

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DIGITAL MEDIA SOLUTIONS, LLC,))	Case No. 1:19-cv-00145
Plaintiff))	Judge Dan Aaron Polster
v.))	Magistrate Judge Thomas M. Parker
SOUTH UNIVERSITY OF OHIO, LLC, <i>et al.</i> ,))	
Defendants.))	

**RECEIVER’S MOTION FOR AN ORDER APPROVING PAYMENT
OF DREAM CENTER EDUCATION HOLDINGS SELF-FUNDED
HEALTH CARE PLAN MEDICAL EXPENSES AT UP TO THE MEDICARE
RATE AND RELEASE OF PLAN PARTICIPANTS AND BENEFICIARIES**

Mark E. Dottore, the duly appointed and acting receiver (the “Receiver”) for the Receivership Entities, by and through undersigned counsel, respectfully requests an Order permitting him to pay certain medical expenses under a certain structure, outlined below.

The Receivership, established in January 2019, is now drawing to a close. Per the Court’s instruction, any claims the Receivership Estate has should be prosecuted and handled not within the confines of a Receivership but instead a liquidating trust. That trust, which is being submitted to the Court for review and approval contemporaneously with this Motion, contemplates an orderly structure of any recoveries. Among the beneficiaries are the former Receivership Entity employees who paid for, but did not receive, health care coverage. Over ten million dollars of claims went unpaid by DCEH under its self-funded plan. The within Motion is reprise of an element of the original Global Settlement and Compromise this Court considered and approved in 2021 (Dkt.

721 for the Motion and plan, and Dkt. 758 for the Order granting said motion), and which was subsequently overturned on other grounds by the Sixth Circuit Court of Appeals.

As a reminder, when considering the previous settlement structure, this Court addressed the problem whereby the DCEH executives attempted to save money by establishing a self-funded health care plan for employees in the waning days of the enterprise. One way they saved money was their failure to actually fund the health care plan or pay claims submitted thereto. Thus, there are over 6,000 medical claims made on behalf of thousands of former employees who were participants in DCEH's self-funded medical plan and were left on their own to pay medical claims they thought were covered under their insolvent medical plan. The failure to fund the plan or pay the administrators of the plan constitute violations of the former officer and directors' fiduciary duties and the Receiver has made a claim under the applicable National Union Fire Insurance Company of Pittsburgh's Fiduciary Liability Insurance Edge Employee Benefit Plan Fiduciary Liability coverage. Any recovery from that particular coverage should be used to administer and pay the outstanding medical claims for the affected former DCEH employees.

As part of the windup of the Receivership Estate, the Receiver contemplates creating a liquidating trust to take the place of the Receivership. The trust will prosecute the outstanding claims against the former officers and directors, and recover as much of the insurance proceeds as possible for distribution to the stakeholders. The trust contains a description of the payments to be made and a direction that proceeds from the Fiduciary Liability Insurance Edge Employee Benefit Plan Fiduciary Liability coverage be used to administer and pay the outstanding medical claims in an equitable

manner. To that end, the Receiver tenders an adapted version of the medical payment plan previously approved (Dkt. 721-4), attached as Exhibit A, and a draft Proposed Order, attached as Exhibit B. The principal difference between the plan the Court approved previously and the one attached hereto is that this version does not make reference to, and is not conditioned upon, entry of a bar order, and provides for payment to provider of up to the approved Medicare rate for services. Reference to the bar order and the previous global settlement have been removed from this iteration of the plan.

WHEREFORE, the Receiver Prays that this Motion is granted, and that this Court enter an Order to that effect, substantially in the form attached hereto as Exhibit B.

Dated: August 31, 2024

Respectfully submitted,

**MCCARTHY, LEBIT, CRYSTAL
& LIFFMAN CO., L.P.A.**

/s/ Hugh D. Berkson

Robert T. Glickman (0059579)

Hugh D. Berkson (0063997)

MCCARTHY, LEBIT, CRYSTAL & LIFFMAN CO., L.P.A.

1111 Superior Ave., Suite 2700

Cleveland, OH 44114

Telephone (216) 696-1422

Facsimile: (216) 696-1210

Email: hdb@mccarthylebit.com

Special Counsel for the Receiver

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of October, 2024 a copy of the foregoing was filed electronically with the Court, and served consistent with the Court's Order of October 8, 2024 (Dkt. No. 845).

Respectfully submitted,

/s/ Hugh D. Berkson
Hugh D. Berkson (0063997)

Exhibit A

PLAN FOR THE PAYMENT OF MEDICAL CLAIMS ON BEHALF OF PLAN PARTICIPANTS OF DREAM CENTER EDUCATION HOLDINGS LLC SIGNATURE BENEFITS PLAN

I. Definitions

- “Benefits Plan” means the Dream Center Education Holdings, LLC Signature Benefits Plan, an ERISA-covered employee benefits plan.
- “Aetna Period” means the period from approximately October 17, 2017, through December 31, 2018, pursuant to which the Aetna Life Insurance Company agreed to provide administrative services to the Benefits Plan.
- “BAS Period” means the period from January 1, 2019, through April 30, 2019, pursuant to which Benefit Administrative Systems, LLC (“BAS”) agreed to provide administrative services to Benefits Plan.
- “Beneficiaries” means the participants, as well as their dependents, beneficiaries, or COBRA continuees, covered by the Benefits Plan during the Aetna Period and/or the BAS Period.
- “Cost Sharing” means amounts during the Aetna Period and/or the BAS Period that are the responsibility of the Beneficiary, which are generally co-pays, co-insurance, and deductibles.
- “DCEH Medical Claims” means the unpaid medical claims incurred by Beneficiaries during the Aetna Period and/or the BAS Period.
- “Explanation of Benefits” or “EOB” means a statement to a Beneficiary providing details about a Provider Payment made on a Provider Claim, and explaining what portion of services were paid by the Benefits Plan and the portion the Beneficiary is responsible for paying.
- “Medical Services Plan” means the Receiver’s Plan for the payment of the unpaid DCEH Medical Claims.
- “Medical Plan Motion” means the Receiver’s Motion for on Order Approving of the Receiver’s Plan for the Payment of Unpaid DCEH Medical Claims
- “Provider” means those physicians, hospitals, clinics, and other entities and persons who provided health care services to the Beneficiaries.
- “Provider Claim” means any unpaid health care services claim owed under the Benefits Plan.
- “Provider Payment” means the payment that the Receiver proposes to pay under the terms of this Medical Services Plan.
- “Receivership Entities” means (i) South University of Ohio LLC; (ii) Dream Center Education Holdings, LLC; (iii) The DC Art Institute of Raleigh-Durham LLC; (iv) the DC Art Institute of Charlotte LLC; (v) DC Art Institute of Charleston, LLC; (vi) DC Art Institute of Washington LLC; (vii) The Art Institute of Tennessee - Nashville LLC; (viii) AiTN Restaurant LLC; (ix) The Art Institute of Colorado LLC; (x) DC Art Institute of Phoenix LLC; (xi) The Art Institute of Portland LLC; (xii) The Art Institute of Seattle LLC; (xiii) The Art Institute of Pittsburgh, DC LLC; (xiv) The Art Institute of Philadelphia, DC, LLC; (xv) DC Art Institute of Fort Lauderdale LLC; (xvi) The Illinois Institute of Art LLC; (xvii) The Art Institute of Michigan LLC; (xviii) The Illinois Institute of Art at Schaumburg LLC; (xix) DC Art Institute

of Phoenix, LLC, and its direct subsidiaries; (xx) the Art Institute of Las Vegas LLC; (xxi) the Art Institute of Indianapolis, LLC; (xxii) AiIN Restaurant LLC; (xxiii) Dream Center Argosy; (xxiv) University of California LLC, and its direct subsidiaries; (xxv) Argosy Education Group LLC; (xxvi) Dream Center Education Management LLC; and (xxvii) South University of Michigan LLC. *See* Order Appointing Receiver (“**Initial Receiver Order**”) [ECF No. 8] at 3-4; *see also* Order Clarifying Order Appointing Receiver (“**Clarifying Receiver Order**”) [ECF No. 14] at 1 (removing AU Student Funding, LLC as a “Receivership Entity”).

II. Fund to Retire Unpaid Medical Claims under the Benefits Plan.

Promptly after a final, non-appealable, Order approving the within Medical Services Plan, and upon the Receiver’s (or his assignee’s) receipt of funds from the National Union Fire Insurance Company of Pittsburgh’s Fiduciary Liability Edge Employee Benefit Plan Fiduciary Liability policy, the Receiver (or his assignee) shall set aside funds sufficient to pay the Provider Claims and unreimbursed payments by Beneficiaries for DCEH Medical Claims.

III. Amount of Provider Payments.

Upon approval of the Court, the Receiver (or his assignee) shall offer to pay to the Providers up to the amount Medicare would pay on the same claim if the claim were submitted to Medicare for payment under the terms and conditions outlined in the Proposed Order attached hereto as Exhibit A.

IV. Payment in Full to the Provider and Releases

If the Provider agrees to accept the Provider Payment and/or deposits and/or cashes the Provider Payment, the Provider Claim shall be deemed to be paid in full. Upon receipt and deposit of the Provider Payment, the Provider is deemed to have accepted the terms and conditions of payment under this Medical Services Plan, including a full and complete release of claims against any Beneficiary for any further amounts due (except for any Cost Sharing amounts due from the Beneficiary). Provider shall not bill any Beneficiary for any balance Provider asserts is remaining to be paid, except that Provider may bill the Beneficiary for normal Cost Sharing under the Benefits Plan.

V. Overpayments.

Upon receipt and deposit of the Provider Payment, Provider promptly shall remit and return to the Beneficiaries any amounts paid by them in excess of the Cost Sharing.

VI. Retention of Administrators.

When possible and available, the Receiver (or his assignee) shall retain the services of claims administrators to process the claims, re-price them, determine eligibility, coverage and Cost Sharing amounts. Where possible, upon the tender of the Provider Payment, the Receiver (or his assignee) shall provide the Beneficiaries an Explanation of Benefits.

VII. Claim Tracking.

The Receiver (or his assignee) shall track the Provider Payments on an Excel spreadsheet and, when the information is available, shall include in the Excel

spreadsheet the Health Claim Attributes. The Receiver shall retain evidence of all Provider Payments and Beneficiary reimbursements made, such as cancelled checks and copies of all EOBs issued. Upon request, the Receiver (or his assignee) shall provide this information to the United States Department of Labor. All Provider Payments and Beneficiary Reimbursements information should track and tie out to cancelled checks and EOBs, as well as the Excel spreadsheet.

VIII. Court Orders.

The Receiver's Medical Plan Motion shall request the Court's approval of this Medical Services Plan and the Proposed Order attached hereto as Exhibit A (the "Proposed Order"). The failure by the Receiver to obtain the Court's approval of the Medical Services Plan and the entry of the Proposed Orders may result in further actions by the United States against the DCEH directors and officers.

IX. Timing.

All time limitations in this Medical Services Plan are subject to extension with approval of the Court.

X. Notice to Beneficiaries with DCEH Medical Claims incurred during the BAS Period ("BAS Period Beneficiaries").

The Receiver (or his assignee) will use his best efforts to retain BAS to administer the BAS Period Beneficiaries' Provider Claims. As part of its administration of claims, BAS plans to provide the BAS Period Beneficiaries with an Explanation of Benefits. When the Explanation of Benefits is mailed to the Beneficiary, the Receiver shall provide additional notice to each BAS Period Beneficiary informing them of the following:

- A. The Provider Claim has been paid and that the Provider is prohibited from billing the Beneficiary for any balance the Provider asserts is remaining to be paid, except that Provider may bill the Beneficiary for normal Cost Sharing under the Benefits Plan;
- B. Information regarding the payment of the Provider Claims can be located on the Receiver's webpage;
- C. Notice that any Beneficiary who has paid more money on a Provider Claim than Cost Sharing is entitled to be reimbursed;
- D. Further notice that any Beneficiary who is entitled to be reimbursed may file for such reimbursement by visiting the Receiver's webpage and filling out and submitting the relevant forms and providing proof of the payment(s) they made for which they seek reimbursement;
- E. If the Receiver (or his assignee) mails a notice to a Beneficiary at the last known address in the Receiver's records and it is returned to the sender as undeliverable, the Receiver's (or his assignee's) obligation to provide further notice is ended for that Beneficiary.

XI. Notice to Beneficiaries with DCEH Medical Claims incurred during the Aetna Period ("Aetna Period Beneficiaries").

Aetna Period Beneficiaries will not receive an Explanation of Benefits because the information necessary to complete an Explanation of Benefits is not available to the Receiver. After the Receiver (or his assignee) has paid the Provider Claims, they will provide notice to each Aetna Period Beneficiary at the last-known address in the

Receiver's records informing them of the following.

- A. The Provider Claim has been paid and that the Provider is prohibited from billing the Beneficiary for any balance the Provider asserts is remaining to be paid, except that Provider may bill the Beneficiary for normal Cost Sharing under the Benefits Plan;
- B. The name and address of the Provider;
- C. The date of the Provider Claim;
- D. The amount paid on the Provider Claim;
- E. Information regarding the payment of the Provider Claims can be located on the Receiver's webpage;
- F. Notice that any Beneficiary who has paid more money on a Provider Claim than Cost Sharing is entitled to be reimbursed;
- G. Further notice that any Beneficiary who is entitled to be reimbursed may file for such reimbursement by visiting the Receiver's webpage and filling out and submitting the relevant forms and providing proof of the payment(s) they made for which they seek reimbursement;
- H. If the Receiver (or his assignee) mails a notice to a Beneficiary at the last known address in the Receiver's records and it is returned to the sender as undeliverable, the Receiver's (and his assignee's) obligation to provide further notice is ended for that Beneficiary.

Exhibit B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DIGITAL MEDIA SOLUTIONS, LLC,) CASE NO. 1:19-cv-145
)
Plaintiff,) JUDGE DAN AARON POLSTER
)
v.) MAGISTRATE JUDGE
) THOMAS M. PARKER
SOUTH UNIVERSITY OF OHIO,)
LLC, *et. al.*,)
)
Defendants.)

**[PROPOSED] ORDER APPROVING PAYMENT OF DREAM CENTER
EDUCATION HOLDINGS SELF-FUNDED HEALTH CARE PLAN
MEDICAL EXPENSES AT UP TO THE MEDICARE RATE AND RELEASE
OF PLAN PARTICIPANTS AND BENEFICIARIES**

This matter came on for hearing on the Receiver’s Motion for an Order Approving the Receiver’s Plan for the Payment of Unpaid DCEH Medical Claims [Dkt. No. ___] (the “Medical Plan Motion”). The Medical Plan Motion seeks approval of the method and amount of payment of the unpaid medical claims of the Receivership Entities.¹

¹ The “**Receivership Entities**” include (i) South University of Ohio LLC; (ii) Dream Center Education Holdings, LLC; (iii) The DC Art Institute of Raleigh-Durham LLC; (iv) the DC Art Institute of Charlotte LLC; (v) DC Art Institute of Charleston, LLC; (vi) DC Art Institute of Washington LLC; (vii) The Art Institute of Tennessee - Nashville LLC; (viii) AiTN Restaurant LLC; (ix) The Art Institute of Colorado LLC; (x) DC Art Institute of Phoenix LLC; (xi) The Art Institute of Portland LLC; (xii) The Art Institute of Seattle LLC; (xiii) The Art Institute of Pittsburgh, DC LLC; (xiv) The Art Institute of Philadelphia, DC, LLC; (xv) DC Art Institute of Fort Lauderdale LLC; (xvi) The Illinois Institute of Art LLC; (xvii) The Art Institute of Michigan LLC; (xviii) The Illinois Institute of Art at Schaumberg LLC; (xix) DC Art Institute of Phoenix, LLC, and its direct subsidiaries; (xx) the Art Institute of Las Vegas LLC; (xxi) the Art Institute of Indianapolis, LLC; (xxii) AiIN Restaurant LLC; (xxiii) Dream Center Argosy; (xxiv) University of California LLC, and its direct subsidiaries; (xxv) Argosy Education Group LLC; (xxvi) Dream Center Education Management LLC; and (xxvii) South University of Michigan LLC. *See* Order Appointing Receiver (“**Initial Receiver Order**”) [ECF No. 8] at 3-4; *see also* Order Clarifying Order Appointing Receiver (“**Clarifying Receiver Order**”) [ECF No. 14] at 1 (removing AU Student Funding, LLC as a “Receivership Entity”).

Signature Benefits Plan, an ERISA-covered employee benefit plan (the "Benefits Plan") (i) in effect from October 17, 2017 through December 31, 2018 administered by Aetna Life Insurance Company (the "Aetna Period") and (ii) in effect from January 1, 2019 through April 30, 2019 administered by Benefit Administrative Systems LLC (the "BAS Period"). The Court, having determined and found that: the relief in the Medical Plan Motion is in the best interest of the Receivership estate and its creditors; the Medical Services Plan is reasonable and appropriate under the circumstances and comports in all regards with the requirements of due process; and, good cause having been shown for the entry of this Order regarding the Payment of the DCEH Medical Claims,

IT IS HEREBY ORDERED THAT:

1. The Medical Services Plan shall be, and it hereby is approved as set forth in the Medical Plan Motion; and
2. All capitalized terms not defined herein shall have the same meaning as set forth in the Medical Plan Motion and the Medical Services Plan attached thereto;
3. Health care services providers (the "**Providers**") who provided medical services to Benefits Plan Beneficiaries during the Aetna Period and the BAS Period shall be paid according to the terms of the Medical Services Plan and this Order; and
4. The Receiver's plan to pay the Providers at a rate of up to the standard Medicare rate for the services provided to the Benefits Plan Beneficiaries is APPROVED; and
5. The Receiver is hereby authorized to tender payment upon the DCEH

Medical Claims by tendering a check to each Provider in an amount which is up to the rate Medicare pays for that same claim or service (the “**Provider Payment**”); and

6. Upon receipt, deposit and/or cashing of the Provider Payment, the Provider shall be deemed to be paid in full, and shall not bill the Beneficiaries for any balance remaining except for amounts due from the Beneficiaries for normal co-pays and deductibles (the “**Cost Sharing**”); and

7. Upon receipt and deposit of the Provider Payment, the Provider is deemed to have accepted the terms and conditions of Provider Payment under the Medical Services Plan, including a full and complete release of the Beneficiaries for any further amounts due (except for the Cost Sharing amounts); and

8. Upon receipt, deposit, and/exhibitor cashing of the Provider Payment, the Provider promptly shall return and remit to the Beneficiary any amounts paid to the Provider in excess of the Cost Sharing.

IT IS SO ORDERED this _____ day of _____, 2024.

JUDGE DAN AARON POLSTER