

Honorable Karen A. Overstreet
Hearing date: February 27, 2009; 9:30 a.m.
Hearing Place: Room 7206, 700 Stewart Street, Seattle, WA 98101
Responses due by: February 27, 2009; by 9:30 a.m.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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

NOTICE

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

PLEASE TAKE NOTICE that, **pursuant to an order shortening time**, the below joined motion will be heard on the **27th day of February, 2009, at 9:30 a.m.**, at the United States Courthouse, 700 Stewart Street, Seattle, Washington, in Room 7206, and the clerk is requested to note the motion on the motion docket for that day.

YOU ARE FURTHER NOTIFIED that responses or objections must be made in writing and the original filed with the Bankruptcy Court at the United States Courthouse, Room 6301, 700 Stewart Street, Seattle, Washington 98101. Copies must be served upon the United States Trustee's Office at the United States Courthouse, Room 5103, 700 Stewart Street, Seattle, Washington 98101, the above-named Judge and the undersigned attorney **at or before the hearing**. Failure to 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 SECOND 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 trustee originally brought on a motion for an order approving a compromise of claim
5 with Kai and Joyce Moldskred on January 9, 2009. At the urging of students/creditors, Judge
6 Overstreet denied the approval of the compromise.

7 The details of the revised compromise can be summarized as follows:

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

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

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

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

1 The CRI Trustee has an additional claim pending against Moldskred for \$150,000. That
2 claim is for the funds which Moldskred loaned to Janisch and Janisch transferred to CRI. CRI then
3 transferred the funds to Janisch, who repaid them to Moldskred. The transfer between CRI and
4 Janisch has been ruled by the court to be a fraudulent conveyance. The issue then as to the claim
5 by the CRI Trustee against Moldskred is whether or not Moldskred acted in good faith and without
6 knowledge of the avoidability of the transfers. There is evidence from which a trier of fact could
7 reasonably conclude that Moldskred did not act in good faith and did have knowledge of the
8 avoidability of the transfers. Likewise, a trier of facts could reasonably conclude that Moldskred
9 did act in good faith without knowledge of the avoidability of the transfers. The situation is
10 inherently unpredictable given the lack of case law on the issue. It is more likely than not that if the
11 estate wins a judgment the matter will be appealed to the Ninth Circuit, which will be writing new
12 law. This fact has been incorporated into the CRI Trustee’s analysis regarding the advisability of
13 the settlement.

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

15 Moldskred will pay the CRI Trustee \$140,000, or \$31,173.09 more than the prior offer. The
16 Janisch Trustee will retain the \$45,673.09 net proceeds from the sale of the Janisch residence
17 without a claim by Moldskred pursuant to his deed of trust. Moldskred will deliver the Jewelry to
18 the Janisch Trustee and title to the Jewelry will vest in the Janisch bankruptcy estate. Moldskred
19 will waive any claim he might have in both bankruptcy estates. During the prior hearing, the court
20 valued the jewelry at \$40,000. Because Moldskred loaned Janisch \$15,000 in new value after
21 obtaining a security interest in the Janisch residence and possession of the Jewelry, this settlement
22 provides the Janisch bankruptcy estate with \$15,000 more than it would likely recover in litigation.
23 Given the Settlement Agreement between the CRI bankruptcy estate and the Janisch bankruptcy
24 estate, this benefit will run to both bankruptcy estates.

25 The Settlement Agreement is attached to the Declaration of James Rigby and is on file with
the Clerk of the United States Bankruptcy Court. It may be viewed during normal business hours

1 at the clerk's office, which is located at Room 6301, 700 Stewart Street, Seattle, Washington 98101.
2 A copy may be obtained by sending an email to The Rigby Law Firm at rigbylaw@aol.com
3 requesting a copy of the document.

4 The CRI Trustee has considered the following factors in deciding to approve the
5 compromise:

- 6 a) the probability of success in resolving the claim;
- 7 b) the difficulties, if any, to be encountered in the matter of collection;
- 8 c) the complexity of resolving the claim and the expense, inconvenience and delay
9 involved; and,
- 10 d) the paramount interest of the creditors.

11 WHEREFORE, the CRI Trustee prays for an order approving the compromise with the
12 Moldskred.

13 DATED this 11th day of February, 2009.

14 THE RIGBY LAW FIRM

15 */S/ James Rigby*

16 _____
17 James Rigby, WSBA #9658
18 Of Attorneys for the CRI Trustee

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