've got to come

up with strategy, right?

A. That's correct.

Q. And then after, the next step after strategy would be the work, the diligence, correct?

A. Right.

Q. And then -- and then you have the alignment, correct?

A. I guess I'm not understanding your question, I'm sorry.

Q. I guess here's my question, put the document aside for a second: If you were -- if your goal was to integrate companies and become a One KapStone, the first part of it would be strategy, right, how are we going to do it? That's what it means?

A. Well, I think if -- yes, you're going to define what your objectives are.

Q. And then you're going to do the work or diligence to fulfill those objectives, correct?

A. Well, I think you're going to do the work to identify what those objectives are and the best way to approach it.

Q. Well, that might be in the strategy section.

A. Not necessarily.

Q. Okay.
A. Not necessarily. The -- the initial strategy session may just be a high-level strategy of generally, this is what we want to accomplish.
Q. But you have to have strategy before implementation, fair?
A. Yes.
Q. And what we have is the kickoff and it says, "Mid October."
Do you see that?
A. I do.
Q. That's when the strategy started, correct?
A. That's when the -- apparently pursuant or at least what's proposed here is we'll have a kickoff in mid October.
Q. Okay. And mid October would be after the injuries to my clients, correct?
A. Mid -- yes.
Q. And then it says, "Diligence, Phase 2; Phase 3 alignment," and then we have got "Day One, January 3rd, 2017."
Do you see that?
A. I do.
Q. Okay. And the way I understand that is

day one would mean this is when it all goes into play, correct?
A. Generally that reference to day one means that's when you're proposing to start executing on the -- whatever the strategy and the steps that you defined in the prior -- prior phases.
Q. All right. And it says "The services." And these are the services that, as I understand them, Deloitte is -- is going to provide. And it says, "Two weeks: Advise on and recommend a common vision for integration."
Do you see that?
A. Yes.
Q. Okay. That would come after the injury to my clients, correct?
A. Yes, presuming that this table is all intended to convey what's -- what's being accomplished within that time period.
Q. Okay. It says, "Get KapStone buy-in."
Do you see that?
A. Yes.
Q. Okay. Again, that would be after the injury to my clients according to the date on the document?
A. According to the date on the document,

yes.
Q. And it says, "Structure business case for KapStone consideration" would be after the date of the injury to my client, according to the document, correct?
A. Yes.
Q. Okay. And then it says -- and then we have got some other things, but moving on into that same "Services" section, the four- to six-week timeframe, do you see that?
A. Yes I do.
Q. Okay. It says, "Align senior leadership around revised high-level synergy plan," correct?
A. Yes.
Q. And that's an objective to be completed over the four to six week period according to the document?
A. Yes.
Q. Clearly articulate --
A. Or, yeah, four to six week after the two weeks, I would assume, yeah.
Q. Right.
A. Well, four to six weeks, yeah.
Q. Four to six weeks after mid

October 2016?
A. Right.
Q. And it says, "Clearly articulate tactical view, including high-level integration blueprint."
Do you see that?
A. I do.
Q. Okay. That is an objective that's four to six weeks after mid October, correct?
A. That's correct.
Q. That objective --
A. Based on how I read this, yes.
Q. That's an objective that would have started after the injury to my client based on how you read this?
A. That's what this states, yes.
Q. And it says, "Develop recommended transformation governance model for KapStone consideration."
Do you see that?
A. I do.
Q. Okay. That would be an objective provided by Deloitte after mid October, correct?
A. Based on what you're -- well, I agree that's -- that's in this date and -- and that's the

timeframe, after October, yes.
Q. And that would be after the date of injury to my client, correct?
A. Yes.
Q. And moving on on "Deliverables," excuse me, "Deliverables: Two-week timeframe, operating modeling parameters."
Do you see that, the second bullet point?
A. The second bullet point -- oh, I'm sorry, back to --
Q. The two-week intervals?
A. Yeah, back under the two weeks. I was still looking at the four to six weeks. Yes, operating model parameters.
Q. And it says, "Agreed strategic direction and tactical objectives." That's what Deloitte's going to provide, correct?
A. That's --
Q. According to the document?
A. According to what this document says, yes.
Q. And then again another deliverable in the four- to six-week timeframe provided by Deloitte is high-level target operating model and high-level

integration blueprint," correct?
A. Yes, I see that.
Q. All of that after the injuries to my clients, correct?
A. Yes.
Q. After mid October of 2016?
A. Yes.
Q. All right. Not a document you had to consider at the time of formulating your opinions, fair?
A. No.
Q. What I'm saying is true?
A. Yes, I did -- I have not seen this document before.
Q. Okay.
MR. WILLIS: Short break?
MR. FINDLEY: Sure.
THE VIDEOGRAPHER: This is the end of media three. The time is 1:38 p.m. We're off the record.
(Recess taken)
THE VIDEOGRAPHER: This is the beginning of media four. The time is 1:48 p.m. We are on the record.
Q. (BY MR. FINDLEY) Okay. Sir, we took a

short break. And just to -- I asked you to make that phone call at a break, and you said something with regards to that.
What was it?
A. I did make the phone call, and I received the attorney's voicemail.
Q. Okay. All right. So going back to -- let's kind of switch gears for a moment.
(Discussion off record)
Q. (BY MR. FINDLEY) What is that in front of you?
A. This is my report.
Q. Okay. And we're going to go back to that report, but all your opinions are contained in that report, correct?
A. Yes.
Q. And are those all the opinions you have to date related to this case based on the documents you've received? Correct?
A. Yes.
Q. Okay. And you felt that you've -- well, you have no outside opinions that are not contained in there, right?
A. No, I don't think so.
Q. Okay. What I'm saying is: You've been

an expert before. You understand kind of like the four-corner rule, your opinions are contained within the four corners of that report.
You would agree with -- that's the case here, correct?
A. Yes. Yes.
Q. Okay.
A. My opinions are -- are summarized and stated in the report.
Q. Right. No additional opinion that you -- you -- you've formulated after the date of that report?
A. No.
Q. Okay. All right. So --
(Discussion off record)
Q. (BY MR. FINDLEY) So KapStone Charleston Kraft LLC is the legal entity that owns the plant in Charleston, as I understand it, correct?
A. That's my understanding as well.
Q. Okay. Have you ever been to the Charleston plant?
A. I have not.
Q. Okay. And KapStone -- well, we're going to talk about three entities and they've got long names. Let's see if we can agree to shorter

names that we can kind of agree on.
KapStone Kraft Paper Corporation, who's your understanding of who they are?
A. KapStone Kraft Paper Corporation is the owner of 100 percent of KapStone Charleston.
Q. Well, where is it located, how about that?
A. The headquarters, I believe, is in -- or the mill associated with KapStone Kraft Paper is located in Grand Rapids.
Q. And then KapStone Paper and Packaging Corporation is located in Chicago?
A. Yes.
Q. Okay. So --
A. Or the headquarters location, yes.
Q. So KapStone Charleston Kraft LLC is the one in Charleston obviously, right?
A. Yes.
Q. Okay. So let's agree to some terms, all right?
A. Okay.
Q. The one in KapStone Charleston Kraft LLC, if I say "KapStone Charleston," you know it means that entity.
Is that fair?

A. That's correct.
Q. If I say "KapStone Kraft Paper," we know we're talking about the one in Roanoke, correct?
A. Yes.
Q. Or if we -- if you want to use a different term for it?
A. I just know you said KapStone Kraft Paper. I just refer to it as KapStone Kraft.
Q. KapStone Kraft is fine.
A. Okay.
Q. So the one in Roanoke we will refer to as "KapStone Kraft," okay?
The one in Chicago we will refer to as KapStone Paper Packaging Corporation, let's refer to that as "KapStone Corporate."
Is that fair?
A. Or KapStone Paper, yes, that's fine.
Q. I think it gets confusing if we do it way another way.
A. That's why I say KapStone Kraft Paper, you know, would -- you know, would make it confusing for me, but yes, I will try to use --
Q. Well, to the extent you don't know who I'm referencing --
A. Okay.

Q. -- let's talk -- I will try to clarify it for you.
A. Understood.
Q. Okay. You understand -- well, do you know which entity Kelly Husleman works for?
A. KapStone Paper.
Q. Okay. The corporate in one Chicago.
A. Yes, it's my understanding it's KapStone Corporate.
Q. Okay. And you would agree with me that each one of those entities has a different Federal Tax ID Number, correct?
A. Yes, my understanding.
Q. Okay. And -- and each one of them issues separate W-2s, separate checks to the employees with the different legal entity names on it, correct? Or do you know that?
A. You know, I think -- you know, I would recharacterize it and just say I understand that W-2s are provided to kind of employees based on -- you know, with reference to the location that they -- you know, or the company that they are reporting to.
Q. Right. And what I'm asking you is: There's other -- I guess there's a Charleston plant we talked about. There's other plants throughout the

country --
A. Right.
Q. -- throughout the country, correct?
A. Right.
Q. Each one of them has their own legal entity name, correct, as far as you understand?
A. Well, I mean, I wouldn't say the legal entity name is associated with the plants. It's associated with the companies, you know, the companies that may own those particular facilities, so --
Q. Right, same thing.
A. Yeah.
Q. What I'm saying is: Each one of them has their own employees that fall within that legal entity, correct?
A. Yes, employees that are assigned to that company, yes.
Q. Okay. Do you know what Kelly Husleman's title is?
A. I don't recall the exact title, but I believe it was, you know, director of shared services or something along those lines.
Q. Vice president of shared services.
A. That's it, yes.

Q. Okay. And she testified that prior to January of 2017, at KapStone Paper and Packaging Corporation, there was no shared services department.

She says "Correct." Do you agree with that?

A. Not based on what I have seen.

Q. Okay. So you disagree with the person who works there who is the actual vice president of shared services; is that correct?

A. I -- if you're -- let me think about the question, you know, whether a shared services department existed prior to that time as opposed to a function. I don't -- you know, the other terminology, I'm not sure. So --

Q. Well, I understand. I mean, you didn't read her deposition, right? We've already established that.

All I'm saying is: If she testified that there was no shared services department prior to January 2017, are you saying she was being untruthful?

A. No. I'm just saying that I think shared services clearly predated that point, whether there was an actual department or what she would define as a department -- department, I don't know.

Q. Okay. When you say shared services predated that point, are you saying it was implemented?

A. I said shared services -- you know, shared services were being provided by KapStone Paper, you know, prior to January 2017.

Q. To who?

A. To KapStone Kraft, KapStone Charleston and the other plants.

Q. What shared services?

A. Shared services in relation to the financial and accounting function of the business, the HR function, the IT function.

Q. Okay. So I want to write down what you think was existed before.

HR function, what else?

A. Financial and accounting function --

Q. Okay.

A. -- IT function, you know, essentially governance and management, executive management.

Q. Let's talk about HR. Have you spoken to anyone from HR?

A. I have not.

Q. Okay. Have you -- you didn't read Kelly Husleman's deposition testimony as to how HR

actually functions on a day-to-day basis, correct?

A. I don't recall seeing that -- well, I have written -- not prior to my -- to -- to my expert report.

Q. Well, the first time -- well, you only had, what, a two-and-a-half hour meeting last night and you said you didn't read the whole deposition, correct?

A. That's correct.

Q. I assume the lawyer pointed you to certain points?

A. No.

Q. Okay. So you didn't read the deposition, fair?

A. That's -- no, that's not what I said. I did read parts of the deposition. So worked through the deposition but didn't read the whole deposition.

Q. What parts?

A. Just parts that I was skimming through the deposition.

Q. Anything stick out in your mind?

A. Not -- not particularly, no.

Q. Okay. Any -- and that would have taken place during the two-and-a-half-hour meeting?

A. No, that would have taken place after the meeting.

Q. Okay. So how did she say that HR function works?

A. I don't recall.

Q. Okay. So sitting here today under oath, you can't tell us what she testified to in relation to HR function, fair?

A. I don't -- yeah --

Q. Okay.

A. -- don't -- don't recall what she testified to HR function.

Q. And can you tell us what she said in regards to financials and accounting?

A. No, I cannot.

Q. Can you tell us what the corporate representative/vice president of shared services said with regards to IT?

A. In her deposition, no, I don't recall.

Q. Okay. Can you tell us what the vice president of shared services said in her deposition with regards to government -- governance and management?

A. No, I can't.

Q. Okay. Can you tell us what she said

relative to any of the opinions you've rendered in this case?
A. Not from her deposition.
Q. Okay. Can you tell us what she said in her deposition relative to anything she said in her affidavit?
A. I would -- you know, I would want to refer back to the affidavit, but she addressed many of these same topics in her affidavit.
Q. Okay. And you -- you -- you brought up a point: You said HR function, financial, accounting, IT governance and maintenance.
A. Governance and management.
Q. Governance and management. And you said that you did not -- you cannot tell us anything she said with regards to those topics, and you were specific to say "not from her deposition"?
A. Not from her deposition.
Q. And I assume -- we know you didn't have a conversation with her, so I assume you're saying you've only seen what she said with regards to that in her affidavit?
A. In her affidavit with respect to Ms. Husleman, yes.
Q. Okay. Are you aware that she testified

A. No, or the information was provided to her from some source, yes.
Q. Okay. Are you aware that she said no information was provided to her when she signed the affidavit other than the affidavit attached in the exhibits created by counsel to it?
MR. TARVER: Objection: Form.
THE WITNESS: I'm sorry, would you break that down for me a little bit?
Q. (BY MR. FINDLEY) Sure. The affidavit came with a couple of attachments to it?
A. Yes.
Q. You've seen those, right?
A. Yes.
Q. Okay. Are you aware that she said that she did not go review any additional information prior to signing that affidavit?
A. I am not aware, you know --
MR. TARVER: Form.
THE WITNESS: -- one way or the other whether that was discussed in her deposition or what her testimony was.
Q. (BY MR. FINDLEY) Okay. Wouldn't that be important, is whether or not she actually did the research to come to the conclusions in the affidavit?

that she did not write the affidavit?
A. No, I'm not.
Q. Okay. Do you think that that should be considered when factoring your opinions about whether or not she had -- she wrote it?
A. Not necessarily.
Q. Okay. Are you aware that she testified that she didn't have personal knowledge related to a lot of the topics in her deposition?
A. I'm not aware of that.
Q. Okay. Do you think that that would be relative to your analysis as to whether or not she actually had personal knowledge as to what she signed off on?
A. Not necessarily.
Q. Okay. And why not?
A. Well, if she had a conversation -- if she didn't have direct, personal knowledge or experience with a particular area but relied upon information that was provided to her or discussed with her from her staff or others within KapStone, then I wouldn't necessarily be surprised with that.
Q. Okay. And what you're saying is that would be okay as long as she went out and got the information from some source?

That would be a factor, wouldn't it?
A. It would be a factor if I determined based on, you know, what was discussed in her affidavit, the documents that, you know, under a lot of the affidavit and other discussions do not appear to provide the basis for her opinions in that affidavit.
Q. Okay. Would it be important to you in relying on her affidavit if she testified that she did not know what a lot of the terms meant in her affidavit, and they were just written by lawyers and she signed it?
MR. TARVER: Objection: Form.
THE WITNESS: Again, would it --
Q. (BY MR. FINDLEY) That would be important, wouldn't it?
A. I'm sorry, state it again for me.
Q. Sure. You're -- you're here to provide an analysis, right?
A. Yes.
Q. Okay. And in order to provide an analysis, you need truthful, accurate information, correct?
A. That's correct.
Q. In order to provide an analysis, you

need access to documentation, correct?
A. That's correct.
Q. And that's the only way you can give a fair and accurate analysis, correct?
A. Yes, I agree with that.
Q. Okay. If an affidavit that you've relied on, if the individual who signed it testified under oath that she did not have personal knowledge and she didn't know what a lot of those terms meant, that it was presented to her by a lawyer and she signed it, that would be an important consideration for you, correct?
MR. TARVER: Objection: Form.
THE WITNESS: I think first, I did not rely upon Ms. Husleman's affidavit.
Q. (BY MR. FINDLEY) You didn't?
A. I reviewed it, but I did my own independent, you know, analysis.
Q. Okay. So we can throw out her affidavit because that's not something you relied on, correct?
A. I -- I reviewed kind of her findings. I reviewed kind of Mr. Niehus's observations and I did my own observations.
Q. Right.

A. So to the extent that there were discrepancies between what was in Ms. Husleman's affidavit and what I identified, then yes, I would review that more deeply.
Q. What I'm asking you is: You said you generated your own opinions, you did not rely on her affidavit, correct?
A. I did not rely upon her affidavit in formulating my own opinions.
Q. Okay. So as far as a document you need to formulate your conclusions, one of them you did not need was her affidavit, fair?
A. That's correct.
Q. Okay. So we can throw her affidavit out of the equation as what information you need in order to render your opinion, correct?
A. My -- my opinion would stand without that information.
Q. Right. So what I'm saying is: I am here to talk about your opinions.
A. Okay.
Q. And if we just remove her affidavit, okay, that's not something you need in order to render your opinions, correct?
A. It's not something that I relied upon

in rendering my opinions, but it was something that I considered in my opinions.
Q. You considered it?
A. Well, I considered it in the performance of my work.
Q. What does that mean? What's the difference between you considered and relied?
A. Well, I reviewed it. You know, my -- my plans are independent. So I reviewed hers, but I didn't review her affidavit until after I had done a significant amount of my work.
Q. To be very clear, to render your opinions, your opinions would be the same with or without her affidavit, fair?
A. Yes.
Q. Okay. So in order -- when we're talking about things you relied on that you needed to support your opinions, one of them was not her affidavit, correct?
A. That's correct.
(Discussion off record)
Q. (BY MR. FINDLEY) Okay. What about Mark Niehus, did you need his affidavit?
A. Yes, I reviewed his affidavit.
Q. Okay. I know you reviewed it.

A. Uh-huh.
Q. It's a document on your list?
A. Yeah.
Q. I'm saying: Did you rely on it in order to formulate your opinions?
A. I mean, it was helpful. It contained information, but -- but my independent -- my -- my opinions would be the same, you know, without it.
Q. Okay. So -- so let's talk about that. I have a very specific question: In order to repender -- render -- strike that.
A very specific question: In order to render opinions in this case, was one of the things that you needed to rely on to formulate your opinions Mark Niehus' affidavit?
A. I did rely on some things from Mr. Neho -- Niehus' deposition -- or however you pronounce his name.
Q. I said "affidavit."
A. I'm sorry, affidavit.
Q. Which one are you -- well, let me start over then, because I think there is a confusion, and maybe that is my fault.
A. Okay.
Q. In order to render your opinions, did

you need Mark Niehus' affidavit?
A. Yes.
Q. Okay. And you relied on it?
A. Yes.
Q. Okay. What portion of it his affidavit did you find helpful?
A. I don't recall all the portions, but I remember a specific discussion related to the centralized purchase order system that the company uses.
Q. What? And so one of the things you relied on in his affidavit was what specifically?
A. His discussion with regard to this centralized purchase order system that the company uses.
Q. You know the difference between an affidavit and a deposition, right?
A. I do.
Q. Okay. And we're going to get to the deposition next. That would be the testimony, correct?
A. Correct.
Q. Okay. So one of the things you relied on in his affidavit was the affidavit related to business operations, you said?

A. Yes.
Q. Okay. And what specifically to business operations did you rely on in his affidavit?
A. Well, I'm trying to recall. The one thing that -- that sticks in my mind is related to the centralized purchase order system that the company uses.
Q. Okay. And I have reviewed his affidavit, and I don't -- I don't see anywhere where he talks about centralized business organization.
A. Well, maybe I am confusing it, then, with his deposition.
Q. Okay. So did you rely on his affidavit?
A. I -- yes, I believe that I did.
Q. Okay. You're aware that his affidavit didn't say anything substantive related to integration?
A. No, that's not what I recall.
Q. Okay. What do you recall from his affidavit? Maybe you were given a different one than me.
A. You know, if you want me to go through and look at his affidavit, I am happy to do so. But I don't -- I don't recall, as I'm sitting here right

now, what it was about his affidavit that I can --
Q. Did you cite to it?
A. -- that I found helpful. I don't recall.
Q. Okay. You got your report in front of you. Did you cite to his affidavit?
A. It's listed in the -- kind of the information of documents considered.
Q. Okay. Right, it's in the appendix. I'm saying: Did you cite to it?
A. I don't recall whether I cited to it or not. I see a reference to his deposition, but not his affidavit, yet.
Q. And -- and I'll represent to you I didn't see a cite to his affidavit.
A. Okay. I --
Q. I was just making sure that I wasn't missing something.
A. Yeah.
Q. If we don't see a cite to his affidavit, that -- to be fair, you did list a cite to his deposition, okay?
A. Okay.
Q. So I'm trying to be fair with you here. As far as if we do not see a cite to

his affidavit, would that mean that you didn't rely on it?
A. Not necessarily.
Q. What would it mean?
A. It just means that in preparing my report, I didn't feel the need to cite something from Mr. Niehus' affidavit yet.
Q. We are going to get to his deposition next.
But as far as his affidavit, sitting here today, other than what you said in his affidavit regarding business operations, was there anything else in his affidavit that comes to mind?
A. Not -- not as I'm sitting here right now.
Q. Okay. If -- if -- if his affidavit, when we pull it up, does not have anything related to business operations, would you agree with me you can't recall anything from his affidavit that you relied on?
A. Yeah. As I'm sitting here, I -- I don't recall. And without looking at his affidavit, I wouldn't be able to answer that question.
Q. Well, I will tell you it doesn't say anything about business operations. I'm going to

give you a copy of it.
A. Okay.
Q. But sitting here today, other than business operations, you don't remember anything that sticks out in your mind, fair?
A. Not as I'm sitting here.
Q. Okay. I did see in your report numerous cites to his deposition.
A. Okay.
Q. Is that right?
A. Yes. I saw a few as I was kind of flipping through.
Q. I assume that means you relied on it in formulating your opinions?
A. Yes.
Q. Okay. And what I'm trying to figure out is: Why is it that you relied upon Mark Nichus', but you didn't rely on Kelly Husleman's?
A. I think counsel, when I was retained, wanted me to come to my own independent conclusions first before reviewing that information.
Q. No. Your testimony is that counsel wanted you to come to your own independent conclusions --
A. Yes.

So I would review that information, along with Mr. Niehus, along with his deposition to confirm that my observations or understanding of the operations were at least consistent with their understanding of the operations.
Q. Okay.
MR. FINDLEY: Object to nonresponsive.
Q. (BY MR. FINDLEY) You have spoken with Mr. Mark Niehus before, correct?
A. No.
MR. FINDLEY: Don't shake your head to the witness during the deposition. I can see you right here.
MR. WILLIS: I'm sorry. I apologize.
MR. FINDLEY: I mean, the games y'all play in this case are getting out of control, so I would ask -- well, just whatever --
MR. WILLIS: Yeah, I apologize. I -- I --
Q. (BY MR. FINDLEY) All right, sir.
MR. WILLIS: Let the record reflect that Mr. Lester was not looking at me. I apologize for shaking my head. And so let's move on.
MR. FINDLEY: I -- I think he was looking at you, but that's why we have a camera here.

Q. -- is why you didn't rely on it?
A. Yes. Uh-huh.
Q. Okay. So tell me how providing the deposition to you helps you rely on -- come to your own independent conclusions?
A. Well, I think because Mr. Nichus was providing information on the operations of the company and how it functions.
Q. Okay. What's Mr. Niehus' title?
A. Mr. Niehus, international, is, you know, a VP and controller --
Q. Okay.
A. -- I think.
Q. My question for you is different, is: Don't you think it would be important to rely on -- well, that's -- I don't understand that.
You -- you selected one corporate representative to rely on and not the other, correct?
A. Well -- and I -- I want to -- you know, I want to back up for just a second, you know -- you know, I reviewed a lot of information. And, you know, and, you know, all of the information I reviews (sic) go into -- goes into the formulation of my opinions, and, you know, including Ms. Husleman's affidavit, okay?

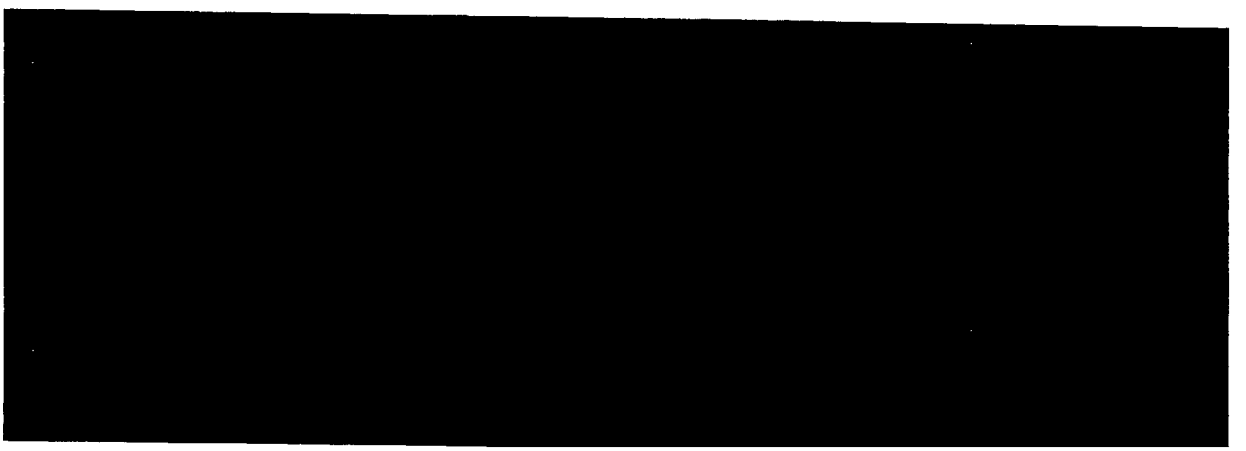
MR. WILLIS: Well, he answered the question before I had shook my head.
MR. FINDLEY: That's not true, either. Maybe we should put a camera on you, too.
MR. WILLIS: That would be fine.
Q. (BY MR. FINDLEY) So back to my question is: Have you ever met with or talked to Mr. Niehus?
A. No, I have not.
Q. Okay. Now, when you draft a report, I assume you do it in Word®, right?
A. That's correct.
Q. Okay. And I assume that that report -- well, you've -- I've seen some e-mails where you've communicated with Counsel with regards to that report, correct?
A. Yes.
Q. Okay. When did you start drafting it?
A. I guess what we talked about earlier in my testimony, I think it was sometime in January I started working up the structure of the report.
Q. When you talked with lawyers regarding your report, those were lawyers sitting in this room, as well as lawyers from Sidley Austin, correct?
A. Yes, primarily lawyers sitting in this room.

Q. Primary lawyers --
A. Primarily the lawyers sitting in this room.
Q. Okay. And the -- all right.
When you -- well, you've provided draft reports to the lawyers, correct?
A. I -- yes, you know, at least one draft report that I recall in this matter.
Q. Okay. And that's where you sent them the report?
A. Yes.
Q. Okay. By e-mail?
A. Yes.
Q. Okay. And then they would provide edits to that report and send it back?
A. Or provide -- you know, we get on a call and discuss it.
Q. Okay. And then you would make changes in accordance with what the recommendations were by counsel?
A. I would evaluate the proposed questions or changes by counsel and then make a determination as to whether I changed it or no.
Q. Okay. Would they send you reports in the red line -- send you changes in redline?

A. Yeah, I'm trying to recall if I received one in this matter or not. It's not typically the course that I think -- the course that I take, but -- but I'm trying to recall if I did get some red line edits from someone at Sidley.
Q. Okay. And just so we're clear, Sidley is the law firm in Chicago?
A. That's correct.
Q. Okay. And they are the law firm in Chicago. You didn't talk to a Sidley South Carolina firm, right?
A. No, no. I have spoken with Mr. Ducayet from Sidley.
Q. Okay. I remember him.
A. Yeah.
Q. He's in Chicago?
A. Yes.
Q. And Mr. Ducayet is someone that you spoke with with regards to changes to your report at some point?
A. I don't know if we spoke specifically about changes to the report. I think we spoke about the -- you know, I had a conversation initially about kind of the scope of the work. I think we may have had a conversation at one point about, you know,

questions about the report and -- but if I'm recalling, you know, the -- the one set of edits that I, you know, may have received in one -- excuse me -- in red line form, may have -- may have come from Mr. Ducayet, but I don't recall.
Q. Okay. Before this deposition -- and I know you say you don't recall.
I assume before this deposition, you didn't go back and look at your e-mails, right?
A. I went back and looked at -- not -- not before the deposition today, but I went back and looked at my e-mails relative to the request from counsel to produce my e-mail communications.
Q. And that was sometime over the last three weeks?
A. No. I think there was an initial conversation that occurred prior to that and then a subsequent conversation.
Q. Okay. When is your recollection of when you provided the e-mail correspondence?
A. I think some of the correspondence occurred along the time with the initial production, you know, documents. I think it's probably been over a month or so now. And then the second conversation and discussion was yesterday about some additional

e-mail communication.
Q. Okay. Well, the reason why I'm asking is you said that, "I don't recall if I received changes in red line or not."
And -- and -- and what I'm trying to figure out: Have you ever gone back to look to see if you received a report from the lawyers in Chicago with red line changes?
A. I went back and looked for all the account e-mail communication that was still on my system to produce to counsel.
Q. Okay. Do you erase things off your system?
A. I do not retain a lot of the e-mails.
Q. Do you erase them?
A. Well, I delete them from my --
Q. Okay. So as far as e-mails that exist relative to this case, there might be some that have already been erased at some point?
A. Yes.
Q. Okay. Is that a practice you normally do --
A. Yes.
Q. -- when retained for litigation?
A. Yes.



Q. -- okay, is erase e-mails with the attorneys that hire you?
A. Not erase e-mails. But I don't retain things that I don't think are relevant, you know, pose any more relevance to the case.
Q. Okay. So there is a May 30th correspondence in your e-mails from -- excuse me -- May 30th, 2019.
Do you see that?
A. Yes.
Q. And it says, "Nicole Cramer: Derek, attached please find Todd's expert reports incorporating the edits we discussed. If you have any questions, please don't hesitate to ask."
Do you see that?
A. I do.
Q. Okay. That's a communication with Derek Tarver, correct?
A. Yes.
Q. Okay. And this would have an e-mail attachment, correct, with the draft?
A. Presumably, yes.
Q. Okay. So at some point a draft was sent to them, sent to Derek, and then changes were made and a new report was sent, correct?

A. I'm not sure if there was a draft sent to him or we just went over the -- kind of discussed the report, you know, by phone.
Q. Well, I haven't seen any draft reports produced. Why didn't you produce them?
A. I don't retain any draft reports. So I have one, one Word® document report --
Q. Sir --
A. -- and we continually -- to change that up -- I mean, make -- you know, make edits into that report until it's finalized.
Q. Well, sir, you sent an e-mail draft to Derek at one point and then they -- then you made changes and sent him a new report that says, "The attached document incorporated the changes"?
MR. TARVER: Objection: Form.
Q. (BY MR. FINDLEY) So there would be two reports sent by e-mail?
A. Well, that May 30th would have been the final report.
Q. I got that. After the change conversation?
A. Yeah.
Q. But in order for there to be changes to it, you would have had to send him an original

report?
MR. TARVER: Objection to the form.
THE WITNESS: Not necessarily. I mean, we -- we could review kind of -- we could discuss a report. We may have reviewed at least one point in time when we may have reviewed that report on line.
Q. (BY MR. FINDLEY) Sir, I mean, you know how e-mail works, right?
A. Uh-huh.
Q. If you e-mail someone a report, and then they get it, and they call you and they tell you changes to make, and you make those changes and send them a new one, that would mean two reports were in your sent box, e-mails, correct?
A. And what I'm telling you is I no longer keep those -- have kept those draft reports.
Q. You erased it?
A. I delete those e-mails as no longer being relevant to what I'm working on.
Q. So you erased your draft report, fair?
A. I did not retain it, no.
Q. Okay. And the reason why you didn't retain it is -- normally on my e-mails, it would be in my sent box. You would have to go into your sent

box and delete the e-mail that contained the attachment, correct?
A. Typically, I would go through and organize these e-mails by case, and then not retain those e -- e-mails, you know, that are no longer relevant.
Q. And when -- who told you that you get to decide what's relevant and not?
MR. TARVER: Objection: Form.
THE WITNESS: I think that's -- that's my determination. It's my report. It's my basis of determination whether it's relevant to the report that I'm producing.
Q. (BY MR. FINDLEY) Okay. So there's no one else that determines what's relevant or not other than your review?
A. No. It's my report and it's my determination as to what I maintain and keep on my e-mail.
Q. Do you think it would be important for purposes of this litigation that when you send a report to the lawyers and the lawyers tell you they want things changed and you make those changes, you don't think how the report existed prior to lawyers getting involved is relevant to litigation?

MR. TARVER: Objection: Form.
THE WITNESS: No.
Q. (BY MR. FINDLEY) Okay. Do you remember going to Colombia?
A. No, I did not go to Colombia. That trip did not occur, if you're referring to an e-mail.
Q. So you never went to Colombia?
A. No.
Q. In December 4th of 2018, there was an e-mail that said, "I'm writing to touch base" -- from Derek Tarver, "I'm writing to touch base regarding the Lucas matter. If you have time for a quick call today, we would like to schedule a day or two during the next three weeks where you can come here to Colombia to discuss your report on the integration of KapStone entities."
Correct?
A. If that's what the e-mail says, yes.
Q. Here it is. Do you see it?
A. Yes.
Q. Okay. And your testimony is you never took that trip?
A. No.
Q. Okay. You did have a discussion at some point, I assume, about what you were hired to do

regarding integration of KapStone entities, correct?
A. Yes, we did have a discussion. I can't recall, it was sometime over the next couple of weeks, yeah.
Q. Okay. And how many times have you rendered a report to anyone where you have made a report on the integration between a parent company and a subsidiary company?
A. I think we went through this earlier. So specifically as it relates to the integration of parents and subsidiaries, I don't recall.
Q. Okay.
A. I had another report that was focused on -- on that specific objective.
Q. Right. And you've given a lot of testimony about how you have done some looking at how companies financially relate to one another earlier.
I'm asking you specifically of an economic relationship between a parent and a subsidiary company on integration. Have you ever done that before?
MR. TARVER: Objection: Form.
THE WITNESS: Yes, I have.
Q. (BY MR. FINDLEY) Okay.
A. And it's been in kind of a report as a

portion of a report.
Q. Okay. What case was that?
A. That was a case where I was hired by a large electric cooperative to evaluate, you know, questionable spending in relation to -- you know, by the parent corporation, including a certain amount of spending that was involved -- or that was in relation to a couple of different subsidiaries.
Q. And it dealt with questionable spending by a parent related to subsidiaries?
A. Yes.
Q. Okay. It did not ask you to analyze whether or not this parent company is financially integrated with a subsidiary, correct?
A. I think part of --
Q. That focused question.
A. That very focused question, I would say there was a question as to how integrated the parent and the subsidiary were. Because it related to, you know, who had authority over making those disbursements to the subsidiary and approving this subsidiary's activities.
So to that extent, again, the question of integration did -- did come into play.
Q. It wasn't the sole focus of your

report, fair?
A. No, it was not.
Q. Okay. You have never generated a report where the sole focus was on an integration between a parent and a subsidiary, true?
A. That's true.
Q. Did you take part in drafting Kelly Husleman's dep -- affidavit?
A. No.
Q. All right. Because you were hired in -- July 19th, 2018 is when you sent your engagement letter, correct?
A. If that's the date, yes.
Q. Okay.
A. And just to clarify, I don't know when it was executed; but if that's the -- kind of a reference to the date I sent the engagement letter, then -- then -- then I guess --
(Discussion off record)
Q. (BY MR. FINDLEY) When you had calls, you -- did you do them by telephone or by videoconference?
A. Most often by telephone.
Q. Did you ever do a videoconference?
A. I think we may have done one

videoconference.
Q. What's the purpose of a videoconference?
A. I think we were wanting to, you know, discuss some aspects of the report.
Q. Okay. And so you would have a videoconference with the lawyers where everybody could look at the report at once, correct?
A. That's what I recall.
Q. And then you would discuss changes, correct?
A. Well, we would discuss their areas for me to look at.
Q. And then you would make those changes if you deemed necessary?
MR. TARVER: Object to the form.
THE WITNESS: If I deemed necessary or -- yes, so --
Q. (BY MR. FINDLEY) And this is -- might be a silly question: But if you were hired to perform an independent analysis about your opinions, why in the world would you need to have input from lawyers?
MR. TARVER: Object to the form.
THE WITNESS: Well, and that's

assuming that -- that the input is -- is in relation to my actual opinions as opposed to factual matters.
So there are a lot of details and facts in the cases that I get involved in and, you know, it's -- it's important to get a review, certainly from a factual standpoint, in case there are facts that I am, you know, not recalling or -- or, you know, that may be incorrect.
Q. (BY MR. FINDLEY) Huh?
A. Facts --
Q. Okay. What facts?
A. A date of a particular document, existence of a particular document, thing -- things along those lines --
Q. Okay.
A. -- so -- and then just -- just in general, other QC, you know in terms of, you know, questions about whether things are clear or I'm clearly articulating something.
Q. And I -- I guess I'm confused, but it -- you know the difference between -- well, you were hired, in your mind, to provide an independent assessment, correct?
A. That's correct.
Q. Okay. You've been paid over $180,000

by KapStone, or billed it, right?
MR. TARVER: Object to the form.
THE WITNESS: Whatever that -- you know, that amount was on the -- on the invoice has been billed, yes.
Q. (BY MR. FINDLEY) Okay. And I guess what I'm trying to figure out: If we wanted an independent assessment and the Judge wanted an independent assessment, wouldn't it be important for us to look at what conclusions you came to prior to the lawyers getting ahold and making edits?
MR. TARVER: Objection to the form.
THE WITNESS: No, you know, I -- I disagree with your characterization. The lawyers reviewing kind of my work and making comments on it does in no way affect my opinions.
Q. (BY MR. FINDLEY) Okay. If we wanted to get a fair and independent assessment -- well, do any of the lawyers you talked with have financial degrees?
A. I don't know.
Q. The top lawyers are notoriously bad at math, aren't they?
MR. TARVER: Object to the form.
THE WITNESS: I will take your word

for it.
Q. (BY MR. FINDLEY) And -- and what I'm trying to figure out is: What in the world are lawyers doing providing comments to Mr. Expert on a financially integrated opinion?
A. I didn't say they were providing comments on the financial and economic aspects --
Q. Well --
A. -- you know. And frankly, I don't recall what the comments were.
Q. Right.
A. But the opinions in the report are mine. I wouldn't make changes to an -- opinions. And, in fact, I can't recall ever making a change to --
Q. Well --
A. -- an opinion based on a conversation --
Q. Well --
A. -- from an attorney.
Q. -- to be fair, if we wanted to know what the report looked like before the lawyers' comments and before Nicole said, "Here is the changes that we discussed," we could do it easy: We take your old report, we take the new report, and we could

compare them, right?
A. You could.
Q. Okay. We can't do that here because you erased it?
A. I do not keep old reports. There's no point.
Q. Well, you know you're required to by law?
A. I --
MR. TARVER: Object to the form.
THE WITNESS: I don't understand that, but --
Q. (BY MR. FINDLEY) Okay. So just to be clear, no attorney ever advised you to keep your report?
A. I've never been advised to keep all of my drafts and all of my reports and things like that. As a general nature, I do not retain drafts.
Q. Okay. Well, you know how e-mail works, right?
A. Uh-huh.
Q. So if you e-mailed it to the lawyers, then they should have a copy, right?
A. Presumably.
Q. Unless they erased it, right?

A. Presumably whoever was on the other side of that e-mail, you know, may have a copy.
Q. And if -- the notice of your deposition had a Subpoena Duces Tecum with it, which called for drafts of your report.
And just so I'm clear for the record, you didn't provide those with us here today, fair?
A. I do not have any drafts of my report.
Q. Okay. All right. If we wanted input, wouldn't it be -- well, one of the things you did not do when coming to financial integration is you did not send your report to anyone within KapStone, whether it's the vice president of shared services or the vice president of controller or any individual within there and ask them to make comments on your report as to whether or not it is accurate?
A. I did not send my report to anyone other than Counsel. I don't know if they have discussed my report with anyone else.
Q. Okay. So as far as you receiving comments or suggestions for changes, your -- never had a conversation or received a correspondence from anyone within KapStone entities, any of them, about suggested changes?
A. I have not received any correspondence

from anyone with the KapStone-related entities.
Q. Okay.
(Discussion off record)
Q. (BY MR. FINDLEY) Okay. KapS -- in order to do business in a state, you have to be registered, correct?
A. That's my general understanding, yes.
Q. Okay. Are you aware that KapStone Paper and Packaging Corporation did -- was not registered to do business in South Carolina?
A. I understand generally that their registration had lapsed in South Carolina for some period of time.
Q. Okay. You know at the date of this incident, KapStone Paper and Packaging Corporation was not registered to do business in South Carolina, fair?
A. I think that's my understanding, that at the time they were -- their registration had lapsed.
(Exhibit 11 marked)
Q. (BY MR. FINDLEY) And here's Exhibit 11. Are you familiar with the "Certificate of Revocation of Authority"? Do you know what that means?

A. Now I'm reading it. Give me just a minute. Yes. I haven't seen the State of South Carolina one before, but I've seen these in one -- on a number of occasions before.
(Discussion off record)
Q. (BY MR. FINDLEY) Well, in any event, you understand that means they were revoked, their certificate to do business in South Carolina? That's all I'm asking you with that.
A. Yes, I understand that that's, you know, essentially revoking, yeah, their current certificate within the state of South Carolina.
Q. Okay. Do you know if they are registered to do business now?
A. I understand that that lapse has been corrected.
Q. Okay.
(Exhibit 12 marked)
Q. (BY MR. FINDLEY) Okay. And here is Exhibit 12. And have you seen this document before? It's got a filing date of February 21st, 2019.
A. I have not seen the document before, or I don't recall.
Q. Okay. So it's not a document you relied on?

A. Like I said, I don't recall seeing it.
Q. Okay. So are you aware that the KapStone Paper and Packaging Corporation was reinstated to do business?
A. As I stated just a couple of minutes ago, that's my understanding --
Q. Okay.
A. -- yes.
Q. And they were reinstated to do business after Kelly Husleman's deposition, correct?
A. I think that's my understanding at the time, you're correct.
Q. Don't you find it odd that the first time they're registered to do business is after it's discovered during a deposition that they were not --
MR. TARVER: Object to the form.
Q. (BY MR. FINDLEY) -- registered to do business?
A. Not necessarily.
Q. Okay. Do you find it odd that the first time we see there being a big urgency to move towards an integrated services is after my clients are injured?
MR. TARVER: Object to form.
THE WITNESS: I don't know what these

documents relate to or whether or not the move started before or after the injury to your clients.
Q. (BY MR. FINDLEY) Well, according to the PowerPoints we've seen, it's all going forward in the future, January 2017?
A. According to the PowerPoints you provided me, which I have not read, the dates are all after your clients being injured.
Q. Right. And what I'm trying to figure out is: Have you ever heard the term "a day late and a dollar short"?
A. Yes, I have.
Q. Okay. And seems to me that there keeps being a push to change things after they're brought to KapStone's attention. One being my clients are injured and then we have a push for integrated scrvices?
MR. TARVER: Object to the form.
Q. (BY MR. FINDLEY) Did you see that?
A. I understand what you're saying is a push for integrated services. What I'm saying is I don't know the -- what the genesis of this integration effort -- you know, when it was or where it came from.
Q. Okay. Fair enough.

And then we see that in a Kelly Husleman deposition, it's exposed that they're not registered to do business in South Carolina, and then we see them hop up and go try to go get registered, right?
MR. TARVER: Object to form.
THE WITNESS: And again, seeing a company that has lost its registration because it failed to pay franchise taxes or something else is not uncommon, and --
Q. (BY MR. FINDLEY) It's not?
A. No.
Q. Okay. So what's the date on that document?
A. This date -- the date the Certificate of Authority was issued was 4/16, April 16, 2013.
Q. The date of the filing of --
A. The revocation -- again, just reading the documents, the date of revocation was June 16th, 2015, and this date is February 20th, 2019.
Q. Okay. So for four years, they weren't registered to do business in South Carolina, fair --
A. KapStone --
Q. -- according to the documents?
A. For four years, Kap -- KapStone Paper

was not registered to do business --
Q. KapStone Paper --
A. -- as the entity, yes.
Q. KapStone Paper and Packaging Corporation for a period of four years was not registered to do business in South Carolina, fair?
A. Based on the -- based on what the Certificate of -- of Authority kind of, you know, allows KapStone Paper to do within the state, yes.
Q. Okay. Have you ever -- are you aware of a way to conduct business in a state without registering in the state?
A. Well, I think there were -- you know, certainly KapStone Charleston existed within the state.
Q. I'm not talking about --
A. I don't know if KapStone Kraft had a similar registration or not, but --
Q. I'm just talking: Are you familiar with registering to do business?
A. Yes.
Q. Okay. And your understanding of the rules to be registered to do business is you've got to conduct business in the state, correct?
A. That's correct.

Q. Okay. If you don't register to do business in the state, you're not supposed to conduct business in the state, fair?
A. That's generally my understanding.
Q. Okay. It is pretty hard to be an integrated business if you're not allowed to conduct business in that state, correct?
MR. TARVER: Object to form.
THE WITNESS: Again, I'm not -- I think you're asking me whether or not the KapStone entities were allowed to conduct business in the state, and I don't understand or appreciate the significance between KapStone Paper not being authorized to do business in the state versus KapStone Charleston or KapStone Kraft or any other kind of subsidiary that -- that, you know, KapStone had.
Q. (BY MR. FINDLEY) Let's do it this way: KapStone Charleston, the plant, was registered to do business in the state, correct?
A. I assume so, yes.
Q. You assume or you know that?
A. I -- I don't recall specific -- you know, I assume they were, yes. That the -- KapStone Charleston, the entity, was registered to do business

in the state.
Q. Okay. And so that's what I'm getting at. You're here to talk about integrated business.
Can you tell us if KapStone Charleston Kraft LLC was registered to do business in the -- South Carolina on the date of this incident?
A. I don't recall the specific dates. I have looked at the information in general, but I don't recall.
Q. You don't know?
A. No.
Q. Okay. Do you know if KapStone Paper and Packaging was registered to do business in the state at the time of the incident?
A. Well, based on the information you're showing me, the answer to that would be no.
Q. Okay. And we haven't seen any -- or you haven't seen any information that KapStone Kraft Paper was registered to do business in the state?
A. I don't recall that information -- or have seen that information.
Q. All right, sir. Each -- KapStone Charleston Kraft LLC has its own employees on location, correct?
A. I think KapStone Charleston does have

employees located its facility, yes.
Q. At Charleston?
A. Yes.
Q. Okay. Can you identify for me -- identify for me any KapStone Paper and Packaging Corporation employee that works in Charleston at the time of this incident?
A. I think, based on the analysis in -- in relation to some of my exhibits identified, I believe there were some KapStone Paper employees that were working in Charleston; but I can't recall whether it was KapStone Paper or KapStone Kraft or, you know, a KapStone Kraft employee.
Q. All right, sir. Look at your report. That's what I'm here for.
A. Thank you.
(Discussion off record)
MR. FINDLEY: That's what he was looking at.
THE WITNESS: So based on my report, Exhibit -- Exhibit 3 to my report identified 22 -- approximately 22 employees that were working in Charleston that were reporting to KapStone Corporate or KapStone Paper.
Q. (BY MR. FINDLEY) Which one, KapStone

Corporate?
A. Yes, KapStone Corporate or KapStone -- you know, you know, what I have been using interchangeably as KapStone Paper.
Q. KapStone Paper, so we're clear, is corporate?
A. Yes.
Q. So 22 employees that reported to KapStone Paper that you've identified, correct?
A. Yes.
Q. And all of those employees were in the IT department?
A. One of the employees was in internal audit department.
Q. Okay. So of the 22 that reported to corporate, all of them were IT individuals except one internal auditor, correct?
A. Yes.
Q. There is no one listed there that's involved in operations, correct?
A. That are not reporting to corporate --
Q. Right.
A. -- so the operations would be reporting to mill headquarters.
Q. What?

A. There are 36 individuals at KapStone Charleston that are reporting to mill headquarters, which would have been more the operational function of -- of the mill.

MR. FINDLEY: Objection: Nonresponsive.

Q. (BY MR. FINDLEY) You're not listening to my question.

There are 22 individuals that you said reported to KapStone Paper and Packaging Corporation in Chicago, correct?

A. Yes.

Q. None of those individuals are involved in operations?

A. How -- how do you define "operations"?

Q. Okay. Do they do anything at the mill?

A. Well, in providing the shared services function of IT related and they're supporting mill system operations.

Q. What -- what's this mill do?

A. It manufactures paper and packaging materials.

Q. Okay. And KapStone Paper and Packaging Corporation does not manage paper and packaging materials, correct?

A. It does not yet manufacture.

Q. It's not in the business --

A. It doesn't have any manufacturing operations.

Q. Right. It's not in the same business of manufacturing paper and packaging materials, fair?

A. KapStone Paper does not have independent manufacturing operations underneath the KapStone Paper --

Q. Okay.

A. -- identity.

Q. And so when I'm talking about operations, I'm talking about making the paper and packaging materials.

A. Okay.

Q. None of the individuals you identified that work for or report to KapStone Paper and Packaging Corporation are involved in the operational process of making or constructing -- constructing paper and packaging materials, correct?

A. Based on what I am reviewing here, I would say that yes, all of the employees are either financial or other service-related employees located at Charleston. They were reporting to the corporate headquarters, i.e. in -- in North Brooke.

Q. Okay. Hold on. You keep adding words in here and so let's just be clear.

The 22 individuals you identified that report to KapStone Paper and Packaging Corporation, 21 of them are listed as IT, and one is an internal auditor, true?

A. That's true.

Q. Okay. When I -- the 21 people involved in IT and the one person who's an internal auditor, by their description, would not be involved in the manufacturing or construction operations related to paper and packaging materials, correct?

A. That's correct, except to the extent that they're providing an overall support --

Q. Okay.

A. -- to the operations.

Q. And did you talk to them about what support?

A. No, I didn't.

Q. Okay. All you have is a document that says next to it "IT," right?

A. And I -- it says "IT," says "mill system operations," it says "IT support, IT business intelligence, IPELP," so yes.

(Discussion off record)

Q. (BY MR. FINDLEY) Right. But as far as what their -- did you read their job descriptions for those jobs?

A. I haven't read the job descriptions for these individuals, or I don't recall reading.

Q. Okay. So sitting here today, if I wanted to know what those individuals did on a day-to-day basis, you couldn't provide me with that information, correct?

A. Other than they were providing IT system supports, which what -- which is what this description tells me.

Q. Right, okay. But listen to my question. It's a little more specific.

If you're involved in IT, that could mean many, many different things. Do you agree?

A. I do agree.

Q. Okay. All I'm asking you is: As far as having a more detailed description other than what you have there which lists IT support or IT infrastructure, et cetera, that is the entirety of what you have regarding what their job duties are?

A. On the payroll department description is what I have in relation to these different job descriptions.

Q. Okay. And that is page -- I'm looking at page eight. What were you looking at?
A. I'm looking at Exhibit 3 to my report.
Q. Okay. Does it have a page number at the bottom?
A. No. It is page three. In exhibits --
Q. I can get there.
A. Okay.
Q. So page three, just so we're clear about what you're referencing -- okay? I have got it here. We'll take this guy, Christopher Kennedy Yan is one individual, corporate, corporate salary, IT support.
Do you see that?
A. Yes.
Q. Okay. The entirety of the description that you have as to what any of these individuals do a day-to-day basis would be listed in the payroll department description at the top of the column?
A. That's correct.
Q. Okay.
A. For him, I -- IT support.
Q. And for -- that would go for all of the employees, all that you have regarding what they do on a day-to-day basis would be -- as far as job

description goes would be the description listed in this column here, "Payroll Department," correct?
A. I -- generally, I would answer correct. You know, there's some other information that I looked at that talks about the IT role and services, but, yes, for -- you know, this does provide the general description.
Q. Okay. And -- and what I'm asking you: It's not like you got a job description for IT support where it detailed, this is what we require of you day to day, fair?
A. You know, I've seen not seen a detailed job description for these individuals.
Q. Okay. Thank you.
Now, when we talk -- we talked a little bit about the construction and manufacturing of paper products, right?
A. Yes.
Q. KapStone Kraft does that in Charleston, correct?
A. At one of its mill divisions, my understanding, yes.
Q. Okay. The Roanoke plant does what they do in Roanoke, correct?
A. There -- there is a mill in Roanoke

Rapids from my understanding, yes.
Q. And Chicago, which I think does -- well, they don't do paper and -- paper and packaging manufacturing, correct?
A. Right. Right. The manufacturing operations for the mills are assigned to the four mills, from my understanding, and then corporate provides, you know, the shared services, the corporate overhead, the management and ongoing kind of support to those operations.
Q. Right. According to your review, that would be the -- where the centralized, if you recall, area is in Chicago?
A. Well, the -- I guess the corporate headquarters, you know, in Chicago; and I guess I'm -- I'm not understanding your centralized.
But -- but the -- you know, the centralized shared services, you know, role or support is located in North Brooke, but also in relation to some of these different entities, you know, and here we have the IT and internal audit function. You know, at least some of that located in -- in Charleston, you know, as well as KapStone Kraft.
Q. And just so I'm clear -- well, do you

have your document list in front of you? I -- there it is right here.
A. Yes, uh-huh.
Q. Okay. And I didn't see anywhere in your document list where you were provided any job descriptions, and you said you don't recall seeing any. And I'm just making sure we're accurate.
So I -- I will give you an opportunity to look at your list, if you want to.
A. Sure.
Q. But I will represent to you that I didn't see that you received any job descriptions.
A. Right. I mean -- and I think I answered your question in the sense that I did not receive, you know, a -- detailed job descriptions for -- you know, for all the different descriptions that -- you know, employees located in Charleston or elsewhere.
Q. Right. Okay. Well, then we're on the same page. I was just giving you a fair opportunity if you wanted it.
So let me know when you're --
A. Oh.
Q. -- you've satisfied your looking.
A. Well, thank you.

(Discussion off record)
MR. WILLIS: When you get to a good breaking point.
MR. FINDLEY: Yeah, I'm about to get there.
(Discussion off record)
THE WITNESS: Yeah, I'm not seeing anything --
Q. (BY MR. FINDLEY) I didn't see anything.
A. -- specific to your question.
Q. I -- I didn't see anything either. I just -- I wanted to be fair to you. I didn't want you to think I was tricking you, but I -- I didn't see anything where you viewed any job descriptions, and I just wanted to give you an opportunity to confirm that.
Have you satisfied that?
A. Yeah. Yeah, I think so. I mean, there is some reference to Hicks, some documents related to organizational chart, and I think there may have been, you know, a job description or, you know, in relation to the positions that your -- your clients were being kind of hired in relation to --
Q. Well, yeah --
A. -- but I don't recall seeing what I

testified to, which is sort of the detailed list of these different description.
Q. Right, and that's all I'm getting at.
A. Yeah.
Q. I think you said in your report that you saw a -- a letter about employment for my clients, right?
A. Yeah. Yes, I've seen the information related to I assume the personnel file and the employment file for your clients.
Q. Right. But as far as what we just went through, the list about description for what those employees actually do on a day-to-day basis, you don't have any information other than what's provided in the col -- payroll column, correct?
A. Well, I mean, the additional information that I guess was provided in the file with regard to your clients. You know, I think my answer was, on Exhibit 3, I don't have any other detailed information or descriptions about kind of the IT services kind of descriptions here.
Q. Or you don't have any descriptions for any of the individuals other than what's listed there in the payroll record?
A. Right --

Q. Okay.
A. -- other than what's listed here, or if I missed it in my lists of documents considered.
Q. Well, if it's not in your list, we can agree you didn't review it?
A. Correct.
Q. All right. Fair enough. Okay.
Here is my only question, and then we will take a break, is: Do you think it's important when you're determining how a company actually conducts business what the employees for each organization do on a day-to-day basis, or do you not need that?
A. No, I have a general understanding of what each employees do on a day-to-day basis, but I am primarily looking at process and not necessarily detailed jobs.
Q. Okay. Well, what your general understanding would come from that you just mentioned on what they do on a day-to-day basis would come from that same list?
A. It would come from that same list, but also all of the other information I reviewed in terms of activities that are ongoing at the various facilities.

Q. Like what?
A. You know, investor presentations, information -- you know, the 10-K report where they're talking about the mill system and the products that are being produced and things like that.
Q. You're talking about what they report to the SEC?
A. I'm talking about some in the SEC, but more specifically in some of the investor presentations which go into more detail about the nature of the -- you know, the nature of the -- of the different kind of products and -- and facilities that the company has -- or that KapStone has.
Q. Wouldn't you agree with me that the -- if we wanted to know what people do on a day-to-day basis at the plant, the best thing to do would be to ask them?
A. And I agree with you if -- if I was focused more on what the individuals were doing at the plant, yes.
Q. Okay.
A. But as I -- I think I started my answer by saying I'm focused more on the processes, on the actual services that are being provided, and the main

function is not the detailed day-to-day descriptions.
Q. I hear you. But if we wanted to know how they actually transact business from a -- various locations with their managers, we would talk to the employees who were there, correct?
A. No, not necessarily.
Q. Well, you don't need to do that?
A. Well, I don't need to do it, again because I'm looking at the processes.
Q. Right. You don't need to do it -- well, strike that. I won't say it.
But -- well, let me do it this way: There's been some actual employees from the Charleston plant that have been deposed. You didn't review that either?
A. I did not review those.
MR. FINDLEY: Okay. We can take a break here.
THE VIDEOGRAPHER: This is the end of media four. The time is 3:02 p.m. We're off the record.
(Recess taken)
THE VIDEOGRAPHER: This is the beginning of media five. The time is 3:16 p.m. We are on the record.

Q. (BY MR. FINDLEY) All right, sir. We took a short break. Are you ready to continue?
A. Yes.
Q. One of the things that you relied on is the tax returns, correct?
A. Yes.
Q. And one of the things you stated about tax returns were that one of -- I know you said many things, but one of the things you looked at was whether they filed consolidated tax returns, correct?
A. That's correct.
Q. You would agree with me that many, many parent companies file consolidated tax returns?
A. Yes.
Q. You would agree with me it is the norm, not the exception?
A. Well, if -- if it meets the requirements for filing consolidated tax returns, yes.
Q. Okay. And what are the requirements for filing consolidated tax returns?
A. It's 80 percent control of voting power value of the company.
Q. Okay. Are there any other requirements?

A. I'm sure there are some other requirements but those are the main ones.
Q. All right. You would agree with me that just because a company filed a -- a parent company files a consolidated tax return does not mean that they are financially integrated?
A. Well, I think from a -- you know, the IRS's perspective, they view it as one economic entity or one economic group.
Q. Okay. I understand that the IRS would look at it as one tax return, okay? That's not what I'm asking you.
I'm saying financial -- because just because someone files a consolidated tax return does not mean to that the economic reality is that they are not financially integrated, yes? Correct?
A. It is one thing to look at, yes.
Q. So what I'm saying is true?
A. No. I wouldn't say in and of itself it says that, but it's one of the facts, one of the pieces of evidence to review.
Q. I understand it's one of the pieces of evidence to review, but I just want to be very clear for the record that if a parent company files a consolidated tax return, that in and of itself does

not mean that the company's economic reality is financial integration, fair?
A. No, but it tends to support that it is.
Q. What I'm saying is fair?
A. I think what you're saying is fair --
Q. Okay.
A. -- in and of itself, yes.
(Discussion off record)
Q. (BY MR. FINDLEY) You understand there are specific definitions for con -- consolidated financial statements?
A. Yes.
Q. Okay. The factor that you cite to the most in your report, as far as I can tell, is the actual SEC filings.
Would you say that's correct?
A. I wouldn't agree with that.
Q. Okay. What do you think is that you cite to the most?
A. You're talking to in the footnotes?
Q. Yeah, or --
A. The citations in the footnotes, I don't -- yeah, I don't know what the -- you know, I haven't added it up, so --
Q. Okay.

(Discussion off record)
Q. (BY MR. FINDLEY) How -- one of the things that you look to with economic integration -- or -- or looking at was how companies hold themselves out to others, correct?
A. Correct.
Q. Okay. And you believe that the company holds itself as -- to others as one large KapStone, correct?
A. That's true.
Q. Okay. Wouldn't how they enter into contracts be important?
A. That's part of it, yes.
Q. Wouldn't how they enter into lease agreements important (sic)?
A. That's part of it, yes.
Q. Wouldn't how they enter into lending agreements with financial institutions important (sic)?
A. Also part of it, yes.
Q. Okay. Did you review the lease agreements for KapStone Charleston Kraft LLC and how they reported themselves?
A. I think I reviewed some examples of lease agreements.

Q. Which ones?
A. I don't recall as I'm sitting here.
Q. Okay.
(Exhibit 13 marked)
Q. (BY MR. FINDLEY) Let's look at Exhibit 13.
A. Okay.
Q. Have you seen this document before?
A. I don't recall whether I've seen this document or not.
Q. Well, I will represent to you it's not a document that's on your list. Do you have anything to suggest otherwise?
A. Not just from my kind of cursory review of it.
Q. Okay. And let's look at it.
This is an equipment lease agreement. Do you see that?
A. I do.
Q. And it's entered into between two parties, right?
A. KapStone Charleston Kraft and G&W Equipment, Inc., yes.
Q. Okay. G&W Equipment, Inc., KapStone Charleston Kraft LLC, Charleston, South Carolina.

Do you see that?
A. Charles -- yes.
Q. Okay. It's not entered into by KapStone Paper Packaging Corporation of Chicago, correct?
A. That's not the company name that the lease is under, you're correct.
Q. Okay. And you don't recall ever seeing these documents when you gave your opinion, correct?
A. That's what I testified to, is I don't recall as I'm sitting here, you know, whether I've seen this document or not.
Q. Well, we could look to your list, and I don't see it there.
You don't have any independent recollection of reviewing this, correct?
A. No, not as I'm sitting here.
Q. Okay. And here in what I'm looking at on Exhibit 13 is Eric Choltco, director of strategic sourcing KapStone Charleston Kraft LLC, correct?
A. That's correct.
Q. And that was entered into April of 2016?
A. That's the date on it, yes.
Q. And he's holding himself out in an

equipment lease agreement as KapStone Charleston Kraft LLC in Charleston, South Carolina, correct?
A. Well, I think he's signing on behalf of KapStone Charleston Kraft LLC.
Q. Okay. Are you aware that he's employed by KapStone Charleston Kraft LLC?
A. I don't recall Mr. Choltco being employed by KapStone Charleston. I thought it was KapStone Kraft.
Q. Okay. Well, at least he's holding himself out as KapStone Charleston Kraft LLC's signature, correct?
A. Well, I think he's -- he's signing on behalf of KapStone Charleston Kraft.
Q. Well, sir, to be fair, you hadn't seen the document before I showed it to you, right?
A. Well, you're asking me, Counsel, to review a document I haven't seen before.
Q. Right.
A. You're asking me about his signature, and you're asking me if he's holding himself out to be a KapStone Charleston employee. And I said, no, he's holding himself out to be somebody who has a signature authority to sign on behalf of KapStone Charleston.

MR. FINDLEY: Objection: Nonresponsive.
Q. (BY MR. FINDLEY) No. What I asked you was: You have not seen this document before I showed it to you in your deposition on September 5th, 2019, correct?
A. And I've answered -- I believe I've answered that several times that I don't recall seeing this document.
Q. All right. Can't any companies file consolidated tax returns?
There's only two ways, two restrictions on filing consolidated tax returns, correct?
A. I -- yeah, I don't recall.
Q. Do you know what those are as we sit here today?
A. Well, I think one of the restrictions is a requirement to file consolidated tax returns if you own a certain percentage of the -- kind of controlling -- or controlling shares of the company, so -- and/or if you have control over the board.
Q. Okay.
(Discussion off record)
Q. (BY MR. FINDLEY) Okay.

A. Is this a copy for my review, or is it one that you needed to mark?
Q. Oh, I marked this one.
A. Oh, okay.
Q. So if -- you can throw that one to the side.
A. All right. I will take it back.
THE WITNESS: Or unless y'all want it.
Q. (BY MR. FINDLEY) Here's another document that I was going to show you.
(Exhibit 14 marked)
Q. (BY MR. FINDLEY) I'll let you review this one, but then I'll switch it out.
A. Okay.
Q. This is Bates labeled 3375, Exhibit 14. Do you see that?
Well, you don't see Exhibit 14, but do you see this document, "Survey of Operating Conditions and Use of Equipment"?
A. Yes, I do.
Q. Okay. And this says, "The De Lage Laden Financial Services Incorporated, Lease Agreement, Lease Schedule, Lease Relating to the Below-Described Equipment." Do you see that?

A. Yes.
Q. Okay. And this says, "Please fill out this survey," in the middle section. And it says full legal name, "KapStone Charleston Kraft LLC," correct?
A. Yes.
Q. And it's 5600 Virginia Avenue, North, Charleston, South Carolina, correct?
A. Yes.
Q. And --
A. As the location for the equipment, right.
Q. Right. And it's entered into by the lessee KapStone Charleston Kraft LLC. Do you see that at the bottom?
A. Yes.
Q. All right. I looked through your list and this isn't a document you reviewed, correct?
A. You know, again, I don't recognize this document.
Q. Okay. And it's not listed in your exhibits. So sitting here today, you don't have any independent recollection that you reviewed it and considered it for your report at the time of your opinions?

A. I do not.
(Discussion off record)
Q. (BY MR. FINDLEY) Okay. And what I'm -- at least from the documents we have reviewed, it is -- KapStone Charleston Kraft LLC is in these documents leasing its own equipment, correct?
A. Well, it's leasing this particular equipment, yes.
Q. Okay. And it is paying for its own equipment, correct?
A. That's not, you know -- you know, I don't see on this document where the payment is actually going to be coming from.
Q. Well, they're entering into the agreement to pay on their own, correct? It's --
A. They are entering into the agreement to -- you know, for the lease of equipment, and then the agreement doesn't really go into, you know, who's going to be paying for the equipment, or how the -- how the funds for the equipment are going to be provided.
Q. As far as entering into the contract to lease the agreement -- or lease the equipment, there is no corporate -- they're not holding themselves out as KapStone Paper, correct?

A. No. They are holding -- they are -- you know, the lease is being executed by KapStone Charleston Kraft, and therefore -- therefore obligating KapStone to a payment of lease.
Q. Right. And that's sometimes how corporations work.
You know what an LLC stands for?
A. A limited liability company.
Q. Isn't one of the reasons to start an LLC is so other people or companies can't be financially responsible?
A. If you're asking me for a legal interpretation, you know that. But yes, there are a number of reasons why LLCs are formed.
Q. I'm asking you for an economic interpretation. What -- is one of the benefits when you give your advice to someone whether or not to start an LLC?
A. Yes.
Q. Okay. Is -- one of the benefits to starting an LLC is if the LLC enters into an agreement and they default on that agreement, the LLC would be the responsible entity?
A. That's correct.
Q. The individual would not, correct?

A. Not necessarily, yes -- well, correct.
Q. Right. And the parent corporation would not?
A. Again, not -- not -- not necessarily. That's the intent of a limited liability.
Q. There's an exception to the rule, right?
A. Well, there are -- I'm -- I'm sure there are a lot of exceptions to the rule.
Q. Well, you've probably testified about exceptions to the rule, correct?
A. Not that --
Q. Have you ever --
A. Not that I recall.
Q. Have you ever testified regarding piercing a corporate veil?
A. No. But I have worked on matters certainly in my bankruptcy days in relation to piercing the corporate veil and things.
Q. Okay. The general principle behind an LLC in entering into agreements on LLC is it would bind that company, not something else, correct?
A. I think to the extent that, yes, it binds KapStone Charleston. But to the extent that there are other relationships within the KapStone

organization that therefore would bind KapStone or KapStone Paper for fulfilling obligations of KapStone Charleston, then I would disagree.
Q. Well, they didn't cosign on it, correct?
A. Well, there is not a signature on this document, so --
Q. There is no cosignment -- cosigning from KapStone Paper and Packaging Corporation that you can see?
A. There is no signature on the document, period, from what can I see.
Q. Look at the other document. There is no cosigning or -- or let me put this way --
A. Sure.
Q. -- on the two documents I showed you, KapStone Paper Packaging, Incorporation isn't mentioned one single time?
A. I will -- I will take a look and see.
You know, from my review, I don't see KapStone Paper or KapStone Kraft, either one, listed in relation to this document.
Q. Okay. All right. Switching gears to something else, is we have -- one of the things you looked at was development and implementation of I

believe you said governance and management, correct?
A. The governance and management processes, yes.
Q. And what is "governance"?
A. Governance is essentially the responsibility of the board of directors to, you know, set the governance standards by which the firm operates or company operates or companies operate, you know, including kind of, you know -- excuse me -- ensuring the necessary internal controls are in place in relation to that governance.
Q. Okay.
(Exhibit 15 marked)
Q. (BY MR. FINDLEY) I have got another document I want to show you, is Exhibit 15. And I only have one copy with it, so I'm going to look at it here first and then I will hand it to you.
A. Okay.
Q. This is a document from an e-mail -- oh, I actually do have another copy for you. Here you go.
A. Thank you.
Q. Have you ever seen this document before?
A. No --

Q. Okay.
A. -- not that I recall.
Q. And I didn't see it in your list of documents reviewed.
But December 14th, 2016, according to our Deloitte paperwork, that would be after they were hired to help implement the "One KapStone" objective in mid October of 2016, correct?
A. I don't recall what the paperwork says about when or if Deloitte had been hired at that point, and my recollection is that, at least the schedules that you referred me to, or pages you referred me to, it was -- I was not able to determine, you know, whether Deloitte had been hired or not.
Q. It's before the leadership workshop PowerPoints that we went through, correct?
A. That's correct.
Q. Okay. If we go back to the document, the sample Synergy Report from KapStone, we have got -- on page KapStone 003815, we had a timeline starting in mid October, January 13, 2017, somewhere in this process of strategy diligence and alignment would fall December, correct?
A. Assuming they were executing on that

strategy and assuming they had actually been retained to kind of provide, you know, billable, chargeable work at that point.
Q. It would fall between these two points, correct?
A. They would fall between those two points, yes.
Q. Two dates of October 2016 and January 3rd --
A. Yes --
Q. -- 2017?
A. -- yes, the December 14th date does, sure.
Q. Okay. So let's look.
Michael Murphy King, he goes on, "Wanted to share my notes from today for our priorities in advance of the mid January meeting."
Do you see that?
A. I do.
Q. Okay. That's January 2017, what he's referring on, correct?
A. I would assume.
Q. Okay. And I want to point you to bullet point three. It says, "One KapStone: Outside help to build out team at KapStone."

Do you see that?
A. Yes.
Q. Okay. And "One KapStone" is what Kelly Husleman referred to was going to be implemented in January 2017 at some point?
That could be -- well, did you know that?
A. Well, you -- we were discussing it earlier today and I just -- I will just have to assume that that --
Q. Okay.
A. -- you know, information is correct.
Q. And it says, "What we're going to do is we're going to standardize" process -- "processes, practices, and data."
Do you see that?
A. Yes.
Q. And it says, "Develop and implement governance." Do you see that?
A. Yes.
Q. That's something that they're planning to do in January of 2017 according to this e-mail?
A. That's -- that says what it says, yes.
Q. Okay. And it says, "On the One KapStone, I think we should discuss the scope of

where we should go to lead a more structured process across data process, the systems, Deloitte or payroll finance consultant, or some other firm."
Do you see that?
A. Yes.
Q. Okay. This is not a document you were provided or reviewed prior to issuing your opinions, fair?
A. Like I said, yes, I don't recall seeing this document.
Q. You would agree with me that it is inconsistent with the opinions you formulated that there was integration in 2016?
MR. TARVER: Object to form.
THE WITNESS: No.
Q. (BY MR. FINDLEY) Okay. This document on its face states that they are moving forward to implemize (sic) and develop and implement governance.
In order to implements (sic) governance, they say they got to develop it and implement it, correct?
MR. TARVER: Object to form.
THE WITNESS: That's what it says.
Q. (BY MR. FINDLEY) And just that plain language, reading the English language, plain

language of, "Hey, guys, we need to develop and implement governance for One KapStone," that would be inconsistent with what you've stated, which is it already existed?

MR. TARVER: Object to the form.

THE WITNESS: To the extent that is how you're reading this bullet point, which is development and implement governance, and to the extent that you're implying that the company or KapStone Paper, KapStone Charleston, KapStone Kraft had no governance is ridiculous.

Q. (BY MR. FINDLEY) The fact that you didn't review all the documents I find ridiculous, do you not?

MR. TARVER: Object to form.

THE WITNESS: No, there are a lot of documents out there, and I'm not surprised that there's some documents that I haven't seen.

Q. (BY MR. FINDLEY) Sir, you didn't even re -- review the document where it says that their current state is decentralized, which you referred to as unintegrated.

Do you remember?

A. No, I think that was a --

Q. Do you remember stating that?

A. I -- I think you asked me whether "centralized" is the same way as saying "integrated," and -- and I said in general, yes, but not necessarily.

Q. Sir, I appreciate that you're working hard for the $180,000 that you were billed, but the facts remain the facts, is this e-mail states something different than what you said, which is it says, "We are going to develop and implement governance for One KapStone," and your opinion says it already existed and had been developed by this timeframe?

MR. TARVER: Object to form.

THE WITNESS: The way I read this e-mail is not inconsistent with my opinion.

Q. (BY MR. FINDLEY) Okay. But -- all right. You think the plain language of, "Hey, team, I'm the vice president of finance at KapStone Paper and Packaging Corporation and I think we need to do a One KapStone across structured processes, across data process system, Deloitte or payroll finance consultants, or one other firm -- or another firm" means in your mind that it already existed prior to the date of this e-mail; is that right?

A. What I'm saying is that I don't know

what the nature of this e-mail was, the context of it, or where it fits in relation to the other documents that you provided me that I have not had a chance to read.

Q. Right, sir, and I --

A. So my response is that clearly, you know, a company of this size and complexity had significant governance procedures in place.

Q. Whether it had governance or procedures in place is a whole different subject.

They didn't have centralized governance on One KapStone according to this e-mail?

A. I'm not seeing where you say that it doesn't have centralized governance.

Q. Well, let's look at Bates labeled 032297 in 2016 where it says it's "decentralized."

So every document we have seen that -- that I have seen throughout the course of this litigation that I provided to you all show that they are moving to One KapStone and centralized governance in January of 2017, and you are the only person in this litigation that has not reviewed these documents.

You would agree with that, at least?

A. What?

Q. You're the only person that hasn't reviewed them -- these?

A. I -- I don't know whether I'm the only person who hasn't seen this or not.

Q. Well, you're the only person in this room that hasn't?

MR. TARVER: Object to form.

THE WITNESS: Let me stop you, Counsel, if you wouldn't mind. I mean, that was -- I think you started a question and then you finished with another question. So -- so if you wouldn't mind, if you want to ask me about --

Q. (BY MR. FINDLEY) Sure, I will reask it. Let's reask it, make sure we're getting our exhibit numbers correct here.

Let's just start with this question: This has a Bates label on it, correct?

A. It does.

Q. Okay. A Bates label meaning it was produced, right?

A. Yes.

Q. Okay. That means the lawyers for KapStone got it, right?

A. My understanding.

Q. That means they sent it to me, right?

A. As you represented.
Q. Okay. So there's four lawyers in this room and there's you and we have a court reporter and a videographer, correct?
A. Yes.
Q. Let's take the court reporter and videographer out of it, okay?
A. Okay.
Q. Between the lawyers and you, you're the person that generated a report regarding economic integration, right?
A. Economic financial integration, yes.
Q. I didn't generate one, right, that you have seen?
A. That I've seen.
Q. Okay. Your lawyers -- well, they helped you edit yours, but they didn't generate their own, correct?
A. I would not agree with the characterize -- characterization of helped me edit. I -- they provided some comments to that.
Q. Well, we can't figure out what they did to edit, because we deleted the drafts. Remember we went through that?
MR. TARVER: Object to the form.

THE WITNESS: I no longer have and I don't keep drafts.
Q. (BY MR. FINDLEY) Okay. And all I'm saying is: You're the only person in this room with a report, and you're also the only person that has not reviewed all of these documents that say we are moving to centralized governance and integration in January 2017, correct?
A. Based on my limited -- extremely limited review of those documents, I would not agree with your characterization.
Q. Sir --
A. I --
Q. -- your extremely limited review of the documents, it's one simple question.
You're the -- you said you didn't review them, okay? All I'm asking you is: You're the only person here that has not had possession of them?
A. I would agree that I have not seen these documents before today.
Q. And you're the only person here that is testifying on behalf of KapStone related to financial integration, correct?
A. I -- as far as I understand.

Q. So the person testifying for KapStone is the only person that has not reviewed all of the documents in connection with this matter?
A. I think I've answered I have not, and we have made very clear that I hadn't seen these documents before today.
Q. Do you think that's fair to my clients, when you're sitting here testifying saying these companies --
MR. TARVER: Object to the form.
Q. (BY MR. FINDLEY) -- are financially integrated that you didn't review all the documents?
It's not fair, is it?
MR. TARVER: Object to form.
THE WITNESS: I -- I wouldn't say that it's fair or not. You know, I don't know until I review documents. But there's nothing that I have seen that would change my opinion.
Q. (BY MR. FINDLEY) Well, let me put it this way: You've read Poch and you've read all these legal cases, right?
A. I've read what the attorneys provided me, yes.
Q. And you read the legal cases, correct?
A. Yes.

Q. And you relied on them in formulating your opinions?
A. I'm not sure I relied upon them.
Q. In any event, you saw in those cases that the financial integration -- well, the ruling of having these companies be integrated barred those clients opportunity for recovery?
You understand that at least?
A. I understand the central theme of the question, yes.
Q. Okay. So what I'm trying to get at: Do you understand what my client's injuries are?
A. I understand that they were very significant.
Q. What type?
MR. TARVER: Object to the form.
THE WITNESS: I -- I don't recall the specific extent of their injuries.
Q. (BY MR. FINDLEY) Do you know if they had broken bones, burns, head injuries, what?
MR. TARVER: Object to the form.
THE WITNESS: I -- again, I don't recall the -- the -- as I'm sitting here, the extent of the injuries.
Q. (BY MR. FINDLEY) Do you know if my

client had burns over 62 percent of his body?
MR. TARVER: Object to the form.
THE WITNESS: I recall that there was -- they were significant, very significant injuries.
Q. (BY MR. FINDLEY) Okay. And what I'm trying to think of is: Do you think it's fair before you came and testified about financial integration to try and bar my client's recovery in this case that you didn't review all the documents where they're saying, "We're moving to go 'One KapStone' in January 2017"?
MR. TARVER: Object to form.
Q. (BY MR. FINDLEY) Is that fair?
A. You know, again, I think you're -- on the one hand, you're character --
Q. Is it fair?
MR. TARVER: Object to form.
THE WITNESS: -- you're characterizing the purpose and intent of these documents, and I'm not even -- because I have not even reviewed these documents, I'm not sure I can -- well, I can't agree with your characterization of what these documents represent.
Q. (BY MR. FINDLEY) Sir, I -- I hear you.

In a perfect world, your lawyers would give you everything, right?
A. Well, in a perfect world, I would have an unlimited amount of time and access to everything I want, that's true.
Q. Right. And what I'm saying is: Did you ever ask the lawyers if you could speak with anybody at the company?
A. We talked about it, so --
Q. And you determined you didn't need to?
A. I -- I think based on the information that I was getting and reviewing, I didn't see that it was necessary.
Q. Okay. So you agree that you would have had the -- you could have talked to them if you wanted to?
A. I don't know if I could or not, so --
Q. I said you had a discussion about it.
A. Yeah. We had -- we had a discussion about whether it would make sense for me to talk to --
Q. Okay. Well, how --
A. -- and, you know, some employees. I think that discussion, you know, ultimately did not lead to that conclusion.

Q. Does that mean you asked to talk to them and they said no, or you talked about it and decided you didn't need to?
A. Well, I think we talked about it and then some additional information was produced, and then I kind of reviewed some additional information, which -- which may have answered some of my questions.
Q. I really don't understand what that means. And I'm not trying to be difficult with you.
What I'm saying is: Did someone prevent you from talking to anyone?
A. No.
Q. Okay. And what that means is if you felt it was necessary, you feel you could have obtained additional information, you just didn't feel it was necessary?
A. No.
Q. What I'm saying is correct?
A. I did not feel that it was necessary based on the information that I had reviewed and -- and relied upon in support of my opinions.
Q. Okay.
(Exhibit 16 marked)
Q. (BY MR. FINDLEY) When did "One

KapStone" start, based on your review of your documents?
A. Well, I think we talked about this earlier, and you're the one that kind of referenced the "One KapStone." And I've heard the term before, but I don't recall what documents, you know, I reviewed that discussed that.
Q. Okay. Do you have any idea -- well, we agreed on what the term "synergy" meant, and you said it's when two companies become one because they're greater than their individual parts. Okay?
So when did the synergy start at KapStone?
A. With regard to what?
Q. With regard to integration?
A. KapStone is an entity that's been integrating since they started making acquisitions back in 2007, 2008.
Q. Okay. So when did they become financially integrated in your mind, what date?
A. I think they were from the very beginning structured to be financially integrated.
Q. So your testimony is they became financially integrated from the very start based on what?

A. Based on how the company was structured and the fact that the corporate headquarters was providing shared services; that the governance structure of the company provided for essentially the same kind of board of directors, the same, you know, executive management, the fact that they were relying upon the same corporate identity of the KapStone name, logo, and so forth. I mean, all of the things I've listed in my report.

Q. So why in the world -- if what you say is true, why is there document after document that says we need to become -- we have an urgent need to be more integrated, we must align, all of these documents? If what you say is true, there would be no need to do that.

A. Well, and I would just -- I would raise just one point: The first document you -- you showed me was specifically related to kind of work between the mill division and the container division, so I don't even know if these documents you provided to me relate to the overall entire KapStone or if the focus was really was between the mill and the container division at that point.

Q. Oh, so what you need -- what you're saying is you need more information to be able to

know if you would change your opinions?

A. Well, I would at least kind of want to review the information. But what I've seen would not lead me at this point to change my --

Q. Sir --

A. -- opinions.

Q. -- you got hired in July of 2018. You've had a year to review information.

A. I've had less than a few minutes to review it in this deposition, the information that you provided.

Q. Is that my fault?

A. I don't know whose fault it is, but -- but you're asking me questions about a document that I haven't reviewed.

Q. Okay. What I'm saying --

A. So I can't really provide much of an answer.

Q. What I'm saying is: The lawyers that gave me these documents hired you over a year ago, correct?

A. I was, yes, retained over a year ago -- or assuming my engagement letter was -- was executed during that time, yes.

Q. And we talked about if you want to stay

on the same path that a company exists, then you don't make changes; but if you want to change your path, you would make changes, just hypothetically, right?

A. Companies are always making changes. So I'm not sure what your question --

Q. Sure --

A. -- you know, really is doing.

Q. Let's do it this way: If you're decentralized and you want to become centralized, you would have to make changes in the way you do things.

A. Or if you were --

Q. Is that right?

A. -- centralized and wanted to become decentralized, yes, you would have to make changes.

Q. All right. And what I'm trying to figure out is -- just limited to my question. We can do the reverse, but just a very simple question.

If you're decentralized and you want to become centralized, you would need to make changes to get there. Can we agree on that?

A. Yes.

Q. And if you don't make changes, you would stay decentralized, correct?

A. I would assume.

Q. Okay. So what I'm trying to figure out is: If there are all these changes being implemented after this incident, why would they need to be made to become centralized if your opinion was true that they already were?

A. You know what, I want to -- and I want to go back to a part of my testimony where you were talking about centralization versus integration. And I would not agree that they mean the same thing. I think in the terms of how we were discussing at that point -- but -- but companies can be integrated and still be centralized or decentralized.

Q. (BY MR. FINDLEY) Sir --

MR. FINDLEY: Objection: Nonresponsive.

Q. (BY MR. FINDLEY) -- I think what you're trying to say is: Companies can file a consolidated tax return and be financially integrated or not financially integrated, correct?

MR. TARVER: Objection to the form.

THE WITNESS: I think the fact that they filed consolidated tax return -- or tax return or financial statements are two elements that support whether or not there is a common business purpose and a common -- and whether or not there's financial

integration between those companies.
Q. (BY MR. FINDLEY) Sir, isn't your entire opinion that you've written in this 30-page report center around one thing, that they filed consolidated tax returns?
MR. TARVER: Object to the form.
THE WITNESS: No.
Q. (BY MR. FINDLEY) Okay. But -- well, do you think the fact that you file consolidated tax returns is an important factor to determine economic integration?
A. I -- I think it's a factor.
Q. It's a factor?
A. It's a factor in relation to the financial and how the financial management or the financial and accounting operations of the company are managed and presented to the public.
Q. Is -- the fact that there is e-mails and PowerPoint presentations that say, "We need to become integrated, we need to go from decentralized to centralized," is that a factor?
A. Well, and again, you're making a characterization about these documents which I don't necessarily agree with, okay?
First of all, I don't know who -- the

A. -- if they are decentralized versus centralized.
Q. So all I'm asking you, then: Is -- the fact that we see e-mails, just taking the documents at their value as what they say, the words written that we have read out loud about making changes to become centralized, is that a factor that should be considered for determining economic integration?
A. Well, to the extent the company is making changes and it implies that there is a different start state from where they're at, yes, I would like to take a look at the information and see what it has; but based on what I have seen right now it wouldn't change my opinions.
Q. Sir, and I appreciate the long-winded answer, but it's really not an answer to my question. I'm asking you about factors, okay?
Is -- the fact that a company is internally saying, "We need to become integrated" just based on what the papers say or "We need to become centralized," is that a factor that should be considered if someone is going to render an opinion on economic integration?
That's all my question is.
A. I understand your question, Counselor.

author of the chart that shows centralized versus decentralized, I don't know if it was Deloitte, I don't know if it was company personnel or what, or what the information was that they relied upon; but the fact that you've centralized or decentralized doesn't necessarily have -- doesn't necessarily have anything to do with integration.
Q. Hold on one second. Let me get this straight. You say the fact that a company says it needs to go from centralized to decentralized doesn't mean they weren't integrated before, correct?
A. Or the vice versa, it goes from decentralized to centralized.
Q. Doesn't mean they were integrated before, correct?
A. Doesn't necessarily -- doesn't mean they weren't integrated before.
Q. Okay. But it also doesn't mean that they were, correct?
A. That's correct. It means, you know, an assessment of a company's -- whether its operations or centralized or decentralized can influence integration, but it doesn't necessarily mean that they are not integrated --
Q. Okay.

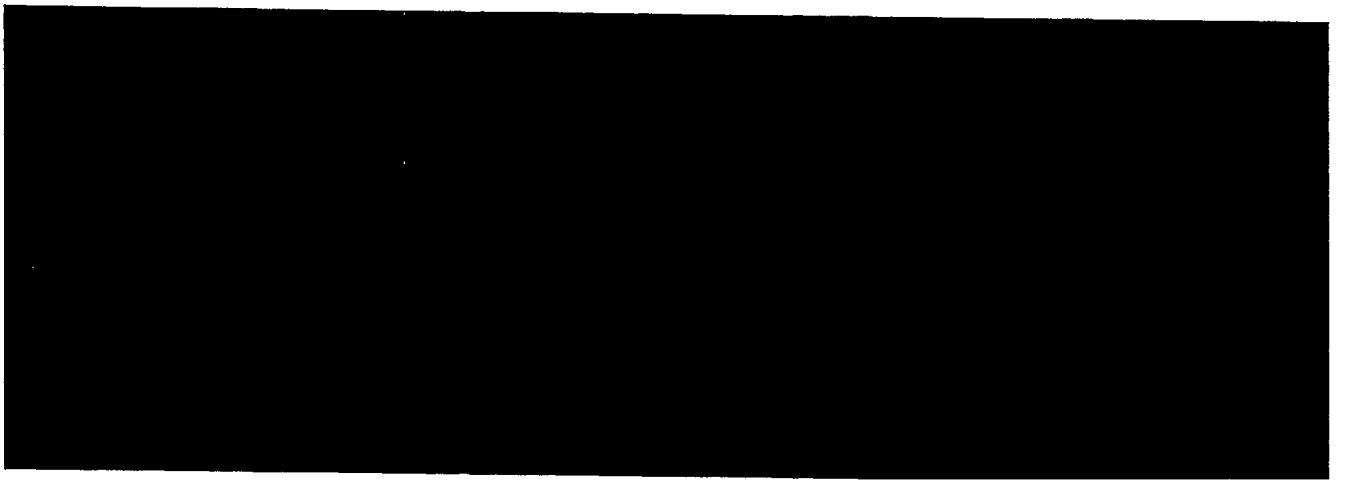
But again, you're -- you're injecting into this your characterization of what these documents purport to mean.
Q. Sir, I'm not injecting anything. I asked you a simple question earlier: If a consolidated tax return is a factor to consider for economic integration?
A. And I said yes.
Q. And you said yes?
A. Yes.
Q. Okay. And I want the same type of response when I ask you about other factors.
Is the fact that a company is internally sending memos saying -- just taking it what it says, if what is in here is true as it's written, okay, take it at face value, I understand you hadn't seen it, but let's just take it at face value.
A. I can't take it at face value because I haven't seen it.
Q. Sir, and I get you hadn't seen it. I'm just asking you when you do -- let's put the documents out of it.
When you do an analysis about economic integration, is a factor someone should consider what

is being said interm -- internally about their current status of integration?
A. Yes.
Q. And that should be given just as much weight as consolidated tax returns, correct?
A. I think it's another factor that should be given weight, yes.
Q. Do you know who Joseph Bryan Gendron is? G-E-N-D-R-O-N.
A. No, I mean, I -- I don't recall that name.
Q. Okay. I want to show you a document that's marked as Exhibit 16. It is Bates labeled KapStone 000735, and I didn't see this on your list of documents reviewed.
A. Okay.
Q. Have you -- do have any independent recollection of this document?
A. Not that I recall.
Q. What?
A. The answer's no, not that I recall.
Q. Okay. So I just want to go through a couple of things, but in this they are talking about this "One KapStone." And if we go to the second page, it says, "One KapStone, one team, one company,

One KapStone or together we can do more."
Do you see that? And that's January 30th --
A. Yes.
Q. -- 2017?
A. Yes.
Q. And then Randy Nebel says, "I like 'One KapStone,' will you run it by the team?"
Do you see that, January 30th, 2017?
A. Yes.
Q. Okay. And then we got the team here, and it says, "News -- Newsletter name: Below is a list of possible newsletters names that I provided to Randy for his review. He likes the 'One KapStone' option highlighted below in yellow," on January 30th, 2017.
Do you see that?
A. Yes.
Q. Okay. And internally, Lindsay William -- William P. Lindsay replies: "Agree, 'One KapStone and together we can do more,' correct?"
Do you see that?
A. Yes.
Q. Okay. And this is about communication, about how they're going -- their slogan to the world,

right?
A. Well, their slogan to the company --
Q. Right.
A. -- with regard to the effort that -- that you're saying was about to start.
Q. Right. And -- and those -- these changes were being made in 2017 about, we're going to start this idea, at least from a marketing standpoint, to project ourselves as "One KapStone"?
A. Well, the e-mail you showed me -- well, this e-mail is -- yes, is in kind of the early part of 2017, January 31st or so, so thereabouts.
Q. Well, apparently someone thought they weren't marketing themselves as one entity and they needed to change something to do that, right?
A. I wouldn't -- I wouldn't read that into that statement.
Q. Okay. Have you seen any documents that suggested they were holding themselves out to the public as, "One KapStone, together we can do more" prior to 2017?
A. Well, and I'm not sure -- when you use the term "marketing," I'm not sure kind of how you're using that term, but I would read this as a -- kind of an e-mail discussing an internal kind of effort by

the company.
Q. Right. An internal effort of how they're going to hold themselves out to the public, which we agree is a factor that should be considered, correct?
A. You say "hold yourself out to the public," if you're referring to the employees of the company, then I would, you know, agree; and what they're doing at this point, you know, to the extent that it had bearing on my opinions, yes.
Q. I don't understand what that means. I -- I guess what I'm saying is --
A. I think what it means is I do not understand what these documents are because I haven't had a chance to review them.
Q. Right. Fair enough.
All I'm saying is: An internal communication -- just putting the e-mail aside, internal communications about a how company plans or when it plans to hold itself out to the public or its employees is a factor for economic integration, correct?
A. No, I think it's --
Q. Just like consolidated tax returns are?
A. I think it's one piece of -- which



references the governance and management of the company.
Q. Right. One piece that should be considered?
A. Well, one piece that should be considered in -- in -- in accordance with a number of pieces.
Q. Sure.
MR. FINDLEY: Let's take a five-minute break. Let me go through my notes and --
THE VIDEOGRAPHER: The time is 4:00 p.m. --
MR. FINDLEY: Hold on. Before we go off, did y'all say his hard file was here?
MR. WILLIS: Yeah.
MR. FINDLEY: Okay. So just let the record reflect we are getting his complete file for the first time at 4:00 p.m. on the date of his deposition that was ordered by the Court back in June.
MR. WILLIS: Yeah, that's not correct.
MR. FINDLEY: The deposition wasn't ordered by the Court or what wasn't correct by the statement?
MR. WILLIS: Virtually nothing in that

statement was correct --
MR. FINDLEY: So tell me --
MR. WILLIS: -- on the record.
MR. FINDLEY: Let's make it on the record. What is a correct --
MR. WILLIS: All right. Let's have the witness leave the room.
MR. FINDLEY: Okay.
(Witness leaves)
MR. WILLIS: All right. So the Court didn't order us to provide anything. This has all been provided voluntarily pursuant to discovery --
MR. FINDLEY: That --
MR. WILLIS: -- number one. I'm -- that's our position. And if you want to show me an order that contradicts that, then I'll take a look at it.
MR. FINDLEY: Okay.
MR. WILLIS: The vast majority of these documents were -- have been provided to you long ago. His -- his working file, which I haven't had a chance to see, I would be surprised if there's anything in there that's new, but we will take a look at it. It's been delivered here. It's available to you today. It's not very big.

So that's -- that's all I have to say.
Your characterization that his file hasn't been provided to us until 4:15 in the afternoon is not accurate.
MR. FINDLEY: Okay. Now, hold on. First of all, we had a Motion to Compel with the Judge. The Judge ordered production of documents. We -- there is an order. You've changed the order. We submitted it to the Court. It's been signed.
There -- that order was violated. We had another hearing where we complained about getting the documents. We didn't get them --
MR. WILLIS: Look.
MR. FINDLEY: Hold on. You made your peace. Let me say mine.
We go to the hearing again with the Judge, when we were in -- the term's I think surprise attacked with an expert report and the Court's -- you said -- represented at that hearing that you would get a list of all the documents.
I sent you an e-mail following that hearing and I say -- I said, "I want all the bills, all the correspondence, et cetera."
I sent you another e-mail last night saying, "Where is it?" I got it this morning.

On top of that, we submitted a subpoena duces tecum for this witness over a week ago. Mr. Willis signed for that subpoena. The witness didn't bring a single item on the subpoena that was issued before him, neither did the lawyers.
And it's this same problem that we're saying, whoops, whoops, whoops. But it's not a bad characterization because the witness' file literally just showed up, and it is 4:15 p.m.
MR. WILLIS: That's not true, Kyle. We -- we brought his file materials. They're all here. They're on zip drives. They're on thumb drives. He just did not bring them down. The lawyers brought them.
MR. FINDLEY: I don't want what --
MR. WILLIS: Let me finish. If -- you get to make a speech, but I don't. Is that -- is that the way it works? Because I'm happy to argue all this to the Judge in front of a Motion to Compel if you want to make it. And if you'll -- if you do, you'll find there is no order compelling us to produce Mr. Lester's file. I did that voluntarily, because that's the normal practice in state court in South Carolina.
And the only thing I didn't provide

you, until this morning, was four bills that you spent a total of five minutes going through and a series of e-mail correspondence that was basically transmittal stuff. And I have provided that to you, and I apologize for not getting that to you earlier. I thought it had been -- it had been included.

And then we have got this working file. We will take a look at that.

MR. FINDLEY: And -- and --

MR. WILLIS: But I'm just saying that there has been no effort to withhold important information from you so that you can't depose or cross-examine this witness. I just don't agree with your characterization.

MR. FINDLEY: That's fine. And so what I --

MR. WILLIS: There's no Judge here to rule on this --

MR. FINDLEY: No, that's --

MR. WILLIS: -- so you and I are wasting our time --

MR. FINDLEY: I'm not wasting --

MR. WILLIS: -- arguing with each other.

MR. FINDLEY: I'm not arguing with

you. Exhibit Number 1 is a subpoena that -- so the record is clear, a subpoena Mr. Willis signed for. Not a single document --

MR. WILLIS: That's not true.

MR. FINDLEY: -- from this was produced in regard to this litigation.

MR. WILLIS: The subpoena --

MR. FINDLEY: At no point in time did I ask the lawyers for their file. I asked, and as is customary in every state court, the witness to produce his working file, which is Exhibit 1, item number 12, "The witness's entire file in this case; a copy of all documents, reports, letters, studies, statistical data, and compilations that will be used to substantiate their opinion; all written material; any literature;" the list goes on and on.

The point of it is: All of those -- well, the -- I don't know what's in his working file, but his working file physically is showing up at the office at 4:05 p.m. on September 5th in 2019.

MR. WILLIS: That's not correct. This is -- his -- his file materials that he's reviewed in this case have been in your possession for months.

MS. SELLERS: Wait.

MR. FINDLEY: Dick, hold on.

MR. WILLIS: So, again, this is --

MS. SELLERS: Wait --

MR. WILLIS: So I don't get to talk, y'all do? So let's just stop this.

MR. FINDLEY: No, you're -- you're misrepresenting --

MR. WILLIS: There's no arguing in front of a judge.

MR. FINDLEY: You're misrepresenting -- it's in front of the hearing. You have a file with you-all of documents that's been produced. It is --

MR. WILLIS: Kyle --

MR. FINDLEY: Hold on.

MR. WILLIS: -- you had these months ago.

MR. FINDLEY: It is different than what the witness has read.

MR. WILLIS: No.

MR. FINDLEY: His list of documents is different than what you have.

MR. WILLIS: It's not.

MR. FINDLEY: We've gone through 1,000 documents that he has not seen, and you are misrepresenting on the record. I didn't ask you --

MR. WILLIS: You are misrepresenting --

MR. FINDLEY: I didn't ask you for your file, Dick. I asked him for his. And I have a list --

MR. WILLIS: We have provided to you his file materials.

MR. FINDLEY: Where?

MR. WILLIS: We provided it to you by Excellion months ago.

MS. SELLERS: You -- Dick, you provided this morning --

MR. WILLIS: I'm not trying to be difficult.

MS. SELLERS: Hold on. Hold on.

MR. FINDLEY: Yes, you are.

MR. WILLIS: No, I'm not, Kyle.

MS. SELLERS: And, Dick, I want to clarify, because I understand the Excellion link that you're talking about, that included the supporting documents which were cited in his report, which includes little excerpts from the depositions, it does not include the document from an appendix.

The Appendix A has hundreds of documents that are not included in the Excellion link

that you provided to us.
MR. WILLIS: I know you guys argued that and we went back and looked at that --
MR. TARVER: Yeah, we --
MR. WILLIS: -- and that's not correct.
MR. TARVER: -- we triple checked it.
MR. WILLIS: We triple checked it. Honest to God, that's not correct.
MS. SELLERS: What I was provided had 111, which matches up to the citations in the report, not the Appendix A.
MR. WILLIS: I don't agree. I think it -- I --
MS. SELLERS: I mean, I can show it to you.
MR. WILLIS: I can show -- think I could show you that we produced Appendix A to you guys months ago.
MR. TARVER: Can I come around?
MR. FINDLEY: So the problem with that is, is he said he has markings on his file. I want his file. You have never produced me any file that has flagged documents and markings, and that's his working file, period.

MR. TARVER: No, we sent a second one.
MS. SELLERS: No, we never got it. This is --
MR. FINDLEY: You're stating things that aren't true.
MS. SELLERS: That is literally all I got.
MR. FINDLEY: You told you me at the break that the person is 20 minutes away with his working file. That person showed up at 4:15, and now that I stated on the record the person shows up at 4:15, you're saying it's inaccurate.
(Unintelligible discussion between Ms. Sellers and Mr. Tarver continues during next sequence)
MR. WILLIS: Let me finish what I'm saying. I'm saying that there are thousands of documents that Mr. Lester has been provided that have been provided to you. If he takes one of those documents out, prints it out, looks at it, highlights it, writes some notes on it, I'm happy to provide that to you. And that's what's been brought down here today.
MR. FINDLEY: At 4:15. I understand that you --

MR. WILLIS: That's not correct.
MR. FINDLEY: You have produced me files from him that have markings and flags?
MR. WILLIS: No.
MR. FINDLEY: Well, see, no.
MS. SELLERS: Well, see, we even checked it, so --
MR. WILLIS: We brought that down here today.
Can we go off?
MR. FINDLEY: At 4:15, Dick. That's the only point I made this whole time is at 4:15 today --
MR. WILLIS: Y'all never came --
MR. FINDLEY: -- his working file is showing up. The fact that you keep saying you produced it to me before this is a false statement.
MR. WILLIS: No, it's not.
MR. FINDLAY: You just called someone to bring it down here --
MR. WILLIS: Right. I --
MR. FINDLEY: -- and are they showing up at 4:15?
MR. WILLIS: We are -- we are talking cross purposes here.

MR. WILLIS: No, 4:20, actually. But 4:15, whatever. We haven't had a chance to get to it. We will get to it. At 2:20, that's when it was delivered.
MR. FINDLEY: In any event, I understand that you produced documents. I'm not asking that. I'm saying his working file he maintains possession of is showing up here today on the date of the deposition --
MR. WILLIS: He -- the file he maintains possession of, it has thousands and thousands of documents in it.
This working file, (indicates) my understanding is the hard copy that he printed out that he's looking at and writing some things on, they are bringing that down here today.
MR. FINDLEY: Okay. Have you produced, so I'm clear, his working file that has writings on it and whatever else?
Did that show up this afternoon on September 5th --
MR. WILLIS: Yes.
MR. FINDLEY: -- or you've given it to me before?
MR. WILLIS: I think that showed up

on -- this afternoon on September 5th.
MR. FINDLEY: Right.
MR. WILLIS: I just don't think it's extensive, but I haven't seen it. Let's look at it.
MR. FINDLEY: Right.
We can go off.
MR. TARVER: Then there was a second one down here --
THE VIDEOGRAPHER: Off the record? Counsel, off the record?
MR. WILLIS: Yeah.
THE VIDEOGRAPHER: The time is 4:09 -- 4:0 -- 10 p.m. We're off the record.
(Recess taken)
THE VIDEOGRAPHER: This is the beginning of media six. The time is 4:15 p.m. We're on the record.
MR. FINDLEY: Okay. So his file's been delivered. I understand it's not the entirety of his file; that there is additional boxes at his office that would be binders you provided him is what the witness just said; is that right?
MR. WILLIS: Yes. And that's what is in that box.
MR. FINDLEY: Okay. Well, I've got

his file right here that he calls his working file, and it's three boxes that I'm going to mark as Exhibit Number 17. And it contains all sorts of flagged copies, highlighted documents, notes written on them, and they'll be an exhibit to his deposition.
(Exhibit 17 marked)
MR. FINDLEY: And these three boxes are at -- it is now 4:16 p.m. in the afternoon and I'm just going through the boxes. We will label them Box One, Two and Three of Exhibit 17. Box Number One has four different binders. All of them have flags and highlights.
MR. WILLIS: All right. Well, let me ask you this --
MR. FINDLEY: Box Number Two --
MR. WILLIS: Hold on. Hold on.
MR. FINDLEY: Let me document here --
MR. WILLIS: Hold on. You got all those notebooks out, Kyle, and identify what they are. You're -- you're being --
MR. FINDLEY: Hold on. Can I just --
MR. WILLIS: -- misrepresenting and unfair to me.
MR. FINDLEY: Dick, I am --
MR. WILLIS: Let's look and see what

documents are.
MR. FINDLEY: Dick, be quiet. Let me get the --
MR. WILLIS: You be quiet.
MR. FINDLEY: -- evidence --
MR. WILLIS: Listen, I'm not going to stand here --
MR. FINDLEY: Hold on.
MR. WILLIS: -- and get yelled at by you. That's not fair what you're doing. The documents in those boxes --
MR. FINDLEY: Oh, my God. Can you be quiet --
MR. WILLIS: -- are the KapStone documents.
MR. FINDLEY: -- so I can identify the exhibits? I'm taking inventory. Keep it down, please.
MR. WILLIS: Listen --
MR. FINDLEY: Stop --
MR. WILLIS: -- you raise your voice to me one more time --
MR. FINDLEY: Stop, Dick.
MR. WILLIS: -- this deposition's over --

MR. FINDLEY: Dick --
MR. WILLIS: -- and we're leaving. Because lawyers don't behave that way. And you and I are too good of friends to be in an argument like this. Let's take it down a notch and let's do our job. And I'm asking you that professionally and as a friend --
MR. FINDLEY: Okay. Dick --
MR. WILLIS: -- okay?
MR. FINDLEY: -- all I'm doing is taking inventory. I marked Exhibit 17. Box Number One has four binders inside of it. They all have flags on them. They all have highlights.
Box Number Two of Exhibit Number 17 has -- one, two, three, four, five -- six white binders, all with flags on them.
Box Number Three has -- one, two, three, four, five, six -- seven binders with flags, highlights, and dividers. That's all I'm saying for the record is what the inventory is of Box -- of Exhibit Number 17.
MR. WILLIS: Can --
MR. FINDLEY: Now --
MR. WILLIS: Would you be willing to identify what the front of those notebooks says --

MR. FINDLEY: Sure.
MR. WILLIS: -- so we're not misrepresenting what I'm saying?
MR. FINDLEY: I'm not misrepresenting any -- anything, Dick. And to be fair, since you're making statements that are mischaracterizing the record, we have other Motions to Dismiss pending in this case, for whatever reason, with KapStone. We have got this issue with every single deposition. And I'm not accusing anyone, but it is very readily apparent with the fact that we have had to move this trial setting so many times, the fact that we have had so many document productions that this keeps occurring.

So Exhibit 17 -- here's what we will do: Box Number One of Exhibit 17 says "Expert Report of Todd Lester, Footnotes one through 60," and it has got blue Sticky marks on various documents and yellow Post-It notes.

Box Number One of Exhibit 17 says "Binder 1 of 1, Background and Organizational Information," multiple highlights on the pages, green flags, purple flags, yellow flags, blue flags, orange flags.

Box Number -- it says "Binder 3 of 3,

Expert Report of Todd K. Lester, Footnotes 96 through 111," has a bunch of referenced material, no flags and highlights on that one, and it says, "Prepared at the request of Counsel."

Box Number Four (sic) says "Binder 2 of 3, Expert Report of Todd K. Lester, Footnotes 61 through 95, Prepared at the Request of Counsel," has an orange tab on it and dividers.

Box Number Two of Exhibit 17 says "Binder 1 of 1, Lucas and Simerly Workers' Comp Claims Prepared at the Request of Counsel," has green flags, pink flags, orange flags, blue flags, purple flags, highlights in some of the documents.

The second binder we have in this Box Number Two of Exhibit 17 says, "Legal Documents, Binder 1 of 1," and it has green and orange flags identifying documents inside of it.

Binder Number Three -- or Two, excuse me, the next binder says "Binder 1 of 1, KapStone Workers' Compensation and Employee Liability Insurance and Group Health and Welfare Plan and Group Benefits." It has green flags, blue flags, pink flags, yellow flags, purple flags, green flags, and orange flags.

The next binder says "Regulatory

Oversight Investigation File, Binder 1 of 1, Prepared at the Request of Counsel," has green flags only inside of it.

The next binder says "Contract Relationships and Banking Relationships, Binder 1 of 1, Prepared at the Request of Counsel," purple flags, orange flags, blue flags, green flags.

The next binder in Box Two of Exhibit 17 says, "Form AK Documents, Investor Presentations, Stock and Equity Purchase Agreements, Amended Agreements, and Miscellaneous Other Documents." This one has orange flags and yellow flags and highlights and a table of contents in the front.

Moving on to Box Number Three of Exhibit 17, "Binder 1 of 1" says "Expert Report of T.K. Lester." It has red flags and purple flags and some highlights.

Box Number Two (sic) says "FTI Sources." It has got a divider called "Legal Merchant Intellect, MarketLine, Nexis Uni, S&P Capital Open Corporates" and other highlights throughout the document -- or binder.

Binder -- the third binder says, "Administrative: Letter of Engagement, Conflict

Check, Correspondence," which is empty, "Invoices," which has a draft bill and a note with a Post-It note; then "Contacts," which is a single page with attorney's numbers, and then "Miscellaneous."

Box Number Three (sic) has background and organizational information, and it has yellow Post-It notes in it -- or excuse me, Box Number Three, the fifth binder says "KapStone Corporate Policies and Procedures, Binder 1 of 1, Prepared at the Request of Counsel." And it's got Post-It notes with writing, orange flags, blue flags, yellow flags.

The Post-It notes read "IT 13, 27, 28, 34, 39 do not exist or were not provided." The other Post-It note says, "IT 16." And there is highlighting throughout the documents.

The next binder is "KapStone Financial Information in 2016, 11/20 Tax Return." It's got various dividers, highlights, orange flags, green flags, purple flags, and a pink flag.

Box Number Three of Exhibit 17, the seventh binder, has "Form AK Quarterly Results and Form DEF15, a Binder 1 of 1 Prepared at the Request of Counsel," has dividers, notes with handwriting on them that were blue, orange flags, yellow flags, highlighting and some various Post-It notes on some

of the pages.
And that is a -- what is a complete box -- three boxes of Exhibit Number 17, which the witness has testified is his working file.
He also states that there are additional binders at his office that Counsel has represented would have been a duplicative copy of stuff that had been produced in this case and binders created for him.
MR. WILLIS: Thank you. I appreciate you doing that.
MR. FINDLEY: So I guess the question is -- and it's now 4:30 in the afternoon. Obviously I don't have time to go through his entire file with him. So I guess let's go off the record for a second.
THE VIDEOGRAPHER: The time is 4:27 p.m. We're off the record.
(Recess taken)
THE VIDEOGRAPHER: The time is 4:45 p.m. And we're on the record.
Q. (BY MR. FINDLEY) All right. Sir, we took a short break. "Short's" a relative term, but we took a break, right?
A. Yes.

Q. Okay. During the break, someone from your office delivered what we had referred to earlier as your working file that would have the binders you talked about at the beginning of this deposition that you flagged or highlighted, correct?
A. Yes.
Q. I've got that -- that -- we took an inventory of that while you were outside, but it is marked as Exhibit 17. It is Boxes One, Two, and Three that are referenced earlier in this record with the contents.
My understanding is there's an -- additional boxes that were delivered to you at some point; is that correct?
A. Yes, delivered to me by Counsel.
Q. And when was that?
A. I believe it was the -- two weeks ago when -- when Mr. Tarver and I met.
Q. Did you go through those boxes?
A. No.
Q. Okay. Did you make any writings or -- well, did you open the box?
A. I think there were three duplicate sets of the box. So then I think the boxes were opened before -- you know, in the presence of Mr. Tarver

before we realized there were duplicate sets, so --
Q. Okay. And no markings or writings on any of those?
A. No.
Q. Okay. Not something you rely on -- what you relied on in generating your opinions would be in these three boxes, Exhibit 17?
A. Well, and to the extent that there was electronic, that information that was produced in electronic file.
Q. Fair enough. But those were the hard copies that you would have written on, made markings?
A. Yes.
Q. And again, we talked about the list of documents. That still remains the same, Exhibit 4, correct?
A. Right, yes.
Q. All right. So I want to kind of skip around. I know it's late in the day. It is 5:00.
I am going to reserve my right, since we just got these boxes, to go through them and, to the extent necessary, question you on those, okay?
A. Understood.
Q. Okay. All right. So let's move on to something else. I have got a copy of your bills that

I wanted to kind of go through quickly.
Exhibit 5 -- we marked them earlier but we did not go through them yet. The first, I guess in order of sequence, would be the March 29th, 2019 bill. Does that sound right?
A. Yes.
Q. Okay. At this point in time, and I will -- I have only got one copy, but I'm not asking you anything too hard, I don't think.
27 hours, 575 per hour, Todd Lester, that's what we talked about earlier, correct?
A. Correct.
Q. And then 47 hours for Nicole Kramer, and -- and the reflective numbers would be there, correct?
A. Yes.
Q. And just so I'm clear on the charges posted, that means posted through March 15, 2019, so this would include all of your -- this is the first bill you've generated?
A. That's my recollection.
Q. And this would include all of your work since you were hired in July 2018?
A. Yes, I didn't -- I didn't really start work on this matter until sometime in December.

Q. Okay. And then it says "Online research," and it -- what are these things, expenses?
A. That would have been expenses related to my search of the South Carolina Secretary of State documents.
Q. What is Internet archives?
A. You know, I'm not recalling specifically, but it may have been in relation to, you know, searching for some of the SEC filings that were somewhat dated. We went through a case service for that.
Q. And what does the portion mean here where it says 0 to 30, 31 to 60, 61 to 90 --
A. That seems to --
Q. -- at the bottom column under "Our records indicate the following invoices"?
A. All right. That's the dates outstanding. So, yeah. No, in fact, there is another invoice, so --
Q. Okay.
A. -- so there is a January 25th invoice --
Q. Oh.
A. -- that's indicating that was the first invoice.

Q. Got you. And I apologize.
A. No, I was thinking that number seemed a little low for -- for March.
Q. And so January 20, this is -- this is part of Exhibit 5. It is the Jan 25th, 2019 bill.
This would be the first bill that was generated, correct?
A. Correct. If you -- if you flip back to the first page, you can see it on this page. It's for time incurred from August 16th through December 31st.
Q. Okay. So this would be -- covers professional fees from August 16th, 2018 to December 31st, 2018, correct?
A. Yes.
Q. Okay. And at that point in time, December 31st, 2018, you had billed 54 hours -- or 50 hours 40 minutes?
A. Yes.
Q. At $28,000?
A. Or 50.4 hours, correct, not 40 minutes.
Q. Oh, excuse me, 50.4 hours.
And Nicole Kramer had done 97 hours?
A. Yes.
Q. What would -- what would these invoices

include? Is there like an itemized --
A. There's not an -- this is the itemized portion of the invoice and then the description of work performed --
Q. Okay.
A. -- is on this next page.
Q. The last page, "Description of Work Performed" would be the work that would be reflected in those hours, correct?
A. Correct, the general description of the services that were provided or the work that was being performed.
Q. And just going through them, it says, "Various discussions with counsel to discuss case, case objective, available information, work performed to date, additional full work to be performed"?
A. Yes.
Q. Do you know how many discussions?
A. I -- I don't. I -- I think at that point, through the end of December, there had been probably only just, you know, several discussions at that point.
Q. And it -- it -- it's -- kind of gives a broad description of review of documents in various formats, but just so I'm clear, the actual -- when it

talks about a generalized document, like, "Research and analysis of public available subscription-based 30 documents" --
Do you see that?
A. Yes.
Q. -- that would be things you've identified in the previous exhibit of documents reviewed?
A. Generally, yes, uh-huh.
Q. Okay. And then you say, "Application of evaluation criteria to identify whether KapStone Paper, KapStone Kraft and KapStone Charleston operated as a single economic unit."
Do you see that?
A. Yes.
Q. "The evaluation metrics," are those evaluation metrics you decided on or what?
A. Yes.
Q. And I am just highlighting what we have talked about, but you have identified seven different criteria you looked into?
A. I think were, yeah, the seven broad -- well, that -- that's what's described on -- on the description, yes.
Q. And it says, "Review of KapStone's bank

account structures to determine" -- did you actually review bank account information?
A. I did have the bank account structure with regard to the reserve balance account structure of the company.
Q. You're talking about -- but that -- those -- anything related to that is listed in your documents reviewed?
A. Yes.
Q. It says, "Produced summaries of KapStone's" --
MR. FINDLEY: Uh-oh. That was me. Sorry.
THE VIDEOGRAPHER: It will reset itself.
Q. (BY MR. FINDLEY) Well, there was a section -- when it comes back on you can see it -- but it says, "Produce summaries of KapStone's acquisition timelines, organizational and management structure, shared policies and procedures, receivable agreements, and inclusion as exhibits in the expert reports."
Did you create summaries of those?
A. Oh, I think they would have been kind of the -- the documents leading to some of the

exhibits, you know, that are listed in the report.
Q. But it says, "Produced." That means you --
A. Correct.
Q. -- whatever --
A. Yeah.
Q. -- you would send them to counsel?
A. No. That means they would be created.
Q. That means your firm creates them?
A. Yes.
Q. Okay. Then it would go on to the next one, which is March 29th, 2019.
So from December 31st to March 29th to -- or, excuse me, March 19th, 2019, additional 27 hours of work, and 47 and a half hours of work for Nicole Kramer, correct?
A. Yes.
Q. Again, "Various discussions with counsel to discuss case requested documentation work performed to date."
A. Yes.
Q. Do you know how many conversations you've had?
A. In total --
Q. Yes.

A. -- at this period? I don't recall how many there have been counted throughout this period. Maybe --
Q. Well, how --
A. -- a dozen or more.
Q. How do you keep time?
A. We keep time with a simple kind of time reporting system.
Q. One of those things on -- on the computer where you can click it when you start and click it when you stop and type in a description?
A. No, it's -- you know, centrally you're just clicking the number of hours that you're working on a particular matter and then providing, you know, some -- some generalized description.
Q. And can I tell which ones you did and which ones Kramer did?
A. I mean, you can't from this information.
Q. Do you have that internally?
A. No, uh-huh.
Q. It says, "Composed a list of documents for Mr. Lester's analysis."
I assume that would be Ms. Kramer did that, or do you refer to yourself as "Mr. Lester"

when you're --
A. I assume -- well, I think we tend to write it a little more formally in third person in providing those descriptions. But I think I would have worked on that with Nicole, and Nicole likely would have been the one primely responsible for putting that list together at this point.
Q. And it says perform -- "Prepared an expert report setting forth Mr. Lester's independent evaluation."
A. Yeah. And again, that would have been primarily me.
Q. So even if it says, "Did X, Y, Z, Mr. Lester," you're saying that would include you?
A. Yes.
Q. June 13th, 2019, this is from January 1st, 2019 to April 30th, 2019; is that correct?
A. That's correct.
Q. I guess where my confusion was is the previous exhibit is from -- or the previous document titled March 29th, 2019, has charges posed through March 15th, 2019. And then --
A. Yeah, I'm a little confused by that as well.

Q. So there's a -- I guess what I'm saying is then this one says "January through April."
A. Yeah, may I see?
Q. Sure. And it might just mean that you -- you -- you meant to write April through March. I -- I don't know.
A. That's -- that's likely what it -- what it -- what it meant. I mean, we have a system that -- that produces dates automatically by the time -- you know, around the time that we are putting an invoice together.
Yeah, based on my reading of this, I think the -- I think the June 13th invoice should have said "From March 16th through April 30th" is what the time period on that one should have been subsequent to the March 15th one.
Q. But it's not -- those are two separate bills is what --
A. They're -- they're two separate bills.
Q. And so the hours worked would be two separate -- what I'm saying is: You would need to add those hours up together?
A. Yes, yes.
Q. Okay. Even though the dates might overlap, those are separate, independent hours you

worked?
A. Yes.
Q. Okay.
A. Yes. But I do want to go back and check that, so --
Q. All right. So I think I was looking at the March one. So again in March of 2019, the work performed during that -- for those hours would be, again, various discussions with counsel, correct?
A. Yes.
Q. So that would be -- and it says -- well, each bill says, "Various discussions with counsel."
That wouldn't be you referring to the previous discussions, those would be new discussions in between the bills?
A. Correct.
Q. Okay. "Research KapStone Paper Packaging process for securitizing its subsidiaries' accounts receivable pursuant to the receivable sale and a receivable purchase agreements."
Again, any research you would have done would have been listed in your sources?
A. Yes.
Q. And it says, "Incorporated additional

information into the exhibits depicting KapStone's organizational structure, shared policies and receivable agreements."
A. Yes.
Q. So I assume there was exhibits before, and you were adding information to them?
A. Or just changing the way they were presented.
Q. And where -- where -- where are those exhibits?
A. Those exhibits would be attached to my expert report.
Q. Okay. That's what you're talking about?
A. Yes.
Q. Okay. All right. Going on to the next one which is part of Exhibit 5 is August 13th, 2019.
And this just has charges to July 31st, correct?
A. Correct.
Q. And that would have the total bills as of July 31st, 177,811.54?
A. That's the total, yes.
Q. Okay. Again, various discussions with Counsel to discuss in between -- since the last bill?

A. Yes.
Q. All right. "Research KapStone Paper's form AKs," that would be independent research you did, right?
A. Yes.
Q. That would mean that was documents -- that was part of that list of documents that was not provided to you, that was documents you went and got on your own?
A. Yes.
Q. Okay. And I assume you get those through maybe various subscription websites or through SEC or something like that?
A. Correct. You don't necessarily have to pay for some of that information, it's available publically on the Internet.
Q. This one says, "Created a series of pivot tables using data."
A. This would have been in relation to the information as listed in some of the exhibits, the KapStone employee of exhibits.
Q. What is a "pivot table"?
A. A pivot table is a file in Excel where you're -- you are essentially creating kind of rules in Excel or processes in Excel to where you can sort

information in different ways and prepare reports.
Q. But whatever you created is in your report, right?
A. Yes.
Q. Okay. It is not a document somewhere else?
A. No.
Q. Okay. Because it says, "To identify the extent to which managers and employee located at 'One KapStone' entity reported and provided services to others, consolidated information into two exhibits to exhibit" -- whatever the rest of the sentence says.
A. Correct.
Q. I guess my point is: All the data to identify the extent which managers and employees reported and provided services would be in those documents, right?
A. Not all the data. So if there was an electronic file that we received which was a complete listing of all the KapStone-related employees, the analysis we did was specifically focused on, you know, employees at Charleston that were reporting to KapStone Kraft or KapStone Corporate.
There were as well as employees that

run our graphics that were reporting to the mill headquarters and so forth. So the results of that analysis or focus of that analysis is in these exhibits.
Q. What -- what is that -- what are those documents you compiled that exhibit from? You said it's an electronic file?
A. It's an electronic Excel file that was produced by the company, you know, in terms of the -- all of the employees that I believe were working at KapStone Charleston and KapStone Kraft or KapStone Corporate at that point in time.
Q. When you say "produced," would you have received it in an e-mail?
A. I don't recall whether it was an e-mail or whether it was a -- whether it was a link file that you --
Q. Well --
A. -- you know, an encrypted kind of file access.
Q. Well, if you -- if you downloaded it from some source, you would have saved it to your own server, right?
A. Yes.
Q. What I'm trying to figure out: If I

wanted to know what you looked at that created those pivot tables, how would I figure it out?
A. It's my understanding that information was produced in connection with our electronic files, or at least I produced it to Counsel in connection with our electronic files.
Q. Well, that's what I'm trying to figure out is: Is I see the exhibits attached to your report, but if I wanted to know the actual identity of the documents you considered in creating those pivot tables, is there a way for me to figure that out?
A. We can look on my list of documents considered, and I can provide you what I understand or believe to be that information.
Q. Okay. Exhibit Number 4, maybe you should look at this one because --
A. Okay.
Q. -- it's got numbers on it.
A. I will see if I can find it. Well, I thought I had saw it earlier, but it's not jumping back out at me. Let me -- let me go back.
No. Let me come at this from a different angle.
(Discussion off record)

MR. FINDLEY: Okay.
THE WITNESS: Okay. It is number 16, from what I can determine.
Q. (BY MR. FINDLEY) Okay.
A. Or number 16 and 17, perhaps.
Q. And if you look at your expert report, there is a -- Counsel showed me a -- one of the exhibits. I think there is a site at the bottom of the -- maybe one of your Excel charts.
A. Right. And I was actually looking at this site in the verbiage at paragraph 56, also --
Q. Is that what --
A. Okay. This is another objective employee job list effective May 24th through KapStone 20 -- so that would be --
Q. And you don't have to --
A. Yeah.
Q. -- point it out on there. But if it's got a site there, that's what it would be referencing to?
A. Yes.
Q. Okay. All right. So let's flip over to your report real quick and I'm going to kind of skip around, okay?
A. Okay.

Q. So summary of your opinions, okay, paragraph -- page one and two, paragraph two.
A. Okay.
Q. And you said your focus on the economic substance of entities, what time period?
A. Well, as we spoke about earlier in the deposition, the focus was around the May 2016 time period, but I would have looked at information that was available leading up to this point. I am including the -- kind of the formation and the structuring of the companies from, you know, inception in 2005, the inception of the -- the company that became known as KapStone Paper; and then I would have carried through reviewing information, you know, at least up through 2017 and possibly into 2018.
Q. When you say "possibly in," what I'm trying to figure out is: Did you consider 2018?
A. Well, I think I pulled documents in 2018, but I can't recall whether or not there was anything significant that -- in the 2018 documents that lent more information to -- to my work, to my opinions.
Q. Okay. Did you consider -- relative to the corporate evaluation and KapStone payer -- Paper

A. And what they were saying about the acquisition at the time.
Q. Did it have a great impact on your evaluation or little impact?
A. You know, I think it is just a -- it's another relevant factor.
Q. Okay. And let's go on to page four, section six, second bullet point.
Are you there?
A. Yes.
Q. When you state you considered certain other factors, what are those?
A. Let me read -- the second bullet point?
Q. Yeah.
A. Section six, so the part where I'm saying "and accounting and financial practice among others"?
Q. Yes.
A. You know, I think in general I was referring to, you know, a longer list of factors that were included in paragraph 24.
Q. Those would be the other factors?
A. Yes. Generally, yes.
Q. When did you select those factors for your analysis of economic substance?

prior to the time period that you stated, which was around the 2016 event, did you consider other events relative to the corporate evolution, like acqusa -- acquisition of businesses?
A. Yes.
Q. Okay. Did -- how does that consideration of those types of events impact your analysis of the economic substance?
A. Well, I wanted to understand, you know, essentially how this company came together, how KapStone came together, you know, when their acquisitions were, what the acquisitions were, and --
Q. And I'm not trying to interrupt you.
A. Uh-huh.
Q. I understand what it means when you said you "evaluated."
I'm just asking you a different question, which is: How did it impact your analysis of the economic substance?
A. Well, I think it's important to understand, you know, everything I can about KapStone Paper, KapStone Charleston, KapStone Kraft, you know, including what was acquired and when and what the structure of the -- you know, the acquisition was.
Q. Okay.

A. You know, I would say that the initial assessment of the factors I need to look at was at the beginning of the engagement.
Q. Well, what I'm trying to figure out: When conducting an economic substance engagement, is there a rigid set of factors required for an analysis?
A. I don't think there is a rigid set of factors.
Q. You don't?
A. I think in my experience of, you know, looking at financial and economic integration, a relationship between entities, these were a number of factors that I reviewed over time in different engagements.
Q. Right. And I know you've listed some factors. But what I'm trying to figure out: Are -- you -- is it your testimony that every economic substance engagement considers only the factors that you have stated or could there be other factors?
A. No, no, there could be others.
Q. Okay. Those are just the ones that you focused on, fair?
A. Well, those -- those are the ones that I focused on in the outset of my investi -- of my

evaluation, yes.
Q. Okay. What were some other types of factors that may be considered that you don't have listed?
A. Well, let me look, and I will see. You know, I'm not thinking of a lot that come to mind.
I think one that does come to mind would be, you know, looking at, you know, capital allocation processes, and one might necessarily -- I mean, I could separate out budgeting. But again, that -- you know, that -- that may roll into kind of the financial and, you know, accounting management of the business. You know, there could be some other factors that I could -- you know, if I wanted to adding to this list, I could.
Q. Right. And I guess what I'm trying to figure out: We know there could be other factors, why did you not consider other factors, why did you limit it to that?
A. Well --
Q. That's just what you felt was relevant?
A. I didn't limit it to that. I think this -- this is -- as I was referring to the scope of my work, this is what I listed as factors that I recalled reviewing --

Q. Okay.
A. -- or evaluating, or, as I said, you know, as I -- at the outset of my kind of work, we set out to -- or I set out to identify a kind of list of different factors.
Q. Well, all I'm getting at is: There's other factors that could be considered to -- to reach an opinion regarding this economic substance, right?
A. To the extent I identified other factors in the course of my work, I would have evaluated them, yes.
Q. Right. Those are the ones that you identified.
What I'm saying: If there -- someone else could do a report and identify other factors that you may or may not have considered, correct?
A. That's true.
Q. Okay. And -- and that wouldn't necessarily be wrong, right?
A. I don't know whether it -- you know, it would depend on whether I believe it's a relevant factor or not. If somebody says, "Well, what about this" or "What about that, that is a factor that should be considered," I would take that it into consideration, yes.

Q. Right. I guess what I'm saying is: This isn't sort some sort of black letter economic, this is the only thing you considered and nothing else, correct?
A. No, no.
Q. What I'm saying is true?
A. What you're saying is true.
Q. On page four and five, section six, the third bullet point, you say that KapStone Charleston operated -- well, you state, "The three different entity -- entities operated with a high degree of financial and economic integration among the three entities."
Did you see that?
A. Yes.
Q. Okay. What -- on a spectrum, what qualities indicate a low degree of financial and economic integration compared to a high degree?
A. Well, I think my -- you know, my report goes through and addresses, you know, all of the factors that I have reviewed and what I observed in relation to those factors.
I think certainly a question would be, you know, if we start at the top or if we start at the governance and the responsibilities of the board,

the fact that there was a common board, you know, among the entities, the fact that a common executive management among the entities, the fact that it was a common kind of operational management from the mill system, mill headquarters with regard to KapStone Kraft and KapStone Charleston, the fact that there was a, you know, integrated financial and tax reporting and kind of how the company was represented in its public filings with the SEC, and, you know, information related to its corporate identity, you know, the fact that it was all 'One KapStone' name, and then it used the name KapStone mark, the same KapStone color, you know, with regard to the three entities. So I think those are some of the factors.
But kind of throughout my report I talk about those, those factors as all leading to a high degree of financial and economic integration. If you start taking some of those factors away, obviously there is -- you know, there is going to be a scale, you know, in there somewhere, you know, in terms of whether or not it's a high or, you know, not a high degree of financial and economic integration.
Q. And that's what I'm talking about is you said on a spectrum -- if I asked you a question, "On a spectrum, what qualities indicate a low degree

of financial and economic integration," you're saying if what you just stated, all of those weren't met?

A. Well, I would say, if any -- certainly if all of those weren't met, you know, if all of the things weren't -- weren't met that we have talked about, where I have talked about in my report, if there were separate boards and separate boards directing the companies to do different things, if there were separate management, if there was not financial consolidation, you know, the enterprises, if there wasn't a -- a common kind of financing or the provision of financing for the combined entities, you know, if they were all separately kind of secure in their own debtors or capital, you know, to run their businesses, I mean, all -- all of those things would have some -- some im -- impact on kind of that opinion.

Q. Okay. So let's talk about some of those, okay? Separate management at the different entities, you're aware that there is separate management at Charleston and Roanoke?

A. There is, and I have referred to executive management. So there is not -- the executive managers are the same.

Q. You're talking about the board?

A. No, I'm talking about executive management.

Q. Who?

A. President, vice president, CEO, CFO, COO -- you know, chief operating officer and --

Q. You're saying KapStone Charleston Kraft LLC has a CEO for KapStone Charleston Kraft LLC?

A. All of the management, the executive officers for KapStone are the same executive officers for those entities. They oversee their subsidiaries.

Q. Okay.

A. There is not a separate COO, CEO, per se, for KapStone Charleston and KapStone Kraft.

Q. Well, most corporations -- or, excuse me, most LLCs don't have CEOs, correct?

A. Correct, correct, they have a sole member. But they can have officers, but they are typically managed in this case by -- by a single member or a member.

Q. Corporations are set up differently than LLCs, true?

A. True.

Q. Corporations require things like board of directors, right?

A. May do.

Q. LLCs do not require board of directors?

A. No.

Q. Okay. LLCs do not require CEOs, correct?

A. They don't need a CEO.

Q. Okay. So all you're saying is that there is a CEO and president that you've identified that work at KapStone Paper and Packaging Corporation, correct? And there are no others in the other entities, that's fair?

A. They are the executive officers for the entire KapStone organization, yes.

Q. Right. But they're not listed as executive officers for KapStone Charleston Kraft LLC, true?

A. I don't know of -- they -- I don't recall seeing a -- any particular filing of whether it lists the officers.

Q. Right. And they're not listed as officers -- executive officers for KapStone Kraft that you've seen, correct?

A. No. But it's in -- but it's inherent that they are the executive officers of the corporation, of the consolidated corporation --

Q. I -- or --

A. -- of KapStone Paper.

Q. My question is more specific than that, is: They are not listed anywhere as the executive officers of KapStone Kraft Paper, true?

A. You know, I'm trying to remember the one document -- internal document that was received that listed some of the executive officers for KapStone Kraft. I'm -- and I thought these executive officers were also listed for KapStone Kraft. In fact, there is -- there is a chart in my report I referred to.

Q. And if there is a chart, that's fine. We can refer to the charts if we need to.

A. That's true, KapStone executive officers in connection with paragraph 64.

Q. What page?

A. 64.

Q. Page 64?

A. Paragraph 64, I'm sorry.

Q. What page is that?

A. Page 22 in my report.

Q. And this is where I'm getting confused is we have KapStone Charleston Kraft LLC, and you say Roger Stone's the chairman and CEO, officer of

KapStone Charleston Kraft LLC.

You would agree with me that KapStone Charleston Kraft doesn't have any documents filed anywhere that list Roger Stone as the chairman and executive officer?

A. Yeah, I don't recall seeing the other filed document. But the sources that I would cite would be, you know, those below, including, I believe, a couple of internal documents produced by KapStone.

Q. Okay. So of those factors that you considered to go to a high degree of integration, you said separate board and management -- well, separate board was one and you talked about the board of directors. We did, right?

A. There is only one board of directors for KapStone -- well, there is a board of directors for KapStone Paper and a separate board for KapStone Kraft.

Q. There is no board of directors for KapStone Charleston?

A. Not that I know of.

Q. Okay. And then as far as management was concerned, what you were referring to was that chart, correct?

A. Yes.

Q. Okay. So the other thing that you said was "Financial integration through the filings."

That's what we talked about earlier, consolidated tax return, correct?

A. Well, I think it is consolidated tax return, consolidated financial statements. It is --

Q. That's SEC stuff is what we are talking about, right?

A. Consolidated financial statements pursuant to the -- you know, the SEC filings, you know, correct. It is the -- it is the kind of banking structure, the receivable securitization structure. It is the -- you know, essentially some of the -- well, I am trying to think, you know, in addition to what else I have reviewed from a financial and accounting standpoint, so --

Q. So I guess was I'm trying to figure out is: The factors that you considered, is there -- for -- well, you said a high degree and we talked about a spectrum of low degree.

Is there any guidance established in your profession that would identify what is considered a high degree of financial integration and a low degree?

A. Yeah, I'm not aware of any guidance in my profession --

Q. Okay.

A. -- that -- that would provide a scale like that.

Q. Okay. Does any factor that you considered merit more weight than any other factor relative to your conclusion that a high degree of integration exists?

A. Well, I think we talked about this at the start of the deposition, and I -- and my comment was -- or my answer was that I think all the factors, you know, of -- kind of can be relevant and important for consideration.

Q. Right. And no -- no one factor has more weight than another, fair?

A. I don't -- I don't know how to answer that question. I think it would depend on the factor and depend on the applicability of the factor to the specific facts and circumstances.

Q. Well, okay, that was my next question is: Does the weighting differ from engagement to engagement?

A. I wouldn't -- wouldn't necessarily argue that, that engagement to engagement the

weighting would differ. If there is -- if there is a weighting, I think some of the factors are -- may be more pronounced or more significant, you know, depending on the facts and circumstances of the -- of the relationships, you know, that I'm evaluating.

Q. So the weighting of the factors -- because I understand your testimony earlier that you didn't weigh any factor more than another, you just considered all factors.

Is that --

A. Well, I considered all -- all factors.

Q. And there is no guidance within your profession that tells you, you've got to weigh factors more than another to come to a conclusion of high degree or low degree?

A. I would agree with that, yes.

Q. Okay. And you're saying it could depend on what -- what you're looking at, right?

Well, I guess what I'm saying: The weighing differs from engagement to engagement based on the details?

A. Well, I think that, you know, the details are important. So to the extent -- you know, the language I used was "the facts and circumstances kind of surrounding the relationships."

Q. Right. And the facts and circumstances, my question's different.

Does the weighting of factors differ from engagement to engagement; and if so, how?

A. Well, and I said -- you know, again, going back to, you know, my testimony this morning and just recently -- is that all the factors are relevant for consideration. You know, which factors may or may not be more significant based on the facts and circumstances than others, you know, I can't make that determination without under -- you know, it is a factor and circumstance-specific determination.

Q. Okay. In page five, section six, the fourth bullet point, are you with me?

A. The sixth bullet point?

Q. Fourth bullet point, section six.

A. Fourth bullet point.

Q. In your report you stated, "KapStone Paper provided a common platform for shared corporate services." Correct?

A. Yes.

Q. Okay. Further you stated that, "The notion of corporate shared services is a common role for parent holding companies." Correct?

A. Yeah, I'm sorry, what page are you on

again?

Q. Page five.

A. Okay. Page five, first -- first bullet point. I'm sorry, I thought you said fourth.

Q. Well, we may go now because I'm just looking off my notes. Let me see your report real quick.

A. Yeah, I'm sorry, I think you're referring to the first bullet point.

Q. Let's see, page five, section six. You're -- it is the fourth bullet exhibit under section six --

A. Oh, I'm sorry.

Q. -- would be the first bullet point on page five.

A. Sorry.

Q. Do you see what I'm saying?

A. I thought you were referring to the first bullet point on the page.

Q. It is section six, fourth bullet point, but it's on page five.

A. Okay.

Q. And you state that, "The notion of corporate shared services is a common role for parent holding companies."

A. Yes.

Q. In your experience, are corporate shared services at a parent level absolute?

A. No.

Q. In other words, are corporate shared services always administered at the parent level?

A. No.

Q. Okay. And page five, section six -- this is the ninth bullet point, so you might need to go -- start at section six and go down to the ninth.

A. Okay. Give me the -- starting on the bullet point, what is the first --

Q. "KapStone-related entities" --

A. Okay.

Q. -- "abide by" --

A. Yes.

Q. It says, "KapStone-related entities abide 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 the KapStone's mill division."

Correct?

A. Yes.

Q. Well, what are you intending to say by that statement?

A. That the corporate policies and procedures that I have reviewed were common to most of the KapStone-related entities, but certain of the information that I have reviewed, you know, appeared to be more specific to the Charleston employees relative to their union contracts.

Q. Okay. Were there a common set of policies and procedures that were applicable primarily to KapStone's mill division that were abided by all KapStone-related entities?

A. Well, I wouldn't say no. I think as well as a common set of policies and procedures applicable to KapStone's mill division. So again, certain -- certain policies and procedures, you know, would not be necessarily related to -- if they were specific to the functions of the mill would not be, you know, applicable to KapStone Paper.

Q. Okay. And they wouldn't be applicable to other KapStone entities under the KapStone parent umbrella that were not part of the mill division, correct?

A. That's -- you know, I think that's a fair statement.

Q. Okay. Were there a common set of policies and procedures that were applicable

primarily to KapStone's mill -- or excuse me.
Were the set of corporate policies and procedures conflicted in any way, based on your review, if you know?
A. You know, I don't recall seeing a conflicting set of policies and procedures, you know, other than a certain procedure saying it's -- it's related to KapStone and all KapStone subsidiaries and entities, but then having another procedure or policy or -- or something that was related specifically to sort of the unionized contract of KapStone Charleston.
Q. The what contract?
A. The union related or the -- you know, the specific policy that was in relation to the union contract or the -- you know, KapStone Charleston.
Q. Were there sets of corporate policies and procedures that were redundant in any way?
A. You know, I don't recall, but I -- I would not be surprised.
Q. Okay. Sitting here today, fair to say you can't say one way or the other under oath?
A. You know, I'm not sure I can say one way or the other. I think there is. You know, I am recalling that in relation to the employee handbook,

it had certain information regarding confidentiality and conflicts of interest and things like that, but I can't remember if it was based on -- the same information was cited in related to the conflict of interest policy or anti-bribery policy or something like that. So I can't remember if there was any overlap or not between those.
Q. Okay. So section -- page six, section six, tenth bullet point, you're -- you assert that "Employees of KapStone-related entities shared benefit plans from a common provider."
Do you see that?
A. Yes.
Q. Does that assertion include all employees and exe -- and executives in the KapStone-related entities?
A. I don't know if all employees and, i.e., executives were subject and/or eligible underneath all of these plans.
Q. Okay. Well, elaborate on that. What do you mean?
A. You know, I would -- you know, I would assume, you know, most full-time employees are eligible for the group health and welfare plan; but, you know, there are, and certainly in my experience,

times when -- when eligibility -- you know, there is a certain time associated with eligi -- eligibility. I would think the same for the 401(k) plan. The defined benefit and retirement plan, I'm -- I'm not sure of.
Q. Okay. What I'm getting -- trying to figure out is: When you say, "Employees of KapStone-related entities shared the benefit plans from the same common provider," does that "employees" include executives in KapStone?
A. That would include employees of KapStone Paper, KapStone Kraft, and KapStone Charleston.
Q. Would that include executives?
A. I don't know if there were other plans that the executives had access to or not.
Q. So you don't know if it would include executives, correct?
A. I don't know, you know, if it was inclusive or if executives had other kind of related plans.
Q. Okay. We already said you talked about you did not interview KapStone management in the course of your work, correct?
A. That's correct.

Q. Did you discuss terms of the employee benefit plans with any of the executives? I assume not, correct?
A. No.
Q. Did you discuss -- well, I would assume you also did not discuss the employee benefit plans with any -- any employee or executive, fair?
A. That's correct.
Q. What's the frequency of renegotiation for the employee benefit plan, do you know?
A. I don't know. It's usually kind of an annual basis.
Q. Well, I -- I'm not asking you what usually is. I'm asking: What is it in this case? Do you know?
A. I don't recall the term of these plans, from my review of them. But again, unless these plans -- at least the group health and welfare, 401(k) is an annual plan.
Q. Okay. But as far as if it is annual in this particular specific case, you don't know one way the other as we sit here right now, fair?
Correct statement?
A. I don't recall.
Q. Okay. How is the process of

integrating employees from an acquired company into the existing employee benefit plan administered?
A. I don't know --
Q. Okay.
A. -- specifically on that.
Q. What is the necessary duration to execute an integration of an acquired business' employees?
A. Oh, that can -- you know, it depends on what you define by "integration." I think it can happen quickly or take a long -- very long period of time.
Q. Okay. Well, you reviewed the acquisition of other businesses.
And what I'm asking you is: Do you know what the necessary duration to execute an integration of the acquired businesses' employees in this case?
A. No, I don't know the amount of time it took to integrate the employees in this case.
Q. Okay. When were the relationships with the employee benefit vendors formed for each benefit?
A. You know, I don't know how far back these -- the current -- the relationships as of this 2016 time period were formed.

Q. Okay. The employee benefits that you did review were for what period?
A. These were applicable policies in 2016 --
Q. Okay.
A. -- or the May of 2016 time period.
Q. Do you know when they were formed?
A. When the relationships were formed or with --
Q. With the --
A. -- the providers?
Q. -- the vendors, yeah.
A. No.
Q. Page seven, paragraph 17, you state that, "Stone Arcade Acquisition Corporation made its first acquisition in 2007 through KapStone Kraft with the purchase of" KapStone -- or excuse me -- "with the purchase of Kraft Papers business from International Paper Company."
Do you see that?
A. Yes.
Q. Did you revert -- review the terms of the acquisition?
A. Not pursuant to a -- a purchase and sale agreement, only what was disclosed in relation

to the SEC filings.
Q. Did you review the SEC files that detailed the acquisition, such as the DEFM14A filed December 15th, 2006?
A. I'm sorry, would you repeat the question?
Q. Sure. Specifically, did you review any SEC filings that detailed the acquisition, such as the DEFM14A that was filed December 15th, 2006?
A. I don't recall.
Q. Okay. I didn't see it in your list of documents. So we can assume you didn't do it, right?
A. I -- I would assume, yeah, if it was in my documents, I reviewed it; if it's not there, then I haven't reviewed it.
Q. So I assume you also didn't review who was identified to manage the acquired business, correct?
A. No.
Q. And I also assume -- assume that you do not know if the acquisition was dependent upon certain relations to be maintained by and between KapStone Business Paper and International Paper, correct?
A. Yeah, I don't recall that.

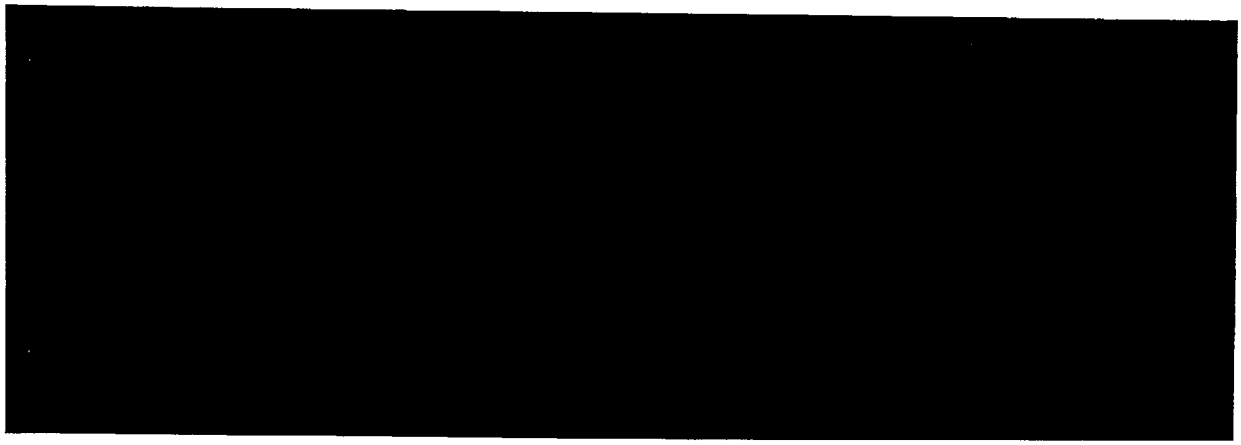
Q. Okay. You also don't know what ancillary agreements were entered into between the parties, correct?
A. Correct.
Q. You assert that -- in page seven, paragraph 18, you assert that "KapStone eventually executed an acquisition from MeadWestvaco Corporation in 2008, as well as other significant transactions."
Do you see that?
A. Yes.
Q. Did you review the terms for those -- each of those transactions?
A. Pursuant to what was disclosed either in AK or at, you know, a 10-K or a 10-Q filing in relation to those acquisitions.
Q. Okay. So the actual terms and agreements for those transactions you didn't review, but what you did review is look at SEC filings; is that right?
A. Correct.
Q. Okay. Which SEC files did you review relative to that, the names of them?
A. You know, again, I think it would be related to press releases or AK filings of the acquisition, as well as how the acquisitions were

described in a 10-K filings.
Q. Okay. Did you review any other documents related to the previously discussed transactions other than the SEC filings?
A. I'm trying to recall. You know, each of these transactions would have included in some of the additional information that I obtained and, you know, from these subscription-based services as to how they're described in my report or, you know, in Appendix A of my report.
So to the extent that some of that additional information was included in the S&P Global information, MarketLine or, you know, other information, I would have reviewed it; but specifically related to, you know, copies of the purchase and sale agreements, I don't recall seeing those purchase and sale agreements.
Q. Okay. I will also assume you didn't review the terms of the MeadWestvaco acquisition, correct?
A. If -- and by "terms," I think the terms are generally described in the -- or the conditions or the acquisition's described in a 10-K, but the very detailed terms associated with the purchase and sale agreement, no.

Q. Okay. So it would be limited to what's contained in the 10K?
A. Or in this other information that's referenced in my report.
Q. What other information?
A. Well, I just gave you a long list of information, including from MarketLine, S&P Global, and some other information that's included --
Q. I'm asking about the terms of the acquisition.
A. Well --
Q. You're saying MarketLine, S&P Global.
A. Well, and what I was saying was to the extent that there was other financial information from S -- S&P Capital IQ, Market Intellect -- excuse me -- Mergent Intellect, MarketLine sources, Factiva, the things that I'm reading, Nexis Uni, the things that I'm reading related to subscription-based research.
Q. Okay. Well, of all the sources you mentioned, did the acquisition of MeadWestvaco include long-term agreements between purchaser and seller that you're aware of?
A. I believe there was an agreement related to the continued sourcing of certain material

from MeadWestvaco, if I remember correctly.
Q. Okay. Other than that one, no?
A. I don't recall any others.
Q. Okay. Page nine, paragraph 24 -- and I think we had talked about this earlier -- but you assert that the scope of your evaluation "included an assessment and analysis of various factors relevant to the form and substance of economic relationship among KapStone Paper, KapStone Kraft, and KapStone Charleston," and then you then proceeded to list -- or name 20 factors, plus a comment regarding "other factors."
What other factors? Or are they limited to that?
A. Well, I think we had the conversation, I think these are the factors that I listed and summarized in my report. To the extent that there are other factors, then I would have considered them. You know, one that I kind of listed, including sort of the capital allocation, you know, process.
But, you know, as I'm sitting here, I don't recall, you know, other factors that I looked at.
Q. And that's what I'm trying to -- sometimes I see this catchall, "other areas, other

factors." I mean -- and I don't know what they mean. So let's go to page nine, paragraph 25. You name factors. You then focus on five named areas with another comment stating that you considered other areas.
What other areas did you consider in your analysis?
A. Well, and again, I was trying to -- paragraph 27, you know, summarizing these factors into a few different kind of bullet points, seven bullet points for seven areas, which I then proceeded to describe throughout my report the information that I reviewed in relation to each of those.
Q. How do the factors defined by you relate to the areas defined by you for the purposes of your economic analysis?
A. I think I tried to consolidate the areas that I described and the scope of work, paragraph 24, the 20 areas, consolidated them down into kind of areas that related to the similar -- similar factors that I reviewed or kind of more summary factors that I reviewed.
Q. Page nine, par -- and ten, paragraph 27, you state factors that you assessed "to determine the degree to which KapStone-related entities were



financial -- financially integrated."
Are the factors different from the factors you cited in your assessment of the economic relationship among KapStone Paper, KapStone Kraft, and KapStone Charleston?
A. You know, I don't think the factors are different. I think they're inclusive of that, as well as the scope of work, and then as I say in paragraph 27 and then describe throughout the reminder of the report.
Q. Generally describe the framework you employed to assess the economic and financial relationship between KapStone Paper, KapStone Kraft, and KapStone Charleston.
A. I'm sorry, can you repeat the question?
Q. Yeah. Generally describe the framework you employed to assess the economic and financial relationship among KapStone Paper, KapStone Kraft, and KapStone Charleston?
A. Certainly. So I looked at, you know, all of the factors that were listed in paragraph 24, the information that was produced and available to me in that in relation -- as well as information that I was able to determine from my review of how the company was structured, you know, how I described its

processes and the publically -- publically available information that I was able -- you know, that I pulled.
Q. Okay. Page 13, paragraph 39 and 40, your report identifies "KapStone Charleston as a 100 percent wholly-owned subsidiary of KapStone Kraft, which in turn, KapStone Kraft is a 100 percent wholly-owned subsidiary of KapStone Paper."
Do you see where I'm at?
A. Yes.
Q. Further, you say, "KapStone Charleston and KapStone Charleston Kraft as being principally governed and under managerial control by KapStone Paper."
A. That is true.
Q. To support that opinion, you cite a KapStone organizational chart dated September 30th, 2016. Do you see that?
A. Yes.
Q. Did you consider any other documents to form that opinion?
A. Yes.
Q. What?
A. You know, the total of my general understanding of the structure of the businesses; the

fact that, you know, KapStone Charleston was home -- excuse me -- wholly owned by KapStone Kraft and KapStone Paper, you know, as well as the described organizational structure of, you know, the companies; the fact that there is one kind of board for KapStone Paper that oversees the -- the KapStone Paper, as well as all the subsidiary companies; the same thing with the executive officers.
Q. Well, here's what I'm trying to figure out: You're stating that KapStone Charleston is a 100 percent wholly-owned subsidiary of KapStone Kraft, which in turn, KapStone Kraft is a 100 percent wholly-owned subsidiary of KapStone Paper, and KapStone Charleston and KapStone Kraft is principally governed under managerial control by KapStone Paper.
What I'm trying to figure out is: What are the specific documents you relied on to come to that, or is it that organizational chart?
A. No, it's not just the organizational chart.
Q. So what are the documents?
A. Well, this is a -- one sentence that -- that talks first about the wholly-owned nature --
Q. So let's start --
A. -- of the two entities.

Q. -- with that one.
A. Okay. And that has been described to some extent in the previous couple of paragraphs, you know, regarding the structuring and the acquisitions of the companies in question.
Q. So when you say it's 100 percent owned -- Charleston's 100 percent owned by KapStone Kraft, KapStone Kraft is 100 percent owned by KapStone Paper, the doc -- what document tells you that?
A. The documents related to the acquisition of the companies, the documents related to Exhibit 21.1 in the chart, you know, above, which is the fact that they are listed as 100 percent owned in their SEC filings.
Q. Okay.
A. You know, and pursuant to I believe this is the 10-K, including organize -- understanding, you know, what was being acquired when KapStone Paper acquired KapStone Kraft, as well as what KapStone Kraft when acquired -- when it acquired KapStone Charleston.
Q. Okay.
A. So there is a -- there is a long list of documents in Exhibit A that I can go through and

kind of highlight those documents.
Q. Okay.
A. For purposes of my reports, I just included kind of references here to, you know, the Exhibit 2 on the chart.
Q. Okay. You've got the list of documents with you right there. You should.
A. Yes, okay.
Q. Well, I gave you the one --
A. Yeah, I don't have your list anymore, do I?
Q. Did I take it back?
A. Oh, yes, I do have it.
Q. All right. So what I want you to do is tell me specifically what documents you rely on to support the assertion that subsidiaries are principally governed and under managerial control by KapStone Paper.
A. Certainly. Well, I cite to a numerical kind of list on my chart: The numbers that you added, Number 19, Number 20, I can't recall on 21, and extend 25, 26, 27, I would say 28, 29, 30, 31, 32, I can't tell from the information in 35, 36, 37 and 38, but presumably it is information related to your organizational -- the organization and creation

or structure of the entities.
Q. No, my -- my question is about principally governed and managerial control.
These documents you're listing tell -- so when I read this later, those documents will specifically -- should show you that these are principally governed and managerially controlled by KapStone Paper?
A. Yes.
Q. Okay. Keep going.
A. I am going to say everything on the SEC filings from 43 up through, I guess, 56, perhaps.
Q. You're going to say SEC filings would show managerial control?
A. Well, I think they're describing the nature of the transaction that occurred between the entities.
Q. I'm not talking about the nature of transaction.
A. But it's relevant.
Q. I'm talking about managerial control.
A. It's relevant.
Q. Do you know what that means?
A. It's relevant --
Q. Sir --

A. It's relevant.
Q. To what?
A. It's relevant to the managerial and governance control. Who owns the company is relevant.
Q. So --
A. And that's what you're asking me is: Who owns the company? And I'm providing an answer.
Q. No. I'm asking you: Who has managerial control?
A. Exactly, the executive officers have managerial control.
Q. Okay. So keep going through the documents. Tell me which ones support that statement of managerial control by the parent.
A. (Complies.)
Q. And when you're going through your list, I don't want the ones that could be relevant, I want what you relied on to formulate that opinion.
A. And I'm telling you these are the documents that I would have looked specifically at to ensure I understood the nature of the transaction, the acquisition of the entities and how those acquisitions were structured.
Q. Right. And those were the documents

that support your opinion, correct, of managerial control?
A. That support my opinions as to the relationship between the parties, which are inherent to understanding governance and managerial control.
Q. And, sir, and I'm not -- here's where I'm losing you: I'm not asking you what documents you reviewed to come up with whatever it was you just stated, I want to know what documents you say support your opinion that the parent company -- or that the subsidiaries are under managerial control of KapStone Paper.
A. There is effectively one board of directors that has governance documents.
Q. Documents, sir --
A. The entire -- that's what I'm going through.
Q. Okay. I'm making sure we're on the same page.
A. Okay.
Q. So that doesn't change any --
A. One group of executive officers for the entire corporation --
Q. Managerial control.
A. -- all those -- of the subsidiaries in

question.
Q. Managerial control, keep labeling -- keep naming the documents that you say support that.
A. I would say there are quite a few documents included in policies and procedures, safety.
Q. No. I wrote numbers next to them so you could identify them for the record of documents you say support managerial control of the parent company to the subsidiaries.
A. Okay. 138, 139, excuse me, 140, 141. I don't recall specifically on some of these, but I would say 145, 146, 147, 148, 149, 150, 151, 50 -- 157, 158, 159, 160, 161, 164-65-66-67, 169, 170-71, 173, 178, 197, maybe 200, 204, 205, 206, 207, 208, 231. And I don't recall on a number of these I'm looking at now.
Q. Well, would you say you've covered the majority?
A. Not yet.
Q. Okay.
A. I don't recall specifically on 320 through 364, but I know there are documents in there that address governance and management of the organizations.

Q. All right. Is that it?
A. Let me look at the last two pages. 368, 372, 378, 379, 380, 3833, 384, 385, 386, okay, that's what I recall.
Q. All right. So let's keep going here for a second, and then we will take a break, okay?
There are other subsidiaries within KapStone Paper other than the two we're focusing on here, correct?
A. Yes.
Q. Okay. Did you analyze those?
A. I didn't spend a significant amount of time analyzing the other subsidiaries.
Q. But based on your economic integration, common services or common shared benefits, whatever it was you stated earlier, are you saying that KapStone Paper and Packaging Corporation manages or is financially integrated with all subsidiaries it has?
A. That's not what my report says.
Q. And I am asking you: Do you have that opinion?
A. No. I have not looked at its integration with Victory Packaging, per se --
Q. Okay.

A. -- or with some of its other subsidiaries.
Q. Is Victory Packaging included within its consolidated tax return?
A. Yes, it is.
Q. Okay. There's a lot of subsidiaries included in its consolidated tax return, correct?
A. That's true.
Q. There's a lot of entities included in its financial cir -- or agree -- or excuse me -- financial agreements documents filed with the SEC, correct?
A. That's true.
Q. And you can't say that those other companies are financially integrated?
A. Wasn't the scope of what I was looking at.
Q. Okay.
A. Only to the extent that I was reviewing information that may have been related to, you know, the fact that all of those other subsidiaries are also 100 percent owned subsidiaries, or something like that.
Q. Well, hold on. If they also have the same board of directors, wouldn't every single

subsidiary they have at least meet two criteria that you have stated: One, they financially integrated from a filing standpoint, correct; and two, they would have the same executives and board of directors, correct?
A. It's true that they -- from the standpoint of the consolidation and the financial statements and a tax return, but I specifically -- with regard to governance and management, I specifically looked at, you know, relationships with these two entities.
Q. Okay. So if they were -- well, they -- if they had -- you do know that they have the same executives and managers as KapStone Paper and Packaging Corporation, correct?
There's none other listed in the SEC filings?
A. So if you're saying that's what's listed in the same -- in the SEC filings regarding the executive officers?
Q. Yeah.
A. Yes, that's correct.
Q. Okay. And so you when -- one of the things you supported to say that they have managerial capabilities would be who the executive officers are,



correct?
A. The executives officers are responsible for the overall executive function of running the company, yes.
Q. So how much time does the executive officers allocate to each one of their subsidiaries?
A. I don't know that.
Q. Okay. Hmm. Well, are you telling us that they manage the day-to-day operations of every single subsidiary?
A. They don't manage the day-to-day operations of the subsidiaries. They do manage the day-to-day operations of the company.
Q. Of KapStone Paper and Packaging Corporation?
A. Which is inclusive of all the subsidiaries.
Q. Okay. Who manages the day-to-day operations of KapStone Charleston Kraft, do you know?
A. Well, you know, that would be -- individuals at the first level would be individuals -- the first level below the executive officers would be those that are in charge of the mill division.
Q. Okay. The -- it would be those

employed at -- after the executives would be those employed at the Charleston facility?
A. No, it would be the individuals who were employed in the mill division, which I understand are mostly located at -- at the Roanoke Rapids location.
Q. Okay. And then as far as who manages the day-to-day operations at the Charleston level, that would be the managers at the Charleston plant?
A. It would probably be the level down from that, which would be sort of the managers that were reporting up to the mill division, yes.
Q. The day-to-day operations at the Charleston facilities for managers who are managing day to day on site would be Charleston Kraft employees, correct?
A. Pursuant to their following directions or guidance from the managers of the mill division, who were following and executing operations pursuant to the executive officers.
Q. Okay. Well, where in the world are you getting information about the Charleston managers get direction from Roanoke?
You didn't speak to anyone, right?
A. That's -- that's the mill headquarters.

They are signing -- the mill headquarters and individuals pursuant to that are signing kind of documents and information related to the operations of the mills.
Q. What? So let's do it again.
You haven't spoken to a single person who told you where they get the directions from, correct?
A. But they report up to the mill --
Q. The finances group?
A. They report up to the mill headquarters. I have not spoken to an individual. We have established that.
Q. Okay.
A. But they are reporting up to the mill headquarters.
MR. FINDLEY: Objection: Nonresponsive.
THE WITNESS: That's the definition of kind of an organizational structure.
MR. FINDLEY: Okay. Objection: Nonresponsive.
Q. (BY MR. FINDLEY) Okay. There is no single document that you've ever seen in your entire review where a manager at Charleston Kraft in

Charleston says, "I get my orders from Roanoke," correct?
A. Based on how you phrased your question, I don't recall a document stating that a manager from KapStone Charleston says, "I get my day-to-day orders from somebody at the mill headquarters."
Q. Okay. Well, I've deposed some people who worked there, and you didn't even read what they said with regard to their --
A. I haven't seen any of their depositions, no.
Q. So the only thing you're using to base that is corporate filings?
A. No, corporate -- and corporate function.
Q. And your general understanding of corporate function?
A. My general understanding of corporate function is how executive officers kind of set the policy and the day-to-day parameters for the company, and then the mill headquarters or the division -- the mill headquarters runs the mill division, which is inclusive of four separate mills that the company owns.
Q. Okay. But as far as who actually calls

and reports to who, you haven't seen that, you're talking about from an organizational standpoint, fair?

A. Day-to-day communications between the parties I'm not aware of.

Q. Okay. Beyond policy -- well, excuse me. You state there -- on page 14, paragraph 41, you state, "There are various reasons why companies form and maintain subsidiaries."

Do you see that?

A. Yes.

Q. In your experience, are subsidiaries exclusively organized as extensions of the parent?

A. I'm sorry, would you rephrase the question?

Q. Sure. In your experience, are subsidiaries exclusively organized as extensions of the parents?

A. What do you mean by "extensions of the parent"?

Q. Okay. Well, what is a subsidiary? Let's start there.

A. Well, a subsidiary is just a -- you know, can be a company that another company owns an interest in.

Do you see that?

A. Yes.

Q. Is it fair to characterize your opinion that subsidiaries are occasionally formed to separate management?

A. Occasionally formed to establish and maintain separate management?

Q. Yeah.

A. I mean, you -- you use the words, you know, "occasionally." Yes, that is one of the reasons why subsidiaries may -- may be formed as to, you know, establish separate management.

Q. Okay. In your experience, have you observed subsidiaries that operate autonomously from its parent?

A. Yes, to some extent.

Q. And what I mean is: Have you observed subsidiaries that operate as a -- with mineral -- minimal operational interaction by its parent?

A. Yes.

Q. Page 15, paragraph 43, in your report you state, "At length, a KapStone Paper presents its financials on a consolidated basis with its subsidiaries, including KapStone Kraft and KapStone Charleston."

Q. Okay. That's an extension?

A. Okay.

Q. So, in your experience, are subsidiaries exclusively organized as extensions of the parent company?

A. No, you know, I wouldn't -- it's the use of the word "extension" that you're providing, which to the extent that it implies that a subsidiary is -- is an extended function of the parent corporation, then I'm not going to say that that's -- that that's true, because subsidiaries can be free-standing and standalone subsidiaries that kind of do their own thing.

You know, in this case, yes, the subsidiaries are organized as an extension of the parent because they were all related or involved in the same business.

Q. Right. But that's not the exclusive reason to do it, correct? There's other reasons you can do it?

A. Well, there's other reasons you can do it, correct.

Q. Page 1441, you state, "Subsidiaries are formed on occasion to establish or maintain separate management."

In your review of that material, did management maintain internal financial statements of each of its legal entities?

A. I'm sorry, would you repeat the question?

Q. Sure. You state at many points that they present its financials on a consolidated basis with its subsidiaries, right?

A. Yes.

Q. Okay. When you reviewed that material, did you find that management maintains internal financial statements for each of their legal entities?

A. I did not review independent, to the extent there were, individual financial statements prepared for each of the individual entities. I would not necessarily be surprised if that information exists.

Q. So you didn't actually review internal financial statements, correct?

A. I haven't reviewed internal financial statements. I think I may have seen some, you know, internal management-type reports, you know, which is discussing kind of the nature of the operations.

Q. All right. Well, I'm asking internal

financial statements.
A. I haven't seen a financial statement prepared specifically for KapStone Kraft or KapStone Charleston.
Q. Okay. So you did not observe that corporate services were being allocated among the subsidiaries from their internal documents?
A. So whether a -- so are you asking me whether I observed that an allocation of corporate overhead is being applied to the individual financial statements?
Q. Right.
A. No, I didn't observe that.
Q. And you note that they filed a consolidated U.S. Corporation income tax return on page 16, paragraph 47.
Given your experience, is this tax filing procedure inconsistent with other similarly organized corporations or consistent?
A. I think it would be consistent with other corporations that --
Q. It is consistent?
A. Yes, I'm just trying to kind of refer to my report, so what I have stated here, to refresh my recollection.

Q. All right. Well, I got a new question if you're ready.
A. Sure.
Q. Did you consider income tax returns at the state level in your analysis?
A. I did not see any tax returns from the state level.
Q. Why not?
A. Because I wouldn't be surprised if there are kind of individual tax returns at the state level.
Q. So you didn't --
A. So I was looking mostly at the federal level.
Q. You didn't think that was important?
A. I didn't think it would really add a significant amount of information to my -- to my evaluation.
Q. Did you determine -- so I guess you didn't determine if certain entities file income tax returns that were not on a consolidated basis?
A. Well, I wouldn't be surprised if they're filing state tax returns on an unconsolidated basis.
Q. But at least documents you didn't rely

on in forming your opinion, fair?
A. I -- correct, I did not see any state income tax return.
Q. Okay. Page 17, paragraph 50, you state that "KapStone Kraft and KapStone Charleston shared a common president during the relevant period, which was Randy Nebel."
When did Mr. Nebel assume responsibility for each subsidiary?
A. I do not recall. But he was in charge of the mill division during that period of time in which KapStone Kraft and KapStone Charleston were a part of.
Q. So as far as when he assumed it, you don't know, fair?
A. I do not know when he took over that responsibility --
Q. Okay. Who did he report --
A. -- or -- or I don't recall.
Q. Okay. As the president -- well, was he the president of each subsidiary?
A. That is my -- well, it's my -- it's my understanding that he was the president of the mill division and Roanoke Rapids mill, and the KapStone and the Charleston mill were underneath his, you

know, authority and management.
Q. Okay. Do you know what his responsibilities entailed?
Did you receive a list of that?
A. No, I did not.
Q. Okay. Do you know who he reported to in the organization?
A. Mr. Nebel?
Q. Yeah.
A. I don't recall specifically, but he would have reported to the executive officers.
Q. Well, that's what you're saying based on your assumption. But you don't know based on actual evidence, correct?
A. I don't recall.
Q. Okay. And then you didn't interview Mr. Nebel, we know that, right?
A. I did not interview Mr. Nebel.
Q. Did he have autonomy relative to day-to-day operations at the subsidiary level -- subsidiary level?
A. I don't know the level of autonomy that Mr. Nebel had.
Q. Okay. Page 17, paragraph 51, you assert that "KapStone 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," correct?

A. That's correct.

Q. What kind of support and oversight did KapStone provide to its subsidiaries? And please be as specific as possible.

A. KapStone Paper provided the -- as we have talked about, you know, the board -- you know, the governance, which is in some role responsible for the policies and procedures, you know, as well as the executive management direction for the company.

They also provided the centralized cash management or resolved the centralized cash management or the management of the cash for the company. They also provided, you know, all of the funds for, you know -- you know, equipment purchases, for, you know, really any spending. They were the point source for the payroll system, who at the time was ADP.

Q. Okay. And --

A. They provided the basis of the human resources function of -- the majority of the people in human resources were located there, as was the

legal group who was responsible for contract management and oversight, as well as, I'm sure, other functions. The IT, information technology services department, you know, was housed within KapStone corporate and providing services across KapStone Kraft, KapStone Charleston.

Q. Okay. And this is sort of the documents you recited to us earlier about managerial?

A. Yes.

Q. Okay. I have a question for you: If I entered into a contract, me, with KapStone Charleston Kraft LLC, okay --

A. Uh-huh.

Q. -- for whatever reason, okay, and they defaulted on our contract and I was owed money damages, are you telling me I can get KapStone Paper to pay for it?

A. I think it depends on -- I would look to the delegation of authority on that particular contract and if that's a level of authority that was delegated down to KapStone Charleston.

I mean, I'm not answering -- I'm not trying to answer a legal question, because I'm not trying to render a legal opinion here, but I'm just trying to say that -- that that doesn't surprise me

that there are levels of kind of expenses incurred or contracts that were executed by either KapStone Charleston or KapStone Kraft -- Kraft or for the entity KapStone Charleston that was signed for on behalf of somebody working within all headquarters or from -- from the executive officers themselves.

Q. Okay. But what your testimony is is they operate and are controlled one and the same, correct?

The corporate identities, in your mind, have ceased to exist between the parent and all the subsidiaries, correct?

A. I think there is a common --

MR. TARVER: Objection: Form.

THE WITNESS: Well, I think there is a common corporate identity, which is the name KapStone.

Q. (BY MR. FINDLEY) Okay.

A. And the local use of the name -- or the similarity in the use of the -- excuse me, the use of the logo.

Q. All right. The use of the logo, what -- you understand -- you've done cases on piecing the corporate veil, haven't you?

A. Yes.

Q. Okay. You know what they say when they say the lines between the corporate identities ceased to exist and they were one and the same?

MR. TARVER: Object to form.

Q. (BY MR. FINDLEY) And I think that's what your -- this report states.

Is that what you're saying?

A. I'm not arguing that the lines ceased to perform. I'm simply, you know, evaluating the -- the economic and financial integration of the parties and how they were operating significantly together.

Q. Right. And you wrote report on it and signed an affidavit, so one day if someone gets ahold of this report, right, and KapStone Charleston Kraft LLC is on the hook, we can rely on this as truthful and honest, right?

A. I -- well, my report, yes.

Q. Okay. Good. Do you consider payroll records for each of the entities?

A. Yes, I did.

THE WITNESS: And I apologize, we -- you had talked about a couple of minutes for a break.

MR. FINDLEY: You want to take a break? Sure.

THE WITNESS: Yeah, if you wouldn't

mind.
MR. FINDLEY: Sure. And let -- that will give me a chance to talk to --
THE VIDEOGRAPHER: This is the end of media six. The time is 6:25 p.m. We're off the record.
(Recess taken)
THE VIDEOGRAPHER: This is the beginning of media seven. The time is 6:35 p.m. We are on the record.
Q. (BY MR. FINDLEY) All right. Page 28, paragraph 82 and 83, you state that "KapStone consolidated the securitization of accounts receivables from KapStone related entities for a given entity the securitization of accounts receivables allows for the individual entity accounts receivables to be traced individually."
Correct?
A. Yes, I think I would agree with that.
Q. Okay. Given your review of the receivable sale agreement that was dated September 26th, 2014, where the KapStone-related entity required to maintain books and records related to the receivables, do you recall?
A. I'm sorry, ask the question again.

Q. So there is a receivable sale agreement?
A. Yes.
Q. Okay. Where -- did that require that the KapStone-related entities maintained books and records related to the receivables?
A. I don't recall specifically what that agreement said in relation to the books and records.
Q. Okay. Well, if it called for maintaining books and records, I assume you did not analyze those books and records with respect to their respective securitized receivables?
A. I have -- I have not looked at anything beyond the -- kind of the sales agreements in question.
Q. All right. Page 26, paragraph 76, you assert that, "Most customer contracts, procurement contract, consultant contract, purchase orders and leases entered into with regard to KapStone Charleston were required to be approved by someone at either corporate headquarters or mill headquarters, depending on the type and size of the contract."
Do you see that?
A. That's based on what I have reviewed, yes.

Q. Okay. And based on what you have reviewed, based on your review, were -- the occasions for which approval for certain contracts were not required at the corporate label -- level?
A. Yes.
Q. Did you sample historically signed contracts to determine the most were required to be signed -- the most that was required to be signed at the corporate level?
A. No, it was based on my review of the KapStone Paper and Packaging capital funding request approval levels.
Q. Okay. All right. Let me switch gears.
Exhibit 17 has some binders. There is a bunch of different flagged tabs here.
So what does the green tab mean?
A. The tabs don't mean anything -- the color of the tabs don't mean anything.
Q. They don't at all?
A. No.
Q. So why don't you use all one color?
A. Because we don't -- didn't have one color in the supply room.
Q. So orange, green, pink, blue, purple have no significance whatsoever?

A. No.
Q. Did you actually physically put those tabs on there or is that Kramer?
A. That's likely 99 percent me, if not 100 percent me.
Q. There was a Post-It note on one of these. I wanted you to tell me what it meant.
A. Sure.
Q. In box three, there is a -- in the binder labeled, "Corporate Policies and Procedures," it says "Note, IT 13" -- read it out loud.
A. "IT 13, 27, 28, and 34-39 do not exist and/or were not provided."
Q. What does that mean?
A. That means that in the sequence of these account -- IT account management policies we noted, that these specific numbers didn't -- you know, were not in the sequence.
Q. Were not provided to you?
A. Well, I don't know if they exist or --
Q. In any event, they weren't given to you?
A. I -- I didn't receive any policies with those numbers.
Q. This one says on page -- or "Policy

Database Security" it says, "IT 16."
What does that mean?
A. I assume this means that even though it wasn't listed as policy number 16, that this is our understanding as to what policy 16 was.
Q. You said "your understanding." Whose?
A. Well, mine or Ann or Nicole's upon reviewing the information.
Q. Okay. You can give it back.
A. (Complies).
MR. FINDLEY: All right. In the interest of time, I'm reserving my right to ask him additional questions related to the information that's been recently produced, but I'm going to allow your lawyers to ask you questions, to the extent they have any.
MR. TARVER: Thank you.
EXAMINATION
Q. (BY MR. TARVER) Mr. Lester, it is a long day, we are tired and hungry, so I am going to try and streamline this and make it as quick as possible.
A. Okay.
Q. Mr. Lester, what was the timeframe that was relevant to the inquiry we posed to you?

A. I think the time -- the relevant timeframe was, you know, in relation to the time period around May 2016 that you really didn't provide me a -- kind of a -- a framework I could look at this time or look at that time. You allowed me to look at the information that I deemed necessary.
Q. How do documents that are erased that were produced after -- or generated after 2016 -- May 2016 relevant to the conclusion you reached with regard to integration in May of 2016?
A. To the extent that there were documents that described, you know, one or more of the factors that I was considering and from those documents I could determine that they were policies or relationships that may have existed as around the time that I would kind of deem that information relevant to the extent that it was information that described ongoing kind of relationships and I could make that determination from the information, then I deem it relevant to the extent that it was noting a change in policy at that point in time from something else, meaning those are -- those are some of the circumstances.
Q. All right. I am going to show you a couple of documents. I am not sure how to access the

exhibit stickers from here. I'm going to pass them along.
MR. TARVER: Thank you, ma'am.
MR. FINDLEY: Can I get these?
MR. TARVER: Thank you.
Q. (BY MR. TARVER) I am going to show you --
MR. FINDLEY: These are extra copies I gave to you.
THE WITNESS: Those are the extra copies you gave me, yes.
Q. (BY MR. TARVER) I am going to show you what I am marking as Exhibit 18.
(Exhibit 18 marked)
Q. (BY MR. TARVER) This is one of several documents produced at or around or after May 30th. I apologize that we didn't get these to you before.
As Mr. Findley pointed out, these were produced a little bit later and you haven't reviewed these.
MR. FINDLEY: What is the Bates label?
MR. TARVER: Sure, this is Bates label KapStone 3436.
Q. (BY MR. TARVER) Take your time to review this. And then could you tell us what this

document is?
A. This title describes it as an "Equipment Schedule dated January 23rd, 2015, relative to a Master Lease Agreement dated August 12th, 2008, between KapStone Paper and Packaging Corporation and MHD Financial Services, Inc."
Q. Can you tell us the equipment that was being leased under this lease agreement?
A. The equipment that's listed on the lease agreement, which relates to a new forklift and new attachments associated with that.
Q. And can you tell us according to this lease the location at which this equipment would be located?
MR. FINDLEY: Object to the form.
Q. (BY MR. TARVER) I'll rephrase.
According to this lease, where is the equipment subject to the lease schedule to be located?
A. The equipment immediately listed above is located at 5600 Virginia Avenue Charleston -- Charleston County, South Carolina.
Q. And which KapStone entity was located at 5600 Virginia Avenue, Charleston, South Carolina?

A. The Charleston mill, which is part of KapStone Charleston.
Q. And can you tell us who was the signatory on behalf of KapStone Paper?
A. The signatory is -- on behalf of KapStone Paper and Packaging is Eric Choltco.
Q. Okay. Thank you. Hang on to that for just a second. I am going to show you another document.
MR. FINDLEY: Before you move on, do y'all know if I marked the e-mail correspondence?
MR. TARVER: You did.
MR. FINDLEY: I did?
MR. TARVER: I think you did. You had a couple of copies floating around.
MR. FINDLEY: Sorry to interrupt, go ahead.
MR. TARVER: You're okay.
THE WITNESS: And I still have my report that you marked.
MR. FINDLEY: Report, all right.
Q. (BY MR. TARVER) I am going to show you another document. I am going to mark this as Exhibit 19. This is KapStone 3397.
(Exhibit 19 marked)

Q. (BY MR. TARVER) Take your time to review this, please.
MR. FINDLEY: 3397?
MR. TARVER: Yes, sir.
Q. (BY MR. TARVER) Can you tell us what this document is?
A. Yes, this appears to be a similar document, "Equipment Schedule," dated -- this one's dated December 30th, 2014 to the same master lease agreement dated August 12th, 2008 between the lessor, MMHG Financial Services, Inc., and KapStone Paper and Packaging Corporation.
Q. And can you tell us the equipment that is being leased under this agreement?
A. It looks to be three new forklifts and new attachments.
Q. And what is the equipment that's scheduled to be -- oh, I'm sorry.
Where is the address that this equipment is scheduled to be stored?
A. The document states, "Equipment immediately listed above is located at 5600 Virginia Avenue, Charleston, Charleston County, South Carolina."
Q. And who is the signatory on behalf of

KapStone Paper and Packaging Corporation on the lease?
A. The signatory is similar, again, on behalf of KapStone Paper is Eric J. Choltco, C-H-O-L-T-C-O.
Q. So I am going to show you a couple of other documents that Mr. Findley has shown you.
MR. FINDLEY: Can I see those that you just talked about?
Are you done with those, for now?
MR. TARVER: Can you hold on for those just one second?
MR. FINDLEY: Sure.
Q. (BY MR. TARVER) This is Exhibit 13 and 14.
A. Okay.
Q. Can you tell us who the signatory is on these two leases?
A. On Exhibit 13, the signatory, again, is Eric Choltco for KapStone Charleston Craft and International. Exhibit 14 is not signed.
Q. Now, from the perspective of a financial analyst and a consulting position as yours, what does it mean, in your opinion, that Eric Choltco is signing lease agreements for equipment on behalf

of KapStone Paper and KapStone Charleston to be located at the Charleston mill?
MR. FINDLEY: And I'm going to object to form. And I'm also going to object to these documents were not relied on in formulating the basis of an opinion, and outside the scope of his report.
THE WITNESS: The fact that these documents are signed by Mr. Choltco says to me that he had that delegated authority from KapStone Paper to sign these equipment leases on behalf of either KapStone Paper and/or KapStone Charleston.
MR. FINDLEY: If you need that.
MR. TARVER: Oh, thank you.
Q. (BY MR. TARVER) Thank you. All right. We are done with those if you would like to pass those over to Mr. Findley to review.
A. Let me get these somewhat organized here. (Complies).
Q. So I would like to move on now to payroll. Can you explain to us how a centralized payment system works with ADP?
MR. FINDLEY: Object to the form.
THE WITNESS: Yes. In a centralized payroll system, there are kind of third-party service providers that provide payroll functions to

companies. Essentially the company, as in KapStone Paper, would provide all the relevant -- relevant information regarding its employees that were subject to the payroll kind of services.

The -- they would provide them kind of information relative -- or to the -- kind of their compensation rates and so forth, but also likely on a periodic basis provide them with information as to minimum numbers of hours worked for those hours that may be -- excuse me, for those employees that may be hourly.

And in turn, the payroll processing company would -- would provide the amount of money that was required to fund payroll for that particular period to the company as a kick. KapStone Paper, who would then provide that money to them and then the payments to -- for the payroll would -- to the employees would be made kind of from the third-party payroll provider.

(Exhibit 20 marked)

Q. (BY MR. TARVER) Okay. Thank you. So I want to talk a little bit about KapStone's employee payroll. I'm going to show you a few documents. This one is marked as Exhibit 20. It's labeled KapStone 000439.

Are you familiar with this document?

A. Yes.

(Exhibit 21 marked)

MR. FINDLEY: Oh, what was that number?

MR. TARVER: 21.

MR. FINDLEY: Here it is. I was trying to give you the numbers.

MR. WILLIS: Thank you.

MR. FINDLEY: What is the Bates on that one?

MR. TARVER: 439.

Q. (BY MR. TARVER) Can you tell us what this document is?

A. Oh, yes, this is a -- an employee direct deposit enrollment form from ADP and specifically with regards to -- or one executed and signed by Mr. Simerly on October 16th, 2012.

Q. Great. Thank you.

I am going to show you another document. This one is marked as Exhibit 21. It is labeled KapStone 335.

Are you familiar with this document?

A. Yes.

Q. Can you tell us what it is, please?

A. Yes, this is a bank record for KapStone Paper and Packaging Corporation from Bank of America and Merrill Lynch providing a listing of various transactions.

Q. All right. Let me show you another document. This one is marked Exhibit 22. Its Bates range is KapStone-2510.

Are you familiar with this document?

A. Yes, the document providing the ADP pay groups relevant to the various companies listed on here: KapStone Paper, KapStone Container, KapStone Charleston and KapStone Craft.

(Exhibit 23 marked)

Q. (BY MR. TARVER) Okay. Let me show you another document. This is marked Exhibit 23. It is KapStone 718.

Are you familiar with this document?

A. Yes, this is the 2016 W-2, an earnings summary provided by ADP for Mr. Lucas.

Q. Thank you.

When viewed collectively, what do these documents tell you about how KapStone employees received paychecks?

MR. FINDLEY: Object to the form.

THE WITNESS: Well, this tells me that

KapStone employees, and specifically Mr. Simerly to Mr. Lucas here, received their checks from ADP following the process that I described, which is where ADP would be provided with relevant information, and in exchange, KapStone Paper would provide the funding necessary for ADP to make those payments.

Q. (BY MR. TARVER) Let's talk about management where were -- what was KapStone Paper's headquarters location?

A. It is the Skokie, Illinois. Or the Skokie, Illinois, or the Skokie address, 1101 Skokie and kind of Chicago, Illinois or North Brooke specifically.

Q. And were was KapStone Craft's Corporate headquarters?

A. The same place.

Q. And KapStone Charleston?

A. The same place.

Q. What employees of KapStone Charleston and Kraft Paper were located at the 1101 Skokie Boulevard address where all three held their corporate headquarters?

MR. FINDLEY: Object to the form.

THE WITNESS: Which employees?

Q. (BY MR. TARVER) (Nods.)
A. So they -- the employees in, you know, including, you know, the executive officers, my understanding as well as, you know, many of the employees that were providing, you know, what we have talked about as shared services, you know, a large numbers of the employees in the HR group, some of them not in the A IT group, a lot of them in the financial accounting function, the legal function, internal audit.
Those are the ones I recall. And I think if there is -- this is included, in part, of -- well, one of the exhibits to my report.
So I think my exhibit -- Exhibit 5 to my report lists KapStone employees that were providing these certain shared services, you know, that I would -- you know, described here as sort of, you know, accounts payable, the CEO function, and the corporate controllership function, credit collection function, human resources function, internal audit, business intelligence, enterprise applications, part of the IT ERP, part of the IT, IT infrastructure, IT integration architecture, IT mill system operations, IT PMO, which I'm assuming is the management office or IT -- again, IT function, legal function, payroll,

to some extent some of our other individuals in payroll.
Q. Thank you. So we have -- we started off the whole deposition talking about the economic substance and the definition of economic substance, and I believe that you represented that as being the -- the sort of reality, the nature of the transactions between the companies that you're tasked to evaluate.
When it comes to economic substance, how important is it to consider whether they call themselves shared services or just provide shared services?
A. I think I am focused primarily on the function, you know, the process, you know, that's involved and not necessarily what it was titled.
Q. Okay. So I want to change gears a little bit.
Mr. Findley pointed out a document. I believe it is Exhibit -- Exhibit 8 that's the "Deloitte Leadership Workshop."
And he pointed out on the page marked Bates range 3548 a few scales. And on the left side of the scale it says "Decentralized," and on the right side of the scale it says "Centralized," and

then it provides -- one, two, three, four, five -- six different factors that under this proposal could be more centralized.
And those factors I would like to compare with the factors that you discuss in your expert report in paragraph 24 --
A. Okay.
Q. -- which we have floating around here somewhere.
MR. FINDLEY: Object to the form and leading.
But what are you looking for?
MR. TARVER: Got it. Thank you, though.
Q. (BY MR. TARVER) So if you could take a look for me at the factors in the Deloitte presentation, and then tell us how they relate to or whether they relate at all to the factors that you considered in reaching your opinion in this case.
A. Well, I think when they're talking about core operations, there is only one bullet listed under core operations, which is plant level accountability. So there is obviously a vast number of other operations and important operations in the company that is not described here, and they're

really just describing one component in which is plant level accountability.
And I'm not sure how that would necessarily fall under one of my factors, but namely my other factors that I reviewed, you know, I don't see listed here under kind of the core operations.
Q. All right. From the perspective of a financial analysis, does the word "centralization" have a specific definition?
A. I don't know if it has a specific definition, but certainly it comes to understand that centralization just means that you are kind of making the oversight, the kind of responsibility for a certain function more centralized. I -- you know, a lot of times it can be the decision making is more centralized.
Q. So Mr. Findley made a point that one of the documents -- or -- or many of the documents started mentioning the phrase "One KapStone" and in the first quarter of 2017. I would like to show you another document that we received. This one is marked Exhibit 24 --
(Exhibit 24 marked)
Q. (BY MR. TARVER) -- KapStone-3483.
And this is not one that we provided

you before you issued your report. It was one we produced after, but I just want you to review that.

And if you could, just take a look at that and give us sort of a general overview of what that document appears to be to you and the date.

A. The document is titled, "KapStone Mill Q2 division 2016 Business Review Afternoon Session" dated April 19th, 2016.

Q. And what was the date of the incident at issue in this case?

A. It is my understanding it was in May of 2016.

Q. Thank you. May I see that briefly?

A. Sure.

Q. And if I could direct you to the page marked Bates range KapStone 3512.

A. 3512?

Q. Yes, sir.

A. Okay.

Q. All right. If you could please read us the text from that page.

A. KapStone 3512, the title on the page is "Sales Grade Rationalization Project." The problem is, "Problem: Four companies came together to form 'One KapStone' but each with their own systems grade

set of process and grade catalogs."

Q. Thank you. Can you tell me how the words "One KapStone" on that page are styled as?

A. Capital one as One, O-N-E, and then KapStone capitalized.

Q. So this document from April 19th, 2016, what does this indicate to you about the "One KapStone" project?

MR. FINDLEY: Object to form.

THE WITNESS: Well, it raises a question for me as to when this -- the term "One KapStone" was originally utilized within the company, and that clearly given that it is capitalized, it has some significance within the company.

Q. (BY MR. TARVER) All right. Thank you.

MR. FINDLEY: What is the exhibit on that one?

THE WITNESS: 24.

MR. FINDLEY: Got you.

Q. (BY MR. TARVER) So we have established that you reviewed Ms. Hulseman's deposition after you drafted your report.

MR. FINDLEY: Object to the form: Leading.

MR. TARVER: That wasn't a question.

MR. FINDLEY: I didn't know if you were done. Go ahead.

MR. TARVER: I'll, you know, figure out if it sounds like a question.

Q. (BY MR. TARVER) But you have reviewed it since then?

A. Correct, yeah, I have reviewed --

MR. FINDLEY: I will object to the form: Leading; misstates prior testimony.

MR. TARVER: All right.

THE WITNESS: I have reviewed some of her deposition testimony.

Q. (BY MR. TARVER) And in your job, do you typically rely on documents or testimony when reaching your opinion, or which would you prefer to rely on?

A. I would prefer to rely on documents.

Q. And why is that?

A. Because documents are more objective or -- and -- and I just would want more of a primary source for information, as opposed to, you know, someone's recollection or interpretation of that information.

Q. So let's talk about corporate synergy, which we touched on briefly when Mr. Findley was

speaking with you. Can you explain to us the definition of "corporate synergy"?

MR. FINDLEY: Objection: Form; asked and answered.

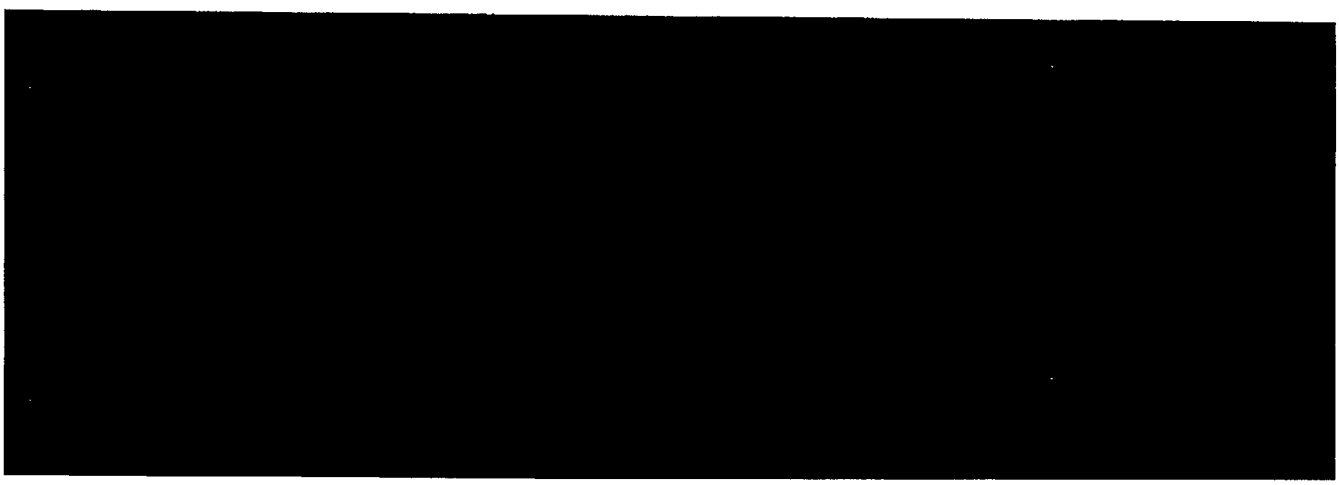
THE WITNESS: I think the definition of "synergy," just in general, when it's used in a corporate form, more often than in acquisition form, is when you're looking at kind of merging two companies together and you expected that this synergy, the ability of those companies working together, will create more value for the combined company.

Q. (BY MR. TARVER) And with regard to the KapStone entities, what sort of synergy existed between KapStone Paper, KapStone Craft, Victory Packaging and the other mills?

MR. FINDLEY: Object to the form: Outside the report and --

Well, go ahead.

THE WITNESS: I think if we're specifically talking about, you know, the purchase of the various mills and the purchase of the various mills may have provided some complimentary services or complimentary product lines, they provided them an opportunity to source, you know, purchased material



from locations that may have been more -- you know, may have been located in -- kind of in greater proximity to the ultimate client, as well as from kind of machines or equipment that had specific -- you know, that may have been much more specifically tailored to that specific purchase order.

Q. (BY MR. TARVER) Thank you. And --

A. Well, I think, you know, that was my answer with regard to the mills. But I think you asked a broad question, and if you want me to continue, I can continue.

Q. No, no, that's fine. Thank you.

I just want to show you another document, Mr. Lester. This one is marked KapStone 000002, and I am marking it Exhibit 30.

(Exhibit 30 marked)

Q. (BY MR. TARVER) Are you familiar with this document?

A. Yes, I am.

Q. Can you please tell us what it is.

A. This is the Form 10-K filed by KapStone Paper and Packaging Corporation with the Securities and Exchange Commission for the fiscal year ended December 31st, 2016.

Q. And did you rely on this document in

drafting your report?

A. Yes, I did.

Q. Can you please turn to the page marked KapStone 29.

A. Okay.

Q. I am going to catch up with you, but there is a chart on that page. Can you tell us what this chart represents, please?

A. This chart is in the section of the 10-K called "Selective Financial Data" where the company is presenting information relative to its -- both information contained on its income statement, as well as information contained on the company's balance sheet for KapStone Paper and the consolidated subsidiaries.

Q. All right. Now, KapStone Paper we have established does not manufacture paper.

Why is it permitted to represent in this document the consolidated financials of its subsidiaries?

MR. FINDLEY: Object to form.

THE WITNESS: Because of their hundred percent ownership of these consolidated subsidiaries, they're required to submit this information to the SEC for purposes of giving the -- kind of the overall

portrait picture presentation of the companies -- of the companies as a whole business.

Q. (BY MR. TARVER) Okay. Thank you.

(Exhibit 31 marked)

Q. (BY MR. TARVER) I am going to show you another document, Mr. Lester. This one I am going to mark Exhibit 31, and it is KapStone-3462.

This is another document that came late with regard to your report. Take a look at that and familiarize yourself.

A. Sure.

MR. FINDLEY: What is the Bates?

THE WITNESS: It's 3462.

MR. FINDLEY: Okay, yes.

Q. (BY MR. TARVER) All right. So based on your review, can you tell us what this document is, please?

A. Sure. Give me one minute and let me look through it real quick, please.

MR. FINDLEY: Object to the form.

THE WITNESS: This document is titled, "April 2016 Financial Statements." It's dated May 11th, 2016, and it's for -- with the name and logo of KapStone Paper and Packaging Corporation, and it appears to be sent to the executive officers: Roger

Stone, Matt Kaplan, Tim Keneally, and others.

Q. (BY MR. TARVER) All right. And if you don't mind, I would like to walk through this page by page and have you explain to us what -- what these charts represent, please.

MR. FINDLEY: First of all, I am going to object, because this isn't a document he relied on, so I'm going to object to outside the scope of his expert opinion already provided and -- okay.

THE WITNESS: Page two is titled, "Segment Information." It appears to be, you know, what I would refer to as a management report listing various metrics or areas of the company as looking at net sales, earnings before interest, taxes, depreciation; and it is specifically broken down by the reporting segments, which is paper and packaging and distribution.

Q. (BY MR. TARVER) All right, sir. If we could turn to the next page, please. This is the page marked KapStone 3463. It was page three of this document.

MR. FINDLEY: Can I just have a running objection for the whole documents so I don't have to keep --

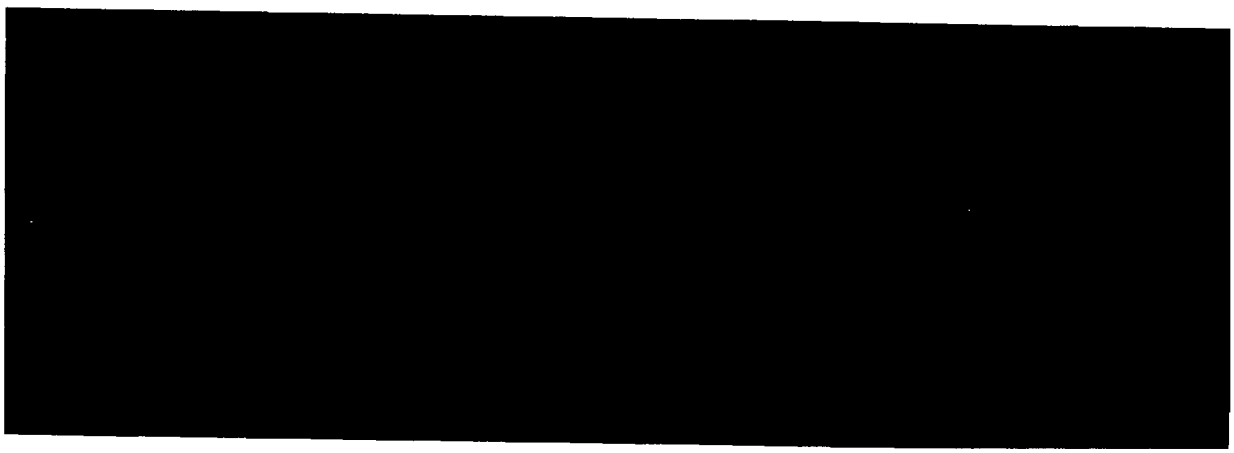
MR. TARVER: Yeah, absolutely. And if

you would keep your speaking objects down, that would be great, too.
MR. FINDLEY: No, they're legal objections, they're not speaking.
MR. TARVER: Yeah, but you object to form. If I want to know what it is, I'll ask.
MR. FINDLEY: I am trying to save you some time.
MR. TARVER: Thank you.
THE WITNESS: Can you repeat the question for me, please?
Q. (BY MR. TARVER) Sure. Can you please run us through page three of this document.
A. The documents listed: Consolidated income statements - month. It is the consolidated income statements for KapStone Paper and Packaging Corporation, and it, you know, contains a little more detailed information as to net sales and that income, and then here it looks like it's broken down by the mill division and the container division.
Q. All right. Thank you.
And -- and which KapStone entities, based on your analysis of the KapStone documents, were included in the mill division?
A. It would have been the KapStone Kraft

Roanoke Rapids, the KapStone Charleston mill, and South Charleston or Charleston, South Carolina, the Longview mill located in Washington, as well as the Kalpens mill in South Carolina.
Q. All right. Thank you.
And if you don't mind, I would like to turn to the page marked KapStone 3466. It is also page five of this document.
A. Okay.
Q. If you could, explain to us what this chart represents.
MR. FINDLEY: Same objection.
THE WITNESS: This -- the sheet is titled, "Ships and nets - month." It appears to be a schedule listing by -- by product line on the actual shipments that month versus the forecasted amount of shipments in tons that month versus the plan of that month, also a comparison to the prior year.
So again, it is a management report assessing the -- the product sales and the performance of those sales against their kind of forecasted plan for that particular month.
Q. (BY MR. TARVER) Thank you. And I would like to jump ahead a few pages, please. If you could turn to the page marked KapStone 3478. It is also

page 17 of this document.
A. Okay.
Q. And could you tell us what this chart represents, please.
MR. FINDLEY: Same objection.
THE WITNESS: The chart on KapStone 3478 is titled "Head Count," and it appears to be a listing of the head count for a number of the locations broken down by -- by, you know, type, you know, pay type of employee and segregated by kind of the mills, the mills division, container, corporate and so forth.
Q. (BY MR. TARVER) All right. And could you look down on the bottom of this page and tell us what the bottom line of this whole chart represents.
A. The bottom line of company total represents the total number of employees for KapStone and its consolidated subsidiaries, and it is listed from, I guess, December of 2014 and December of 2015 and then monthly from January, February, March, and April.
Q. And from the perspective of a financial analysis, why would a parent entity consider its subsidiaries its own employees and keep track of them this way?

MR. FINDLEY: Object to form.
THE WITNESS: I think because the parent company is essentially managing all of its subsidiaries and its employee.
Q. (BY MR. TARVER) Thank you. And then we're just about done and we will wrap up on a more fun topic.
Let's talk about corporate identity.
A. Okay.
Q. From the perspective of a financial analysis, what is the difference between corporate identity and separate legal entities?
MR. FINDLEY: Object to the form.
THE WITNESS: You know, I think I answered that, you know, corporate identity is inclusive of a number of things. It's -- it's the name, it's what customers associate with purchases of products, it's the -- you know, the image, the logo, and kind of how they present themselves to the public and what the public identifies with.
Q. (BY MR. TARVER) And what type of -- sort of factors are included in the concept of a corporate identity?
MR. FINDLEY: Object to the form.
THE WITNESS: I think there's a lot of



factors. I think I listed some of them: Name, logo, color scheme; it could be a particular saying; it could be, you know, what the company lists as its -- as its mission, its values, its corporate principals.

You know, all of those things I think can be wrapped into a corporate identity, including, you know, any particular advertising, you know, and how they go about doing their advertising.

Q. (BY MR. TARVER) And when it comes to evaluating a company, what effect does the corporate identity have on the overall value?

MR. FINDLEY: Object to the form.

THE WITNESS: Clearly a corporate identity can derive economic value from its corporate identity, and we see that value expressed in -- in some form or fashion in kind of acquisitions, you know, specifically related to, you know, goodwill that may be recognized in those acquisitions, i.e. value that cannot be assigned to, you know, specific assets, you know, tangible assets within the company.

Q. (BY MR. TARVER) And with regards to the KapStone entities -- well, strike that.

So in your report you reserve the right to amend your opinion.

Have any of the documents Mr. Findley

or I have presented to you today that you had not seen previously changed your opinion in any way?

MR. FINDLEY: Object to the form.

THE WITNESS: They have not changed my opinion, but I have not had an opportunity to review, you know, on any level the documents that Mr. -- some of the documents that we were talking about earlier in the deposition, specifically some of these documents related to the work that, you know, Deloitte was doing in relation to kind of these documents in the latter part of 2016, early part of 2017.

MR. TARVER: All right.

MR. FINDLEY: All right. Just a couple of follow ups.

FURTHER EXAMINATION

Q. (BY MR. FINDLEY) I have got -- I don't know what exhibit you have, but what is this one (indicates)?

A. That would be 31, I believe, "April 2016 Financial Statements."

Q. Yeah. Do you have that in front of you?

A. Yes.

Q. Okay. This is a May 11th, 2016

document Bates labeled 003462?

A. Yes.

Q. And could you recite the exhibit number for me so I know what I'm referring to?

A. Exhibit 31.

Q. Okay. Exhibit 31, this document handed to you by Counsel you have never seen before it was handed to you, right?

A. Yes.

Q. Okay. It was never provided to you at any point over the course of the last year, right?

A. I have not seen this document in preparation of my report, if that's your question.

Q. Yeah. It was never talked about during these multiple conversations with attorneys and the bills that we saw and the drafts of your -- or your bills throughout the invoices over the course of the last several years, correct?

A. Not this specific document.

Q. Okay. Let's go to page 3478.

Are you there?

A. Yes.

Q. And you can look at it up here if you need to (indicates).

A. No, that's okay. I'm on there.

Thanks.

MR. FINDLEY: You can put it on the screen for me.

Q. (BY MR. FINDLEY) Each one of the mills is listed out in this document individually, correct?

A. That's correct.

Q. And the -- each one has individual employees listed for the individual facility, true?

A. That's true.

Q. And it even has corporate listed for its own employees, correct?

A. Yes.

Q. Okay. And it lists, 212, do you see that -- or 217?

A. 217 as of December 2014, yes.

Q. Okay. And as -- I know you didn't read Ms. Husleman's deposition testimony, but she told me during her deposition testimony that KapStone Paper and Packaging Corporation had 200 employees.

That would be a -- consistent with that document?

A. Yes, to the extent that she was talking about KapStone Corporate, yeah. This as of December 2014, yes.

Q. Okay. And the North Brooke address in

Illinois that we were talking about in Chicago that you were talking about with your lawyer, do you remember that?

A. Yes.

Q. Okay. Are you aware that she testified that not a single individual within the entire KapStone organization works in Chicago except for KapStone Charleston -- excuse me, KapStone Paper and Packaging Corporation?

MR. TARVER: Objection: Form.

THE WITNESS: I don't recall that from her deposition, but I -- I mean, I have no reason to dispute that based on this information.

Q. (BY MR. FINDLEY) Fair enough.

You don't -- you don't -- you don't dispute that statement?

A. No.

Q. Okay.

A. But I would like to refer back to my exhibit for a minute and see if it sheds any light on that.

Q. Okay.

A. Yeah, this Exhibit 5 that I'm looking at would not -- it would not show me that information, so --

Q. Okay. Fair enough. So let's move on to the -- this is now Exhibit 24. This is Bates labeled 3483, "KapStone Mill Division Quarter Two Business Review."

Do you see that?

I can put it on here. I just have a specific question on it.

A. Yes.

Q. Okay. And --

(Discussion off record)

Q. (BY MR. FINDLEY) Okay. This is a document you had never reviewed before this deposition?

A. Yeah, I don't recall seeing that document.

Q. I didn't see it in your list.

So you don't recall seeing it at any point, correct?

A. I don't recall, that's correct.

Q. This was a document that was just handed to you by your lawyer during his examination of you, fair?

A. It -- yes.

Q. Okay. Let's see, back in April of 2016, we see here, "Sales grade rationalization project."

Do you see that?

A. I do.

Q. And it says under here, let's just focus on, "Problem: Four companies came together to form 'One KapStone' but each their own system, grade, setup, processes and grade catalogs."

Correct?

A. Yes.

Q. Okay. I know you wanted to talk about "One KapStone," but I want to talk about the rest of this sentence.

A. Okay.

Q. It says, "The four companies each have their own system, grade, setup, processes, and grade catalogs." True?

A. Yes, it does say that.

Q. In April --

A. Well, I said that it came together, but each with their system, grade, setup, processes, and security catalogs, yes.

Q. And then it says, "Inconsistency in the process created confusion for our customer base internally, externally," on and on.

Do you see that?

A. Yes.

Q. Okay. And now it's saying, "We have got a project and here is the goals for the projects."

Do you see that?

A. Yes.

Q. So on April 2016, they're saying, "Here is our project, our goal moving forward is to develop a collaborative environment to manage sales grade areas across enterprise." Correct?

A. I see that.

Q. Okay. So this would say that moving forward from April 2016 that they're going to start to develop a more collaborative environment, correct?

A. A more collaborative environment with regard to kind of how grades are managed within, you know, the different mills, correct.

Q. Okay. And it says, "The objective that was going to start at least in the future beyond April" 2 -- excuse me, documents April 2016, we know that April 19th, 2016, we know if you have an objective and a goal, it takes time to actually implement, right?

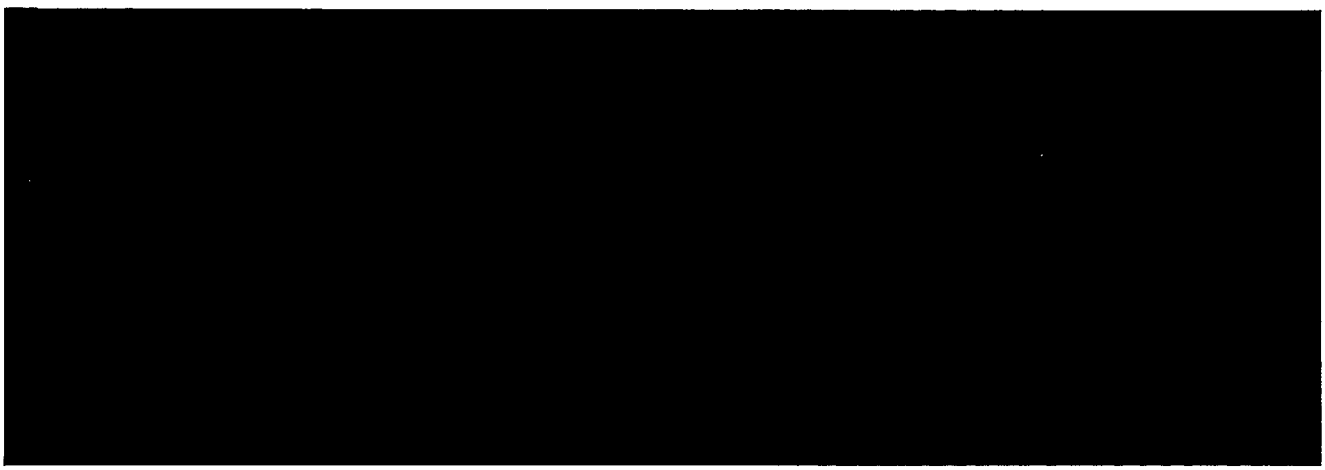
A. Exactly. Some can take a significant amount of time.

Q. Can take months, right?
A. Depends on how much work has been put into the process prior to it being kind of listed on presentation, yes.
Q. It can take years, right?
A. I -- you know, I have seen some things that have been on the drawing board and discussed for quite a time, yes.
Q. And just because you discuss something doesn't mean it's actually implemented, it takes a while, you got to make some changes to get there, right?
A. Well, I think it has to be -- you know, ideas are generated, they are discussed, you build alignment and understanding, and then you'll need to kind of seek approval, you know, for launching some kind of initiative; but yes, all of those things are obviously in the process of trying to figure that out.
Q. Right. And so in April -- late April of 2016, they're still in the process of trying to figure out how they're going to get the sales grade to generate an enterprise process and procedures for creation and retirement of sales grades.
Do you see that?

A. Yeah, that appears to be making a recommendation.
Q. So they're -- they're just now starting, "Hey, let's get this systems and the inconsistencies fixed and get more unified in late April 2016," correct?
A. With regard to that specific item, yes.
Q. You have no evidence to suggest this was actually implemented across the board less than 30 days later, correct?
MR. TARVER: Objection: Form.
THE WITNESS: I -- I guess. I don't know.
Q. (BY MR. FINDLEY) Okay. Because we know these things can take months, right?
A. I think processes -- some processes can probably be done very quickly and others can take long periods of time.
Q. Well, as far as this process, it is limited to sales grades, right?
A. That's correct.
Q. Okay. And it says, "The sale grade."
And the 'One KapStone' it's referring to is the grade setup process and grade catalogs that they're going to implement, correct?

A. Well, I think if I'm reading that document, I understand that they have different grades of products and that there may not be consistency across kind of grades of product that they produce, you know, including kind of how they're representing those grades to their different customers.
Q. It is not like the overall "One KapStone" that you see late October with the Deloitte project, correct?
MR. TARVER: Objection: Form.
THE WITNESS: Well, again, the Deloitte project didn't relate to overall KapStone, it relates to primarily the mill and container division based on what I have seen.
Q. (BY MR. FINDLEY) Okay. The Deloitte project --
A. Are you looking for this one, the first one or --
Q. Either one will work.
A. Okay.
Q. The Deloitte project covered core operations, engineering, technical, quality, safety, environment, sales, marketing, and scheduling, procurement, and transportation, support functions,

IT, finance, HR, and legal, correct, at least stuff they were looking at?
A. Specifically related to the bullet points listed in the left-column is how I would read this. And again, I -- not having much of an opportunity to review those documents, I saw at least a couple of references to the mill and the container division working more closely together.
Q. Got you. But the other document you were shown, Exhibit 24, dealt specifically with sale grades only, correct?
A. You know, again, I didn't read through the whole document, but that specific page was talking about the sales grades, which -- which I would understand to mean -- you know, may be related to the mill division, may be related to the container division.
Q. Got it.
A. So --
Q. Well, I was just pointing out to the -- at least the document that your attorney directed your attention to would have been the sales grade portion of it, correct?
A. Right. But again, if it's related to products, it would have been the mill division or the



container division.
Q. You don't know which, right?
A. If it's the mill or the container, no, I don't know which --
Q. Okay.
A. -- or both. I stand corrected.
Q. All right. And I think what you're saying is: You didn't have an opportunity to review those, they weren't something you listed or relied on, and so you're giving your opinions based on your review of them as they're handed to you, correct?
A. Yes.
Q. Okay.
A. Yeah, the same -- the same as the other documents that -- that you brought my attention to earlier.
Q. Right. But I guess what I'm saying is: What -- in order for you to give a full, accurate picture, you'd want to have time to study those documents, right?
A. Yes.
Q. Okay. Are you aware that there's over 1,200 documents that you have not reviewed?
MR. TARVER: Object to the form.
THE WITNESS: I am not aware --

Q. (BY MR. FINDLEY) Okay.
A. -- of the amount of documents that I have not reviewed.
Q. Would you -- well, I guess you don't know why, but in order to have a full picture, certainly you wanted to have the opportunity to look at the 1,200 pages of documents, correct?
MR. TARVER: Objection: Form.
THE WITNESS: I don't know how to answer that. I don't know what's contained in those documents.
Q. (BY MR. FINDLEY) Okay. Yeah.
MR. FINDLEY: And what -- why are you objecting?
MR. TARVER: Oh.
MR. FINDLEY: Is there a legal basis?
MR. TARVER: Yeah, yeah. I mean, you're just sort of pre-supposing that he wants to see these documents without him having any idea or foundation what the documents might be. You're just throwing it out there: There's 1,200 documents he hasn't seen. There's thousand of documents he hasn't seen, but he's seen a representative sample of documents that were deemed representative of the questions that you guys asked in discovery.

So we produced to him all the documents that we have produced to you up to the date when he issued his report. These documents were concurrent with production of his report.
Q. (BY MR. FINDLEY) Okay. So, sir, let me rephrase it. I don't know if that was a legal objection. It was more of a rant, but let me rephrase it for the legal or the objection, okay?
Are you -- documents that were produced in litigation were the documents that were important to you, correct?
A. I don't know how to answer that question.
Q. Well, I -- I was trying to clean up the objection.
A. So I'm assuming that the documents that were produced to me were the documents deemed kind of relevant to my review.
Q. Okay. And what I'm trying to figure out is: You would want -- in order to formulate a picture, you would want to look at the documents that were produced relevant to the requests in this discovery, correct?
A. If there are other documents that I would deem relevant to my review, I would want to

review them, yes.
Q. Okay. And there are 1,200 Bates-labeled documents produced in discovery that you have not reviewed.
Are you aware of that?
A. I am not aware of the amount of additional documents that have been produced.
Q. Okay. Let's go to Exhibit 31. And then I'll let you go. The -- I think this was the document we -- well, let me back up. We are after that page.
Page 14, which is Bates labeled 3475 of Exhibit Number 31, we have got, "Safety divided up by divisions."
Do you see that?
A. Yes, uh-huh.
Q. Okay. And all of these injuries listed below have them labeled by plant, correct?
A. By location, that's correct.
Q. And just looking at it -- well, there are in April -- well, these are all just for the months of April how many people were hurt, correct?
A. I don't know. I haven't looked at this page.
Q. Okay. Haven't seen it before, right?

A. Not that I recall.
Q. Here is the good news: Down in corporate in Chicago, not a single person hurt, right?
A. There are zero incidents listed --
Q. Right.
A. -- for that months, yes.
Q. And I assume that because they're not doing actual turning wrenches and operations, correct?
A. I don't know. I would assume that.
MR. FINDLEY: Okay. All right, sir. I appreciate your time. That's all the questions I have. I still reserve the right with related -- relative to the box proceedings in Exhibit 17.
MR. TARVER: Do you want to hang on to those?
MR. FINDLEY: Yeah, I want them to go with the court reporter and have her make -- well, I can --
MR. TARVER: Let's go off the record and figure out what to do, the most efficient way to do it.
MR. FINDLEY: Okay.
THE VIDEOGRAPHER: Are we done?

MR. TARVER: Yeah.
THE VIDEOGRAPHER: This will conclude the testimony of Todd Lester. The time is 7:32 p.m. We're off the record.
(Recess taken)
MR. FINDLEY: Here's what I usually do --
MR. TARVER: What do you want to do?
MR. FINDLEY: -- with these documents --
MR. TARVER: Do you want to take this with you?
How many pages are there?
MS. SELLERS: 460 approximately.
MR. FINDLEY: -- like this, what I would like them to do is -- do you have a -- does he -- anyway, thank you.
MS. SELLERS: I'm ready.
MR. FINDLEY: All right. Just for sake of when we look at this later, I have got e-mails in groupings --
Is this one that we have?
(Discussion off record)
MR. FINDLEY: Exhibit Number -- do you know? We quit keeping track.

THE COURT REPORTER: No, they have been keeping track. Sorry.
MR. FINDLEY: Ah. Exhibit Number 32 is e-mails that we have received in connection with the communication.
(Exhibit 32 marked)
MR. FINDLEY: And it is a grouping, based on the staples, of September 4th, 2018 is one; May 1st, 2019 is one; and July 19th, 2018 is one.
And I'm including all of them as Exhibit 32. Okay?
THE COURT REPORTER: Done.
MR. FINDLEY: Is that right?
MR. TARVER: I'm sorry, I wasn't listening to you.
MR. FINDLEY: Yeah. Okay.
So Exhibit 32 is September 4, 2018, it contains another grouping of May 1st, 2019, and another grouping of July 19th, 2018, which I understand to be the correspondence he's produced in connection with this subpoena.
MR. TARVER: Yeah, if you want to bind them together.
MR. FINDLEY: Yeah, that's what I am going to do.

THE COURT REPORTER: Done?
MR. FINDLEY: Yes.
(Proceedings concluded at 7:35 p.m.)

CHANGES AND SIGNATURE

PAGE LINE CHANGE REASON

Job No. HOU3510372

I declare under penalty of perjury that the foregoing is true and correct.

MR. TODD K. LESTER

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, by the witness, MR. TODD K. LESTER, on this the _____ day of _____, 2019.

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

STATE OF TEXAS

COUNTY OF HARRIS

REPORTER'S CERTIFICATE

ORAL VIDEOTAPED DEPOSITION OF

MR. TODD K. LESTER

September 5, 2019

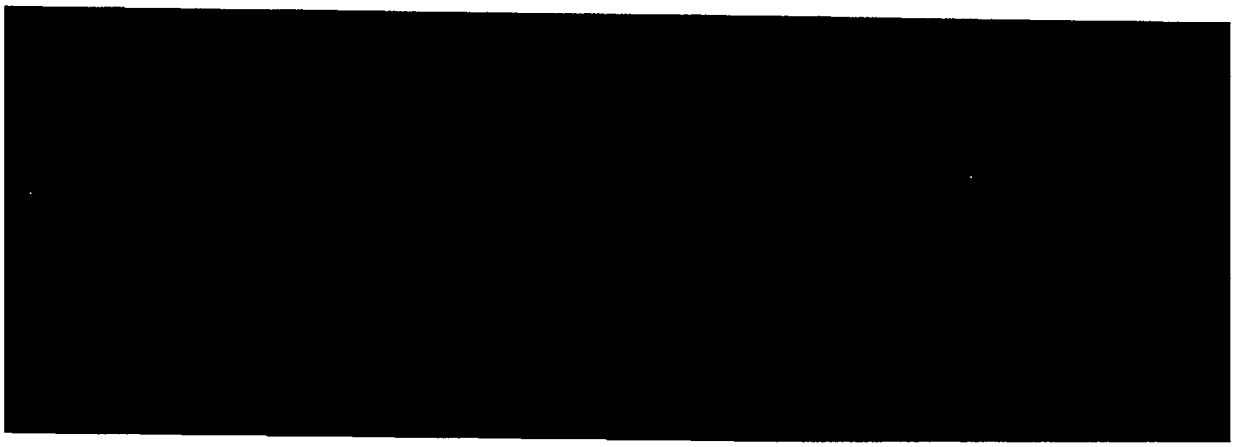
I, Michelle Hartman, the undersigned Certified Shorthand Reporter in and for the State of Texas and Registered Professional Reporter, certify that the facts stated in the foregoing pages are true and correct.

I further certify that I am neither attorney or counsel for, related to, nor employed by any parties to the action in which this testimony is taken and, further, that I am not a relative or employee of any counsel employed by the parties hereto or financially interested in the action.

That the deposition transcript was duly submitted on _____ to the witness or to the attorney for the witness for examination, signature, and returned to me by _____.

SUBSCRIBED AND SWORN TO under my hand and seal of office on this 10th day of September, 2019.

Michelle Hartman, CSR, RPR
Texas CSR 7093
Expiration: 12/31/19
Veritext Legal Solutions
Firm Registration No. 571
300 Throckmorton, Suite 1600
Ft. Worth, Texas 76102
817-336-3042



derek.tarver@bowmanandbrooke.com

September 10, 2019

RE: Jacque Lucas, Et Al v. Kapstone Paper And Packaging Corporation, Et Al

DEPOSITION OF: Todd K. Lester (# 3510372)

The above-referenced witness transcript is available for read and sign.

Within the applicable timeframe, the witness should read the testimony to verify its accuracy. If there are any changes, the witness should note those on the attached Errata Sheet.

The witness should sign and notarize the attached Errata pages and return to Veritext at errata-tx@veritext.com.

According to applicable rules or agreements, if the witness fails to do so within the time allotted, a certified copy of the transcript may be used as if signed.

Yours,

Veritext Legal Solutions

cc: All counsel

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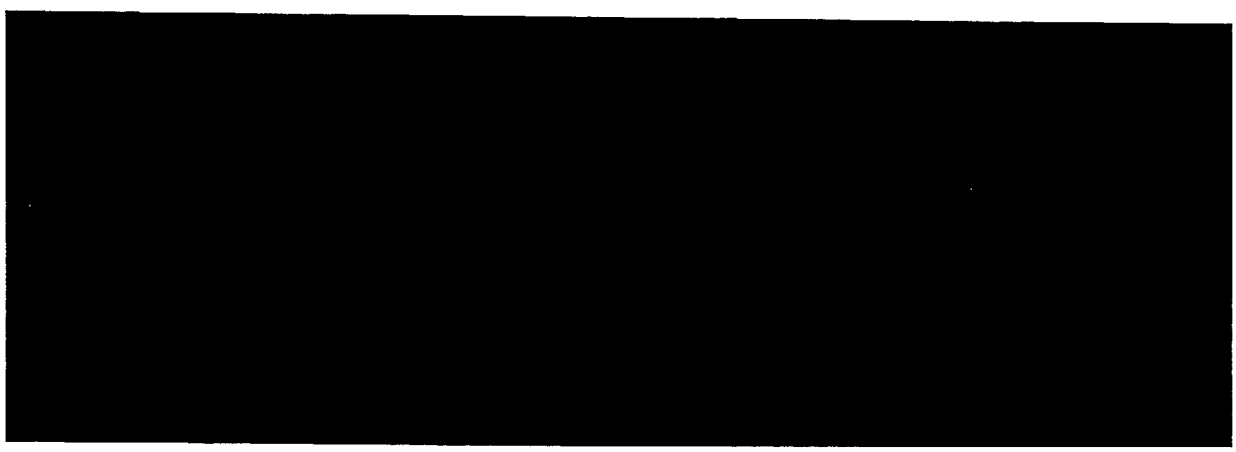
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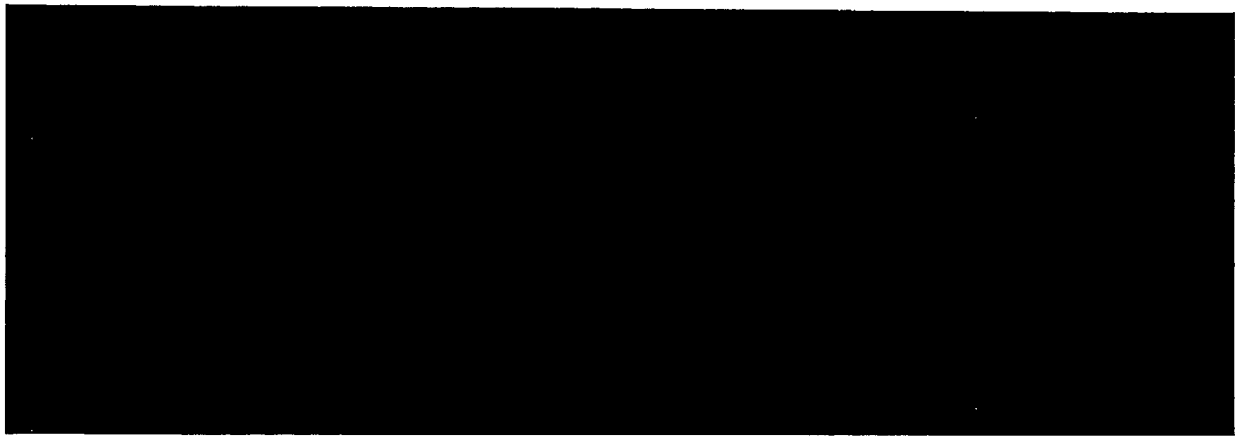
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EXHIBIT "R"

CONFIDENTIAL



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.	)	
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*.	)	**Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation's Supplemental Brief in Support of Their Rule 12(b)(1) Motion to Dismiss**

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JULIE J. ARMSTRONG
CLERK OF COURT

Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation (collectively, the "KapStone Defendants"), by and through their undersigned counsel, hereby submit for the Court's consideration the attached deposition excerpts in support of their pending Rule 12(b)(1) motion to dismiss. See **Exhibit A**, Excerpts from the Deposition of Todd Lester (Sept. 5, 2019); **Exhibit B**, Excerpts from the Deposition of Kelly Hulseman, Rule 30(b)(6) designee on behalf of the KapStone Defendants (Mar. 6, 2018); and **Exhibit C**, Excerpts from the Deposition of Mark Niehus, Rule 30(b)(6) designee on behalf of the KapStone Defendants (Jan. 8, 2019).

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Columbia, South Carolina

September 18, 2019

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

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CLERK OF COURT

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 and E-Mail, the following:

Pleadings: Defendants KapStone Paper and Packaging Corporation and KapStone Kraft Paper Corporation's Supplemental Brief in Support of Their Rule 12(b)(1) Motion to Dismiss

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Kim Rothrock
Legal Secretary

September 19, 2019
Columbia, South Carolina

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,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	C/A NO.: 2017-CP-10-838
	§	
KAPSTONE PAPER AND	§	
PACKAGING CORPORATION,	§	
KAPSTONE KRAFT PAPER	§	
CORPORATION, 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,	§	
	§	
Defendants	§	

ORAL VIDEOTAPED DEPOSITION

MR. TODD K. LESTER

September 5, 2019

ORAL VIDEOTAPED DEPOSITION OF MR. TODD K. LESTER, produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above-styled and numbered cause on the 5th day of September, 2019 from 9:41 a.m. to 7:35 p.m., before Michelle Hartman, Certified Shorthand Reporter in and for the State of Texas and Registered Professional Reporter, reported by computerized stenotype machine at the offices of Arnold & Itkin LLP, 6009 Memorial Drive, Houston, Texas, 77007, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

business, naming a case for me, you can name this one and you can't recall another, fair?

A. I said I don't recall how many have had this objective. But to the extent you're asking how many chases have I had where this was the sole objective?

Q. Yeah.

A. Then I would argue -- then I would say that this is likely the only case that's had this focused of objective.

Q. Okay. Fair enough. And I've got another question for you on -- let's see here -- well, you say in your affidavit -- and I don't know what -- I think it's page two and three, paragraph eight.

Are you there?

A. Yes.

Q. Okay. You say that you were retained to evaluate economic substance.

Do you see that?

A. Yes, I do.

Q. Okay. What is your definition of "economic substance"?

A. Well, economics deals primarily with the flow of goods and services.

Q. Well --

A. And specifically when you're dealing with a company, kind of the business that the company's in, from the purchase of inputs and raw materials to the processing of those materials and production of output. So when you're looking at the economic relationship, you're typically looking at the substance of that relationship relative to, you know, what the form of the transaction may be.

(Discussion off record)

Q. (BY MR. FINDLEY) Let me do it this way: Here is page two of your affidavit, okay?

A. Okay.

Q. You say you were "hired to do consulting and litigation support services," but you say, "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, the KapStone entities."

Let's stop there, okay?

A. Okay.

Q. What is your definition of "economic substance" in the context of this sentence?

A. Economic reality.

Q. Okay. And what does "economic reality" mean?

A. That means what is the true nature of the relationship between the parties relative to or in comparison to how that relationship may be represented in its form or represented to others.

Q. So it would be the economic reality of how that relationship is on an economic level relative to how it is represented to others.

Is that fair?

A. Well, represented to others or the actual structure of the transaction of the relationship itself.

Q. Okay. So I want to make sure as we move forward we're using the same terms.

So economic substance in this context, your definition would be the economic relationship of the parties with how it's shown or represented to others is one part, correct?

A. What is the true nature of the relationship or if you're talking about a transaction, the true nature of the transaction.

Q. Okay. So listen to my question, okay? Because you're saying a lot of words and I want to make sure we're very specific so the Judge can

understand what we're talking about.

Economic substance in the context of this sentence for this litigation, part of the definition that you gave me was the economic relationship of the parties and how it's represented to others is one part, and the other part is what you characterized the true nature of the relationship?

A. Well, I think -- and I think those are all kind of relevant definitions, meaning, you know, economic substance, what is the true kind of the economic reality of the relationship between the parties.

Q. Okay. Sir, I'm just -- I'm just asking for a -- a definition.

And so economic substance, what you've said is now three different things, okay? You said true nature of the parties, you said the economic reality, you said economic relationship internally. So all I'm looking for is a definition, okay? So --

A. Yeah, and I don't think that was characterizing my testimony correctly. But -- but economic substance of the relationship deals with what is the economic reality of the relationship as opposed to the legal form or structure of that transaction or relationship.

economic reality?

A. Now, it's a -- and I have given you my definition.

Q. What is it?

A. Okay. Economic reality is what is the economic reality as opposed to the legal structure or legal term of a relationship. Economic reality deals with how the -- the true financial and economic transactions or relationship between the parties are -- you know, what the true nature of those relationships are.

Q. Okay. So the true financial relationships of those parties, correct?

A. Financial and economic relationship, true.

Q. And when you say "true financial and economic relationships of the parties", you're saying what -- how their income is derived or what?

A. Well, I think, you know, the economic substance question is a fundamental, you know, accounting principle, which is to accurately record and define the relationships between parties at an economic level. Okay?

Regardless of whether it's a -- regardless of how it may be structured from a legal

perspective or regardless of how complex it may be, you know, the focus of preparing financial statements and presenting financial information is intended to be at the level of the -- kind of the -- kind of the economically reality of that transactional relationship.

Q. Okay. And I keep asking you a definition of economic substance and economic reality and you keep giving me a definition that includes the word I'm asking you for the definition of.

So what does "economic reality" mean?

A. Economic --

Q. You said it is a fundamental word in accounting. Most fundamental words in accounting have a definition. What is yours?

A. Economic -- economic -- you can use economic substance of a transaction. Economic reality of the transaction is the actual kind of relationship between the parties on a financial and economic standpoint, a business standpoint, okay?

So what is the nature of the transaction and what is the nature of the relationship?

Q. Okay. Did you speak with anyone at KapStone?

A. What's that?

Q. Give me an example.

A. Corporate identity.

Q. Okay. Meaning what their filing states?

A. No. Corporate identity is more than just what their filing states, but the brand of the company, the name, the logo, how that -- how that corporate identity is established by the company, as well as the -- you know, the company that has, you know, alleged to have stolen that identify, stolen their trademarks, stolen their image and so forth.

So all the factors that go into kind of the -- the corporate entity -- the corporate entity of two -- or a couple of different entities and the economic value that the company derives from that.

Q. Right. The other one you said is dealing with a trademark infringement, correct?

A. This is the same case. So it's dealing with trademark and it's theft of trade secrets, trademark infringement, and unfair competition.

Q. Right. But you understand there is no trademark infringement allegations made in this case or unfair competition, correct?

Q. Okay. And she testified that prior to January of 2017, at KapStone Paper and Packaging Corporation, there was no shared services department.

She says "Correct." Do you agree with that?

A. Not based on what I have seen.

Q. Okay. So you disagree with the person who works there who is the actual vice president of shared services; is that correct?

A. I -- if you're -- let me think about the question, you know, whether a shared services department existed prior to that time as opposed to a function. I don't -- you know, the other terminology, I'm not sure. So --

Q. Well, I understand. I mean, you didn't read her deposition, right? We've already established that.

All I'm saying is: If she testified that there was no shared services department prior to January 2017, are you saying she was being untruthful?

A. No. I'm just saying that I think shared services clearly predated that point, whether there was an actual department or what she would define as a department -- department, I don't know.

Q. Okay. When you say shared services predated that point, are you saying it was implemented?

A. I said shared services -- you know, shared services were being provided by KapStone Paper, you know, prior to January 2017.

Q. To who?

A. To KapStone Kraft, KapStone Charleston and the other plants.

Q. What shared services?

A. Shared services in relation to the financial and accounting function of the business, the HR function, the IT function.

Q. Okay. So I want to write down what you think was existed before.

HR function, what else?

A. Financial and accounting function --

Q. Okay.

A. -- IT function, you know, essentially governance and management, executive management.

Q. Let's talk about HR. Have you spoken to anyone from HR?

A. I have not.

Q. Okay. Have you -- you didn't read Kelly Husleman's deposition testimony as to how HR

employees located its facility, yes.

Q. At Charleston?

A. Yes.

Q. Okay. Can you identify for me -- identify for me any KapStone Paper and Packaging Corporation employee that works in Charleston at the time of this incident?

A. I think, based on the analysis in -- in relation to some of my exhibits identified, I believe there were some KapStone Paper employees that were working in Charleston; but I can't recall whether it was KapStone Paper or KapStone Kraft or, you know, a KapStone Kraft employee.

Q. All right, sir. Look at your report. That's what I'm here for.

A. Thank you.

(Discussion off record)

MR. FINDLEY: That's what he was looking at.

THE WITNESS: So based on my report, Exhibit -- Exhibit 3 to my report identified 22 -- approximately 22 employees that were working in Charleston that were reporting to KapStone Corporate or KapStone Paper.

Q. (BY MR. FINDLEY) Which one, KapStone

Corporate?

A. Yes, KapStone Corporate or KapStone -- you know, you know, what I have been using interchangeably as KapStone Paper.

Q. KapStone Paper, so we're clear, is corporate?

A. Yes.

Q. So 22 employees that reported to KapStone Paper that you've identified, correct?

A. Yes.

Q. And all of those employees were in the IT department?

A. One of the employees was in internal audit department.

Q. Okay. So of the 22 that reported to corporate, all of them were IT individuals except one internal auditor, correct?

A. Yes.

Q. There is no one listed there that's involved in operations, correct?

A. That are not reporting to corporate --

Q. Right.

A. -- so the operations would be reporting to mill headquarters.

Q. What?

A. There are 36 individuals at KapStone Charleston that are reporting to mill headquarters, which would have been more the operational function of -- of the mill.

MR. FINDLEY: Objection: Nonresponsive.

Q. (BY MR. FINDLEY) You're not listening to my question.

There are 22 individuals that you said reported to KapStone Paper and Packaging Corporation in Chicago, correct?

A. Yes.

Q. None of those individuals are involved in operations?

A. How -- how do you define "operations"?

Q. Okay. Do they do anything at the mill?

A. Well, in providing the shared services function of IT related and they're supporting mill system operations.

Q. What -- what's this mill do?

A. It manufactures paper and packaging materials.

Q. Okay. And KapStone Paper and Packaging Corporation does not manage paper and packaging materials, correct?

A. It does not yet manufacture.

Q. It's not in the business --

A. It doesn't have any manufacturing operations.

Q. Right. It's not in the same business of manufacturing paper and packaging materials, fair?

A. KapStone Paper does not have independent manufacturing operations underneath the KapStone Paper --

Q. Okay.

A. -- identity.

Q. And so when I'm talking about operations, I'm talking about making the paper and packaging materials.

A. Okay.

Q. None of the individuals you identified that work for or report to KapStone Paper and Packaging Corporation are involved in the operational process of making or constructing -- constructing paper and packaging materials, correct?

A. Based on what I am reviewing here, I would say that yes, all of the employees are either financial or other service-related employees located at Charleston. They were reporting to the corporate headquarters, i.e. in -- in North Brooke.

Q. Okay. Hold on. You keep adding words in here and so let's just be clear.

The 22 individuals you identified that report to KapStone Paper and Packaging Corporation, 21 of them are listed as IT, and one is an internal auditor, true?

A. That's true.

Q. Okay. When I -- the 21 people involved in IT and the one person who's an internal auditor, by their description, would not be involved in the manufacturing or construction operations related to paper and packaging materials, correct?

A. That's correct, except to the extent that they're providing an overall support --

Q. Okay.

A. -- to the operations.

Q. And did you talk to them about what support?

A. No, I didn't.

Q. Okay. All you have is a document that says next to it "IT," right?

A. And I -- it says "IT," says "mill system operations," it says "IT support, IT business intelligence, IPELP," so yes.

(Discussion off record)

Rapids from my understanding, yes.

Q. And Chicago, which I think does -- well, they don't do paper and -- paper and packaging manufacturing, correct?

A. Right. Right. The manufacturing operations for the mills are assigned to the four mills, from my understanding, and then corporate provides, you know, the shared services, the corporate overhead, the management and ongoing kind of support to those operations.

Q. Right. According to your review, that would be the -- where the centralized, if you recall, area is in Chicago?

A. Well, the -- I guess the corporate headquarters, you know, in Chicago; and I guess I'm -- I'm not understanding your centralized.

But -- but the -- you know, the centralized shared services, you know, role or support is located in North Brooke, but also in relation to some of these different entities, you know, and here we have the IT and internal audit function. You know, at least some of that located in -- in Charleston, you know, as well as KapStone Kraft.

Q. And just so I'm clear -- well, do you

Q. (BY MR. FINDLEY) All right, sir. We took a short break. Are you ready to continue?

A. Yes.

Q. One of the things that you relied on is the tax returns, correct?

A. Yes.

Q. And one of the things you stated about tax returns were that one of -- I know you said many things, but one of the things you looked at was whether they filed consolidated tax returns, correct?

A. That's correct.

Q. You would agree with me that many, many parent companies file consolidated tax returns?

A. Yes.

Q. You would agree with me it is the norm, not the exception?

A. Well, if -- if it meets the requirements for filing consolidated tax returns, yes.

Q. Okay. And what are the requirements for filing consolidated tax returns?

A. It's 80 percent control of voting power value of the company.

Q. Okay. Are there any other requirements?

A. I'm sure there are some other requirements but those are the main ones.

Q. All right. You would agree with me that just because a company filed a -- a parent company files a consolidated tax return does not mean that they are financially integrated?

A. Well, I think from a -- you know, the IRS's perspective, they view it as one economic entity or one economic group.

Q. Okay. I understand that the IRS would look at it as one tax return, okay? That's not what I'm asking you.

I'm saying financial -- because just because someone files a consolidated tax return does not mean to that the economic reality is that they are not financially integrated, yes? Correct?

A. It is one thing to look at, yes.

Q. So what I'm saying is true?

A. No. I wouldn't say in and of itself it says that, but it's one of the facts, one of the pieces of evidence to review.

Q. I understand it's one of the pieces of evidence to review, but I just want to be very clear for the record that if a parent company files a consolidated tax return, that in and of itself does

(Discussion off record)

Q. (BY MR. FINDLEY) How -- one of the things that you look to with economic integration -- or -- or looking at was how companies hold themselves out to others, correct?

A. Correct.

Q. Okay. And you believe that the company holds itself as -- to others as one large KapStone, correct?

A. That's true.

Q. Okay. Wouldn't how they enter into contracts be important?

A. That's part of it, yes.

Q. Wouldn't how they enter into lease agreements important (sic)?

A. That's part of it, yes.

Q. Wouldn't how they enter into lending agreements with financial institutions important (sic)?

A. Also part of it, yes.

Q. Okay. Did you review the lease agreements for KapStone Charleston Kraft LLC and how they reported themselves?

A. I think I reviewed some examples of lease agreements.

Q. Which ones?

A. I don't recall as I'm sitting here.

Q. Okay.

(Exhibit 13 marked)

Q. (BY MR. FINDLEY) Let's look at Exhibit 13.

A. Okay.

Q. Have you seen this document before?

A. I don't recall whether I've seen this document or not.

Q. Well, I will represent to you it's not a document that's on your list. Do you have anything to suggest otherwise?

A. Not just from my kind of cursory review of it.

Q. Okay. And let's look at it.

This is an equipment lease agreement. Do you see that?

A. I do.

Q. And it's entered into between two parties, right?

A. KapStone Charleston Kraft and G&W Equipment, Inc., yes.

Q. Okay. G&W Equipment, Inc., KapStone Charleston Kraft LLC, Charleston, South Carolina.

Do you see that?

A. Charles -- yes.

Q. Okay. It's not entered into by KapStone Paper Packaging Corporation of Chicago, correct?

A. That's not the company name that the lease is under, you're correct.

Q. Okay. And you don't recall ever seeing these documents when you gave your opinion, correct?

A. That's what I testified to, is I don't recall as I'm sitting here, you know, whether I've seen this document or not.

Q. Well, we could look to your list, and I don't see it there.

You don't have any independent recollection of reviewing this, correct?

A. No, not as I'm sitting here.

Q. Okay. And here in what I'm looking at on Exhibit 13 is Eric Choltco, director of strategic sourcing KapStone Charleston Kraft LLC, correct?

A. That's correct.

Q. And that was entered into April of 2016?

A. That's the date on it, yes.

Q. And he's holding himself out in an

equipment lease agreement as KapStone Charleston Kraft LLC in Charleston, South Carolina, correct?

A. Well, I think he's signing on behalf of KapStone Charleston Kraft LLC.

Q. Okay. Are you aware that he's employed by KapStone Charleston Kraft LLC?

A. I don't recall Mr. Choltco being employed by KapStone Charleston. I thought it was KapStone Kraft.

Q. Okay. Well, at least he's holding himself out as KapStone Charleston Kraft LLC's signature, correct?

A. Well, I think he's -- he's signing on behalf of KapStone Charleston Kraft.

Q. Well, sir, to be fair, you hadn't seen the document before I showed it to you, right?

A. Well, you're asking me, Counsel, to review a document I haven't seen before.

Q. Right.

A. You're asking me about his signature, and you're asking me if he's holding himself out to be a KapStone Charleston employee. And I said, no, he's holding himself out to be somebody who has a signature authority to sign on behalf of KapStone Charleston.

MR. FINDLEY: Objection: Nonresponsive.

Q. (BY MR. FINDLEY) No. What I asked you was: You have not seen this document before I showed it to you in your deposition on September 5th, 2019, correct?

A. And I've answered -- I believe I've answered that several times that I don't recall seeing this document.

Q. All right. Can't any companies file consolidated tax returns?

There's only two ways, two restrictions on filing consolidated tax returns, correct?

A. I -- yeah, I don't recall.

Q. Do you know what those are as we sit here today?

A. Well, I think one of the restrictions is a requirement to file consolidated tax returns if you own a certain percentage of the -- kind of controlling -- or controlling shares of the company, so -- and/or if you have control over the board.

Q. Okay.

(Discussion off record)

Q. (BY MR. FINDLEY) Okay.

Q. Right. I guess what I'm saying is: This isn't sort some sort of black letter economic, this is the only thing you considered and nothing else, correct?

A. No, no.

Q. What I'm saying is true?

A. What you're saying is true.

Q. On page four and five, section six, the third bullet point, you say that KapStone Charleston operated -- well, you state, "The three different entity -- entities operated with a high degree of financial and economic integration among the three entities."

Did you see that?

A. Yes.

Q. Okay. What -- on a spectrum, what qualities indicate a low degree of financial and economic integration compared to a high degree?

A. Well, I think my -- you know, my report goes through and addresses, you know, all of the factors that I have reviewed and what I observed in relation to those factors.

I think certainly a question would be, you know, if we start at the top or if we start at the governance and the responsibilities of the board,

the fact that there was a common board, you know, among the entities, the fact that a common executive management among the entities, the fact that it was a common kind of operational management from the mill system, mill headquarters with regard to KapStone Kraft and KapStone Charleston, the fact that there was a, you know, integrated financial and tax reporting and kind of how the company was represented in its public filings with the SEC, and, you know, information related to its corporate identity, you know, the fact that it was all 'One KapStone' name, and then it used the name KapStone mark, the same KapStone color, you know, with regard to the three entities. So I think those are some of the factors.

But kind of throughout my report I talk about those, those factors as all leading to a high degree of financial and economic integration. If you start taking some of those factors away, obviously there is -- you know, there is going to be a scale, you know, in there somewhere, you know, in terms of whether or not it's a high or, you know, not a high degree of financial and economic integration.

Q. And that's what I'm talking about is you said on a spectrum -- if I asked you a question, "On a spectrum, what qualities indicate a low degree

of financial and economic integration," you're saying if what you just stated, all of those weren't met?

A. Well, I would say, if any -- certainly if all of those weren't met, you know, if all of the things weren't -- weren't met that we have talked about, where I have talked about in my report, if there were separate boards and separate boards directing the companies to do different things, if there were separate management, if there was not financial consolidation, you know, the enterprises, if there wasn't a -- a common kind of financing or the provision of financing for the combined entities, you know, if they were all separately kind of secure in their own debtors or capital, you know, to run their businesses, I mean, all -- all of those things would have some -- some im -- impact on kind of that opinion.

Q. Okay. So let's talk about some of those, okay? Separate management at the different entities, you're aware that there is separate management at Charleston and Roanoke?

A. There is, and I have referred to executive management. So there is not -- the executive managers are the same.

Q. You're talking about the board?

A. No, I'm talking about executive management.

Q. Who?

A. President, vice president, CEO, CFO, COO -- you know, chief operating officer and --

Q. You're saying KapStone Charleston Kraft LLC has a CEO for KapStone Charleston Kraft LLC?

A. All of the management, the executive officers for KapStone are the same executive officers for those entities. They oversee their subsidiaries.

Q. Okay.

A. There is not a separate COO, CEO, per se, for KapStone Charleston and KapStone Kraft.

Q. Well, most corporations -- or, excuse me, most LLCs don't have CEOs, correct?

A. Correct, correct, they have a sole member. But they can have officers, but they are typically managed in this case by -- by a single member or a member.

Q. Corporations are set up differently than LLCs, true?

A. True.

Q. Corporations require things like board of directors, right?

times when -- when eligibility -- you know, there is a certain time associated with eligi -- eligibility. I would think the same for the 401(k) plan. The defined benefit and retirement plan, I'm -- I'm not sure of.

Q. Okay. What I'm getting -- trying to figure out is: When you say, "Employees of KapStone-related entities shared the benefit plans from the same common provider," does that "employees" include executives in KapStone?

A. That would include employees of KapStone Paper, KapStone Kraft, and KapStone Charleston.

Q. Would that include executives?

A. I don't know if there were other plans that the executives had access to or not.

Q. So you don't know if it would include executives, correct?

A. I don't know, you know, if it was inclusive or if executives had other kind of related plans.

Q. Okay. We already said you talked about you did not interview KapStone management in the course of your work, correct?

A. That's correct.

exhibit stickers from here. I'm going to pass them along.

MR. TARVER: Thank you, ma'am.

MR. FINDLEY: Can I get these?

MR. TARVER: Thank you.

Q. (BY MR. TARVER) I am going to show you --

MR. FINDLEY: These are extra copies I gave to you.

THE WITNESS: Those are the extra copies you gave me, yes.

Q. (BY MR. TARVER) I am going to show you what I am marking as Exhibit 18.

(Exhibit 18 marked)

Q. (BY MR. TARVER) This is one of several documents produced at or around or after May 30th. I apologize that we didn't get these to you before.

As Mr. Findley pointed out, these were produced a little bit later and you haven't reviewed these.

MR. FINDLEY: What is the Bates label?

MR. TARVER: Sure, this is Bates label KapStone 3436.

Q. (BY MR. TARVER) Take your time to review this. And then could you tell us what this

document is?

A. This title describes it as an "Equipment Schedule dated January 23rd, 2015, relative to a Master Lease Agreement dated August 12th, 2008, between KapStone Paper and Packaging Corporation and MHD Financial Services, Inc."

Q. Can you tell us the equipment that was being leased under this lease agreement?

A. The equipment that's listed on the lease agreement, which relates to a new forklift and new attachments associated with that.

Q. And can you tell us according to this lease the location at which this equipment would be located?

MR. FINDLEY: Object to the form.

Q. (BY MR. TARVER) I'll rephrase.

According to this lease, where is the equipment subject to the lease schedule to be located?

A. The equipment immediately listed above is located at 5600 Virginia Avenue Charleston -- Charleston County, South Carolina.

Q. And which KapStone entity was located at 5600 Virginia Avenue, Charleston, South Carolina?

A. The Charleston mill, which is part of KapStone Charleston.

Q. And can you tell us who was the signatory on behalf of KapStone Paper?

A. The signatory is -- on behalf of KapStone Paper and Packaging is Eric Choltco.

Q. Okay. Thank you. Hang on to that for just a second. I am going to show you another document.

MR. FINDLEY: Before you move on, do y'all know if I marked the e-mail correspondence?

MR. TARVER: You did.

MR. FINDLEY: I did?

MR. TARVER: I think you did. You had a couple of copies floating around.

MR. FINDLEY: Sorry to interrupt, go ahead.

MR. TARVER: You're okay.

THE WITNESS: And I still have my report that you marked.

MR. FINDLEY: Report, all right.

Q. (BY MR. TARVER) I am going to show you another document. I am going to mark this as Exhibit 19. This is KapStone 3397.

(Exhibit 19 marked)

Q. (BY MR. TARVER) Take your time to review this, please.

MR. FINDLEY: 3397?

MR. TARVER: Yes, sir.

Q. (BY MR. TARVER) Can you tell us what this document is?

A. Yes, this appears to be a similar document, "Equipment Schedule," dated -- this one's dated December 30th, 2014 to the same master lease agreement dated August 12th, 2008 between the lessor, MMHG Financial Services, Inc., and KapStone Paper and Packaging Corporation.

Q. And can you tell us the equipment that is being leased under this agreement?

A. It looks to be three new forklifts and new attachments.

Q. And what is the equipment that's scheduled to be -- oh, I'm sorry.

Where is the address that this equipment is scheduled to be stored?

A. The document states, "Equipment immediately listed above is located at 5600 Virginia Avenue, Charleston, Charleston County, South Carolina."

Q. And who is the signatory on behalf of

KapStone Paper and Packaging Corporation on the lease?

A. The signatory is similar, again, on behalf of KapStone Paper is Eric J. Choltco, C-H-O-L-T-C-O.

Q. So I am going to show you a couple of other documents that Mr. Findley has shown you.

MR. FINDLEY: Can I see those that you just talked about?

Are you done with those, for now?

MR. TARVER: Can you hold on for those just one second?

MR. FINDLEY: Sure.

Q. (BY MR. TARVER) This is Exhibit 13 and 14.

A. Okay.

Q. Can you tell us who the signatory is on these two leases?

A. On Exhibit 13, the signatory, again, is Eric Choltco for KapStone Charleston Craft and International. Exhibit 14 is not signed.

Q. Now, from the perspective of a financial analyst and a consulting position as yours, what does it mean, in your opinion, that Eric Choltco is signing lease agreements for equipment on behalf

of KapStone Paper and KapStone Charleston to be located at the Charleston mill?

MR. FINDLEY: And I'm going to object to form. And I'm also going to object to these documents were not relied on in formulating the basis of an opinion, and outside the scope of his report.

THE WITNESS: The fact that these documents are signed by Mr. Choitco says to me that he had that delegated authority from KapStone Paper to sign these equipment leases on behalf of either KapStone Paper and/or KapStone Charleston.

MR. FINDLEY: If you need that.

MR. TARVER: Oh, thank you.

Q. (BY MR. TARVER) Thank you. All right. We are done with those if you would like to pass those over to Mr. Findley to review.

A. Let me get these somewhat organized here. (Complies).

Q. So I would like to move on now to payroll. Can you explain to us how a centralized payment system works with ADP?

MR. FINDLEY: Object to the form.

THE WITNESS: Yes. In a centralized payroll system, there are kind of third-party service providers that provide payroll functions to

companies. Essentially the company, as in KapStone Paper, would provide all the relevant -- relevant information regarding its employees that were subject to the payroll kind of services.

The -- they would provide them kind of information relative -- or to the -- kind of their compensation rates and so forth, but also likely on a periodic basis provide them with information as to minimum numbers of hours worked for those hours that may be -- excuse me, for those employees that may be hourly.

And in turn, the payroll processing company would -- would provide the amount of money that was required to fund payroll for that particular period to the company as a kick. KapStone Paper, who would then provide that money to them and then the payments to -- for the payroll would -- to the employees would be made kind of from the third-party payroll provider.

(Exhibit 20 marked)

Q. (BY MR. TARVER) Okay. Thank you. So I want to talk a little bit about KapStone's employee payroll. I'm going to show you a few documents. This one is marked as Exhibit 20. It's labeled KapStone 000439.

Are you familiar with this document?

A. Yes.

(Exhibit 21 marked)

MR. FINDLEY: Oh, what was that number?

MR. TARVER: 21.

MR. FINDLEY: Here it is. I was trying to give you the numbers.

MR. WILLIS: Thank you.

MR. FINDLEY: What is the Bates on that one?

MR. TARVER: 439.

Q. (BY MR. TARVER) Can you tell us what this document is?

A. Oh, yes, this is a -- an employee direct deposit enrollment form from ADP and specifically with regards to -- or one executed and signed by Mr. Simerly on October 16th, 2012.

Q. Great. Thank you.

I am going to show you another document. This one is marked as Exhibit 21. It is labeled KapStone 335.

Are you familiar with this document?

A. Yes.

Q. Can you tell us what it is, please?

A. Yes, this is a bank record for KapStone Paper and Packaging Corporation from Bank of America and Merrill Lynch providing a listing of various transactions.

Q. All right. Let me show you another document. This one is marked Exhibit 22. Its Bates range is KapStone-2510.

Are you familiar with this document?

A. Yes, the document providing the ADP pay groups relevant to the various companies listed on here: KapStone Paper, KapStone Container, KapStone Charleston and KapStone Craft.

(Exhibit 23 marked)

Q. (BY MR. TARVER) Okay. Let me show you another document. This is marked Exhibit 23. It is KapStone 718.

Are you familiar with this document?

A. Yes, this is the 2016 W-2, an earnings summary provided by ADP for Mr. Lucas.

Q. Thank you.

When viewed collectively, what do these documents tell you about how KapStone employees received paychecks?

MR. FINDLEY: Object to the form.

THE WITNESS: Well, this tells me that

KapStone employees, and specifically Mr. Simerly to Mr. Lucas here, received their checks from ADP following the process that I described, which is where ADP would be provided with relevant information, and in exchange, KapStone Paper would provide the funding necessary for ADP to make those payments.

Q. (BY MR. TARVER) Let's talk about management where were -- what was KapStone Paper's headquarters location?

A. It is the Skokie, Illinois. Or the Skokie, Illinois, or the Skokie address, 1101 Skokie and kind of Chicago, Illinois or North Brooke specifically.

Q. And were was KapStone Craft's Corporate headquarters?

A. The same place.

Q. And KapStone Charleston?

A. The same place.

Q. What employees of KapStone Charleston and Kraft Paper were located at the 1101 Skokie Boulevard address where all three held their corporate headquarters?

MR. FINDLEY: Object to the form.

THE WITNESS: Which employees?

Q. (BY MR. TARVER) (Nods.)

A. So they -- the employees in, you know, including, you know, the executive officers, my understanding as well as, you know, many of the employees that were providing, you know, what we have talked about as shared services, you know, a large numbers of the employees in the HR group, some of them not in the A IT group, a lot of them in the financial accounting function, the legal function, internal audit.

Those are the ones I recall. And I think if there is -- this is included, in part, of -- well, one of the exhibits to my report.

So I think my exhibit -- Exhibit 5 to my report lists KapStone employees that were providing these certain shared services, you know, that I would -- you know, described here as sort of, you know, accounts payable, the CEO function, and the corporate controllership function, credit collection function, human resources function, internal audit, business intelligence, enterprise applications, part of the IT ERP, part of the IT, IT infrastructure, IT integration architecture, IT mill system operations, IT PMO, which I'm assuming is the management office or IT -- again, IT function, legal function, payroll,

to some extent some of our other individuals in payroll.

Q. Thank you. So we have -- we started off the whole deposition talking about the economic substance and the definition of economic substance, and I believe that you represented that as being the -- the sort of reality, the nature of the transactions between the companies that you're tasked to evaluate.

When it comes to economic substance, how important is it to consider whether they call themselves shared services or just provide shared services?

A. I think I am focused primarily on the function, you know, the process, you know, that's involved and not necessarily what it was titled.

Q. Okay. So I want to change gears a little bit.

Mr. Findley pointed out a document. I believe it is Exhibit -- Exhibit 8 that's the "Deloitte Leadership Workshop."

And he pointed out on the page marked Bates range 3548 a few scales. And on the left side of the scale it says "Decentralized," and on the right side of the scale it says "Centralized," and

really just describing one component in which is plant level accountability.

And I'm not sure how that would necessarily fall under one of my factors, but namely my other factors that I reviewed, you know, I don't see listed here under kind of the core operations.

Q. All right. From the perspective of a financial analysis, does the word "centralization" have a specific definition?

A. I don't know if it has a specific definition, but certainly it comes to understand that centralization just means that you are kind of making the oversight, the kind of responsibility for a certain function more centralized. I -- you know, a lot of times it can be the decision making is more centralized.

Q. So Mr. Findley made a point that one of the documents -- or -- or many of the documents started mentioning the phrase "One KapStone" and in the first quarter of 2017. I would like to show you another document that we received. This one is marked Exhibit 24 --

(Exhibit 24 marked)

Q. (BY MR. TARVER) -- KapStone-3483.

And this is not one that we provided

you before you issued your report. It was one we produced after, but I just want you to review that.

And if you could, just take a look at that and give us sort of a general overview of what that document appears to be to you and the date.

A. The document is titled, "KapStone Mill Q2 division 2016 Business Review Afternoon Session" dated April 19th, 2016.

Q. And what was the date of the incident at issue in this case?

A. It is my understanding it was in May of 2016.

Q. Thank you. May I see that briefly?

A. Sure.

Q. And if I could direct you to the page marked Bates range KapStone 3512.

A. 3512?

Q. Yes, sir.

A. Okay.

Q. All right. If you could please read us the text from that page.

A. KapStone 3512, the title on the page is "Sales Grade Rationalization Project." The problem is, "Problem: Four companies came together to form 'One KapStone' but each with their own systems grade

set of process and grade catalogs."

Q. Thank you. Can you tell me how the words "One KapStone" on that page are styled as?

A. Capital one as One, O-N-E, and then KapStone capitalized.

Q. So this document from April 19th, 2016, what does this indicate to you about the "One KapStone" project?

MR. FINDLEY: Object to form.

THE WITNESS: Well, it raises a question for me as to when this -- the term "One KapStone" was originally utilized within the company, and that clearly given that it is capitalized, it has some significance within the company.

Q. (BY MR. TARVER) All right. Thank you.

MR. FINDLEY: What is the exhibit on that one?

THE WITNESS: 24.

MR. FINDLEY: Got you.

Q. (BY MR. TARVER) So we have established that you reviewed Ms. Hulseman's deposition after you drafted your report.

MR. FINDLEY: Object to the form: Leading.

MR. TARVER: That wasn't a question.

MR. FINDLEY: I didn't know if you were done. Go ahead.

MR. TARVER: I'll, you know, figure out if it sounds like a question.

Q. (BY MR. TARVER) But you have reviewed it since then?

A. Correct, yeah, I have reviewed --

MR. FINDLEY: I will object to the form: Leading; misstates prior testimony.

MR. TARVER: All right.

THE WITNESS: I have reviewed some of her deposition testimony.

Q. (BY MR. TARVER) And in your job, do you typically rely on documents or testimony when reaching your opinion, or which would you prefer to rely on?

A. I would prefer to rely on documents.

Q. And why is that?

A. Because documents are more objective or -- and -- and I just would want more of a primary source for information, as opposed to, you know, someone's recollection or interpretation of that information.

Q. So let's talk about corporate synergy, which we touched on briefly when Mr. Findley was

speaking with you? Can you explain to us the definition of "corporate synergy"?

MR. FINDLEY: Objection: Form, asked and answered.

THE WITNESS: I think the definition of "synergy," just in general, when it's used in a corporate form, more often than in acquisition form, is when you're looking at kind of merging two companies together and you expected that this synergy, the ability of those companies working together, will create more value for the combined company.

Q. (BY MR. TARVER) And with regard to the KapStone entities, what sort of synergy existed between KapStone Paper, KapStone Craft, Victory Packaging and the other mills?

MR. FINDLEY: Object to the form. Outside the report and --

Well, go ahead.

THE WITNESS: I think if we're specifically talking about, you know, the purchase of the various mills and the purchase of the various mills may have provided some complimentary services or complimentary product lines, they provided them an opportunity to source, you know, purchased material

from locations that may have been more -- you know, may have been located in -- kind of in greater proximity to the ultimate client, as well as from kind of machines or equipment that had specific -- you know, that may have been much more specifically tailored to that specific purchase order.

Q. (BY MR. TARVER) Thank you. And --

A. Well, I think, you know, that was my answer with regard to the mills. But I think you asked a broad question, and if you want me to continue, I can continue.

Q. No, no, that's fine. Thank you.

I just want to show you another document, Mr. Lester. This one is marked KapStone 000002, and I am marking it Exhibit 30.

(Exhibit 30 marked)

Q. (BY MR. TARVER) Are you familiar with this document?

A. Yes, I am.

Q. Can you please tell us what it is.

A. This is the Form 10-K filed by KapStone Paper and Packaging Corporation with the Securities and Exchange Commission for the fiscal year ended December 31st, 2016.

Q. And did you rely on this document in

drafting your report?

A. Yes, I did.

Q. Can you please turn to the page marked KapStone 29.

A. Okay.

Q. I am going to catch up with you, but there is a chart on that page. Can you tell us what this chart represents, please?

A. This chart is in the section of the 10-K called "Selective Financial Data" where the company is presenting information relative to its -- both information contained on its income statement, as well as information contained on the company's balance sheet for KapStone Paper and the consolidated subsidiaries.

Q. All right. Now, KapStone Paper we have established does not manufacture paper.

Why is it permitted to represent in this document the consolidated financials of its subsidiaries?

MR. FINDLEY: Object to form.

THE WITNESS: Because of their hundred percent ownership of these consolidated subsidiaries, they're required to submit this information to the SEC for purposes of giving the -- kind of the overall

portrait picture presentation of the companies -- of the companies as a whole business.

Q. (BY MR. TARVER) Okay. Thank you.

(Exhibit 31 marked)

Q. (BY MR. TARVER) I am going to show you another document, Mr. Lester. This one I am going to mark Exhibit 31, and it is KapStone-3462.

This is another document that came late with regard to your report. Take a look at that and familiarize yourself.

A. Sure.

MR. FINDLEY: What is the Bates?

THE WITNESS: It's 3462.

MR. FINDLEY: Okay, yes.

Q. (BY MR. TARVER) All right. So based on your review, can you tell us what this document is, please?

A. Sure. Give me one minute and let me look through it real quick, please.

MR. FINDLEY: Object to the form.

THE WITNESS: This document is titled, "April 2016 Financial Statements." It's dated May 11th, 2016, and it's for -- with the name and logo of KapStone Paper and Packaging Corporation, and it appears to be sent to the executive officers: Roger

Stone, Matt Kaplan, Tim Keneally, and others.

Q. (BY MR. TARVER) All right. And if you don't mind, I would like to walk through this page by page and have you explain to us what -- what these charts represent, please.

MR. FINDLEY: First of all, I am going to object, because this isn't a document he relied on, so I'm going to object to outside the scope of his expert opinion already provided and -- okay.

THE WITNESS: Page two is titled, "Segment Information." It appears to be, you know, what I would refer to as a management report listing various metrics or areas of the company as looking at net sales, earnings before interest, taxes, depreciation; and it is specifically broken down by the reporting segments, which is paper and packaging and distribution.

Q. (BY MR. TARVER) All right, sir. If we could turn to the next page, please. This is the page marked KapStone 3463. It was page three of this document.

MR. FINDLEY: Can I just have a running objection for the whole documents so I don't have to keep --

MR. TARVER: Yeah, absolutely. And if

you would keep your speaking objects down, that would be great, too.

MR. FINDLEY: No, they're legal objections, they're not speaking.

MR. TARVER: Yeah, but you object to form. If I want to know what it is, I'll ask.

MR. FINDLEY: I am trying to save you some time.

MR. TARVER: Thank you.

THE WITNESS: Can you repeat the question for me, please?

Q. (BY MR. TARVER) Sure. Can you please run us through page three of this document.

A. The documents listed: Consolidated income statements - month. It is the consolidated income statements for KapStone Paper and Packaging Corporation, and it, you know, contains a little more detailed information as to net sales and that income, and then here it looks like it's broken down by the mill division and the container division.

Q. All right. Thank you.

And -- and which KapStone entities, based on your analysis of the KapStone documents, were included in the mill division?

A. It would have been the KapStone Kraft

Roanoke Rapids, the KapStone Charleston mill, and South Charleston or Charleston, South Carolina, the Longview mill located in Washington, as well as the Kalpens mill in South Carolina.

Q. All right. Thank you.

And if you don't mind, I would like to turn to the page marked KapStone 3466. It is also page five of this document.

A. Okay.

Q. If you could, explain to us what this chart represents.

MR. FINDLEY: Same objection.

THE WITNESS: This -- the sheet is titled, "Ships and nets - month." It appears to be a schedule listing by -- by product line on the actual shipments that month versus the forecasted amount of shipments in tons that month versus the plan of that month, also a comparison to the prior year.

So again, it is a management report assessing the -- the product sales and the performance of those sales against their kind of forecasted plan for that particular month.

Q. (BY MR. TARVER) Thank you. And I would like to jump ahead a few pages, please. If you could turn to the page marked KapStone 3478. It is also

page 17 of this document.

A. Okay.

Q. And could you tell us what this chart represents, please.

MR. FINDLEY: Same objection.

THE WITNESS: The chart on KapStone 3478 is titled "Head Count," and it appears to be a listing of the head count for a number of the locations broken down by -- by, you know, type, you know, pay type of employee and segregated by kind of the mills, the mills division, container, corporate and so forth.

Q. (BY MR. TARVER) All right. And could you look down on the bottom of this page and tell us what the bottom line of this whole chart represents.

A. The bottom line of company total represents the total number of employees for KapStone and its consolidated subsidiaries, and it is listed from, I guess, December of 2014 and December of 2015 and then monthly from January, February, March, and April.

Q. And from the perspective of a financial analysis, why would a parent entity consider its subsidiaries its own employees and keep track of them this way?

MR. FINDLEY: Object to form.

THE WITNESS: I think because the parent company is essentially managing all of its subsidiaries and its employee.

Q. (BY MR. TARVER) Thank you. And then we're just about done and we will wrap up on a more fun topic.

Let's talk about corporate identity.

A. Okay.

Q. From the perspective of a financial analysis, what is the difference between corporate identity and separate legal entities?

MR. FINDLEY: Object to the form.

THE WITNESS: You know, I think I answered that, you know, corporate identity is inclusive of a number of things. It's -- it's the name, it's what customers associate with purchases of products, it's the -- you know, the image, the logo, and kind of how they present themselves to the public and what the public identifies with.

Q. (BY MR. TARVER) And what type of -- sort of factors are included in the concept of a corporate identity?

MR. FINDLEY: Object to the form.

THE WITNESS: I think there's a lot of

factors. I think I listed some of them: Name, logo, color scheme; it could be a particular saying; it could be, you know, what the company lists as its -- as its mission, its values, its corporate principals.

You know, all of those things I think can be wrapped into a corporate identity, including, you know, any particular advertising, you know, and how they go about doing their advertising.

Q. (BY MR. TARVER) And when it comes to evaluating a company, what effect does the corporate identity have on the overall value?

MR. FINDLEY: Object to the form.

THE WITNESS: Clearly a corporate identity can derive economic value from its corporate identity, and we see that value expressed in -- in some form or fashion in kind of acquisitions, you know, specifically related to, you know, goodwill that may be recognized in those acquisitions, i.e. value that cannot be assigned to, you know, specific assets, you know, tangible assets within the company.

Q. (BY MR. TARVER) And with regards to the KapStone entities -- well, strike that.

So in your report you reserve the right to amend your opinion.

Have any of the documents Mr. Findley

EXHIBIT B

09:41AM

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT C/A NO: 2017-CP-10-838 NOTICE OF 30(b)(6) DEPOSITION TO KAPSTONE PAPER AND PACKAGING CORPORATION

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.

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ALSO PRESENT:

MR. GABRIEL MARTIN, Videographer

deposition? What were you being asked to provide 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 claim for Lucas and Simerly, do any of your duties 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 position? 10:34AM

A. I have held that position since January of 2017. **10:34AM**

Q. Okay, prior to being the vice president of 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 Corporation? 10:35AM

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

Q. Prior to that what did you do? 10:35AM

A. I was the director of Treasury and Risk for KapStone Paper and Packaging from 2008 forward. 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

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

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

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

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

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

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

Q. Okay, objection, nonresponsive. P. 10:38AM

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

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

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

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

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

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

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

A. Correct. **10:40AM**

Q. You deal with KapStone Paper and Packaging Corporation's accounts receivable, payable, credit collections, insurance, and payroll, correct? 10:40AM 10:41AM

A. The whole company. I assume responsibility for those areas for the whole company which includes Kapstone Charleston. **10:41AM 10:41AM 10:41AM**

Q. And we are going to get to that in a second. But what we are talking about is your employer Kapstone Paper and Packaging Corporation, that's who you deal with, right? 10:41AM 10:41AM 10:41AM

A. I deal with all entities of Kapstone Paper. **10:41AM**

Q. Okay. Do you have anything to do with the day-to-day management at the plant? 10:41AM 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 about the Charleston mill, you understand that, correct? 10:41AM 10:41AM

A. I do. **10:41AM**

Q. Okay. Do you have any interactions and I know you have the overview that we will get into in a second of dealing with Kapstone Paper and Packaging Corporation as a whole. What I want to know about is do 10:41AM 10:41AM 10:41AM 10:41AM

date. 12:07PM

A. I was not employed by KapStone in 2006, so no. **12:07PM**

BY MR. FINDLEY: 12:07PM

Q. I am just doing it the way we did the other ones. As far as the time frame you couldn't do it as written, fair? 12:07PM 12:08PM 12:08PM

A. Right. **12:08PM**

Q. As far as whether you could do it at all, is there any portion, any time frame that you'd be comfortable testifying and binding the company on related to payments, checks or wires for compensation, insurance or benefits paid? 12:08PM 12:08PM 12:08PM 12:08PM 12:08PM

A. I manage the worker's compensation insurance relationship. **12:08PM** **12:08PM**

Q. With Hiep? 12:08PM

A. With Hiep, yes. So invoices come to us and we submit them for payment. **12:08PM** **12:08PM**

Q. Okay. All right. Now, do you -- is there anyone else involved in that role other than you and Hiep? 12:08PM 12:08PM 12:08PM

A. Accounts payable would make the payment also in my group. **12:08PM** **12:08PM**

Q. Okay. All right. So we will put a plus or 12:08PM

minus next to that one. I guess that would depend on the question, fair, as far as whether it would be you or Hiep to answer it? 12:08PM 12:09PM 12:09PM

A. Okay, fair. **12:09PM**

Q. I am not trying to put words in your mouth. I am trying to make sure we are on the same page. Is there anyone else other than you and Hiep that would be exposed to talking about those things? 12:09PM 12:09PM 12:09PM 12:09PM

MR. WILLIS: You mean knowledgeable about those things? 12:09PM 12:09PM

MR. FINDLEY: Yes, that's what I mean. 12:09PM

A. Some people, employees of KapStone get invoices based on their relationship. We get invoices based on this one and we process them, yes. **12:09PM 12:09PM 12:09PM**

Q. You get invoices based on the relationships, what do you mean? 12:09PM 12:09PM

A. For example, legal would get their own invoices and they would submit for payment. The same process is true for us in this area. **12:09PM 12:09PM 12:09PM**

Q. And so the lawyers who are sitting here at this table will submit a bill to you, correct? 12:09PM 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**

Q. Okay. Right. When I say you I mean Kapstone Paper. But as far as whether or not that bill is approved or not approved, who would you have to go to? 12:09PM 12:09PM 12:10PM

A. People are responsible for their own invoices approving based on the relationship, the budgets they have, et cetera. **12:10PM 12:10PM 12:10PM**

Q. And that's what I am not following. When you say people are responsible for approving their own invoices, what does that mean? 12:10PM 12:10PM 12:10PM

A. There are vendors that I engage. As part of my responsibility I approve their invoices and request payment. **12:10PM 12:10PM 12:10PM**

Q. Okay. So whoever engages the vendor says pay or don't pay, fair? 12:10PM 12:10PM

A. In our office, yes. **12:10PM**

Q. Okay. And what if someone secures a vendor outside of your office, how is a determination made on pay or be paid? 12:10PM 12:10PM 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 different requisition process. **12:10PM 12:10PM**

Q. Okay, fair enough. So as I understand it, as far as invoices there would be two various categories, I 12:10PM 12:10PM

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**

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

Q. Anyway, back to my question, does it say KP -- what does yours say, KPPC? 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

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

A. I can say that KapStone Paper provides oversight and support. **12:15PM**

Q. Okay. You would agree with me and we talked about it earlier that KapStone Paper and Packaging 12:15PM

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

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

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

A. I cannot speak to all documents, but I have knowledge of how it works. **12:23PM**

Q. Okay. And let's get to that. You have knowledge of how the banking system works, right? 12:24PM

A. For KapStone, yes. **12:24PM**

Q. KapStone, which one? 12:24PM

A. All of them. **12:24PM**

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

BY MR. FINDLEY: 01:24PM

Q. All right, Ma'am, we took a lunch break. Are you ready to continue? 01:24PM

A. I am. **01:24PM**

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? 01:24PM 01:25PM 01:25PM

A. Yes. **01:25PM**

Q. Okay. KapStone Charleston Kraft LLC has its own employees as well, correct? 01:25PM 01:25PM

A. Correct. **01:25PM**

Q. And KapStone Kraft Paper Corporation has its own employees as well, correct? 01:25PM 01:25PM

A. Correct. **01:25PM**

Q. All are separate employers of individuals, true? 01:25PM 01:25PM

A. Yes. **01:25PM**

Q. Now, your paychecks would, do your paychecks actually say KapStone Paper and Packaging Corporation, right? 01:25PM 01:25PM 01:26PM

A. Yes. **01:26PM**

Q. And if people are employed by KapStone Charleston Kraft LLC, their paychecks would say KapStone 01:26PM 01:26PM

Charleston Kraft LLC, correct? 01:26PM

A. I would have to check. The W2s do. I'm just not sure about the stub. **01:26PM**

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? 01:26PM

A. Yes. Yes. **01:26PM**

Q. The W2 will not say Kapstone Paper and Packaging Corporation, correct? 01:26PM

A. Yes. **01:26PM**

Q. And just to give you an example, I am going 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 about the same things. 01:26PM

(Plaintiff's Deposition Exhibit No. 8 was marked for identification.) 01:26PM

BY MR. FINDLEY: 01:26PM

Q. 2016 W2 for Jacque Lucas as we see indicating KapStone Charleston Kraft LLC, correct? 01:27PM

A. Yes. **01:27PM**

Q. Now, your W2 would say KapStone Paper and Packaging Corporation, fair? 01:27PM

A. Yes. **01:27PM**

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? 01:27PM

A. Yes. **01:27PM**

Q. Okay. All three have their own I guess check writing ability for payroll? 01:27PM

A. ADP processes our payroll and it's all drawn 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 of Exhibit 7 where it's blacked out, it says the last digits of it are 9916? 01:27PM

A. Yes. **01:28PM**

Q. Okay. Now, as far as the actual -- hold on. The check itself does not say KapStone Paper and 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 is looking for it, let me go on asking you questions. Well, let me just ask you do you know if putting KapStone Charleston Kraft LLC aside, do you know if KapStone Kraft Paper Corporation would have their own 01:29PM

generated, it's generated there? 01:56PM

A. Correct. **01:56PM**

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? 01:56PM 01:56PM 01:56PM 01:56PM

A. Fair. **01:57PM**

Q. As far as any lease, are you familiar with any lease or purchase agreements they have related to equipment? 01:57PM 01:57PM 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 at the Charleston mill, what you would refer to them as is Kapstone Charleston Kraft employees, correct? 01:57PM 01:57PM 01:57PM

A. We speak of all as Kapstone. **01:57PM**

Q. Well, if you wanted to be specific about whom my clients work for, you would refer to them by their employer? 01:57PM 01:57PM 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 Kraft LLC, that's how you take Charleston to mean? 01:57PM 01:57PM

A. We refer to location, so it holds true in **01:57PM**

1	**this situation, but not across the company, no.**	**01:57PM**
2	Q. Let me give you an example. If you are	01:58PM
3	working at your company within the payroll department	01:58PM
4	and someone comes to you and says, hey, we have a	01:58PM
5	Charleston employee that has XYZ problem, okay, are you	01:58PM
6	with me so far?	01:58PM
7	**A. Yes.**	**01:58PM**
8	Q. That's problem happened before, right?	01:58PM
9	**A. Yes.**	**01:58PM**
10	Q. Maybe it happened with this lawsuit. We have	01:58PM
11	some victims who were in Charleston who were burned. Is	01:58PM
12	that how you first found out about it?	01:58PM
13	**A. No. I manage insurance, so I saw the claim.**	**01:58PM**
14	Q. Okay, fair enough. In any event there might	01:58PM
15	be from time to time where someone comes to you and	01:58PM
16	talks to you about an employee and refers to you as a	01:58PM
17	Charleston employee, correct?	01:58PM
18	**A. Correct.**	**01:58PM**
19	Q. And what you would take that to mean is he is	01:58PM
20	employed by Kapstone Charleston Kraft LLC, right, the	01:58PM
21	same as what we talked about earlier?	01:58PM
22	**A. Correct.**	**01:58PM**
23	Q. Okay. And when you say a Charleston employee	01:58PM
24	or a Kapstone Charleston Kraft LLC employee, a hundred	01:58PM

Q. Yeah, I think it was. I think I was just making sure we were on the same page. 02:00PM 02:00PM

A. Okay. **02:00PM**

Q. What I am saying is there are managers whose sole purpose and sole function is to manage the Charleston mill, correct? 02:00PM 02:00PM 02:00PM

A. I would like to follow-up because we do have employees that are in our mill headquarter group that are employed by KapStone Kraft that may be located there. **02:00PM** **02:00PM** **02:00PM** **02:00PM**

Q. Okay. And that's fair and we can get to that in a second. My question is a little bit different. Is there are managers at the mill who are just sole Kapstone Charleston Kraft LLC employees, correct? 02:00PM 02:00PM 02:00PM 02:00PM

A. Correct. **02:00PM**

Q. And what you are saying is there might also be some higher level individuals there who work at Kapstone Paper and Packaging? 02:00PM 02:00PM 02:00PM

A. Kraft. KapStone Kraft. **02:00PM**

Q. Okay, might work at KapStone Kraft Paper Corporation? 02:00PM 02:00PM

A. Be employed by KapStone Kraft, yes. **02:00PM**

Q. Okay. And we have got three different entities, so I just want to make sure we are using the 02:00PM 02:00PM

locations in other mills, Longview, Washington is one that comes to mind? 02:02PM

A. Yes. **02:02PM**

Q. I think that y'all might have purchased one 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 far as Kapstone Charleston Kraft LLC employees, we already said there is no location you would find them at other than the Charleston mill for KapStone Kraft, 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, as far as KapStone Kraft Paper Corporation? 02:02PM

A. Right. **02:02PM**

Q. Let me make sure I am saying that right. Yes, KapStone Kraft Paper Corporation, okay, we talked about that a second ago. You said they may have mill managers at the Charleston plant, correct? 02:02PM 02:03PM 02:03PM

A. Managers. **02:03PM**

Q. Okay. Would they also have like lower level employees too or would it be strictly limited to managers? 02:03PM 02:03PM

A. Potentially IT, and maybe others. I'd have to check. 02:03PM

Q. But as far as KapStone Kraft Paper Corporation, as far as that employer entity, that would 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 as Kapstone Kraft Paper Corporation, the managers in IT department might either be at the Charleston mill or in the Roanoke facility, correct? 02:03PM 02:04PM 02:04PM

A. Correct. And maybe others. I would like to confirm. 02:04PM

Q. Okay. Well, how would you confirm that? 02:04PM

A. I would run a report on location 850 and see where their physical locations would be. 02:04PM

Q. And what is location 850? 02:04PM

A. This mill headquarters I was talking about. People who have responsibilities for all mills not 02:04PM

unique to a location. **02:04PM**

Q. Okay. And let me ask you another question since we are talking about reports. You can run several reports with your intra system technology, correct? 02:04PM

MR. WILLIS: Objection to the form of the question. 02:04PM

MR. FINDLEY: Maybe I asked it wrong. Intranet technology, you can run several reports regarding employers? 02:04PM

A. No. Payroll is one of my functions, so it's in the payroll system. **02:04PM** **02:05PM**

Q. Okay. So you would do it through the payroll system? 02:05PM

A. Yes. **02:05PM**

Q. Okay. If I wanted to know every single location that has a Kapstone Charleston Kraft LLC employee, could you run that? 02:05PM

A. Yes. **02:05PM**

Q. Okay. It wouldn't be hard for you to do, 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

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**

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 02:06PM 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 02:06PM 02:07PM 02:07PM 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 02:07PM 02:07PM 02:07PM 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 02:07PM

you could do it, right? 02:07PM

A. Yes. **02:07PM**

Q. Okay. And how would you go about doing that search? 02:07PM 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 02:07PM 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 02:07PM 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 02:08PM 02:08PM

A. Correct. **02:08PM**

Q. That was part of that process of moving to a centralized role, correct? 02:08PM 02:08PM

A. To be an integrated company, integrated packaging. **02:08PM 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 02:08PM 02:08PM 02:08PM

A. We are, but it was my same position with **02:08PM**

accounts payable added. **02:08PM**

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 02:08PM 02:08PM

A. Correct. **02:08PM**

Q. And that title did not exist prior to January 2017, correct? 02:08PM 02:08PM

A. Correct. **02:08PM**

Q. And it was a title that was created for the first time in January 2017, correct? 02:08PM 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 02:09PM 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** **02:09PM** **02:09PM**

Q. Okay. Well, you'd agree with me that, well, we will get to that. 02:09PM 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 02:09PM 02:09PM 02:09PM 02:09PM

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 affidavit after it was sent to you, you said there was two or three? 03:40PM

A. Correct. **03:40PM**

Q. One of those was you went and confirmed the payout of three and a half million that's listed in 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 or paragraph number four. "Kapstone Paper produced, paid the premiums for and the policyholder of worker's compensation policy issued by Sentry that ensures Kapstone." Do you see that paragraph? 03:40PM 03:41PM 03:41PM

A. Yes. **03:41PM**

Q. Okay. Did you -- you didn't -- we know you didn't type that paragraph, right? 03:41PM 03:41PM

A. Correct. **03:41PM**

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

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? 03:42PM

A. I did not. **03:42PM**

Q. Okay. Do you have copies of those checks? Have you seen them since you saw this affidavit for the 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 broker, is an ACH, so there would not have been no check, an electronic payment, because the vendor. **03:42PM**

Q. One more time, I'm sorry, I didn't understand. Who is a what? 03:42PM

A. We would pay Marsh the premiums and they would in turn pay Sentry. **03:42PM** **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 for it? 03:43PM 03:43PM

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 U.S.A. is who? 03:43PM

A. I don't know if that's the exact company that. 03:43PM

Q. And what I am trying to get clarity on, in exhibit number, I'm sorry, what is your affidavit, the exhibit? 03:43PM

A. Six. 03:43PM

Q. In Exhibit No. 6 we have got a sworn to affidavit, paragraph number four, and it talks about who pays the premiums for the worker's compensation policy. And what you have testified to is you did not go back and look at the checks for the premiums. Your understanding is that you pay Marsh U.S.A., is that 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 Marsh? 03:44PM

A. For the worker's comp policy it was monthly. 03:44PM

Q. Okay. Do you have any idea which entity paid Marsh every single month? 03:44PM 03:44PM

A. The money came out of the Kapstone Paper account. **03:44PM 03:44PM**

Q. Okay. KapStone Paper and Packaging Corporation? 03:44PM 03:44PM

A. Yes. **03:44PM**

Q. Okay, was their name on the bank account that issued the check or do you know? 03:44PM 03:44PM

A. According to this document it's KapStone Kraft Paper, but I would need to confirm. **03:44PM 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 Corporation is your understanding of who paid Marsh, correct? 03:45PM 03:45PM 03:45PM

A. Right. So the payment would be initiated from this account, but the funds to cover it would come from Kapstone Paper because all of these are ZBA accounts. **03:45PM 03:45PM 03:45PM 03:45PM**

Q. So let's just go take it one step at a time. The actual payment would come from KapStone Kraft Paper, 03:45PM 03:45PM

correct? 03:45PM

A. From the KapStone Kraft Paper account, yes. **03:45PM**

Q. Okay. And as far as how much -- oh, excuse me. As far as how much came from that actual account, that wasn't something you looked at before signing this affidavit, fair? 03:45PM 03:45PM 03:45PM 03:45PM

A. Fair. **03:45PM**

Q. Okay. As far as whether or not that was the same account that paid the premiums every month, that wasn't something you looked at prior to signing this affidavit, fair? 03:45PM 03:46PM 03:46PM 03:46PM

A. Can you repeat that. **03:46PM**

Q. As far as whether or not those premiums did, in fact, get paid out of that account every single month, the same account for the entire existence of that policy, that was not something you verified prior to signing this affidavit, correct? 03:46PM 03:46PM 03:46PM 03:46PM 03:46PM

A. Correct. **03:46PM**

Q. Okay. And what I mean by that is you relied on someone else to do that research for you, I assume, right? 03:46PM 03:46PM 03:46PM

A. I approved the payment to be paid. **03:46PM**

Q. Okay. And what I am saying is when exhibit, paragraph number four, okay, we already know you did not 03:46PM 03:46PM

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

A. Okay. So by support I can speak to my world. We do all of the accounts payable, receivable, credit, collections, payroll, and insurance. 03:53PM 03:53PM 03:53PM

Q. Okay, fair enough. And so that's what I want to talk to you about. Well, you have never worked for Kapstone Charleston Kraft LLC, fair? 03:53PM 03:53PM 03:54PM

A. Fair. 03:54PM

Q. You have never worked for KapStone Kraft Paper Corporation, correct? 03:54PM 03:54PM

A. Correct. 03:54PM

Q. The only entity you have worked for is KapStone Paper and Packaging Corporation, true? 03:54PM 03:54PM

A. True. 03:54PM

Q. Okay. So as far as your role at KapStone Paper and Packaging Corporation, the only information you know related to what it provides is related to what you talked about earlier, helping with accounting, payroll. Tell me what it was. I have got accounts payable, receivable? 03:54PM 03:54PM 03:54PM 03:54PM 03:54PM 03:54PM

A. Credit, collections, payroll, and insurance. 03:54PM

Q. Okay. 03:54PM

A. Insured service group. The whole corporate office does the same, they are just not in my department. 03:54PM 03:54PM 03:54PM

Q. Okay. So when it says oversight to the operations; okay, when we are talking about oversight to the operations of the plant, you have no idea what they provide oversight over? 03:54PM 03:54PM 03:55PM 03:55PM

MR. WILLIS: Objection to the form of the question. 03:55PM 03:55PM

A. Well, Matt Kaplan is the CEO, right, so operations report to him and he is housed in Northbrook and employed by Kapstone Paper. **03:55PM** **03:55PM** **03:55PM**

MR. FINDLEY: Objection, nonresponsive. 03:55PM

Q. My question is you have never at any point in time in your life been exposed to the oversight or operations of any of the subsidiaries other than what you talked about in your role in the accounting department? 03:55PM 03:55PM 03:55PM 03:55PM

A. I participate on a leadership team. **03:55PM**

Q. Which one? 03:55PM

A. The One Kapstone Leadership Team which has the president, the mill system and the container system VPs, executive teams that are in operations, so I am aware of the conversations that they have. **03:55PM** **03:55PM** **03:55PM** **03:55PM**

Q. Okay. And so let's talk about that for a second. Matthew Kaplan, you mentioned him, remember? 03:55PM 03:56PM

A. Yes. **03:56PM**

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? 04:02PM

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

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 04:03PM 04:03PM 04:04PM 04:04PM

A. That's how we speak of it, the corporate office, the headquarters. **04:04PM 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 04:04PM

MR. WILLIS: Objection to the form of the question. 04:04PM 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 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 04:04PM 04:04PM 04:04PM 04:04PM

A. Yes. **04:04PM**

Q. Okay. And when people refer to corporate 04:04PM

accounting. I do accounts payable and accounts receivable, but I have exposure to the accounting. 04:53PM 04:54PM

Q. Okay. So we are going to come back to that. But as far as what we talked about here, this is the strategic direction you talked about that was implemented January 1, 2017? 04:54PM 04:54PM 04:54PM 04:54PM

MR. WILLIS: Objection to the form of the question. 04:54PM 04:54PM

BY MR. FINDLEY: 04:54PM

Q. As far as making things more centralized, is that what this was dealing with? 04:54PM 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? What does that even mean? 04:54PM 04:54PM

A. Again, in the leadership meeting or in the rules in Northbrook they set the strategy. 04:54PM 04:54PM

Q. Okay, you are talking about the leadership meeting that did not occur until 2017? 04:54PM 04:54PM

MR. WILLIS: Objection to the form of the question. 04:54PM 04:54PM

A. Prior to that people were in the roles that did the same. 04:54PM 04:54PM

Q. Okay, where? 04:56PM

A. In Northbrook. **04:56PM**

Q. That covers what? 04:56PM

A. The entire company. The corporate controller is housed in Northbrook. **04:56PM** **04:56PM**

Q. Are you talking about your accounting department that we were speaking about earlier? 04:57PM 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 they help collect everything from the various locations and put it into one? I am confused by what you mean. 04:57PM 04:57PM 04:57PM

A. All locations are on the same accounting system and they are responsible for the consolidation. **04:57PM** **04:57PM**

Q. Okay. So they are responsible for taking the 04:57PM

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

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 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 saying that -- well, let's just talk about integrated accounting system, that specific term would be Microsoft Dynamics AX, is that fair, that's what you refer to as integrated accounting system, and it would allow you to keep detailed accounting at each one of the plant locations or mills? 05:23PM

MR. WILLIS: Objection to form. 05:23PM

A. We use it to consolidate the financial information. **05:23PM**

Q. Okay. Consolidate the financial information for the purposes of the 10K? 05:23PM

A. Yes. **05:23PM**

Q. Okay. And because when you perform your 10K what you are doing is you are consolidating financials for every entity, right? 05:23PM

A. Everybody's information is in the same **05:24PM**

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 an individual balance sheet for each location. **05:24PM** **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, yes. **05:24PM** **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

A. Yes. **05:27PM**

Q. Okay. Now what you are saying when you are talking about integrated accounting system to consolidate, what you are saying and what my understanding is and I think we agree to is Microsoft Dynamics AX allows you to take all of these separate identifying numbers, P and L statements and consolidate them together for the purpose of filing a 10K, is that fair? 05:27PM

A. Yes. There is a system that actually consolidates, but the data is in AX and I am not familiar with the process. **05:27PM** **05:27PM** **05:28PM**

Q. But the data is recorded separately and the data can be kept separately for the purposes of specific identifier number per location? 05:28PM

A. Yes. **05:28PM**

Q. And that would be true for accounts payable and receivable? 05:28PM

A. Yes. **05:28PM**

Q. Now, paragraph 21 has a long description about how receivables are swept together and I am just going to ask you off the bat to see if we can save ourselves some questions, are you prepared to answer questions in relation to paragraph 20? 05:28PM

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 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**

Q. Well, it would deal with accounts payable and accounts receivable. It would deal with paragraph 21, would it not? 05:30PM

A. The cash is collected in these accounts and these ZBA everyday to this account. 05:30PM

Q. Okay. 2: 05:30PM

MR. WILLIS: Why don't you make this is your last paragraph. 05:30PM

MR. FINDLEY: You are going to have to shut me down. 05:30PM

MR. WILLIS: I am going to shut you down at 5:30, 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. For the receivable securitization and just so that we are clear for the record, what we are marking as Exhibit 16 would be Kapstone 00358 to 00362, okay. And you can take this copy, Ma'am, and let me ask you some questions in relation to it. 05:31PM

(Plaintiff's Deposition Exhibit No. 16 was marked for identification.) 05:31PM

BY MR. FINDLEY: 05:31PM

Q. First of all, this document as far as where 05:31PM

it came from do you know? 05:31PM

A. I don't. **05:31PM**

Q. Okay, because it looks like it is part of something bigger maybe. I don't know the larger document that this is. 05:31PM 05:31PM 05:31PM

A. I don't know. **05:31PM**

Q. Okay, fair enough. Anyway, your understanding is receivable securitization deals with accounts receivables related to Kapstone Charleston Kraft LLC, Kapstone Paper Corporation, and KapStone Paper and Packaging Corporation, correct? 05:31PM 05:31PM 05:31PM 05:32PM 05:32PM

A. It's all receivables. **05:32PM**

Q. Okay. Well, let's go to glossary. It's got a bunch of different entities listed, okay. All right, so now I want to go to page three and it says current structure. As far as when that became the current structure, do you have any idea? 05:32PM 05:32PM 05:32PM 05:32PM 05:32PM 05:32PM

A. Receivables, document or the start of it was 2014. **05:32PM** **05:32PM**

Q. Okay. Is this the current structure or do you know? 05:32PM 05:33PM

A. I can't speak to the detail. **05:33PM**

Q. Okay, fair enough. And you can't speak to the detail of whether or not what is contained in 05:33PM 05:33PM

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**

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 05:35PM

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

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

A. These are monthly journal entries related to this agreement. It's not cash. **05:35PM**

Q. All right. My question is different. My question and I object to the nonresponsive portion. 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

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

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

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

A. My understanding is it is a way to concentrate or consolidate AR to allow further borrowing, yes. **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

this and why it was created was for the specific purpose of protecting Kapstone Packaging and Paper Corporation from bankruptcy and liabilities, fair? 05:37PM 05:37PM 05:38PM

A. No. **05:38PM**

Q. Okay, what was it created for? 05:38PM

A. To consolidate receivables so we could borrow against them. It's a borrowing plan. **05:38PM 05:38PM**

Q. So to consolidate receivables so it can be borrowed against. And why wouldn't Kapstone Charleston, what you are saying it's to so that KapStone Paper and Packaging Corporation can receive a bigger credit line? 05:38PM 05:38PM 05:38PM

A. No. **05:38PM**

Q. Okay, well borrowing against what? 05:38PM

A. An advance on receivables is how I understand it. **05:38PM 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 it. **05:38PM 05:38PM**

Q. Okay. As far as why it was created as far as you having knowledge as to being involved in the creation of this receivable sales agreement structure, the purposes behind it, do you know, because earlier you 05:38PM 05:38PM 05:38PM 05:38PM

told me it was bankruptcy remote protection? 05:39PM

A. No, I said the entity. We weren't allowed to borrow against it if it wasn't protected, right. **05:39PM**

Q. Okay. So you are saying the receivable entity is you are allowed to borrow against it, correct? 05:39PM

A. I am saying that we borrow against the receivables. **05:39PM**

Q. Which entity are you referring to, KapStone 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 receivables over here. Your line of credit as far as what it comes from to be able to borrow against would be solely limited to the Receivables LLC is what you are saying? 05:39PM

A. To our AR balance, yes. Combined AR balance. **05:39PM**

Q. Okay. All right. Now can Kapstone Charleston Kraft LLC borrow against that same receivables? It cannot, true? 05:39PM

MR. WILLIS: Objection to form. 05:40PM

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 against. **05:40PM**

Q. The receivables? 05:40PM

A. It's a consolidated arrangement. All receivables are. **05:40PM**

Q. Objection, nonresponsive. Have you seen Kapstone Charleston -- 05:40PM

MR. WILLIS: Hold on, she didn't finish her answer. 05:40PM

MR. FINDLEY: Okay. Finish it for us, please. 05:40PM

MR. WILLIS: I thought you interrupted her before 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 receivable arrangement, I believe not. **05:41PM**

Q. Okay. So the only person or the only entity 05:41PM

that can receive a benefit from borrowing against any of this related to the sale agreement structure would be Kapstone Charleston Paper and Packaging Corporation, fair? 05:41PM

MR. WILLIS: Kapstone Paper and Packaging Corporation. 05:41PM

MR. FINDLEY: He is correct. Kapstone Paper and Packaging Corporation. Let me restate the question. 05:41PM 05:42PM

Q. The only entity that can borrow against the receivables as a result of this receivable sales agreement would be Kapstone Paper and Packaging Corporation, correct? 05:42PM 05:42PM 05:42PM

A. I would like to confirm because they have KKPC, right, Kapstone Kraft Paper at the top. **05:42PM 05:42PM**

Q. Okay. Well, can Kapstone Paper Packaging and Corporation do it? Do you know is what I am asking you? 05:42PM 05:42PM

A. I am not sure if it's KapStone Kraft or Kapstone Paper, but it is meant for the consolidated entity to borrow against receivables, consolidated receivables. **05:42PM 05:42PM 05:42PM 05:42PM**

Q. Okay, and what I mean by that is Charleston Longview, Container, Victory, they cannot borrow against receivables according to the structural agreement? 05:42PM 05:42PM 05:42PM

A. They cannot receive cash. **05:42PM**

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 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

EXHIBIT C

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON
JACQUE LUCAS, SHIRLEY ANN LUCAS and DANIEL SIMERLY,
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.

DEPOSITION OF: 30(b)(6)
KAPSTONE PAPER AND PACKAGING CORPORATION
(MARK NIEHUS)

DATE: January 8, 2019

TIME: 10:05 a.m.

LOCATION: Young Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC

TAKEN BY: Counsel for the Plaintiffs

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Registered Professional Reporter

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was a Sypris deposition taken. Did you review that?

A. No.

Q. Did you review Hulseman's deposition?

A. Yes.

Q. Okay. Anything else?

A. Those are all the documents I reviewed.

Q. Did you review any OSHA files related to this?

A. The only files -- if they were included in the 71 documents in the binders I would have, but no additional documents.

Q. Did you review the OSHA -- well, in these documents I don't -- I looked through them before we started. I didn't see any OSHA correspondence with the plant.

Have you seen that?

A. No, I have not.

Q. Have you seen any part of OSHA's investigation related to this incident?

A. No, I have not.

Q. Is this your first time in Charleston?

A. No.

Q. How many times have you been here?

A. I would estimate somewhere between --

around ten times.

Q. For work?

A. Yes.

Q. Work related to what?

A. Well, when KapStone acquired the Charleston mill in 2008 we came down here frequently for due diligence, and then following the acquisition on July 1st, 2008 we came down here a number of times working on financial integration.

Q. Okay. When?

A. In 2008, and that continued into 2009. And the trips were numerous then, and then over the next few years it was reduced to probably one or two per year.

Q. Okay. And so what I want to talk to you about is: What is Hulseman's duties at KapStone?

A. Kelly Hulseman is the vice-president of Shared Services, and in that role she's got responsibility for the company's accounts receivable department, accounts payable department, payroll and risk management.

Q. Right. And prior to Shared Services she was a senior director of Treasury and Risk?

A. Yes.

Q. And she had been the director of Treasury and Risk, I guess, from 2008 forward; is that correct?

A. Yes. She was hired shortly after we bought the Charleston mill.

Q. Well, all I'm asking is: She was a director of Treasury and Risk in 2008 forward; correct?

A. Yes. That sounds about right.

Q. Okay. And Shared Services is something that was implemented on January 1st of 2017?

A. No. We've had Shared Services now for quite some time.

Q. Okay. Well, let me back up for a second. Is Hulseman an honest person?

A. I believe so.

Q. And you trust her to be open and honest during her deposition?

A. Yes, I do.

Q. Here is what I am trying to figure out, is: Why are you here?

She's already been designated as a corporate representative related to the Motion to Dismiss. And I'm looking at your affidavit. Well -- so why are you here?

work for KapStone Charleston Kraft, LLC were previous employees of MeadWestVaco; correct?

A. Yes.

Q. And you understand my clients are employees of KapStone Charleston Kraft, LLC; correct?

A. Yes, I do.

Q. And KapStone Charleston Kraft, LLC, as I understand it -- and we've talked about this at length in previous depositions. But they have customers; right?

A. Yes. KapStone Charleston Kraft has hundreds of customers.

Q. Right. And those customers deal directly with KapStone Charleston Kraft, LLC?

A. Some of them do entirely and then some of them also deal with KapStone Kraft Paper Corporation as well.

Q. Right. I mean, depending on what they're trying to get; right?

A. Yes.

Q. Okay. If they're trying to get a specific product that only KapStone Charleston Kraft, LLC produces, they'll deal directly with KapStone Charleston Kraft, LLC?

A. Yes. And at times if it's a product produced both by KapStone Charleston Kraft, LLC and KapStone Kraft Paper Corporation, they could be dealing with another paper mill that the company owns.

Q. Okay. And KapStone Kraft Paper Corporation is a, I guess, parent corporation.

A. Well, I would describe it as KapStone Paper and Packaging Corporation is the parent.

Q. Is the ultimate parent?

A. Is the ultimate parent.

KapStone Kraft Paper Corporation owns KapStone Charleston Kraft, LLC, but it's also an operating company and its principal asset is the Roanoke Rapids paper mill in North Carolina.

Q. It is a -- well, when you say "owns," you're saying it's the -- what, sole member? What does it own, KapStone Kraft Paper?

A. KapStone Kraft Paper Company owns the Roanoke Rapids, North Carolina paper mill and it also owns KapStone Kraft Charleston, LLC.

Q. Does it own anything else? It owns several South Carolina plants, doesn't it?

A. No. I think the only paper mill it owns is Roanoke Rapids and Charleston, is owned by

representative for KapStone Kraft Paper Corporation; correct?

A. Yes.

Q. And you -- well, KapStone Kraft Paper Corporation isn't even registered to do business in South Carolina. Is that accurate?

A. I don't believe that it is.

Q. Did you know they forfeited their registration to do business with South Carolina in 2015?

MR. DUCAYET: Object to the form of the question.

A. I believe that was KapStone Paper and Packaging Corporation and not KapStone Kraft Paper Corporation.

Q. Oh, then -- I thought I said KapStone -- I might have misspoke. Let me back up.

KapStone Paper and Packaging Corporation is not registered to do business in South Carolina. True?

MR. DUCAYET: Objection to the form of the question.

A. Yes. Through an administrative oversight a filing was not made and it's in the -- either it has been recently corrected or it's in

the process of being fixed.

Q. When did that start?

MR. DUCAYET: Objection to the form.

A. It's interesting. During the due diligence that KapStone had with West Rock for the acquisition that was completed on November 2nd, 2015 it was identified at that stage and it was put on a list of things to follow up on -- and not having the highest priority at that time. And then in 2019 after we completed the first two months of integration work it was identified, and various tax and legal representatives of West Rock are making that new filing.

Q. Okay. At the time of this incident KapStone Paper and Packaging Corporation was not registered to do business in South Carolina. True?

A. Yes.

MR. DUCAYET: Objection to the form.

BY MR. FINDLEY:

Q. Not only was it identified during the West Rock acquisition, it was also identified during Kelly Hulseman's deposition; correct?

MR. DUCAYET: Object to the form.

A. Yes; I believe so.

Q. And so the process to get them

million company, and then in 2008 when we bought the Charleston mill it was a $500 million company. So overnight we tripled the size of the company.

So from a legal perspective it was deemed appropriate at that time to create an LLC to own the assets of the Charleston mill.

Q. What you're saying is an LLC, limited liability company, to own the assets of the Charleston mill, which is a separate and distinct legal entity from the other entities you mentioned?

A. Yes, but it was owned entirely by KapStone Kraft Paper Corporation, which is owned a hundred percent by KapStone Paper and Packaging Corporation.

Q. And that's what I'm getting lost on.

From a legal perspective you open an LLC -- what, to shield it from liability?

MR. DUCAYET: Objection to the form of the question. And I'll instruct you not to reveal any legal communications that you've had about any of these topics.

Q. (Continued) and I don't want to know what your lawyer said. All I want to know is what you know.

MR. DUCAYET: Right. And if you know

something because your lawyer told you, I instruct you not to reveal the content of that communication.

A. It was just -- all I know back in 2008 that it was created for legal purposes.

Q. Well, each one of these legal entities has their own profit and loss statements; correct?

A. Yes, they do.

Q. And each one of them have a profit and loss -- what I mean by that is the profit and loss statement for the North Charleston plant contains the profit and losses of KapStone Kraft Charleston, LLC; correct?

A. Yes.

Q. The profit and loss statement of KapStone Kraft Paper Corporation are contained within their own confines as well; correct?

A. Yes.

Q. The same with Victory?

A. Yes; and Longview Fibre.

Q. The same with Longview Fibre?

A. Yes.

Q. For the purposes of separating accounting; right?

A. Well, we have to do it in certain

situations because of income tax returns. We have to file an income tax return for state purposes for each one of our legal entities. From a federal perspective we file a consolidated tax return.

Q. I understand that.

A. 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, but we have the ability in our accounting system to generate an earnings statement for each one of our locations.

MR. FINDLEY: Objection; nonresponsive.

BY MR. FINDLEY:

Q. All I'm asking is each one has an accounting record that tracks its own profit and losses for each separate entity; correct?

MR. DUCAYET: Objection. Asked and answered.

A. Yes.

Q. Each one has its own separate, I guess, list of payroll employees for those separate entities; correct?

A. Yes.

Q. And what I mean by that is my clients were working at the KapStone Charleston Kraft, LLC

plant; correct?

A. Yes, they were.

Q. And if you were to look at the payroll records for KapStone Charleston Kraft, LLC, they would have my clients on there?

A. Yes. That's true.

Q. Okay. Or at the time of the incident at least.

A. Yes.

Q. If you were to look at the KapStone Paper Corporation, it would have the employees of that corporation for their payroll; correct?

A. Yes, it would.

Q. It wouldn't have my clients; correct?

A. No, it would not.

Q. The same with the KapStone Paper and Packaging Corporation. Accounting payroll records would have people like you and Kelly; right?

A. Yes.

Q. It would not have my clients; correct?

A. No, it would not.

Q. Let me ask you a question. You said you're familiar with legal entities and whatnot; right? I assume that's part of what you do as a controller.

A. Yes, it is.
Q. So, for instance, let's talk about Victory. Okay? What is that legal entity?
A. Victory Packaging.
Q. Victory Packaging, LLC?
A. No. It's not an LLC.
Q. What is it?
A. I believe it's an LP.
Q. Okay. Victory Packaging Limited Partnership?
A. LP. Yes.
Q. One of the things that happens when you have separate entities -- if Victory Packaging, LP were to go bankrupt, it would not bankrupt KapStone Charleston Kraft, LLC; correct?
A. No, it would not.
Q. And that's because they're separate and distinct legal entities; correct?
A. Yes.
Q. And that's one of the reasons why they're formed that way; correct?
MR. DUCAYET: Objection to the form.
Q. (Continued) There might be many, but that's one that you know of?
MR. DUCAYET: Object to the form of the

question.

A. It could be.

Q. And from another standpoint, what it would also do is make the separate entities not share any debt of the others; correct?

MR. DUCAYET: Object to the form of the question.

A. Yes, I think so.

Q. What I mean by that is KapStone Charleston Kraft, LLC wouldn't share any debt that was acquired by some other separate legal entity; correct?

A. Yes, but generally all the assets of the company -- of the entire corporation are pledged as part of our debt agreements.

Q. Well, regardless of -- your debt agreements may say what the debt agreements say. I'm just talking from a legal entity standpoint.

A. Yes.

Q. So what I'm saying was true from that standpoint; correct?

A. Yes, I think so.

MR. DUCAYET: Object to the form.

BY MR. FINDLEY:

Q. Where are the -- do you have all the

debt agreements for KapStone Charleston Kraft, LLC?

A. There are no debt agreements for KapStone Charleston Kraft.

Q. Okay. Do you have any debt agreements for KapStone Paper Corporation -- KapStone Kraft Paper?

A. Yes.

Q. Were those in the binders?

A. I don't believe they were. I have seen them before.

Q. I'm sure you've seen them.

A. But I don't -- I would have to double check the index.

Q. What I'm trying to figure out -- make sure we're on the same page.

What you're saying is as part of your job you've seen one before; correct?

A. A debt agreement?

Q. Yes.

A. Yes; by all means.

Q. And look through the index and let me know if you see one in there.

A. (Witness complies.) Okay. I've looked through the exhibit. Included in the exhibits is the KapStone 10-K that was filed with the SEC. An

depositions this week; right?

A. Yes. I've been told there is one on Thursday and Friday.

Q. Did you speak with any of those individuals?

A. No, I did not.

Q. Do you know who is getting deposed?

A. You know, I think I saw the names, but I don't recall who they are.

Q. Couldn't say them as we sit here?

A. Right.

Q. Who is Oak Acquisitions?

A. Oak Acquisitions was the entity created to purchase the North Charleston mill from MeadWestVaco.

Q. Okay. It's not in existence anymore?

A. No. It was merged into -- it became essentially KapStone Charleston Kraft, LLC after the acquisition or in conjunction with the acquisition.

Q. And as far as dealing with the actual correspondence with OSHA or EPA or any of these governmental entities, is that any role that you have whatsoever?

A. Well, it would be. It is with the

processes involved with that, the details associated with it, that wouldn't be you to talk to; correct?

A. Yes.

Q. When KapStone Charleston Kraft, LLC -- well, Oak Acquisitions, LLC. Let's start there. Who opened that? Was that you?

A. No. I believe our legal department with outside attorneys established Oak Acquisitions for the purchase of the Charleston mill.

Q. And when you say "our" you're talking about KapStone Paper and Packaging Corporation?

A. Yes.

Q. And the KapStone Charleston Kraft, LLC -- the purpose of that mill is -- I mean, it has its own customers and produces paper. What all does it produce, do you know?

A. Yeah. Basically it produces four different products. It produces liner board, it produces corrugated medium; it produces saturated craft paper, and it produces craft pack.

Q. And that's shipped out from that location to the customers?

A. Yes.

Q. And payment for that would go to

KapStone Charleston Kraft, LLC; correct?

A. Well, the payments -- when customers make payments it comes to a lock box under the umbrella of KapStone Paper and Packaging Corporation. So I would say it goes to the parent company, not to KapStone Charleston Kraft.

Q. Well, it goes to a receivable account and KapStone Charleston Kraft, LLC receives an IOU; correct?

I mean, that's how you keep -- you're talking about accounting principles related to -- well, without getting into the details of it, it's basically the product is exchanged for -- I don't know how you would term it. I call it IOUs, but isn't that basically what it is?

A. I'm confused by the question. Maybe you --

Q. Here is what I'm trying to figure out: When a customer pays this lock box, receivable box --

A. Yeah.

Q. -- it's still able to be tracked that this was sold from KapStone Charleston Kraft, LLC?

A. Yes.

Q. Okay. It's separate. What I'm saying

is a lot of things might go into some receivable account, but the transactions are still kept in separation from KapStone Charleston Kraft, LLC transactions, KapStone Paper Corporation transactions. True?

A. Yes. The processing of all those cash receipts is done by employees of KapStone Paper and Packaging Corporation.

MR. FINDLEY: Objection to the nonresponsive portion.

BY MR. FINDLEY:

Q. Your various plants, Victory -- wherever you want to -- however you want to term it, the different legal entities. You know what I'm talking about; right?

A. I think so.

Q. Okay. Each of them have their own projects they're working on as far as production. Does that make sense?

A. Yes.

Q. And what I'm saying is: Are there contracts for that? Meaning, if I customer wants 800 whatever, is that entered into a contract?

A. Yes, it is, through a purchase order.

Q. A purchase order. Okay.

A. Yes.
Q. Have you reviewed any purchase orders related to KapStone Charleston Kraft, LLC?
A. In preparation for this deposition, no.
Q. And I didn't see anything contained in the binders that you sent or that we have here.
A. I don't recall any.
Q. Okay. I was just making sure we're on the same page. But typically a purchase order is generated, and that's how KapStone Charleston Kraft, LLC knows to start production; right?
A. Yes.
Q. And the same with -- let's take Roanoke, for example. They have their own purchase orders to be able to produce whatever that purchase order wanted; correct?
A. Yes.
Q. And then like Victory, for example, in Texas, they would have purchase orders to produce whatever it is that purchase order wanted, whatever product they make there.
A. Well, Victory doesn't produce. They're not a manufacturing company. They're just strictly a distribution company. So they would distribute the products.

The only clarifying point I would make in the comment you made about the purchase orders is there is a centralized group on behalf of our entire mill system -- remember, we have four different paper mills. So it's the centralized group that determines where the product is made. Because we have the flexibility of producing a purchase order at multiple paper mills. So we'll determine based upon various factors where it should be produced.

Q. Okay. Well, as far as what those purchase order says or what decisions are made regarding that, that's not something that you do on a day-to-day basis; correct?

A. No. I don't do that.

Q. As far as the details involving that, that's not something you're here to testify about on behalf of KapStone Paper and Packaging Corporation. Fair?

A. Fair. Correct.

Q. In fact, we don't even have any purchase orders here to talk about, do we?

A. I don't think there is any in the binders.

Q. Well, if there are any in this room you

covered by our workers' compensation.

Q. Thank you.

Mr. Findley asked you some questions about KapStone Paper being registered to do business in South Carolina. Do you remember that?

A. Yes, I do.

Q. Do you know as of the time of the accident whether KapStone Paper was required to be registered to do business in South Carolina?

MR. FINDLEY: Object to form; leading.

A. I am uncertain about that.

Q. You were also asked some questions about a debt and a debt instrument.

Let me just ask you: Does KapStone Charleston, LLC have its own debt?

A. No.

Q. Can you explain that.

A. Well, basically all the debt of the company is either carried at KapStone Kraft Paper Corporation or at KapStone Paper and Packaging Corporation.

Q. And you made reference during your testimony to a 10-K that had as an exhibit a credit facility document; right?

A. Yes.

Q. And if I wanted to get a copy of that agreement what would I do?

MR. FINDLEY: Object to the form.

A. Yes. It would be available on the SEC website. Public information.

Q. So anyone can do that?

A. Yes. Yes. All material contracts are required for public companies to be submitted to the SEC, and that was definitely a material contract.

Q. Mr. Findley asked you some questions about purchase orders and how they're filled. Do you remember that?

A. Yes.

Q. Can you just describe for us what the role of KapStone Paper is in connection with the fulfillment of purchase orders.

MR. FINDLEY: Object to form. Who is KapStone Paper? Who are you referring to?

MR. DUCAYET: The parent company.

THE WITNESS: KapStone Paper and Packaging Company. KapStone Paper and Packaging company is not involved in the fulfillment of any customer purchase orders.

BY MR. DUCAYET:

Q. So, then, what is the role of KapStone Kraft?

A. KapStone Kraft is responsible for producing the needs of the customers based upon the specific requirements in the purchase order and shipping the product to the customer.

Q. And when a customer is looking to purchase -- to use Mr. Findley's example, 800 something, what role do the mills have in connection with the fulfillment of that purchase order?

MR. FINDLEY: Object to form. Outside the scope. He's not designated for any of these topics that you're asking him questions on.

Q. (Continued) You can go ahead and answer.

A. The mill is directly responsible for getting that purchase order and including it into production planning and producing it and shipping the order.

Q. Does the mill decide whether it is going to fulfill that order or some other mill within the mill system would do that?

MR. FINDLEY: Object to the form.

Leading; outside the scope.

A. We have a centralized production planning department that takes a look at all of our our incoming orders, and then they allocate the orders to the specific mills based upon the mill's capacity, their machine requirements and the type of product the customer is requesting.

Q. And in your answer you just said "we." Who is the "we?" KapStone Kraft?

A. Yes. The production planning department is part of KapStone Kraft Paper Corporation.

Q. And just so I understand, if I'm a customer looking to buy boxes or liner board from KapStone, who do I contact?

MR. FINDLEY: Object to the form.

A. Generally most customers will contact a customer service representative at the location.

Q. And then who does that customer service rep work for?

MR. FINDLEY: Object to form.

A. All of our customer service employees for our paper mills are employees of KapStone Kraft Paper Corporation.

Q. So once I contact the customer

representative and I place the order what happens?

A. Again --

MR. FINDLEY: Form; outside the scope.

A. -- the production planning department will look at all orders for across our entire four mill system and they'll allocate the orders to the mills based upon what the type of product is, where the customer is located, and the current capacity of each paper machine at the paper mill.

Q. So, for example, if the Charleston plant is fully booked at the moment for a particular product, you might ask another plant to actually do that production?

MR. FINDLEY: Form; outside the scope.

A. Yes. That happens frequently. It can go to our Roanoke Rapids mill or it can go to our Cowpens mill or it can go to our Longview, Washington mill.

Q. Are you familiar with the term "One KapStone?"

A. Yes, I am.

Q. What does that mean?

MR. FINDLEY: Object to the form; leading.

A. One KapStone was a slogan developed at

the beginning of 2017 to bring together our mill system and our container plant system to act more as one because it would benefit the entire company.

Q. Prior to the One KapStone program -- strike that.

(Discussion off the record.)

BY MR. DUCAYET:

Q. You are leaving the employment of KapStone as of next Tuesday; right?

A. Yes.

Q. In the event that the judge wants to hear your testimony about the issues we've been talking about today or that are set forth in your affidavit, are you prepared to come to Charleston to testify?

A. Yes, I am.

MR. DUCAYET: That's all.

MR. FINDLEY: Anybody else?

EXAMINATION

BY MR. FINDLEY:

Q. So let's go through some things. Are you ready?

A. Yes, I am.

Q. All right. Good. Let's start with Exhibit 1. Or excuse me. I guess this is

Defendant's Exhibit 1. Okay? This document that was handed to you.

A. Yes.

Q. Did you generate that document?

A. No, I did not.

Q. This is another document like the other document that was generated by the lawyers and placed in your notebook; correct?

A. Yes, it was.

Q. And as far as going back and verifying any of that information through actual filings or anything of that sort, did you do that?

A. You know, not through -- not through checking it off the filings. It's more just my knowledge of being with the company for 12 years and knowing all these individuals and what roles they perform.

Q. Well, let's be fair, sir. You do accounting; right?

A. Yes.

Q. You do nothing with operations. True?

A. Well, I wouldn't say nothing with operations.

Q. Okay. Tell me what operation you fulfill at any of these plants in regards to

manufacturing paper products.

A. Well, I have a controller of our mill system and a controller of our container system, and these people have the responsibility for what is going on at the four paper mills or the 22 plants.

Part of that responsibility is understanding the inventory levels at the locations, properly valuing the inventories for financial statement purposes, looking at manufacturing variances. They get involved in some respects at trying to manage the production going on at those facilities so we maximize the highest profit potential products.

So they get involved with that and they report to me, and periodically we'll have discussions concerning those items.

Q. You're talking about inventorying and accounting; correct?

A. Yes.

Q. Everything you're dealing with deals with financials. True?

MR. DUCAYET: Object to the form.

A. Not everything. If you consider the valuation of inventory being included in our

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. 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.	**Plaintiffs' Response in Opposition to Defendants KapStone's Memorandum of Law in Support of the Admissibility of the Affidavit of Todd K. Lester**

FILED
2019 JUL 26 AM 9:30
JULIE J. ARMSTRONG
CLERK OF COURT

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS KAPSTONE'S MEMORANDUM OF LAW IN SUPPORT OF THE ADMISSIBILITY OF THE AFFIDAVIT OF TODD K. LESTER

The Plaintiffs, Jacque Lucas, Shirley Ann Lucas, and Daniel Simerly (collectively, "Plaintiffs"), file this, Plaintiffs' Response in Opposition to Defendants KapStone's Memorandum of Law in Support of the Admissibility of the Affidavit of Todd K. Lester, and request that the Court strike the affidavit of Defendants KapStone's ("Defendants") retained expert, respectfully showing unto the Court the following:

I.

Summary

The Court should strike the affidavit of Todd K. Lester and refuse to consider the incorporated analysis and opinions therein because:

- For over two years, Defendants failed to disclose or designate an expert to provide opinions and testimony regarding the economic integration of the KapStone entities. It was not until jurisdictional discovery was completed that Defendants sought to hire a forensic litigation expert in an attempt to deflect from the testimony that has been elicited during discovery in this case;

- Not only is the designation of Mr. Lester untimely, the opinions Defendants seek to introduce through Mr. Lester's testimony and report are entirely improper. Specifically, Defendants purport to utilize Mr. Lester to substantiate the level of economic integration between the KapStone entities, and in fact, analyze and interpret the eight-factor *Poch* test in their favor;

- Defendants cannot introduce expert testimony to supplant the facts, testimony, and evidence that were included in the briefing submitted by Defendants in the first two years of this litigation. Defendants' assertion that Mr. Lester's report is necessary in order to summarize voluminous documents is a red herring, as Defendants have not ever referenced a single, individual document in support of their motion to dismiss prior to filing their reply within weeks of the hearing on this matter;[1] and

- To the extent this Court is inclined to allow Defendants to unravel two years' worth of discovery efforts and supplant sworn deposition testimony on behalf of Defendants, Plaintiffs request additional time to (1) depose Mr. Lester and (2) retain their own countering expert in order to fully brief this Court as to the facts underlying this issue and the application of the *Poch* case prior to being heard on Defendants' motion to dismiss.

II.

Exhibits

Exhibit A: **Report of Todd Lester**

Exhibit B: **CV of Todd Lester**

III.

Argument

A. The Designation of Todd Lester is Both Untimely and Prejudicial

[1] 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. Furthermore, simply attaching an index of every document produced as an exhibit to a supplemental memorandum does not satisfy Defendants' burden to prove entitlement to dismissal.

Precisely as Plaintiffs predicted, Defendants produced an expert report from Todd Lester well after Plaintiffs filed their response to Defendants' motion to dismiss, providing multiple improper opinions on the evidence. Specifically, this expert – who was not designated and did not produce a report during the first **two years** that Defendants had their Motion to Dismiss on file – purportedly seeks to provide this Court with the opinion that the KapStone entities "operated with a high degree of financial and economic integration." *See* Ex. A at 4. Defendants should not be permitted to hire a litigation expert to try to correct prior testimony on the eve of a hearing that has been reset multiple times. This is especially true given the fact that Defendants have designated two corporate representatives over the course of this litigation to testify on *exactly* the issues Mr. Lester would now like to present differently to the Court.

Defendants' untimely expert designation is improper, and should not be permitted. To suggest that a director for a forensic and litigation consulting practice should be allowed to provide expert opinions to this Court in an attempt to obfuscate the prior sworn testimony in this case on the economic integration of the KapStone entities is undeniably prejudicial. Todd Lester has no personal knowledge of the KapStone entities or their operation outside what has been provided by counsel for Defendants. He has never worked a single day at KapStone. There is no indication he has ever stepped foot in a KapStone facility. His representative experience does not note a single instance of performing an analysis of financial and economic integration of related entities, likely because such an inquiry necessarily constitutes an improper legal opinion. *See* Ex. B. Despite this, KapStone hired Mr. Lester at a rate of $575/hour as a last-ditch effort to confuse this Court as to the evidence and facts as they stand in the case on the jurisdictional issue.

Furthermore, Plaintiffs anticipate that Defendants intend to utilize the analysis and opinions of Mr. Lester to provide additional support for their motion to dismiss that was never

previously briefed or disclosed to Plaintiffs. Throughout the course of this litigation, Plaintiffs have been hamstrung to fully prosecute this case because of the pending motion to dismiss. Due to the jurisdictional motion filed two years ago, Plaintiffs have been forced to pursue discovery as to KapStone solely from a jurisdictional standpoint. During that time, Defendants refused to fully participate in discovery and withheld critical documents until forced to produce them upon order of this Court. Plaintiffs have worked diligently to uncover the arguments Defendants intended to bring before this Court with their motion to dismiss by deposing corporate representatives on these very issues.

Now, after over two years of jurisdictional litigation, Defendants have chosen to completely upend all of the previous discovery and briefing on the *Poch* factors with the analyses and opinions of Todd Lester. These opinions should have been elicited from KapStone's own witnesses, if the evidence truly existed without expert influence. However, when questions regarding evidence of integration were asked at the depositions, the opinions now being presented by Mr. Lester were never articulated. Defendants should not be permitted to create new evidence from a hired witness at this late date.

Considering the untimely and prejudicial nature of Mr. Lester's disclosure and report, Plaintiffs respectfully request that this Court strike Mr. Lester's designation, report, and any reference to Mr. Lester's opinions in any briefing by Defendants in this case.

B. Mr. Lester's Opinions Constitute Improper Conclusions of Law

While Defendants allege that Mr. Lester is not advocating for a legal conclusion, Defendants' admissions could not be clearer – Mr. Lester will provide opinions as to the nature of the economic and operational integration of the KapStone entities. *See* Defs' Brief at 5. A determination of the economic and operational integration of the entities is exactly what the Court

is being asked to find based on the factors enunciated in the *Poch* case. To say that Mr. Lester is not advocating a legal conclusion, while admitting he will be giving opinions as to the ultimate question this Court is being asked to decide is impossible to reconcile. The purpose of the *Poch* factors is to provide the Court with a framework to find whether or not economic integration exists to support the contention that separate entities should be considered to be a single economic entity, thus extending tort immunity. Defendants seek to skip this analysis by presenting an expert opinion to argue for this Court that the KapStone entities "operated with a high degree of financial and economic integration," and therefore, are entitled to immunity. *See* Ex. A at 4. The simple fact is that Mr. Lester has been hired to advocate for a legal conclusion.

Specifically, Mr. Lester intends to opine – as evidenced by the summary of his opinions – 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." *See* Ex. A at 4-5. This is precisely the legal conclusion that the Court is entitled to decide – not a retained expert. Furthermore, it is clear Mr. Lester intends to offer an opinion on the ultimate question of law by stating to this Court that "at and around May 2016, [the KapStone related entities] were highly integrated from a financial standpoint." *Id.* at 6. Mr. Lester's opinions constitute improper legal conclusions and should be excluded.

Furthermore, Mr. Lester's testimony does not add any specialized knowledge to the Court's analysis of the *Poch* factors and their implication with regards to economic integration and tort immunity. Rather, it usurps the Court's duty to interpret the plain language of the evidence presented in the briefing previously filed by Defendants, and apply that interpretation to the law. Expert testimony is improper when it seeks to provide a legal conclusion based on the evidence in place of the Court.

The legal standards for the admission of expert testimony or opinions confirm that the exact type of testimony Defendants' litigation expert seeks to admit is improper. Defendants cite the *Dawkins v. Fields* case in their memorandum, the substance and holding of which directly supports Plaintiffs' arguments for exclusion of Mr. Lester's opinions from consideration in the pending motion to dismiss. In *Dawkins*, the trial court excluded an expert affidavit at a summary judgment hearing because the court concluded that the affidavit contained legal opinions and conclusions. *Dawkins v. Fields*, 354 S.C. 58, 63-64, 580 S.E.2d 433, 436 (2003). The Court of Appeals reversed, finding that the trial court erred in refusing to consider the affidavit. *Id.* On appeal to the Supreme Court of South Carolina, the Court considered whether the Court of Appeals erred in finding the trial court improperly refused to consider the expert affidavit, and found that the Court of Appeals did in fact err, and the trial court properly excluded the proffered affidavit. *See id.* The Court determined that because the affidavit primarily contained legal arguments and conclusions, that the affidavit should have been excluded. *Id.* at 437.

Similar to the *Dawkins* case, Mr. Lester's report inappropriately attempts to usurp this Court's role in determining whether the KapStone Defendants are entitled to dismissal. *See id.; see also O'Quinn v. Beach Assocs.*, 272 S.C. 95, 106–07, 249 S.E.2d 734, 739–40 (1978) (where expert testimony was offered to establish a conclusion of law, the Court held that the trial court properly excluded the testimony because that was within the exclusive province of the trial court). In general, expert testimony on issues of law is inadmissible. *See id.* (citing Note, *Expert Legal Testimony*, 97 Harv.L.Rev. 797, 797 (1984); *see also Askanase v. Fatjo*, 130 F.3d 657, 673 (5th Cir.1997) (where the court disallowed a legal expert's opinion on whether corporate officers and directors breached their fiduciary duties because "[s]uch testimony is a legal opinion and inadmissible."); *United States v. Sinclair*, 74 F.3d 753, 758 n. 1 (7th Cir.1996) (commenting that

Federal Rules of Evidence 702 and 704 prohibit experts from offering opinions about legal issues that will determine the outcome of a case)).

Mr. Lester purports to opine for this Court as to the economic and financial integration of the KapStone entities, which on its face, is offering opinions about a legal issue that will determine the outcome of this case. The Court's determination on economic integration will decide the outcome of the pending dispositive motion in this case. Testimony that constitutes a veiled attempt to present a legal argument as to how the court should rule as a matter of law is improper. *See Green v. State,* 351 S.C. 184, 198, 569 S.E.2d 318, 325 (2002). Just as in the *Green* case (which the *Dawkins* court relied heavily upon), Mr. Lester's report reads as if it could be Defendants' oral argument to the Court at the motion to dismiss hearing. In fact, it is evident that Defendants' have essentially copied the analyses and opinions from Mr. Lester's report to incorporate in their reply to Plaintiffs' previously filed response to the motion to dismiss. The Supreme Court has refused to permit this type of expert opinion, even if the expert could offer some helpful or factual information. *See Dawkins*, at 66, 580 S.E.2d at 437.

Simply because Mr. Lester does not mention the *Poch* case in his report does not mean his opinions are proper.[2] 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

[2] Interestingly, the *Poch* case (along with the *Monsanto* case) is cited by Mr. Lester as being part of the materials he reviewed prior to coming to his opinions in this case. *See* Ex. A at Appendix A, pg. 1.

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").

Mr. Lester's analysis and opinions are nothing more than veiled legal conclusions commenting on the *Poch* factors and the application of those factors to the documents produced in this case. The interpretation and analysis of the produced documents could have been, and should have been, performed by the corporate representatives and affiants previously disclosed and deposed by Plaintiffs. Defendants would have Mr. Lester testify as to the ultimate legal issue that is within the province of this Court, namely, the economic integration of the KapStone entities. Defendants should not be permitted to hire a forensic expert to interpret Defendants' own documents in a manner that helps them resolve a legal question in their favor.

Considering the improper nature of Mr. Lester's opinions, including the intention to opine on ultimate legal issues, this Court should prohibit the inclusion of Mr. Lester's testimony and opinions in this case.

C. Mr. Lester's Opinions are Unreliable

Even if the Court is inclined to permit Defendants' expert report, the Court should still exclude Mr. Lester's proposed testimony because he has not demonstrated that his opinions are reliable. Considering the opinions Defendants wish to elicit are not scientific in nature, cannot be proven, and are speculative at best, they should be excluded.

Here, Mr. Lester offers nothing more than "vague theorizing based upon general principles;" Rule 702 requires more. *Pro Service Auto., L.L.C. v. Lenan Corp.*, 469 F.3d 1210, 1216 (8th Cir. 2006). Mr. Lester's opinions regarding the supposed economic integration of the KapStone entities, without any personal knowledge of such entities, is not true expert testimony but instead, constitutes advocacy. Mr. Lester has identified no methodology, no prior similar analyses, and no specialized knowledge that would permit the introduction of his analyses or opinions in this case.

All expert testimony must meet the requirements of Rule 702, regardless of whether it is scientific, technical, or otherwise. *Id.* at 74, 735 S.E.2d at 655 (citing *State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009)). In determining whether to admit expert testimony, the Court "must make three inquiries":

(a) whether the testimony is helpful, i.e., is "'the subject matter beyond the ordinary knowledge of the jury;'" (b) whether the expert is qualified to render the opinion; and (c) whether the testimony is reliable. *Id.* (citing *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010) & *White*, 382 S.C. at 270, 676 S.E.2d at 686). Nonscientific evidence is not subject to a "general test" and must instead "be evaluated on an ad hoc basis." *Id.* at 75, 735 S.E.2d at 656. In evaluating nonscientific expert testimony, the Court may consider whether the expert is "proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation, or whether they have developed their opinions expressly for purposes of testifying." *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311, 1317 (9th Cir. 1995). In the end, all expert testimony must be "properly grounded, well-reasoned, and not speculative before it can be admitted. The expert's testimony must be grounded in an accepted body of learning or experience in the expert's field, and the expert must explain how the conclusion

is so grounded." *Id.* Thus, "[i]f the witness is relying solely or primarily upon experience, then the witness must explain how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the facts." *Id.*

In the case of Mr. Lester, it is clear that the proposed nonscientific expert testimony is derived specifically for purposes of testifying, and does not exemplify the type of opinions Mr. Lester would ordinarily make in his professional capacity. Further, it is clear that these opinions were derived solely for litigation purposes, and more specifically, solely to provide an interpretation of critical case law factors. "[E]xpert testimony prepared solely for purposes of litigation, as opposed to testimony flowing naturally from an expert's line of scientific research or technical work, should be viewed with some caution." *Johnson v. Manitowoc Boom Trucks, Inc.*, 484 F.3d 426, 434 (6th Cir. 2007); *see also In re Breast Implant Litig.*, 11 F. Supp. 2d 1217, 1243 (D. Colo. 1998) ("Whether or not testimony is biased and unreliable because it was developed solely for litigation purposes is an important factor in determining the admissibility of evidence."). The Court should not allow Mr. Lester to testify merely to provide an expert's "stamp of approval" on Defendants' contentions concerning economic integration. *Dukes v. Georgia*, 428 F. Supp. 2d 1298, 1315 (N.D. Ga. 2006).

In this regard, an expert cannot simply reply upon his own "say-so" or ipse dixit. *Bryte ex rel. Bryte v. Am. Household, Inc.*, 429 F.3d 469, 477 (4th Cir. 2005); *see also Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997). Here, the opinions provided by Mr. Lester are irrelevant because they are not based on any specialized skills or expertise but are instead, nothing more than his own "say-so" or ipse dixit. Essentially, Mr. Lester has been hired by Defendants, to review Defendants own documents that have previously been reviewed and testified to by Defendants own representatives, to provide an opinion that those documents show that the KapStone entities are

economically integrated. The opinion that the entities are economically integrated is the legal conclusion this Court must conclude for itself in order to grant tort immunity to Defendants.

For these reasons, Mr. Lester should be excluded from testifying and providing opinions in this case.

D. Plaintiffs Require Additional Time to Counter Mr. Lester's Affidavit Should it be Permitted in this Litigation

To the extent this Court is inclined to permit the designation of Mr. Lester, Plaintiffs would request this Court continue the hearing on Defendants' motion to dismiss, and permit Plaintiffs adequate time to both depose Mr. Lester, and retain an expert to counter Mr. Lester's opinions, to the extent necessary. Defendants withheld discovery, fought the litigation process, and failed to designate or even suggest the introduction of an expert during the past two years. Further, Defendants failed to specifically cite a single document in their motion to dismiss briefing, and instead, attached a business records affidavit and an index of every document produced by KapStone in this litigation, whether related to the pending motion or not. It was not until Defendants retained Mr. Lester did Defendants provide briefing to this Court identifying specific documents and exhibits for the record.

Therefore, Plaintiffs would be prejudiced by the inability to depose Mr. Lester and retain their own expert should the Court be inclined to review Mr. Lester's expert report or the reply filed by Defendants which incorporates Mr. Lester's analysis and opinions. For these reasons, Plaintiffs would request additional time to conduct discovery as to Mr. Lester, and retain an expert to counter his opinions to the extent necessary.

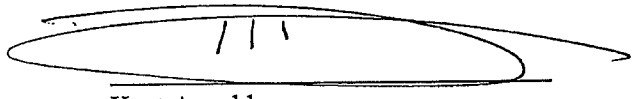
Conclusion

Wherefore, Plaintiffs request that the Court grant its motion and enter an order denying Defendants' Motion to Dismiss.

This 25th day of July, 2019.

Respectfully submitted,

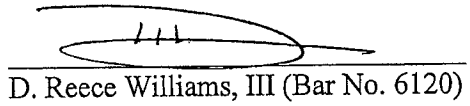
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ATTORNEYS FOR PLAINTIFFS

EXHIBIT

"A"

(Report of Todd K. Lester)

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.

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 A.**

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.

- 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, to assess the degree of financial integration between the three entities.

- In May 2016, KapStone Paper, KapStone Kraft and KapStone Charleston operated with

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. KapStone Paper provided 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.

- KapStone Charleston, KapStone Kraft and KapStone Paper used a common internet website and email exchange system, a shared corporate headquarters, and a common logo on applicable internal and external corporate documentation.

- KapStone Paper filed 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).

- 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.

- The KapStone related entities were governed and managed by 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) that reported directly to Executive Officers at KapStone's headquarters.

- The KapStone related entities 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 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.

- The KapStone related entities operated through a centralized purchase order system and an integrated accounting and cash management system that included managing cash through a master account maintained by KapStone Paper, as well as through combined accounts receivables sale and associated receivables purchasing agreements.

- As described throughout this report, I evaluated the economic and financial relationship between KapStone Paper, KapStone Kraft and KapStone Charleston. Based on my evaluation, I observed that the KapStone related entities, at and around May 2016, were highly integrated from a financial standpoint.

VII. BACKGROUND

15. In May 2016, KapStone was a U.S. based company in the paper, packaging and distribution solutions business that produced mill products and lumber products including containerboard, kraft papers, corrugated products and specialty paper.[1] KapStone operated 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

[1] KapStone Paper and Packaging Corporation, Form 10-K for the fiscal year ended December 31, 2016 [KAPSTONE-000002 – 134 at 3], KapStone Paper and Packaging Corporation, Securities and Exchange Commission, Form 8-K at 3, July 27, 2016

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 through 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 that became KapStone Charleston, U.S. Corrugated, Inc. in 2011 that 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 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]

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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
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

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.

VIII. Scope of Work and Approach

A. Objective

22. I was tasked 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, and to evaluate the degree to which the relationship was indicative of entities that operated as part of an integrated business.

23. More specifically, I was asked to evaluate various aspects of the corporate identity, governance and management structures, operations, and accounting and financial management practices of the respective KapStone related entities, and to what extent, if any, the entities were financially and/or economically integrated.

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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

B. Scope of Work

24. 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.

25. For purposes of my evaluation, I primarily 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.

C. Assessment of Financial and Economic Integration of KapStone Paper and its Subsidiaries

26. 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 in May 2016?
- Were the parent and subsidiaries operating as an integrated economic entity (e.g., did they integrate efforts to achieve a common business purpose)?

27. The factors I assessed in determining the degree to which the KapStone related entities were financially integrated are summarized below and more fully described throughout this report:

- **Corporate Structure and Reporting** – how were the KapStone related entities structured and how did they report for financial reporting and tax purposes?
- **Business Purpose and Focus** – did the KapStone related entities share a common business purpose and have common business interests and / or activities?
- **Corporate Location and Identity** – did the KapStone related entities share a common external and / or internal corporate identity; did they share facilities and office locations?

- **Corporate Governance and Management** – were the KapStone related entities controlled by the same group of Directors and / or managed by the same Executive Officers?

- **Business Operations** – were 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** – did the KapStone related entities conduct business from a financial, accounting and / or operational perspective as a single economic unit (e.g., did they maintain separate books and records)?

- **Policies and Procedures** – were the employees of the KapStone related entities subject to the same set of internal controls and other corporate policies and procedures?

28. In addition, I relied on my over 30 years of qualifications in evaluating financial, economic and accounting characteristics of businesses and their respective parent companies, subsidiaries and special-purpose entities, as well as in evaluating joint ventures and other relationships in relation to forensic accounting and fraud investigations, bankruptcy disputes, complex litigation matters and valuations.

IX. KAPSTONE CORPORATE STRUCTURE AND REPORTING

A. KapStone Paper was created as an Acquisition Vehicle to hold KapStone Kraft

KapStone Paper

29. As described, KapStone Paper was originally incorporated in the State of Delaware on April 15, 2005 as Stone Arcade.[13] Stone Arcade was formed as a special purpose acquisition corporation "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."[14,15]

30. "Special purpose acquisition corporations" are generally created for the purpose of acquiring

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[13] Certificate of Incorporation of Stone Arcade Acquisition Corporation, filed April 15, 2005 [KAPSTONE-000288 – 293]

[14] *Ibid*

[15] KapStone Paper and Packaging Corporation, Form 10-K, for the fiscal year ended December 31, 2016 [KAPSTONE-000002 – 134, at 5]

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.[16] They are companies without any revenue or operating history that use investor funds to acquire or merge with another company.[17] As such, Stone Arcade was formed to serve as a vehicle for the acquisition of another business.[18]

31. On August 19, 2005, Stone Arcade completed its IPO generating gross proceeds to be used for the acquisition of a yet to be identified business.[19] On June 23, 2006, Stone Arcade and International Paper announced they had signed a definitive agreement for Stone Arcade, "...through its newly-formed wholly-owned subsidiary KapStone Kraft Paper Corporation...." to acquire International Paper's Kraft Papers Business.[20] 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.[21]

KapStone Kraft

32. 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.[22] KapStone Kraft became a wholly-owned subsidiary of KapStone Paper. Prior to the referenced acquisition, neither KapStone Kraft nor KapStone Paper had any operations.[23]

33. 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.[24]

KapStone Charleston

34. KapStone Charleston was initially incorporated as Oak Acquisition LLC ("Oak Acquisition"),

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16 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

17 08-54 Guidance on Special Purpose Acquisition Companies at 1, FINRA, Regulatory Notice

18 Stone Arcade Acquisition Corporation, Form 10-Q/A at Note A, filed for the quarterly period ended September 30, 2005

19 Stone Arcade Acquisition Corporation, Securities and Exchange Commission, Form 8-K at 2, August 19, 2005

20 Stone Arcade Acquisition Corporation, Securities and Exchange Commission, Form 8-K at 1, June 23, 2006

21 KapStone Paper and Packaging Corporation, Securities and Exchange Commission, Form 8-K, December 29, 2006

22 Certificate of Incorporation, State of Delaware, KapStone Kraft Paper Corporation, May 25, 2006 [KAPSTONE-000260 – 263]

23 KapStone Paper and Packaging Corporation, Securities and Exchange Commission Form 10-K at Note A: Organization and Business Operations, December 31, 2006

24 KapStone Paper and Packaging Corporation, Securities and Exchange Commission Form 10-K at 1, 27, December 31, 2007

a Limited Liability Company in the State of Delaware, on March 26, 2008.[25] KapStone Kraft was the sole member of Oak Acquisition, which later changed its name to KapStone Charleston.[26] KapStone Charleston was registered in the State of South Carolina on May 14, 2008.[27]

35. 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 company at its discretion.[28]

36. 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.[29] The sale was concluded on July 1, 2008.[30] 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.).[31]

37. 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.[32] 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.[33]

38. 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

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25 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

26 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

27 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

28 Limited Liability Company Agreement of Oak Acquisition LLC, March 2008 [KAPSTONE-000273 – 287]

29 MeadWestvaco Corporation, Securities and Exchange Commission, Form 8-K at 2, April 7, 2008

30 KapStone Paper and Packaging Corporation, Securities and Exchange Commission, Form 8-K at 1, July 2, 2008

31 MWV Agrees to Sell South Carolina Kraft Paper Mill to KapStone Paper and Packaging for $485 Million, MeadWestvaco Press Release, April 7, 2008

32 KapStone Paper and Packaging Corporation, Securities and Exchange Commission, Form 8-K at 2, July 2, 2008

33 *Ibid*

Form 10-K Annual Report filed with the SEC for their fiscal year-ended December 31, 2015 listing KapStone Paper's wholly-owned subsidiaries.[34]

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%

B. KapStone Kraft and KapStone Charleston are Wholly-Owned Subsidiaries of KapStone Paper

39. 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).[35] 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.

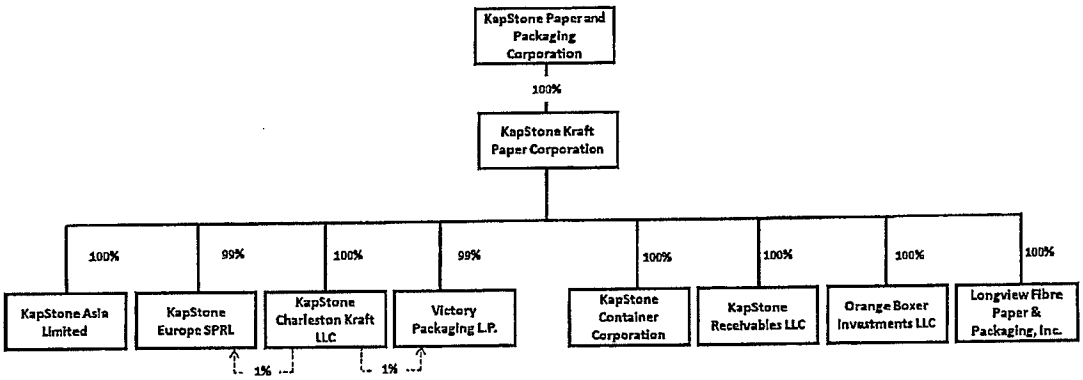
40. More specifically, KapStone Charleston is wholly-owned (100%) by KapStone Kraft, which in turn is wholly-owned (100%) by KapStone Paper, and both are principally governed and under managerial control by KapStone Paper.[36] The organizational structure of KapStone Paper and its various subsidiaries is summarized in the chart below and provided in more detail in Exhibit 2.

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[34] 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

[35] Accounting Standard (AS) 21, Consolidated Financial Statements, Definitions

[36] KapStone Paper and Packaging Organization Chart, dated September 30, 2016 [KAPSTONE-000001]



41. 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.

42. 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 Kraft and KapStone Charleston are wholly-owned (100%) subsidiaries of KapStone Paper and controlled by KapStone Paper.[37] 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).

C. KapStone Paper, KapStone Kraft and KapStone Charleston Reported Consolidated Financial Statements

43. 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."[38] Financial statements are a primary means through which management reports the financial activities of a

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[37] 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

[38] Accountants' Handbook, Eleventh Edition, Volume One: Financial Accounting and General Topics, Subsection 1.3(a)(v) – The Conceptual Framework

business or enterprise, as well as a fundamental requirement of publicly-traded companies operating pursuant to the rules and regulations of the SEC.

44. During the relevant period, KapStone Paper provided its Annual Report and financial statements on a consolidated basis with its subsidiaries including KapStone Kraft and KapStone Charleston.[39] "Consolidated financial statements are the financial statements of a group presented as those of a single enterprise."[40] 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."*[41]

45. 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 a particular unit of accountability."[42] 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.[43] 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.[44]

46. 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."[45]

> *"The prime purpose of consolidation is to present as one economic entity the financial position and*

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39 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]

40 Accounting Standard (AS) 21, Consolidated Financial Statements, Definitions

41 The Economic Entity Principle, Accounting Tools, July 17, 2017

42 Kieso and Weygandt, Intermediate Accounting, Sixth Edition, Chapter 2 | Conceptual Framework Underlying Financial Accounting, p. 33, John Wiley & Sons, 1989

43 *Ibid*

44 *Ibid*

45 Accounting Standard (AS) 21, Consolidated Financial Statements, Objective

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."[46]

D. KapStone Paper, KapStone Kraft and KapStone Charleston Filed a Consolidated U.S. Corporation Income Tax Return

47. Similar to its financial reporting with the SEC, KapStone Paper, KapStone Kraft and KapStone Charleston 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).[47] 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 owned 100% of the voting stock of KapStone Kraft and KapStone Kraft is the sole or single member (i.e., owner) of KapStone Charleston.

48. 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")."[48] However, "[i]f the single-member LLC is owned by a corporation (as in the case of KapStone Charleston), the IRS requires the LLC to "be reflected on its owner's federal tax return as a division of the corporation."[49] 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 Performed the Same Business Activity

49. The KapStone related entities performed the same principal business activity. While KapStone Paper served as a holding company, KapStone Kraft and KapStone Charleston were both described with the same principal business activity (i.e., Paper Manufacturing – Pulp, Paper and Paperboard Mills) in their reporting to the IRS.[50,51]

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46 The Vest-Pocket CFO, Chapter 7, Key Financial Accounting Areas, p. 125, Jae K. Shim and Joel G. Siegel, Prentice Hall, 1992

47 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]

48 Single Member Limited Liability Companies, Internal Revenue Service, www.irs.gov

49 *Ibid*

50 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]

51 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).

50. 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.[52] They also shared a common President during the relevant period, Mr. Randy Nebel.[53] The KapStone related entities also were described jointly in relation to their shared corporate goals.[54]

51. 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.[55]

B. KapStone Kraft and KapStone Charleston were not identified as Distinct Businesses from KapStone Paper in its Financial Reporting

52. In 2016, KapStone Paper reported its operating results by two segments: (1) Paper and Packaging; and (2) Distribution.[56] KapStone's 10-K described the Paper and Packaging segment by saying that 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."

53. 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,

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52 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

53 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

54 *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

55 *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.

56 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]

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."[57] 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."

54. Although the KapStone related entities maintained separate financial statements for internal use (i.e., for managerial and financial accountability purposes), with regard to external financial reporting the KapStone related entities were presented as an economic unit.[58] In the year preceding May 2016, KapStone presented itself as an 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).[59] The specific subsidiaries (i.e., KapStone Kraft and KapStone Charleston) were rarely referenced.[60] KapStone also made similar presentations to investors and / or at conferences during this period.[61]

XI. KapStone Corporate Locations and Identity

A. The KapStone Related Entities Shared the Same Corporate Facilities

55. As a large corporation conducting business across the United States, Canada and Mexico, KapStone had many locations and offices, but shared a common corporate headquarters located at 1101 Skokie Blvd., Suite 300, Northbrook, Illinois, 60062.[62] While KapStone owned or leased a series of

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57 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

58 *See also* 30 (b) (6) Deposition of KapStone Paper and Packaging Corporation (Mark Niehus) dated January 8, 2019 at 7-8

59 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)

60 *"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

61 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

62 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]

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.[63]

56. KapStone Paper, KapStone Kraft and KapStone Charleston had significant overlap insomuch that managers and employees of one entity shared and provided services to the other entities. In May 2016, KapStone was operating four paper mills including the KapStone Charleston facility located in North Charleston, South Carolina.[64] 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).[65,66] See Exhibit 3 for a listing of personnel located at the KapStone Charleston mill that reported to KapStone Paper (Corporate Northbrook) or the Mill Headquarters (KapStone Kraft).

57. 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 Exhibit 4 for a listing of individuals working at KapStone Kraft (Roanoke Rapids) that were reporting to KapStone Paper (Corporate Northbrook) or Mill Headquarters.

58. 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).[67]

B. The KapStone Related Entities Shared the Same Corporate Name and Brand

59. 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.

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63 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]

64 www.kapstonepaper.com, The Internet Archive Wayback Machine (www.web.archive.org), April 20, 2016

65 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

66 KapStone Active Employee Job List as of May 24, 2016 [KAPSTONE-002596 – 2650]

67 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]

60. 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).[68] 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.[69] The images were used in connection with corporate letterhead, internal policies and forms, invoices, and contracts and agreements, among others.[70]

61. The images were routinely used in establishing the internal corporate brand of KapStone with its employees including in relation to employment applications, the employee handbook, employee benefit documents, corporate policies and procedures, and other internal documents used with employees.[71] For example, in the offer letter to Mr. Simerly, KapStone did not make a 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...")[72]

XII. KapStone Corporate Governance and Management

A. The KapStone Related Entities were Governed by an Overlapping Board of Directors

62. 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

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68 KapStone Paper and Packaging Corporation Trademarks, Justia Trademarks

69 KapStone Paper and Packaging Corporation Trademark Acknowledgement, dated February 1, 2016

70 *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]

71 *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-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]

72 *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]

KapStone Charleston.[73] The common governance was further evidenced by a set of corporate internal controls and policies and procedures, which are described further below.[74]

63. While KapStone Charleston was organized as an LLC, it was governed and managed by its single member, KapStone Kraft.[75] 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 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.

64. In addition to an overlapping Board of Directors, the business of the KapStone related entities was conducted by a common group of Executive Officers during the relevant period. 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. 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, and Timothy P. Keneally, Vice President & General Manager and President of the Container Division). KapStone's Executive Officers in and around May 2016 are further summarized in the chart below:

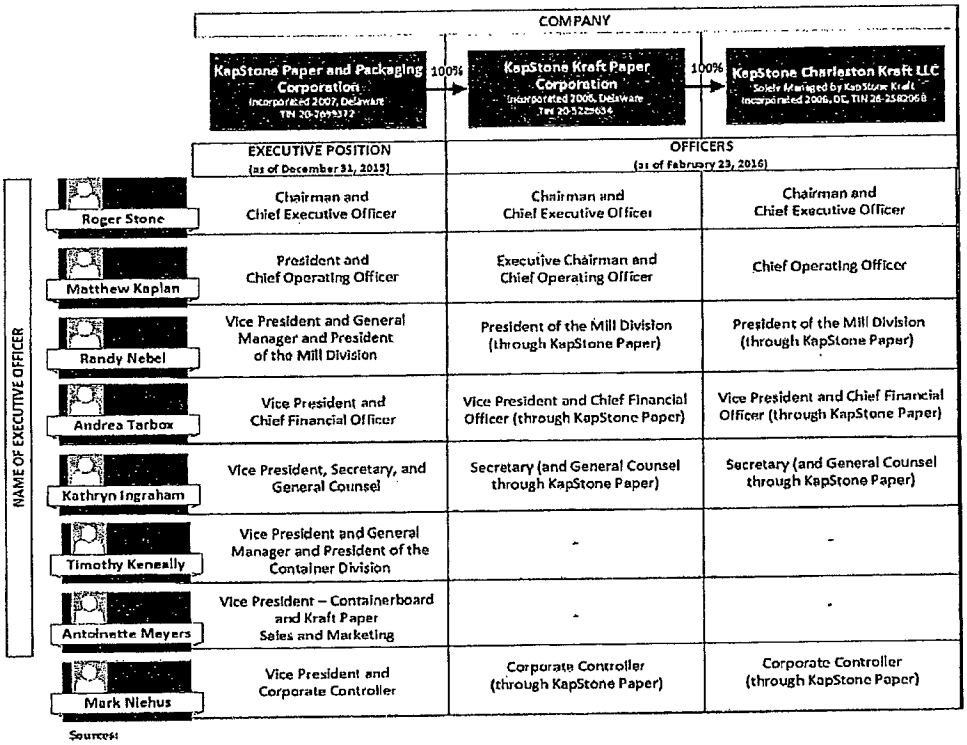
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[73] KapStone Entity Directors and Officers as of February 23, 2016 [KAPSTONE-001184 – 1187] and as of February 14, 2017 [KAPSTONE-000266 – 270]

[74] *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]

[75] Limited Liability Agreement of Oak Acquisition LLC, March 2008 [KAPSTONE-000273 – 287 at 276]

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.

65. While the corporate structure of KapStone Kraft and KapStone Charleston were different – one was a corporation and one was an LLC – 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.[76]

XIII. KAPSTONE BUSINESS OPERATIONS

66. The management and operations of the KapStone related entities were integrated, including in their dealings with various contractual matters, financing of acquisitions and operations, insurance, financial interactions among the entities, and the provision of other corporate services (e.g., IT, human resources, etc.).

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[76] KapStone Paper & Packaging Corp Form DEF 14A filed March 28, 2016 (at 22-23) and May 16, 2017 (at 23-24)

"KapStone uses a company-wide management approach to continuously monitor all internal and external aspects of the business."[77]

67. 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. 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, and the Internal Audit function were managed through the corporate headquarters by KapStone Paper.[78] In addition, KapStone Paper was responsible for procuring and sponsoring employee benefit plans, insurance and payroll services, and providing an integrated purchase order, accounting and cash management system, among other services.[79] 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

68. 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.[80] While KapStone Paper was the first named insured under Policy Number 90-16567-04, both KapStone Kraft and KapStone Charleston were named insureds and received insurance coverage through the same policy.

69. The Workers' Compensation and Liability Insurance policy premium was billed to, and paid by, KapStone Paper on behalf of itself and its subsidiaries.[81] The claims filed by Messrs. Lucas and Simerly were under the same policy (i.e., Policy Number 90-16567-04).[82]

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77 KapStone 2014 Sustainability Report, p. 42

78 KapStone Active Employee Job List as of May 24, 2016 [KAPSTONE-002596 – 2650]

79 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.

80 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

81 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]

82 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]

B. The KapStone Related Entities had the Same Group Health and Welfare Plan

70. 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"..."* [83]

71. 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 are summarized below:[84,85]

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

72. Employees of the KapStone related entities were eligible to participate in the "KapStone Paper and Packaging Corporation 401(K) Plan," the "KapStone Paper and Packaging Corporation Deferred Compensation" plan, and the "KapStone Paper and Packaging Corporation Defined Benefit Retirement

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83 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]

84 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]

85 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.

Plan," which were sponsored by KapStone Paper.[86,87]

C. The Labor Agreement between KapStone Charleston and its Union was Originated by KapStone Kraft and Executed by Someone Reporting to Mill Headquarters

73. 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), who appears to have been located at the Longview Mill but reported to Mill Headquarters at KapStone Kraft.[88,89]

D. The KapStone Related Entities Operated Under Some of the Same Contracts and Master Services Agreements

74. 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).[90] 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 and its Affiliates ("KapStone") and Safway Services LLC ("Contractor") dated February 19, 2016 –*

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86 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]

87 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]

88 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

89 KapStone Active Employee Job List as of May 24, 2016 [KAPSTONE-002596 – 2650]

90 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]

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*

75. Messrs. Hoffman, Choltco and Davis all reported to Mill Headquarters in Roanoke Rapids, North Carolina in 2016 (i.e., the location of KapStone Kraft).[91]

76. 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.*[92] 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*).[93] A summary of KapStone's Legal Contract Review and Signing Authority Policy with applicable reporting locations and descriptions is provided in Exhibit 6.

77. 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

78. The KapStone related entities conducted business as a consolidated economic unit from a financial, accounting and / or operational perspective. While some separation of books and records, as well as bank accounts, is expected as KapStone was comprised of different operational units and divisions, ultimately KapStone managed the accounting and financial aspects of its business as a single entity.

A. While Other Bank Accounts Existed, KapStone Operated Primarily through One Master Account

79. The bank account structure in use by KapStone during the relevant period included separate accounts for KapStone Kraft and other KapStone Paper subsidiaries including different accounts for

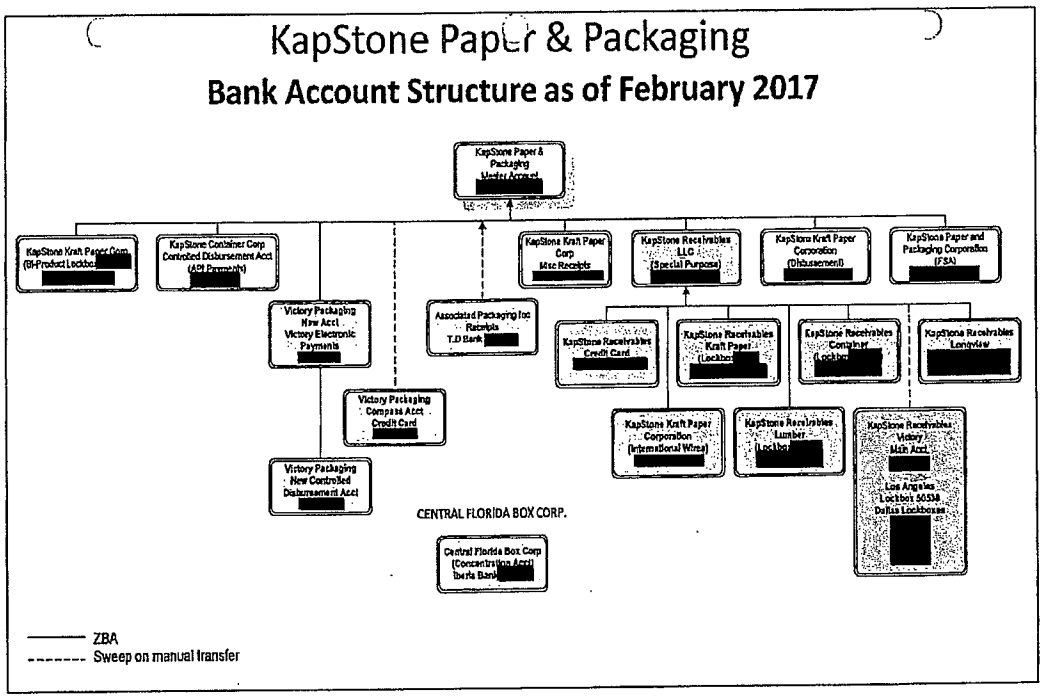
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91 KapStone Active Employee Job List as of May 24, 2016 [KAPSTONE-002596 – 2650]

92 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]

93 KapStone Paper and Packaging Capital Funding Requests Approval Levels, Revision: 03/15/2015 [KAPSTONE-001976 – 1979]

different purposes (i.e., Receivables, Disbursement, Special Purpose, etc.).[94] While certain separate bank accounts existed under the names of KapStone Charleston and KapStone Kraft, as well as other KapStone Paper subsidiaries, 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:



80. 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.[95] In other words, funds received or available in the separate subsidiary accounts were transferred to the Master Account at the end of each day. Zero Balance Accounts allow for greater control over disbursements and a greater amount of funds available for use in the Master Account (i.e., the KapStone Paper Master Account).

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94 KapStone Paper & Packaging Bank Account Structure as of February 2017 [KAPSTONE-000339]

95 Zero Balance Account – ZBA, Investopedia, updated August 9, 2018

KapStone Paper concentrated its funds into one master operating account from which it controlled the funds including the funds transferred back to the subsidiary accounts for the purpose of disbursements.

81. Although separate subsidiary accounts existed, the KapStone related entity accounts were identified as KapStone Paper accounts with funds originating from "KapStone Paper and Packaging Corp., 1101 Skokie Blvd, Suite 300, Northbrook, Illinois, 60062.[96]

B. KapStone Consolidated the Securitization of Accounts Receivables from the KapStone Related Entities

82. In addition to managing its disbursements primarily through a KapStone Master Account, the KapStone related entities, as well as KapStone Container and Longview, operated under a joint Receivables Sale Agreement where any receivables (i.e., from the sales of goods and services) were sold to KapStone Receivables, LLC ("KapStone Receivables").[97] The Receivables Sale Agreement effectively transferred 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 was financed with the collateral of the obligation.

83. Immediately after acquiring receivables pursuant to the Receivables Sale Agreement, KapStone Receivables sold the receivables to certain "Purchasers" pursuant to a Receivables Purchase Agreement.[98] In other words, KapStone Receivables, in turn, sold the receivables to certain outside purchasers (e.g., Wells Fargo Bank, PNC Bank, etc.).[99,100] Diagrams of the receivables sale and receivables purchase process are provided in Exhibit 7.

C. The KapStone Related Entities were Principally Supported by one Debt / Credit Agreement

84. 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 the purpose of making acquisitions) and a

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96 *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]

97 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]

98 *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]

99 *See e.g.*, Amendment No. 2 to Receivables Purchase Agreement, dated as of June 8, 2016 [KAPSTONE-002384 – 2394]

100 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]

revolving credit facility (i.e., typically used more for working capital purposes).[101] 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.[102]

D. The Mill Division of KapStone had a Centralized Purchase Order System

85. 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.[103]

XV. KAPSTONE POLICIES AND PROCEDURES

86. The KapStone related entities were 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

87. The KapStone Paper and Packaging Employee Handbook was the same handbook applicable to employees of KapStone Kraft and KapStone Charleston in May 2016.

> *"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")."* [104]

88. While incorporated as a part of the Employee Handbook, various other policies also specifically spelled 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 acting on 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).[105]

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[101] 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

[102] *Id.*

[103] 30 (b) (6) Deposition of KapStone Paper and Packaging Corporation (Mark Niehus) dated January 8, 2019 at 85-86 and 119-122

[104] 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

[105] 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]

"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."[106]

B. The KapStone Related Entities were Subject to Other Consistent Policies and Procedures

89. In addition to those policies and procedures directed primarily at employees, the KapStone related entities were subject to the same operating controls, policies and procedures in various respects including the following:[107]

- 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]

90. Various other identified policies applicable to employees of the KapStone related entities are summarized in Exhibit 8.[108]

91. The KapStone related entities were 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.[109]

92. 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."[110] Various other IT policies were applicable across KapStone.[111]

XVI. CONCLUSION

93. The factors that I evaluated and observed in relation to the KapStone related entities are indicative of a parent holding company and its subsidiaries that were operating from an economic and

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[106] KapStone Paper and Packaging Corporate, Securities and Exchange Commission, Form 10-K, for the fiscal year ended December 31, 2015 at 42

[107] *See also* 30 (b) (6) Deposition of KapStone Paper and Packaging Corporation (Mark Niehus) dated January 8, 2019 at 7-8

[108] All sourced material addressing KapStone's integrated policies are set forth in Exhibit 7.

[109] 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]

[110] IT-1 Account Management Policy, and other affiliated policies [KAPSTONE-000428]

[111] KapStone IT Policies Portfolio [KAPSTONE-001985 – 1993, and KAPSTONE-001997 – 2081]

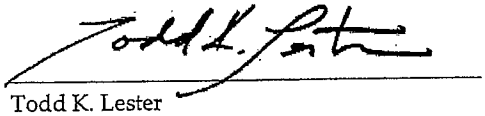
financial perspective as an integrated economic unit.

94. During the relevant period, 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. The KapStone related entities also identified themselves primarily through one unifying name, trademarked image, and in their representations of KapStone in the public domain (e.g., website, press releases, investor presentations, etc.). In addition, the financial operations of the KapStone related entities were managed through an integrated purchase order, accounting and cash management system that included the centralized management of payroll, lending / credit agreements, and banking.

XVII. EXPERT DECLARATION

95. 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 30, 2019

By: 

Todd K. Lester

APPENDIX A

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).
- Company Policy No. 30500 for Periodic Physical Certification of Rolling and Non-Rolling Stock Fixed Assets, effective July 20, 2004 (KAPSTONE 001910-1913).
- Company Policy No. 30600 for Leases – Long Term, effective March 29, 2005 (KAPSTONE 001924-1933).
- Company Policy No. 30351 – Accounting Policy for Liquor Inventory for Charleston and Roanoke Rapids Paper Mills, effective January 1, 2009 (KAPSTONE 001901).
- Company Policy No. 30350 – Accounting Policy for Alternative Fuel Mixture Tax Credit, effective January 29, 2009 for Charleston and February 14, 2009 for Roanoke Rapids (KAPSTONE 001900).
- Kieso and Weygandt, Intermediate Accounting, Sixth Edition, Chapter 2, dated 2009.
- Company Policy No. 30400 for Storeroom Assets, effective January 1, 2010 (KAPSTONE 001902-1909).
- Company Policy No. 30340 for Cycle Counts and Physical Inventories, effective January 1, 2011 (KAPSTONE 001899).
- Company Policy No. 30501 for Capitalization and Expensing of Expenditures for Fixed Assets, effective January 1, 2011 (KAPSTONE 001914-1917).
- Company Policy No. 30800 for Charges Related to Acquisition of Fixed Assets, effective January 1, 2011 (KAPSTONE 001934).
- Company Policy No. 30820 for Project Managers' and Other Internal Costs, effective January 1, 2011 (KAPSTONE 001935-1936).
- Company Policy No. 30510 for Capitalization of Interest Cost, effective June 1, 2012 (KAPSTONE 001918-1920).
- Company Policy No. 6000 Revenue Recognition, effective June 30, 2012 (KAPSTONE 001947).
- KapStone Paper and Packaging Corporation Amended and Restated 2009 Employee Stock Purchase Plan, approved in October 2014 (KAPSTONE 001950-1958).
- All KapStone & Subsidiaries Policy Service Organization Control Report Review (SOC-1), issued December 1, 2014 and revised September 20, 2016 (KAPSTONE 001980-1981).
- All KapStone & Subsidiaries Service Organization Control Report Review (SOC-1), issued December 1, 2014 and revised September 20, 2016 (KAPSTONE 001982-1983).
- KapStone Paper and Packaging Corporation Credit Policy, effective May 2016 (KAPSTONE 001889-01892).
- KapStone Paper and Packaging Corporation Collection Policy, effective May 2016 (KAPSTONE 001893-1895).
- Examples of Payment of Accounts Receivable by Kapstone Paper and Packaging Corporation on behalf of Kapstone Charleston Kraft LLC, dated June 30, 2016 (KAPSTONE 000349-354).

- All Container Division Plant Locations – KCC Pricing Controls for SOX OTC, issued and revised September 20, 2016 (KAPSTONE 001984).
- KapStone Paper and Packaging Corporation Financial Accounting and Approval of Leases Policy, effective 2016 (KAPSTONE 001994-1996).
- KapStone Paper and Packaging Corporation Financial Accounting and Approval of Leases Policy, effective 2016 (KAPSTONE 002104-2106).
- KapStone Paper and Packaging Corporation Financial Derivatives Policy, effective 2016 (KAPSTONE 001943-1944).
- Accounting for Trades and Longview, effective 2016 (KAPSTONE 001948-1949).
- KapStone Paper and Packaging Corporation Investment Policy, effective 2016 (KAPSTONE 001945-1946).
- The Economic Entity Principle, Accounting Tools, July 17, 2017.
- Zero Balance Account – ZBA, Investopedia, updated August 9, 2018.
- Kapstone Paper and Packaging Corporation Consolidating Balance Sheet, for the period 2012 – 2015 (KAPSTONE 000363).
- Accounting Standard (AS) 21, Consolidated Financial Statements, Objective, n.d.
- Kapstone Paper and Packaging Corporation, Receivables Securitization Transaction, Structure Chart, n.d. (KAPSTONE 000358-362).

Safety

- SOG 15- No. 2 Evaporator Shutdown Checklist, dated February 24, 1993 (KCK 00489-490).
- Recovery Dept Evaporator Specialist Qualification Learning Checklist, completed on April 10, 2008 (KCK 00491-510).
- Kapstone On-Site Service Terms and Conditions, dated June 6, 2014 (KAPSTONE 000264-265).
- Template for KapStone Recovery – No. 2 Evaporator Entry Isolation Procedure, dated September 10, 2014 (KCK 00188-195).
- Completed KapStone Recovery – No. 2 Evaporator Entry Isolation Procedure, dated September 10, 2014 (KCK 00178-187).
- KapStone Health & Safety Procedure: Lock, Tag, & Test, revised January 19, 2015 (KCK 00197-217).
- ATTN: EVAP Operators Notice re outage and procedures, dated May 23, 2016 (KCK 00196).
- KapStone Health & Safety Procedure: Working with Hazardous Chemicals: Line Breaking Information, various dates (KCK 00339-343).
- KapStone Health & Safety Procedure: Mill-wide General Safety Rules, various dates (KCK 00358-376).
- Screenshot of Version History for No. 2 Evaporator Entry Isolation Procedure; Source: Charleston DMS, various dates (KCK 00394).
- KapStone Recovery Dept Orientation Checklist and Utility Support Specialist Qualification Learning Checklist, various dates (KCK 00438-458).
- New Recovery Employee/ Recovery Utility Support Specialist Orientation Manual, various dates (KCK 00459-483).
- Evaluation of Safety and Health Program (Inspection No. 318041316): KapStone Charleston Kraft, LLC, n.d. (KCK 00093).
- Recovery Operations with Map of Recovery area, n.d. (KCK 00128).
- Accident Investigation Preparation & Procedure for KapStone Charleston including notes, n.d. (KCK 00145-150).
- New Recovery Employee/ Recovery Utility Support Specialist Orientation Manual, n.d. (KCK

00164-170).
- Safety Training re Line Break Safety (pg. 1 – 33 (out of 49)), n.d. (KCK 00226-279).
- Charleston Mill 2015 Lockout/ Tagout Presentation Course, n.d. (KCK 00280-329).

Information Technology
- Company Policy No. 30530 for Computer Software, effective September 2, 2010 (KAPSTONE 001921-1923).
- KapStone Paper and Packaging Corporation IT-1 Account Management Policy for Population: all KapStone Paper and Packaging, and Subsidiaries, Employees, effective 2016 (KAPSTONE 001997-2081).
- Example of Corporate IT Communication for All Kapstone, dated September 15, 2017 (KAPSTONE 000355).
- KapStone Paper and Packaging Corporation IT-3 Data Transmission Security for Population: All KapStone paper & Packaging, and Subsidiaries, Employees and Contractors, various dates (KAPSTONE 001985-1993).
- Kapstone Paper and Packaging Corporation, 2016 Consolidated IT Budget, n.d. (KAPSTONE 000356).
- Kapstone Paper and Packaging Consolidated IT, Directory Users and Computers, n.d. (KAPSTONE 000357).
- Kapstone Paper and Packaging Corporation IT- 1 Account Management Policy, n.d. (KAPSTONE 000428).

Other Policies and Procedures:
- KapStone Paper and Packaging Corporation and its subsidiaries Legal Contract Review and Signing Authority Policy, revised November 2, 2014 (KAPSTONE 001969-1979).
- KapStone Paper and Packaging Corporation Anti-Bribery Policy, effective September 23, 2016 (KAPSTONE 001959-1963).
- KapStone Paper and Packaging Corporation Environmental Policy, effective 2016 (KAPSTONE 002103).
- KapStone Paper and Packaging Corporation and its subsidiaries Legal Contract Review and Signing Authority Policy, dated April 18, 2017 (KAPSTONE 002514-2519).
- KapStone Paper and Packaging Antitrust Policy & Guidelines, effective June 15, 2017 (KAPSTONE 001964-1968).

Contracts, Agreements, Banking and Financial Transactions
- Summary of Daily Activity KCK Bank Account BOFAUSXXXXX XXXXXXXXX5001, dated May 21, 2016 (KAPSTONE 001620-1641).
- Summary of KapStone Receivables LLC Account XXXXXXX730 Depository and Account, dated May 21, 2016 (KAPSTONE 002491-2508).
- Examples of KapStone Paper and Packaging Corporation payments to third party contractors, dated May 2016 (KAPSTONE 002135-2139).
- J. Lucas Expense, from the period between June 1, 2016 – June 6, 2016 (KAPSTONE 000713).
- J. Lucas Expense, from the period between June 4, 2016 – June 10, 2016 (KAPSTONE 000714).
- J. Lucas Expense, from the period between June 11, 2016 – June 17, 2016 (KAPSTONE 000715).
- J. Lucas Expense, from the period between June 23, 2016 – May 31, 2016 (KAPSTONE 000712).
- KapStone Paper and Packaging Corporation payment to DIR CAL OSHA – Department of Industrial Relations – Example of Payment of Fine by KPPC, dated July 29, 2016 (KAPSTONE

002242).

- Kapstone Paper and Packaging Corporation, Invoice from Blue Cross Blue Shield of Illinois, for Health Insurance Coverage Premium, dated October 18, 2016 (KAPSTONE 000407-408).
- Kapstone Paper and Packaging Premium, Payment to Blue Cross Blue Shield of Illinois, dated October 18, 2016 (KAPSTONE 000412-413).
- Kapstone Paper and Packaging Bank Account, effective February 2017 (KAPSTONE 000339).
- Hobgood Electric & Machinery Co., Inc. Invoice No. 0070357 to KapStone Charleston Kraft – Examples of Payments of Invoices, dated March 17, 2017 (KAPSTONE 002123).
- KapStone Paper and Packaging Corporation Check to HobGood Electric & Machinery – Examples of Payments of Invoices, dated April 17, 2017 (KAPSTONE 002124).
- Examples of KapStone Paper and Packaging Corporation payments to third party contractors, dated February 10, 2018 (KAPSTONE 002130-2134).
- Example of KapStone Paper and Packaging Corporation paying KapStone Charleston Kraft LLC Invoice, for the period 2017-2018 (KAPSTONE 002125-2129).

Related to Incident and Investigation

Workers Compensation and Personnel Documents for Jacque Lucas and Daniel Simerly

- Kapstone Charleston Kraft LLC Hiring letter to Jacque Lucas, dated February 4, 2010 (KAPSTONE 000344).
- Jacque Lucas Personal Data Change Form 9EB0YQ0000, dated January 2, 2012 (KAPSTONE 000707).
- Kapstone Charleston Kraft LLC Hiring letter to Daniel Simerly, dated August 31, 2012 (KAPSTONE 000345-346).
- Employer File Materials – Simerly Workers Compensation Claim, dated October 16, 2012 (KAPSTONE 000439-578).
- KapStone Safety Data Sheet: Black Liquor, dated May 30, 2015 (KCK 00351-357).
- Jacque Lucas Earnings Statement, dated May 1, 2016 (KAPSTONE 000708-711).
- Claim Number: 55C277929A Daniel Simerly, Loss Date: May 24, 2016, dated September 19, 2017 (KAPSTONE 000334).
- KapStone Entity Officers and Directors, effective May 2016 (KAPSTONE 001184-1187).
- Jacque Lucas Personnel File, dated June 3, 2016 (KAPSTONE 000680-705).
- Instance A – Description: PPE Requirements, Additional Info: G. Bower e-mail, dated June 17, 2016 (KCK 00120).
- OSHA Referral Inspection note, dated July 15, 2016 (KCK 00057).
- Memorandum for Record re May 25, 2016 inspection, dated July 15, 2016 (KCK 00058).
- Memorandum for File re inspection, dated July 15, 2016 (KCK 00059).
- Informal Conference Memorandum, dated October 5, 2016 (KCK 00009-10).
- KapStone Charleston Kraft LLC d/b/a KapStone, inspection date: May 25, 2016 – July 13, 2016, informal conference, dated October 25, 2016 (KCK 00011-19).
- Representative Intracompany Correspondence re Hiring for Kapstone Charleston Kraft LLC, dated July 13, 2017 (KAPSTONE 000343).
- Claim Number: 55C277926A Jacque Lucas Loss Date: May 24, 2016, Recoverable Deductible Losses through August 31, 2017, dated September 19, 2017 (KAPSTONE 000333).
- Daniel Simerly Workers Compensation File, dated September 29, 2017 (KAPSTONE 000579-679).
- Jacque Lucas SC Workers Comp Statement of Earnings of Injured Employee, various dates (KAPSTONE 000706).

- Jacque Lucas Claim #55C277926, various dates (KAPSTONE 000312-315).
- Daniel Simerly Claim #55C277929, various dates (KAPSTONE 000316-319).
- Instance A – Description: PPE Citation, n.d. (KCK 00102).
- Measurements and additional information re Recovery operator incident, n.d. (KCK 00103).
- Instance A – Description: PPE Requirement, n.d. (KCK 00111).
- Measurements and additional information re incident, n.d. (KCK 00112).
- Black Liquor Flow Diagram, n.d. (KCK 00129).
- PareView Display of E2-1B Associated Pump Load (not visible), n.d. (KCK 00344).
- Representative Employment Related, Documentation for All Kapstone, n.d. (KAPSTONE 000376-383).

South Carolina Department of Labor, Licensing & Regulation ("SCDLLR") Documents

- SC Dept of Labor Licensing & Regulation Penalty Credits, inspection dates May 25, 2016 – July 13, 2016 (KCK 00061-92).
- SC Dept of Labor Licensing & Regulation – Inspection Division Assignment Sheet CSHO: Paskauskas, Raymond and Referral, dated May 26, 2016 (KCK 00130-132).
- SC Dept of Labor Licensing & Regulation – Opening and Closing Conference Summary, dated July 13, 2016 (KCK 00094).
- SC Dept of Labor Licensing & Regulation Citation and Notification of Penalty, dated July 13, 2016 (KCK 00095-101).
- SC Dept of Labor Licensing & Regulation Citation & Notification of Penalty, dated August 9, 2016 (KCK 00038-44).
- SC Dept of Labor Licensing & Regulation Citation & Notification of Penalty, dated August 9, 2016 (KCK 00049-55).
- SC Dept of Labor Licensing & Regulation – Citation and Notification of Penalty, dated August 9, 2016 (KCK 00104-110).
- SC Dept of Labor Licensing & Regulation – Citation and Notification of Penalty, dated August 9, 2016 (KCK 00113-119).
- Notice to Employees of Informal Conference, dated October 25, 2016 (KCK-00020).
- SC Dept of Labor Licensing & Regulation Informal Settlement Agreement, dated November 1, 2016 (KCK 00007-8).
- SC Dept of Labor Licensing & Regulation – OSHA Inspection Report (Report ID 0454510), dated December 21, 2016 (KCK 00060).

Correspondence / Other

- KapStone Learning Center Certificate of Completion to certify that J. Fuller has successfully completed Recovery – Concentrator Training Manual, dated July 26, 2012 (KCK 00542).
- KapStone Charleston Kraft: Recovery Department PSC Evaporator Support Specialist Qualification Learning Checklist for J. Fuller, completed on August 3, 2012 (KCK 00511-541).
- User Training Transcript Report for Jacque Lucas, for the period of January 1, 2014 – May 25, 2016 (KCK 00218-221).
- Activity Completion Records Report for CH-Equipment Isolation Process Improvements (J. Fuller, A. Smith, J. Lucas, and D. Simerly), for the period of June 1, 2014 – June 10, 2016 (KCK 00598).
- User Training Transcript Report for Daniel Simerly, for the period of January 1, 2015 – May 25, 2016 (KCK 00222-225).

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- G. Bower Transmittal Letter re Requested Documentation OSHA Accident, dated May 26, 2016 (KCK 00172-173).
- G. Bower email to R. Paskauskas re KapStone Organizational Chart – Maintenance/ Recovery with attached charts for: (1) Maintenance & Stores Org Chart (Maintenance Team); (2) Fiber & Utilities Org Chart; and (3) Maintenance & Stores Org Chart, dated May 26, 2016 (KCK 00174-177).
- G. Bower Transmittal Letter to R. Paskauskas re Requested Documentation – OSHA Accident Investigation, dated June 7, 2016 (KCK 00387-388).
- G. Bower Transmittal Letter to R. Paskauskas re Requested Documentation – OSHA Accident Investigation, dated June 10, 2016 KCK 00389).
- G. Bower Transmittal Letter to R. Paskauskas re Requested documentation, dated June 10, 2016 (KCK 00484-488).
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- G. Bower email to R. Paskauskas re Requested Documentation – KapStone with clarification questions, dated June 17, 2016 (KCK 00156-158).
- G. Bower transmittal letter to R. Paskauskas re Clarification & Requested Documentation Q&A, dated June 17, 2016 (KCK 00599-600).
- R. Paskauskas email to G. Bower re Additional questions remaining for E2/1B investigation, dated June 20, 2016 (KCK 00393).
- G. Bower email to R. Paskauskas re Additional questions remaining for E2/1B investigation, dated June 21, 2016 (KCK 00159-160).
- Case No. 318041316 R. Paskauskas Ee # 1-14 employee information (legend), dated June 23, 2016 (KCK 00171).
- G. Bower transmittal letter to R. Paskauskas re Clarification & Requested Documentation Q&A, dated June 27, 2016 (KCK 00603-604).
- G. Bower email to R. Paskauskas re Additional questions remaining for E2/1B investigation with responses, dated June 28, 2016 (KCK 00161-162).
- G. Bower email to R. Paskauskas re Opening Closing Conference Summary, dated July 14, 2016 (KCK 00163).
- Invoice – Debt Collection Notice for $1,700 for Inspection Number 318041316, dated August 9, 2016 (KCK 00045).
- Invoice – Debt Collection Notice for inspection Number 318041316, dated August 9, 2016 (KCK 00056).

- OSHA letter to George Bower re penalty, dated September 12, 2016 (KCK 00037).
- OSHA letter to George Bower, dated September 27, 2016 (KCK 00035).
- OSHA letter to George Bower re penalty, dated September 27, 2016 (KCK 00036).
- Mail Envelope & Green Card for certified mail from OSHA to George Bower, dated October 18, 2016 (KCK 00046-48).
- KapStone letter to SC Dept of Labor Licensing & Regulation re Abatement Certification of citation 01, Items 001a, 001b, and 001c with enclosed copies of: (1) Process/ Line Breaking on Hazardous sys; (2) PPE Hazard Assessment Certification Form; and (3) Job Hazard Analysis (JHA), dated October 25, 2016 (KCK 00021-34).
- Letter to George Bower from Karl Maddox (OSHA Informal Hearing Officer) re Informal Conference with Enclosure of Amended Citation & Notification of Penalty, dated November 3, 2016 (KCK 00005-6).
- Check to SC Dept of labor Licensing and Regulation from KapStone paper & Packaging, dated November 10, 2016 (KCK 00001).
- George Bower letter to SC Dept of Labor Licensing & Regulation re Inspection No. 318041316/ Operational Report No. 0799-16, dated November 11, 2016 (KCK 00002-3).
- Correspondence to Lucas re disability coverage, dated March 29, 2017 (KAPSTONE 000716).
- Correspondence to Lucas re benefits coverage, dated May 16, 2017 (KAPSTONE 000717).
- Class Name and Start Date Sheet for Daniel Simerly and Jacque Lucas, various dates (KCK 00330-338).
- KapStone Recovery Department Evaporator Specialist Qualification Learning Checklist, various dates (KCK 00412-437).
- KapStone Lockout/Tagout Program Improvements, n.d. (KCK 00543-597).
- KapStone Recovery Operations Training Coordinator – Internal Job Posting, n.d. (KCK 00004).

Photographs

- Photographs taken on May 25, 2016 (KCK 00605-651).
- Photographs taken on May 25, 2016 (KCK 00652-675).
- Photo Log, dated May 26, 2016 (KCK 00121-125).
- Photo Log, dated June 7, 2016 (KCK 00126-127).
- Photographs taken in June 7, 2016 (KCK 00676-719).
- Kapstone Charleston Kraft LLC Tax Parcel, dated July 14, 2017 (KAPSTONE 000263).

Work Orders

- KapStone Maintenance Work Order: Replace E2 1B Effect Vapor Head Door, dated December 2009 (KCK 00345).
- KapStone Maintenance Work Order: Repair E2 1B Effect Vapor Piping Leak, dated December 2009 (KCK 00349).
- KapStone Maintenance Work Order: E2 Jan Outage – Remove 1B Head and Pull Umbrella, dated November 2013 (KCK 00346).
- KapStone Maintenance Work Order: E2 Jan Outage – Remove 1B Head and Pull Umbrella, dated December 2013 (KCK 00350).
- KapStone Maintenance Work Order: Repair flange leak on E2 1B effect steam line, dated September 2014 (KCK 00347).
- KapStone Maintenance Work Order: E2 1B Effect Change Out Discharge Valve, dated November 2015 (KCK 00348).
- Inspection Checklist for Inspection No. 035-16 with handwritten notes, dated May 25, 2016 (KCK

00134-138).
- Draft Field Note – Inspection Checklist with handwritten notes, dated May 25, 2016 (KCK 00139-140).
- Handwritten notes, dated June 7, 2016 (KCK 00141-144).
- KapStone Recovery No. 2 Evaporator Entry Isolation Procedure, various dates (KCK 00395-402).
- KapStone Recovery No. 2 Evaporator Entry Isolation Procedure, various dates (KCK 00403-411).

Subscription-based Research:

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- WestRock Company (NYSE:WRK) > Fixed Income > S&P Global Ratings. S&P Global Market Intelligence, p.1, dated 2018.
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- Comerford, M., Northfield company buys paper business. Factiva, via Chicago Daily Herald, p.1, dated January 3, 2006.
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- Robertson, Rob, IP sells kraft papers unit -- Stone Arcade to pay $155 M; some local jobs are affected. Factiva, via The Commercial Appeal, pp.1-2, dated June 27, 2006.
- Cole, N., International Paper has buyer for Fordyce plant. Factiva, via The Arkansas Democrat Gazette, pp.1-2, dated June 27, 2006.
- Pohl, Kimberly, Stone Arcade to purchase kraft paper manufacturer. Factiva, via Chicago Daily Herald, p.1, dated June 28, 2006.
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- MWV Agrees to Sell South Carolina Kraft Paper Mill to KapStone Paper and Packaging for $485 Million, Factiva, via Business Wire, pp.1-2, dated April 7, 2008.
- KapStone Paper and Packaging Corporation Conference Call – Final, Factiva, via Voxant Inc., pp.1-21, dated April 7, 2008.
- KapStone to Purchase MeadWestvaco 's North Charleston Kraft Division; Building Strength, Flexibility and Profitability; KapStone Investor Conference Call at 11 a.m. ET, Factiva, via PR Newswire Association LLC, pp.1-2, dated April 7, 2008.
- MeadWestvaco Sells South Carolina Mills For $485 Million. Factiva, via FinancialWire, p.1, dated April 8, 2008.
- FTC Grants Early Termination of Waiting Period for KapStone Paper and Packaging Corporation, Factiva, via PR Newswire (U.S.), p.1, dated May 6, 2008.
- Coyle, B., KapStone Gets Antitrust OK to Acquire MeadWestvaco Mill. Factiva, via Dow Jones Newswires, p.1, dated May 6, 2008.
- FTC Okays Early Termination Of Kapstone Papers MeadWestvaco Purchase Waiting Period, Factiva, via FinancialWire, p.1, dated May 7, 2008.
- KapStone Completes Acquisition of MeadWestvaco's Charleston Kraft Division, Factiva, via PR Newswire (U.S.), pp. 1-3, dated July 1, 2008.
- Other: MWV Completes Sale of South Carolina Kraft Paper Mill to KapStone Paper and Packaging for $485 Million, Factiva, via Business Wire, pp.1-2, dated July 1, 2008.
- MeadWestvaco Corporation announced a definitive agreement to sell its North Charleston, S.C., kraft paper mill and related assets to KapStone Paper and Packaging Corporation for $485 million in cash, Factiva, via Global Cosmetic Industry, p.1, dated July 1, 2008.

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- Stone Arcade Acquisition Corp. Announces Conference Call to Discuss Planned Acquisition of International Paper's Kraft Paper Business, Nexis Uni, via PrimeZone Media Network, dated June 27, 2006.
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- Company Profile of KapStone Paper and Packaging Corporation, Nexis Uni via Plus Media Solutions, dated September 2, 2016.
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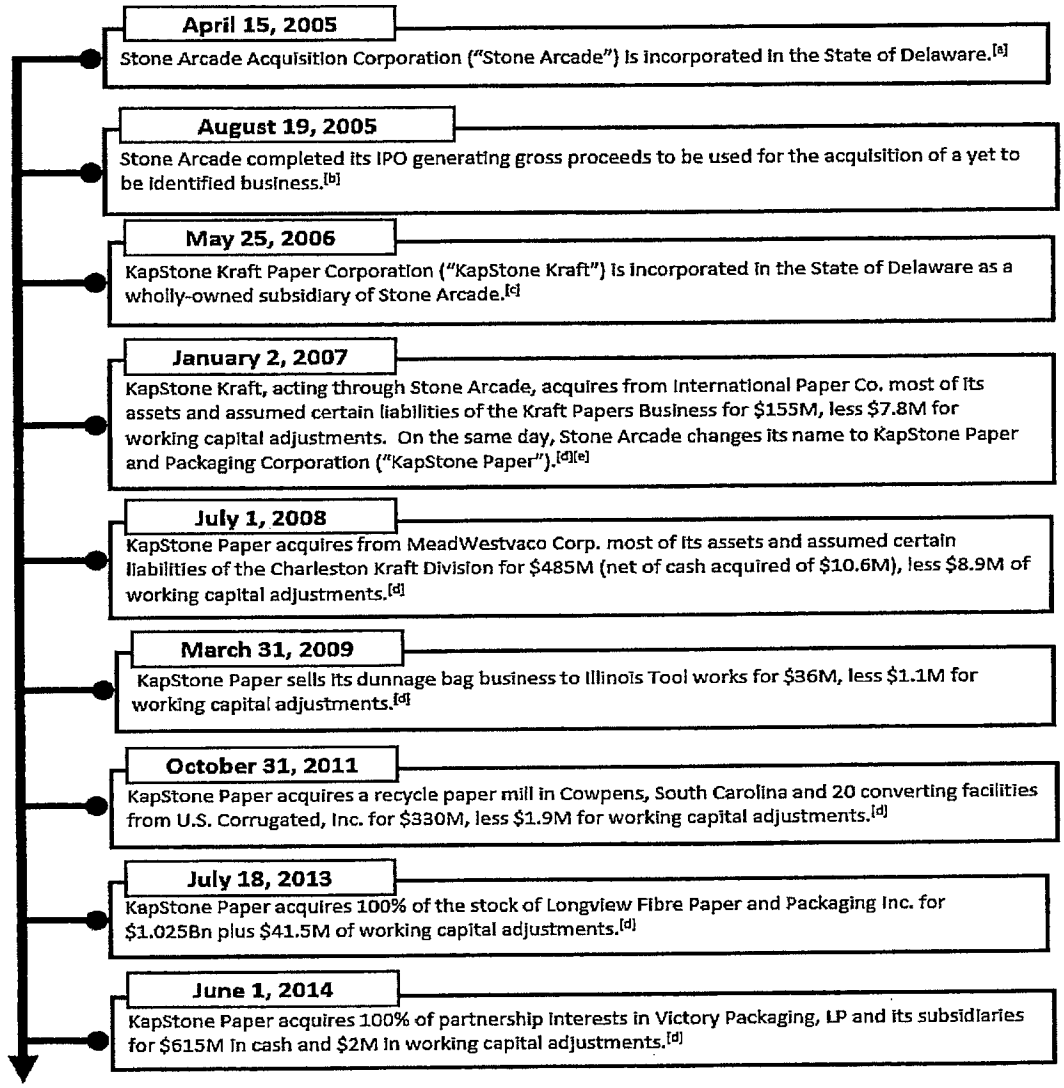
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- KapStone Paper & Packaging (KS) Quarterly Results – Earnings Call Transcripts, Seeking Alpha, for each quarter of FY2015 – 2016.
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Jacque Lucas, et al. v. KapStone Paper and Packaging Corporation, 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

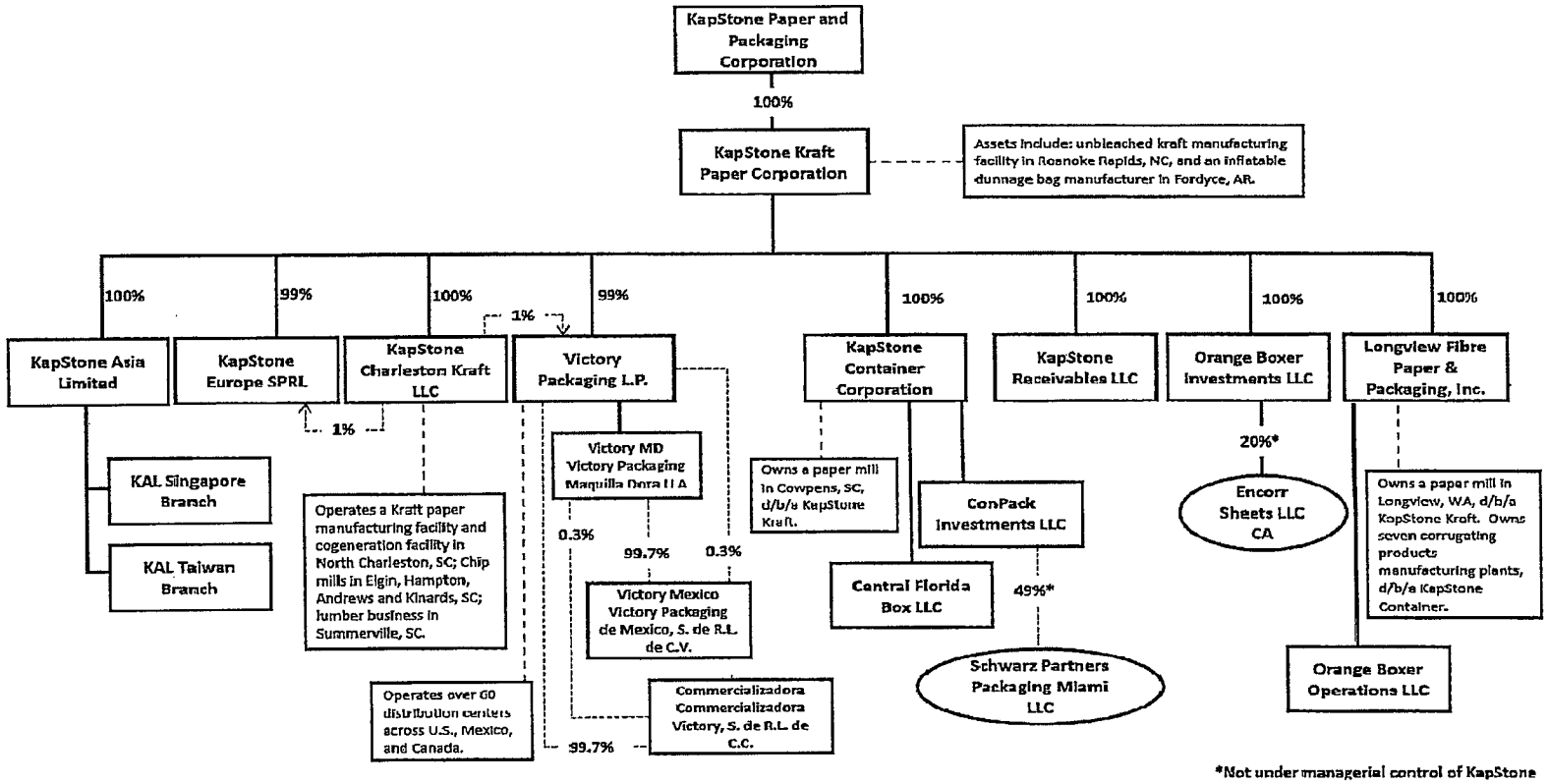
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[e] KapStone to Acquire U.S. Corrugated, Retrieved from https://www.packaginginsights.com/news/kapstone-to-acquire-us-corrugated.html, dated September 23, 2011

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]

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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,Tela 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
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
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
100898	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]

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EXHIBIT 4

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 Duane	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]

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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	Holoverko,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
500059	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	Boscepomi,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

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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
500078	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 S	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	Zroback,Jeffrey K	853	Corporate Northbrook	853	Corporate Northbrook	Corporate	COR	FYH	Corporate Salary	S	006410	Human Resources	001	Salaried
100986	Hohl-Perrie,Alanna Tedlanne	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,Getha 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	Preger,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,Katyana	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,Iyabowaleoln Wurnola	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

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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	Dogiparti,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

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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	Puller,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]

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Summary of Legal Contract Review and Signing Authority Policy[a],[b]

Confidentiality Agreements				
Type of Contract	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 Cholteo	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 Contract	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

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≤ $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

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<$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

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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 Cholico	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

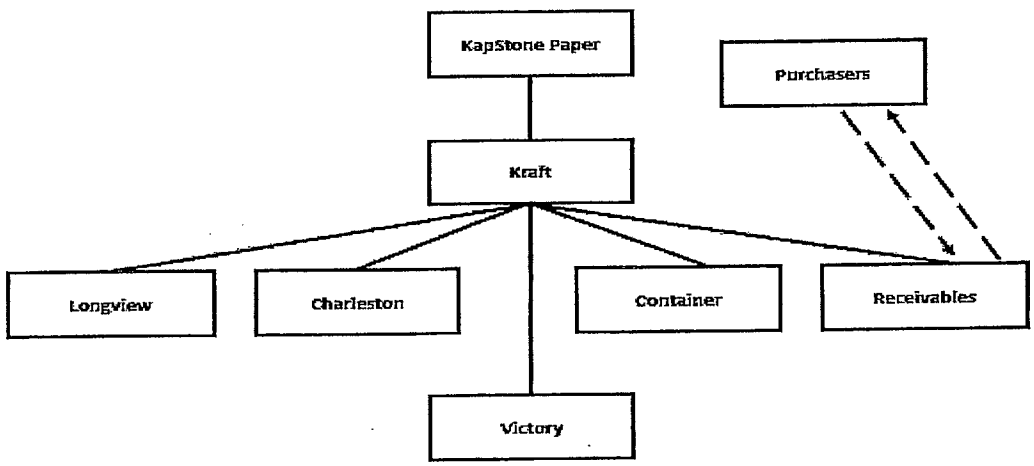
Sources:

[A] KapStone Paper and Packaging Corporation and its subsidiaries Legal Contract Review and Signing Authority Policy, revised November 2, 2015 [KAPSTONE - 001969-197

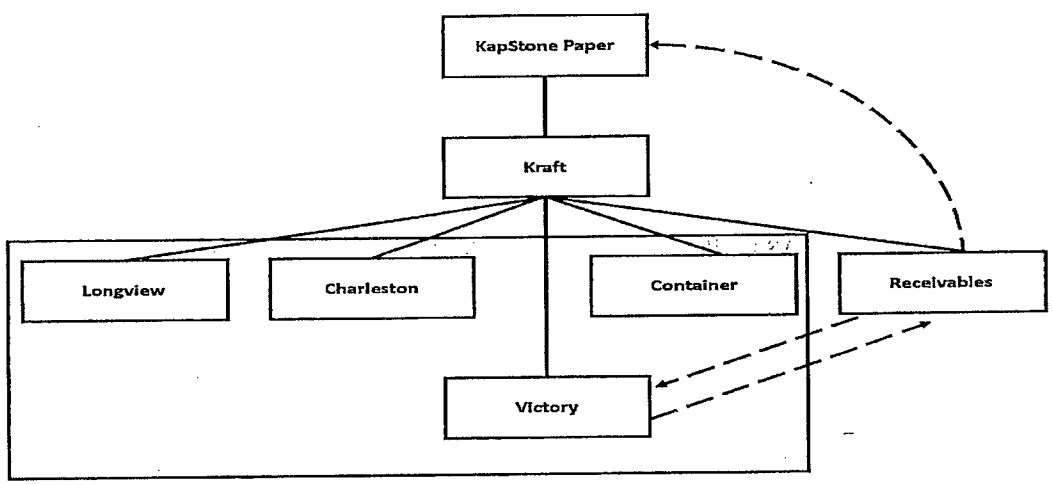
[B] Active Employee Job List, effective May 24, 2016 [KAPSTONE - 002596-2650]

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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"

(CV of Todd K. Lester)

Todd K. Lester

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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

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.

FTI CONSULTING

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.

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.	)	**KapStone Defendants' Reply to Plaintiffs' Response in Opposition to the KapStone Defendants' 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*.	)	

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CLERK OF COURT
BY

INTRODUCTION

KapStone Paper and Packaging Corporation ("KapStone Paper") and KapStone Kraft Paper Corporation ("KapStone Kraft") (collectively, the "KapStone Defendants") hereby submit this reply to Plaintiffs' response to the KapStone Defendants' Rule 12(b)(1) motion to dismiss.

Plaintiffs argue that the Court must deny the KapStone Defendant's Rule 12(b)(1) motion because *Poch v. Bayshore* is "inapplicable" to this case. They are wrong. Failing this, Plaintiffs argue that if *Poch* does control, the Court should ignore the 2,739 pages of documentary evidence and testimony showing extensive economic integration between the KapStone Defendants and KapStone Charleston Kraft, LLC ("KapStone Kraft"), and "strike" the affidavit of Kelly Hulseman. They are wrong about this as well.

First, Plaintiffs' assertion that *Poch* does not control this dispute is without merit. The *Poch* court expressly held that the "the correct approach" to determine "whether two related

businesses are separate and distinct corporations for workers' compensation purposes" is the test set forth in that case, adopted from Judge Wilkin's order in *Monroe v. Monsanto*, 531 F. Supp. 426 (D.S.C. 1982). *See* 405 S.C. 359, 371, 372, 747 S.E.2d 757, 763, 764 (2013) (citing *Monroe v. Monsanto*). Whether the KapStone Defendants are separate and distinct from KapStone Charleston, for workers compensation purposes, is the sole issue in the KapStone Defendants' pending Rule 12(b)(1) motion. As both the South Carolina Court of Appeals and the South Carolina Supreme Court have held, this issue is "jurisdictional" and a question for the trial court to determine. As such, *Poch* controls this inquiry.

Second, Plaintiffs contend that no competent evidence supports the KapStone Defendants' motion to dismiss, despite the 2,739 pages of authenticated business records that demonstrate the nature of the economic integration of the KapStone Defendants with KapStone Charleston. These business records demonstrate the KapStone entities' economic integration satisfies *Poch*.

Rather than grapple with this extensive documentary evidence, Plaintiffs instead direct their energies at attacking Ms. Hulsman's affidavit, claiming that it is a "sham" because she did not compose the affidavit herself, or independently verify her personal knowledge with other evidence. The Rules of Evidence do not require a witness/affiant to literally draft an affidavit, or to independently determine the accuracy of her personal knowledge by finding other confirming evidence (documents or records). *See* Rule 602, SCRE. Ms. Hulseman never denied that she had personal knowledge of the facts set forth in her affidavit, although she did testify that she did not independently confirm her personal knowledge by searching for additional documentary support. But, hypothetically, even if Ms. Hulseman had outright denied having any personal knowledge of the facts in her affidavit (which she did not do), such testimony does not render the affidavit a "sham," as her affidavit is entirely congruent with both her deposition testimony and documented

facts in the record.

For all of the reasons discussed in the KapStone Defendants' initial brief and below, the Motion to Dismiss should be granted.

I. *Poch* is controlling law in this case.

Poch controls whether a subsidiary's workers' compensation tort immunity extends to the subsidiary's parent. Our Supreme Court held in *Poch* that "[i]n examining the relationship between . . . two corporations [for workers' compensation and tort immunity purposes], the correct approach is the one found in *Monroe v. Monsanto Company*." 405 S.C. 359, 371, 747 S.E.2d 757, 763 (citing *Monroe*, 531 F. Supp. 426 (D.S.C. 1982)). There, the Supreme Court of South Carolina expressly adopted "eight factors that courts should consider in determining whether two related businesses are separate and distinct corporations for workers' compensation purposes." *Id.* at 372, 747 S.E.2d at 764 (citing *Monroe* at 432-34).

Plaintiffs incorrectly contend that *Poch* applies only in disputes "wherein a parent company created a legal entity to serve as a local presence for the parent company during a project." *See* Pls.' Resp. p. 16. That distinction does not appear in the *Poch* decision. Had a "local presence" scenario been a factual predicate for the application of *Poch*, the Supreme Court of South Carolina could have included such a factor – but did not do so. Instead the *Poch* court adopted the *Monroe* factors as "the correct approach" to determine whether "two related businesses" were sufficiently integrated for workers' compensation purposes.

After the *Poch* court adopted the *Monroe* test, the court summarized the facts of *Monroe* – noting that the *Monroe* court applied this test to two *sister* corporations, wholly owned by the same parent – a scenario much different from the facts in *Poch*. Clearly, the South Carolina Supreme Court did not intend to limit *Poch* to its facts. Accordingly, Plaintiffs' argument that *Poch* is

inapplicable in the instant case is incorrect.[1]

II. Substantial evidence shows the KapStone entities' economic integration satisfies the *Poch* inquiry.

The evidence shows that the KapStone Defendants and KapStone Charleston are sufficiently economically integrated that, under *Poch*, KapStone Charleston's workers-compensation immunity should extend to the KapStone Defendants. The KapStone Defendants have placed into the record authenticated business records, bank records, contracts, policies and procedures that illustrate substantial integration between the KapStone Defendants and KapStone Charleston; deposition testimony from Ms. Hulseman and Mr. Niehus going to the same; and an expert report by Mr. Todd Lester describing how these records show economic integration among these entities.

a. Substantial documentary evidence shows economic integration between the KapStone entities.

Substantial evidence in the record supports a finding that at the time of Plaintiffs' injuries, the KapStone Defendants' integration with KapStone Charleston satisfied the *Poch* inquiry.[2] The KapStone Defendants have introduced 2,739 pages of authenticated business records, bank records, contracts, policies and procedures that illustrate such integration, through the affidavits of Mark Niehus, freestanding and as an exhibit to the KapStone Defendants' supplemental memorandum in support of their Rule 12(b)(1) motion to dismiss, filed August 6, 2018. These

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[1] Plaintiffs further demonstrate their misreading of *Poch* in a footnote in which Plaintiffs contend that the KapStone Defendants "do not even qualify as statutory employers in this case." *See* Pls.' Resp. p. 15 n.1. Importantly, the *Poch* court expressly held that the statutory employer test is "an incorrect legal standard" in determining whether the Workers' Compensation Act's Exclusivity Rule bars tort actions by a subsidiary's employees against a parent entity. *See Poch*, 405 S.C. 359, 370, 747 S.E.2d 757, 763 (2013). Even so, under the "statutory employer" test, were it applicable, both Messrs. Lucas and Simerly were clearly "statutory employees" of the KapStone Defendants, because the work they were performing was both within the scope of work of the KapStone Defendants' traditional business, as well as being performed with the ultimate goal to benefit the KapStone Defendants. *See id.*

[2] For the Court's convenience, the KapStone Defendants have attached the KapStone Defendants' Appendix A to this reply brief, which provides an overview of the eight *Poch* factors, and identifies documents, by subject and bates range, that respond directly to each inquiry.

documents provide a clear and objective overview of the integration between the KapStone entities on the date in question.

The South Carolina Workers Compensation Act (the "Act") provides that where an applicable workers' compensation policy provides coverage for an employee's work-related injuries, recovery under the policy is the employee's exclusive remedy against his employer for such injuries. *See* S.C. Code Ann. § 42-1-540 (1974). The Supreme Court of South Carolina held in *Poch* that an employer's immunity under the Act will extend to the employer's parent corporations, if a preponderance of the evidence shows that the employer and parent may be treated as "one economic entity for workers compensation purposes." *See* 405 S.C. at 372-73, 747 S.E.2d at 764. Under *Poch*, the eight factors a court must consider under this inquiry includes whether the parent and subsidiary:

> (1) have a common corporate identity;
>
> (2) share common Directors and Officers,
>
> (3) transact business from common locations, with shared management,
>
> (4) collectively hire and compensate employees,
>
> (5) hold themselves out to employees as related entities,
>
> (6) engage in similar business activities,
>
> (7) maintain common books, accounts, and payroll records, and
>
> (8) file a common tax return.

Id., 405 S.C. at 372-73, 747 S.E.2d at 764-65. No one of these factors is dispositive, and not all must be satisfied to establish economic integration under *Poch*. *See id.*

As shown in the factor-by-factor analysis below, the KapStone Defendants have provided

substantial evidence that their economic integration with KapStone Charleston is far beyond that of the Bayshore[3] entities in *Poch*. Accordingly, KapStone Charleston's immunity should extend to them, and Plaintiffs' tort claims against the KapStone Defendants should be dismissed.

i. The KapStone entities shared a common corporate identity.

The first *Poch* factor is whether the entities at issue share a "common corporate identity." *Id.*, 405 S.C. at 372-73, 747 S.E.2d at 764-65. This inquiry is not whether the "two separate businesses" were the same incorporated entity, as such a fact would eliminate the need for the *Poch* test entirely. Instead, *Poch* provides that two businesses share a common corporate identity when they use a corporate name "interchangeably" on "documents such as letterhead, employment applications, benefits packages, and safety manuals." 405 S.C. at 373, 747 S.E.2d at 764. During the time at issue, the KapStone entities shared a common corporate identity sufficient to satisfy this *Poch* element.[4]

During the time period at issue, members of the KapStone corporate family collectively represented themselves to the public as "KapStone" – a paper-manufacturing and distribution company. The "KAPSTONE" name, logo and other trademarks are owned primarily by KapStone Paper but found on corporate documents produced by KapStone Paper, KapStone Kraft and KapStone Charleston. *See* KAPSTONE-000431-432, **Exhibit 1**; *see, e.g.*, KAPSTONE-000216, **Exhibit 2**; KAPSTONE-344, **Exhibit 3**; KAPSTONE-345-346, **Exhibit 4**; KAPSTONE-376-383, **Exhibit 5**; KAPSTONE-414, **Exhibit 6**. KapStone Paper, KapStone Kraft and KapStone Charleston represented themselves as "KapStone" both in name and via two separate trademarked

[3] It should be noted that the Bayshore Defendants in *Poch* did not provide for or fund the workers compensation policy they were seeking to rely upon for immunity purposes, and yet immunity was extended to them. *Poch*, 405 S.C. 359, 363, 747 S.E.2d 757, 759 (2013). Here, the KapStone Defendants actually procured and paid for the workers' compensation coverage for these Plaintiffs.

[4] Since the incident, KapStone Paper and Packaging Corporation has been acquired through stock acquisition by WestRock, a separate paper manufacturing corporation. *See* WestRock, *KapStone is Now Part of WestRock*, https://www.westrock.com/kapstone?utm_source=kapstone&utm_medium=redirect

images in their daily business transactions. *See id.* These trademarks 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. *See id.* In fact, in the employment offer letter to Mr. Simerly, KapStone did not distinguish 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 . . ."). *See* KAPSTONE-000345-346, **Exhibit 4**.

The KapStone entities also presented themselves as a consolidated organization to the public and their employees, through the use of a shared KapStone website, *see* KAPSTONE-000758-762, **Exhibit 7**; shared employee procedures, an employee handbook, and ethics guides, *see* KAPSTONE-000414-428, **Exhibit 8**; and employee benefits packages, *see* KAPSTONE-000403—406, **Exhibit 9**, among several other documents. Substantial evidence shows that the KapStone entities, regardless of location or specific role, shared the common name of "KapStone." Based on the same, to any reasonable person, "KapStone" would be representative of an integrated organization, rather than independent and unrelated entities, like the Monsanto subsidiaries in *Monroe v. Monsanto*. As such, the degree to which the KapStone entities "shared a common identity" satisfies this *Poch* factor.

ii. The KapStone entities shared common directors, officers, and accounting, payroll, and legal departments.

The second *Poch* factor considers whether the entities at issue shared common directors, officers, or other managers. *Id.*, 405 S.C. at 372-73, 747 S.E.2d at 764-65. In *Poch*, the Supreme Court found that where corporations shared several overlapping officers, directors, and a general counsel, and where those officers and counsel received their salaries from the parent entity, the

second element of this inquiry was satisfied. *See* 405 S.C. at 373, 747 S.E.2d at 764. That is also the case here. On the date of the incident giving rise to this litigation, the KapStone Defendants and KapStone Charleston shared the same officers, had overlapping directors, and the same in-house counsel, among other common managerial roles.

In 2016, KapStone Kraft and KapStone Charleston shared the same five officers. *See below chart*; KAPSTONE-001184-85, **Exhibit 10**. These five individuals also served as officers of KapStone Paper, in an essentially identical capacity. *See id.*

	KapStone Paper	KapStone Kraft	KapStone Charleston
Roger Stone	Chairman/C.E.O.	Chairman/C.E.O.	Chairman/C.E.O.
Matthew Kaplan	President/C.O.O.	C.O.O.	C.O.O.
Randy Nebel	V.P./President Mill Divisions	President	President
Andrea Tarbox	V.P. & C.F.O.	V.P. & C.F.O.	V.P & C.F.O.
Kathryn Ingraham	V.P. & Secretary	Secretary	Secretary

As to directors, KapStone Kraft had only two: Roger Stone and Matthew Kaplan, both of whom also served as directors of KapStone Paper. *See id.* While KapStone Charleston, as an LLC, had no directors, its sole managing member was KapStone Kraft, and was thereby under the direction of the same persons as KapStone Kraft. *See* KAPSTONE-000275-76, **Exhibit 11**. Both KapStone Kraft and KapStone Charleston 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. *See id.* Thus, KapStone Charleston was subject to managerial oversight by its sole managing member – KapStone Kraft – who was in turn directed and governed by the same officers and directors as KapStone Paper. *See id.*

In addition to overlapping Directors and Officers, all of the KapStone entities shared a legal department (among other managerial departments, including accounting and payroll) based out of the KapStone corporate office, located at 1101 Skokie Blvd., Suite 300, in Northbrook, Illinois (the "corporate office"). As with all KapStone employees, these officers, directors, and counsel received compensation in the form of salaries and benefits funded by KapStone Paper. *See* Hulseman Dep. 279:20-283:16, **Exhibit 12**; KAPSTONE-000335-337, **Exhibit 13**; KAPSTONE-002510, **Exhibit 14**. As such, the degree of directorial and official overlap of KapStone Paper with its subsidiaries at issue satisfies this *Poch* factor.

iii. The KapStone entities transacted business from a common location, with shared management.

The third *Poch* factor is whether the entities at issue transacted business from a common location, with shared management. *Id.*, 405 S.C. at 372-73, 747 S.E.2d at 764-65. In *Poch*, the Supreme Court found that two corporations conducted business from a common location for purposes of the *Poch* inquiry, despite the corporations being headquartered in and operating from separate locations, because the parent oversaw contract formation of the subsidiary, took charge of the accounting of the subsidiary, and retained the corporate and personnel files of the subsidiary. *See* 405 S.C. at 373, 747 S.E.2d at 764.

At the time of the incident in this lawsuit, each member of the KapStone corporate family was headquartered at the KapStone corporate office, at 1101 Skokie Boulevard, in Northbrook, Illinois. *See* KAPSTONE-000002 - 134, **Exhibit 15** (KapStone 10-K). In addition to being the location of the officers, directors and counsel for each KapStone entity, the corporate office was also the headquarters for several "shared departments" that managed a broad spectrum of operations for each member of the KapStone corporate family, including accounting and sales, payroll management, insurance, compliance with SEC regulations, employee benefits, legal issues,

and safety. *See* Hulseman Dep. 20:23-21:7, 274:17-278:14, **Exhibit 12**; Niehus Dep. 76:7-18, **Exhibit 16**.

These shared departments at KapStone's corporate office generated KapStone-wide policies that controlled, on a "macro" level, the day-to-day operations of all KapStone subsidiaries. *See* KAPSTONE-001969-79, **Exhibit 17** (limiting authority to enter certain contracts); KAPSTONE-0001994-96 , **Exhibit 18** (limiting authority to enter leases without corporate approval), KAPSTONE-002243-2508 , **Exhibit 19** (integrating the finances of KapStone entities); *see also* KAPSTONE-001889-1942, **Exhibit 20**; KAPSTONE-001959-2122, **Exhibit 21**; (various KapStone-wide policies, spanning topics such as ethics, antitrust, inventory accounting, financing, etc.). Under these shared corporate policies, while KapStone subsidiaries had discretion as to their day-to-day operations, this was guided by parameters set forth by shared corporate policies.

The degree of overlapping operations in this case exceeds that of the two corporations at issue in *Poch*, where the entities at issue were found to satisfy this factor despite being headquartered in separate locations. The KapStone entities at issue in this case (and all KapStone entities) shared a corporate office, with shared officers and directors located at the same, as well as corporate-wide accounting, information technologies, and certain operational policies. As such, this *Poch* factor is satisfied.

iv. KapStone Paper managed payroll and benefits for KapStone Charleston employees; payroll was drawn from funds provided by KapStone Paper; benefits were procured and paid for by KapStone Paper.

The fourth *Poch* factor is whether the entities hired and paid their own employees. *Id.*, 405 S.C. at 372-73, 747 S.E.2d at 764-65. In *Poch*, the Supreme Court held that where employees of a subsidiary received compensation from the parent corporation and were provided retirement

benefits and healthcare coverage through the parent, the fourth element of the inquiry was satisfied. *See* 405 S.C. at 373-74, 747 S.E.2d at 764-65. Here, KapStone Paper provides the funds for payroll for all KapStone subsidiaries, as well as procures and funds various benefits, including insurance and retirement benefits.

At the time of the incident giving rise to this litigation, KapStone Charleston employees received pay through a third-party payroll vendor, ADP, which was in turn funded exclusively by KapStone Paper, which required approval of the KapStone corporate payroll services department at the Corporate Office. Hulseman Dep. 20:23-21:7; 274:11-20, **Exhibit 12**. Once the KapStone corporate payroll services department approved payroll, ADP would then distribute payment from funds held by KapStone Paper, either by check or direct deposit. Hulseman Dep. 283:15-21, **Exhibit 12**.

In addition to compensation, KapStone Paper also procured and funded all benefits available to KapStone Charleston employees. *See* KAPSTONE-000149-192, **Exhibit 22**; KAPSTONE-000322-327, **Exhibit 23**; KAPSTONE-000328, **Exhibit 24**; KAPSTONE-000333, **Exhibit 25**; KAPSTONE-000334, **Exhibit 26**. These benefits included health insurance, long and short-term disability insurance, unemployment, *see id.*, and the workers compensation policy at issue. *See* KAPSTONE-000322-327, **Exhibit 23**; KAPSTONE-000328, **Exhibit 24**; KAPSTONE-000329-332, **Exhibit 27**; KAPSTONE-000333, **Exhibit 25**; KAPSTONE-000334, **Exhibit 26**. KapStone Paper also arranged for and funded KapStone Charleston employees' retirement funds, including their 401(k) accounts. *See* KAPSTONE-001144-1174, **Exhibit 28**.

KapStone Charleston employees, during the period at issue, received compensation from funds held by KapStone Paper. In addition, any benefits received as a result of their position as employee with KapStone were procured and funded by KapStone Paper. Accordingly, this *Poch*

factor is satisfied.

v. The KapStone entities held themselves out to employees as related entities.

The fifth *Poch* factor is whether the entities held themselves out to their employees as separate entities. In *Poch*, the Supreme Court held that where a parent and subsidiary hold themselves out to employees of the subsidiary as "the same entity," and where the subsidiary's employees were provided with employment documents shared by the parent, this element was satisfied. *See* 405 S.C. at 374, 747 S.E.2d at 765. Here, while employees at the Charleston mill understood that their employer was KapStone Charleston, these employees also understood that the KapStone entities were operationally integrated, and that the operations of their immediate employer were subject to oversight by the ultimate owner, KapStone Paper. This integration was obvious to KapStone Charleston employees by way of, *inter alia*, the fact that their paychecks and W-2s were sourced from the corporate office in Northbrook, Illinois, *see* Pls.' Resp. Exhibits G and H; by the fact that the KapStone Paper Employee Handbook is the same handbook used at KapStone Kraft and KapStone Charleston; *see* KAPSTONE-000216-259, **Exhibit 2**; M. Niehus Dep., 116:1-25, **Exhibit 16**; and several shared KapStone policies that apply across organizational lines, including but not limited to the KapStone Anti-Bribery Policy and the Code of Conduct and Ethics. *See* KAPSTONE-000414-427, **Exhibit 8**; KAPSTONE-002082-2094, **Exhibit 29**.

vi. The KapStone entities engaged in the business of manufacturing and selling paper.

The sixth *Poch* factor is whether the corporations engaged in different business activities. *Id.*, 405 S.C. at 372-73, 747 S.E.2d at 764-65. In *Poch*, the Supreme Court held that where the parent and its subsidiary were both engaged in the business of providing concrete forms for construction sites, and used the same processes to perform this work, this element was satisfied.

See 405 S.C. 374, 747 S.E.2d at 765.

Here, the KapStone family of entities were collectively engaged as several parts of a whole, with the overarching business purpose of manufacturing, selling, and distributing paper products. While separate entities within the KapStone corporate family were tasked with individual aspects of the business (i.e., a chipping facility in South Carolina; paper mills in North Carolina, South Carolina, and Washington; a shipping facility in Texas; an accounting department in Illinois), these separate entities worked collectively as an integrated organization to achieve this shared goal. KapStone Paper's organization of its subsidiaries included both KapStone Kraft and KapStone Charleston as part of the "Mill Division," which shared a common President during the relevant period, Mr. Randy Nebel. *See* KAPSTONE-001184-85, **Exhibit 10**. While KapStone Paper was not part of the "Mill Division," it served an oversight and management function for the Mill Division, particularly as to finances, as well as other operations of other KapStone entities.

Further illustrating the KapStone entities' shared operations is the substantial amount of operating equipment at the North Charleston Mill that was leased by KapStone Paper or KapStone Kraft. *See* KAPSTONE-003278-3437, **Exhibit 30**. Specifically, during the time at issue, KapStone Paper or KapStone Kraft had entered into at least seven separate equipment leases for heavy machinery for use at the Charleston Mill on KapStone Charleston's behalf. *See id.* These leases collectively amounted to KapStone Paper and KapStone Kraft paying over $2.3 million to lease heavy machinery for KapStone Charleston's use in its paper manufacturing processes. *See id.*

As to the culmination of the shared purpose of the KapStone corporate family – the sale of paper products – KapStone managed customer orders, sales, and delivery through a "centralized purchase order system" that would determine where (i.e., what mill) a product should be produced,

and other aspects of filling the orders. *See* Niehus Dep. 86:1-10, **Exhibit 16**. As discussed more thoroughly below, once an order was fulfilled by the designated KapStone entity, the accounts receivable generated would be swept into the account held by KapStone Receivables, LLC, and sold to a "Purchaser," the proceeds of which would be held and controlled by KapStone Paper, and would later be disbursed by KapStone Paper to or on behalf of subsidiaries as operating capital. Thus, the proceeds from one subsidiary's operations would often fund the expenditures of another, thereby demonstrating the collective operation of these several entities as a functional whole. In this regard, the various KapStone entities that comprised the corporate family acted as several parts of a collective whole to manufacture and sell paper, rather than as unrelated operational entities. As such, this *Poch* factor is satisfied.

vii. The KapStone entities maintained common books, accounts, and payroll records.

The seventh *Poch* factor is whether the entities maintained separate books, bank accounts, and payroll records. *Id.*, 405 S.C. at 372-73, 747 S.E.2d at 764-65. In *Poch*, the Supreme Court held that even where the parent and its subsidiary maintained separate books, accounting records, and bank accounts, those entities were still sufficiently economically integrated for workers' compensation purposes, because the subsidiary's accounts ultimately contributed to the parent's gross revenues, and the parent was responsible for the financial operations of the subsidiary. *See* 405 S.C. at 374, 747 S.E.2d at 765. As provided below, the KapStone entities' economic integration exceeded that of the Bayshore entities in *Poch*.

Further, KapStone Paper managed the receipts and disbursements of funds from almost all subsidiary accounts through one Master Account, which was funded through an automatic "zeroing out" nightly of the balance of each subsidiary's independently-held bank accounts. *See* KAPSTONE-000339, **Exhibit 31**. In other words, all funds received or available in the separate

subsidiary accounts were transferred to the Master Account at the end of each day.

In addition to managing its disbursements primarily through the KapStone Master Account, KapStone also operated under a Receivables Sale Agreement and Receivables Purchase Agreement. *See* KAPSTONE-002405-2490, **Exhibit 32**. Under this agreement, all accounts receivable generated by KapStone Charleston or KapStone Kraft (or any other KapStone entity) were transferred to an entity known as KapStone Receivables, LLC. *See id.* Immediately after acquiring the accounts receivables of a KapStone subsidiary, KapStone Receivables would then sell the accounts receivables to certain "Purchasers," as defined in the KapStone Receivables Purchase Agreement. *See id.* These sales in turn funded the day-to-day operations of various KapStone entities, as disbursed through the KapStone Paper Master Account.

Further, all KapStone entities were principally supported by a single Debt/Credit Agreement, secured by KapStone Paper for the use of KapStone entities to obtain term loans and a revolving credit facility. *See* KapStone Paper 8-K filed June 3, 2015, **Exhibit 33**; M. Niehus Dep. pp. 67:1-68:25, **Exhibit 16**. Under these lines of credit, while KapStone Paper was the "borrower," all KapStone entities were guarantors of the credit facility, pledging the collateral of their tangible and intangible assets. *See id.* Each credit agreement was executed on behalf of KapStone Paper, KapStone Kraft, and KapStone Charleston. *See id.*

Finally, each entity in the KapStone corporate family maintained shared books through an integrating accounting and cash management system through which they consolidated their financial information. *See* Hulseman Dep. 288:16-289:14, **Exhibit 12**. In addition to consolidated accounting, KapStone Paper oversaw each entity's financial decisions, including decisions to enter leases or contracts over a prescribed value. *See* KAPSTONE-001969-79, **Exhibit 17**; Hulseman Dep. 274:17-20, **Exhibit 12**; Niehus Dep. 76:7-18, **Exhibit 16**. As such, the shared finances,

accounts, and lines of credit for the KapStone corporate family satisfies this *Poch* factor.

viii. The KapStone entities filed a common tax return and other consolidated financial statements.

The final *Poch* factor is whether the entities at issue filed a single, joint tax return. *Id.*, 405 S.C. at 372-73, 747 S.E.2d at 764-65. In *Poch*, the Supreme Court held that the filing of a single tax return between the parent and subsidiary was a "weighty" factor, because it shows that the organization is taxed as one entity. *See* 405 S.C. at 374, 747 S.E.2d at 765. Even though the Bayshore entities in *Poch* did not file a single tax return, the court still found that the preponderance of the evidence necessitated a finding that the parties at issue "operated as one economic entity." *See id.* Here, again exceeding the threshold for integration set by *Poch*, for the year at issue (and previous and subsequent years), KapStone Paper filed a single, consolidated federal tax return on behalf of itself and its subsidiaries. *See* KAPSTONE-001642-1888, **Exhibit 34**. In fact, KapStone Charleston, as a single-member LLC, is considered a "disregarded entity" for federal tax purposes, and is treated as part of the member taxpayer, rather than a separate taxable entity. *See* Limited Liability Company, IRS, https://www.irs.gov/businesses/small-businesses-self-employed/limited-liability-company-llc, **Exhibit 35**.

In addition to filing a single, consolidated federal tax return, KapStone Paper, as a publicly traded company, filed its Annual Report and financial statements on a consolidated basis (as one economic entity) with its subsidiaries, including KapStone Kraft and KapStone Charleston. *See, e.g.*, KAPSTONE-00002-134, **Exhibit 15**. In general, consolidated financial statements are presented by a parent company to provide financial information about the activities of the group (i.e., the economic entity). *See* Accounting Standard (AS) 21, Consolidated Financial Statements, Objective, **Exhibit 36**. 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 the results the group achieves with its resources." *See id.* (emphasis added).

KapStone Paper not only filed a single consolidated federal tax return that included KapStone Kraft and KapStone Charleston, but also file consolidated financial statements that represent the consolidated economic status of the various KapStone entities as a single economic entity. As such, this *Poch* factor is satisfied.

b. Ms. Hulseman's affidavit is admissible and reliable, and is, in any event, not essential to the Court's determination.

Instead of attempting to address all of this substantial evidence, Plaintiffs focus their efforts in their response brief on seeking to "strike" the affidavit of Kelly Hulseman. This argument is without merit, but more importantly – even if the Court strikes Ms. Hulseman's affidavit, in light of the substantial documentary evidence, this would not be dispositive of the issue of integration. *See Poch v. Bayshore*, 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009) (finding that documentary evidence supported a finding of integration, after striking the defendants' affidavits). While there is no basis to "strike" the affidavit, even if the Court were to disregard it, the extensive documentary evidence, as well as the testimony of Ms. Hulseman and Mark Niehus, plus the expert report of Todd Lester, provides an ample basis to grant the pending motion.

Ms. Hulseman's affidavit is based on her personal knowledge derived from over ten years of employment with KapStone Paper and Packaging Corporation. *See* Hulseman Aff. 16:9-17:5, **Exhibit 37**. Plaintiffs' assertion that Ms. Hulseman's affidavit is a "sham," and should be disregarded because Ms. Hulseman did not confirm her personal knowledge by combing through documents to confirm what she knew from experience, is a misreading of both the law and of Ms. Hulseman's deposition testimony. First, the Rules of Evidence do not require independent documentary verification of "personal knowledge" for the admissibility of witness testimony. *See*

Rule 602, SCRE. Second, the affidavit is not a "sham" as defined under South Carolina law, because the substance of Ms. Hulseman's affidavit was not drafted to correct contradictory prior testimony, and is congruent with, rather than contradictory of her subsequent deposition testimony – including her testimony regarding her personal knowledge. *See Cothran v. Brown*, 357 S.C. 210, 218, 592 S.E.2d 629, 633 (2004) (holding a "sham" affidavit is one created to contradict prior harmful testimony).

Rule 602 of the South Carolina Rules of Evidence provides that "A witness may not testify as to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony."

When she signed the affidavit, Ms. Hulseman testified that she had personal knowledge of the facts asserted in her affidavit. This is sufficient under the Rules of Evidence to establish personal knowledge as required by Rule 602. ("Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony.") Ms. Hulseman's personal knowledge was derived generally from her experience and ten-year tenure with KapStone Paper. Whether Ms. Hulseman had reviewed additional business records in support of her personal knowledge is not relevant to whether she actually had personal knowledge under Rule 602, SCRE. Moreover, to the extent Ms. Hulseman testified as a Rule 30(b)(6) designee for the KapStone Defendants, the South Carolina Rules of Civil Procedure do not require such a witness to have "personal knowledge," but instead to have knowledge as to "matters known or reasonably available to the organization." Rule 30(b)(6), SCRCP.

The Rules of Evidence do not require testimony to have citations to supporting documents in order to qualify as "personal knowledge." Ms. Hulseman did not deny her personal knowledge

of the facts provided in the affidavit. The portions of Ms. Hulseman's deposition to which Plaintiffs cite demonstrate this point. Plaintiffs' intensive and intimidating questioning of Ms. Hulseman focused exclusively on her having not verified her knowledge through documentary support, or having not actually drafted the affidavit herself, but *not* on her lacking personal knowledge of the facts:

> Q: . . . 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?

Hulseman Dep. 30:16-20 (emphasis added).

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

Hulseman Dep. 30:22-31:2 (emphasis added).

> Q: . . . [I]n this organizational chart it's got – well, do you know who made it?

Hulseman Dep. 14-15 (emphasis added).

> Q: 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?

Hulseman Dep. 33:7-10 (emphasis added).

> Q: As far as having personal knowledge as to what is contained in those documents regarding directors and officers, you do not have personal knowledge other than what is contained on Exhibit B, correct?

Hulseman Dep. 33:12-15 (emphasis added).

> Q: Did you review any documents as to who the officers and directors were in 2016?

Hulseman Dep. 33:21-22 (emphasis added).

Q: Before you signed [the affidavit] did you go look at any other documents other than the ones that were attached?

Hulseman Dep. 52:11-13 (emphasis added).

Plaintiffs' questioning focused exclusively on Ms. Hulseman not reviewing documents that supported her personal knowledge – *not* whether she had personal knowledge of the facts themselves. In fact, Ms. Hulseman testified that she *did* have personal knowledge of those facts *and* of the exhibits attached to the affidavit. *See* Hulseman Dep. 33:12-16 (Q: As far as having personal knowledge as to what is contained in [what paperwork is contained with filings regarding officers and directors], you do not have personal knowledge *other than what is contained on Exhibit B*, correct?; A: Correct.) (emphasis added); Hulseman Dep. 30:22-31:3 (Q: 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 sit here today, fair? *All you have personal knowledge of is what would be contained on this chart*, true?; A: True.) (emphasis added). Plaintiffs' questioning was designed to shake Ms. Hulseman's confidence in her personal knowledge, but Ms. Hulseman never retracted her statement that she had personal knowledge of the information in her affidavit.

Plaintiffs' argument that Ms. Hulseman's affidavit is a "sham" is based on a misunderstanding regarding the admissibility of competing affidavits. Under South Carolina law, there is "a general prohibition against a judge excluding a contradictory affidavit from consideration." *See Cothran v. Brown*, 357 S.C. 210, 218, 592 S.E.2d 629, 633 (2004) (citing *Hancock v. Bureau of Nat'l Affairs*, 645 S.2d 588, 591 (D.C. Cir. 1994)). South Carolina has adopted the "competing affidavit rule" as a "narrow exception" to this rule, which is used "only when the affidavit is an attempt to create a sham issue of material fact." *Id.* A "sham affidavit" is one that is subsequently introduced to contradict an original statement, the substance of which is harmful to the affiant. *Cothran*, 357 S.C. at 218, 592 S.E.2d at 633. In addition to the requirement

that such an affidavit be a subsequent effort to remediate harmful testimony, courts consider the following guidance to distinguish a sham affidavit and a correcting affidavit:

> (1) whether an explanation is offered for the statements that contradict prior sworn statements, (2) the importance to the litigation of the fact about which there is a contradiction, (3) whether the nonmovant had access to this fact prior to the previous sworn testimony, (4) the frequency and degree of variation between statements in the previous sworn testimony and statements made in the later affidavit concerning this fact, (5) whether the previous sworn testimony indicates the witness was confused at the time, and (6) when, in relation to [the dispositive motion], the second affidavit is submitted.

Id. (emphasis added).

Plaintiffs argue that Ms. Hulseman's Affidavit, drafted *before* her deposition testimony, is a "sham" because she did not compose the affidavit herself, or subsequently verify her personal knowledge through review of documentary evidence. "Not authoring an affidavit" and "failure to verify personal knowledge with documentary support" are not considerations under South Carolina's "competing affidavit rule." *See id.* Even if Ms. Hulseman did not independently confirm the facts set forth in her affidavit, it does not change the fact that the subject matter of her affidavit is consistent with her deposition testimony (and the substantial documentary evidence showing the same). Because Ms. Hulseman's affidavit is consistent with her deposition testimony, Ms. Hulseman's affidavit cannot be a "sham" affidavit under South Carolina's "competing affidavit rule." As such, the Court should deny Plaintiffs' invitation to strike Ms. Hulseman's affidavit, and accept the affidavit for what the Court considers it to be worth.

Finally, even if the Court were to disregard Ms. Hulseman's affidavit, Plaintiffs offer no real response to the thousands of pages of documentary evidence, the testimony of Mr. Niehus and Ms. Hulseman, or the expert report of Mr. Lester. That evidence alone is more than sufficient to establish economic integration and support the KapStone Defendants' motion. Thus, while the

Court should consider Ms. Hulseman's affidavit for all of the reasons discussed above, even if it does not, there remains a substantial evidentiary basis on which the Court can and should dismiss the claims against the KapStone Defendants on the basis of *Poch*.

CONCLUSION

The preponderance of the evidence shows that at the time of the incident giving rise to this litigation, the KapStone Defendants and KapStone Charleston operated as one integrated economic entity, for purposes of workers compensation. These entities acted collectively as "KapStone," with the shared purpose to fulfill the various functions involved in the manufacture, sale, and distribution of paper products. In doing so, the KapStone entities shared the same officers, directors, and general counsel, and conducted business from the same corporate office. They shared accounting books, bank accounts, insurance policies, benefits programs, email systems, a centralized purchase system, and payroll services. KapStone Charleston's employees received compensation, both as to pay and benefits, including workers compensation insurance, from accounts procured and funded by KapStone Paper. Further, KapStone Charleston's operations were subject to certain corporate-wide policies promulgated by KapStone Paper. Finally, these entities filed a single consolidated federal tax return, as well as other consolidated financial statements, in the form of 10-Ks, 8-Ks and other filings with the SEC.

The interrelationship and significant financial connections between the KapStone Defendants and KapStone Charleston are far more extensive than between the Bayshore entities, and, like these entities, satisfy the factors adopted in *Poch v. Bayshore*. As such, the KapStone Defendants should be accorded KapStone Charleston's workers-compensation immunity, and Plaintiffs' claims against KapStone Paper and KapStone Kraft should be dismissed.

[Signature block on following page.]

Respectfully submitted,

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