

**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.)	

RECEIVER'S OCTOBER 1, 2019 REPORT

Mark E. Dottore, Receiver of the Receivership Entities, pursuant to this Court's Order of September 11, 2019, files this Report. As a preliminary matter, the Receiver filed a Motion to Compromise and for Entry of an Order Authorizing the Receiver to Obtain Financing (etc.) [Dkt. No. 427]. This Motion allows cash to flow into the Receivership in order to pay the unpaid payroll of March 8, 2019, and insures that other current administrative expenses of the Receivership will be paid before the secured lenders are repaid for their loan. Put simply, the secured lenders expect to be repaid out of proceeds derived from litigation which is more fully explained below. If the Receiver can recover on the litigation, many if not all of the administrative expenses of the receivership will be paid, including the employees' healthcare expenses.

Financial Report

Sale of Western State College of Law

As the Court is aware, the foundation point of the transfer of the Western State College of Law was a teachout by the Buyer, Westcliff University (“Westcliffe”). The teachout of existing WSCL students had been previously approved by the US Department of Education (“USDE”). Federal Title IV funding is being provided to students participating in the teachout. Westcliff has advised the Receiver that 232 students started the fall term, and that the students, faculty and staff are relieved and pleased that classes have resumed at the existing facility. The Receiver is further advised that Westcliff plans to relocate the law school to Westcliff’s current location, also in Irvine, CA. Westcliff University is relocating nearby. The move is expected to occur after the first of the year.

Lawyers have been working hard on the various approvals required to close the WSCL transaction. The American Bar Association (the “ABA”) visited WSCL as part of its site visit process on September 17-18, 2019; WSCL is awaiting receipt of the ABA’s site visit report. Should the report identify any issues that need to be addressed, WSCL will have the opportunity to respond. The Council of the Section of Legal Education and Admissions to the Bar of the ABA will consider WSCL’s change of ownership request at a meeting on November 21-22, 2019.

Another accrediting agency, WASC Senior College and University Commission (WSCUC) is also engaging in pre-closing due diligence. WSCUC’s Substantive Change Committee met with Westcliff on September 20, 2019 and

issued its Interim approval of that date. Final Commission approval is expected within 30 days of September 20.

Under California law, in the event there is a sale or disposition of all or substantially all of the assets of any public benefit corporation holding assets subject to charitable trust, the seller must provide advance notice to, or request waiver of notice by the California Attorney General. Even though the proposed sale of WSCL did not represent a sale of all or substantially all of the assets of Argosy University, in an abundance of caution, on August 2, 2019, the Receiver provided written notice of the sale to the Charitable Trust Division of the California Attorney General's office. The Receiver has not received any objection to the sale from the California Attorney General.

Final approval must be obtained from USDE. On August 22, 2019, lawyers for the Buyer spoke with Donna Mangold from the Office of General Counsel about any final approvals USDE may require to allow the award of Title IV funding for new students after closing. Given the other approvals pending at that time, Ms. Mangold asked that I contact her closer to the date of the ABA meeting in November to revisit this issue.

Sale of AI Las Vegas

Outstanding Payroll

As the Court is aware from the Receiver's Report Regarding Pay Status of Employees (Doc. No. 183), as of March 18, 2019, there was outstanding payroll of

\$2,491,264.45. The Receiver paid student worker payrolls and administrative worker payrolls. The remaining payroll, which is for faculty and management positions, amounts to \$1.8 million.

The Receiver has filed a Motion to Compromise and for Authority to Borrow (the “**Borrowing Motion**”). In the Borrowing Motion, the Receiver seeks to compromise a contest between the Receiver and DCEH’s secured lenders about the ownership of a specific cash asset. The details of this controversy and its resolution are contained in documents filed with the Court [See Docket No. 427]. If the Court grants the Borrowing Motion, the \$900,000 advance by the secured lenders under the proposed order will be applied immediately to the payment of the remaining payroll.

Should the Borrowing Motion be overruled, the employees would be required to wait for the completion of the asset sales and the recovery by way of litigation as described below.

Termination of the 401(k) Plan

Greystone Consulting and Morgan Stanley, which was appointed by this Court to terminate the 401(k) ERISA qualified pension plan, has advised the Receiver that through September 30, 2019, there were 2,574 withdrawals totaling \$158,164.966.93. There are still 4,319 participants with balances totaling \$239,466,850.86.

On or about August 1, 2019, approximately 6,893 participants with balances totaling over \$426,000,000 were mailed a letter advising each participant that

he/she would be deemed fully vested in the balance on hand and that they must take a total distribution of the sums due to them on or before November 15, 2019. Participants were further advised that if the participant held a self-directed brokerage account, and no was taken before October 15, 2019, their balances would be liquidated and the cash deposited into their 401(k) account.

The letter also advised participants that if they did not make an election to distribute their balance on hand by November 15, 2019, they will be deemed to have elected to rollover their account balance to an IRA at Millennium Trust Company ("Millenium").¹ This ensures that all funds will leave the DCEH 401(k) plan on or about November 15, 2019.

Greystone/Morgan Stanley will continue to use best efforts to locate, notify and obtain elections from the participants both before and after the rollover to Millenium. The US Department of Labor (the "DOL") has been very focused on insuring that funds on deposit in the DCEH 401(k) plan do not become "orphaned" there, and that former employees are able to access their accounts. The movement of the accounts to Millenium will address the DOL's concern.

Sale of the Remaining Assets

FCC broadcasting license No. WNC980

The Receiver has sought appointment of Susan Marshall of the law firm of Fletcher, Heald & Hildreth as special counsel with knowledge of FCC licensing statutes and regulations [Dkt. No. 426]. FCC Counsel has advised the Receiver of

¹ Millenium was selected by Greystone/Morgan Stanley because of its reasonable fee structure.

the following FCC licensing requirements for Educational Broadband Service (EBS) Stations:

When an EBS license is assigned from one person or entity to another, prior approval of the FCC is normally required to ensure that the new licensee is qualified to be a licensee. License qualification is relatively easy (the licensee cannot have been convicted of a drug offense or a recent felony, for example) though the process can be more complicated if the new licensee is not a US citizen. The FCC also reviews other spectrum holdings of the new licensee to ensure that there is not too much of an ownership concentration.

Where the license assignment has already occurred or is being done under court mandate, one can file an application for involuntary assignment which is identical to the regular process, but it must be filed within 30 days of the involuntary assignment having occurred or a waiver must be requested. The new licensee is subject to the same review as in a voluntary assignment. Once the assignment application is filed, the FCC promptly puts the application on public notice so that interested members of the public can oppose the application. Oppositions (called "petitions to deny" in FCC parlance) are rarely filed but the applicant can file an appropriate reply to the petition if one is filed. Assuming the absence of an opposing petition, the FCC can be expected to act on such an application in eight to twelve weeks. Recently, actions have been on the shorter side of this timetable. Once granted, the new licensee assumes the license terms of the

prior licensee and will have to file a renewal application near the expiration of the license's current term. Licenses are good for 10 years.

Sale of the Computer, Exit from Pittsburgh Facility and the Settlement of other Issues with Studio

The Receiver has entered into a third settlement with Studio Enterprise Manager LLC. The documents are being drafted for presentation to the Court. The settlement is multi-part, and includes:

1. Studio will assume responsibility for administration and payment of approximately \$3.5 million of health care claims that pertain to the transferred employees of New South and New AI.
2. The Receiver will release Studio from the payment of further health care claims;
3. The Receiver and Studio Enterprise Manager, LLC will work together to obtain possession of cash derived from the payment of student accounts receivable that is on deposit at EVO Payments, Inc. (the "Evo Accounts"). The Evo Accounts are all on deposit under DCEH's employer ID number but some of the Evo Accounts belong to Studio; some of the Evo Accounts belong to the Receiver. Both Studio and the Receiver are conducting oversight to insure that all funds are accounted for and credited to the proper accounts.
4. The Receiver will sell the computer located at 615 McMichael Drive in Pittsburgh, PA to Studio for \$500,000. Studio will allow the Receiver access to the computer for one year. Third parties who wish to access

information on the computer through court process, including subpoena, may do so for the period of one year at their own cost.

The Receiver is completing the sale of AI Las Vegas to Save The Art Institute Las Vegas Limited. Save Las Vegas has advised the Receiver that the approval for the financing is in its final stages and that the closing of the transaction is imminent.

Litigation

Litigation: D&O Claim EDMC

Litigation: D&O Claim DCEH

Status of Claims Submitted by the Minnesota Office of Higher Education

The Minnesota Office of Higher Education (“OHE”) has demanded that the Receiver return certain funds, which it has described as being related to three separate programs, the: Minnesota GI Bill, Minnesota Child Care Grant; and, Minnesota SELF Loan funds. The Receiver has been in contact with OHE staff concerning the demands and has tried to determine what happened to the funds OHE advanced DCEH. We address each of the programs below.

Minnesota GI Bill Aid

Minnesota has demanded the return of \$4,020 it contends was advanced to DCEH for the benefit of eligible students, but which funds were not used for the benefit of those students. Following conversations with OHE staff, the Receiver agrees that \$4,020 is the correct sum to be returned; however, those funds were advanced to DCEH on October 1, 2018, before the Receiver was appointed. Those funds were not found within the estate at the time the Receiver was appointed. The

Receiver cannot return that which he does not have and contends that Minnesota's claim for those monies should be treated in accord with other pre-receivership unsecured creditors.

Minnesota Child Care Grant Aid

Minnesota has demanded the return of \$54,802 for Child Care Grant funds advanced to DCEH, which funds were not used for the benefit of eligible participants. While the Receiver agrees that \$54,802 is the correct sum, as with the GI Bill funds, the Child Care Grant funds OHE seeks were advanced to DCEH in installments through the course of August, October, and December 2018. As of the date the Receiver was appointed, those funds were not found within the receivership estate. Thus, and again, if Minnesota is entitled to the return of the funds, it should be treated as any other pre-receivership unsecured creditor.

SELF Loan Funds

Finally, OHE demands the return of \$150,662.40 of SELF Loan funds advanced to DCEH. The Receiver does not contest the sum and, based on the State staff's representations that all of the SELF loans have been forgiven, agrees that Minnesota is owed the money. That said, and as with the GI Bill and Child Care Grand funds, a portion of the SELF loan funds were advanced to DCEH before the Receiver was appointed, and those funds were not present in the accounts when the Receiver assumed control. The State's records show that \$107,513 was distributed after the Receivership was established. DCEH's accounting staff was still responsible for processing those monies when the funds were deposited in a DCEH

account. The funds were used in the ordinary course of business and do not remain available in any general accounts remaining.

Thus, the Receiver acknowledges that, regarding the SELF loan funds, OHE should be deemed to maintain a pre-receivership unsecured claim of \$43,149.40, and a post-receivership administrative unsecured claim of \$107,513.

The Restricted Account

Minnesota complains that the Receiver has not addressed or returned an account in his possession titled "Minnesota State Grant Restricted," which account holds \$62,348.00. That account was, in fact, funded by Minnesota directly and in part through the course of a fourth program – not mentioned by Minnesota in its pleadings – simply called the Minnesota State Grant Program. Before the Receiver was appointed, DCEH advanced in excess of \$200,000 to Argosy Twin Cities students under the program. The \$62,348.00 held in the Restricted Account was a partial reimbursement owed to DCEH for the funds DCEH had advanced. In other words, the money belonged to DCEH regardless of its account location.

The Receiver has advised Minnesota that it still owes the receivership estate \$85,560 for funds DCEH advanced to Argosy Twin Cities students under the Minnesota State Grant program, but for which DCEH was never reimbursed. Minnesota has acknowledged the debt but has indicated that any monies will be paid at some later date after everything else is settled (i.e., after the Receiver pays Minnesota everything it is owed).

Conclusion

The Receiver has been working diligently with Minnesota to determine the issues at play and the amount owing to each of the estate and Minnesota. The accounts need to be reconciled on a student by student basis. There are also issues concerning equitable setoff that must be addressed. The Receiver requires additional time to resolve the remaining issues regarding funds owing to the receivership by Minnesota and to Minnesota by the Receivership.

Status of Close Out Audits

Status of Investigation into Student Stipend Issue

Dated: October 1, 2019

Respectfully submitted,

/s/ Mary K. Whitmer

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