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JUDGE: Hon. Karen A. Overstreet
DATE: October 24, 2008
TIME: 9:30 a.m.
CHAPTER: 7
LOCATION: Seattle
RESPONSE DATE: October 17, 2008

6 UNITED STATES BANKRUPTCY COURT
7 WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

8 In re:) No. 06-14202
9 COURT REPORTING INSTITUTE, INC.,)
10) REPLY TO OPPOSITION BY
11 Debtor(s).) MOTION FOR AN ORDER
12) APPROVING COMPROMISE

13 Steve Fleischman, Fleischman Family Limited Partnership, and Fleischman Center
14 [collectively “Fleischman”], the parties to a settlement with trustee Michael McCarty in the Court
15 Reporting Institute, Inc. [“CRI”] case and trustee Ed Wood in the Alen Janisch case (no. 07-15620),
16 submit this reply to the Opposition to Motion for an Order Approving Compromise of Claims filed
17 by creditors and students Jessica Berta et al. [“Students”] herein.

18 **1. Preliminary Matters.** First, Fleischman absolutely empathizes with the plight of the
19 Students. Nothing in this reply should be construed to suggest otherwise. That said, Fleischman did
20 not cause the plight of the Students and he did not do anything “underhanded” as the Students want
21 to argue. Fleischman is a co-victim in the CRI and Janisch fiasco. Among other things, Fleischman
22 Family Limited Partnership is owed over \$185,000 in unpaid rent, real estate taxes, insurance and
23 utilities payments, etc. as a result of both breach and ultimate termination of its lease with Janisch
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27 Reply to Opposition by Students (Berta et al.) to
28 Motion for an Order Approving Compromise - 1

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1 for the business premises [the “Rent Claim,” summarized in a filed proof of claim in the Janisch
2 case]. These are real losses just as the Students’ losses are undoubtedly real.

3 **2. Reasonableness of compromise.** Reduced to its essence, the settlement basically
4 involves two claims:

5 (a). Claim for turnover of \$62,000 net deposit provided by CRI to Fleischman,
6 which was then used to back a letter of credit obtained for the benefit of CRI (at issue in Adv. No.
7 08-01131). Under the settlement, Fleischman returns to the two trustees, to be allocated as they
8 determine or as ordered by the court, the entire principal amount. Fleischman has (and appended to
9 his formal answer, a true and correct copy of), an agreement executed by CRI/Janisch, providing
10 that Fleischman is entitled to retain interest on the amount initially provided by CRI to Fleischman.
11 Thus, the settlement provides for full relief to the estates.
12

13 (b). Claim for avoidance and return of \$150,000 received by Fleischman as
14 alleged subsequent transferee of a transfer constituting repayment of a short-term loan provided by
15 Fleischman to Janisch in late 2005 and repaid in early 2006 (at issue in Adv. No. 08-01167).
16 Initially, it must be stated that Fleischman provided actual funds in that amount, to Janisch such that
17 repayment in no manner represented a depletion of CRI or Janisch assets that would have existed in
18 the absence of the short-term loan. According to the complaint brought by the CRI trustee, CRI
19 remitted these funds to Janisch, who in turn remitted them to Fleischman in repayment of the loan to
20 CRI. Fleischman has asserted bona fide defenses to liability, including without limitation, defense
21 as a “good faith” subsequent transferee. In this regard, Fleischman contends and the evidence will
22 show (among other things):
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1 ● Fleischman was not an insider of CRI, did not have general knowledge of its
2 financial affairs, and did not have reason to believe at the time of this repayment, that CRI was
3 insolvent or otherwise in financial distress;

4 ● The Fleischman family or entities had consistently made similar short-term, year-
5 end loans to Janisch, a long-time tenant and family acquaintance, for many years (dating back to
6 1997), with the loan, in each case, being repaid in early January of the following year just as it was
7 repaid in the transaction at issue. Fleischman had no reason to know of the avoidability of a transfer
8 made to repay the late 2005 loan;

9 ● Although Fleischman did not know the particular financial condition of CRI or
10 Janisch at the time of this transaction, since the litigation has been commenced, Fleischman has
11 learned of facts that have been contended in other proceedings before this Court to show that the
12 financial difficulties of CRI occurred after the transaction at issue, at least largely if not wholly in
13 response to adverse publicity generated in a critical newspaper article by the Seattle Times in March
14 2006. This suggests that as of the early January 2006 repayment transaction, CRI was a viable
15 concern just as it had been for many years prior. There was no reason why Fleischman should have
16 suspected any repayment to be with intent to hinder, delay or defraud any creditors of CRI or
17 Janisch.

18 If these matters are not settled, Fleischman intends to defend vigorously. The trustee will
19 spend significant attorneys fees, and possibly costs of an expert with respect to financial conditions,
20 to complete discovery and trial in this matter. All of these costs are administrative expenses that
21 will deplete whatever funds might be available for distribution to the Students and other creditors.
22 Whether Fleischman is a good faith transferee is a question of fact that will require trial in these
23 circumstances. If Fleischman prevails, Fleischman's liability will be zero, not some portion of
24 \$150,000. In these circumstances, the \$30,000 in additional settlement funds provided by
25 Fleischman represent a settlement well within a zone of reasonableness.

26 3. Rent Claim Analysis and Conditional Waiver. With due respect, Fleischman believes
27 the argument of the Students with respect to the Rent Claim are misplaced. Fleischman submitted
28 his claim in the Janisch case, not the CRI case, because the relevant lease is with Janisch. The

1 Students argue that the claim should be against CRI. If it were against CRI, however, Fleischman
2 would then assert a right of setoff against the \$62,000 he owes to CRI on account of the certificate
3 of deposit funds provided by CRI, under 11 U.S.C. § 553 and other applicable law.¹ The Students
4 would be better off as it is: Fleischman has not asserted the Rent Claim against CRI and the Rent
5 Claim therefore will not diminish any CRI estate funds which might be available for distribution to
6 CRI creditors.²

8 At the request of the CRI trustee, however, Fleischman has considered waiving the Rent
9 Claim, and if this settlement is finally approved without appeal, will agree to do so in the interests of
10 bringing finality to all affairs between Fleischman and the estates. In the event the settlement is not
11 approved, or if the order approving the settlement is appealed or collaterally attacked, Fleischman
12 reserves all rights with respect to the Rent Claim as well as his other claims and defenses.

14 4. Provision of Shelter to Mr. Janisch. Mr. Janisch, for whatever shortcomings he may
15 have had or now has, happened to be a tenant and family acquaintance of the Fleischman family for
16 many years. When he lost his home to foreclosure, he was, as Steve Fleischman observed, “dirty
17 and on the street.” Mr. Fleischman agreed to let Janisch stay temporarily in a space at the

19 1. Furthermore, if the claim were against CRI, it could be used defensively as a setoff even if not
20 timely filed and therefore not recoverable as an affirmative claim against the estate. In this regard, the CRI
21 trustee’s complaint with respect to the certificate of deposit funds as styled as a “turnover” complaint. 11
22 U.S.C. § 542(b) explicitly provides that payment of a debt to the estate that is immediately payable is
23 nonetheless subject to “offset under section 553...”

24 2. The Students argue that “Fleischman was less than forthcoming when he put in a claim for rent
25 monies owed, and did not bring up the letter of credit owned by CRI/Janisch over which Fleischman and/or
26 Bank of America had control.” This is frankly a gratuitous, legalistic statement, and it is factually incorrect.
27 The CRI trustee’s attorney took a Rule 2004 examination of Steve Fleischman, specifically about the letter of
28 credit funds, in early December 2007. The CRI trustee well knew about these funds before Fleischman
Family Limited Partnership filed a proof of claim, initially in the form of a letter to the court (because
Fleischman did not know how to file a formal proof of claim) later in December. Subsequently, when

1 commercial property owned by Fleischman -- a space that was not under lease and for which there
2 was no known immediate prospect for a lease -- so that Janisch would at least have shelter and
3 running water. This was a temporary arrangement and Mr. Janisch no longer occupies the property.
4 Mr. Fleischman frankly was concerned whether he should do this (without waiving attorney-client
5 privilege, the subject of whether he should provide shelter to Mr. Janisch was discussed with his
6 counsel). Mr. Fleischman decided to do what he thought was right in the circumstances even though
7 someone might try to ascribe some bad motive to it later. It should not be held against him, that he
8 performed a charitable act that in no manner harmed the Students or the bankruptcy estate.
9

10 WHEREFORE, Fleischman suggests that when understandable emotions are put aside, the
11 compromise is consistent with the economic interests of the estate and its creditors. Fleischman
12 requests that the Court approve the compromise as being reasonable in the circumstances.
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14 Respectfully submitted this 20th day of October, 2008.

15 BUCKNELL STEHLIK SATO & STUBNER, LLP

16

17 /s/ Edwin K. Sato

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Edwin K. Sato, WSBA # 13633

19 Attorneys for Fleischman

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Fleischman retained counsel, a formal proof of claim was filed.

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