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

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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

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[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.

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[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.