

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
Debtor(s).	)	OPPOSITION TO MOTION FOR AN
	)	ORDER APPROVING COMPROMISE
	)	OF CLAIMS

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COMES NOW the duly appointed trustee, Michael B. McCarty, through counsel, The Rigby Law Firm, and James Rigby, and files this reply to the Opposition to Motion for an Order Approving Compromise of Claims filed by several students.

It should be noted at the outset that the objection filed by 24 students is the only objection filed to the motion. There were hundreds of students who attended Court Reporting Institute, Inc. (“CRI”) and there are over fifteen hundred creditors on the mailing matrix. While the objection must be seriously addressed, the court cannot assume that it is representative of the other student creditors.

The trustee seeks to compromise two claims against Steve Fleischman, Fleischman Family LLP, Fleischman Center and any other entities owned and operated by the Fleischman family (“Fleischman”). The CRI estate has filed an adversary proceeding under Adversary No. 08-01131 against Steve Fleischman and Bank of America to recover approximately \$62,000 held in an account. The CRI estate has also filed an adversary proceeding under Adversary No. 08-01167 against the Fleischman Family LLP, d/b/a Fleischman Center, to recover \$150,000 as a subsequent transferee of a transfer from CRI to Alen Janisch which was forwarded to Fleischman.

**TRUSTEE’S REPLY TO OPPOSITION  
TO MOTION FOR AN ORDER APPROVING  
COMPROMISE OF CLAIM**

1           The objecting students have filed an opposition objecting as follows: (a) the settlement  
2 allows Fleischman a claim for \$186,000 as a general unsecured creditor in the Janisch proceeding  
3 for unpaid rent, (b) the \$62,000 in the account should not be allowed to be part of the settlement  
4 proceeds, (c) they would prefer to spend money on litigation attempting to get a full recovery, and  
5 (d) a forty percent recovery is not adequate.

6           At the end of their opposition, the students acknowledge that this court must analyze the  
7 costs and benefits at issue here and that there will be no relief for their debts.

8           The primary case which bears on this matter is *In re A & C Properties*, 784 F.2d 1377 (9th  
9 Cir. 1986). That case sets forth the elements this court must analyze when determining whether or  
10 not a settlement should be approved as follows:

- 11           a)     the probability of success in the litigation;
- 12           b)     the difficulties, if any, to be encountered in the matter of collection;
- 13           c)     the complexity of the litigation involved and the expense, inconvenience and delay  
14 necessarily attending it; and,
- 15           d)     the paramount interest of the creditors and the proper deference to their reasonable  
16 views in the premises.

17           The trustee would not have initiated the litigation in the first place if he was not confident  
18 that there was a reasonable likelihood of success. Having said that, however, litigation is always  
19 uncertain and, even in the best of cases, there is a significant possibility that the estate will not be  
20 successful.

21           As indicated in the declaration of the trustee, the difficulties in collecting the funds in the  
22 account, or \$62,000, will not be great. The difficulties in collecting the remaining amount are  
23 unknown. While on one hand the defendant appears to be prosperous, on the other hand this is not  
24 a certainty. Therefore, collection remains an open question.

25           The litigation is not unduly complex; however, it is not unusually simple either. The trustee  
has the burden of proof and must establish factual elements before a judgment may be entered in this

1 favor. The expense associated with the litigation must be measured against the possibility of a  
2 recovery. In the best case, the trustee would recover \$62,000 held in the account, plus \$150,000,  
3 for a total of \$212,000. While the cost of litigation would likely be less than half of that amount,  
4 if the estate were to fail on either claim, the expenses associated with the litigation may more than  
5 consume much or most of the recovery. It is also possible that the estate would fail on both claims  
6 and the legal fees associated with this action would consume the entire bankruptcy estate. Further,  
7 a successful judgment would likely entail an appeal to the Ninth Circuit and the process will likely  
8 take the next three years. On the other hand, an instant settlement may bring this bankruptcy  
9 proceeding to a conclusion early next year.<sup>1</sup>

10 The reasonable interest of the creditors must be weighed heavily. The instant opposition,  
11 however, makes it clear that the student creditors are well aware that pending litigation may  
12 consume all of the potential recovery. The situation is perhaps even more dire than that, as it is  
13 possible that if the litigation is not settled the estate will become administratively insolvent. That  
14 will not benefit the creditors. Although the creditors may rather the estate spend money on litigation  
15 than recover less than the entire claim, that is not a reasonable position because that position could  
16 always veto a reasonable settlement. The students must realize that the proposed settlement is truly  
17 in the best interest of the estate, given the elements outlined in *In re A & C Properties*.

18 Further, the trustee, upon receipt of the opposition, contacted the attorneys for Fleischman  
19 and they are willing to concede an additional element in the settlement. Fleischman is willing to  
20 waive their claim in the Janisch bankruptcy proceeding (they do not have such a claim in the CRI  
21 proceeding) and, thus, eliminate one of the students' objections to the settlement.

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<sup>1</sup>The trustee has a settlement pending of the other major litigation in this case.

1 For the reasons set forth herein, the trustee believes that the proposed settlement meets the  
2 elements of *In re A & C Properties*, and is in the best interest of the estate. The trustee requests that  
3 the court overrule the objection and authorize the settlement.

4 DATED this 21<sup>st</sup> day of October, 2008.

5 THE RIGBY LAW FIRM

6  
7 */S/ James Rigby*

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James Rigby, WSBA #9658  
Of Attorneys for Trustee

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