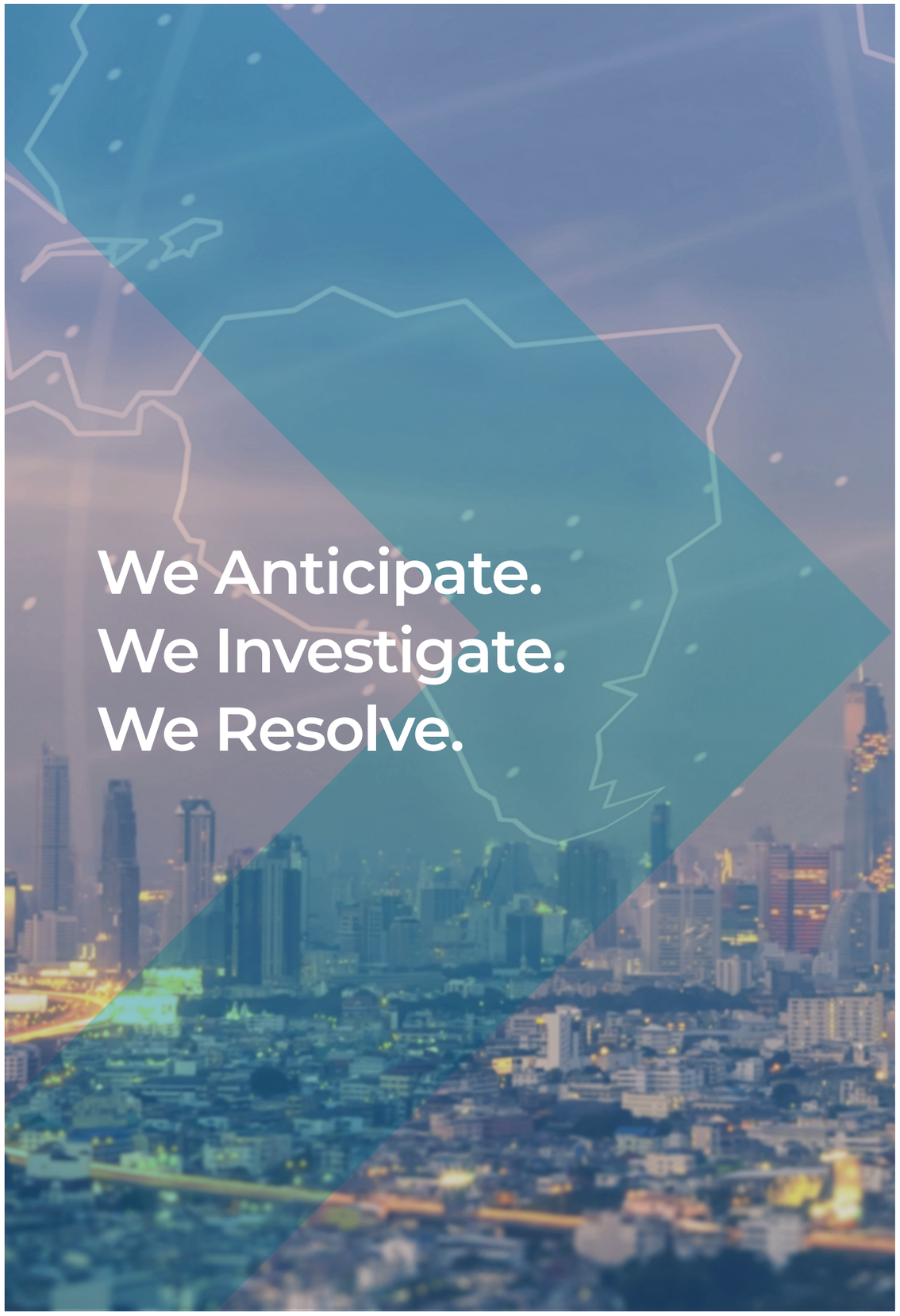
HKA
DECODING COMPLEXITY
FORENSIC ACCOUNTING & COMMERCIAL DAMAGES

HKA



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Who we are

HKA is a global leader in providing forensic accounting, investigations, and commercial damages services. Our clients choose us because of our ability to develop “outside-the-box” solutions to complex commercial disputes. Our experts develop high quality financial and economic analyses in order to deliver credible opinions and persuasive testimony to the trier of fact.

This profile document highlights our extensive experience advising clients on the economic impact of complex commercial disputes and forensic accounting matters. Our experts have been engaged on a variety of projects around the world, including both construction and non-construction related matters.

HKA professionals have regularly consulted on behalf of Fortune 500 companies and other clients in various industries, including mining, gaming, real estate development, homebuilding, shipbuilding, manufacturing, oil & gas, software, healthcare, grocery, automotive, transportation, speciality finance, non-profit, financial institutions, and agriculture.

Our commercial damages and forensic accounting experts work both independently and in conjunction with our global delay, quantum and technical experts to present evidence (both written and oral) before courts, arbitration tribunals and in mediations. Our US operation has a rapidly growing white-collar crime and investigations practice that completes a suite of world-renowned expert services and litigation support.

> “Clients have access to thought leaders with diverse skills and the ability to anticipate, investigate and resolve complex challenges.”

Renny Borhan
Partner &
Chief Executive Officer

HKA in numbers

Experience in
100+
countries on all
7
continents

40+
years of experience

40+
offices

18
countries

Fluency in

30+

of the world's most spoken languages

Instructed by

100%

of the world's top 20 law firms (by revenue)

6,500+

clients worldwide

including government agencies, local authorities, investors, developers, owners, operators, architects, engineers, project & construction managers, contractors, specialist suppliers, manufacturers, banks, lawyers and insurers

100,000+

project disputes resolved around the world, valued in excess of

US $250 BILLION

in the last forty years

2,000+

engagements per year

1,000+

PEOPLE

500+
consultants and advisors

500+
quantum, engineering, architecture and technical, delay, disruption, damages and government contracts experts

155+

AMERICAS

25+
Certified Public Accountants (CPAs)

35+
Certified in Fraud or Forensics (CFE/CFF)

60+
professionals experienced in investigations

35+
valuation professionals (12 certified)

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Forensic accounting & corporate fraud

The internal and external threats from fraud, theft and accounting irregularities multiply with an organization's scale and global digitalization.

These threats emanate from employees, executives, directors and officers, and owners, as well as outside forces – from cybercriminals to vendors, and even customers. The true costs of fraud may never be known, but credible estimates – such as that by the US Association of Certified Fraud Examiners – put the annual cost at an average of 5% of annual revenue.[1] Not only are corporations hemorrhaging value from their bottom lines, when impropriety comes to light, they face a tumultuous time of internal investigations, only intensified when conducted under the glare of negative publicity.

HKA's investigators and global forensic accountants are seasoned specialists who can help you navigate the fallout and ramifications of fraud allegations. Just as important, our consultants also work with clients to anticipate risks, remedy inadequate internal controls, and guard against employee theft, cyber criminals, and the multitude of other internal and external risks in today's business environment.

Deep experience and expertise

Our people have conducted tens of thousands of hours of investigations and risk assessments, responding to and pre-empting corporate fraud and malfeasance. We work with clients' boards of directors, insurance companies, internal auditors, general counsel and external counsel – and, where appropriate, with regulatory agencies – providing plaintiff and defense investigatory support.

HKA's professionals are highly qualified – Certified Fraud Examiners (CFEs), Certified in Financial Forensics (CFFs), Certified Public Accountants (CPAs), US Government Investigators – with the required expertise in technical accounting, planning and conducting investigations, identifying data sources, and performing interviews. Our teams also deploy essential complementary skills in digital forensic data, big data analysis, and cybersecurity.

Our experts have extensive experience conducting investigations and testifying on fraud and regulatory matters in different jurisdictions across the globe.

1 Associate of Certified Examiners Report to the Nations 2020 Global Study on Occupational Fraud and Abuse

We also provide assistance outside of the litigation process, as organizations often need to explore allegations or malfeasance thoroughly prior to an expensive litigation or regulatory investigation.

Much of our work is proactive rather than reactive, and involves identifying business areas potentially susceptible to fraud, assessing and prioritizing risks, and recommending steps to remediate or mitigate those risks. In addition, we provide training tailored to these risks to strengthening the control environment. HKA has the capacity to execute large-scale engagements around the world. However, we are highly regarded for our capability to deploy small, focused and highly efficient teams of experienced investigators that achieve rapid and cost-effective results.

US government contracts

Supporting companies that provide goods and services to the US government is another HKA specialism. Our personnel help companies and counsel assess their potential exposure to liability, and quantify damages, penalties and ability-to-pay issues arising from allegations of over-billing, defective pricing and false claims.

Service areas

Our work on corporate fraud investigations and risk assessment includes:

- Accounting irregularities
- Bribery and corruption (including Foreign Corrupt Practices Act, UK Bribery Act)
- Cryptocurrency
- Funds and asset tracing
- False Claims Act
- Insurance claims
- Anti-money laundering and Know Your Customer
- Ponzi scheme investigations
- Receiverships
- Regulatory investigations
- Revenue recognition
- Shareholder disputes
- Theft/misuse of cash/other assets
- Vendor schemes
- White-collar crime investigations
- Business intelligence and investigative due diligence

Case study: Labor mischarging on shipbuilding contracts

Americas

Government contracts

The US government alleged that supervisors at a large shipyard were responsible for mischarging labor costs to boost profits on US Navy and Coast Guard contracts. Covering a period of some 10 years, the allegations under the False Claims Act generated intense political and media scrutiny, and posed a potentially serious threat to the business of this very significant government shipbuilder.

Brief

Our people were commissioned to investigate the allegations, identify the scope of the overbilling, and quantify the excessive costs charged to the company's clients.

What we did

We rapidly assembled and deployed a team of more than 20 consultants with the appropriate blend of expertise in finance and forensic accounting, plus relevant experience in the industry and government contracting.

In the course of our investigation, which involved analyzing terabytes of data, we:

- Interviewed the contractor's personnel to develop a detailed understanding of its timekeeping and earned-value management systems
- Assisted in interviews of suspected perpetrators
- Analyzed trends in time charging and developed methodologies for identifying fraudulent labor records
- Examined more than 100 million labor records over multiple years
- Compared hard-copy timesheets to electronic labor records to identify discrepancies
- Identified false progress reports and misallocation of labor costs from one contract to another
- Estimated the impact on individual contracts of labor mischarging
- Liaised with multiple government agencies (including the Navy, Coast Guard, Defense Contract Audit Agency, Defense Criminal Investigative Service and Naval Crime Investigation Service), to present and explain our findings and methods
- Prepared evidence detailing suspected mischarging
- Assisted with compliance measures to improve recording practices

Outcomes

Our investigation ultimately revealed that the mischarging was perpetrated by several bad actors during specific time periods, rather than systemic.

The ability to mobilize a thorough large-scale investigation promptly and efficiently was crucial, while the rigor of our analysis and the clarity of the findings we reported were favorably received by the government agencies.

Case study: Healthcare organization's COVID cost recovery

Americas

Corporate fraud

A not-for-profit healthcare system operating across several states in the Midwest was heavily impacted by COVID-19. Cancellation of all elective surgery and the increased costs of patient care resulted in significant financial losses for the organization.

Brief

The client required expert accounting and analytical support for its recovery of costs and the preparation of claims for losses incurred due to the pandemic.

What we did

As there were several sources of funding and compensation available, establishing a funding management control process to delineate sources and avoid duplication of benefits was critical, while still maximizing recovery.

The team prepared financial claims from commercial insurance as well as state and federal public assistance programs – notably, the Coronavirus Aid, Relief and Economic Security (CARES) Act and the Federal Emergency Management Agency.

This process, which covered multiple healthcare facilities including three hospitals, involved:

- Compiling and analyzing financial information to understand the expenses incurred
- Preparing claim packages for submission to insurance providers
- Quantifying the business interruption losses for segments of the healthcare system mandated to shut down
- Undertaking the loss revenue analysis to support federal aid disbursements
- Compiling eligible expenditures for FEMA reimbursement
- Responding to the evolving FEMA guidelines and changing costs of PPE items amid shortages and price inflation
- Submitting these claims and resolving any issues raised by funding agencies and insurers

Outcomes

Thorough and comprehensive compilation of the costs incurred, and the supporting evidence, helped the healthcare system to recover more than $200 million in lost revenue and eligible expenditures.

Case study: Global chemicals manufacturer

US and Austria

Corporate fraud

Suspecting its Austrian subsidiary of paying $1.5 million in bribes, the US parent company commissioned an independent investigation, which uncovered long-running embezzlement on a far greater scale.

Brief

The global chemical company's General Counsel promptly commissioned the investigation after its head of internal audit identified several suspicious transactions. It was thought that the sales manager in Austria had paid bribes – in the form of rebates – to clients in Eastern European and Russia.

What we did

The team led by HKA's forensic accounting expert examined the general ledger, sales and rebate documents, bank statements and all other relevant records to identify suspicious transactions. Company personnel were also interviewed.

Using exception analysis and data analytics, it was established that the fraudulent rebate scheme went back more than 15 years and involved many more customers than originally suspected.

The investigation traced the rebates – which amounted in total to $5.1 million – to bank accounts that had been created by the sales manager, whose misappropriation funded a lavish lifestyle. Customers duly confirmed that the rebates had never been received.

Our role also involved liaising with the insurance company and providing an independent account of the losses for a claim under the client's directors and officers insurance policy.

Outcomes

The claim was accepted by the insurer, and the company also recovered the cost of the independent investigation. We also advised the internal audit team on measures to strengthen its controls to prevent similar misappropriation in the future.

Case study: Fraudulent billing for security services

US and Afghanistan

Government contracts

Under a worldwide contract with a major US federal agency, HKA provided protective security services for embassy staff in high-risk environments, including Afghanistan. The contract required security guards to undergo regular shooting tests to prove their firearms proficiency and avoid deductions for failing to staff security roles properly. Following claims by a whistleblower, the private contractor was accused under the False Claims Act of falsifying weapons test records and fraudulent billing.

Brief

HKA was commissioned to analyze the report prepared by the whistleblower's expert and provide an expert opinion on its estimate of penalties payable under the FCA.

What we did

Led by a senior forensic accountant who is also a qualified expert in this industry, the HKA team investigated the facts and evaluated the report's analysis and interpretation.

This work included:

- Interviewing the client's personnel responsible for contract performance, based in the US and in Afghanistan.
- Analyzing accounting and other relevant business records to establish the extent of any over-billing, quantifying those costs, and investigating the claim that invoiced amounts were invariably misstated.
- Determining if, as alleged, the federal government was invoiced for services not provided, and whether the issues at hand were material or not to DoS payment decisions.

Outcomes

Drawing on our knowledge of industry norms and practices, as well as forensic accounting expertise, the HKA investigation was able to demonstrate that the report commissioned by the whistleblower had improperly assessed the materiality of the alleged shortcomings in contract performance and exaggerated the significance of the marksmanship tests and incidence of over-billing.

HKA's expert report facilitated the full disclosure of salient information, provided a robust appraisal of the extent of contractual non-compliance, and ultimately, paved the way to a negotiated settlement with the DoS.

Regulatory investigations & white-collar crime

An ever-changing landscape of regulations has created a potential minefield for businesses, which can unwittingly run the risk of government investigations and enforcement action. That risk is far-reaching, given the international scope of US legislation, not to mention the wide remit of some national laws, such as that covering any organization or individual in contact with the UK and responsible for a bribe.

Regulatory investigations against clients for alleged violations of these statutes cause serious business disruption and consume significant management time and resources. Aside from the collateral damage to your brand and reputation, material sanctions and fines may result. A single scam can destroy a company or cost investors billions of dollars.

Decades of experience

HKA's specialists in this area have decades of experience helping clients proactively assess and test controls, conducting internal investigations, and responding to regulators' inquiries, formal investigations, and enforcement actions. This is in addition to their work on other corporate fraud investigations.

Our experts are among the most experienced in their fields and eminently qualified for this work – Certified Public Accountants, Certified Fraud Examiners, professionals Certified in Financial Forensics, Certified Anti-Money Laundering Specialists, Certified Experts in Cyber Investigations, and Certified Cryptocurrency Forensic Investigators. They also bring extensive know-how from their careers in a variety of industries.

After completing investigations, HKA often provides further assistance by developing and delivering training courses to enhance controls in high-risk areas and help internal staff monitor future compliance.

How to manage risk

Limiting regulatory risk requires a thorough, unbiased assessment of your organization's internal controls and compliance to determine exposure to enforcement action and identify measures to remediate deficiencies and mitigate future risks.

Whatever jurisdictions you operate in around the world, HKA arms your enterprise with the facts and insights you need to respond confidently to local and international regulatory scrutiny of alleged bribery and corruption, money laundering, economic sanctions violations, and other matters. Our teams include experts in forensic accounting, data analysis, financial investigation, money laundering, fraud and corruption, and cybersecurity. This combination of experience and capabilities allows us to bring unparalleled resources and perspective to our work.

Our specialists help clients assess and test compliance programs, carry out forensic investigations, and monitor services in relation to regulations under a wide range of legislation, including the CARES Act, Dodd Frank, the False Claims Act (FCA), Foreign Corrupt Practices Act (FCPA), USA Patriot Act, Bank Secrecy Act, UK Bribery Act, and anti-money-laundering laws, as well as whistleblower allegations.

We have worked with various national governments, and in the US, have collaborated with most regulatory and quasi-regulatory agencies, including the Department of Justice, Securities and Exchange Commission, Federal Bureau of Investigation, Internal Revenue Service, Commodity Futures Trading Commission, Office of Inspector General, Financial Industry Regulatory Authority, Office of Foreign Assets Control, the Consumer Financial Protection Bureau, and Attorneys General of various states.

Our experts have extensive experience testifying on regulatory matters in various jurisdictions, and HKA has the resources to carry out large-scale assignments around the globe. However, in many cases our expert assistance avoids the need and expense of litigation. Also, compact teams with the right blend of skills and experience can achieve rapid and cost-effective outcomes.

US government contracts

Supporting companies that provide goods and services to the US government is another HKA specialism. Our personnel help companies and counsel assess their potential exposure to liability, and quantify damages, penalties and ability-to-pay issues arising from allegations of over-billing, defective pricing, and false claims.

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Many of these matters involve the Federal Acquisition Regulation (FAR) mandatory disclosure requirements, including questions relating to 'credible evidence.' Some are filed under the False Claims Act. As well as providing testimony before courts and boards, we routinely present our findings to government attorneys and auditors including officers of the Department of Justice, the Office of Inspector General of the US Department of Defense, the Defense Contract Audit Agency, the Federal Bureau of Investigation, and other government agencies.

Case study: International soccer corruption investigation

Americas and international

International investigation

In 2015, US federal prosecutors indicted 14 officials and associates of soccer's world governing body, FIFA (the Fédération International de Football Association). The then-current and former presidents of CONCACAF – which administers the sport in the Caribbean, Central and North America – were among those charged with racketeering and bribery by the US Attorney's Office.

Brief

On behalf of CONCACAF, Sidley Austin LLP retained HKA's expert – a Certified Public Accountant and Certified Fraud Examiner with additional qualifications in anti-money laundering as well as forensics – to assist the law firm by conducting an internal forensic accounting investigation in full cooperation with the Department of Justice (DoJ).

What we did

The team traced activity through the organization's bank accounts, books and records, and supporting documentation to identify potentially suspect transactions connected with the indicted officials. This work focused on a period of 5-7 years and covered multiple countries and jurisdictions.

The officials' corruption of international soccer included collusion with US and South American sports marketing executives, who were charged with paying bribes and kickbacks for lucrative media and marketing rights to international soccer tournaments.

The four-month forensic accounting investigation involved analysis of:

- Numerous related-party transactions, including payments channeled through multiple companies and disguised in various ways, including as consulting fees
- The terms and conditions of contracts with sports marketing companies to assess the reasonableness of payments and detect overpayment for goods and services received
- The background and credentials of individuals to identify affiliated organizations, related parties, chart the connections and money flows – including potentially tainted payments – and assess the potential for third-party fraud and bid-rigging.

Accounting and other staff at CONCACAF's headquarters in Miami were also interviewed, while international colleagues investigated the related activities of foreign companies.

Outcomes

Drawing on our analysis in conjunction with its comprehensive investigation, the law firm was able to demonstrate that the CONCACAF organization was a victim of the corruption rather than a culpable entity.

The firm brought claims for restitution, based in part on the forensic accounting evidence, against various defendants in the US District Court. This culminated in the recovery by CONCACAF and its member associations of $70 million in August 2021 as the DoJ restored a total of $201 million in misappropriated funds to affected organizations, including FIFA and the South American football confederation, CONMEBOL.

Case study: Energy and telecom cable manufacturer

US and Thailand

FCPA investigation

Allegations under the Foreign Corrupt Practices Act (FCPA) were made against the Thai subsidiary of a global energy and telecom cable systems group headquartered in the US. The company was suspected of violating the Act's anti-bribery and books and records provisions while making improper payments – both before and after its acquisition – to various state-owned entities.

Brief

The US parent company appointed an HKA forensic accountant and Certified Fraud Examiner to lead an independent investigation in full cooperation with the Department of Justice (DoJ), Securities and Exchange Commission (SEC), and Federal Bureau of Investigation (FBI).

What we did

Working closely with the counsel of the US group, HKA examined the Thai company's books and records to identify suspicious and high-risk transactions. This analysis involved millions of lines of ledger entries and transactions amounting to hundreds of millions of dollars across six countries.

Drawing on our experience detecting accounting anomalies and our expertise in data analytics, the team flagged potentially dubious payments and examined the supporting documentation. Meanwhile, an extensive review of email and other correspondence shed further light on suspect dealings.

Our investigation confirmed several lapses in FCPA compliance involving payments to state-owned entities in three of the countries. These included transactions masked in the general ledger as commissions to third-party agents and freight-forwarding charges. We also identified and documented the attempts of lower-level managers to cover up the violations.

The team advised on information requests, developed questions and conducted interviews of accounting personnel, issued a detailed report, and provided testimony before the DoJ, SEC and FBI.

Outcomes

HKA's expertise in forensic accounting, data analytics, interviewing staff, and expert testimony – along with the capacity to distill complex accounting procedures in a clear, conclusive report – all play a part in successful investigations The US authorities looked favorably on our client's cooperation and the transparency and thoroughness of our investigation. Damages, including punitive penalties, in these cases can be a multiple of the unlawful transactions' value.

The fines and penalties applied to the cable group were set at 50% of the typical floor mandated for FCPA matters.

Stakeholder disputes

There are many stakeholder disputes in business that can only be resolved with expert forensic accounting support.

Among the most common scenarios are shareholders and/or partners who disagree over how the business is operated; joint venture and other business relationships dissolve; minority shareholders allege oppressive treatment by the controlling parties; or shareholders file lawsuits challenging the economic terms of a transaction.

Forensic accounting support is essential to establish the propriety of transactions, as is a thorough analysis to value ownership interests subject to buy-out.

HKA's Forensic Accounting and Commercial Damages (FACD) team includes professionals with deep experience in forensic investigations, business valuation analysis, and expert witness testimony. The forensic accounting and valuation services we provide have helped companies, stakeholders, and their legal advisors to make robust assessments of the financial issues arising from disputes in just about every industry.

Cutting through complexity

The issues involved in stakeholder disputes can be complex, and disentangling them tends to require an acute understanding of applicable legal statutes, case law, investigative techniques, and valuation concepts.

Our forensic accounting and valuation experts leverage their mastery of this knowledge – and insights gleaned from a variety of shareholder disputes – to:

- Analyze company books and records to investigate and quantify the true impact of financial transactions;
- Conduct analyses to value businesses and ownership interests in businesses;
- Assist with discovery of essential information;
- Provide mediation and support settlement negotiations;
- Prepare expert reports; and
- Testify at deposition and trial.

Valuation of minority ownership interest

Shareholder dispute

An HKA expert was retained by counsel for the majority shareholder and founder of a metropolitan Washington DC home healthcare company to perform an independent valuation of a minority ownership interest. The expert also provided rebuttal analysis with respect to the analysis performed by the opposing expert, and testified at trial regarding his valuation.

Valuation of minority ownership interest

Shareholder dispute

In connection with a dispute over the valuation of a minority ownership interest in a Harley-Davidson dealership, an HKA expert was retained to perform an independent valuation of the interest. The expert testified at trial regarding his valuation opinion.

Valuation of minority ownership interest

Shareholder dispute

One of the founding shareholders of an engineering company was 'squeezed out' of the company. Counsel for the shareholder retained an HKA expert to perform a valuation of the minority interest, and to perform rebuttal analyses surrounding the valuation performed by the opposing expert. The expert testified to his opinions at an injunction hearing and at arbitration.

Valuation of minority ownership interest

Shareholder dispute

The minority shareholders in a limited partnership – established to build and operate a hotel – sought to have their interest in the partnership bought out. An HKA expert was retained to perform an independent analysis of the value of the minority interest, and his expert report was submitted in arbitration.

Forensic investigation

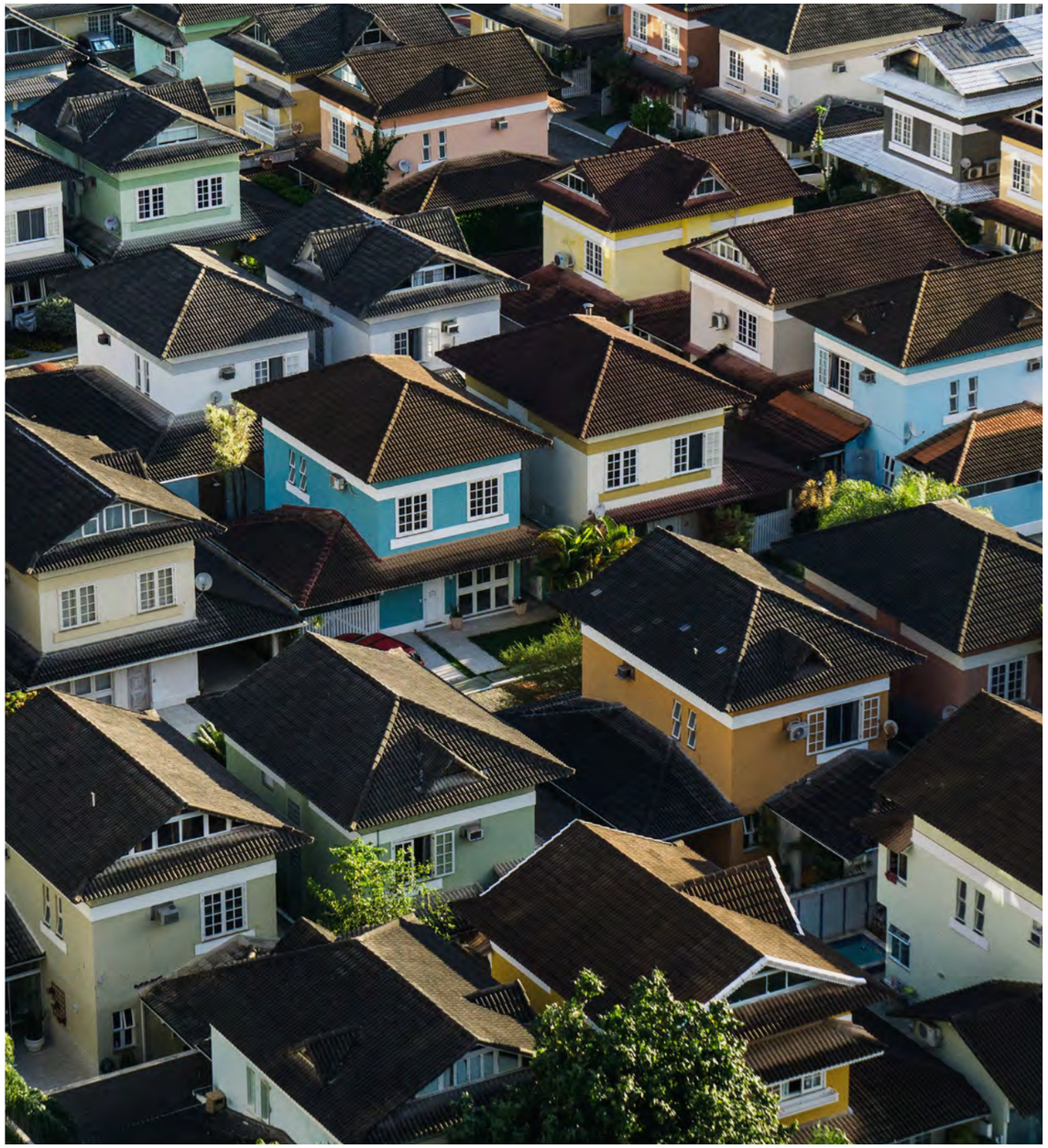
Shareholder dispute

In connection with a shareholder dispute, an HKA expert was retained to investigate associated transactions undertaken by the managing member of a limited liability company formed to undertake the development of high-end, single-family homes in northern New Jersey. The expert performed tracing analyses surrounding the development activities over a six-year period, and provided his opinions in an expert report, and testimony at arbitration.

Neutral valuation expert

Shareholder dispute

HKA was appointed as the neutral valuation expert to provide a binding arbitration opinion surrounding the value of an ownership interest held by the retiring founder of a home security company. In performing his work, the expert evaluated the valuation reports and underlying documentation provided by both the retiring founder and the company, and conducted multiple hearings with the parties whereby each provided their positions and analyses. The expert ultimately set forth his opinion in an independent valuation of the ownership interest in the company.



Case study: Home security company sale agreement

Americas

Stakeholder Dispute

The retiring founder of a home security business agreed to sell his ownership interest to a large corporation. Under their agreement, the valuation – over which the parties were sharply divided – would be decided by binding arbitration.

Brief

An HKA specialist in commercial damages and disputerelated valuations was appointed as neutral valuation expert. The brief was to evaluate the conflicting valuations provided by the seller and buyer, and determine in an impartial manner which more closely reflected fair market value.

What we did

The team brought experience of this niche market and an understanding of comparable business models to the assignment. Our experience in providing neutral services in post-acquisition disputes was also valuable in designing a process, procedures and schedule that would be seen to be even-handed and transparent.

The divergent valuations provided by the parties' appointed experts were evaluated by the team, along with all supporting documentation. At a series of hearings – joint and separate, as appropriate – both sides were able to explain the rationale for their valuations and the methodologies they followed.

The team also undertook its own, independent valuation of what was a complex business, given its nature and market conditions. This was based on applicable valuation standards, our accumulated business knowledge, and a robust calculation of fair market value – which the parties' retained experts had interpreted very differently.

Outcomes

Under the terms of the shareholder agreement that governed the buyout, the more accurate estimate of the business's value – which was significantly closer to our neutral valuation – determined the sale price.

Post-acquisition disputes

Today's increasingly complex environment of mergers and acquisitions makes disputes more likely. Both buyers and sellers need to understand – and prepare for – the myriad complications that can arise through the deal lifecycle.

HKA has assembled a team of highly qualified professionals with a unique blend of capabilities and experience to help clients overcome these challenges. Our people, who are veterans of hundreds of mergers and acquisitions across many industries, serve as neutral accountants or arbitrators, consultants, and expert witnesses.

Drawing on this accounting and valuation expertise, and deep industry knowledge, we can assist clients from pre-closing considerations through to post-closing disputes, helping clients mitigate risk and navigate disputes at any stage.

Our approach

HKA specialists in post-acquisition disputes support clients across multiple areas, including:

- Procedural disputes
- Document discovery
- Working capital adjustments
- Cash and indebtedness adjustments
- Contingent value calculations
- Earn-out calculations
- Breaches of representations and warranties
- Loss calculations of representations and warranties

Pre-transaction advice

Our downstream experience is also invaluable when vetting contracts before parties commit. We identify and assess the language in the financial and accounting sections of the agreement that may be beneficial or detrimental to our clients' interests. HKA's work on all sides of post-acquisition disputes – including as arbitrator – gives us a unique and advantageous perspective.

Having dealt with all the pitfalls associated with cash, working capital, indebtedness, earn-outs, and financial and accounting representations and warranties, our consultants are adept at drafting wording that will protect the interests of our clients. We also craft language related to the procedural aspects of the post-closing price adjustment process, including the arbitration process.

Post-acquisition services

The post-closing purchase adjustment process typically begins with completion accounting. Completion accounting often has complex and distinct stipulations that require a deep understanding of the different types of accounting language used in purchase agreements. Our professionals are well equipped to work with clients and counsel to prepare and document completion accounting as specified by agreements, which can often include GAAP (Generally Accepted Accounting Principles).

In the event of disagreement over any aspect of an acquisition, HKA helps prepare and document the notice of objection. Additionally, we can help our clients handicap the probability of success for disputed items by considering all relevant facts, the agreement, and how an accounting arbitrator may rule under the circumstances.

If disputes cannot be avoided, our teams have a proven track record in determining strategies that result in favorable outcomes. HKA helps you navigate the arbitration process, including assisting in the selection of an arbitrator, advising on procedures, drafting submissions, and supporting you on any related discovery matters.

Representation and warranty disputes

Disputes related to representation and warranty clauses have increased significantly in recent years, not least alleged breaches of insured representations and warranties.

In addition to consulting on purchase price adjustment issues, we have provided advisory services in numerous cases involving alleged breaches of financial and accounting representations and warranties. HKA has served sellers, buyers, and insurance companies in these disputes as both consultants and expert witnesses on accounting and loss computation.

Sell-side consulting

Working capital dispute

HKA served as consultant to the seller in a purchase price dispute involving more than $150 million in proposed adjustments to the post-closing net assets statement. The adjustments related primarily to warranty reserves, inventory reserves, and receivables for an international business that manufactured heavy-duty mining equipment.

Insurance company consulting

Representation and warranty claims

HKA served as consultant and potential expert witness to an insurance company regarding the buyer's claim that the seller breached its representation and warranty regarding its financial statements for a pipeline construction and maintenance business. Claims were related to GAAP, liabilities, and damages issues.

Buy-side consulting

Contingent value calculation

HKA served as consultant to the buyer of an online advertising, marketing, and gaming company. Issues in dispute amounted to approximately $1 billion of equity value in the company. Disputed items included revenue recognition, contingent liabilities, extraordinary items, debt, accounts receivable, officer and employee compensation, discontinued operations, and gain/loss on sale of an asset.

Buy-side consulting

Working capital & Representation and warranty claims

HKA served as consultant and potential expert witness to a UK buyer of a vacuum cleaner business in connection with claims against a US seller and insurance company related to breaches of representations and warranties of financial statements and undisclosed liabilities, as well as potential working capital adjustments against the seller. Claims were related to GAAP, liabilities, and damages issues.

Government contracting

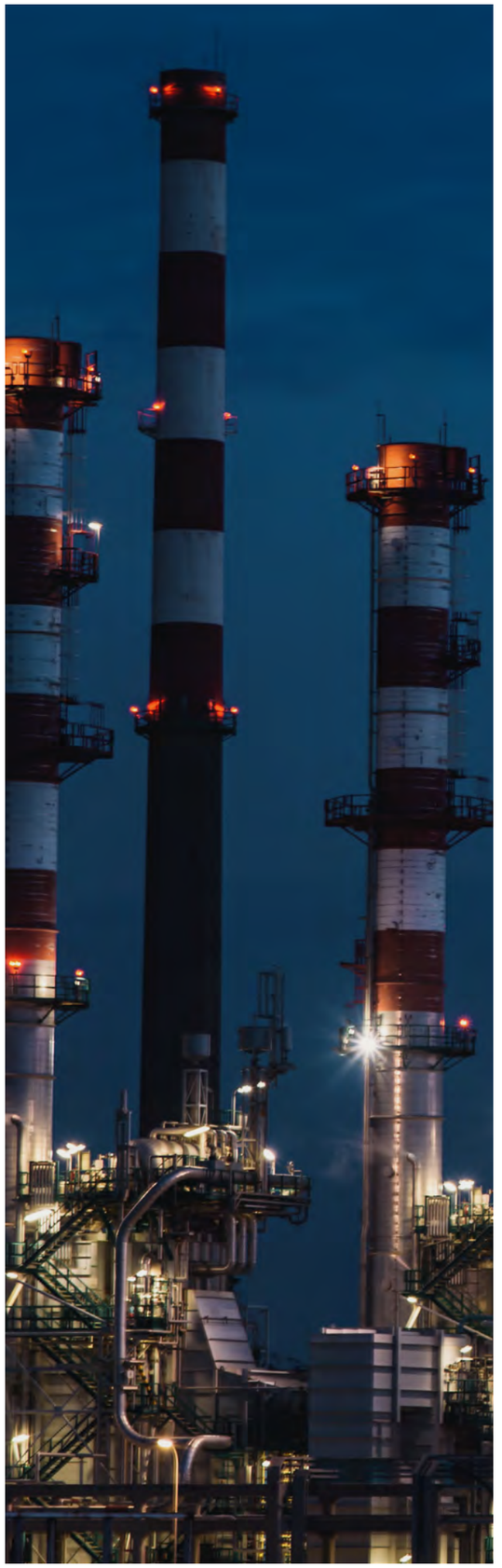
Fraudulent financial accounting

HKA served as a consultant to (and potential expert witness for) the buyer – a government contractor with over $1 billion in revenues – in a purchase price dispute involving allegations of fraudulent financial accounting under GAAP in a nine-figure acquisition of another government contractor. Disputed items included revenue and expense recognition, as well as asset and liability measurements.

Arbitrator

Working capital dispute

HKA served as a neutral accountant in a multi-billion-dollar working capital dispute for two large, international pharmaceutical companies. The scope included litigation and regulatory accruals, gross-to-net revenue reserves, payables, inventory reserves, and procedural issues.



Case study: Representations and warranty insurance claim arbitration

Americas

Post-acquisition dispute

Insurance products for representation and warranty claims in post-acquisition disputes are a relatively recent development, and related case law is evolving. When the buyer of an oil and gas contractor claimed for losses due to the seller's allegedly misleading financial statements, the insurance provider opted to file for private arbitration rather than pay up or seek a negotiated settlement.

Brief

HKA's consultant was commissioned by the insurer to review the policyholder's multi-million-dollar claim and, when this was found not to be valid, to prepare its case for arbitration and act as expert witness, if required.

What we did

To inform our examination of the accounting and financial information, HKA's expert analyzed the terms of the insurance policy and purchase agreement, in light both of his extensive legal expertise and forensic accounting experience of post-acquisition disputes. Evaluation of the claimant's submission required the discovery and analysis of all supporting information along with interviews of accounting and operational staff, as well as the previous and current auditors of the oil and gas contractor.

HKA dissected the representations and warranties claim from an accounting perspective, bearing in mind the appropriate conventions. The buyer's submission relied on an alleged violation of generally agreed-upon accounting principles (GAAP). On these grounds, the buyer re-stated the unaudited financial statements, raising questions in turn whether an auditor would be expected to do so under government accounting, auditing, and financial reporting (GAAFR) rules. The buyer's accountants also availed of 'purchase accounting' to write down the value of billings at the point of acquisition and extended this retrospectively.

Outcomes

Our analysis showed that there was no evidence for the alleged violation of accounting standards, and our report rebutted the buyer's entitlement to claim adjustments based on purchase accounting after the acquisition.

The HKA consultant's combination of forensic accounting and expert witness expertise ensures our client can rely on a seamless and robust defense of its decision to reject the claim at an arbitration hearing.

Case study: Pharmaceutical company acquisition

US and other jurisdictions

Post-acquisition dispute

An acquisition involving two large, international pharmaceutical companies led to a complex multi-billion-dollar dispute raising multiple issues – from accounts payable and inventory to regulatory accruals and gross-to-net revenue reserves, as well as procedural matters. Failure to find a resolution triggered arbitration under the purchase agreement.

Brief

HKA was appointed as neutral accountant to analyze the items claimed, the supporting financial records of the target company, and the accounting methods used by both sides, before preparing an arbitration report determining the value of any losses incurred by the buyer.

What we did

Our arbitrator's accounting and legal expertise – spanning multiple post-acquisition disputes in this and other sectors – informed HKA's approach. Finding common ground on the process to be followed was a priority as one of the parties considered litigation over the vexed procedural issues.

A timetable was eventually agreed upon, allowing for three rounds of rebuttal submissions, and a hearing. As neutral accountant, we ruled on the validity of information requests and, in addition to the separate discovery process required to facilitate our analysis, compelled the buyer to disclose a large volume of information to the seller.

Other aspects of the arbitration included:

- Reviewing the purchase agreement to gain a clear understanding of its stipulations on the disputed items and their accounting treatment. As well as generally accepted accounting principles (GAAP), this specified 'contract accounting' rules in several areas.
- Appraising the valuations of accruals related to litigation and regulatory cases, most of which involved European and other national jurisdictions outside the US.
- Analyzing contested pricing adjustments, including US reserving prices alleged not to have been properly adjusted. The large sums involved accounted for a significant proportion of the claim.

The hearing was attended by more than 40 legal, accounting, and other representatives of the parties, and included testimony by video link from staff of the target company's subsidiaries in North America, Europe and Asia.

Outcomes

Days before the arbitration report was due to be issued, the parties settled the case, which included a parallel, high-value dispute over representations and warranties.

Over a period of a year and a half, the accounting analysis and arbitration process – from discovery and impartial probing of contentious issues to rebuttal submissions and the hearing – had helped crystallize the companies' respective positions, so a compromise could be reached.

HKA's handling of this significant dispute as a neutral expert – combining international accounting expertise with the legal insights gained from numerous expert witness and arbitration assignments – has commended the firm to general counsel seeking a conflict-free alternative to the big accountancy groups.

Bankruptcy

Experience in investigating financial transactions and recovering assets and losses is crucial when dealing with distressed companies.

A variety of related entities may be impacted by bankruptcies – from financial institutions and investors to joint venture partners, owners, customers, vendors, and general or subcontractors. Whatever your relationship, a thorough investigation of the transactions and dealings leading to insolvency will maximize the potential for recoveries.

Our services add value for our clients at all stages including pre- and post-bankruptcy proceedings. HKA investigative teams combine forensic accounting and commercial damages expertise with experience in identifying and valuing potentially diverted assets, tracing those assets globally, and navigating the many paths to recovery.

Strength in depth

We have a strong line-up of expert witnesses with significant testimony experience in jury trials, bench trials, arbitrations (international and domestic), mediations, and depositions.

Our professionals include Certified Public Accountants, Certified Fraud Examiners, professionals Certified in Financial Forensics, Certified Valuation Analysts, and Professional / Chartered Engineers.

They have honed their skills working as forensic accountants and experts for receiverships, debtors-in-possession, and creditor committees, and can serve as, or assist, appointed receivers.

Our industry experience spans most sectors, including agriculture, mining, grocery, manufacturing, gaming, financial services (including hedge funds and commodities), oil & gas, construction, insurance, and power, among others.

Focus on value

HKA teams focus on identifying the value remaining in bankruptcy and maximizing your potential recoveries in the most efficient way possible. Our work – in or outside of bankruptcy court – involves identifying, valuing, tracing, and evaluating complex transactions at distressed companies, in-court bankruptcy filings, and activities such as:

- Expert advice and testimony on claims for fraudulent transfer, diversion of assets, preference, and other avoidance actions;
- Unwinding complex transactions to identify value;
- Investigating related-party transactions;
- Analyzing causes of business failure;
- Solvency analyses and determination of 'reasonably equivalent value';
- Testifying on the indicia of fraud;
- Forensic accounting, including cashflow investigation and forecasting, and detailed funds/asset tracing analyses around the globe;
- Tracing analysis for the identification of collateral in defunct insurance companies;
- Accounting issues and audit malpractice claims related to bankrupt entities; and
- Ponzi scheme investigations and analyses.

Case study: Bankruptcy of drug testing company

Americas

Bankruptcy

Following an audit by the Centers for Medicare & Medicaid Services (CMS), a healthcare services company was found to have over-billed the Department of Health and Human Services when reclaiming the costs of testing truck drivers, heavy machinery operators and other employees in highrisk roles for illicit substances. With insufficient funds to cover the estimated damages, the company went out of business, leaving investors out of pocket.

Brief

With experience of many similar healthcare bankruptcies, our partner was tasked with investigating the underlying causes and the scope for recovering the investors' money.

What we did

This common healthcare bankruptcy scenario raises a series of key questions:

- Were the investors' funds managed appropriately?
- Was the company truly insolvent and at what point?
- Did the CMS auditors over-estimate damages?
- Have the owners of the business profited unlawfully?
- Are the investors entitled to recoverable funds from the owners, related entities, or the Department?

All relevant financial accounts, records and statements, were reviewed along with supporting documents, internal controls and procedures. This included the allocation of funds between the urine testing side of the business and other healthcare services provided by the same company.

CMS sampling methods, results and its extrapolation calculations were also scrutinized.

Outcomes

Our forensic accountant established that the company had unlawfully comingled investors' funds with other businesses, which had expanded rapidly. In the absence of proper management controls, the company had claimed and received refunds for ineligible repeat testing. The federal agency's valuation was overstated, but still put the company in a deficit position.

The investigation did identify significant funds the investors were entitled to recover, but the business had minimal assets of value and its profits had been consumed by the owners' extravagant lifestyles. Investors' only recourse was to pursue the owners personally.

Case study: Oil and gas operator bankruptcy

US and other jurisdictions

Bankruptcy

A developer/operator of oil and gas wells fell into bankruptcy following a slump in the oil prices. The company's investors, which included major US banks, sought to recover their investment amid concerns that the operating company had violated their joint operating agreement (JOA).

Brief

Our partner, an experienced forensic accountant and former audit partner of more than 25 years, was commissioned to investigate on behalf of investors and working-interest partners.

What we did

Following a close examination of the terms of the JOA, the investigation focused on the operator's dealings with a series of related entities, including its management company and various other service providers.

Activities undertaken included:

- Reviewing all relevant financial statements, records and supporting documentation
- Tracking the flows of funds into and out of the operating company's accounts
- Assessing internal controls over payments to related entities, their adequacy and observance
- Comparing what was reported to investors with internal reporting
- Interviewing accounting staff and re-interviewing them in light of findings
- Determining the point of insolvency and analyzing all subsequent payments
- Evaluating various items of expenditure for reasonableness

This analysis found that the operating company had been insufficiently capitalized while continuing to expand and to trade despite its insolvency. This enabled the investors' right to remove the operator under the JOA.

More than $30 million of investors' funds were misused in total, including:

- Comingled joint and standalone operator funds
- Management and seismic survey fees paid after insolvency to the management company and traced to the owner's bank account
- Expenditure without the required approval of non-operating working interests, including the acquisition of mineral rights from homeowners that would never be viable

Outcomes

The investors submitted our partner's report to the trustee of the court. Subject to its approval, they stand to recover a meaningful portion of their investment from the owner of the operating company, the sale of its assets, and its general partners and creditors.

Investment treaty cases

Investment treaty case services

Investment treaty cases usually arise by a foreign investor bringing a claim against a state for alleged breaches of investor protections included within an investment treaty agreed between two or more states or a multilateral treaty. Investment treaties are reciprocal agreements that establish rights and protections for nationals of a country that is party to the investment treaty, who invest in another country that is also party to the treaty. Such protections include protection against unfair treatment by the state, and expropriation. A significant protection under an investment treaty is that foreign investors can sue states directly for breach of the treaty through arbitration, instead of having to go through local courts. There are currently more than 2,800 bilateral investment treaty (BIT) agreements globally, with 180 different countries having entered into one or more investment treaties. Investment treaty cases can therefore be brought against a wide range of countries by a wide range of investors.

HKA's professionals include experts who have extensive experience acting in an expert witness capacity on a wide range of investment treaty cases, having acted for either the foreign investor bringing the claim or the state defending the claim. The investment treaty cases which HKA's experts have been involved in cover a wide range of sectors including cases relating to mining, power, infrastructure, telecoms, transportation, finance, insurance, manufacturing, and the food industry. These cases have also covered a wide range of geographies, with cases involving countries in Africa, Asia, CIS, Europe, South America and the Middle East.

How HKA can assist

HKA supports clients in investment treaty cases by using our expertise and experience to assess the quantitative impact of the alleged breach of the treaty. HKA experts use accounting and valuation expertise alongside the factual evidence from the case to determine the reasonable damages amount, whether HKA is acting for the claimant investor of the defendant state. Such quantitative assessments performed by HKA for investment treaty cases include: valuing investments which have allegedly been expropriated by a state, quantifying damages arising due to early termination of contacts between a company and a state, and quantifying losses suffered by a company as a result of government takeover of its operations.

HKA's experts ultimately testify on their expert opinion on the quantitative impact of the case, based on their review of evidence and detailed calculations performed. HKA's experts have extensive experience testifying in various jurisdictions and venues across the globe, including in investment treaty cases.

HKA has offices around the globe and has the capacity and experience to work on large scale cases across the world across a range of industry sectors. HKA's experts have experience acting on investment treaty cases across a wide range of industry types, however are also able to combine core damages and valuation principles with experience from other sectors to perform quantitative assessments for cases relating to new industries.

Key professionals

HKA has over 50 practitioners in the Forensic Accounting and Commercial Damages (FACD) practice globally, many of whom have extensive experience in working on investment treaty cases.

Key experience in relation to Investment Treaty cases

Listed below are a sample of the previous appointments of HKA's experts which relate to investment treaty cases. These illustrate the wide range of investment treaty case types which HKA experts have been involved with, with experience acting for the investor side bringing the claim and also for the state defendant, and across a wide range of geographies and industries:

- Expert witness for a Latin American Government defending an investment treaty claim regarding fisheries.
- Expert witness for a mining company in its investment treaty claim against an African Government.
- Expert witness for various African Governments defending investment treaty claims related to proposed power plants.
- Expert witness for Claimants in various investment treaty case against an African Government related to a power plant.
- Expert witness in relation to a telecoms investment treaty claim in Asia.
- Acted as advisor on $500 million claim in relation to airport in Asia.
- Acted for the claimant in an infrastructure related investment treaty claim in the CIS.
- Expert witness on behalf of former Soviet Union country in relation to property project claim in excess of $100 million.
- Expert witness for a former Soviet Union country in a $50 billion oil and gas claim in relation to expropriation.
- Expert witness for a claimant against a CIS government in relation to a $1 billion+ claim for expropriation of an oil and gas investment.
- Expert witness for an African Government defending a $1 billion+ oil and gas related claim.
- Appointed as an Expert in regard to assessing the value of a settlement agreement from an arbitration involving a Middle Eastern government and two large oil and gas fields.
- Appointed as an Expert on valuation in regard to two ISCID claims by investors in an Asian LPG Terminal.
- Appointed to act in an ICSID arbitration involving a $500 million claim in the mobile telecoms industry.
- Appointed as the expert in an ICC arbitration to quantify claims against an African country for the expropriation of assets, non-payment of fees and interest claims.
- Preliminary damages assessment in an ad hoc arbitration, brought under UNCITRAL rules by an investor alleging effective expropriation by a Balkan state of investments in real estate properties.
- Expert reports and assistance at the hearing in an UNCITRAL arbitration relating to the sequestration of a start-up Central Asian retail bank by the government. This engagement included valuing the bank at different dates under different but for scenarios.
- Expert reports in an ICSID arbitration case between an investor in health insurance companies and an Eastern European government. This engagement included the valuation of health insurance companies.
- Preliminary damages assessment in contemplation of an investment treaty arbitration for a commodities trader against a Middle Eastern State.
- Appointed to value a number of manufacturing and import businesses, and assess additional losses, in an ICSID bilateral investment treaty claim against a CIS state. The investors businesses, assets and funds were expropriated.
- Expert report on the valuation of a number of nuclear power plants in the context of a litigation against an EU government.
- Acted as "shadow expert" in the early stages of an arbitration regarding the loss of profits to an airport terminal operator from the takeover of its operations by the government.

Intellectual property disputes & protection

For many modern businesses, intellectual property is the most valuable of all their assets. Intangible assets comprise as much as 84% of the total asset value of S&P 500 companies.

Protecting your intellectual property assets – including patents, trademarks, copyrights, and trade secrets – is critical to your business and competitive advantage in the marketplace.

HKA's Forensic Accounting and Commercial Damages team is made up of professionals with deep experience in quantifying economic damages, valuing intangible assets, and providing expert witness testimony.

These capabilities underpin the intellectual property consulting and valuation services we provide to help you and your legal advisors assess the economic harm that results when intellectual property rights are infringed, assets are misappropriated, or associated agreements are breached.

Breadth of knowledge

The issues involved in intellectual property disputes are complex, and navigating them requires expertise in damage and valuation and a detailed understanding of applicable legal statutes, case law, economic and damage theory, and valuation concepts.

Our team leverages this knowledge to:

- Quantify lost profits;
- Evaluate reasonable royalty rates;
- Assess disgorgement / unjust enrichment damages;
- Conduct valuation analyses;
- Perform royalty compliance investigations;
- Assist with discovery;
- Provide mediation and support settlement negotiations;
- Prepare expert reports; and
- Testify at deposition and trial.

Outside of dispute situations, our team also provides consulting services to clients around intellectual property protection, licensing transactions, and valuations for transaction and compliance purposes.

Assessment of class certification criteria

False advertising

HKA was engaged on behalf of defendants in connection with allegations of false advertising to analyze factors used in determining whether the class should be certified. The expert reviewed and provided a rebuttal to the proposed class plaintiffs' expert report, which contained anticipated damages to the class approximating $100 million. Class certification was denied.

Valuation

Intangible assets

In connection with the redevelopment of the city center of a mid-sized US city, HKA performed valuation analyses related to the expected future tax revenues returned to the developer to finance the activity. Under legislation passed by the state, the redevelopment area received special designation that, among other things, resulted in below-market rents that yielded appraised property values insufficient to support the financing provided. Recognizing the shortfall in hard collateral value, the funding banks took a security interest in the future tax revenue stream (payroll taxes, sales taxes, use taxes, and cigarette stamp taxes, among others) returned by the state to fund the development, and required valuation analyses to support the collateral value. Analyses were performed over multiple years, and, in addition to development of a valuation model and report, required detailed assessments of building occupancy, lease agreements, financing agreements, financial statements and tax returns, and historical and projected tax revenue models.

Reasonable royalty

Patent infringement

HKA performed pre-litigation consulting to estimate the value of damages in a series of patent infringement cases involving consumer electronics. Damages were measured by reference to the reasonable royalty that would potentially have been paid to license the patented technology.

Lost profits / Reasonable royalty

Patent infringement

In connection with a patent infringement dispute involving road milling tools, HKA analyzed the lost profits sustained by the plaintiff as result of the infringement, and in doing so conducted extensive analyses of the volume of sales made by the defendant, as well as the historical financial records of the plaintiffs. Additionally, conducted analyses surrounding a reasonable royalty. The results of the analyses were set forth in an expert report, and the expert testified at deposition regarding his opinions.

Lost profits

Breach of license agreement

HKA was engaged to compute damages to provider of software design, development, implementation, and maintenance, located in Bangkok, Thailand. These arose from an alleged breach of a software license agreement with a US-based software distributor. Lost profits were based on an analysis of lost customer fees derived from services specifically allowed under a single count of the complaint in a bifurcated proceeding. The expert testified regarding her opinions at deposition.

Disgorgement of defendant's profits

Trademark infringement

HKA performed calculation of damages where it was alleged that a leading provider of equipment and supplies to the foodservice industry wrongfully used the trademark of another online retailer in its pay-per-click advertising campaigns. Plaintiff sought disgorgement of defendant's profits. Damages were based on sales records provided by the defendant and computed according to a variety of findings with respect to liability.

Reasonable royalty / Disgorgement

Copyright infringement

HKA was retained by the developer of personality assessments in connection with claims of copyright infringement brought against one of the largest tutoring franchise operators in the US. In evaluating the damages from the infringement, analyzed the volume of assessments sold to and used by the franchise operator, analyzed reasonable royalty rates, and performed analyses surrounding the revenues earned by the franchise operator from the sale of assessments. The expert testified regarding his opinions at deposition.

Disgorgement of defendant's profits

Copyright infringement

HKA performed calculation of damages to a leading provider of equipment and supplies to the foodservice industry as a result of alleged copyright infringement. This stemmed from the use by defendant of the plaintiff's photographic images and descriptions of products on its website. Due to the volume of product sales, and growth of the plaintiff's business, damages were computed by reference to the defendant's profits derived from infringing sales.

HKA

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Our people

We employ the best people with diverse skills and the insight to anticipate, investigate and resolve project challenges.

Our greatest strength is our people. Their knowledge and expertise repeatedly deliver the best possible outcomes for our clients.

We attract, retain and develop the leading talent from across the industry and a wide spectrum of disciplines. They are knowledgeable people with strong skills and experience, many of them multi-qualified in technical and legal professions.

As part of the world's pre-eminent consultancy in the field, our people get to work on the most challenging and exciting projects with a rich variety of clients. HKA people live and breathe complex projects, and commit to our core principles.

At HKA, we have honed highly effective ways of working, which we always follow. Whether we are providing consulting, expert or advisory services, our people will:

- Focus on your organization's business imperatives.
- Challenge conventional thinking and approaches.
- Work with you and your team to shape shared solutions.
- Work relentlessly in pursuit of the best outcomes.
- Use inventive thinking to deliver practical and innovative answers.
- Implement and carry through change, if required, as well as propose it.
- Act with integrity and respect to earn our place as your trusted independent advisor.

Our people are leaders and problem-solvers, who thrive on complexity. Through collaborative practices and innovative thinking, our clients receive an offering that is constantly evolving and improving in response to their needs.

Our values

When we engage with our clients, our success revolves around individual relationships and trust.

We convey a message of careful thinking and planning, offering a steady hand to our clients. At the same time, we deliver a responsive service with an ability to bring out our values and knowledge to bear on any situations that arise throughout the life cycle of projects, programs and portfolios.

Our brand values and core principles help shape our behavior and actions, ensuring we remain on the right path and fulfil our goals to our stakeholders. We continuously strive to add value, create solutions, deliver excellence and exceed expectations.

Agile

We embrace and adapt rapidly to change, challenges, events and opportunities. We are very clear about what we stand for. We look to the future.

Innovative

We know what we are doing and how to innovate. We encourage different thinking and are open to the potential of new ideas, methods and technologies.

Collaborative

We embrace the principles, practices and processes of collaborative organisational structure that enhance communications and the exchange of ideas, and foster teamwork.

Passionate

We are inspiring and distinctive, and our professional commitment earns the most interest and authority in our space, both on- and off-line.

Confident

We inspire clients to trust us with their business and business-critical projects and decision-making.

We foster a culture that encourages a collaborative environment where ideas are shared and opinions are openly discussed in pursuit of the best outcomes for our clients, people and other key stakeholders.