

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.,)	
)	TRUSTEE’S REPLY TO RESPONSE
Debtor(s).)	TO MOTION FOR AN ORDER
)	APPROVING COMPROMISE OF
)	CLAIMS

COMES NOW the duly appointed trustee, Michael B. McCarty, through counsel, The Rigby Law Firm, and James Rigby, and files this reply to Judy McKinney’s Response to Motion for an Order Approving Compromise of Claims.

Ms. McKinney does an outstanding job of summarizing the facts and legal issues, and providing the court with an analysis regarding the settlement.

The trustee only slightly differs with Ms. McKinney in the factual presentation. While the Janisch jewelry has been appraised at \$56,800, it is the trustee’s experience that the estate would only recover ten percent (10%) or so of that value if the estate were to sell it. This reduces the compromise value to Mr. Moldskred, in the trustee’s opinion, by about \$50,000. Using Ms. McKinney’s numbers, then, the estate is compromising its claim by approximately \$170,000, not the \$220,973.09 she presents.

Additionally, Mr. Moldskred would be entitled to credit for the amount of funds he loaned to Mr. Janisch after taking a security interest in Mr. Janisch’s residence and jewelry. This amount is in excess of \$15,000.

Ms. McKinney requests that the trustee provide an analysis of the costs of administration and how they will impact the settlement. The trustee has filed a declaration in conjunction with this

1 reply. To summarize the declaration, there is an appeal pending before the Ninth Circuit BAP
2 regarding the \$123,000 judgment based upon a fraudulent conveyance. The trustee believes that it
3 will cost approximately \$15,000 to \$25,000 to address that appeal in both the Ninth Circuit BAP and
4 the Ninth Circuit Court of Appeals.

5 The trustee believes that a trial against Moldskred on the remaining issues would take
6 approximately two days. The discovery has been essentially concluded; however, no trial
7 preparation as such has taken place. It is estimated that the trial would take two days to perform and
8 ten days to prepare. The trial will be rather fact intensive, unlike the proceedings to date. The trial
9 will involve the interviewing and preparation of third party witnesses, although it will not be
10 necessary to take their depositions. The trustee estimates it will cost \$30,000 to \$50,000 for the
11 legal fees to prepare for and conduct that trial. Additionally, the trustee's accountant will be utilized
12 as an expert witness and it is estimated that his fees would approximate \$5,000. This means that a
13 trial could cost as much as \$55,000.

14 Assuming the trustee wins the trial against Mr. Moldskred, he may well file a second appeal
15 to the Ninth Circuit BAP and then the Ninth Circuit Court of Appeals. Again, such an appeal will
16 cost approximately \$15,000 to \$30,000 to prosecute.

17 This means that the trustee has considered potential costs of \$110,000 to take the Moldskred
18 matter to trial and to pursue the two appeals to two courts, or four appeals.

19 This amount does not include the time value of the money. It is likely that it would take
20 another six months to try the Moldskred matter and posture the case for an appeal. It is likely that
21 an appeal first to the BAP and then to the Ninth Circuit would take approximately three years. This
22 means that in the best case the creditors would have to wait an additional three and one half years
23 in order to obtain a final judgment regarding the outstanding claims.

24 Ms. McKinney notes that the estate expects to receive \$92,000 from the Fleischman
25 settlement, and the trustee has approximately \$15,000 on hand. At the same time, this attorney has
a fee application pending before this court in the approximate amount of \$80,000, and the trustee's

1 accountant has an application pending for \$20,000. This means that the costs of administration to
2 date are equal to all assets in this case other than the instant litigation. If the trustee pursues the
3 pending claims, recovers an additional \$175,000 and spends \$110,000 on litigation expenses, the
4 creditors will net \$65,000.

5 Under the proposed settlement, the creditors will net \$154,500. This is over twice the
6 amount of money that would be recovered under the best case scenario for litigating this matter to
7 a conclusion, assuming the costs of administration do not exceed the trustee's estimates and not
8 considering the time value of the money for the three years which will transpire prior to the
9 conclusion of the litigation. She also does not consider the possibility of losing the case or being
10 unable to collect a judgment three or four years from now.

11 Ms. McKinney has done an excellent job summarizing the facts and analyzing the law. It
12 is understandable that she would not anticipate that the litigation would be so incredibly expensive.
13 The fact is, however, that litigation is expensive and the trustee has postured this case for a
14 settlement which provides the maximum net value to the creditors. If the instant motion is denied
15 and the trustee pursues the litigation, he will argue the case much along the lines of Ms. McKinney's
16 memorandum. Mr. Moldskred will likely argue that when he loaned the \$150,000 to Mr. Janisch
17 he had no knowledge of any wrongdoing on Mr. Janisch's part or he would not have loaned the
18 money. It is the old "I was not so stupid as to have done that" defense. It may or may not work.
19 Either way, the creditors will receive less than they will receive under the instant settlement.

20 DATED this 6th day of January, 2009.

21 THE RIGBY LAW FIRM

22
23 */S/ James Rigby*

24 _____
James Rigby, WSBA #9658
Of Attorneys for Trustee