

BENJAMIN J. CAYETANO  
GOVERNOR



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November 15, 1999

Robert K.U. Kihune, Chair  
David P. Coon  
Francis A. Keala  
Constance H. Lau  
Ronald D. Libkuman, Esq.  
Interim Board of Trustees  
Kamehameha Schools Bernice  
Pauahi Bishop Estate  
567 South King St. Suite 200  
Honolulu, Hawaii 96813

Re: Lindsey v. Federal Insurance Company  
(D. Haw. Civil 99-00789)

Dear Chair Kihune and Trustees Coon, Keala, Lau, and Libkuman:

I am writing about the declaratory judgment action filed November 10, 1999 by former trustee Lindsey against Federal Insurance Company for her legal costs incurred in unsuccessfully defending against the petition to remove her initiated by former trustees Stender and Jervis. The complaint alleges that her costs of defense exceed \$900,000.

The trust has already paid the costs incurred by Stender and Jervis in prosecuting the Lindsey removal petition. Those costs presently total \$ 1,757,181 and are subject to upward adjustment for the costs incurred by the Attorney General in connection with the Lindsey removal proceeding and for the costs incurred by Stender and Jervis in preparing their fee petitions.

It is unclear whether or not the insurer will reimburse (or

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has been requested to reimburse) the trust for the amounts the trust has already paid or will in the future pay Stender and Jervis and the Attorney General for the Lindsey removal proceeding. In addition to any insurance, the trust surely has a claim for surcharge against Lindsey (and against Wong and Peters, who enthusiastically joined her unsuccessful defense) for all amounts paid to Stender and Jervis and the Attorney General.

In August 1999, the trust declined to pursue immediately its surcharge claims for the Stender and Jervis fees. I believe that, in light of Lindsey's complaint against the insurance company, the trust should now intervene as a co-insured in the insurance action to assert whatever claims the trust has against the insurance company and/or against Lindsey, Wong and Peters. The interests of the trust beneficiaries would be disserved if Lindsey receives \$900,000 from the insurance company for the same litigation that gives rise to the trust's claim against Lindsey for \$ 1,757,181. There is no reason to think that Lindsey (or Wong or Peters) could respond with personal assets to any demand or judgment for \$1,757,181. Nor is there any reason to think that all or any portion of any monies paid to Lindsey by the insurance company would be available to make the trust whole.

Thank you for your prompt attention to this matter.

Very truly yours,



Earl I. Anzai  
Attorney General