

Review of Professional Services
Rendered to Kamehameha Schools
by Outside Providers
July 1, 1989 to May 7, 1999

Morgan Lewis & Bockius LLP
October 31, 2000

EXHIBIT B

TABLE OF CONTENTS

PART I: INTRODUCTION.....	1
PART II: TIMELINE OF KEY EVENTS	10
PART III: KEY AREAS UNDER REVIEW.....	22
I. INTRODUCTION.....	22
II. ALLEGED AND DOCUMENTED BREACHES OF FORMER TRUSTEES’ DUTIES OF LOYALTY AND PRUDENCE	22
A. Excessive Compensation	22
1. Allegations that the Former Trustees breached their fiduciary duties by paying themselves excessive compensation	22
2. Allegations that the compensation studies that the Former Trustees commissioned were deficient.....	26
3. Allegations that asset transfers were made to preserve Trustee commissions	29
B. Investigations Into Change of Domicile and Tax Status	30
C. Lobbying with Respect to Proposed Legislation Affecting Trustee Compensation	33
1. Allegations and findings that the Former Trustees lobbied against the passage of, or for self-serving modifications to, the proposed intermediate sanctions legislation.....	33
D. Other Instances of Alleged and Documented Self-Dealing.....	36
1. Allegations that the Former Trustees engaged in political activities.....	36
2. Allegations and the finding that the Former Trustees made personal use of Trust Estate personnel and assets	39
a. Personal Travel and Entertainment.....	39
b. Trustee Lindsey’s Use of Trust Estate Employees for Personal Matters	40
c. Trustee Peters’ Mid-Ocean Director Fees	40
d. Payment of Milton Holt’s Expenses.....	41

e.	Kalele Kai	42
f.	Investment in KDP Technologies.....	43
g.	Creation of Positions for and Hiring of Friends and Relatives	45
(1)	Terrance Tom	45
(2)	George Lindsey, Jr.	46
(3)	Albert Jeremiah, Jr.	47
3.	Trustee Co-investments	48
E.	Noncompliance with Orders of the Probate Court	48
1.	Allegations and finding that the Former Trustees violated a 1966 court order preventing commissions on FDOC.....	48
2.	Allegations and finding that the Former Trustees violated a court order requiring implementation of a CEO-based management system.....	49
3.	Allegations and findings that the Former Trustees violated other binding court orders.....	50
III.	ALLEGED AND DOCUMENTED BREACHES OF FORMER TRUSTEES' DUTY OF PRUDENT DELEGATION	50
A.	The Lead Trustee System	50
B.	The Neglect of the Trust's Educational Mission—Mismanagement of the Schools	53
1.	Allegations and findings that as lead trustee for education, Trustee Lindsey mismanaged the Schools.....	53
2.	Allegations and findings that the Former Trustees inadequately monitored and failed to correct timely Trustee Lindsey's misconduct.....	57
a.	The Yim Report.....	58
b.	The Peterson Report	59
c.	The WASC Report	59

3. With the assistance of the McCorriston Miller Mukai MacKinnon, the Former Trustees conducted an investigation into the unauthorized disclosure of the WASC Report.....61
4. Trustee Lindsey was eventually removed as a KS Trustee pursuant to the petition of Trustees Stender and Jervis63

IV. ALLEGED AND DOCUMENTED BREACHES OF FORMER TRUSTEES' DUTIES OF LOYALTY AND PRUDENCE—CONTINUED63

A. Deficiencies in Financial and Educational Strategic Planning for the Schools63

1. Allegations and findings that the Former Trustees failed to adopt timely an appropriate strategic plan for education63
2. Allegations and findings that the Former Trustees directed the accumulation of income and its transfer to corpus64
3. Allegations and findings that the Former Trustees lacked a clearly defined plan for spending assets for educational purposes.....66
4. Allegations and findings that the *Go Forward* Initiative announced by the Former Trustees was not a comprehensive plan67

B. Mismanagement of Trust Assets69

1. Allegations and findings that the Former Trustees lacked appropriate investment policies69
2. Allegations and findings that the Former Trustees lacked appropriate documentation and due diligence policies and practices71
3. Allegations that the Former Trustees' investment policies and practices resulted in significant investment losses71
4. Allegations and findings that the Former Trustees spent Trust Estate funds on contracts that violated Trust Estate policies or provided no benefit to the Trust Estate.....73
 - a. Hawaii Protective Association.....73
 - b. Dura Construction and Rhino Roofing.....74
 - c. Educational Management Group74

	d.	Baker/Van Dyke Collection.....	75
	e.	Shintani Diet.....	76
	f.	Hamakua Land Purchase	76
V.		ALLEGED AND DOCUMENTED BREACHES OF FORMER TRUSTEES' DUTY TO TAKE NO ACTION TO DEPRIVE THE TRUST ESTATE OF AN OTHERWISE AVAILABLE TAX EXEMPTION	77
	A.	The IRS's Arguments in General	77
	B.	Allegations of Private Inurement.....	77
	1.	Unreasonable Compensation	78
	2.	Lobbying with Respect to Proposed Legislation Affecting Trustee Compensation	80
	3.	Investigations into Change of Domicile and Tax Status	81
	4.	Other Alleged Instances of Private Inurement.....	81
	a.	Towers Perrin Professional Fees	81
	b.	Trustee Peters' Cellular Phone Expenditures	82
	c.	Trustee Peters' Mid-Ocean-Related Expenses	82
	d.	Other Personal Travel and Entertainment Expenses	82
	C.	Failure to Operate Organization Exclusively for Educational Purposes	82
	1.	Allegations that actions of the Former Trustees furthered substantial nonexempt purposes	83
	2.	Allegations that furthering substantial private interests constituted another substantial nonexempt purpose.....	85
	D.	Allegations of Private Benefit	86
	1.	RTJ Debt Forgiveness	86
	2.	Field Debt Forgiveness.....	87
	3.	Smith and Gordy Debt Forgiveness	89

4.	Rubin Put Guaranty	94
5.	Guido Giacometti Contractor Fees	94
E.	Additional Allegations of Political Activities	95
F.	Allegations of Excessive Commercial Activities/Lack of Arm's Length Dealings with Taxable Subsidiaries	96
VI.	ALLEGED MISCONDUCT RELATED TO THE AG INVESTIGATION, THE MASTER'S REVIEW, AND THE IRS AUDIT	97
A.	Master's Review	97
B.	AG Investigation and Petitions for Removal	97
C.	Allegations of Master Richards	99
D.	IRS Audit	102
1.	Allegations that the Former Trustees failed to address conflicts of interest raised by the IRS audit	102
2.	Allegations and findings that the Former Trustees failed to resign to preserve the Trust Estate's tax-exempt status	103
a.	Failure to Resign on an Interim Basis	103
b.	Failure to Permanently Resign	105
VII.	ADDITIONAL ALLEGATIONS (NOT FOR ATTRIBUTION)	106
A.	Robert Bruce Graham, Jr. (Ashford & Wriston)	106
B.	Cades Schutte Fleming & Wright	107
C.	Mark McConaghy (PWC)	107
	PART IV: APPLICABLE LEGAL STANDARDS	108
I.	INTRODUCTION	108
II.	IDENTIFICATION OF THE CLIENT AND RELATED ISSUES	109
III.	DUTIES OF DISCLOSURE, AND OTHER PROVISIONS REGULATING ATTORNEY CONDUCT	111
A.	Duties of Disclosure	111

1.	Hawaii Probate Rules	111
2.	Rules of Professional Conduct	113
B.	Other Provisions Regulating Attorney Conduct.....	115
1.	Rules Governing the Adequacy of Representation.....	115
2.	Rules Governing the Lawyer's Duty as an Advisor	116
3.	Conflict of Interest Standards.....	117
4.	A Lawyer's Duty of Candor Toward the Court and Third Persons.....	117
IV.	STANDARDS FOR ASSERTING A PROFESSIONAL LIABILITY/LEGAL MALPRACTICE CLAIM	119
A.	Elements of a Professional Liability Claim.....	119
B.	Standard of Care—Breach Element	120
1.	Advice.....	120
2.	Failure to Advise	120
V.	STANDARDS FOR ASSERTING A CLAIM FOR DISGORGEMENT	122
A.	Disgorgement as a Remedy	122
B.	Disgorgement is Appropriate Only in Limited Circumstances	122
C.	Standards for Seeking Disgorgement	123
VI.	TRUSTEE OBLIGATIONS.....	126
A.	Trustees' Obligations to Pursue Claims	126
B.	Trustees' Obligation to Delegate Prudently—Continued Retention of Legal Advisors.....	127
	PART V: PROVIDER SPECIFIC ANALYSES	128
	<i>SECTION ONE - PROVIDER-SPECIFIC ANALYSIS FOR ASHFORD & WRISTON</i>	<i>128</i>
I.	INTRODUCTION	128

II.	ISSUE-SPECIFIC DISCUSSION	130
A.	Compensation-Related Issues	130
B.	Violation of Court Order on CEO-Based Management System.....	132
C.	Advice on Trustees Serving as Directors	133
D.	Opinion on Final Disbursements of Capital	134
E.	Accumulated Income	135
F.	Definition of the Client.....	136
G.	Bruce Graham's Representation of KS	136
III.	ANALYSIS OF POTENTIAL CLAIMS BASED ON WORK PERFORMED BY BRUCE GRAHAM	139
A.	No Basis for Professional Liability Claim.....	139
B.	No Basis for a Disgorgement Claim.....	140
C.	Future Retention	140
<i>SECTION TWO - PROVIDER-SPECIFIC ANALYSIS FOR CADES SCHUTTE FLEMING & WRIGHT</i>		<i>142</i>
I.	INTRODUCTION	142
II.	ISSUES IMPLICATED BY WORK PROVIDED BY CADES	143
A.	Hare's Initial Work for KS	143
B.	Settlement of the Field Litigation.....	144
C.	The Payment of Milton Holt's Legal Fees	145
1.	Hare's September 26, 1994 Letter	145
2.	Application of Legal Standards	147
D.	Work Done with Respect to the Master's Review	148
E.	Research into Judge King's Statements.....	149
F.	Work on the Harmon Matter	150

G.	Hare's Role in Advising KS's General Counsel After August 1997	151
H.	Cades' Role in Responding to the AG's Investigation.....	152
I.	Materials Requested by Individual Trustees	153
J.	Miscellaneous Category	154
1.	Change in Domicile.....	154
2.	Grand Jury Investigations.....	155
3.	Work Done in Conjunction with the IRS Audit	155
III.	APPLICATION OF LEGAL STANDARDS.....	156
A.	No Basis for a Professional Liability Claim.....	156
B.	No Basis for Disgorgement	156
C.	Recommendations for Future Use	157
	<i>SECTION THREE - PROVIDER-SPECIFIC ANALYSIS FOR</i> <i>McCORRISTON MILLER MUKAI MacKINNON</i>	158
I.	INTRODUCTION	158
II.	ISSUE-SPECIFIC DISCUSSION	159
A.	McCorriston Miller Mukai MacKinnon's Representation of KS, as Opposed to Individual Trustees.....	159
1.	Scope of the McCorriston Miller Mukai MacKinnon's Initial Representation of KS.....	160
2.	McCorriston Miller Mukai MacKinnon's General Involvement in and Approach to the AG's Investigation.....	161
3.	McCorriston's Analysis of Trust Estate versus Individual Trustee Issues	162
4.	Interaction with Individual Trustees.....	163
5.	Other Specific Representations	164
a.	<i>Burgert and Mederios Class Actions</i>	164
b.	Campaign Spending Commission Matter.....	164

c.	McCorriston Miller Mukai MacKinnon's Work in Connection with the Master's Review.....	165
d.	November 17, 1998 Board Resolutions.....	165
6.	Stan Mukai's Representation of Trustee Wong	166
B.	Litigation in Response to the AG's Investigation	168
1.	KS's Response to the AG's Investigation	168
2.	Motions for Protective Orders	169
3.	Document Production During the AG's Investigation	171
4.	Additional Work Performed with Respect to AG's Investigation...	172
a.	Opposition to a Temporary Restraining Order	173
b.	Petition to Prevent the AG from Contacting KS Employees	173
c.	Disclosure of Milton Holt Credit Card Information.....	173
d.	Disclosure of the WASC Report	174
e.	Draft Pleadings	174
(1)	AG Conflict of Interest	174
(2)	Administrator <i>Ad Litem</i>	175
(3)	Judge Chang and Judge King	175
(4)	Matsumoto's Endorsement of Governor Cayetano ..	176
C.	Factual Investigations Undertaken by the McCorriston firm	176
1.	Milton Holt	176
2.	WASC Report.....	176
3.	Hamakua.....	177
4.	Kalele Kai	177
D.	Miscellaneous Work Performed by McCorriston Miller Mukai MacKinnon	178

C.	Efforts to Justify the Intermediate Sanctions Lobbying Project to the Master and to the Probate Court	199
1.	Temkin Letter of August 3, 1998	201
2.	Temkin Letter of September 18, 1998	202
3.	Memorandum of October 15, 1998 and Subsequent Events	204
D.	AG Subpoenas	209
III.	APPLICATION OF LEGAL STANDARDS	210
A.	Evaluation of Potential Professional Liability Claims.....	210
B.	Disgorgement	213
C.	Future Retention	213
	<i>SECTION SIX - PROVIDER-SPECIFIC ANALYSIS FOR PRICEWATERHOUSECOOPERS.....</i>	<i>214</i>
I.	INTRODUCTION	214
II.	ISSUES IMPLICATED BY WORK PROVIDED BY PWC	215
A.	Compensation.....	215
B.	Lobbying with Respect to Intermediate Sanctions	218
1.	PWC's Role with Respect to KS's Lobbying Efforts.....	218
2.	Advice on the "Tax Consequences" of the Lobbying.....	219
3.	Post-Enactment Characterizations of the Trust Estate's Lobbying Efforts	220
C.	Change in Tax Status.....	222
D.	Arm's Length Relationships	223

E.	General Advice Regarding Federal Tax Law Standards Applicable to Tax-Exempt Organizations.....	224
F.	Advice Concerning the Tax Consequences of Investments	225
G.	McConaghy Co-Investments	226
1.	SG Methane/HAK-III Investment	226
2.	Benson Forests Limited Partnership.....	228
3.	McConaghy's Actions to Evaluate the Propriety of the Co-investments and Disclosures of his Co-investments to KS	234
H.	PWC's Role with Respect to the IRS Audit.....	234
III.	ANALYSIS OF POTENTIAL CLAIMS BASED ON WORK PROVIDED BY PWC	235
A.	Legal and Professional Standards Applied in Evaluating the Work Provided by PWC.....	235
1.	General Standards of Conduct for Tax Practitioners.....	237
2.	Standards Governing Tax Advice in Particular	238
3.	Continuing Duty to Provide Advice	239
B.	No Basis for a Professional Liability Claim Against PWC.....	240
C.	No Basis for a Claim for Disgorgement of Fees Paid to PWC.....	244
D.	No Reason Exists to Discontinue PWC's Services	244
	PART VI: CONCLUSIONS.....	245
	Ashford & Wriston	246
	Cades Schutte Fleming & Wright.....	246
	McCorriston Miller Mukai MacKinnon	248
	Pitluck Kido Sato & Stone.....	249
	Verner Liipfert	249
	PricewaterhouseCoopers.....	250

PART I: INTRODUCTION

In early May 2000, Dr. Hamilton McCubbin, Chief Executive Officer of Kamehameha Schools ("KS"),¹ retained Morgan Lewis & Bockius LLP ("Morgan Lewis") to conduct an independent review of the work performed and services rendered by various outside professional advisors during the period July 1, 1989 through May 7, 1999 (hereinafter the "Review Period"). The Review Period begins on the starting date of the period covered by the most recent IRS audit of KS and ends on the date on which the Probate Court temporarily removed the Former Trustees and installed the current panel of Interim Trustees.²

When KS retained us, we understood that they sought a law firm that had no prior involvement with the Trust Estate. That decision ensured an independent review, but it also meant that the firm engaged would have to very quickly familiarize itself with a multifaceted, ten-year history of controversy. The complexity of the assignment was daunting. We had an extraordinary amount of written material to review, and numerous interviews to conduct; we could not begin that task until we fully understood the events that led up to our assignment. Fortunately, the Interim Trustees made available the resources of Miller & Chevalier, the firm that successfully assisted KS through the sensitive negotiations with the IRS that led to the preservation of KS's tax-exempt status, and that represented the Interim Trustees in the

¹ "KS" and the "Trust Estate" shall be used throughout this Report to refer to Kamehameha Schools Bishop Estate both before and after the current Trustees changed the name of the Trust Estate to Kamehameha Schools, effective January 1, 2000. Other names or abbreviations for the Trust Estate do appear throughout this Report in quotations, but we have chosen to maintain the integrity of the quotation rather than revise it to be consistent with our usage.

² As used throughout this Report "Former Trustees" is used to refer to former KS Trustees Peters, Wong, Lindsey, Stender, and Jervis. "Trustees" and "former Trustees" are used throughout this Report to refer to individuals who served as KS Trustees during the Review Period. Finally, "KS Trustee" or "KS Trustees" is used to refer to the position of a Trustee of the Trust Estate generally, irrespective of who may be serving as a KS Trustee at a particular time.

subsequent proceedings seeking to remove the Former Trustees. We could not have completed this Report without Miller & Chevalier's able assistance. The quality of their work and the level of their cooperation has enabled us to complete this Report in a thorough and timely fashion.

In the course of our review, we met occasionally with the Interim Trustees and Dr. McCubbin. Their support for our effort, and their commitment to our independence, was unwavering. They were dedicated at all times to both the perception and the reality of our reporting our findings and conclusions accurately and fairly. At all times, the Interim Trustees and Dr. McCubbin focused on what was best for Kamehameha Schools. This dedication guided us in our work. We received equal support and commitment from the professional and support staff at KS. Their unfailing courtesy and cooperation also helped to ensure the integrity and timeliness of this Report.

We also met with former Attorney General Margery Bronster and current Attorney General Earl Anzai, and with members of his staff. Attorney General Anzai and his staff met with us on several occasions and gave us extremely helpful guidance and insights with respect to the Providers under review and issues to be examined. They quite properly gave us helpful information, but never with any suggestion that there should be any particular outcome. We were impressed with their dedication to the mission of KS and their desire to see the integrity of its governance maintained at the highest level.

We were asked to review the activities of the following: Ashford & Wriston; Cades Schutte Fleming & Wright ("Cades"); McCorriston Miller Mukai MacKinnon ("McCorriston"); Pitluck Kido Sato & Stone ("Pitluck"); Verner, Liipfert, Bernhard, McPherson and Hand

("Verner Liipfert"); and PricewaterhouseCoopers ("PWC").³ (These professional advisors will collectively be referred to as the "Providers.")⁴ KS asked us to submit a report at the completion of our review summarizing our findings and providing Dr. McCubbin with our legal opinion as to whether there is a basis—under rules of professional responsibility and other ethical rules, applicable statutory and case law, and relevant principles of trust law—for the KS Trustees to conclude that they should discontinue using the services of one or more of the Providers and whether, as a result of their prior services, KS has monetary claims, including disgorgement of fees, that should be pursued against any of the Providers.⁵ We emphasize that we have been charged with reviewing the services the Providers rendered to KS during the Review Period; we were not asked to evaluate the conduct of the Former Trustees or the possibility of surcharge claims against them. The Interim Trustees have already stated their views of the Former Trustees' conduct for the record in their Trial Memorandum and Proposed Findings of Fact and Conclusions of Law, which were filed with the Probate Court in December of 1999 in connection with the hearing for the removal of certain of the Former Trustees. We further note that various surcharge claims against the Former Trustees were resolved through mediation while we were conducting our investigation; accordingly, those claims are now moot.

³ The McCorriston firm recently changed its name from McCorriston Miho Miller Mukai. PricewaterhouseCoopers was formed as a result of the merger of Price Waterhouse into Coopers and Lybrand; we use 'PWC' throughout this Report to refer to Price Waterhouse both before and after the merger.

⁴ We acknowledge the cooperation we received from each of the Providers reviewed. We were granted unlimited access to documents and we were allowed to interview any person whom we selected, without restriction. We note that, in general, the Providers spent many hours of "billable" time with us for the interviews and document reviews we conducted. None of the Providers has been or will be reimbursed for that time.

⁵ We were also asked to review the services KS General Counsel Nathan Aipa provided to the Trust Estate during the Review Period. We will apprise Dr. McCubbin separately of the results of the Aipa review.

Shortly after Dr. McCubbin retained us to conduct this review, Master Robert Richards filed his report evaluating the services provided to KS by various outside consultants, including many of the Providers. Our report is independent of the review conducted by Master Richards and covers a broader period of time than his report, which was limited to the August 1998 to May 1999 time period. Some of the issues we consider in this Report overlap with those considered by Master Richards; to the extent that they do, we have conducted an independent evaluation of these issues and have formulated our own conclusions regarding them. Although we may agree with many of Master Richards' conclusions regarding surcharge claims against the Former Trustees, we disagree with Master Richards' interpretation and application of the legal principles applicable to the Providers under review. We discuss our understanding of the relevant legal principles in Part IV of this Report. We also repeat that we were not asked to evaluate surcharge claims against the Former Trustees and that those claims have been settled.

William L. Gardner of Morgan Lewis was the lead counsel for the review. Another Morgan Lewis partner, Mark Srere, and two Morgan Lewis associates, Rachel Damelin and Brian Privor, assisted William Gardner. Celia Roady, head of Morgan Lewis' Exempt Organizations Practice, also participated in this review. Emmett Lewis and Jay Carlson, members of Miller & Chevalier, with the assistance of two Miller & Chevalier associates, Shane Hamilton and Sasha Mason, assisted the Morgan Lewis attorneys. In order to expedite the review process, we established two review teams, each consisting of a Morgan Lewis and a Miller & Chevalier partner and an associate from each firm. The Morgan Lewis attorneys on each team reviewed all of the documents examined as part of the review, with assistance from Miller & Chevalier attorneys. Morgan Lewis attorneys also conducted all of the interviews of the Providers. William Gardner either conducted or attended the interviews of the principal

attorneys from each Provider who provided services to the Trust Estate during the Review Period (with the exception of Wayne Pitluck, whom Mark Srere interviewed).

To define the scope of the review, we examined various documents made public within the past three years that raised allegations of misconduct by KS Trustees during the review period. Those documents included the following.

1. Interim Trustees' Amended Petition for Removal ("IT Removal Petition").
2. Interim Trustees' Trial Memorandum ("ITTM") and Proposed Findings of Fact and Conclusions of Law ("ITFF").
3. IRS Forms 5701, Notices of Proposed Adjustment ("NOPAs"):
 - a. Primary Purpose;
 - b. Inurement;
 - c. Private Benefit;
 - d. Unreasonable Compensation; and
 - e. Pauahi Holding Company and Subsidiaries ("PHC").
4. Second Amended Petition of the Attorney General on Behalf of Trust Beneficiaries to Remove and Surcharge Trustees ("AG Petition").
5. Judge Hirai's Findings of Fact, Conclusions of Law, and Order Granting the Attorney General's Request for Interim Removal of Henry Haalilio Peters and Richard Sung Hong Wong (August 31, 1999) ("Hirai Decision").
6. Judge Weil's Findings of Fact and Conclusions of Law with Respect to Judge Weil's Order Reaffirming the May 6, 1999 Order Granting the Petition for the Removal of Trustee Marion Mae Lokelani Lindsey (June 10, 1999) ("Weil Decision").
7. Patrick Yim's Final Report of Fact Finder (December 4, 1997) ("Yim Rpt.").
8. The Report of the Visiting Committee of the Western Association of Schools and Colleges, March 9-12, 1998 ("WASC Rpt.").

9. Master's Report on the 109th Annual Account of the Trustees ("Master's 109th Rpt.").
10. Master's Consol. Rpt. on the 109th, 110th, and 111th Annual Accounts of the Trustees ("Master's Consol. Rpt.").
11. Master's First Supplemental Report on the 109th, 110th, and 111th Annual Accounts of the Trustees ("Master's 1st Supp. Rpt.").
12. Master's Second Supplemental Report on the 109th, 110th, and 111th Annual Accounts of the Trustees ("Master's 2nd Supp. Rpt.").
13. Master's Third Supplemental Report on the 109th, 110th, and 111th Annual Accounts of the Trustees ("Master's 3rd Supp. Rpt.").
14. Attorney General's Campaign Spending Report (April 13, 2000) ("CSR").
15. Report of Master Regarding Retention of Non-Staff Counsel (May 18, 2000) ("Richards Rpt.").

Additional documents reviewed are noted throughout this Report. We also sought and obtained input from the current and former Attorney General (the "AG"), and from other interested third parties, of additional areas that should be examined as part of our review. Based on our review of the documents listed above and the input that we received from the current and former AG and others, we identified the areas on which to focus our review. Part III of this Report discusses each of these areas.

Once we identified the areas for review, we determined which of the Providers had provided advice with respect to, or were otherwise involved in, any of these areas. Unlike KS's Legal Group, which had some involvement in almost every area discussed in Part III of this Report, the Providers were brought in to assist on specific matters. We identified those areas that were relevant to each Provider through interviews of each of the Providers, interviews of third parties, and comprehensive reviews of each Provider's files of all work that Provider performed

for KS during the Review Period. These files included retention letters, billing records, internal memoranda, correspondence and pleadings files, files maintained by the KS Legal Group relevant to each Provider and each area under review, the personal logs of the former General Counsel of KS, all outside and internal legal opinions provided to KS and/or the former Trustees during the Review Period, and investment files and due diligence files relating to investment losses suffered by KS and its taxable subsidiaries during the Review Period. We also reviewed all of the files that had been made available to Master Richards for his review. In total, we reviewed approximately 370 bankers boxes of files, totaling approximately 930,000 document pages of material. We tabbed and pulled relevant documents and prepared document digests for certain of the Providers; we also prepared interview notebooks containing key documents, which we used during our interviews of the principal persons at each Provider.

In addition, we interviewed more than 50 individuals who possessed potentially relevant information. We conducted over 200 hours of interviews. In addition to the principal personnel at each of the Providers, these interviews included the Interim Trustees, counsel for many of the Former Trustees, current and former KS employees, members of the Hawaiian community, representatives of KS alumni groups, the current AG and his staff, the former AG, persons identified by the current and former AG as possessing potentially relevant information, KS's current and former internal auditor, and current and former court-appointed Masters. To encourage candor, we conducted these interviews on a not-for-attribution basis. We prepared memoranda of these interviews based on our notes.

From the documents that we reviewed and the interviews that were conducted, we determined the material facts on which reliable conclusions could be drawn. To ensure that we applied the proper legal standards in reaching the conclusions set forth in this Report, we

retained the services of Professor John Langbein of Yale Law School and Professor John Leubsdorf of Rutgers Law School. Professor Langbein is a nationally recognized expert on trust law and trust administration. Professor Leubsdorf is a nationally recognized expert on legal malpractice and professional responsibility issues and served as the Associate Reporter for the Restatement of Law Governing Lawyers. Early on in the review process, we met with Professors Langbein and Leubsdorf separately for two, day-long discussions of the legal principles applicable to the activities under review. Thereafter, we requested and received written reports from each of these professors articulating the legal standards applicable to our review. *See* Appendices A and B. Finally, to ensure that we correctly applied these legal standards in reaching the conclusions set forth in the report, we provided a draft of the report to Professors Langbein and Leubsdorf for their review and comment. Copies of letters received from each of these professors following their review of the report are attached as Appendices C and D, respectively.

This report consists of six parts. Part I is this Introduction. Part II is a timeline of principal events as they unfolded during the Review Period. Part III identifies and explains the key areas under review, *i.e.*, the allegedly improper activities of prior KS Trustees that provided the framework for our review. The legal standards that we employed in reaching our conclusions are found in Part IV of this Report. In Part V of this Report, we review the performance of each Provider in light of the applicable legal standards. Part V of this Report discusses, with respect to each Provider, whether the Trust Estate has any professional liability or disgorgement claims. Part V also provides factors that the Trust Estate may wish to take into account in deciding whether to retain the services of that Provider in the future.

Part VI contains our conclusions. With one exception, we conclude that the Trust Estate has no viable professional liability or disgorgement claims against the Providers. In the case of Verner Liipfert, we conclude that KS has a potential claim against that firm, but that factual and legal obstacles, as well as other important considerations, make it impractical for KS to pursue this claim and we do not recommend KS do so. We conclude that there is no reason why the Trust Estate should not continue to use the services of PWC or the four Honolulu-based firms; on the other hand, we conclude Verner Liipfert's past service to the Trust Estate does not warrant their being considered for future work.

