

CANDON TODD & SEABOLT<sub>LLC</sub>

## Market for Small Businesses Heats Up

### *Mergers & Acquisitions to Increase in 2011.*

As the worldwide economy improves, we are seeing increased investment in businesses. During 2010, according to Thomson Reuters, there were almost 15% more mergers and acquisition deals worldwide that involved small businesses than in 2009. Small businesses are those with a value of less than \$50 million. The total value of deals during 2010 was over \$129 billion, with the United States accounting for 6,656 deals having an average value of \$3.2 million.

Global 2011 activity is expected to increase by 36%, according to a recent Thompson Reuters report, led by strong growth in real estate, finance, and health care.

## Federal Rules Change for Expert Witnesses

### *Hawaii rules unchanged*

It has been well known that the Federal Rules of Evidence allowed the discovery of an expert witness's draft reports and communications with the attorney who retained the expert. However, as of December 1, 2010, the new Federal rule 26(b)(4)(B) and (C) provide work-product privilege protections to an expert's draft reports and most communications between the expert and the attorney. Communications that are not deemed privileged and remain discoverable include 1) the expert's compensation; 2) facts or data considered by the expert provided by the attorney; and 3) assumptions relied upon by the expert that were provided by the attorney. While it is expected that many states will adopt the new Federal rules, it remains to be seen if Hawaii will follow suit.

## A Case to Revisit – When an Expert's Report is Inadmissible

### *Tabieros v. Clark Equipment Company, 85 Hawaii 336, 944 P.2d 1279 (1997)*

Among the many legal issues discussed in the case, the Hawaii Supreme Court addressed the issue of admissibility of an economic expert's opinion that was based on assumptions that were speculative and unsupported by the record. In the case, the opinion was based on assumptions provided primarily by the attorney who hired the economic expert. The trial court admitted the report containing the opinion, but the Hawaii Supreme Court disagreed citing that "assumptions based on mere speculation that are foundational to an expert's opinion testimony render the latter inadmissible as untrustworthy, i.e. as unreliable." The Hawaii Supreme Court held that the trial "court committed an abuse of discretion when it ultimately allowed" the report to be admitted. The Hawaii Supreme Court did recognize that experts can give opinions based on hypotheticals that assume facts not yet in evidence. But, as the Court stated, "the ultimate admissibility of such testimony is subject to later introduction of those fundamental facts."

## About CTS's People

*John Candon, CPA, ABV, ASA, CFE, CFF* recently completed a two day course on the changes to the Uniform Standards of Professional Appraisal Practice given by the American Society of Appraisers. He has held the ASA designation since 1996. John also attended the AICPA's Annual Fraud Conference and has been named the testifying business valuation expert in several 2011 trials in Honolulu.

*Duane Seabolt, JD, MBA, CPA/CFF/ABV, CFE*, is the firm's Director of Forensic Services. Recently, Duane testified through deposition in a case involving disputed loans between officers of a business. Also, Duane recently gave a presentation on fraud and Hawaii's whistleblower law to a local chapter of the Institute of Internal Auditors.

*Kimo Todd, JD, CPA/ABV/CFF, CVA*, is the firm's Director of Business Valuation Services. Recently, Kimo provided deposition testimony in a fraud and funds misappropriation case. Additionally, Kimo recently appraised several target businesses for clients for acquisition purposes.

Who We Are: CTS is an independent consulting firm, dedicated to providing the highest quality of independent, objective and confidential services. We have provided forensic accounting and business valuation services to clients in Hawaii and elsewhere for over 15 years. Our professionals have extraordinary backgrounds and a wealth of experience. We specialize in:

|                             |                             |                      |
|-----------------------------|-----------------------------|----------------------|
| Business Valuation          | Forensic Accounting         | Litigation Support   |
| Lost Profits & Earnings     | Corporate Recovery Services | Fraud Investigations |
| Intangible Asset Valuations | Business Acquisitions       | Profit Improvement   |

Our Clients: Our clients are located throughout Hawaii and include many of Hawaii's largest businesses and law firms. We have also consulted with clients located in the U.S. Mainland, Japan, China, and Taiwan.

Talk to us: We hope this has been informative. If you would like a friend or colleague to get a copy, just let us know. If something in this newsletter caught your interest or you have a question, call us at (808) 533-1270 or email us from our website: [www.candontoddseabolt.com](http://www.candontoddseabolt.com).



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