



**Reasonableness of Settlement**

In essence the settlement proposes to settle claims totaling \$375,473.09: ((a) \$123,000 awarded to CRI Trustee per partial summary judgment on July 11, 2008 (hereinafter "Ruling"), and currently on appeal; (b) \$150,000 in which the Ruling states Moldskred was the immediate transferee, leaving only the issue of whether Moldskred acted in good faith and without knowledge of the avoidability; (c) \$45,673.09 which is Moldkred's second deed of trust on Janisch's house; and (d) \$56,800, the value of the jewelry per Ms. Ellis<sup>1</sup>) for \$154,500 which is the sum of \$108,826.91 and \$45,673.09 owed on the Second Deed of Trust. That is a compromise of \$220,973.09.

**Culpability of Moldskred v. Fleischman**

In her decision to accept the settlement of the Fleischman case, the court pointed out that inasmuch as Fleischman was only CRI's landlord and was never employed by CRI, proving that he knowingly transferred money to CRI in furtherance of any scheme or without knowing that CRI was insolvent would be difficult.

In this case as the CRI Trustee has pointed out that Kai Moldskred and Alen Janisch have had extensive dealings with each other and such a defense would not be available to him:

Moldskred was well aware that his \$150,000 loan to Janisch would be transferred to the Janisch capital account in CRI so that it would place CRI in a better "zone" in terms of reporting to the U.S. Department of Education ("DOE"). Moldskred was keenly aware of the purpose of his \$150,000 loan to Janisch in December of 2005 because they had

<sup>1</sup> Defendant/Cross-Plaintiff's Response to Motion for Summary Judgment, p.2, lns. 25-26 (dated June 13, 2008) Though the court ordered an appraisal be performed, it is not in the court file and I request that it be submitted to the court in order to allow a proper evaluation of the merits of the settlement.

1 extensive business deals which went back for decades. Janisch and  
 2 Moldskred have had extensive business dealings since they were  
 3 roommates. During the past 20 to 25 years, Janisch and Moldskred  
 4 have owned several condominiums together. Moldskred has purchased  
 5 Janisch's interest in three condominiums they own together, plus one  
 6 condominium and one house that Janisch owned himself. Moldskred is  
 7 well versed in business in general and CRI's business in particular.  
 8 Moldskred has a Bachelor of Arts degree in accounting from the  
 University of Washington which he received in 1977. While  
 Moldskred's present occupation is investing in real estate and stock, in  
 his last job Moldskred was the in-house accountant for CRI. He kept  
 the accounting records and prepared profit and loss sheets and  
 financial statements for CRI. He worked for CRI during the years 1993  
 through 2000, and he had worked part time for CRI in 1989.

9 *Plaintiff's Memorandum In Support of Second Motion for Summary Judgment, p.2,*  
 10 *Ins. 7-19 to p.3, Ins. 1-2,*

11 Moldskred's defense, in very general terms appears, to be twofold: (1) He  
 12 made the \$123,000 and \$150,000 loans to Janisch/CRI in good faith and not for  
 13 any fraudulent purpose. Additionally, he had no reason to believe that CRI was not  
 14 in good financial condition and CRI would have been able to reimburse him if not for  
 15 the publication of the negative Seattle Times article that caused its "sudden"  
 16 demise/bankruptcy and made his loans voidable; and (2) The loans which were  
 17 made to CRI were, in essence, zero sum transactions which if CRI does not  
 18 reimburse, would result in a windfall for CRI and its creditors.

19 Considering the extensive relationship between Janisch and Moldskred it  
 20 would appear that Moldskred would have a difficult time prevailing on his first  
 21 defense especially considering how long he engaged in making these loans and the  
 22 knowledge he would have of CRI's operations. As for Mr. Moldskred's second  
 23 defense, the loans were not "zero sum" when the effect of the loans were to allow  
 24 CRI to have sufficient capital to qualify for the federal student loan program. In

1 essence, Moldskred was playing a lucrative but risky game with his money and he  
2 profited handsomely receiving \$250,000 in interest in 2005 from loans he made to  
3 Janisch over the years. *Plaintiff's Memorandum In Support of Second Motion for*  
4 *Summary Judgment signed July 18, 2008, p.7, Ins. 19-20.* As long as CRI  
5 remained solvent and was able to meet its obligations, he was arguably entitled to  
6 withdraw the money he placed in it and they were revenue neutral. Of course the  
7 intent of the scheme was still a fraud perpetuated on the Department of Education  
8 and ultimately the students. However, once CRI went into bankruptcy those loans  
9 became the property of CRI, or more importantly, CRI's creditors per the terms of  
10 the \$295,000 promissory note. *Deposition of Alen Janisch, p.51, Ins. 20-25 to*  
11 *p.52, Ins. 1-2; Ex. 6, p.3.* After all the purpose of the pledge was to ensure that in  
12 the event of CRI's insolvency there would be a certain amount of capital available to  
13 mitigate the financial damages to students and other creditors!

#### 14 **Analysis of Components of the Settlement**

##### 15 (a) The \$123,000

16 This sum has already been fully adjudicated by the court in its Ruling and is  
17 pending a perfected appeal in the 9<sup>th</sup> Circuit. It is difficult for me, though I am a lay  
18 person, to see how that court could find that, considering the full record, Moldskred  
19 made the infusion in good faith. If the court will recall, in my Declaration in  
20 *Opposition to the Fleishman Settlement* filed October 30, 2008, I testified that the  
21 *Seattle Times* article was not what caused the "sudden" demise of the school. The  
22 *Washington State Workforce Board* had pulled CRI's license to teach court  
23 reporting. *See Ex. "A" to that declaration.* Additionally, CRI owed considerable  
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25

1 refunds to the Department of Education for violations concerning "clock hours" and  
2 it did not have the funds. *See Exs "B" through "D" to that declaration.*

3 Considering their close relationship, Moldskred would have or should have been  
4 aware of these facts and realized that the future viability of the school was perilous.

5 Additionally, "pumping up" the balance sheet of a school in order to qualify it  
6 for participation in the federal student aid program is a fraudulent endeavor and  
7 any person engaged in such actions must be aware that the school is under  
8 capitalized and that any misstep or misfortune would cause a financial catastrophe  
9 which might well lead to bankruptcy.

10 In fact, Moldskred took steps as far back as 1995 to bolster CRI's balance  
11 sheet by having Janisch assume loans totaling \$165,000 that he had made to CRI.

12 *Deposition of Kai Moldskred, p.33, ln. 2.*

13 (b) The \$150,000

14 Pursuant to the court's Ruling, the only issue remaining is whether or not  
15 Moldskred acted in "good faith and without the knowledge of the voidability of the  
16 transfers avoided." It would appear, again, considering the aforementioned reasons  
17 and the totality of the circumstances that Moldskred would be able to prevail on  
18 that defense.

19 (c) The \$45,673.09

20 The Ruling states that the CRI/Janisch estates have judgment against Janisch  
21 for his "reduction and satisfaction of the \$295,000 promissory note owed by Janisch  
22 to CRI." That very note was partially secured by a second deed of trust against  
23 Janisch's residence for \$126,000. Thus, Janisch has no right to grant a deed of  
24 trust to Moldskred when the residence was already encumbered and thus

1 Moldskred's deed of trust is null and void and the original deed of trust in favor of  
2 CRI should be restored.

3 (d) The Jewelry

4 For the reasons stated above, the jewelry was pledged to secure the  
5 \$295,000 promissory note pledged to CRI which the Ruling indicates was unlawfully  
6 reduced and satisfied. Thus, the jewelry plainly belongs to the Janisch estate  
7 pursuant to the Ruling. Janisch testified twice in his sworn deposition that he gave  
8 the jewelry to Moldskred for no consideration and for "safekeeping" should he "lose"  
9 them. *Deposition of Alen Janisch*, p.54, ln. 16 to p.56, ln. 20. Janisch's and  
10 Moldskred's answers to the preference complaint contradict Janisch's unequivocal  
11 sworn deposition testimony when they claim that the rings were given to Moldskred  
12 for security for an unidentified loan. *Janisch's Answer to Preference Complaint*, p.4,  
13 *Ins. 4-5; Moldskred's Answer to Preference Complaint*, p.3, ¶ 18. It would appear  
14 that after Janisch and Moldskred saw the preference complaint and had an  
15 opportunity to confer, they changed their "story." I would posit that Janisch's initial  
16 testimony is the more credible scenario.

17 Again, Janisch had no right to transfer the jewelry, which was already  
18 encumbered, to Moldskred and he certainly did not receive equivalent value.  
19 Alternatively, if it were indeed transferred to Moldskred for security of a loan,  
20 Moldskred only loaned Janisch \$15,000 at that point. Thus, per the argument of  
21 the Janisch Trustee, it should receive the jewelry minus the \$15,000 the actual  
22 value given Janisch. *Defendant/Cross-Plaintiff's Response to Motion for Summary*  
23 *Judgment signed June 13, 2008*, p. 5, *Ins. 12-14*.

1 **Costs of Further Litigation v. Potential Recovery**

2 I am well aware and understand the cost/benefit issues that have to be  
3 weighed in any litigation. Mr. Rigby has submitted a bill for legal fees and costs of  
4 \$79,257.55 for the litigation up to this point. He has also indicated that the estate  
5 has \$15,000 in cash and he anticipates receiving \$92,000 from Fleishman. There  
6 is of course, Ms. Ellis' compensation to be considered as well as well as the two  
7 trustees. I would like to know how much they would anticipate the defense of the  
8 9<sup>th</sup> Circuit Appeal of the \$123,000 judgment would cost and also trying the rest of  
9 the case. Most of the discovery is completed and presumably much of the trial  
10 preparation is done. There is a potential additional recovery of \$220,973.09 and I  
11 feel an estimate of the potential legal fees and costs going forward would greatly  
12 assist the court in its evaluation of the merits of the proposed settlement.

13 **Conclusion**

14 Respectfully, for the foregoing reasons, I do not believe that the proposed  
15 settlement, is reasonable and I would submit that Moldskred should offer more  
16 money or the case could be further litigated.

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18   
19 Judy McKinney  
20 Student Creditor

Dated: January 2, 2009



1 CERTIFICATE OF SERVICE

2 I hereby certify that on January 2, 2009, I faxed a true and correct copy of the  
3 foregoing document to the following parties:

4 Jeffrey Wells, Esq.  
5 927 Logan Building  
6 500 Union Street  
7 Seattle, WA 98101-2332  
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9 Kathryn Ellis, Esq.  
10 600 Stewart Street  
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RESPONSE TO MOTION TO COMPROMISE CLAIMS-8

Judy McKinney  
12250 Greenwood Ave. N.  
No. 316  
Seattle, WA 98133  
Student Creditor

1 CERTIFICATE OF SERVICE

2 I hereby certify that on January 2, 2009, I served a true and correct copy of the  
3 foregoing document on the following party:

4 United States Trustee's Office  
5 United States Courthouse, Room 5103,  
6 700 Stewart Street  
7 Seattle, Washington 98101

8 Hon. Karen A. Overstreet  
9 United States Courthouse  
10 700 Stewart Street, Room 6301  
11 Seattle, WA 98101

12   
13 Judy McKinney

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RESPONSE TO MOTION TO COMPROMISE CLAIMS-9

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