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John R. Rizzardi, WSBA No. 9388
Admitted Pro Hac Vice
Cairncross & Hempelmann, P.S.
524 Second Avenue, Suite 500
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Telephone: (206) 587-0700
Facsimile: (206) 587-2308

The Honorable Terry L. Myers
Chapter 11
Hearing Date: May 27, 2003
Hearing Time: 9:00 a.m. PDT
10:00 a.m. MDT

TH

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF IDAHO

In re:

FRANK L. CHAPIN and
SYDNEY L. GUTIERREZ-CHAPIN,

Debtors.

NO. 02-20218

MOTION OF FREDERICK A. LEAF FOR
APPROVAL OF SETTLEMENT

Frederick A. Leaf, M. D., a plan proponent ("Leaf"), by and through his attorneys
Cairncross & Hempelmann, P.S., hereby moves this Court for approval of a proposed settlement
as set forth in the attached Mutual Release and Settlement Agreement ("Settlement Agreement").

Attached hereto as Exhibit A and by this reference incorporated herein is the proposed
Settlement Agreement between, among others, the Debtors and their estate, Leaf, the heirs of the
Estate of Christina Leaf (the "Heirs") and Robert Kovacovich. Although Exhibit A is not fully
executed at the time of filing this Motion, it is anticipated this agreement will be either executed

11

1 or counsel will be able to represent that the agreement is going to be executed as of the date of
2 the confirmation hearing.¹

3 To summarize the nature of the claims: Robert Kovacevich and John Murray were
4 attorneys for the Estate of Christina Leaf. The Debtors were involved in the alleged mishandling
5 of certain estate assets, as more thoroughly described in the Disclosure Statement. Leaf, the
6 Heirs and the Debtors have asserted claims against Kovacevich and Murray based upon
7 professional negligence in their legal representation of the estate. Other Settlement Agreement
8 recitals are incorporated herein. The settlement terms are essentially as follows:

- 9 a. Kovacevich will pay to the Estate of Christina Leaf the sum of \$250,000,
10 comprised of \$150,000 from the remaining benefits of his professional errors and
11 omissions insurance policy and \$100,000 from his personal assets, thus reducing
12 the Heirs' claims in this estate by \$250,000.
- 13 b. Kovacevich will eliminate his two claims filed in this proceeding for \$1,500,000
14 and \$79,330.46. Kovacevich will also agree to the withdrawal of all ballots filed
15 by him in this proceeding.
- 16 c. Mutual releases will be exchanged between the parties.

17 Based upon the attached Declaration, the Debtor, Frank Chapin, represents that this settlement is
18 in the best interests of this Estate. The amount being paid by Kovacevich has been reviewed by
19 all of the parties and their independent counsel, and is believed to represent the best possible
20 recovery under the circumstances. Accordingly, the benefits to this Estate are maximized by the
21 reduction of the claims of the Heirs and Leaf by the amount of \$250,000. Although the Debtors

22 _____
23 ¹ There may also be additional editing to the Agreement prior to May 27, 2003, but as of May 16, 2003, it is
believed all major terms have been resolved, and any future changes will not result in material or substantive
changes to the Agreement.

1 have filed claims against Kovacevich as set forth in the Settlement Agreement Recitals, these are
2 indemnification claims. Thus, the removal of Kovacevich's claims against this Estate will be of
3 significant benefit to this Estate.

4 Furthermore, the dollar-for-dollar reduction in the claims of the Heirs also achieves the
5 maximum possible reduction of the Heirs' claims from the funds available from Kovacevich.

6 ARGUMENT

7 Bankruptcy Rule 9019(a) provides that:

8 On motion by the trustee and after notice and a hearing, the
9 court may approve a compromise or settlement. Notice shall be
10 given to creditors, the United States trustee, the debtor, and
11 indenture trustees as provided in Rule 2002 and to any other
entity as the court may direct.

12 Fed. R. Bankr. P. 9019(a).

13 The Ninth Circuit has recognized that the bankruptcy court has great latitude in
14 approving compromise agreements. *See Martin v. Kane (In re A & C Properties)*, 784 F.2d
15 1377, 1380-81 (9th Cir. 1986). "The purpose of a compromise agreement is to allow the [debtor
16 in possession] and the creditors to avoid the expenses and burdens associated with litigating
17 sharply contested and dubious claims." *Id.*

18 In approving a compromise, a bankruptcy court must find that the compromise is fair and
19 equitable and that the negotiations between the parties were conducted in good faith. *Id.* at 1381
20 (citing, *Citibank, N.A. v. Baer*, 651 F.2d 1341, 1345-46 (10th Cir. 1980). The Ninth Circuit has
21 identified four factors that a bankruptcy court should consider in determining whether a proposed
22 settlement agreement is fair and equitable:

23 a. The probability of success in the litigation;

- 1 b. The difficulties, if any, to be encountered in the matter of collection;
- 2 c. The complexity of the litigation involved, and the expense,
3 inconvenience and delay necessarily attending it; and
- 4 d. The paramount interest of the creditors and a proper deference to their
5 reasonable views in the premises.

6 *Martin*, 784 F.2d at 1381 (quoting *In re Flight Transp. Corp. Sec. Litig.*, 730 F.2d 1128, 1135
7 (8th Cir. 1984); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

8 To apply such factors, a bankruptcy court need not conduct an exhaustive investigation
9 into the validity of the merits of the claims sought to be compromised. *In re Walsh Constr. Inc.*,
10 669 F.2d 1325, 1328 (9th Cir. 1982). Likewise, a bankruptcy court is not required to decide the
11 questions of law and fact raised in the controversies sought to be settled, nor is it required to
12 determine whether the settlement presented is the best one that could possibly have been
13 achieved. Rather, it is sufficient that the settlement not fall "below the lowest point in the zone
14 of reasonableness." *Newman v. Stein*, 464 F.2d 689, 698 (2d Cir. 1972). Finally, although a
15 bankruptcy court should give deference to the reasonable views of creditors, it is well established
16 that compromises are favored in bankruptcy. *In re Lee Way Holding Co.*, 120 B.R. 881, 891
17 (Bankr. S.D. Ohio 1990).

18 The facts set forth in the motion, the content of the Settlement Agreement, and the
19 Debtor's Declaration demonstrate that the proposed settlement with Kovaccvich is reasonable,
20 fair and equitable and in the best interests of the Debtor's estate. By this settlement, the Estate is
21 obtaining not only the withdrawal of two substantial claims, but is also achieving a credit of
22 \$250,000 against other potential claims that have been filed by the Heirs and Leaf in this case.
23 Furthermore, the settlement will save the Estate potential expense which may have been incurred
 in any claims litigation with Kovaccvich.

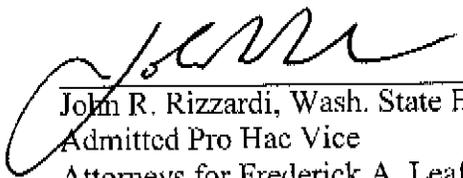
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CONCLUSION

Based on the above, the proposed settlement is in the best interests of this Estate and should be approved as set forth in the attached proposed Order.

DATED this 16th day of May, 2003.

CAIRNCROSS & HEMPELMANN, P.S.



John R. Rizzard, Wash. State Bar No. 09388
Admitted Pro Hac Vice
Attorneys for Frederick A. Leaf

EXHIBIT A

SETTLEMENT AGREEMENT

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement ("Agreement") is made and entered into as of May _____, 2003 by and among FREDERICK A. LEAF, an individual ("Leaf"), FRANK L. CHAPIN AND SYDNEY GUTIERREZ-CHAPIN, as husband and wife and Debtors in Possession ("Chapin"), ROBERT E. KOVACEVICH, an individual ("Kovacevich"), JOHN MURRAY, an individual ("Murray"), the ESTATE OF CHRISTINA LEAF (the "Estate"), AMERICAN LUTHERAN CHURCH, a nonprofit organization ("ALC"), JERILYN KLUNGTVEDT, an individual ("Klungtvedt"), KAREN SAXOWSKY, an individual ("Karen"), JOHN C. WAGNER, an individual ("John"), DANIEL C. WAGNER, an individual ("Daniel"), LYNETTE J. BREKKE, an individual ("Brekke"), DONALD WAGNER, an individual ("Donald"), LINDA WAGNER, an individual ("Linda"), JERYLN BIEREMA, an individual ("Bierema") and THE FOUNDATION FOR DEACONESS AND VALLEY HEALTHCARE, a nonprofit organization (the "Foundation"). ALC, Klungtvedt, John, Daniel, Brekke, Donald, Linda, Bierema and the Foundation are collectively referred to herein as the "Beneficiaries," and Leaf, Kovacevich, Murray, the Estate, Chapin and the Beneficiaries are collectively referred to herein as the "Settling Parties." This Agreement shall be effective as of the date that all Settling Parties have signed this Agreement and the Court has approved this Agreement (the "Effective Date").

RECITALS

A. Wilbur and Christina Leaf, husband and wife (the "Leafs"), died on December 20, 1993 and August 1, 1995, respectively. Leaf and Frank L. Chapin, a certified public accountant, served as co-personal representatives of the Estate and successor co-personal representatives of Wilbur Leaf's estate and Chapin also served as the accountant for the Estate and Wilbur Leaf's estate. Murray and Kovacevich rendered legal services to the Estates.

B. On May 17, 1996, Kovacevich, as attorney for the Estate, filed a petition to probate Christina Leaf's last will and testament *In the Matter of the Estate of Christina Leaf*, State of Washington Superior Court, Spokane County (the "Court"), Cause No. 96-4-00617-5 (the "Probate Proceedings"). Joseph Delay was subsequently appointed as legal counsel for the Estate.

C. On September 23, 1996, a check in the amount of \$748,809.14 payable to Estate was issued to Chapin and Leaf by New York Life Insurance Company, which proceeds represented life insurance proceeds on life of Christina Leaf. Leaf and Chapin subsequently endorsed the check for deposit into the Estate's bank account. However, Chapin deposited the check into his corporation's bank account, and subsequently made loans to various entities owned by Chapin.

D. On June 24, 2001, the Court entered an order (the "Security Order") requiring, among other things, Leaf and Chapin to post security in the amount of \$1,250,000, restricting any transaction in the Estate's assets without the approval of the Court and holding Chapin in contempt. On February 22, 2002, Chapin filed a Chapter 11 Reorganization with the United

States Bankruptcy Court for the District of Idaho under Cause No: 02-20218 (the "Chapin Bankruptcy").

E. On October 29, 2001, the Beneficiaries filed a civil complaint against Leaf and Chapin in *American Lutheran Church, et. al., vs. Chapin, et. al.*, State of Washington Superior Court, Spokane County, Cause No. 01-206413-9 (the "Civil Proceedings"), alleging causes of action against Leaf and Chapin based upon breach of fiduciary duties, negligence, conversion, the tort of outrage and fraud. Judgment in the amount of \$915,689.07 was entered by the Court against Leaf on October 18, 2002, Judgment No. 02907325-5 (the "Judgment").

F. The Judgment is secured by a security interest in certain of Leaf's real estate holdings granted to the Beneficiaries pursuant to an order (the "Judgment Lien Order") issued by the Court on April 23, 2002 in the Civil Proceedings.

G. On October 25, 2002, Leaf filed a Notice of Appeal ("Appeal") to the Court of Appeals Division III in Spokane, Washington (the "Appellate Court"), appealing the Court's Judgment (the "Appellate Proceedings").

H. On December 10, 2001, Leaf filed a Third Party Complaint in the Civil Proceedings alleging a claim for contribution against Chapin, Kovacevich and Murray for any judgment entered against Leaf arising out of the probate of the Wilbur and Christina Leaf Estates.

I. The Estate, the Beneficiaries and Leaf are parties to Adversary Proceedings under Cause Nos. 02-6135, 02-6136 and 02-6137, respectively, pending before the Chapin Bankruptcy Court. The Estate filed its Complaint to Determine Non-Dischargeability of Debt with the Bankruptcy Court on June 4, 2002 (the "Estate Complaint"). The Beneficiaries filed their Complaint to Determine Non-Dischargeability of Debt with the Bankruptcy Court on June 4, 2002 (the "Beneficiary Complaint"). Leaf filed his Complaint to Determine Non-Dischargeability of Debt with the Bankruptcy Court on June 4, 2002 (the "Leaf Complaint").

J. Chapin has filed third party Complaints against Kovacevich in the Adversary Proceedings, numbers 02-6135, 02-6136 and 02-6137 alleging negligence in advice to the personal representatives of the Estate of Wilbur Leaf and in overseeing the marshalling and distribution of Wilbur Leaf Estate assets.

K. Kovacevich is listed as creditor of the Chapin estate in the amount of \$79,330.00 for unpaid attorney fees. On June 13, 2002 Kovacevich filed two proofs of claim: one for \$79,330.46 for attorney's fees and one for \$1,500,000.00 for reimbursement, damages, etc. relating to the leaf Estates.

L. The Settling Parties have met and conferred in good faith to discuss all claims and all parties have the assistance of counsel.

M. On February 4, 2003, the Estate, Beneficiaries, Leaf, Kovacevich and Murray, through mediation, agreed upon the primary terms of a tentative Settlement Agreement. While a

full and final Settlement Agreement has not been signed by the parties, a Settlement Agreement Summary has been prepared, expressing agreement to the most significant aspects of the Settlement Agreement. The parties are currently finalizing the full Settlement Agreement and attempting to implement the terms thereof.

N. In order to efficiently proceed with the full settlement of, all issues among the parties, at this time the parties desire to enter into this Agreement, which address only the terms of the settlement of the claims by and against Kovacevich and Murray. The Settlement Agreement pertaining to the claims against Leaf will be finalized at a later date.

O. The parties understand that this Agreement will need final approval by the Court; however, the parties intend to expedite seeking such approval. The parties further intend that this Agreement is specifically enforceable as a contract.

AGREEMENTS

In compromise and settlement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Settling Parties agree as follows:

1. Settlement.

Settlement by Kovacevich. On the Effective Date, Kovacevich shall pay to Joseph P. Delay, or his designee, on behalf of and in trust for the Beneficiaries, the aggregate sum of \$250,000.00 (the "Kovacevich Settlement Payment") by cash, check or wire transfer. Such payment, pursuant to RCW 4.22.040, shall be applied as a \$250,000.00 credit against the judgment entered against Leaf on October 18, 2002. Such amount of \$250,000 shall also reduce the amount of any judgment liens asserted by the Beneficiaries against the assets of Leaf.

2. Dismissal Orders. In consideration for the Kovacevich Settlement Payment, the Settling Parties agree to the following:

2.1 Dismissal of Civil and Probate Proceedings. Within five (5) business days of the Effective Date, the Settling Parties shall file with the Court a stipulation and order dismissing with prejudice Kovacevich and Murray and their respective marital communities from the Civil Proceedings and the Probate Proceedings, which stipulation and order shall be substantially in the form attached hereto as Exhibit F.

2.2 Agreed Order to Dismiss Claims Against Kovacevich. Within five (5) business days of the Effective Date, or as soon as practicable, the Settling Parties shall cause to be entered with the Bankruptcy Court an agreed order dismissing all of Chapin's claims against Kovacevich, which agreed order shall be substantially in the form attached hereto as Exhibit J, or shall otherwise be incorporated into an Order of Confirmation.

No Settling Party shall oppose any of the orders or motions set forth in this Section 2. No Settling Party shall file any objection to the foregoing orders or motions.

3. Claims of Kovacevich. In consideration for the Kovacevich Settlement Payment

and the mutual releases set forth below, the Settling Parties agree to the following:

3.1 Withdrawal of Claims Against Chapin and Consent to Confirmation of Plan. Kovacevich and Murray hereby absolutely, irrevocably and unconditionally withdraw any and all filed claims, affirms they have no unfiled claims or administrative claims, withdraw all ballots and consent to confirmation of the Plan of Reorganization that is pending before the Chapin Bankruptcy Court as of May 13, 2003.

3.2 Subject to Court approval of the settlement and after notice and hearing, Chapin shall dismiss the third party claims against Kovacevich in the Adversary Proceedings, number 02-6135, 02-6136 and 02-6137.

4. Mutual Release. The Settling Parties acknowledge and agree that, except as set forth herein, this Agreement shall constitute a full and final settlement, release and discharge of all known and unknown claims each party has against Kovacevich and Murray, and that Kovacevich and Murray may have against any other party to this Agreement. Specifically, Leaf, Chapin, the Estate and Beneficiaries do hereby release and forever discharge Kovacevich and Murray, their spouses, marital communities, firms and attorneys from any and all claims, demands damages, liabilities, obligations, actions and causes of action, arising from any act or occurrence up to the present time. Including, but not limited, to those matters raised in the pleadings filed in the Civil Proceedings and any Adversary Proceeding in the Chapter 11 Bankruptcy Proceedings (including those for attorney's fees or any other damages).

Kovacevich and Murray do hereby release and forever discharge Leaf, Chapin, the Estate and Beneficiaries, their spouses, marital communities, firms, directors, officers, employees, agents subsidiaries, affiliates and attorneys from any and all claims, demands damages, liabilities, obligations, actions and causes of action, arising from any act or occurrence up to the present time. Including, but not limited, to those matters raised in the pleadings filed in the Civil Proceedings and any Adversary Proceeding in the Chapter 11 Bankruptcy Proceedings (including those for attorney's fees or any other damages).

The parties authorize and direct their attorneys, upon full performance of this Agreement by all parties, to take all necessary action to have this Agreement approved by the Court in the above-mentioned Probate Proceedings, Civil Proceedings, and Chapin Bankruptcy Court Proceedings, including a full dismissal, with prejudice, of all pending claims, counterclaims, and causes of action by and against Kovacevich and Murray in the Civil Proceedings, Probate Proceedings, and Chapin Bankruptcy Proceedings.

5. Claims by the Estate and Beneficiaries Against Leaf Are Unaffected. Nothing in this Settlement Agreement shall diminish in any way the judgment or pending claims the Beneficiaries and the Estate have against Leaf. However, the Kovacevich settlement payment shall be applied as a \$250,000 credit against the judgment entered against Leaf on October 18, 2002.

6. Court Approval. This Agreement shall not be effective unless and until the Court and the Chapin Bankruptcy Court enter orders approving this Agreement. The Settling

Parties agree to file papers with the Courts seeking approval of the Agreement within five (5) business days of this Agreement being fully executed.

7. **Confidentiality.** Except as required for obtaining approval of the Courts, the Settling Parties agree that the terms of this Agreement shall be and will remain confidential, which precludes any disclosure, except in response to a Court order or a valid legal process, and except for disclosure for legitimate business reasons to legal, business, banking or tax representatives of the Settling Parties. It is understood and agreed that the Kovacevich financial statements referred to herein 1) are, and will remain, subject to an existing and continuing confidentiality agreement 2) contain confidential information, which shall remain confidential, and 3) shall be filed under seal if presented to, or filed with, any tribunal or any court, or in response to legal process of any kind and for any purpose.

8. **Attorneys' Fees Regarding Enforcement of This Agreement.** In any proceeding brought to enforce this Agreement or to determine the rights of the parties under this Agreement, the prevailing party shall be entitled to collect, in addition to any judgment awarded by a court, a reasonable sum as attorneys' fees and all costs and expenses incurred in connection with such a lawsuit, including attorneys' fees, expenses of litigation, and costs of appeal. For purposes of this Agreement, the prevailing party shall be that party in whose favor final judgment or award is rendered or who substantially prevails, if both parties are awarded judgment. The term "proceeding" shall mean and include arbitration, administrative, bankruptcy, and judicial proceedings including appeals.

9. **Representations.**

9.1 **Authority.** Each Settling Party represents and warrants that it, he or she has the full power and authority to enter into this Agreement and to perform all transactions, duties, and obligations herein set forth. Each signatory to this Agreement who signs on behalf of a Settling Party represents and warrants that he or she has the authority to sign on behalf of that Settling Party.

9.2 **Advice of Counsel.** Each Settling Party represents and warrants that: (i) it, he or she is represented by competent counsel with respect to this Agreement and all matters covered by this Agreement; (ii) that they have been fully advised by their respective counsel with respect to their rights and obligations and with respect to the legal effect and execution of this Agreement; and (iii) they authorize and direct their respective attorneys of record to execute such papers, and to take such other action, as is reasonably necessary and appropriate to effectuate the terms of this Agreement.

9.3 **Certification by Kovacevich.** Kovacevich will sign a separate certification (modeled on the certifications required of Chief Executive Officers by Sarbanes Oxley, 18 U.S.C. 1350) that the financial statements and other financial information produced in this case by him regarding his net worth, based on his knowledge, fairly present all material respects of his financial condition at or near the date contained in the reports, and that since the date of the reports, his financial condition has not materially changed.

10. **Notices.** All notices, requests, demands and other communication hereunder shall be in writing or by electronic means producing a written record (facsimile machine, telex, telecopier or telegraph) personally delivered or mailed by registered or certified United States mail, return receipt requested, first-class postage prepaid, or by nationally recognized overnight courier, effective upon personal delivery, or one (1) day after mailing if by overnight carrier, or three (3) days after mailing if by United States mail, addressed as follows:

If to Leaf: Dr. Frederick Leaf
8544 Sand Point Way NE
Seattle, WA 98115

With copies to:

John Rizzardi
Cairncross & Hempelmann, P.S.
524 2nd Avenue, #500
Seattle, WA 98104-2323

If to the Estate: Joseph P. Delay
601 West Main Street, Suite 1212
Spokane, WA 99201

If to the Beneficiaries: William J. Schroeder
Paine Hamblen Coffin Brooke & Miller, LLP
717 West Sprague, Suite 1200
Spokane, WA 99201

And

Michael J. Church
Stamper Rubens Stocker and Smith, P.S.
720 West Boone, Suite 200
Spokane, WA 99201

If to Chapin: Bruce Anderson
Elsaesser Jarzabck Anderson Marks Elliott &
McHugh, Chtd.
1400 Northwood Center Court, Suite C
Coeur d'Alene, Idaho 83814

If to Kovacevich: Robert Kovacevich
4603 S. Pittsburg
Spokane, WA 99223

If to Murray: John Murray

Attorney at Law
3405 S. Altamont St.
Spokane, WA 99223-4637

Notice of a change of address shall be given by written notice in the manner detailed above.

11. **No Admission of Liability.** The performance of any covenants contained herein, nor anything contained or incorporated herein shall not be deemed, nor shall the negotiation, execution and performance of this Agreement constitute, any admission or concession of liability or wrongdoing on the part of any Settling Party, or any other form of admission with respect to any matter, thing or dispute whatsoever. Any such liability or wrongdoing is expressly denied.

12. **Binding Effect.** The covenants, agreements, representations, and warranties contained herein shall extend to and be obligatory upon the successors and assigns of the respective parties hereto.

13. **Amendment.** This Agreement may be amended only by written instrument executed by all Settling Parties.

14. **Entire Understanding.** This Agreement, and the documents incorporated herein, embodies the entire agreement among the Settling Parties with relation to the transactions contemplated hereby. There have been and are no covenants, agreements, representations, warranties, or restrictions among the Settling Parties with regard thereto other than those set forth herein or for which there has been provision made herein. No waiver or consent to any breach or other default in the performance of any of the terms of this Agreement shall be deemed to constitute a waiver of any subsequent breach of the same or any other term or condition hereof.

15. **Counterparts.** This Agreement may be executed in counterpart originals, each of which is equally admissible in evidence and shall be deemed to be one and the same instrument. This Agreement shall not take effect until all Settling Parties have signed a counterpart.

16. **Time of Essence.** Time is of the essence of this Agreement.

17. **Severability.** The unenforceability, invalidity, illegality, or termination of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal and shall not terminate this Agreement or impair the rights or obligations of any Settling Party.

18. **Captions.** Section or paragraph titles or other headings contained in this Agreement are for convenience only and shall not be a part of this Agreement, or considered in its interpretation.

19. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Washington. In the event of any suit, action or proceeding arising from or relating to this Agreement, or the transactions contemplated hereby, each Settling Party irrevocably and unconditionally submits, for itself and

its property to the exclusive jurisdiction of the Court, set forth above.

20. Cooperation. The Settling Parties agree to cooperate in the performance of this Agreement and to do all things (and to so instruct their respective attorneys) reasonably required to carry out the intent of this Agreement.

DATED as of the date first above written.

Signature Pages and Exhibits

To be provided

PROPOSED ORDER

1 John R. Rizzardi, WSBA No. 9388
2 Admitted Pro Hac Vice
3 Cairncross & Hempelmann, P.S.
4 524 Second Avenue, Suite 500
5 Seattle, WA 98104-2323
6 Facsimile: (206) 587-2308
7 Telephone: (206) 587-0700

The Honorable Terry L. Myers
Chapter 11
Hearing Date: May 27, 2003
Hearing Time: 9:00 a.m. PDT
10:00 a.m. MDT

8 UNITED STATES BANKRUPTCY COURT FOR THE
9 DISTRICT OF IDAHO

10 In re:

11 FRANK L. CHAPIN and
12 SYDNEY L. GUTIERREZ-CHAPIN,
13 Debtors.

NO. 02-20218

ORDER APPROVING SETTLEMENT

14
15 THIS MATTER having come for hearing before this Court on the Frederick A. Leaf's
16 ("Leaf") Motion for Order Approving Settlement (the "Motion"); the Court having reviewed the
17 pleadings and finding that the Settlement Agreement and Release entered into by and between
18 Leaf and Robert Kovacevich is a fair and equitable settlement, which benefits the estate by
19 reducing the claims of the Heirs of the Estate of Christina Leaf and that the removal of
20 Kovacevich's claims against this estate is of significant benefit to this estate; now, therefore, it is
21 hereby

22 ORDERED that the Settlement Agreement and Release entered into by and between the
23 Leaf and Robert Kovacevich, attached as **Exhibit A** to the Motion, is approved; and

ORDER APPROVING SETTLEMENT - 1

Cairncross & Hempelmann, P.S.
Law Offices
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
Phone: 206-587-0700 • Fax: 206-587-2308

1 IT IS FURTHER ORDERED that after such time as the necessary parties obtain approval
2 from the probate court for the Estate of Christina Leaf, that Robert Kovaccvich will pay the
3 Estate of Christina Leaf the sum of \$250,000, thus reducing the claims of the Heirs of the Estate
4 of Christina Leaf, the personal representative for the Estate of Christina Leaf and Dr. Frederick
5 A. Leaf claims in this estate by \$250,000; and

6 IT IS FURTHER ORDERED that the claims of Robert Kovacevich filed in this
7 proceeding for \$1,500,000 and \$79,330.46 are deemed withdrawn, and any ballots cast pursuant
8 to the pending Plan of Reorganization are deemed withdrawn and nullified.

9
10 DATED this ____ day of May, 2003.

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Hon. Terry L. Myers
United States Bankruptcy Court Judge

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15 Presented by:

16 CAIRNCROSS & HEMPELMANN, P.S.

17
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John R. Rizzardi WSBA No. 9388
19 Admitted Pro Hac Vice
20 Attorneys for Frederick A. Leaf, M.D.

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ORDER APPROVING SETTLEMENT - 2

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