

Honorable Karen A. Overstreet
Hearing date: October 24, 2008; 9:30 a.m.
Hearing Place: Room 7206, 700 Stewart Street, Seattle, WA 98101
Responses due by: October 17, 2008; by 4:30 p.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 MOTION FOR AN
) ORDER APPROVING COMPROMISE
) OF CLAIMS

NOTICE

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

PLEASE TAKE NOTICE that the below joined motions will be heard on the 24th day of October, 2008, 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 on or before October 17, 2008. 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 MOTION FOR
AN ORDER APPROVING
COMPROMISE OF CLAIMS**
080915eNot Page 1

THE RIGBY LAW FIRM
600 Stewart Street, Suite 1908
Seattle, WA 98101 - (206) 441-0826

1 **MOTIONS**

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 compromises of claims.

4 Motion for an Order Approving Compromise of Claim with Janisch Bankruptcy Estate

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

6 Court Reporting Institute, Inc. ("CRI") filed bankruptcy in the United States Bankruptcy
7 Court for the Western District of Washington at Seattle under Case No. 06-14202 on December 28,
8 2006, and Michael B. McCarty was appointed as the CRI Trustee. The CRI Trustee initiated an
9 adversary proceeding in the United States Bankruptcy Court for the Western District of Washington
10 at Seattle under Adversary No. 07-01167 against Alen Janisch ("Janisch") and Kai Moldskred
11 ("Moldskred"). The adversary proceeding set forth several causes of action against each Janisch and
12 Moldskred concerning their involvement with CRI.

13 Janisch filed bankruptcy in the United States Bankruptcy Court for the Western District of
14 Washington at Seattle under Case No. 07-15620, and Edmund J. Wood was appointed as the Janisch
15 Trustee. Janisch did not initially file schedules in the matter and the CRI Trustee filed a motion in
16 both the CRI and Janisch matters seeking to substantively consolidate the two cases based upon the
17 fact that Janisch was the 100 percent owner of CRI and their financial affairs were irrevocably
18 intertwined, including their assets and creditors; however, since the assets and creditors were not
19 identical, the motion was denied.

20 The adversary proceeding was initially stayed by the Janisch automatic stay, the motion for
21 summary judgment was re-noted for June 20, 2008, and partial summary judgment was awarded.
22 The adversary proceeding sets forth certain claims against Janisch based upon a fraudulent
23 conveyance theory and certain claims against Moldskred based upon both the fraudulent conveyance
24 theory and subsequent transferee theory.

25 Presently, the CRI estate has an Order of Partial Summary Judgment against Janisch, which
may not be enforced because of the automatic stay in that bankruptcy proceeding, in the amount of

1 \$905,360 and against Moldskred in the amount of \$123,000. Additionally, the CRI estate has an
2 Order of Partial Summary Judgment stating that the transfer from Janisch to Moldskred of \$150,000
3 is recoverable by the CRI estate if the CRI estate can establish that Moldskred made a loan in the
4 like amount without good faith and without knowledge of the avoidability of the transfers.

5 Both the CRI estate and the Janisch estate may have a claim or claims against Steve
6 Fleischman, Fleischman Family LLP, Fleischman Center and any other entities owned or operated
7 by the Fleischman family (“Fleischman”). The CRI estate has filed an adversary proceeding under
8 Adversary No. 08-01131 against Steve Fleischman and Bank of America to recover approximately
9 \$62,000 held in an account. The CRI Trustee has also filed an adversary proceeding under
10 Adversary No. 08-01167 against the Fleischman Family Limited Partnership, d/b/a Fleischman
11 Center, to recover \$150,000 as the subsequent transferee of a transfer by CRI to Janisch which was
12 forwarded to Fleischman.

13 The CRI estate may not pursue claims against the Janisch estate, other than as a creditor in
14 that case. The Janisch Trustee takes the position that it is in fact the owner of the claims that the
15 CRI estate has made against both Fleischman and Moldskred.

16 The CRI Trustee and Janisch Trustee have agreed to settle their claims against each other
17 for an equal division of the net proceeds. The net proceeds are determined by deducting the
18 professional fees incurred in recovering the proceeds, exclusive of trustee fees. The settlement
19 agreement between the two estates includes all net proceeds recovered by either estate from the
20 prosecution of the avoidance claims, sales of real property and personal property and other
21 liquidation of assets in either estate.

22 The avoidance claims are essentially all of the property in the CRI estate. The Janisch estate
23 consists of the avoidance claims and \$45,000, which is subject to a deed of trust held by Moldskred.
24 Additionally, it owns jewelry which has been assigned to Moldskred and which may be recovered
25 by the Janisch Trustee.

1 The CRI Trustee has considered the following factors in deciding to approve the
2 compromise:

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

8 While both the CRI Trustee and Janisch Trustee are optimistic concerning their respective
9 avoidance claims, this type of litigation is inherently unpredictable. What appears to be the best case
10 can easily come apart before the conclusion of a trial and judgment is entered. Thereafter, appeals
11 are highly likely given the dollar amount of the claims and the history of the case. While either the
12 CRI estate or the Janisch estate is likely to prevail upon some or all of the avoidance claims,
13 determining which estate will ultimately be successful and in what amount is impossible to predict
14 with certainty. Further, the two estates will be at odds in the litigation and spend significant sums
15 pursuing and defending claims with respect to either other. It will be in the best interest of the
16 creditors, given the nature of the assets and the debt structure of each estate, to settle the claims as
17 indicated. A copy of the Declaration of James Rigby Appending CRI/Janisch Settlement Agreement
18 is on file with the bankruptcy court and may be viewed during normal business hours at the clerk's
19 office, which is located at Room 6301, 700 Stewart Street, Seattle, Washington 98101, or by
20 sending an email to rigbylaw@aol.com requesting a copy of the declaration.

21 Motion for an Order Approving Compromise of Claim with Fleischman

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

23 The CRI Trustee has filed two separate adversary proceedings against Fleischman entities
24 as referenced above. The Fleischman entities and the CRI Trustee have determined to settle those
25 proceedings by a payment of \$92,000 to the CRI estate. The funds will be held by the CRI Trustee

1 and distributed pursuant to further court order and the settlement agreement above, if that agreement
2 is authorized by the court.

3 A copy of the Declaration of James Rigby Appending Fleischman Settlement Agreement is
4 on file with the bankruptcy court and may be viewed during normal business hours at the clerk's
5 office, which is located at Room 6301, 700 Stewart Street, Seattle, Washington 98101, or by
6 sending an email to rigbylaw@aol.com requesting a copy of the declaration.

7 The CRI Trustee has considered the following factors in deciding to approve the
8 compromise:

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

14 WHEREFORE, the CRI trustee prays for orders accordingly.

15 DATED this 22nd day of September, 2008.

16 THE RIGBY LAW FIRM

17 */S/ James Rigby*

18 _____
19 James Rigby, WSBA #9658
20 Of Attorneys for Trustee