

00000000  
0000-5 210:27

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

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

The Honorable Terry L. Myers  
Chapter 11  
Hearing Date: June 9, 2003  
Hearing Time: 2:00 p.m.

UNITED STATES BANKRUPTCY COURT FOR THE  
DISTRICT OF IDAHO

In re:

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

NO. 02-20218

PRE-CONFIRMATION REPORT AND  
MEMORANDUM IN SUPPORT OF  
CONFIRMATION OF CREDITOR'S PLAN  
OF REORGANIZATION

Frederick A. Leaf, M. D., a plan proponent, ("Leaf"), by and through his attorneys  
Cairncross & Hempelmann, P.S., hereby submits his Pre-Confirmation Report and Memorandum  
in Support of Confirmation of Leaf's Proposed Plan of Reorganization (the "Plan"). Leaf is  
pleased to advise the Court that it has received creditor approval of the Plan. Leaf has provided a  
Summary of Ballots under separate filing.

**I. INTRODUCTION**

Leaf's Disclosure Statement, referencing the Plan, was approved by the Court pursuant to  
an order signed on April 1, 2003. In accordance with such Order, the Disclosure Statement,  
together with the Plan, notice of confirmation hearing regarding the Plan, and the Ballots, were

(00150922.DOC;2)

PRE-CONFIRMATION REPORT AND  
MEMORANDUM IN SUPPORT OF  
CONFIRMATION OF CREDITOR'S PLAN OF  
REORGANIZATION - 1

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

ORIGINAL

1 mailed by Leaf to all creditors, interest holders and other parties in interest in this case, in full  
2 compliance with the Court's order and the requirements of Fed. R. Bankr. P. 3017(d).

3 The Order approving the Disclosure Statement set May 2, 2003 as the last day for filing  
4 and serving written objections to confirmation of the Plan pursuant to Fed. R. Bankr. P.  
5 3020(b)(1). Three objections were timely filed by Bonner County, the Internal Revenue Service  
6 and certain beneficiaries of the Estate of Paul A. Van Schravendyk. By the time of or at the  
7 Confirmation Hearing, it is anticipated that these three objecting parties will have withdrawn  
8 their objections to confirmation of the Plan. Leaf has received no other objections to the Plan.

9 The Court also fixed May 2, 2003 as the last day for the filing of ballots. A Summary of  
10 Balloting on Chapter 11 Plan is filed in conjunction with this Report.

11 As allowed by the Plan, Leaf intends to advocate the confirmation of the Plan with or  
12 without the joint participation of the Debtor. As indicated above and as summarized in greater  
13 detail below, unsecured creditors have voted overwhelmingly in favor of the Plan.

14 The Plan complies with all statutory requirements as noted below.

15 **II. THE DEBTOR'S PLAN COMPLIES WITH EACH OF THE REQUIREMENTS**  
16 **FOR CONFIRMATION SET FORTH IN 11 U.S.C. § 1129(a)**

17 11 U.S.C. § 1129 contains the standards for confirmation of a plan under Chapter 11. 11  
18 U.S.C. § 1129 identifies thirteen prerequisites of reconfirmation of a Plan. One provision, 11  
19 U.S.C. § 1129(a)(8), need not be satisfied if the requirements of 11 U.S.C. § 1129(b) are met. 11  
20 U.S.C. § 1129(b) sets forth the requirements to "cramdown" a non-consenting impaired class of  
21 creditors. But if each of the thirteen confirmation requirements under 11 U.S.C. § 1129(a) is  
22 satisfied, the Court shall confirm the Plan without considering 11 U.S.C. § 1129(b).

1 Here, all of the conditions set forth under 11 U.S.C. § 1129(a) are satisfied. Leaf submits  
2 this statement as to how each of the requirements of 11 U.S.C. § 1129(a) is satisfied. Based on  
3 the Plan's satisfaction of the conditions under 11 U.S.C. § 1129(a) in their entirety, Leaf requests  
4 that this Court confirm the Plan as proposed in the confirmation order.

5 **A. 11 U.S.C. § 1129(a)(1) - Chapter 11 Compliance of Plan**

6 § 1129(a)(1) provides that the Plan may be confirmed only if it complies with the  
7 applicable provisions of Chapter 11. Bankruptcy Code sections 1122 and 1123 are the  
8 substantive provisions which are most relevant in satisfying section 1129(a)(1). Section 1122  
9 governs classification of claims and interests and section 1123 sets forth the provisions that are  
10 require to be included, and those that may be included, in a plan of reorganization. 11 U.S.C. §  
11 1122 and 1123. As is reflected by the Plan, Leaf has satisfied its burden under 11 U.S.C. §  
12 1129(a)(1).

13 **B. 11 U.S.C. § 1129(a)(2) - Chapter 11 Compliance by Proponent**

14 § 1129(a)(2) provides that the Plan may be confirmed only if the proponent of the Plan  
15 has complied with the applicable provisions of Chapter 11. The most important of these  
16 provisions are set forth in 11 U.S.C. § 1125. § 1125 provides that acceptances or rejections of a  
17 Plan may not be solicited after the commencement of a Chapter 11 case unless, at the time of or  
18 before such solicitation, there is transmitted to the party being solicited the plan or a summary of  
19 the Plan and a written disclosure statement approved by the Court as containing adequate  
20 information. Leaf has complied with the requirements of § 1125 in that all creditors received the  
21 same Disclosure Statement which was approved by the Court as containing adequate  
22 information.

1 **C. 11 U.S.C. § 1129(a)(3) - Good Faith**

2 § 1129(a)(3) requires that the Plan be proposed in good faith and not by any means  
3 forbidden by law. To comply with the good faith requirement, the Plan must be intended to  
4 achieve a result consistent with the objectives of the Bankruptcy Code. In re Corey, 892 F.2d  
5 829, 835 (9<sup>th</sup> Cir. 1989).

6 The Plan provides for payment to classes of Allowed Claims consistent with the priority  
7 scheme provided in the Bankruptcy Code, except as consented to by affected parties and  
8 represents Leaf's good faith effort to propose a plan for the liquidation of the Debtors' assets.  
9 Therefore, good cause exists for this Court to find that the Plan was proposed in good faith and  
10 not by any means forbidden by law.

11 **D. 11 U.S.C. § 1129(a)(4) - Payment of Services**

12 § 1129(a)(4) requires that all payments made or promised by the proponent of the Plan to  
13 any person for services or for costs and expenses in connection with the case, or in connection  
14 with the plan and incident to the case, be approved by the Court, or be subject to the approval of  
15 the Court. The Plan allows for payment of administrative expenses of the kind specified in 11  
16 U.S.C. § 507(a)(1), which includes compensation awarded by the Court to professional persons.  
17 The Debtors have not and will not make payments to professionals without an order of the Court  
18 approving such payments. No administrative claimant has filed an objection to confirmation.<sup>1</sup>

19 **E. 11 U.S.C. § 1129(a)(5) - Identity of Insider Employees**

20 § 1129(a)(5) requires that the Plan proponent disclose the identity and affiliations of any  
21 insider who will be employed or retained by the reorganized debtor, and the nature of any  
22 compensation for such insiders. This provision is not applicable to these proceedings

23 <sup>1</sup> The IRS has objected to confirmation, but it is believed this objection will be resolved at or prior to confirmation.  
(00150922.DOC;2)

1 **F. 11 U.S.C. § 1129(a)(6) - Regulatory Commissions**

2 § 1129(a)(6) requires that any governmental regulatory commission with jurisdiction over  
3 the rates of the Debtor approve any rate change provided for by the Plan. § 1129(a)(6) is  
4 inapplicable in that no such regulatory approval is required in this case.

5 **G. 11 U.S.C. § 1129(a)(7) - Best Interest of Creditors Test**

6 § 1129(a)(7) requires that, with respect to each impaired class of claims or interests, each  
7 holder of a claim or interest in such class accept the plan, or receive under the Plan, property of a  
8 value as of the effective date of the Plan which is not less than the amount which such holder  
9 would receive if the debtor's assets were liquidated under Chapter 7 of the Bankruptcy Code. As  
10 the claims and ballots of Robert Kovacevich have now been withdrawn by reason of the  
11 Kovacevich settlement, all holders of claims, with the exception of one unsecured creditor  
12 asserting a \$20,000 claim, have accepted the Plan.

13 **H. 11 U.S.C. § 1129(a)(8) - Acceptance of the Plan**

14 § 1129(a)(8) requires that, with respect to each class of claims or interests, each holder of  
15 a claim or interest in such class accepts the Plan or is not impaired. All classes of creditors have  
16 now accepted the Plan.

17 **I. 11 U.S.C. § 1129(a)(9) - Priority Claims Treatment**

18 § 1129(a)(9) requires that priority claims be treated in accordance with the specific  
19 provisions of § 1129(a)(9), unless the holder of a priority claim consents to a less favorable  
20 treatment. The requirements of § 1129(a)(9) have been met in that the holders of priority claims  
21 have agreed to either the Plan provisions or the terms of the Confirmation Order, or both.  
22  
23

1 A concern may be raised by this Court if the Debtors fail to remedy their most recently  
2 breached agreement to file all of their delinquent tax returns by May 31, 2003. As of the date of  
3 this pleading, the returns had not been filed.

4 Leaf is aware that Local Rule 1007.3 requires the filing of tax returns in Chapter 12 and  
5 13 proceedings, but it appears to not apply to Chapter 11 proceedings. Article V of the Plan  
6 specifies the powers of the Liquidating Trustee. Among these powers, the Liquidating Trustee  
7 has the power to fully administer claims. See: Paragraphs 5.5.5 and 5.5.6. Leaf would propose  
8 at the time of confirmation that the powers of the Liquidating Trustee include the right to file  
9 claims and any tax returns for the Debtors in this proceeding. In light of the Debtors' regular  
10 failures to adhere to their responsibilities in this proceeding, Leaf submits approval of the  
11 liquidating Plan and the immediate appointment of a Liquidating Trustee will be in the best  
12 interests of the creditors, including the holders of priority claims. The Liquidating Trustee will  
13 be empowered to perform the various obligations of the Debtors, and the creditors of this estate  
14 will be benefited.

15 **J. 11 U.S.C. § 1129(a)(10) - Consenting Impaired Class**

16 § 1129(a)(10) requires that, if a class of claims is impaired by the Plan, at least one class  
17 of claims that is impaired by the Plan has accepted the Plan, determined without including any  
18 acceptances of the Plan by any insider. The requirements of § 1129(a)(10) have been satisfied in  
19 this case in that Classes 1b, 3a and 3b have accepted the Plan.

20 **K. 11 U.S.C. § 1129(a)(11) - Feasibility**

21 § 1129(a)(11) requires that the Court determine that confirmation of a Plan is not likely to  
22 be followed by the liquidation, or the need for further financial reorganization, of the Debtors.

23

1 As the Plan proposed the full liquidation of the Debtors, and as the post-petition income of the  
2 Debtors is not property of this estate, this requirement is satisfied.

3 **L. 11 U.S.C. § 1129(a)(12) - Payment of Fees**

4 § 1129(a)(12) requires that all fees payable under 28 U.S.C. § 1930, as determined by the  
5 Bankruptcy Court at the hearing on the confirmation of the Plan, have been paid, or that the Plan  
6 provide for the payment of all such fees, on the effective date of the Plan.<sup>2</sup> The requirements of  
7 § 1129(a)(12) have been met in this case in that the Plan provides that all such fees will be paid.

8 **M. 11 U.S.C. § 1129(a)(13) - Retiree Benefits**

9 § 1129(a)(13) requires that the Plan provide for the continuation, after the effective date  
10 of the Plan, of the payment of all retiree benefits. The requirements of § 1129(a)(13) are not  
11 applicable in this case in that the Debtors are not obligated to make any payments for retiree  
12 benefits.

13 **III. RESPONSE TO FILED OBJECTIONS**

14 The Internal Revenue Service, Bonner County and certain beneficiaries of the Estate of  
15 Paul A. Van Schranvendyk filed objections to Leaf's Plan. Bonner County has withdrawn its  
16 objection in consideration for the proposed language in the Confirmation Order. The  
17 beneficiaries are believed to now support the confirmation of the Plan as their right to assert both  
18 a claim and a non-discharge proceeding has been approved. The IRS is believed to support the  
19 concept of liquidation, and is further anticipated to be addressing this Court concerning the status  
20 of the tax returns. Should any objecting party assert their objection at the time of the  
21 confirmation hearing, Leaf reserves his right to respond to same.

22 <sup>2</sup> If needed, Leaf may propose at confirmation that the Effective Date be modified in the Confirmation Order so that  
23 the Liquidating Trustee can obtain funds from the Debtors' estate to make any needed payments. It is believed the  
only amount due is \$250.00.

{00150922.DOC;2}

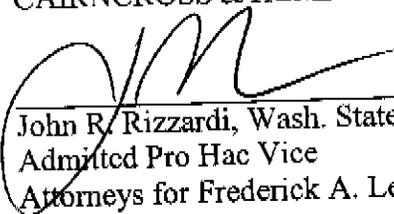
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**IV. CONCLUSION**

Based on the above, the proposed Plan of Reorganization satisfies the requirements of the Bankruptcy Code and should be confirmed. All classes under the Plan have voted to accept the Plan. There should be no need for this Court to consider the requirements of 11 U.S.C. § 1129(b). Therefore, Leaf respectfully requests this Court enter the proposed order confirming the Plan and approving the various agreements and settlements that are set forth in the proposed Confirmation Order.

DATED this 5th day of June, 2003.

CAIRNCROSS & HEMPELMANN, P.S.

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