

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Bruce E. Kiernat,

Debtor.

BKY 03-35883

Chapter 7 Case

NOTICE OF HEARING AND MOTION TO OBJECT TO CLAIM(S)

To: Parties in interest specified in Local Rule 9013-3.

1. Bruce E. Kiernat (“Debtor”), moves the Court for the relief requested below and gives notice of hearing herewith.
2. The court will hold a hearing on this motion on in Courtroom No. 228A, Second Floor, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota on November 23, 2004 at 9:30 a.m.
3. Any response to this motion must be filed and delivered not later than November 16, 2004, which is seven days before the date set for hearing (including Saturdays, Sundays and holidays), or filed and served by mail no later than November 13, 2004, which is ten days before the time date set for hearing (including Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.
4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. § 157 and 1334, Fed.R.Bankr.P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this chapter 7 case was filed on August 26, 2003. The case is now pending

in this court. This Motion arises under 11 U.S.C. 502, Fed.R.Bank.P. 3007 and Local Rule 3007-1, and Fed.R.Bank.P 9006(c) and (d) and Local Rule 9006-1(d).

Procedural Status of the Case and Claims

5. By Notice dated and filed March 24, 2004, the Acting Clerk of the U.S. Bankruptcy Court for the District of Minnesota (“Acting Clerk”) provided notice to creditors that the trustee had advised the Bankruptcy Court that payment of a dividend to creditors appeared possible, and that, creditors were therein notified that the time period to file a claim was 90 days from the date of the notice. Ninety days after March 24, 2004 was June 22, 2004.

6. On June 22, 2004, only one claim had been filed in the bankruptcy case: Claim No. 1 as a priority claim in the amount of \$1,095, filed by the Debtor for the benefit of the Minnesota Department of Revenue.

7. By notice, dated and filed June 29, 2004, the Acting Clerk provided notice to creditors that the trustee had advised the Bankruptcy Court that the amount of funds on hand exceeded the total administrative expenses and claims which had been filed to date, and notified creditors that 20 days after the date of the notice was fixed as the last day to file claims against the surplus. Twenty days after June 29, 2004 was July 19, 2004. The June 29 Notice was generated purportedly pursuant to Local Rule 3002-4.

8. Local Rule 3002-4 was abrogated and deleted from the text of the Local Rules pursuant to the Order Promulgating Amendments, dated November 21, 2001, with an effective date of January 2, 2002.

9. William M. Beadie, Trustee of the Alice S. French Trust (“Creditor”) filed Proof of Claim No. 2 on July 13, 2004 (“Claim”). A copy of the Claim is attached as Exhibit A.

10. At the time that this Objection was drafted, there were two claims filed in the bankruptcy case: Claim No. 1 and Claim No. 2.

11. When this Objection is heard by the Bankruptcy Court, an amended proof of claim will have been filed, amending Claim No. 1 to be in the amount of \$567.17.

12. Claim No. 2 filed by William M. Beadie, Trustee, was untimely filed pursuant to the March 24, 2004 Notice provided by the Bankruptcy Court Clerk's Office.

13. The Claim is in the amount of \$612,741.17.

14. According to the attachment to the Claim, the basis of the claim is "Defalcation under 11 U.S.C. §523(a)(4); and willful and malicious injury under 11 U.S.C. §523(a)(6). The attachment to the Claim also contains a "Summary," the last statement of which alleges that "[a]s a result of Kiernat's fraud and defalcation as a fiduciary, he is obliged to forfeit and return all fees received from the trusts and this debt cannot be discharged by Kiernat's bankruptcy."

15. On September 23, 2003, the Debtor filed his bankruptcy schedules. In Schedule F, the Debtor listed various claims asserted, including the claim of William M. Beadie Trustee, and indicated that the claim was disputed. Attached as Exhibit B is a copy of Schedule F.

16. If the Claim is disallowed, the estate will be solvent and there will be surplus funds available for distribution to the Debtor pursuant to Section 726(a)(6).

Procedural Status of Adversary Proceeding

17. On December 12, 2003, a complaint ("Complaint") was filed by the St. Paul Academy and Summit School, the Alice S. French Trust, and the Richard S. French Trust against the Debtor for a determination of the dischargeability an alleged debt under Section 523(a)(4) and Section 5233(a)(6) of the Bankruptcy Code.

18. On December 30, 2004, the Debtor filed an answer (“Answer”) to the Complaint. In the Answer, among other matters, the Debtor asserted that, before the bankruptcy case was filed, he paid the claim he owed to the Creditor, denied the allegations that any debt owed was nondischargeable, and asserted various affirmative defenses. A copy of the Answer is attached hereto as Exhibit C.

19. On June 11, 2004, the parties to the adversary proceeding filed a stipulation. The underlying reasons for the stipulation were: (1) that the Court had entered an Order for Pre-Trial Conference, setting certain obligations to be performed on or before June 16, 2004; (2) that in April, 2004, the Debtor was sentenced to serve six months in a correctional facility; (3) that at the time of the stipulation, the Debtor was incarcerated and unable to assist counsel in compliance with the obligations imposed in the Order for Pre-Trial Conference; and (4) that the Debtor was scheduled for release on November 2, 2004. A copy of the stipulation is attached hereto as Exhibit D.

20. By Order, dated June 14, 2004 and filed June 15, 2004 in the adversary proceeding, the Order for Pre-Trial was vacated.

21. The adversary proceeding is still pending.

22. To the best of counsel’s knowledge, the Debtor is still scheduled to be released on November 2, 2004.

Objection to Claim

23. According to the Summary of the Claim attached to the proof of claim, the basis for the claim is the assertion that Kiernat forfeits all fees received from the trusts because Kiernat allegedly committed fraud and defalcation of a fiduciary duty.

24. As indicated in Schedule F and the Answer to the Complaint, the Debtor disputes that he owes any debt at all to the Creditor.

25. As indicated in the Answer, the Debtor paid the claim he owed to the Creditor pursuant to the plea agreement and order for restitution before the bankruptcy case was filed.

26. As indicated in the Answer, the Debtor denies that the Creditor is owed any claim that is not dischargeable under Section 523(a)(4) or (a)(6).

Determination of Claim Objection

27. The subject matter of the Claim and this Objection is subsumed within the subject matter of the adversary proceeding.

28. The Debtor asks that the determination of the Claim and this Objection be made in conjunction with the determination of the adversary proceeding.

WHEREFORE, the Debtor requests and order as follows:

- (a) Disallowing Claim No. 2 in its entirety;
- (b) Consolidating the determination of the Claim and this Objection with the adversary proceeding presently pending; and
- (c) Granting any other relief the Court deems just and proper.

HENSON & EFRON, P.A.

Dated: October 8, 2004

/e/ William I. Kampf
William I. Kampf (#53387)
Mary L. Cox (#176552)
220 South Sixth Street, Suite 1800
Minneapolis, MN 55402
Telephone: 612-339-2500

Attorneys for Debtor

VERIFICATION

I, William I. Kampf, attorney for the Debtor, hereby certify under penalty of perjury, that the statements contained in the foregoing Objection to Claim(s) are true and correct according to the best of my knowledge, information and belief, and that some or all of the statements are a matter of the case record.

Dated: October 8, 2004

/e/ William I. Kampf

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA (ST. PAUL)**

PROOF OF CLAIM

Name of Debtor
Bruce E. Kiernat

Case Number
03-35883

RECEIVED
04 JUL 14 AM 9:14

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. §503.

S. BANKRUPTCY COURT

03-35883

Name of Creditor (The person or other entity to whom the debtor owes money or property):
WILLIAM M BEADIE TRUSTEE

- Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
- Check box if you have never received any notices from the bankruptcy court in this case.
- Check box if the address differs from the address on the envelope sent to you by the court.


1516089

Name and Address where notices should be sent:
**WILLIAM M BEADIE TRUSTEE
THE ALICE S FRENCH TRUST
701 FOURTH AVE S STE 1350
MINNEAPOLIS MN 55415-1636**

Telephone Number:
Account or other number by which creditor identifies debtor:

Check here if replaces this claim amends a previously filed claim, dated: _____

- 1. Basis for Claim**
- Goods sold
 - Services performed
 - Money loaned
 - Personal injury/wrongful death
 - Taxes
 - Other See attachment.

- Retiree benefits as defined in 11 U.S.C. §1114(a)
- Wages, salaries, and compensation (fill out below)
Last four digits of SS #: _____
- Unpaid compensation for services performed
from _____ to _____
(date) (date)

2. Date debt was incurred:

3. If court judgment, date obtained:

4. Total Amount of Claim at Time Case Filed: \$ 612,741.17
(unsecured) (secured) (priority) (Total)

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured Claim.

Check this box if your claim is secured by collateral (including a right of setoff).

Brief Description of Collateral:
 Real Estate Motor Vehicle
 Other _____

Value of Collateral: \$ _____

Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____

7. Unsecured Priority Claim.

Check this box if you have an unsecured priority claim

Amount entitled to priority \$ _____

Specify the priority of the claim:

- Wages, salaries, or commissions (up to \$4,925)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3).
- Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4).
- Up to \$ 2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6).
- Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____).

*Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

6. Unsecured Nonpriority Claim \$ 612,741.17

Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.

8. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

9. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. **DO NOT SEND ORIGINAL DOCUMENTS.** If the documents are not available, explain. If the documents are voluminous, attach a summary.

10. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

Send claims to:
**U.S. Bankruptcy Court
200 U.S. Courthouse
316 North Robert Street
St. Paul, MN 55101**

Date July 13, 2004
Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): William M. Beadie Trustee by Robert M. McClay Attorney for Trustee
Robert M. McClay

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

CHAPTER 7, 11 or 12 CASES filed on or after April 1, 2004



ATTACHMENT TO PROOF OF CLAIM

United States Bankruptcy Court
District of Minnesota (St. Paul)
Name of Debtor: Bruce E. Kiernat, Debtor
Name of Creditor: SPA / William M. Beadie Trustee
Case Number: 03-35883

1. Basis for Claim.

Other Defalcation under 11 U.S.C. §523(a)(4); and willful and malicious injury under 11 U.S.C. §523(a)(6).

9. Supporting Documents:

Summary

St. Paul Academy and Summit School, the Alice S. French Trust, and the Richard S. French Trust ("SPA") is the primary beneficiary of two trusts (receiving all but \$50,000), for which Debtor Kiernat ("Kiernat") acted as trustee and attorney. Kiernat paid himself trustees fees of \$270,104.18 and attorneys fees of \$401,436.99 for a total of \$671,541.17 from the two trusts. It is the position of SPA that all payments constituted fraud and defalcation. Fifty eight thousand eight hundred (\$58,800) dollars of this sum was repaid by Kiernat to SPA pursuant to an October 2003 criminal plea agreement. As a result of Kiernat's fraud and defalcation as a fiduciary, he is obliged to forfeit and return all fees received from the trusts and this debt cannot be discharged by Kiernat's bankruptcy.

In re Bruce E. Kiernat / Debtor

Case No. 03-35883

(if known)

SCHEDULE F-CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and account number, if any, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

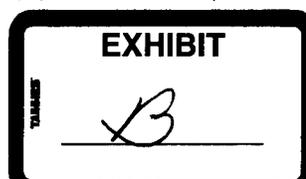
If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedules. Report this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding unsecured nonpriority claims to report on this Schedule F.

Creditor's Name and Mailing Address including Zip Code	C o d e b t o r	Date Claim was Incurred, and Consideration for Claim. If Claim is Subject to Setoff, so State.	C o n t i n g e n t	U n l i q u i d a t e d	D i s p u t e d	Amount of Claim
Account No: Creditor # : 1 Allina Health Systems PO Box 9114 Minneapolis MN 55480-9114						\$ 176.41
Account No: Creditor # : 2 Ann B. Burnes, Trustee The Dora Sommers 1953 Trust 333 South Seventh St, Ste 2000 Minneapolis MN 55402					X	Unknown
Account No: Creditor # : 3 Ann B. Burns, Trustee The Stephen J. Barrett Trust 333 South Seventh St, Ste 2000 Minneapolis MN 55402					X	Unknown
Account No: Creditor # : 4 Barrett, Matthew 13 Courtnell Street London W2 5BU England					X	Unknown
Subtotal \$ (Total of this page)						176.41
Total \$ (Report total also on Summary of Schedules)						

3 continuation sheets attached



In re Bruce E. Kiernat / Debtor

Case No. 03-35883

(if known)

SCHEDULE F-CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

Creditor's Name and Mailing Address including Zip Code	C o d e b t o r	Date Claim was Incurred, and Consideration for Claim. If Claim is Subject to Setoff, so State.	C o n t i n g e n t	U n l i q u i d a t e d	D i s p u t e d	Amount of Claim
Account No: Creditor # : 5 Barrett, Nicholas 20 Stanbridge Road London SW15 1DX England					X	Unknown
Account No: Creditor # : 6 Barrett, Timothy Yebisu Garden Place Tower 20-3 Ebisu 4-chome Shibuya-ku Tokyo 150-6008					X	Unknown
Account No: Creditor # : 7 Felhaber, Larson, et al. 601 Second Ave S, Ste 4200 Minneapolis MN 55402-4302					X	Unknown
Account No: Creditor # : 8 Fredrikson & Byron, P.A. 200 S Sixth Street, Ste 4000 Minneapolis MN 55402-1425						\$ 25,966.80
Account No: Creditor # : 9 John O. Irvine, PR Estate of Alice S. French 2503 Manitou Island WBL MN 55110					X	Unknown
Account No: Creditor # : 10 John O. Irvine, PR Estate of Richard S. French 2503 Manitou Island WBL MN 55110					X	Unknown

Sheet No. 1 of 3 continuation sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

Subtotal \$
(Total of this page)

25,966.80

Total \$

(Report total also on Summary of Schedules)

In re Bruce E. Kiernat / Debtor

Case No. 03-35883

(if known)

SCHEDULE F-CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

Creditor's Name and Mailing Address including Zip Code	C o d e b t o r	Date Claim was Incurred, and Consideration for Claim. If Claim is Subject to Setoff, so State.	C o n t i n g e n t	U n l i q u i d a t e d	D i s p u t e d	Amount of Claim
		H--Husband W--Wife J--Joint C--Community				
Account No: Creditor # : 11 John O. Irvine, Trustee The Richard S. French Trust 2503 Manitou Island WBL MN 55110					X	Unknown
Account No: Creditor # : 12 John O. Irvine, Trustee The Alice S. French Trust 2503 Manitou Island WBL MN 55110					X	Unknown
Account No: Creditor # : 13 May & O'Brien Law Offices 204 Sibley Street, Ste 202 Hastings MN 55033					X	Unknown
Account No: Creditor # : 14 Sir Stephen Barrett 22 Radnor Walk London SW3 4BN England					X	Unknown
Account No: Creditor # : 15 St. Paul Academy/Summit School Attn: Daniel J. Pennie 1712 Randolph Avenue St. Paul MN 55105					X	Unknown
Account No: Representing: St. Paul Academy/Summit School		Martin Fisk, Esq. Briggs and Morgan 332 Minnesota Street #W2200 St. Paul MN 55110				

Sheet No. 2 of 3 continuation sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

Subtotal \$ (Total of this page)	0.00
Total \$ (Report total also on Summary of Schedules)	

In re Bruce E. Kiernat / Debtor

Case No. 03-35883

(if known)

SCHEDULE F-CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

Creditor's Name and Mailing Address including Zip Code	C o d e b t o r	Date Claim was Incurred, and Consideration for Claim. If Claim is Subject to Setoff, so State.	C o n t i n g e n t	U n l i q u i d a t e d	D i s p u t e d	Amount of Claim
		H--Husband W--Wife J--Joint C--Community				
Account No:					X	Unknown
Creditor # : 16 William M. Beadie, PR Estate of Alice S. French 701 Fourth Ave S, Ste 1350 Minneapolis MN 55415						
Account No:					X	Unknown
Creditor # : 17 William M. Beadie, Trustee Estate of Richard S. French 701 - 4th Ave S, Ste 1350 Minneapolis MN 55415						
Account No:					X	Unknown
Creditor # : 18 William M. Beadie, Trustee The Richard S. French Trust 701 Fourth Ave S, Ste 1350 Minneapolis MN 55415						
Account No:					X	Unknown
Creditor # : 19 William M. Beadie, Trustee The Alice S. French Trust 701 Fourth Ave S, Ste 1350 Minneapolis MN 55415						
Account No:						
Account No:						

Sheet No. 3 of 3 continuation sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

Subtotal \$	0.00
(Total of this page)	
Total \$	26,143.21
(Report total also on Summary of Schedules)	

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 03-35883

Bruce E. Kiernat,

Debtor.

St. Paul Academy and Summit School, the
Alice S. French Trust, and the Richard S.
French Trust,

Plaintiffs

ADV No. 03-3356

vs.

Bruce E. Kiernat,

Defendant.

ANSWER

Bruce E. Kiernat ("Defendant") for his Answer to the Complaint of St. Paul Academy and Summit School, the Alice S. French Trust, and the Richard S. French Trust ("Plaintiffs") states and alleges as follows:

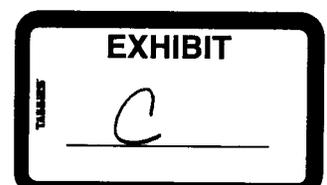
1. Defendant denies each and every allegation, matter and thing contained in Plaintiffs' Complaint unless otherwise stated herein.

2. Defendant is without knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 1 and therefore denies the same.

3. Answering paragraph 2, Defendant admits that the Alice S. French Trust and the Richard S. French Trust were created by Alice S. French and Richard S. French and denies the remaining allegations therein.

4. Defendant admits the allegations in paragraph 3.

5. Defendant admits the allegations in paragraph 4.



6. Answering paragraph 5, Defendant states that the allegations therein state a legal conclusion to which no response is required.

7. Answering paragraph 6, Defendant admits that Alice S. French died in January of 1998, and that her Last Will left her probate Estate to her Revocable Trust. Defendant further admits that Richard S. French died in April 1999, and that his Last Will left his probate Estate to his Revocable Trust. Defendant denies the remaining allegations therein.

8. Answering paragraph 7, Defendant admits that the death of Alice S. French caused the termination of certain trusts created under the will of Benjamin Sommers dated March 3, 1999. Defendant denies the remaining allegations therein.

9. Answering paragraph 8, Defendant admits that he was attorney of record for the Alice S. French Estate with respect to the probate of the Estate, but affirmatively alleges that he was not attorney of record with respect to the litigation regarding the trust established by Benjamin Sommers and Doris Sommers that was venued in Ramsey County. Defendant further admits that he was attorney of record for the Richard S. French Estate with respect to the probate of the Estate, but affirmatively alleges that he was not attorney of record with respect to the litigation regarding the trust established by Benjamin Sommers and Doris Sommers that was venued in Ramsey County. Subject to verification with County records for document numbers and filing dates, Defendant admits that he was removed as a Trustee of the French Trusts in June, 2003, and that a trustee of St. Paul Academy and Summit School was appointed Trustee of the French Trusts. Defendant denies the remaining allegations therein.

10. Defendant denies the allegations in paragraph 9.

11. Defendant denies the allegations in paragraph 10, and affirmatively alleges that the controlling trust agreements authorized the Trustees to pay trustee and attorneys' fees without

Court approval. Alice French and Richard French approved all attorneys' fees paid to Defendant.

12. Defendant denies the allegations in paragraph 11, and affirmatively alleges that the controlling trust agreements authorized the Trustees to pay attorneys' fees without Court approval.

13. Defendant admits that the Saint Paul Academy and the Summit School has filed an objection to the payment of attorneys' fees for work performed on behalf of the Alice and Richard French Trusts. Defendant denies the remaining allegations therein.

14. Assuming Plaintiffs are referring to the SPA objection described in paragraph 12 of its complaint, Defendant admits the allegations in paragraph 13, subject to verification with County records for document numbers and filing dates.

15. Defendant admits the allegations in paragraph 14.

16. Answering paragraph 15, Defendant admits that he entered into a plea agreement on or about October 27, 2003, and further alleges that the document speaks for itself, that the Court accepted the plea, and that Defendant has paid the sum of \$58,800 as and for the restitution required.

17. Answering paragraph 16, Defendant admits that he did not seek the approval of SPA, the Court or the Attorney General prior to paying trustee and attorneys' fees from trust assets, denies that any attorneys' fees and/or trustee's fees were paid from Estate assets, and affirmatively alleges that the controlling Trust agreements authorized the Trustees to pay trustee and attorneys' fees without the prior approval of SPA, the Court or the Attorney General.

18. Defendant admits the allegations in paragraph 17.

19. Defendant denies the allegations in paragraph 18.

20. Defendant denies the allegations in paragraph 19.
21. Defendant denies the allegations in paragraph 20.
22. Answering paragraph 21, Defendant alleges that no response is required.
23. Defendant denies the allegations in paragraph 22.
24. Defendant denies the allegations in paragraph 23.
25. Defendant denies the allegations in paragraph 24.
26. Answering paragraph 25, Defendant alleges that no response is required.
27. Defendant denies the allegations in paragraph 26.

AFFIRMATIVE DEFENSES

28. Defendant asserts the following affirmative defenses: failure to state a claim upon which relief can be granted; claim is barred by doctrine of release; claim is barred in whole or in part by doctrines of estoppel and waiver; claim is barred by the doctrine of material breach and discharge; claim is barred by the doctrine of modification; failure to mitigate damages, if any; claims have been settled or adjudicated and therefore are barred by the doctrines of res judicata, collateral estoppel, accord and satisfaction and/or payment and release; insufficiency of service of process; claim is barred by fact that any injuries that the plaintiffs may have sustained were proximately caused by the acts, omissions, or fault of persons over whom Defendant exercised no control and for which acts, omissions or fault Defendant cannot be held liable.

WHEREFORE, Defendant Bruce E. Kiernat prays for the following relief: (a) for judgment dismissing Plaintiffs' complaint with prejudice on the merits; (b) for judgment awarding Defendant Bruce E. Kiernat his attorneys' fees and costs; and (c) for judgment granting

any other relief that the Court deems appropriate.

Dated: December 30, 2003.

HENSON & EFRON, P.A.

/e/ William I. Kampf

William I. Kampf (#53387)

Mary L. Cox (#176552)

Matthew H. Morgan (#304657)

220 South Sixth Street, Suite 1800

Minneapolis, MN 55402

Telephone: (612) 339-2500

Attorneys for Defendant

217194.DOC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Bruce D. Kiernat,

Debtor

The Richard S. French Trust, The Alice S. French
Trust, St. Paul Academy & Summit School,

Plaintiffs,

vs.

Bruce E. Kiernat,

Defendant.

**STIPULATION FOR
EXTENSION OF TIME**

BKY No. 03-35883

ADV NO. 03-3356

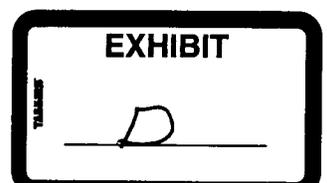
This Stipulation is made by and between Bruce E. Kiernat, debtor in the above-referenced bankruptcy case and defendant in the above-referenced adversary proceeding , and The Richard S. French Trust, The Alice S. French Trust , St. Paul Academy and Summit School, plaintiffs in the above-referenced adversary proceeding.

WHEREAS, the Court entered an Order for Pretrial dated May 12, 2004, setting a pretrial conference for June 16, 2004 at 10:30 a.m. and requiring certain actions by stated deadlines; and

WHEREAS, in April, 2004 the Defendant was sentenced to serve six months in a correctional facility.

WHEREAS, at the time that the Order for Pretrial was entered, the Defendant was incarcerated, and the Debtor currently remains incarcerated and unavailable to assist with the compliance of the Court-ordered requirements and to attend any pretrial or trial in this proceeding.

WHEREAS, the Defendant is scheduled to be released on November 2, 2004.



WHEREAS, the parties wish to toll the obligation to comply with the terms of the order for pretrial during the Defendant's incarceration.

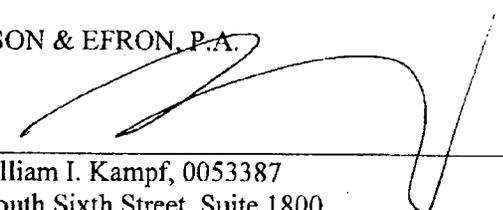
NOW THEREFORE, it is agreed among the Plaintiffs and the Defendant:

1. The parties consent to entry of an order vacating or amending the Order for Pretrial, dated May 12, 2004.
2. The parties consent to entry of an order (a) setting a new date for a pretrial conference, and (b) setting corresponding deadlines for the preparation and filing of pretrial documents, provided the earliest of such deadline occurs after November 2, 2004, and provided there is a reasonable period of time between November 2, 2004 and the earliest deadline to give the Defendant and his counsel time to perform the obligations of the Order for Pretrial.
3. The parties agree that if the Defendant is released prior to November 2, 2004, Defendant's counsel shall notify the Court of the early release, and the Court may further amend its Order for Pretrial to schedule the pretrial conference to occur on a date earlier than scheduled.

Dated: _____

HENSON & EFRON, P.A.

By

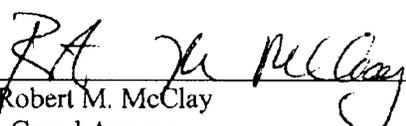


William I. Kampf, 0053387
220 South Sixth Street, Suite 1800
Minneapolis, Minnesota 55402-4503
Telephone: 612-339-2500
Attorneys for Defendant

McCLAY ALTON, P.L.L.P.

Dated: June 7 2004

By



Robert M. McClay
951 Grand Avenue
St. Paul, MN 55105
Telephone: 651-290-0301
Attorneys for Plaintiffs

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Bruce E. Kiernat,

Debtor.

BKY 03-35883

Chapter 7 Case

MEMORANDUM OF LAW

Bruce E. Kiernat (“Debtor”) submits this memorandum of law in support of the Motion to Object to Claim(s) (Motion).

I. STATEMENT OF FACTS

The Debtor relies on the Statement of Facts set forth in the verified Motion and incorporates the same herewith.

II. STATEMENT OF LAW AND ARGUMENT

Section 502(a) of the Bankruptcy Code provides that a proof of claim is deemed allowed as filed unless a party in interest objects.

Section 502(b)(1) provides that if such objection to a claim is made, the court, shall determine the amount of the claim as of the date of the filing of the petition, and shall allow such claim except to the extent that such claim is unenforceable against the debtor under applicable law.

A Chapter 7 debtor has standing to object to a proof of claim if the debtor has a pecuniary interest. “If the debtor can show a reasonable possibility of a surplus after satisfying all debts, then the debtor has shown a pecuniary interest and has standing to object to a bankruptcy order.” *Nangle v. Surratt-States*, 288 B.R. 213 (8th Cir. BAP 2003). *See also In re I & F Corporation*,

219 B.R. 483 (Bankr. S.D. Ohio 1998) (“Unless the estate is solvent and there will be a distribution to the debtor, the debtor has no pecuniary interest in the reduction of a filed claim.” 219 B.R. 483, 484).

The Debtor objects to the proof of claim filed by William M. Beadie, Trustee in the amount of \$612,741.17. According to the proof of claim, the basis for the claim is the assertion that Kiernat forfeits all fees received from the trusts because Kiernat allegedly committed fraud and defalcation of a fiduciary duty. The Debtor denies that there are any unpaid damages from any act amount to defalcation, larceny, and/or embezzlement, or willful and malicious injury..

The subject matter of the Claim and this Objection is a part of the subject matter of the adversary proceeding. The Debtor asks that the determination of the Claim and this Objection be consolidated with the prosecution of the adversary proceeding.

III. CONCLUSION

Based on the foregoing, the Debtor asks this Court to disallow the Claim in its entirety and to consolidate the determination of the Claim and this Objection with the adversary proceeding presently pending.

Respectfully submitted,

HENSON & EFRON, P.A.

Dated: October 8, 2004

/e/ William I. Kampf
William I. Kampf (#53387)
Mary L. Cox (#176552)
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Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT
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PROOF OF SERVICE

The undersigned states that she is an employee of Henson & Efron, P.A., and in the course of said employment, on the date indicated below, she served the following:

Notice of Hearing; Motion to Object to Claim(s); Memorandum of Law; Order Regarding Claim Number 2; and Proof of Service

on the entities named below and/or on the attached service by enclosing true and correct copies of same in an envelope, properly addressed and postage prepaid, and depositing same in the United States mail, unless otherwise noted; and that she certifies the foregoing under penalty of perjury.

and

See parties on attached list

Dated: October 1, 2004

/e/ Nancy W. McDonagh

Office of the United States Trustee
1015 U.S. Courthouse
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Minneapolis, MN 55415

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Trustee
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Vadnais Heights, MN 55109

Bankruptcy Administration
IOS Capital, LLC
1728 Bass Road
P. O. Box 13708
Macon, GA 31208-3708

Ford Motor Credit Company
c/o Stewart, Zlimen & Jungers, LTD.
430 Oak Grove Street, #200
Minneapolis, MN 55403

William M. Beadie, Trustee
The Alice S. French Trust
701 Fourth Avenue S., Ste. 1350
Minneapolis, MN 55415-1636

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951 Grand Avenue
St. Paul, MN 55105

UNITED STATES BANKRUPTCY COURT
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In re:

BKY 03-35883

Bruce E. Kiernat

Debtor(s).

ORDER REGARDING CLAIM NUMBER 2

This case came before the Court on the Debtor's Motion to Object to Claim(s).
Appearances were noted in the record. Based on the pleadings, and the file, record and
proceedings herein.

IT IS HEREBY ORDERED: Claim No 2, in the amount of \$612,741.17 filed on July
14, 2004 by William S. Beadie, Trustee is hereby disallowed in its entirety.

BY THE COURT:

Dated:

Dennis D. O'Brien
U.S. Bankruptcy Judge