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**COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION II**

**CIVIL ACTION No. 20-CI-00590**

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**COMMONWEALTH OF KENTUCKY,  
on its own behalf and for the benefit of all  
of its departments, commissions, agencies,  
political subdivisions, its citizens, taxpayers,  
and all pension plan beneficiaries**

**PLAINTIFF**

vs.

**KKR & CO. INC. f/k/a/ KKR & CO., L.P., et al.**

**DEFENDANTS**

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**ORDER**

This matter is before the Court upon Defendant Jennifer Elliot’s *Motion to Dismiss*; Defendant William Cook’s *Motion to Dismiss*; Defendants Thomas Elliott, Bobby Henson, Randy Overstreet, Vince Lang, Timothy Longmeyer, T.J. Carlson, Brent Aldridge, and William Thielen’s *Motion to Dismiss*; R.V. Kuhns & Associates, Inc. (RVK), Jim Voytko, and Rebecca Gratsinger (collectively, the “RVK Parties”) *Motion to Dismiss*; KKR & Co. Inc., Henry Kravis, and George Roberts’ *Motion to Dismiss*; T.J. Carlson’s *Motion to Dismiss*; Cavanaugh Macdonald Consulting LLC, Thomas Cavanaugh, Todd Green, and Alisa Bennett (the “CavMac Defendants”) *Motion to Dismiss*; David Peden’s *Motion to Dismiss*; Defendants Blackstone Inc. (formerly The Blackstone Group, Inc.), Stephen A. Schwarzman, and J. Tomilson Hill’s *Motion to Dismiss*; Defendants PAAMCO Prisma, LLC (formerly Pacific Alternative Asset Management Company, LLC, and hereinafter “PAAMCO”), Jane Buchan, Prisma Capital Partners LP (“Prisma”), Girish Reddy, R.V. Kuhns & Associates, Inc., Rebecca A. Gratsinger, Jim Voytko, Blackstone Inc., Stephen

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A. Schwarzman, J. Tomilson Hill, KKR & Co. Inc., Henry Kravis, George Roberts, Cavanaugh Macdonald Consulting, LLC, Thomas Cavanaugh, Todd Green, and Alisa Bennett, collectively referred to as the “Non-KPPA Defendants” *Motion to Dismiss*; PAAMCO Prisma, LLC (formerly Pacific Alternative Asset Management Company, LLC, and hereinafter “PAAMCO”) and Jane Buchan (collectively, the “PAAMCO Defendants”) *Motion to Dismiss*; Prisma Capital Partners LP (“Prisma”) and Girish Reddy (collectively, the “Prisma Defendants”) *Motion to Dismiss*; Blackstone Alternative Asset Management L.P.’s (“BAAM”) *Motion to Dismiss*. This matter was called before the Court on Thursday, February 29, 2024.

Upon review of the parties’ briefs and papers, and after being sufficiently advised, the Court hereby **GRANTS in part, and DENIES in part**, Defendant Jennifer Elliot’s *Motion to Dismiss*; **GRANTS in part, and DENIES in part**, Defendant Brent Aldridge’s *Motion to Dismiss*; **GRANTS in part, DENIES in part**, Defendant William Thielen’s *Motion to Dismiss*; **GRANTS** Defendants R.V. Kuhns & Associates, Inc. (RVK), Jim Voytko, and Rebecca Gratsinger (The RVK Parties) *Motion to Dismiss*; **GRANTS** Defendants Cavanaugh Macdonald Consulting, LLC’s *Motion to Dismiss*; **GRANTS in part, and DENIES in part** T.J. Carlson’s *Motion to Dismiss*. All remaining Motions to Dismiss are **DENIED**.

### STANDARD OF REVIEW

Under Kentucky law, when a court considers a motion to dismiss under Civil Rule 12.02, “the pleadings should be liberally construed in a light most favorable to the plaintiff and all allegations taken in the complaint to be true.” *Gall v. Scroggy*, 725 S.W.2d 867, 869 (Ky. Ct. App. 1987) citing *Ewell v. Central City*, 340 S.W.2d 479 (Ky. 1960). “The

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court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim.” *Mims v. W.-S. Agency, Inc.*, 226 S.W.3d 833, 835 (Ky. Ct. App. 2007) quoting *James v. Wilson*, 95 S.W.3d 875, 883-84 (Ky. Ct. App. 2002). In *D.F.Bailey, Inc. v. GRW Engineers Inc.*, 350 S.W.3d 818 (Ky. Ct. App. 2011), the Kentucky Court of Appeals discussed a trial court’s standard of review when ruling on a motion to dismiss. “[T]he question is purely a matter of law. [...] Further, it is true that in reviewing a motion to dismiss, the trial court is not required to make any factual findings, and it may properly consider matters outside of the pleadings in making its decision.” *Id.* at 820 (internal citations omitted).

**ANALYSIS**

**I. Statute of Limitations**

**Professional Services – The RVK Parties**

KRS 413.245 provides: “a civil action, whether brought in tort or contract, arising out of any act or omission in rendering, or failing to render, professional services for others shall be brought within one (1) year from the date of the occurrence or from the date when the cause of action was, or reasonably should have been, discovered by the party injured.” This statute applies to any claim “arising out of any act or omission in rendering, or failing to render, professional services for others,” regardless of allegations of malice or whether the claims are brought by the individuals or entities who engaged the professional to provide the services. *Seiller Waterman, LLC v. RLB Props.*, 610 S.W.3d 188, 205 (Ky. 2020). Professional services, for purposes of KRS 413.245 means “any service rendered in a profession required to be licensed, administered and regulated as professions in the Commonwealth of Kentucky, except those professions governed by KRS 413.140.”

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Claims against the RVK parties are subject to a one-year “professional services” statute of limitation under KRS 413.245. All of the claims against RVK arise out of RVK’s provision of investment advisory professional services to KPPA, and fall squarely within KRS 413.245. Investment advising is a “profession” under the statute. A “profession” connotes other vocations such as accounting, engineering and teaching, the admission to which requires higher education, special knowledge, and training. *Plaza Bottle Shop, Inc. v. Al Torstrick Ins. Agency, Inc.*, 712 S.W.2d 349, 351 (Ky. App. 1986). See e.g. *Matherly Land Surveying Inc. v. Gardiner Park Dev., LLC* 230 S.W.3d 586, 589-90 (Ky. 2007); *Old Mason’s Home of Ky., Inc. v. Mitchell*, 892 S.W.3d 304, 306 (Ky. App. 1995).

Providing investment advice to public pension funds certainly requires special knowledge of investment markets and public pension systems. Like other professions listed in the cases cited above, RVK’s profession requires advanced education, knowledge, and training, and therefore the RVK parties are subject to the one-year “professional services” statute of limitations. Additionally, KRS 413.245 applies to all investment advisors, including those out-of-state advisors.<sup>1</sup>

RVK’s contract with KRS terminated in 2017, and all of the allegations against RVK concern public events, with the most recent mention of RVK concerning the 2015 KRS Annual Report. RVK’s study and disclosures occurred more than a decade before the filing of the complaint in this case. For these reasons, R.V. Kuhns & Associates’ *Motion to Dismiss* is **GRANTED**.

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<sup>1</sup> KRS 413.245 does not require the defendant to be licensed or registered by the Commonwealth, only that the profession is one that is licensed, administered and regulated in the Commonwealth. “[T]he Kentucky legislature and the Kentucky Supreme Court must have intended for section 413.245 to apply to all engineers, not just those licensed in the Commonwealth of Kentucky.” *ISP Chemicals LLC v. Dutchland, Inc.*, No. 5:08-CV-153, 2010 WL 4225888, at \*3 (W.D. Ky. Oct. 21, 2020).

**Professional Services – CavMac**

Cavanaugh Macdonald Consulting, LLC (“CavMac”) is an actuary that was engaged by KPPA from 2006-2016. The services included provision of an annual actuarial valuation of the liabilities of the System’s different funds, provision of an annual letter and summary of valuation to be included in the System’s Comprehensive Annual Financial Report, and creation of experience reports compiled every five (5) years to serve as the basis of subsequent actuarial assumptions to be considered and adopted by the System and the Legislature.

The statute of limitations for a claim for professional negligence is one year from the date the injury was or reasonably should have been discovered. KRS 413.245. The statute of limitations for a claim for civil conspiracy is one year. KRS 413.140(1)(c). The statute of limitations for a breach of fiduciary duty is five years, with no allowance for discovery. *Middleton v. Sampey*, 522 S.W.3d 875, 878 (Ky. App. 2017) However, where the fiduciary duty arises from a professional relationship, the statute of limitations is one year. *Peoples Bank of N. Kentucky, Inc. v. Crowe Chizek & Co. LLC*, 277 S.W.3d 255, 266 (Ky. App. 2008).

Even giving the Commonwealth the most generous statute of limitations, the claims against CavMac started to run, at the latest, on July 21, 2010 when the highest authority for the System had actual knowledge of all relevant facts. Public record shows that by July 21, 2010, the Legislature received a clear report on the unfunded state of the System, was aware that the 7.75% Assumed Return was a “hoped-for” Assumed Return, was aware the Board was contemplating risky investments and was aware it was unlikely the System could invest its way out of the hole it was in.

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For these reasons, CavMac's *Motion to Dismiss* is **GRANTED**.

### Civil Conspiracy

Claims for civil conspiracy have a one-year statute of limitations. KRS 413.140(1)(c) provides: "The following actions shall be commenced within one (1) year after the cause of action accrued: (c) An action for malicious prosecution, conspiracy, ...". The rule in Kentucky is that the statute of limitations for a conspiracy claim commences upon performance of the last overt act in compliance with the objective of the alleged conspiracy. *Dist. Union Loc. 227, Amalgamated Meat Cutters & Butcher Workmen of N. Am., AFL-CIO v. Fleischaker*, 384 S.W.2d 68, 72 (Ky. 1964). Furthermore, Kentucky recognizes the right of an alleged co-conspirator to "withdraw" from an alleged conspiracy. *See Warren v. Commonwealth*, 333 S.W.2d 766 (Ky. 1960).<sup>2</sup> "All statutes of limitations begin to run when the relevant cause of action accrues." *See Lexington-Fayette Urban Cyt. Gov. v. Abney*, 748 S.W. 2d 376, 378 (Ky. App. 1988). A civil conspiracy begins to run when the "last overt act performed in compliance with the objective of the conspiracy has been accomplished." *Fisk*, 2017 WL 244087 at \*6.

### The Commonwealth's conspiracy claim against Jennifer Elliott is time-barred.

The statute of limitations for any conspiracy claim involving Ms. Elliott began to run in 2012 when she resigned from the Board. By departing from the KRS Board of Trustees in October 2012, she fully withdrew from any civil conspiracy. Permanent termination from

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<sup>2</sup> While Kentucky law is silent as to how a co-conspirator's withdrawal impacts the running of the statute of limitations for a conspiracy claim against him, other jurisdictions, including the United States Supreme Court, hold that a conspiracy claim accrues for limitations purposes upon an alleged co-conspirator's withdrawal from the conspiracy. *See, e.g., Smith v. United States*, 568 U.S. 106, 111 (2013) ("Withdrawal also starts the clock running on the time within which the defendant may be prosecuted, and provides a complete defense when the withdrawal occurs beyond the applicable statute of limitation." As noted in *Morton's Market, Inc. v. Gustafso's Dairy, Inc.*, 198 F.3d 823, 837 (11th Cir. 1999), "A conspirator who withdraws from the conspiracy is no longer a member of the conspiracy and the subsequent acts of the conspirators usually do not bind them.")

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assisting or participating in a conspiracy satisfies the legal standard for withdrawal or abandonment. The permanent and complete departure from the Board constituted an effective withdrawal in 2012.

**The Commonwealth's conspiracy claim against T.J. Carlson is time-barred.**

Carlson was CIO of KPPA from February 2011 to November 2013. Carlson's tenure ended in November 2013 when he voluntarily resigned his position to move to Texas. This permanent and complete departure constituted an effective withdrawal in November 2013. The Commonwealth has not alleged any further actions taken by him after the end of his employment relating to this action.

The rule in Kentucky is that the statute of limitations for a conspiracy claim commences upon performance of the last overt act in compliance with the objective of the alleged conspiracy. Under the holdings in *Smith v. United States* and *Morton's Market, supra*, the one-year statute of limitations applicable to Plaintiff's conspiracy claim against Carlson began running upon his withdrawal from the alleged conspiracy in November 2013. Thus, the conspiracy claim against Carlson is dismissed.

**The Commonwealth's conspiracy claim against Brent Aldridge is time-barred.**

Aldridge was an employee of KPPA from 1991 until he became Director of Alternative Assets in 2004. He was named interim CIO on July 15, 2010, until T.J. Carlson was hired as CIO on November 1, 2010. Aldridge then returned to Director of Alternative Assets on December 1, 2010. While he was interim CIO, no decisions were made by the Board regarding the investments contained in Plaintiffs' Complaint.

KRS 413.140(1)(c) creates a one-year statute of limitations for conspiracy claims. Aldridge's tenure at KPPA ended in August of 2016. His retirement would necessarily

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create a withdrawal from any conspiracy. Under *Smith v. United States and Monton's Market, supra*, the one-year statute of limitation applicable to Plaintiff's conspiracy claim against Aldridge began running in August of 2016. The conspiracy claims asserted against Aldridge are dismissed as time-barred.

**The Commonwealth's conspiracy claim against William Thielen is time-barred.**

Thielen became the interim Executive Director in April of 2011 and served as Executive Director from 2012 to 2016. During the relevant time period, as Executive Director of Kentucky Retirement Systems (now Kentucky Public Pension Authority), Thielen had no decision-making involvement or voice in investment decisions.

For the same reasons as discussed under both Aldridge and Carlson, the claims of civil conspiracy against William Thielen are dismissed.

**KRS 413.090(2)**

KRS 413.090(2) provides a fifteen-year limitations period for an action upon a written contract executed prior to July 15, 2014. Defendants entered into three LLC agreements, all of which were executed less than 15 years ago. The Kentucky Retirement Systems Statement of Investment Policy ("Investment Policy") that was in effect when the LLC agreements were made requires outside investment managers, such as Prisma, BAAM, and PAAMCO, to "agree to serve as a fiduciary." *See, e.g.*, Memorandum of Law in Support of Blackstone Alternative Asset Management L.P.'s Motion to Dismiss, Ex. C (Annex H at H-3). Prisma, BAAM, and PAAMCO agreed to be contractually obligated to comply with the fiduciary duties set forth in the Investment Policy.



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The Court agrees with the Commonwealth that *Ingram v. Cates*, 74 S.W.3d 783 (E.D. KY. 2002) is distinguishable from the facts of this case. *Ingram* was not an action for a breach of contract, rather the fiduciary duty arising from the relationship was breached. *Id.* at 786-87. That case was “not an action for breach of contract, nor for the taking of property, nor an action arising from a breach of duties as a trustee.” *Id.* Because of these facts, 413.090 did not apply. However, the breach of fiduciary duty would violate the contractual terms and the obligations to comply with those terms. The breach of the fiduciary duties in *Ingram* did not independently breach the contract and, accordingly, *Ingram* does not foreclose the application of KRS 413.090(2) in the present case. Here, there are fiduciary duties attached or incorporated into the LLC Agreements where Prisma, BAAM, and PAAMCO agreed to serve as fiduciaries and agreed to contractual obligations to comply with those duties. A breach of those duties would then result in a breach in the LLC Agreements. *See Abbott v. Chesley et al.*, 413 S.W.3d 589, 600 (Ky. 2013).

The Court believes the breach of contract claims, based on the terms of the written LLC agreements, are subject to the 15 year statute of limitations and thus, the breach of contract claims are timely on their own without regard to relation back principles or the Savings Statute.

## II. Personal Jurisdiction

Kentucky follows a two-step analysis to assess personal jurisdiction regarding a nonresident defendant. *Caesars Riverboat Casino, LLC v. Beach*, 336 S.W.3d 51, 58 (Ky. 2011). “[R]eview must proceed under KRS 454.210 to determine if the cause of action arises from conduct or activity of the defendant that fits into one of the statute’s enumerated categories.” *Id.* These categories are liberally construed in favor of long-arm jurisdiction

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and the relation to the claim is assessed with “a common sense analysis, giving the benefit of the doubt in favor of jurisdiction.” *Id.* at 56, 59. The second inquiry focuses on the showing of minimum contacts, and whether the maintenance of the suit offends “traditional notions of fair play and substantial justice.” *Id.* at 897 (quoting *Int’l Shoe Co. v. Washington*, 325 U.S. 310, 316 (1945)).

Several defendants contest personal jurisdiction, including Blackstone and KKR. The Commonwealth alleges that these defendants directed, facilitated, and participated in conduct that caused KPPA to invest over a billion dollars into Black Boxes. Their roles spanned an extended period of time and their acts were taken in furtherance of, and to facilitate, the scheme that targeted the Commonwealth and its citizens. Read as a whole, the Commonwealth’s Complaint provides ample rationale for the exercise of personal jurisdiction over each of the defendants. *See* KRS 454.210(2)(a)(4)

In *Ford Motor Co. v. Montana Eighth Judicial District*, 141 S. Ct. 1017 (2021), a unanimous Supreme Court made clear that “minimal contacts” necessary for long arm jurisdiction are the aggregate of the defendants’ business and commercial contacts with the forum. Consistent with *Ford Motor*, courts have asserted personal jurisdiction over parent holding companies based on their subsidiaries or agents’ contacts with the forum state. *See, e.g., Acorn v. Household Int’l, Inc.*, 211 F. Supp. 2d 1160, 1165–67 (N.D. Cal. 2002).

The detailed allegations in the Complaint as to the degree of control Kravis and Roberts, as Co-Chair/Co-CEOs of KKR, had and exercised over KKR and its wholly-owned subsidiaries, taken in combination with the documentary evidence demonstrating KKR’s firm-wide strategy initiatives specifically in connection with the Trustee, are sufficient to make out a prima facie case of “transacting any business” through agents. *See*

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*Daimler AG v. Bauman*, 571 U.S. 117, 135 n.13 (2014) (“Agency relationships we have recognized, may be relevant to the existence of specific jurisdiction. ... [A] corporation can purposefully avail itself of a forum by directing its agents or distributors to take action there.”); *see also Genpharm Inc. v. Pliva-Lachema a.s.*, 361 F. Supp. 2d 49, 58 (E.D.N.Y. 2005) (“sufficient contacts would exist if the Plaintiff’s [agency] theory of jurisdiction is established by a preponderance of the evidence”).

Regarding Blackstone, the parent company of BAAM, exerted substantial control over BAAM by directing its activities and personnel who managed the KPPA account, and also shared some employees and agents with its subsidiary. Defendant Schwarzman, founder, Board Chair, CEO of Blackstone, and Chair of Management Committee, controlled day-to-day operations, elected its board of directors, and controlled all aspects of its corporate structure and operation. He met by-weekly with the Hedge Fund Solutions investment committee and thereby supervised the creation, approval, and implementation of the Blackstone business plan. Defendant Hill, as a Vice Chairman of Blackstone and CEO of BAAM, held various positions across the Blackstone group, and was the President and CEO of the Hedge Fund Solutions group and met bi-weekly with Schwarzman to review the business and affairs.

The Commonwealth is entitled to jurisdictional discovery, including depositions of Kravis, Roberts and other senior KKR executives before dismissal on this ground could be ripe for decision. Accordingly, the defendants that have raised the personal jurisdiction defense will not be deemed to have waived their right to reassert this defense if warranted by facts established in pretrial discovery.

**CONCLUSION**

**WHEREFORE**, Cavanaugh Macdonald Consulting, LLC’s *Motion to Dismiss* is **GRANTED**; R. V. Kuhns & Associates’ *Motion to Dismiss* is **GRANTED**. The following *Motions to Dismiss* are **GRANTED, in part**, only concerning the civil conspiracy claims: William Thielen’s *Motion to Dismiss*; T.J. Carlson’s *Motion to Dismiss*; Brent Aldridge’s *Motion to Dismiss*; Jennifer Elliot’s *Motion to Dismiss*; all remaining aspects, outside of the civil conspiracy claims, are **DENIED** for the following: William Thielen’s *Motion to Dismiss*; T.J. Carlson’s *Motion to Dismiss*; Brent Aldridge’s *Motion to Dismiss*; Jennifer Elliot’s *Motion to Dismiss*.

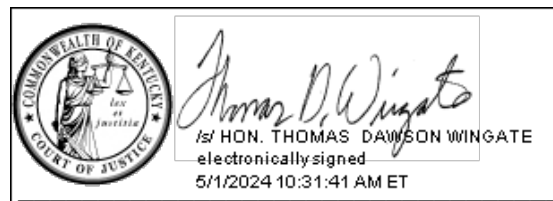
All remaining *Motions to Dismiss* are **DENIED**.

Parties are encouraged to continue settlement negotiations while discovery is ongoing.

Only the following *Motions* are final and appealable: Cavanaugh Macdonald Consulting, LLC’s *Motion to Dismiss* and R. V. Kuhns & Associates’ *Motion to Dismiss*.

There is no just cause for delay.

**SO ORDERED**, this 1<sup>st</sup> day of May, 2024.



**THOMAS D. WINGATE**  
**Judge, Franklin Circuit Court**