

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
1:15-cv-409**

**DAVID SCOTT CECIL, FRANK HOOD,
MARTIN KRUMNACHER**, in their
capacity as Trustees of the Kingsdown, Inc.
Employee Stock Ownership Plan (the “ESOP”),
on behalf of the ESOP, and as participants in
the ESOP, on behalf of a class of similarly
situated participants in the ESOP,

Plaintiffs,

vs.

**W. ERIC HINSHAW, GEORGE
McLAMB, THOMAS McLEAN**,

Defendants.

CLASS ACTION COMPLAINT

NOW COME Plaintiffs David Scott Cecil, Frank Hood, and Martin Krumnacher (collectively, the “Plaintiffs”), through counsel, and for its class action complaint against Defendants W. Eric Hinshaw, George T. McLamb, and Thomas McLean (collectively, the “Defendants”), state and allege as follows:

PARTIES

1. Plaintiff, David Scott Cecil (“Mr. Cecil”), is a citizen and resident of Efland, Orange County, North Carolina and is a current trustee of the Kingsdown Inc. Employee Stock Ownership Plan (“ESOP”).

2. Mr. Cecil has been with the company for the past twenty-two years. In

addition to serving as an ESOP trustee, Mr. Cecil is currently the Vice President for Information Technology for Kingsdown, Inc.

3. Mr. Cecil is a fiduciary of the ESOP within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21).

4. Plaintiff, Frank Hood (“Mr. Hood”), is a citizen and resident of Burlington, Alamance County, North Carolina and is a current Kingsdown ESOP trustee.

5. Mr. Hood currently serves as the President and Chief Executive Officer for Kingsdown, Inc. in addition to his role as an ESOP trustee.

6. Mr. Hood is a fiduciary of the ESOP within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21).

7. Plaintiff, Martin Krumnacher (“Mr. Krumnacher”), is a citizen and resident of Ten Mile, Meigs County, Tennessee and is a current Kingsdown ESOP trustee.

8. Mr. Krumnacher was a long-time employee of Kingsdown, Inc. In addition to currently serving as an ESOP trustee, Mr. Krumnacher is retired from Kingsdown. Before retiring, Mr. Krumnacher was a Kingsdown plant manager.

9. Mr. Krumnacher is a fiduciary of the ESOP within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21).

10. Upon information and belief, Defendant, W. Eric Hinshaw (“Mr. Hinshaw”), is a citizen and resident of Durham, Durham County, North Carolina and at all relevant times alleged herein, held a position on the Kingsdown ESOP Administrative Committee and/or was a Kingsdown ESOP trustee.

11. Defendant Hinshaw joined Kingsdown, Inc. in February 1976 and became Chief Executive Officer of the company in 1984.

12. Defendant Hinshaw remained in this position from that date until May 30, 2012, when his employment was terminated.

13. At all relevant times alleged herein, Defendant Hinshaw also served as Kingsdown's CEO and the Chairman of the Board.

14. Defendant Hinshaw additionally served on the Kingsdown ESOP Administrative Committee and/or was an ESOP trustee from 1985 until 2012.

15. By reason of his position on the Kingsdown ESOP Administrative Committee and/or as an ESOP trustee, and by reason as his status as a named fiduciary of the ESOP, and by reason of his actions alleged more specifically in this complaint, Mr. Hinshaw was a fiduciary of the Kingsdown ESOP within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that he exercised discretionary authority or discretionary control respecting management of the ESOP, exercised authority or control respecting management or disposition of the ESOP's assets, and exercised discretionary authority or discretionary responsibility in the administration of the ESOP.

16. Upon information and belief, Defendant, George McLamb ("Mr. McLamb"), is a citizen and resident of Burlington, Alamance County, North Carolina.

17. Defendant McLamb served on the Kingsdown Board of Directors, as well as on the ESOP Administrative Committee and/or as an ESOP trustee, from 1985 until December 31, 2011.

18. By reason of his position on the Kingsdown ESOP Administrative Committee and/or as an ESOP trustee, and by reason as his status as a named fiduciary of the ESOP, and by reason of his actions alleged more specifically in this Complaint, Mr. McLamb was a fiduciary of the ESOP within the meaning of ERISA § 3(21), 29 U.S.C. §1002(21), in that he exercised discretionary authority or discretionary control respecting management of the ESOP, exercised authority or control respecting management or disposition of the ESOP's assets, and exercised discretionary authority or discretionary responsibility in the administration of the ESOP.

19. Upon information and belief, Defendant, Thomas McLean ("Mr. McLean"), is a citizen and resident of Burlington, Alamance County, North Carolina.

20. Defendant McLean served on the Kingsdown Board of Directors (including as Chairman for a period of time), as well as on the ESOP Administrative Committee and/or as an ESOP trustee, at various times from May of 1985 until December 31, 2011.

21. By reason of his position on the ESOP Administrative Committee and/or as an ESOP trustee, and by reason as his status as a named fiduciary of the ESOP, and by reason of his actions alleged more specifically herein, Mr. McLean was a fiduciary of the Kingsdown ESOP within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that he exercised discretionary authority or discretionary control respecting management of the ESOP, exercised authority or control respecting management or disposition of the ESOP's assets, and/or exercised discretionary authority or discretionary responsibility in the administration of the ESOP.

22. Mr. Cecil, Mr. Hood, and Mr. Krumnacher (collectively the “Current Trustees”) were appointed to serve as the Kingsdown ESOP trustees on May 30, 2012 following the resignations of Mr. McLamb and Mr. McLean on December 31, 2011 and the resignation of Mr. Hinshaw on May 30, 2012.

JURISDICTION AND VENUE

23. This Court has subject matter jurisdiction to hear this claim pursuant to 28 U.S.C. § 1331, in that the claim arises under the laws of the United States. Specifically, Plaintiffs bring this action to enforce their rights under ERISA, as allowed by ERISA § 502(e)(1) (29 U.S.C. § 1132 (e)(1)).

24. Venue is appropriate in the Middle District of North Carolina pursuant to ERISA § 502(e)(2) (29 U.S.C. § 1132 (e)(2)) because the ESOP was administered in this District, some or all of the fiduciary breaches for which relief is sought occurred in this District, and one or more of the Defendants may be found in this District. Venue is also proper in this district under 28 U.S.C. §1391(b) and (c) because one or more of the Defendants resides in this District.

FACTUAL ALLEGATIONS

A. Background

25. Kingsdown, Incorporated (“Kingsdown” or the “Company”) is an employee-owned company that was founded in 1904.

26. Kingsdown is headquartered in Mebane, Alamance County, North Carolina.

27. Kingsdown maintains a research and development center, training and distribution facilities, and two manufacturing facilities in Mebane.

28. The majority of Kingsdown's products consist of handcrafted mattresses and box springs.

29. As an employee-owned company, Kingsdown supported its employees' professional growth and career development in part by providing its employees opportunities to increase their compensation and stake in the Company.

30. To further these values and objectives, Kingsdown created an Employee Stock Ownership Plan (the "ESOP" or the "Plan") in or around 1985.

31. As detailed in Section 1.03 of the Plan, the ESOP was restated in 1989 and was further amended on January 1, 1997. The 1997 version of the ESOP is the version of the Plan that has been in effect at all relevant times in this action.

32. Pursuant to Plan Section 1.03, the Plan functions as both (a) an ESOP within the meaning of Section 4974(e)(7) of the Internal Revenue Code and Section 407(d)(7) of ERISA and (b) as a Stock Bonus Plan under Section 401(a) of the Internal Revenue Code.

33. Pursuant to Section 1.01 of the Plan, the purpose of the ESOP is to "share in the growth and prosperity of the Company, and to provide Participants with an opportunity to accumulate capital for their future economic security" and "to enable Participants to acquire stock ownership interests in the Company."

34. To fulfill this purpose, Kingsdown created an ESOP Administrative

Committee (the “Committee”).

35. According to Section 1.03 of the Plan, the Committee supervises and directs the ESOP, as well as “administer[s] the ESOP in a nondiscriminatory manner for the exclusive benefit of all ESOP participants and their beneficiaries.”

36. The Committee remained in place until January 1, 2011, at which time the committee structure was no longer in place, leaving the responsibilities to administer the ESOP directly with the ESOP trustees.

37. At all relevant times preceding the termination of the committee structure effective January 1, 2011, the Defendants were members of and constituted the Committee.

38. The Defendants also collectively functioned as ESOP trustees during the relevant time period.

39. Section 11.01 of the Plan, entitled “Named Fiduciaries,” provides that the members of the ESOP Administrative Committee and the ESOP trustees are named fiduciaries to the Plan.

40. Upon information and belief, Defendants Hinshaw, McLamb, and McLean (collectively the “Former Trustees”) failed to meet as the ESOP Administrative Committee from 1985 to 2011, a span of 26 years. They also failed to meet as ESOP trustees between 1985 and 2011.

41. The Former Trustees were all Kingsdown shareholders, holding shares of Kingsdown stock in their individual names.

42. Upon information and belief, at the close of 2009, Mr. Hinshaw owned 16,703 shares, Mr. McLamb owned 7,600 shares, and Mr. McLean owned 6,000 shares.

43. Upon information and belief, at the close of 2009, Mr. Hinshaw owned 10.9% of Kingsdown's shares, Mr. McLamb owned 5%, and Mr. McLean owned 3.9%.

44. The Kingsdown ESOP was the largest shareholder at the Company. It maintained 66,046 shares at the close of 2009, amounting to 43.2% of Kingsdown's shares.

45. Besides the Kingsdown ESOP, the Former Trustees were the largest shareholders at the Company, collectively owning about 19.81% of the outstanding shares of stock.

46. Prior to 2010, the Company suffered financial difficulties. Specifically, stock prices declined from \$355 per share in 2007 to \$320 per share in 2009.

47. Additionally, Kingsdown embarked on an unsuccessful retail venture in 2008 that resulted in an approximate loss to the Company of at least \$8 to 10 million dollars.

48. In or around September 2008, the United States entered the worst recession since the Great Depression of 1929 (the "2008 Recession").

49. Due to the recession and associated devastation of the housing market in 2008-2009, mattress sales, as a whole, declined significantly during the time period leading into 2010.

50. The 2008 Recession impacted Kingsdown, as its net cash decreased by

nearly \$10 million dollars from 2007 to 2008. From 2009 to 2010, Kingsdown's net cash amount plummeted yet again, with the Company ultimately losing over \$15 million dollars in net cash from 2007 to 2010.

51. In or around 2009, there were also a significant number of known retirements that resulted in large payout redemptions between 2008 and 2011 totaling \$7-8 million dollars paid out to retirees to purchase their shares of stock.

52. Because of the ongoing recession, the significant decline in mattress sales, and the reduction in operating cash, Kingsdown was in an unstable financial position entering 2010.

B. 2010 Stock Redemption Plan

53. On March 4, 2010, Defendant Hinshaw provided notice to Kingsdown shareholders, alerting them to a stock redemption program in which shareholders could sell their stock back to Kingsdown (the "2010 Redemption Plan" or "Redemption Plan").

54. As shareholders, Mr. McLamb and Mr. McLean received this letter.

55. The Redemption Plan was limited to 28,000 shares.

56. If, upon acceptance of the redemption offer, the Kingsdown shareholders offered to collectively redeem more than 28,000 shares, Kingsdown would reduce all offers pro-rata.

57. Through the Redemption Plan, Kingsdown redeemed shares of stock at a price of \$320.00 per share.

58. Defendant McLamb redeemed 5,600 of his personal shares through the

Redemption Plan

59. Defendant McLean redeemed all of his personal stock (6,000 shares) through the Redemption Plan.

60. McLamb and McLean's redeemed shares accounted for a total of 11,600 out of the 20,881 total shares that were redeemed (approximately 56%).

61. Mr. Hinshaw did not participate in the Redemption Plan.

62. The ESOP did not participate in the Redemption Plan.

63. If the ESOP had participated in the Redemption Plan, the number of shares that could be redeemed by other shareholders would be severely limited as the ESOP was the largest shareholder at the Company.

64. Had the ESOP participated in the Redemption Plan, it could have redeemed a total of 21,234 shares.

65. Had the ESOP participated in the Redemption Plan, McLean's shares available to be redeemed would have been reduced from 6,000 shares to 1,944 shares.

66. Had the ESOP participated in the Redemption Plan, McLamb's shares available to be redeemed would have been reduced from 5,600 shares to 1,814 shares.

67. McLean and McLamb would have retained the remaining unredeemed stock.

68. Because the ESOP did not participate in the Redemption Plan, the ESOP owned 49.996% of Kingsdown's outstanding shares after Kingsdown redeemed the shares tendered by participating shareholders.

69. Because Mr. Hinshaw did not participate in the Redemption Plan, his ownership interest of Kingsdown stock increased from 10.9% to 12.6% after Kingsdown redeemed the participating shareholders' stock.

70. Because the ESOP did not participate in the Redemption Plan, Defendant McLamb reduced his ownership interest in Kingsdown stock from 5% to 1.51% and Defendant McLean reduced his ownership interest from 3.9% to 0.0%.

71. As a result of the ESOP not participating in the Redemption Plan, and the redemptions by other shareholders, Defendant Hinshaw effectively gained greater control of the Company. Specifically, as trustee of the ESOP, Defendant Hinshaw exercised control of the ESOP's stock as well as his own personal stock. The ESOP's shares, taken together with Mr. Hinshaw's shares, amounted to approximately 62.596% of Kingsdown's stock after the 2010 stock redemptions were completed.

72. Upon information and belief, Defendant Hinshaw allowed or even encouraged Defendants McLamb and McLean to personally rid themselves of stock that was deteriorating in value in order for Defendant Hinshaw to increase his control of the Company.

73. Upon information and belief, there exists no documentation to suggest that the Former Trustees ever discussed whether the ESOP should participate in the Redemption Plan, despite their knowledge of the Redemption Plan, their position on the ESOP Administrative Committee and/or as ESOP trustees, and the personal participation of two of the Former Trustees.

74. Section 11.07 of the Plan requires that the Committee “keep a record of all its proceedings and actions and shall maintain all such books of accounts, records and other data as may be necessary for the proper administration of the Plan.”

75. Section 11.06 of the Plan enables the Committee to “secure legal, accounting ... and actuarial advice and assistance as it deems necessary or desirable in discharging its responsibilities.”

C. Failed Results of the Redemption Plan

76. Since 2010, the purpose of the ESOP has been obstructed due to Kingsdown’s financial difficulties.

77. Specifically, due to factors including the money paid out to redeem the stock in 2010 (\$6,681,920.00) and the previous years’ financial difficulties, it became necessary for Kingsdown to amend the ESOP in 2011 to defer and extend its required ESOP payments.

78. The Current Trustees bring this action against the Former Trustees pursuant to their fiduciary obligations to the ESOP.

CLASS ALLEGATIONS

79. This action is brought pursuant to Federal Rule of Civil Procedure 23(b) on behalf of Plaintiffs in their capacity as the current trustees of the ESOP, on behalf of the ESOP, as participants in the ESOP, on behalf of the ESOP, and on behalf of a class of similarly-situated participants in the ESOP; namely, all individuals who were participants in the Kingsdown, Inc. Employee Stock Ownership Plan from January 1, 2010, through

and including December 31, 2011, excluding the Defendants and excluding those participants during said time period to the extent said participants were paid out at a stock price of \$320.00 or greater (“Class Members” or the “Class”).

80. The number of Class Members is numerous and geographically diverse such that their joinder is impracticable and inefficient.

81. The questions of law and fact arising from Plaintiffs’ claims are questions common to each member of the Class, and these common questions predominate over any individual questions. These common questions include the following with respect to the 2010 Redemption Plan:

(a) Did Defendants fail to follow Plan documents pursuant to 29 U.S.C. § 1104?

(b) Did Defendants fail to avoid conflicts of interest pursuant to 29 U.S.C. § 1104?

(c) Did Defendants breach their fiduciary duty of care pursuant to 29 U.S.C. § 1104 and § 1109?

(d) Did Defendants breach their fiduciary duty of loyalty pursuant to 29 U.S.C. § 1106 and § 1109?

(e) Are Defendants liable as co-fiduciaries pursuant to 29 U.S.C. § 1105?

(f) Did Defendants engage in self-dealing pursuant to 29 U.S.C. § 1106?

82. Plaintiffs’ claims are typical of those of the Class Members.

83. Plaintiffs will fairly and adequately protect the interests of the Class, and has retained experienced counsel to do so.

84. This case can easily be managed as a class action because Kingsdown keeps a database containing data about each Class Member, which are readily accessible. Notice can be sent to every or virtually every Class Member.

85. Given that the damage to individual Class Members would likely be dwarfed by the expense of litigating a claim on an individual basis, a class action is the most efficient way to adjudicate this matter.

86. In addition, a Class may be certified because: (a) the prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudication with respect to individual Class Members that would establish incompatible standards of conduct for defendants; (b) the prosecution of separate actions by individual Class Members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other Class Members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; (c) Defendants have acted or refused to act on grounds generally applicable to the Class thereby making appropriate final declaratory and/or injunctive relief with respect to the members of the Class as a whole; (d) the questions of law or fact common to Class Members predominate over any questions affecting only individual members; and (e) a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

FIRST CLAIM FOR RELIEF:
FAILURE TO PRUDENTLY AND LOYALLY MANAGE PLAN ASSETS
UNDER ERISA, 29 U.S.C. § 1109

87. Pursuant to Rule 10(c) of the F.R.C.P., Plaintiffs respectfully incorporate by reference all prior paragraphs, where not inconsistent, as if set forth fully and re-alleged.

A. Existence and Scope of Duties

88. Defendants meet the minimal standards required by ERISA to be considered fiduciaries.

89. Pursuant to 29 U.S.C. § 1002(21)(A), “fiduciary” is broadly defined under ERISA. “Fiduciary” is defined, not in terms of formal trusteeship, but in functional terms of control and authority over the plan.

90. An individual may be a fiduciary for ERISA purposes either because the plan documents explicitly describe fiduciary responsibilities or because that person functions as a fiduciary. Defendants meet both criteria.

91. Defendants collectively made up the ESOP Administrative Committee. Mr. Hinshaw and Mr. McLamb have been members of the Committee since at least 1985. Mr. McLean initially joined the Committee in 1985, came off the Committee for a period of time, and then rejoined the Committee in November of 2004.

92. Section 11.01 of the Plan Documents, entitled “Named Fiduciaries,” named the Committee members as fiduciaries to the Plan.

93. There is no indication in Kingsdown records that the Defendants did not

collectively function as the ESOP Administrative Committee at all times pertinent to the allegations in this Complaint.

94. Thus, the Defendants acted as the “named fiduciaries” for the ESOP at all times pertinent to the allegations in this Complaint.

95. Further, Defendants functioned as ERISA fiduciaries because they: (1) exercised a degree of discretionary authority or discretionary control respecting management of the ESOP; and (2) maintained discretionary authority or discretionary responsibility in the administration of the ESOP as Trustees of the Kingsdown ESOP.

96. Defendants are fiduciaries under ERISA and are subject to liability for any losses to the ESOP caused by breaches of their fiduciary duties relating to the 2010 Redemption Plan.

B. Breach of Fiduciary Duties

97. As ERISA fiduciaries, Defendants owed fiduciary duties to the Kingsdown ESOP, its participants, and its beneficiaries.

98. ERISA §404(a)(1), 29 U.S.C. §1104(a)(1) requires that a plan fiduciary “discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and ... for the exclusive purpose of: ... providing benefits to participants and their beneficiaries ... with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.”

99. Defendants' selection, monitoring, and continuation of the investments under the ESOP were subject to the above-described fiduciary duties of both prudence and loyalty.

100. Defendants failed to act prudently by declining and/or failing to sell the ESOP's stock through the Redemption Plan. Specifically, Defendants breached their duty of prudence by not offering any of the ESOP shares for redemption in the Redemption Plan because they: (1) failed to hold any investigation or have any discussion regarding the effects of the Redemption Plan on the ESOP; (2) knew of Kingsdown's declining stock prices; and (3) knew of Kingsdown's precarious financial condition that was attributed to both internal decisions and developments, as well as external economic conditions, specifically the 2008 Recession.

101. Defendants have not presented a transcript of a meeting, nor even a conversation, to memorialize discussions regarding the ESOP's involvement in the Redemption Plan.

102. There is no evidence that the ESOP Administrative Committee has met in the last 26 years of the Former Trustees' terms.

103. Had Defendants met with greater regularity or investigated the implications of the Redemption Plan, the ESOP's participation in the Plan could have been considered and damage to the ESOP and its beneficiaries could have been avoided.

104. This failure to engage in any reasoned discussion or investigation regarding the Redemption Plan's effect on the ESOP amounts to a breach of fiduciary

duty of prudence.

105. Defendants were also aware of Kingsdown's declining stock value.

106. From 2004 until 2007, Kingsdown's stock value increased.

107. From 2008 to 2009, however, the stock prices dropped and consistently remained below the 2007 stock value.

108. Further, Defendants knew or should have known of the impact the 2008 Recession had on stock value.

109. Defendants acted imprudently by maintaining the ESOP investments in Kingsdown stock despite its falling value and despite Defendants' knowledge of global decline in stock value when the ESOP could have participated in the Redemption Plan before the stock prices fell further. As a consequence of their high-level positions, Defendants had access to and thus knowledge of the true state of affairs at Kingsdown. Specifically:

(a) Kingsdown was terribly affected by a failed retail venture that cost the company roughly \$8-10 million dollars, which occurred only two years prior to the Redemption Plan.

(b) Further, in or around 2009, there were a significant number of known retirements that resulted in large payout redemptions between 2008 and 2011 totaling \$7-8 million dollars paid out to retirees to purchase their shares of stock.

110. The 2008 Recession also affected Kingsdown considerably.

111. A new mattress or box spring is a highly postponable purchase in the face of financial crisis.

112. The 2008 Recession devastated the national housing market. The general success or failure of mattress sales is directly correlated to housing sales. Thus, it is wholly imprudent to refrain from increasing the ESOP's revenue stream when the Defendants knew of the financial ruin of the housing market.

113. The 2008 Recession contributed to a tremendous loss of Kingsdown's net income. The Company's net cash decreased by nearly \$10 million dollars from 2007 to 2008. From 2009 to 2010, Kingsdown's net cash amount plummeted yet again, with the Company ultimately losing over \$15 million dollars in net cash from 2007 to 2010.

114. Defendants breached their fiduciary duty of loyalty by not offering any of the ESOP's shares in the Redemption Plan when these considerations were known, or should have been known, to Defendants at the time they reached their decision.

115. Defendants also breached their fiduciary duty of loyalty by failing to discharge their duties "solely in the interest of the participants and beneficiaries."

116. Specifically, Defendants McLamb and McLean participated in the Redemption Plan while the ESOP did not.

117. Because Defendants McLamb and McLean found the Redemption Plan to be financially beneficial to themselves, it is conversely true that the Redemption Plan would have been financially beneficial to the ESOP participants. Thus, Defendants' actions were not taken with the interests of the ESOP beneficiaries in mind.

118. Further, Defendant Hinshaw refrained from personally participating in the Redemption Plan while he, along with Defendants McLamb and McLamb, simultaneously refrained from having the ESOP participate in the Redemption Plan. These actions, along with the redemptions by participating shareholders, including Defendants McLamb and McLean, left Mr. Hinshaw with greater control of the Company.

119. Specifically, the ESOP increased its ownership interest in Kingsdown stock from 43.2% to 49.996% by not participating in the Redemption Plan. Defendant Hinshaw increased his personal ownership interest of Kingsdown stock from 10.9% to 12.6%.

120. As trustee of the ESOP, Defendant Hinshaw controlled the ESOP's stock as well as his own personal stock. The ESOP shares, combined with Hinshaw's personal shares, amount to approximately 62.596% of Kingsdown's stock.

121. Thus, Defendant Hinshaw's actions were not taken with the interests of the ESOP beneficiaries in mind. Instead, Hinshaw personally benefitted from the 2010 redemptions by effectively strengthening his control of the Company.

122. Had Defendants successfully maintained their duties of prudence and loyalty, they would have taken appropriate action to protect the ESOP and its participants, including one or more of the following: (i) directed the ESOP to participate in the Redemption Plan in order to increase the ESOP's cash flow; (ii) appointed an independent fiduciary to evaluate the extent to which the ESOP should remain invested in Kingsdown stock and/or determine an appropriate strategy for divestment; and/or (iii)

notified the Secretary of Labor.

123. At a very minimum, Defendants owed a duty to have considered the ESOP's participation in the Redemption Plan.

124. Defendants could have consulted with outside legal, accounting, or actuarial advice as specifically provided for in Section 11.06 of the Plan.

125. Defendants failed to discharge their fiduciary obligations and instead continued to blindly or knowingly lead the ESOP down a detrimental road. Thus, Defendants breached their fiduciary duties by failing to prudently and loyally manage the ESOP's assets.

C. Damages Caused by the Defendants' Breach

126. Because of the Former Trustees' breach of their fiduciary duties, it became necessary for Kingsdown to amend the ESOP in 2011 to defer and extend its required ESOP payments.

127. The ESOP could have sold its stock back to the Company for \$6,681,920.00 based upon the \$320.00 redemption rate.

128. Pursuant to ERISA § 502(a)(2), 11 U.S.C. §1132(a)(2), Defendants are personally liable to make cover any losses to the ESOP resulting from each breach.

129. Pursuant to ERISA §502(a)(3), 11 U.S.C. §1132(a)(3), the Court should award equitable relief.

130. As a direct and proximate result of Defendants' breaches of fiduciary duty and other improper conduct, Plaintiffs, on behalf of the ESOP, have suffered damages

and are entitled to judgment against Defendants in an amount to be proven at trial, and appropriate equitable relief as set forth herein.

SECOND CLAIM FOR RELIEF:
FAILURE TO AVOID CONFLICTS OF INTEREST
UNDER ERISA, 29 U.S.C. § 1104

131. Pursuant to Rule 10(c) of the F.R.C.P., Plaintiffs respectfully incorporate by reference all prior paragraphs, where not inconsistent, as if set forth fully and re-alleged.

132. The fiduciary duty of loyalty entails a duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an “eye single” to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor.

133. Pursuant to ERISA §404(a), 29 U.S.C. § 1104 and as represented in the Plan, Defendants have a duty to discharge their duties with respect to the ESOP for the exclusive purpose of providing benefits to participants and their beneficiaries.

134. Defendants breached this duty when they took advantage of the Redemption Plan for their personal benefit and to the detriment of the ESOP participants and beneficiaries.

A. Defendants McLamb and McLean’s Conflict of Interest

135. The Kingsdown ESOP was the largest shareholder in the Company at the time the challenged decision was made, holding 66,046 shares.

136. At the close of 2009, Mr. McLamb owned 7,600 shares and Mr. McLean

owned 6,000 shares.

137. Mr. McLamb redeemed 5,600 of his personal shares and Mr. McLean redeemed all of his personal stock (6,000 shares) through the Redemption Plan.

138. The Redemption Plan was limited to 28,000 shares.

139. The Redemption Plan provided that if more than 28,000 shares were offered back to the Company, the Company would accept the shareholders' offers on a pro rata basis.

140. Because of the cap of 28,000 shares, the ESOP's participation in the Redemption Plan, as the largest shareholder, would have significantly reduced the number of shares Defendants McLamb and McLean could have exercised personally.

141. The exclusion of the ESOP from the Redemption Plan enabled Defendants McLean and McLamb to sell more shares back to the Company than they would have had the ESOP been included.

142. The ability of Defendants McLamb and McLean to cumulatively receive more redemption proceeds by excluding the ESOP from the Redemption Plan functioned as a clear conflict of interest that impeded Defendants' prudent decision-making with respect to the ESOP and ESOP participants.

143. This conflict of interest is further substantiated by the fact that Defendants maintained the ESOP participants' investments in Kingsdown stock despite their knowledge of the deteriorating financial stability of Kingsdown and their knowledge of outside economic considerations, specifically the 2008 Recession.

144. Upon information and belief, this decision was made so that Defendants McLamb and McLean could increase the amount of personal stock they could sell before the stock value further plummeted.

145. McLamb and McLean could have alleviated this breach by engaging independent fiduciaries or simply refraining from personally participating in the Redemption Plan.

146. Defendants McLamb and McLean could have obtained outside legal, accounting, or actuarial advice as specifically provided for in Section 11.06 of the Plan.

147. McLamb and McLean, however, took none of these actions.

148. If Defendants McLamb and McLean had at all times discharged their fiduciary duties to avoid conflicts of interest, including by resigning if necessary, the losses suffered by the ESOP would have been minimized or avoided.

B. Defendant Hinshaw's Conflict of Interest

149. The Kingsdown ESOP was the largest shareholder in the Company at the time the challenged decision was made, holding 66,046 shares which equated to a 43.2% ownership interest in Kingsdown stock.

150. At the close of 2009, Defendant Hinshaw personally owned 16,703 shares which equated to a 10.9% ownership interest in Kingsdown stock.

151. Because the ESOP did not participate in the Redemption Plan, the ESOP ownership interest increased from 43.2% to 49.996% of Kingsdown's shares after the Company redeemed the shares offered by participating shareholders.

152. Because Hinshaw did not participate in the Redemption Plan, his personal ownership interest of Kingsdown stock increased from 10.9% to 12.6% after the Company redeemed the shares offered by participating shareholders.

153. Because the ESOP did not participate in the Redemption Plan, Defendant Hinshaw effectively gained greater control of the Company. Specifically, as trustee of the ESOP, Defendant Hinshaw exercised control of the ESOP's stock as well as his own personal stock. The ESOP's shares, taken together with Mr. Hinshaw's shares, amounted to approximately 62.596% of Kingsdown's stock after the 2010 stock redemptions were completed.

154. Upon information and belief, Defendant Hinshaw allowed (or even encouraged) Defendants McLamb and McLean to personally rid themselves of stock that was deteriorating in value in order for Defendant Hinshaw to increase his control of the Company.

155. The ability of Defendant Hinshaw to effectively increase his control of Kingsdown through his and the ESOP's non-participation in the Redemption Plan functioned as a clear conflict of interest that impeded Defendant Hinshaw's prudent decision-making with respect to the ESOP and ESOP participants.

156. Defendant Hinshaw could have alleviated this breach by engaging independent fiduciaries.

157. Defendant Hinshaw could have obtained outside legal, accounting, or actuarial advice as specifically provided for in Section 11.06 of the Plan.

Defendant Hinshaw, however, took none of these actions.

158. If Defendant Hinshaw had at all times discharged his fiduciary duties to avoid conflicts of interest, including by resigning if necessary, the losses suffered by the ESOP would have been minimized or avoided.

159. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the ESOP, and indirectly the ESOP participants and beneficiaries, lost millions of dollars and were otherwise damaged.

160. Pursuant to ERISA § 502(a)(2), 11 U.S.C. §1132(a)(2), Defendants are personally liable to make cover any losses to the ESOP resulting from each breach.

161. Pursuant to ERISA §502(a)(3), 11 U.S.C. §1132(a)(3), the Court should award equitable relief.

162. As a direct and proximate result of Defendants' breaches and other improper conduct, Plaintiffs, on behalf of the ESOP, have suffered damages and are entitled to judgment against Defendants in an amount to be proven at trial, and appropriate equitable relief as set forth herein.

THIRD CLAIM FOR RELIEF:
FAILURE TO FOLLOW PLAN DOCUMENTS
UNDER ERISA, 29 U.S.C. § 1104

163. Pursuant to Rule 10(c) of the F.R.C.P., Plaintiffs respectfully incorporate by reference all prior paragraphs, where not inconsistent, as if set forth fully and re-alleged.

164. As members of the ESOP Administrative Committee at the time of the

challenged decision, Defendants were required to act prudently and solely in the interest of all of the participants and beneficiaries in the ESOP.

165. Pursuant to 29 U.S.C. § 1104(a)(1)(D), this includes the duty to follow the terms of the Plan, including Section 11.07.

166. Section 11.07 of the Plan requires that the Committee “keep a record of all its proceedings and actions and shall maintain all such books of accounts, records and other data as may be necessary for the proper administration of the Plan.”

167. Upon information and belief, the Defendants have wholly failed to keep any such records or documents.

168. Upon information and belief, Defendants’ failure to keep records of all its proceedings and actions means that Defendants, specifically with respect to the 2010 Redemption Plan, failed to meet to discuss the ESOP’s participation or the Defendants knowingly engaged in improper conduct with respect to the 2010 Redemption Plan.

169. Had the Defendants kept proper records or documents, the ESOP could have been properly administrated and the current financial harm to the ESOP could have been avoided.

170. No prudent and loyal fiduciary would have failed to keep records of meetings or conversations unless such meetings or conversations never occurred or occurred for an improper purpose.

171. Regardless of the Defendants’ reasons for failing to keep proper records, such inaction clearly violated Section 11.07 of the Plan.

172. Pursuant to ERISA § 502(a)(2), 11 U.S.C. §1132(a)(2), Defendants are personally liable to make cover any losses to the ESOP resulting from each breach.

173. Pursuant to ERISA §502(a)(3), 11 U.S.C. §1132(a)(3), the Court should award equitable relief.

174. As a direct and proximate result of Defendants' breaches and other improper conduct, Plaintiffs, on behalf of the ESOP, have suffered damages and are entitled to judgment against Defendants in an amount to be proven at trial, and appropriate equitable relief as set forth herein.

FOURTH CLAIM FOR RELIEF:
FAILURE TO REFRAIN FROM SELF-DEALING
UNDER ERISA, 29 U.S.C. § 1106

175. Pursuant to Rule 10(c) of the F.R.C.P., Plaintiffs respectfully incorporate by reference all prior paragraphs, where not inconsistent, as if set forth fully and re-alleged.

176. Defendants, as personal shareholders of the Company, had an interest and benefit in not offering the ESOP's shares in the Redemption Plan.

177. Specifically, Defendants McLamb and McLean were able to redeem more of their personal stock in the Redemption Plan because of the ESOP's non-participation.

178. Further, Defendant Hinshaw, upon information and belief, allowed, or even encouraged, Defendants McLean and McLamb to participate in the Redemption Plan in order to increase his power within the Company.

179. Because he refrained from participating in the Redemption Plan, Hinshaw's personal ownership interest in the Company increased from 10.9% to 12.6% after Kingsdown redeemed the shares offered by participating shareholders.

180. Because the ESOP did not participate in the Redemption Plan, the ESOP's ownership interest in the Company increased from 43.2% to 49.996% after the Company completed the redemptions for participating shareholders.

181. As an ESOP trustee and Committee member, Defendant Hinshaw effectively controlled the ESOP.

182. Following the Redemption Plan, Defendant Hinshaw's personal ownership interest, together with his responsibilities as an ESOP trustee, in effect, gave him control of approximately 62.596% of Kingsdown's shares.

183. Upon information and belief, Defendant Hinshaw allowed Defendants McLamb and McLean to sell their stock back to the Company via the Redemption Plan, because their redemptions, and those of other participating shareholders, served to increase Defendant Hinshaw's ownership percentage and control of the Company and gave Defendants McLamb and McLean, as co-trustees with Defendant Hinshaw, incentive to cooperate with Hinshaw in his exercise of control of the Company.

184. Specifically, Defendant McLamb reduced his ownership interest in Kingsdown stock from 5% to 1.51% and Defendant McLean reduced his ownership interest from 3.9% to 0.0% via the Redemption Plan.

185. Upon information and belief, through the foregoing occurrences,

Defendant Hinshaw sought to benefit himself by acquiring greater control of the Company.

186. Defendants used the Redemption Plan for their personal benefit and interest in breach of their fiduciary duties and in violation of ERISA § 406(b)(1), 29 U.S.C. §1106(b)(1).

187. Thus, the responsible fiduciaries were guilty of self-dealing which resulted in substantial losses to the ESOP.

188. Pursuant to ERISA § 502(a)(2), 11 U.S.C. §1132(a)(2), Defendants are personally liable to make cover any losses to the ESOP resulting from each breach.

189. Pursuant to ERISA §502(a)(3), 11 U.S.C. §1132(a)(3), the Court should award equitable relief.

190. As a direct and proximate result of Defendants' breaches and other improper conduct, Plaintiffs, on behalf of the ESOP, have suffered damages and are entitled to judgment against Defendants in an amount to be proven at trial, and appropriate equitable relief as set forth herein.

FIFTH CLAIM FOR RELIEF:
LIABILITY FOR BREACH BY CO-FIDUCIARY
UNDER ERISA, 29 U.S.C. § 1105

191. Pursuant to Rule 10(c) of the F.R.C.P., Plaintiffs respectfully incorporate by reference all prior paragraphs, where not inconsistent, as if set forth fully and re-alleged.

192. Each Defendant is liable for the acts of the other Defendants as a co-

fiduciary.

193. Upon information and belief, each Defendant (a) knowingly participated in, or knowingly undertook to conceal the breaches of the other fiduciaries, (b) by virtue of his own breach of fiduciary duty, enabled the other Defendants to breach their fiduciary duties, and/or (c) had knowledge of the other Defendants' breaches and failed to take reasonable steps to remedy them.

A. Defendant Hinshaw's Liability for Breach by Co-Fiduciaries

194. Defendants McLamb and McLean breached their fiduciary duty of loyalty by failing to discharge their duties with respect to the 2010 Redemption Plan "solely in the interest of the participants and beneficiaries."

195. Defendants McLamb and McLean participated in the Redemption Plan while the ESOP did not participate.

196. Because Defendants McLamb and McLean found the Redemption Plan to be financially beneficial, it is conversely true that the Redemption Plan would have been financially beneficial to the ESOP participants. Thus, their actions were not taken with the interests of the ESOP beneficiaries in mind.

197. Defendant Hinshaw "had knowledge of the other Defendants' breaches and failed to take reasonable steps to remedy them."

198. Defendant Hinshaw knew, or should have known, based upon his position as Chairman of the Board, as well as his close working relationship with Defendants McLamb and McLean, that the two parties personally participated in the Redemption

Plan at the expense of the ESOP.

199. Even if Defendant Hinshaw was acting in a corporate capacity when he acquired this knowledge, thus wearing his “Chairman of the Board hat,” he should have taken that hat off and donned his “ESOP Administrative Committee hat” to determine whether his co-fiduciaries’ participation in the Redemption Plan, and the ESOP’s non-participation in that redemption opportunity, were inconsistent with the best interests of the ESOP’s participants and beneficiaries.

200. Defendant Hinshaw allowed Defendants McLamb and McLean to personally participate in the Redemption Plan with full knowledge that their actions were in furtherance of their own personal interests and without regard for or contrary to the interests of the ESOP.

201. Defendant Hinshaw is thus liable as a co-fiduciary for Defendants McLamb and McLean’s breaches of fiduciary duties because he had knowledge of their breach and failed to take reasonable steps to remedy the breach.

202. Specifically, as a co-fiduciary and member of the Committee, Defendant Hinshaw failed to include the ESOP in the Redemption Plan and failed to make proper inquiries regarding the potential effects of Defendants McLamb and McLean’s personal involvement in the Redemption Plan on the ESOP.

B. Defendants McLamb and McLean’s Liability for Breach by Co-Fiduciary

203. Defendant Hinshaw, upon information and belief, allowed, or even encouraged, Defendants McLean and McLamb to participate in the Redemption Plan in

order to increase his power within the Company.

204. By refraining from participating in the Redemption Plan, Hinshaw's personal ownership interest in the Company increased from 10.9% to 12.6% after Kingsdown completed the redemptions for participating shareholders.

205. Because the ESOP did not participate in the Redemption Plan, the ESOP's ownership interest increased from 43.2% to 49.996% after Kingsdown redeemed the shares of participating shareholders.

206. As an ESOP trustee and Committee member, Defendant Hinshaw effectively controlled the ESOP.

207. Following the Redemption Plan, Defendant Hinshaw's personal ownership interest, together with his responsibilities as an ESOP trustee, in effect, gave him control over approximately 62.596% of Kingsdown's shares.

208. Further, upon information and belief, Defendant Hinshaw allowed Defendants McLamb and McLean to sell their stock back to the Company via the Redemption Plan because their redemptions, in conjunction with those of other participating shareholders, served to increase Defendant Hinshaw's ownership percentage and control of the Company and gave Defendants McLamb and McLean, as co-trustees with Defendant Hinshaw, incentive to cooperate with Hinshaw in his exercise of control of the Company.

209. Specifically, Defendant McLamb reduced his ownership interest in Kingsdown stock from 5% to 1.51% and Defendant McLean reduced his ownership

interest from 3.9% to 0.0% via the Redemption Plan.

210. Upon information and belief, Defendant Hinshaw allowed the redemptions by Defendants McLamb and McLean and retained all of his personal shares during the Redemption Plan in order to gain greater control of the Company.

211. Upon information and belief, Defendants McLamb and McLean were aware that Hinshaw's acts and omissions alleged herein were intended to provide him with greater control of the Company and were without regard for or contrary to the best interests of the ESOP's participants and beneficiaries. Defendants McLamb and McLean thus were aware of Defendant Hinshaw's breach of the fiduciary duty of loyalty.

212. Defendants McLamb and McLean are thus liable as co-fiduciaries for Defendant Hinshaw's breaches of fiduciary duties because they had knowledge of his breach and failed to take reasonable steps to remedy the breach.

213. At a minimum, all three Defendants had a duty to discuss the ESOP's participation in the Redemption Plan, which they did not do.

214. Defendants McLamb, McLean, and Hinshaw are charged with the knowledge and responsibility for each other's fiduciary breaches.

215. Pursuant to ERISA § 502(a)(2), 11 U.S.C. §1132(a)(2), Defendants are personally liable to cover any losses to the ESOP resulting from each breach.

216. Pursuant to ERISA §502(a)(3), 11 U.S.C. §1132(a)(3), the Court should award equitable relief.

217. As a direct and proximate result of Defendants' breaches and other

improper conduct with respect to the 2010 Redemption Plan, Plaintiffs, on behalf of the ESOP, have suffered damages and are entitled to judgment against Defendants in an amount to be proven at trial, and appropriate equitable relief as set forth herein.

WHEREFORE, Plaintiffs pray that the Court:

1. Certify this action to be a Class Action, appointing Plaintiffs as Class Representatives, and appointing Plaintiffs' counsel as Class Counsel;
2. Declare that the Defendants have, jointly and severally, breached their ERISA fiduciary duties to the ESOP's participants and beneficiaries relating to the 2010 Redemption Plan;
3. Direct that Defendants account to Plaintiffs and the other members of the Class for all damages caused by them as a result of their breaches of their fiduciary duties;
4. Issue an order compelling Defendants to make good to the ESOP all losses to the ESOP resulting from these breaches, including lost return on investments that would have resulted from the ESOP's participation in the Redemption Plan;
5. Impose a constructive trust on any amounts by which any Defendant was unjustly enriched at the expense of the ESOP as the result of a breach of fiduciary duty;
6. Order equitable restitution and other appropriate equitable monetary relief against Defendants;
7. Award such other equitable or remedial relief as may be appropriate.
8. Award Plaintiffs their attorneys' fees, including costs and expenses incurred

as a result of Defendants' wrongful denial, pursuant to ERISA §502(g), 29 U.S.C.

§1132(g);

9. Award pre- and post-judgment interest as allowed by law; and
10. Award such other and further relief as the Court deems equitable and just.

This the 22nd day of May, 2015.

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