

OGDEN
MURPHY
WALLACE

P. L. L. C. ATTORNEYS AT LAW

2100 Westlake Center Tower • 1601 Fifth Avenue • Seattle, WA 98101-1586 • (206) 447-7000 • Fax (206) 447-0215

Steven A. Reisler

FOR SETTLEMENT PURPOSES ONLY

June 22, 1998

Douglas C. Rasmussen
Pamela Salgado
Bullivant Houser Bailey, P.C.
2400 Westlake Office Tower
1601 Fifth Avenue
Seattle, WA 98101
Attorneys for
Steven W. Fisher

Peter A. Deming
Inslee, Best, Doezie & Ryder, P.S
Rainier Plaza, Suite 1900
777 - 108th Ave. N.E.
Bellevue, WA 98009
Attorneys for Kevin Iverson

Kurt Balmer
Attorney at Law
209 Westlake Avenue N.
Seattle, WA 98109
Attorney for Grant L. Anderson

Thomas Oldfield
Sloan Bobrick & Oldfield
2601 North Alder St.
Tacoma, WA 98407
Attorneys for
William Hamilton

Re: Hoffman Trust and Estate

Dear Counsel:

We have studied the material provided by Steve Fisher, the current trustee of the Hoffman Trust, pursuant to the action for an accounting filed by our client (the "Accounting"). We have also examined the materials and testimony made public during the Commission on Judicial Conduct hearing *In re the Honorable Grant Anderson*, as well as all of the information in the possession of our client relative to this matter.

Based on our review of the facts of testimony, we have reached these conclusions about the current and former trustees' and personal representatives' administration of the Hoffman Trust and Estate:

1. Messrs. Fisher and Anderson failed to disclose material information regarding the administration of the Hoffman Trust and Estate to the beneficiaries, i.e., the

EXHIBIT J COPY

June 22, 1998

Page 2

nature and existence of in excess of \$125,000 in management fees, the agreement to reduce/adjust the price of the sale of the Pacific Lanes business (by \$90,000), the receipt of fees and commissions on or related to the sale of Trust and Estate assets (\$81,000) and the sale of Trust and/or Estate assets to interested partners and employees in their law firm (the dollar value of which has not yet been accurately ascertained).

2. Messrs. Fisher and Anderson have breached their common law and statutory duties as trustees, including their duties to provide an annual accounting, disclose and account for all fees, not to self deal, terminate the trust, disclose material information, and to comply with the *Allard* statute.
3. Mr. Anderson, as trustee, knew or should have known of fraudulent acts or practices of the personal representative in the administration of the Hoffman Trust and Estate, and had a duty to pursue redress for those acts on behalf of the Trust and Estate.
4. Mr. Fisher knew or should have known of fraudulent acts or practices of the predecessor trustee and predecessor personal representative in the administration of the Hoffman Trust and Estate, and had a duty to pursue redress for those acts on behalf of the Trust and Estate.
5. Messrs. Fisher and Anderson breached the standard of care and ethical standards applicable to attorneys in their capacity as attorneys at various times for the Hoffman Trust, Hoffman Estate and various related corporate entities.
6. Messrs. Fisher and Anderson are liable for the disgorgement of some or all of the fees received from the Hoffman Trust and Estate and their related corporations (\$200,000).
7. Mr. Kevin Iverson breached his professional duties as a certified public accountant and knowingly made material misrepresentations regarding the financial affairs of the Hoffman Trust, Hoffman Estate and related corporate entities. Mr. Iverson and/or his accounting firm are liable for disgorgement of some or all of his related fees and for damages to the Hoffman Trust in a dollar value of which has not yet been accurately ascertained.
8. Mr. Grant Anderson sold the business, land and buildings of Pacific Lanes to an insider for a minimum of \$500,000 less than fair market value, amounts which Messrs. Anderson, Fisher and/or Hamilton may be required to pay in damages to the Hoffman Trust in order to make it whole. Independently, Mr. Fisher sold the land and buildings of Pacific Lanes for a minimum of \$400,000 less than fair

June 22, 1998
Page 3

market value without an independent appraisal or sale in an open-market transaction. However, in calculating our total damages we are not double counting the value of the land.

9. Messrs. Anderson and Fisher, as a result of violating their statutory and common law duties as fiduciaries, and for breaching their ethical duties as attorneys, are liable for all of Ocean Beach Hospital's costs and attorneys' fees incurred in pursuing this matter (currently, - \$70,000).

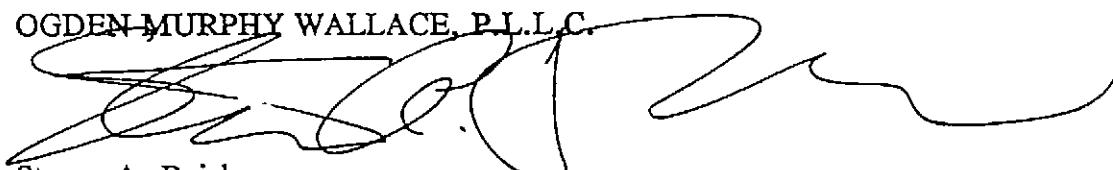
The aggregate potential liability of Steve Fisher, Judge Anderson, William Hamilton and Kevin Iverson exceeds one million dollars. You and your clients may or may not agree with all or some of these observations and conclusions. However, all of you have had access to all of this same information as well as to the applicable body of law regarding fiduciaries, attorneys, and insiders.

Our client is well aware of the vagaries involved in this type of case, as we know your clients, too, are aware of their risks. Our client also understands that it may ultimately receive less than its total actual damages. Although, our client is committed to pursuing this matter to resolution, we recognize that a bird in hand is worth two in the bush. Therefore, we will accept \$750,000, plus payment of all of our costs and attorney fees incurred to date, paid to the Hoffman Trust in settlement of our clients' claims.

If you want to settle this matter as set forth above, individually or collectively, contact us at your earliest convenience. If we have not resolved this matter by July 22, 1998, we will file suit.

Very truly yours,

OGDEN MURPHY WALLACE, P.L.L.C.



Steven A. Reisler

cc: Pam Ott
Stanbery Foster, Jr.
Douglas E. Albright
Donald W. Black

1
2
3
4 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
5 IN AND FOR PIERCE COUNTY
6
7

8 PACIFIC COUNTY HOSPITAL DISTRICT
9 NO. 3, d/b/a OCEAN BEACH HOSPITAL,
10 a Washington municipal corporation,

11 Plaintiff,

12 v.

13 GRANT L. ANDERSON AND PATSY L.
14 ANDERSON, husband and wife and the
15 marital community comprised thereof,
16 STEPHEN W. FISHER AND JANE DOE
17 FISHER, husband and wife and the marital
18 community comprised thereof, WILLIAM L.
19 HAMILTON AND ZOE A. HAMILTON,
20 husband and wife and the marital community
21 comprised thereof, ROBYN L. LINDSAY
22 and JOHN DOE LINDSAY, wife and
23 husband and the marital community
24 comprised thereof, DAVID R. TUELL, JR.
25 and JANE DOE TUELL, husband and wife
26 and the marital community comprised
27 thereof, RICHARD L. HOEFEL and JANE
28 DOE HOEFEL, husband and wife and the
29 marital community comprised thereof, GARY
30 L. FRIND AND JANET L. FRIND, husband
31 and wife and the marital community
32 comprised thereof, KEVIN A. IVERSON
33 AND THERESA B. IVERSON, husband and

34 NO.

35 COMPLAINT FOR NEGLIGENT
36 MISREPRESENTATION,
37 FRAUDULENT MISREPRESENTA-
38 TION, NEGLIGENCE, BREACH OF
39 FIDUCIARY DUTIES, FRAUDULENT
40 FAILURE TO DISCLOSE,
41 VIOLATIONS OF CONSUMER
42 PROTECTION ACT, UNJUST
43 ENRICHMENT, CONSTRUCTIVE
44 TRUST, VIOLATIONS OF CHAPTERS
45 11.48, 11.98, 11.100, 11.104, AND
46 11.106 RCW, and BREACH OF
47 ETHICAL DUTIES

1 wife and the marital community comprised
2 thereof, FISHER & LINDSAY, P.L.L.C., a
3 Washington professional limited liability
4 company, TUELL, ANDERSON, FISHER &
5 KOPPE, a Washington partnership, FRIND
6 & IVERSON, a Washington professional
7 services corporation, PACIFIC
8 RECREATION ENTERPRISES, INC., a
9 Washington corporation, JOHN ROE AND
JANE ROE 1-5, individuals, husbands and
wives and the marital communities comprised
thereof, ABC INC., an unknown Washington
corporation, XYZ LLC, an unknown
Washington limited liability company, and
BLACK & WHITE, an unknown Washington
partnership,

10 Defendants.

11 COMES NOW plaintiff, Pacific County Hospital District No. 3, d/b/a Ocean Beach Hospital,
12 ("Plaintiff") by and through its attorneys Steven A. Reisler, Donald W. Black and Ogden Murphy
13 Wallace, P.L.L.C., and alleges as follows:

14 **I. PARTIES AND VENUE**

15 1. Plaintiff is a Washington municipal corporation operating under Chapter 72.41 RCW
16 and doing business in Pacific County, Washington. Plaintiff was duly authorized and licensed to do
17 business as a hospital in Pacific County, Washington at all times material hereto.

18 2. Defendants Grant L. Anderson and Patsy L. Anderson are believed and therefore
19 alleged to be residents of Pierce County, Washington. Defendant Grant L. Anderson is a superior
20 court judge for Pierce County, Washington, and formerly practiced law in that county in the
21 partnership Tuell, Anderson, Fisher & Koppe. All acts performed by defendant Grant L. Anderson
22 were done on his own behalf and on behalf of his marital community.

23 3. Defendants Stephen W. Fisher and Jane Doe Fisher are believed and therefore alleged
24 to be residents of Pierce County, Washington. Defendant Stephen W. Fisher is an attorney

25 / / /

26 / / /

Law Offices of
OGDEN MURPHY WALLACE, P.L.L.C.
2100 Westlake Center
1601 Fifth Avenue
Seattle, Washington 98101-1686
(206) 447-7000/FAX: (206)447-0215

1 practicing law in the firm of Fisher & Lindsay in Pierce County, Washington. All acts performed
2 by defendant Steven W. Fisher were done on his own behalf and on behalf of his marital community.

3 4. Defendants William L. Hamilton and Zoe A. Hamilton are believed and therefore
4 alleged to be residents of Pierce County, Washington. Plaintiff further believes that defendant
5 William L. Hamilton is involved in various business enterprises in Pierce County, Washington,
6 including Pacific Lanes. All acts performed by defendant William L. Hamilton were done on his
7 own behalf and on behalf of his marital community.

8 5. Defendants Robyn L. Lindsay (formerly Robyn L. Koppe) and John Doe Lindsay are
9 believed and therefore alleged to be residents of Pierce County, Washington. Defendant Robyn L.
10 Lindsay is an attorney practicing law in the firm of Fisher & Lindsay in Pierce County, Washington.
11 All acts performed by defendant Robyn L. Lindsay were done on her own behalf and on behalf of
12 her marital community.

13 6. Defendants David R. Tuell, Jr. and Jane Doe Tuell are believed and therefore alleged
14 to be residents of Pierce County, Washington. Defendant David R. Tuell, Jr. is an attorney and
15 practices law in Pierce County, Washington. All acts performed by defendant David R. Tuell, Jr.
16 were done on his own behalf and on behalf of his marital community.

17 7. Defendants Richard L. Hoefel and Jane Doe Hoefel are believed and therefore alleged
18 to be residents of Pierce County, Washington. Defendant Richard L. Hoefel is an attorney and
19 practices law in King County, Washington. All acts performed by Richard L. Hoefel were done on
20 his own behalf and on behalf of his marital community.

21 8. Defendants Gary L. Frind and Janet L. Frind are believed and therefore alleged to be
22 residents of Pierce County, Washington. Defendant Gary L. Frind is a certified public accountant,
23 formerly of the firm Frind & Iverson, P.S. in Pierce County, Washington. All acts performed by
24 defendant Gary L. Frind were done on his own behalf and on behalf of his marital community.

25 9. Defendants Kevin A. Iverson and Theresa B. Iverson are believed and therefore
26 alleged to be residents of Pierce County, Washington. Defendant Kevin A. Iverson is a certified

Law Offices of
OGDEN MURPHY WALLACE, P.L.L.C.
2100 Westlake Center
1601 Fifth Avenue
Seattle, Washington 98101-1686
(206) 447-7000/FAX: (206)447-0215

1 public accountant, formerly of the firm Frind & Iverson, P.S. in Pierce County, Washington. All
2 acts performed by defendant Kevin A. Iverson were done on his own behalf and on behalf of his
3 marital community.

4 10. Defendant Fisher & Lindsay is a Washington professional limited liability company,
5 all members of which are engaged in the practice of law in Pierce County, Washington.

6 11. Tuell, Anderson, Fisher & Koppe is believed and therefore alleged to be a former
7 Washington partnership whose partners were defendants David R. Tuell, Jr., Grant L. Anderson,
8 Steven W. Fisher, and Robyn L. Koppe (now Lindsay) and that engaged in the practice of law in
9 Pierce County, Washington.

10 12. Defendant Frind & Iverson, P.S. is believed and therefore alleged to be a former
11 Washington professional services corporation, whose shareholders were defendant Gary L. Frind and
12 Kevin A. Iverson, that engaged in the practice of accounting in Pierce County, Washington.

13 13. Defendant Pacific Recreation Enterprises, Inc. is believed and therefore alleged to be
14 a Washington Corporation, duly authorized and licensed to do business in Pierce County, Washington
15 at all times material to this complaint, and whose sole shareholder is defendant William L. Hamilton.

16 14. Defendants John Roe and Jane Roe 1 - 5, individuals, husbands and wives and the
17 marital communities comprised thereof, are as of now unknown to Plaintiff but are believed and
18 therefore alleged to have committed one or more of the acts complained of herein.

19 15. Defendant ABC Inc., a Washington corporation is as of now unknown to Plaintiff but
20 is believed and therefore alleged to have committed one or more of the acts complained of herein.

21 16. Defendant XYZ LLC, a Washington limited liability company is as of now unknown
22 to Plaintiff but is believed and therefore alleged to have committed one or more of the acts
23 complained of below.

24 17. Defendant Black & White, a Washington partnership, is as of now unknown to
25 Plaintiff but is believed and therefore alleged to have committed one or more of the acts complained
26 of below.

Law Offices of
OGDEN MURPHY WALLACE, P.L.L.C.
2100 Westlake Center
1601 Fifth Avenue
Seattle, Washington 98101-1686
(206) 447-7000/FAX: (206)447-0215

1 18. This court has jurisdiction over the parties and the subject matter of this action, and
2 venue is proper in Pierce County because one, or some, or all, defendants reside and/or do business
3 in Pierce County, Washington.

4 **II. FACTS**

5 19. Plaintiff is a remainder beneficiary of a testamentary trust under the will of Charles
6 C. Hoffman ("Hoffman"). Mr. Hoffman died on March 7, 1989 in Pierce County, Washington.
7 His Last Will and Testament ("Will") was admitted to probate in Pierce County. In the Will
8 Mr. Hoffman appointed his attorney, defendant Grant L. Anderson, as personal representative of
9 Hoffman's estate ("Estate"). Letters Testamentary were issued to Mr. Anderson on March 8, 1989
10 by the Pierce County Superior Court in the probate proceeding relating to the Estate.

11 The Will gave all of Hoffman's real and personal property to defendant Grant L. Anderson,
12 as trustee and in trust, to hold, administer, and distribute according to the terms of Hoffman's
13 testamentary trust ("Trust"). The Trust provided that the trustee was to hold and administer the
14 Trust for the benefit of Hoffman's former wife, Mildred D. Hoffman, during her life. The Will
15 gave defendant Grant L. Anderson, as trustee, sole discretion to distribute the income and/or assets
16 of the Trust to maintain Mildred Hoffman at the same level of care and support that she then
17 enjoyed. Upon the death of Mildred Hoffman, the Will directed that the trustee of the Trust
18 distribute 10 percent of the Trust assets to Hoffman's son Edward Curtis Hoffman and that the
19 balance (90 percent) of the Trust assets be distributed by the trustee of the Trust to Plaintiff.

20 20. At the time of Hoffman's death, the major assets of the Estate consisted of all the
21 stock of two closely-held Washington corporations (Hoffman-Stevenson, Inc. and Pacific Lanes, Inc.)
22 and real property in Pacific County, Washington. The assets of Hoffman-Stevenson, Inc. included
23 additional real property in Pacific and Pierce Counties as well as an interest in a time-share-unit
24 condominium development in Pacific County. The assets of Pacific Lanes, Inc. consisted of the
25 business of a bowling alley located in Tacoma, Pierce County, Washington.

26 / / /

Law Offices of
OGDEN MURPHY WALLACE, P.L.L.C.
2100 Westlake Center
1601 Fifth Avenue
Seattle, Washington 98101-1686
(206) 447-7000/FAX: (206)447-0215

1 21. Defendant Grant L. Anderson and defendant Tuell, Anderson, Fisher & Koppe worked
2 on the probate of the Estate from Hoffman's death in March 1989 until some time in January 1993.
3 During that time, defendants Grant L. Anderson, David R. Tuell, Stephen W. Fisher, Robyn L.
4 Lindsay, and Richard L. Hoefel worked in one or more capacities regarding the Estate, the office
5 of personal representative of the Estate, the office of trustee of the Trust, the corporations under the
6 control of the personal representative of the Estate and/or the trustee of the Trust, and the officers
7 and directors of the corporations.

8 22. Defendant Grant L. Anderson as or on behalf of the personal representative of the
9 Estate filed a petition for distribution of the Estate to the Trust on December 9, 1992. The decree
10 of distribution in the probate of the estate was entered in January 1993, the same month defendant
11 Grant L. Anderson took the bench in Pierce County as a superior court judge. An order accepting
12 defendant Grant L. Anderson's resignation as trustee of the Trust and appointing defendant Stephen
13 W. Fisher as successor trustee of the Trust was signed on January 6, 1993. Mildred Hoffman died
14 on January 22, 1993. Defendant Stephen W. Fisher continues to serve as trustee of the Trust.

15 23. During the pendency of the probate of the Estate, defendant Grant L. Anderson
16 arranged sales of condominiums owned by Hoffman-Stevenson, Inc. and various third parties to
17 Trendwest Resorts. Defendant Grant L. Anderson billed attorney's fees for his time to the Estate
18 for arranging these sales, while receiving additional sales commissions on the third party sales. Two
19 weeks prior to the decree of distribution in the Estate, several of defendant Grant L. Anderson's law
20 office staff, partners, and the treasurer of defendant Grant L. Anderson's judicial campaign all
21 purchased time-share-unit condominiums from Hoffman-Stevenson, Inc. for less than fair market
22 value.

23 24. In December 1992, defendant Grant L. Anderson, as personal representative of the
24 Estate, trustee of the Trust, and president of Pacific Lanes, Inc., sold the bowling alley business of
25 Pacific Lanes, Inc. to defendant Pacific Recreation Enterprises, Inc. ("PRE, Inc."), a Washington
26 corporation solely owned by defendant William L. Hamilton for less than fair market value. On or

Law Offices of
OGDEN MURPHY WALLACE, P.L.L.C.
2100 Westlake Center
1601 Fifth Avenue
Seattle, Washington 98101-1686
(206) 447-7000/FAX: (206)447-0215

1 about January 13, 1993, defendant William L. Hamilton and/or defendant PRE, Inc. began making
2 payments on defendant Grant L. Anderson's new car, and such payments continued on a regular
3 basis until May 1995, in consideration for personal benefits received. Defendant Grant L. Anderson
4 reduced the purchase price of the bowling alley business in March 1993. In October 1993, defendant
5 Grant L. Anderson, as president of Pacific Lanes, Inc., defendant Steven W. Fisher, as trustee of
6 the Trust, sold the real property on and in which the bowling alley business was operated to
7 defendants PRE and defendant William L. Hamilton for less than fair market value. In connection
8 with the sale of the real property, defendant William L. Hamilton made a direct payment to
9 defendant Steven W. Fisher and/or defendant Fisher & Lindsay, L.L.C. that was not disclosed to
10 the Trust or its beneficiaries or in the closing statements.

11 25. Defendant Stephen W. Fisher petitioned to reopen the Estate in July 1993. The Estate
12 was reopened in July 1993 and defendant Stephen W. Fisher was named successor personal
13 representative in the Estate. He continues to serve in that capacity.

14 26. At all times material hereto, defendants Grant L. Anderson; Stephen W. Fisher; Robyn
15 L. Lindsay; David R. Tuell, Jr.; Richard L. Hoefel; the law firm of Tuell, Anderson, Fisher &
16 Koppe; and the law firm of Fisher & Lindsay served as attorneys for the Estate, the Trust, Hoffman-
17 Stevenson, Inc. and Pacific Lanes, Inc.

18 27. At all times material hereto, defendants Kevin A. Iverson, Gary L. Frind and Frind
19 & Iverson, P.S. served as certified public accountants for the Estate, Trust, and/or Hoffman-
20 Stevenson, Inc. and Pacific Lanes, Inc.

21 28. At times material hereto, defendant Kevin A. Iverson also served as CPA for
22 defendants William L. Hamilton, Grant L. Anderson, and PRE.

23 / / /
24 / / /
25 / / /
26 / / /

Law Offices of
OGDEN MURPHY WALLACE, P.L.L.C.
2100 Westlake Center
1601 Fifth Avenue
Seattle, Washington 98101-1686
(206) 447-7000/FAX: (206)447-0215

III. NEGIGENT MISREPRESENTATION

29. Defendants Grant L. Anderson, Stephen W. Fisher, and Kevin A. Iverson, by their words and deeds, actions and inactions, made one or more negligent misrepresentations to Plaintiff regarding administration of the Estate and the Trust, the sale of Trust assets, and operation of Hoffman Stevenson, Inc. and Pacific Lanes, Inc., all of which were justifiably relied upon by Plaintiff to its detriment.

IV. FRAUDULENT MISREPRESENTATION

30. Defendants Grant L. Anderson and William L. Hamilton made material misrepresentations of facts and opinions regarding the administration of the Trust and the Estate, the sale of the assets of the Estate and Trust, and the operation of Hoffman Stevenson, Inc. and Pacific Lanes, Inc.

31. Defendants Grant L. Anderson and William L. Hamilton made said misrepresentations with knowledge, or reckless disregard of the falsity of these misrepresentations, and with the intent that Plaintiff rely on such misrepresentations.

32. Plaintiff had a right to, and did, rely on defendants Grant L. Anderson's and William L. Hamilton's misrepresentations to the detriment of Plaintiff.

V. NEGLIGENCE

33. Defendants Grant L. Anderson, Stephen W. Fisher and Kevin A. Iverson negligently failed to perform, or negligently performed, duties owed to the Plaintiff resulting in Plaintiff's failing to receive the full and fair benefit of its beneficial interests.

VI. BREACH OF FIDUCIARY DUTIES

34. Defendants Grant L. Anderson, Stephen W. Fisher and Kevin A. Iverson, in their various capacities as personal representative, trustee, attorney, accountant, and corporate officer and director have breached their fiduciary duties owed to the Plaintiff through their negligent, intentional, and/or wrongful actions or inactions. Including, by their actions and inactions, defendants Grant L.

Law Offices of
OGDEN MURPHY WALLACE, P.L.L.C.
2100 Westlake Center
1601 Fifth Avenue
Seattle, Washington 98101-1686
(206) 447-7000/FAX: (206) 447-0215

1 Anderson and Stephen W. Fisher breached their duties as trustees in the administration of the Trust,
2 including the duty of loyalty, the duty to account, the duty to exercise reasonable skill and care, the
3 duty to inform, and the duty to preserve trust property.

4 **VII. FRAUDULENT FAILURE TO DISCLOSE**

5 35. Defendants Grant L. Anderson and Stephen W. Fisher in their various fiduciary
6 capacities had an affirmative duty to disclose material facts and failed to disclose material facts to
7 the Plaintiff regarding their administration of the Estate and Trust and operation of the corporations
8 held in the Estate and Trust resulting in Plaintiff's failing to receive the full and fair benefit of its
9 beneficial interest.

10 **VIII. CONSUMER PROTECTION ACT**

11 36. One or more of the defendants violated Ch. 19.86 RCW in their billing and collection
12 practices as attorneys and committed various unfair and deceptive acts and practices as prohibited
13 by Ch. 19.86 RCW in their capacities as corporate officers and directors resulting in damages to the
14 Estate and Trust.

15 **IX. UNJUST ENRICHMENT**

16 37. One or more of the defendants have been unjustly enriched by the tortious and/or
17 wrongful administration of the Estate and the Trust and by the operation of the corporations in which
18 the Estate and Trust had an interest, all for the benefit of one or more of the defendants and to the
19 detriment of the Estate and the Trust and the beneficiaries of the Trust, including Plaintiff.

20 **X. CONSTRUCTIVE TRUST**

21 38. One or more of the defendants, with knowledge of the existence of the Estate and of
22 the Trust and of the nature of the property included in the inventory of the Estate and corpus of the
23 Trust, purchased or received certain property of the Estate and/or Trust for less than the fair market
24 value of the property and should be deemed to be holding such property in constructive trust for the
25 benefit of the Trust. One or more of the defendants, in violation of their fiduciary duties, received
26 a commission, bonus or other profit and should return the same to the Trust.

Law Offices of
OGDEN MURPHY WALLACE, P.L.L.C.
2100 Westlake Center
1601 Fifth Avenue
Seattle, Washington 98101-1686
(206) 447-7000/FAX: (206)447-0215

1 **XI. VIOLATION OF CHAPTERS 11.48 RCW, 11.98 RCW,
11.100 RCW, 11.104 RCW, and 11.106 RCW**

2 39. By their actions and inactions, defendants Grant L. Anderson and Stephen W. Fisher
3 violated: their duties as personal representative of the Estate, Chapter 11.48 RCW; provisions of the
4 Washington Trust Act, Chapter 11.98 RCW; provisions of the Investment of Trust Funds Act,
5 Chapter 11.100 RCW; provisions of the Washington Principal and Income Act, Chapter 11.104
6 RCW; and provisions of the Washington Accounting Act, Chapter 11.106 RCW.

7 **XII. VIOLATION OF ETHICAL DUTIES**

8 40. By their actions and inactions, defendants Grant L. Anderson, Stephen W. Fisher and
9 Robyn L. Lindsay violated one or more of their professional ethical duties as set forth in the
10 Washington Rules of Professional Conduct.

11 **XIII. VICARIOUS LIABILITY**

12 41. Defendants Fisher & Lindsay, Frind & Iverson, and PRE, Inc. are vicariously liable
13 for the negligent and/or wrongful actions of their members, managers, shareholders, officers,
14 directors, partners, agents, and employees as described above and taken on behalf or for the benefit
15 of defendants Fisher & Lindsay, Frind & Iverson, and PRE, Inc.

16 **XIV. PROXIMATE CAUSE**

17 42. As a proximate cause of the negligent, intentional, or wrongful actions or inactions
18 of one or more of the defendants, Estate, Trust and Plaintiff suffered and continue to suffer damages
19 in an amount to be proven at trial.

20 **XV. RELIEF REQUESTED**

21 WHEREFORE, Plaintiff Pacific County Hospital District No. 3, d/b/a Ocean Beach Hospital
22 prays for relief against defendants as follows:

23 1. For judgment against the defendants jointly and severally, in an amount to be proven
24 at trial, together with prejudgment interest;

25 / / /

2. For treble damages arising out of violation of Ch. 19.86 RCW in an amount not to exceed \$10,000.000;

3. An order requiring defendants to make the Estate and the Trust whole by disgorging all fees or monies charged to and received from the Estate or from the Trust, or from any corporation in which the Estate, the Trust, or both, had or has an interest;

4. An order requiring defendants to return and/or account for the full fair market value of all Estate and/or Trust property held by defendants in constructive trust for the benefit of the Estate and/or Trust beneficiaries;

5. Attorneys' fees and costs as permitted by law;

6. For such other relief as the court deems just and equitable.

DATED this 24th day of July, 1998.

OGDEN MURPHY WALLACE, P.L.L.C.

By:

Steven A. Reisler, WSBA #9384
Donald W. Black, WSBA #25272
Attorneys for Plaintiff

COMPLAINT - 11
DWB17/695.4P/F/B6912.4000

Law Offices of
OGDEN MURPHY WALLACE, P.L.L.C.
2100 Westlake Center
1601 Fifth Avenue
Seattle, Washington 98101-1686
(206) 447-7000/FAX: (206) 447-0215

RELEASE, SETTLEMENT, AND HOLD-HARMLESS AGREEMENT

Subject to the terms herein, PACIFIC COUNTY HOSPITAL DISTRICT NO. 3 d/b/a OCEAN BEACH HOSPITAL (hereinafter referred to as "The Hospital District") and EDWARD CURTIS HOFFMAN(hereinafter collectively referred to as "Releasors") have agreed to settle all disputed claims and release and hold harmless GRANT L. ANDERSON and PATSY L. ANDERSON; STEPHEN W. FISHER and MARY K. FISHER; WILLIAM L. HAMILTON and ZOE-ANN HAMILTON; ROBYN A. LINDSAY and "JOHN DOE" LINDSAY; DAVID R. TUELL, JR., and DOLORES TUELL; RICHARD L. HOEFEL and "JANE DOE" HOEFEL; GARY L. FRIND and JANET L. FRIND; KEVIN A. IVERSON and THERESA B. IVERSON; FISHER & LINDSAY, P.L.L.C.; TUELL, ANDERSON, FISHER & KOPPE; TUELL, ANDERSON & FISHER; FRIND & IVERSON; and PACIFIC RECREATION ENTERPRISES, INC. (hereinafter referred to as "Releasees") from any and all claims arising out of or in any way related to the probate proceedings, the administration, settlement, distribution, sale wind-up and/or closure of any interests/assets of the Estate of Charles C. Hoffman and/or the Charles C. Hoffman Trust (hereinafter collectively referred to as "The Trust"). This Agreement shall be interpreted pursuant to Washington law, including but not limited to the provisions for nonjudicial resolution of a will or trust dispute contained in RCW 11.96.170.

In consideration of the mutual promises contained below and payment as set forth below, it is hereby mutually agreed:

1. In consideration of the mutual agreements by and among the parties hereto and contained herein, the Releasees shall deposit by December 23, 1998 the sum of Five Hundred Thousand Dollars (\$500,000.00) (the "Settlement Amount.") The Settlement Amount shall be distributed to or for the benefit of Releasors, and as agreed by the Releasors, as follows:

- \$127,450.72 payment to Ogden Murphy Wallace, P.L.L.C. for reasonable and necessary costs and attorneys' fees, as approved by Releasors and which were incurred by the Hospital District in pursuing a recovery on behalf of the Trust.

\$335,294.35

- of the remaining \$372,549.28, \$335,924.25 to the Hospital District and \$37,254.93 \$37,249.93 to Edward Curtis Hoffman, less the funds to be paid to the State of Washington Department of Social and Health Services for their lien in the amount of Nineteen Thousand One Hundred Six and 86/100 Dollars (\$19,106.86).

2. Releasors hereby release Releasees, their partners, agents, employees, representatives (specifically including but not limited to their attorneys, investigators, insurers and reinsurers), predecessors, successors, and assigns from any and all claims, demands, damages, liabilities, and causes of action of any kind or nature whatsoever, arising out of or in any way related to the probate proceedings, the administration, settlement, distribution sale and wind-up, and/or closing of any interests or assets of The Trust, all claims asserted or which could have been asserted in the action commenced against

COPY RECEIVED

Releasees by the Hospital District, and any derivative or related claims and/or causes of action. This Release, Settlement & Hold-Harmless Agreement ("Agreement") specifically includes, but is not limited to, any claims based upon or related to any claims for violation of any statute or regulation, any claim for emotional or mental distress, attorney's fees, costs, or disbursements, or any other claim for damages not specifically described above. In addition, Releasors specifically understand that they may later discover additional injuries or damages which are not known to Releasors at this time. This Agreement specifically applies to such later discovered injuries or damages, and Releasors specifically accept the risk that they may later discover such injuries or damages.

3. Releasors specifically acknowledge and agree that payment made herein is made by Releasees solely to buy peace and is settlement of a disputed claim and Releasees contend this is a doubtful claim. Releasors further agree that payment is not to be construed by anyone as an admission of liability or wrongdoing. The Settlement Agreement made by Releasees is being made to avoid the expenses and hazards of litigation.

4. Releasors hereby mutually release one another, their partners, agents, employees, representatives (specifically including but not limited to their attorneys, investigators, insurers and reinsurers), predecessors, successors, and assigns from any and all claims, demands, damages, liabilities, and causes of action of any kind or nature which could be asserted between or among themselves, arising out of or in any way related to the commencement of probate proceedings, the administration, settlement, distribution and wind-up, and/or closing of any interest or assets of The Trust, including but not limited to any claims that could have been made among or between Releasors in the action commenced by the Hospital District and any derivative or related claims and/or causes of action. This Agreement specifically includes, but is not limited to, any claims based upon or related to any claims for violation of any statute or regulation, any claim for emotional or mental distress, attorney's fees, costs, or disbursements, or any other claim for damages not specifically described above.

5. Except for a reasonable reserve in The Trust for known and unknown contingencies, Stephen W. Fisher, as trustee, and the Releasors agree that all of the other assets of The Trust shall be distributed 90 percent to the Hospital District and 10 percent to Edward Curtis Hoffman in accordance with their distributive shares provided for in The Trust. Further, the Hospital District agrees to accept as part of its distributive share the promissory notes/real estate contracts currently held by The Trust and valued at the unpaid principal balance plus interest to the date of distribution.

6. The Hospital District and Edward Curtis Hoffman expressly agree that any claims they may have regarding the establishment, administration, settlement, and closure of The Trust is intended to be a part of the settlement set forth in this Agreement. The parties acknowledge and agree to use their best efforts to accomplish the settlement and distribution of The Trust by December 31, 1998. The Hospital District and Edward Curtis Hoffman agree to cooperate with the Trustee in the settlement, distribution, wind-up and/or closure of The Trust, including, but not limited to, agreeing to execute any and all documents necessary to accomplish the foregoing. In the event the settlement, and distribution is delayed due to unforeseen circumstances such delay will not affect the enforceability of this Agreement and

13/08/96 TUE 17:59 FAX

004

the parties agree to use their best efforts to accomplish the settlement, and distribution of The Trust as soon as possible thereafter.

7. The Hospital District and Edward Curtis Hoffman have agreed with Stephen W. Fisher that any bills to The Trust for professional services fees from November 1, 1998, forward shall not exceed \$15,000.00. The professional service fees which Fisher is authorized to pay include bills for his time as trustee of The Trust and fees associated with retaining professionals to assist in the administration, settlement and closure of The Trust. For purposes of this paragraph, Fisher acknowledges that as of November 1, 1998, there are no unpaid bills for professional fees rendered to The Trust. Any future bills may include charges for services rendered before November 1, 1998, but are subject to the \$15,000.00 limit. This paragraph in no way limits the payment of the Hospital District's attorney fees as set forth in paragraph 1.

8. The Hospital District and Edward Curtis Hoffman agree they will each be responsible for their pro rata share of any federal estate and income taxes that are assessed against The Trust for any taxable year and for any tax liability as a result of receipt of their respective distributive shares. STEPHEN W. FISHER agrees, in his capacity as trustee, to be responsible for any penalties and interest resulting from his failure to have timely filed or paid federal income taxes of The Trust for the tax years 1993 through 1997.

9. Other than as specified above, including the lien specifically described in paragraph 1, the Hospital District and Edward Curtis Hoffman represent and warrant that neither is aware of any lien holders or other persons or entities, other than themselves, having any interest in the Settlement Proceeds and the conditions of this Agreement. Releasees represent and warrant that they are not aware of any lienholders or any other persons or entities, including themselves, having any interest in the Settlement Proceeds and the conditions of this Agreement. The Hospital District and Edward Curtis Hoffman agree to fully indemnify, hold harmless, and defend Releasees, and all others described herein to be protected by this Agreement, for any claims of others against their respective shares of the Settlement proceeds.

10. Releasees warrant and represent they and /or their attorneys have read the entire Agreement and understand no other consideration or payment will be given, other than as expressed in this Agreement, and this Agreement contains the entire agreement between the parties and there is no other agreement, promise, or inducement, other than expressed herein. Releasees further warrant and represent that they have retained or had the opportunity to obtain their own experts, consultants, and attorneys and are not relying in any way on the advice or representations of any of the released parties regarding the advisability of entering into this Agreement. Releasees mutually agree that the attorneys' fees and costs payable from the Settlement Amount to Ogden Murphy Wallace, P.L.L.C. as provided herein are reasonable and necessary and were necessarily incurred for the benefit of the persons interested in the Trust. Releasees consent to the payment of such fees and costs as provided herein.

11. Edward Curtis Hoffman hereby acknowledges that he has been advised to retain an attorney to represent his interests regarding this Agreement and his legal rights and

12/08/98 TUE 18:00 FAX

0005

interests as a beneficiary of the Estate of Charles C. Hoffman and the Charles C. Hoffman Trust. He further acknowledges that he was provided ample time to retain an attorney and to review the Agreement. Additionally, he acknowledges that Ogden Murphy Wallace, P.L.L.C. has not acted as attorneys on his behalf.

12. Releasors, either individually or through their attorneys, have participated in the preparation and review of this Agreement, and it shall therefore not be construed against any party. The language of this Agreement shall be construed for all purposes and in accordance with the plain meaning of language used.

13. In the event of a breach by any party of this Agreement, or enforcement by any part of this Agreement, the most prevailing party shall be entitled to their costs and reasonable attorneys' fees. If any dispute arises regarding the terms of this Agreement, the parties agree to submit any such dispute to Frederick Rasmussen for binding resolution.

14. This Agreement may not be modified except by the express written agreement of the parties hereto.

15. This Agreement may be executed by one or more parties on separate counterparts, each of which shall be deemed to be an original, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties enter into this Agreement this 10th day of December, 1998.

EDWARD CURTIS HOFFMAN

PACIFIC COUNTY HOSPITAL
DISTRICT NO. 3 d/b/a OCEAN
BEACH HOSPITAL

By John D. O'Neil
Its CEO

DEC 28 '98 10:36 FR BULLIVANT/SEATTLE 286 386 5138 TO 6438#3571#168#12 P.05/87

Interests as a beneficiary of the Estate of Charles C. Hoffman and the Charles C. Hoffman Trust. He further acknowledges that he was provided ample time to retain an attorney and to review the Agreement. Additionally, he acknowledges that Ogden Murphy Wallace, P.L.C. has not acted as attorneys on his behalf.

12. Releasors, either individually or through their attorneys, have participated in the preparation and review of this Agreement, and it shall therefore not be construed against any party. The language of this Agreement shall be construed for all purposes and in accordance with the plain meaning of language used.

13. In the event of a breach by any party of this Agreement, or enforcement by any party of this Agreement, the most prevailing party shall be entitled to their costs and reasonable attorneys' fees. If any dispute arises regarding the terms of this Agreement, the parties agree to submit any such dispute to Frederick Rasmussen for binding resolution.

14. This Agreement may not be modified except by the express written agreement of the parties hereto.

15. This Agreement may be executed by one or more parties on separate counterparts, each of which shall be deemed to be an original, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties enter into this Agreement this 10 day of December, 1998.

PACIFIC COUNTY HOSPITAL
DISTRICT NO. 3 d/b/a OCEAN
BEACH HOSPITAL

Edward Curtis Hoffman
EDWARD CURTIS HOFFMAN

By Edward Curtis Hoffman
I'm Beneficiary / Releasor

RECEIVED

DEC 14 1998

FISHER, KOPPE & HOEFEL

FISHER & LINDSAY, P.L.L.C.

TUELL, ANDERSON, FISHER & KOPPE

By _____
Its _____

FRIND & IVERSON

By _____
Its _____

TUELL, ANDERSON & FISHER

By _____
Its _____

GRANT L. ANDERSON

STEPHEN W. FISHER

By _____
Its _____

PATSY L. ANDERSON

MARY K. FISHER

ROBYN L. LINDSAY

RICHARD L. HOEFEL

DAVID R. TUELL, JR.

DOLORES TUELL

GARY L. FRIND

JANET L. FRIND

KEVIN A. IVERSON

THERESA B. IVERSON

285 386 5130 TO 643843671#160#12 P.07/08

FISHER & LINDSAY, P.L.L.C.

By _____
Its _____

FRIND & IVERSON

By _____
Its _____

GRANT L. ANDERSON

STEPHEN W. FISHER

Robyn A. Lindsay
ROBYN A. LINDSAY

DAVID R. TUELL, JR.

GARY L. FRIND

KEVIN A. IVERSON

TUELL, ANDERSON, FISHER &
KOPPE

By _____
Its _____

TUELL, ANDERSON & FISHER

By _____
Its _____

PATSY L. ANDERSON

MARY K. FISHER

Richard L. Hoefel
RICHARD L. HOEFEL

DOLORES TUELL

JANET L. FRIND

THERESA B. IVERSON

FISHER & LINDSAY, P.L.L.C.

By 
Its Kevin A. Iverson

FRIND & IVERSON

By _____
Its _____

GRANT L. ANDERSON

STEPHEN W. FISHER

ROBYN L. LINDSAY

DAVID R. TUELL, JR.

GARY L. FRIND


KEVIN A. IVERSON

TUELL, ANDERSON, FISHER & KOPPE

By _____
Its _____

TUELL, ANDERSON & FISHER

By _____
Its _____

PATSY L. ANDERSON

MARY K. FISHER

RICHARD L. HOEFEL

DOLORES TUELL

JANET L. FRIND


THERESA B. IVERSON

5-29-1995 0:55AM
12/08/98 10E 18:00 FAX

FROM OCEAN BEACH HOSPITAL 3606428070

P. 7

0007

APPROVED:

OGDEN MURPHY WALLACE, P.L.L.C.

By 

STEVEN A. REISLER
STANBERRY FOSTER, JR.
DONALD W. BLACK
Attorneys for Hospital District

BULLIVANT HOUSER BAILEY

By _____

DOUGLAS C. RASMUSSEN
Attorneys for Fisher, Lindsay,
Hoefel, and Fisher & Lindsay, P.L.L.C.

RYAN SWANSON & CLEVELAND

By _____

JERRY KINDINGER
Attorneys for Hon. Grant L. Anderson

BURGESS FITZER LEIGHTON & PHILLIPS, P.S.

By _____

F. ROSS BURGESS
Attorneys for David Tuell

INSLEE BEST DOZIE & RYDER, P.S.

By _____

PETER A. DEMING
Attorneys for Kevin Iverson

F:\CLIENTS\3671\160\PL0GS\RELEASE\BLACK 12-4 REV3.DOC

APPROVED:

OGDEN MURPHY WALLACE, P.L.L.C.

By _____
STEVEN A. REISLER
STANBERY FOSTER, JR.
DONALD W. BLACK
Attorneys for Hospital District

BULLIVANT Houser BAILEY

By _____
DOUGLAS C. RASMUSSEN
Attorneys for Fisher, Lindsay,
Hoefel, and Fisher & Lindsay, P.L.L.C.

RYAN SWANSON & CLEVELAND

By _____
JERRY KINDINGER
Attorneys for Hon. Grant L. Anderson

BURGESS FITZER LEIGHTON & PHILLIPS, P.S.

By _____
F. ROSS BURGESS
Attorneys for David Tuell

INSLEE BEST DOZIE & RYDER, P.S.

By 
PETER A. DEMING
Attorneys for Kevin Iverson

FACLIENTS3671160PLDG5RELEASE.DLL 12-4 REV5.DOC

APPROVED:

OGDEN MURPHY WALLACE, P.L.L.C.

By _____

STEVEN A. REISLER
STANBERY FOSTER, JR.
DONALD W. BLACK
Attorneys for Hospital District

BULLIVANT HOUSER BAILEY

By _____

DOUGLAS C. RASMUSSEN
Attorneys for Fisher, Lindsay,
Hoefel, and Fisher & Lindsay, P.L.L.C.

RYAN SWANSON & CLEVELAND

By _____

JERRY KINDINGER
Attorneys for Hon. Grant L. Anderson

BURGESS FITZER LEIGHTON & PHILLIPS, P.S.

By _____

F. ROSS BURGESS
Attorneys for David Tuell

INSLEE BEST DOZIE & RYDER, P.S.

By _____

PETER A. DEMING
Attorneys for Kevin Iverson

F:\CLIENTS\5711160\PLDS\RELEASE\BLACK 12-4 REV5.DOC