

1 Honorable Karen A. Overstreet
2 Hearing date: January 9, 2009; 9:30 a.m.
3 Hearing Place: Room 7206, 700 Stewart Street, Seattle, WA 98101
4 Responses due by: January 2, 2009; by 4:30 p.m.
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8 IN THE UNITED STATES BANKRUPTCY COURT FOR THE
9 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

9 In re:) Chapter 7
10 COURT REPORTING INSTITUTE, INC.,) Bankruptcy No. 06-14202
11 Debtor(s).) NOTICE AND MOTION FOR AN
12) ORDER APPROVING COMPROMISE
13) OF CLAIM

14 **NOTICE**

15 TO: Court Reporting Institute, Inc., and its attorney of record, creditors, and parties of interest.

16 PLEASE TAKE NOTICE that the below joined motion will be heard on the 9th day of
17 January, 2009, at 9:30 a.m., at the United States Courthouse, 700 Stewart Street, Seattle,
18 Washington, in Room 7206, and the clerk is requested to note the motion on the motion docket for
19 that day.

20 YOU ARE FURTHER NOTIFIED that responses or objections must be made in writing and
21 the original filed with the Bankruptcy Court at the United States Courthouse, Room 6301, 700
22 Stewart Street, Seattle, Washington 98101. Copies must be served upon the United States Trustee's
23 Office at the United States Courthouse, Room 5103, 700 Stewart Street, Seattle, Washington 98101,
24 the above-named Judge and the undersigned attorney on or before January 2, 2009. Failure to
25 comply with the local rule may be deemed by the court as opposition without merit. If responsive
pleadings are not filed as stated above, the hearing may be stricken and an order granting the relief
requested in the motion may be presented *ex parte*.

**NOTICE AND MOTION FOR
AN ORDER APPROVING
COMPROMISE OF CLAIM**
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THE RIGBY LAW FIRM
600 Stewart Street, Suite 1908
Seattle, WA 98101 - (206) 441-0826

1 **MOTION**

2 COMES NOW the trustee, Michael B. McCarty, through counsel, The Rigby Law Firm, and
3 James Rigby, and moves this court for an order approving the trustee's compromise of a claim.

4 The details of the compromise can be summarized as follows:

5 Court Reporting Institute, Inc. ("CRI") filed bankruptcy in the United States Bankruptcy
6 Court for the Western District of Washington at Seattle under Bankruptcy No. 06-14202 on
7 December 28, 2006. Michael B. McCarty was appointed as the CRI Trustee. The CRI Trustee
8 initiated an adversary proceeding in the United States Bankruptcy Court for the Western District of
9 Washington at Seattle under Adversary No. 07-01167 against Moldskred and Alen Janisch
10 ("Janisch").

11 Janisch filed bankruptcy in the United States Bankruptcy Court for the Western District of
12 Washington at Seattle under Bankruptcy No. 07-15620 on November 23, 2007. Edmund J. Wood
13 was appointed as the Janisch Trustee. The claims between the two bankruptcy estate have been
14 settled pursuant to orders entered in their respective bankruptcy proceedings, whereby the two
15 bankruptcy estates have agreed to jointly settle claims against third parties and share in the recovery.

16 The Janisch Trustee has sold the Janisch residence, which was subject to a deed of trust in
17 favor of Moldskred and the Janisch Trustee is presently holding \$45,673.09 as the net proceeds from
18 that sale subject to the Moldskred deed of trust. Moldskred is in the possession of one fourteen karat
19 yellow gold diamond ring and one eighteen karat yellow gold diamond ring ("Jewelry") transferred
20 by Janisch to Moldskred in order to secure a loan.

21 The bankruptcy estates have made various claims against Moldskred in the pending
22 litigation. The CRI Trustee obtained a judgment against Moldskred in the amount of \$123,000 and
23 Moldskred has filed an appeal of that judgment. Moldskred denies the allegations.

24 The CRI Trustee has an additional claim pending against Moldskred for \$150,000. That
25 claim is for the funds which Moldskred loaned to Janisch and Janisch transferred to CRI. CRI then
transferred the funds to Janisch, who repaid them to Moldskred. The transfer between CRI and

1 Janisch has been ruled by the court to be a fraudulent conveyance. The issue then as to the claim
2 by the CRI Trustee against Moldskred is whether or not Moldskred acted in good faith and without
3 knowledge of the avoidability of the transfers. There is evidence from which a trier of fact could
4 reasonably conclude that Moldskred did not act in good faith and did have knowledge of the
5 avoidability of the transfers. Likewise, a trier of facts could reasonably conclude that Moldskred
6 did act in good faith without knowledge of the avoidability of the transfers. The situation is
7 inherently unpredictable given the lack of case law on the issue. It is more likely than not that if the
8 estate wins a judgment the matter will be appealed to the Ninth Circuit, which will be writing new
9 law. This fact has been incorporated into the CRI Trustee's analysis regarding the advisability of
10 the settlement.

11 The parties have agreed to resolve the claims as follows:

12 Moldskred will pay the CRI Trustee \$108,826.91. The Janisch Trustee will retain the
13 \$45,673.09 net proceeds from the sale of the Janisch residence without a claim by Moldskred
14 pursuant to his deed of trust. Title to the Jewelry will vest in Moldskred and he will waive any claim
15 he might have in both bankruptcy estates.

16 The Settlement Agreement is attached to the Declaration of James Rigby and is on file with
17 the Clerk of the United States Bankruptcy Court. It may be viewed during normal business hours
18 at the clerk's office, which is located at Room 6301, 700 Stewart Street, Seattle, Washington 98101.
19 A copy may be obtained by sending an email to The Rigby Law Firm at rigbylaw@aol.com
20 requesting a copy of the document.

21 The CRI Trustee has considered the following factors in deciding to approve the
22 compromise:

- 23 a) the probability of success in resolving the claim;
- 24 b) the difficulties, if any, to be encountered in the matter of collection;
- 25 c) the complexity of resolving the claim and the expense, inconvenience and delay
involved; and,

1 d) the paramount interest of the creditors.

2 WHEREFORE, the CRI Trustee prays for an order approving the compromise with the
3 Moldskred.

4 DATED this 10th day of December, 2008.

5 THE RIGBY LAW FIRM

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7 */S/ James Rigby*

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James Rigby, WSBA #9658
Of Attorneys for the CRI Trustee

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