

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
ILLINOIS EASTERN DIVISION**

EMMANUEL DUNAGAN, et al.,

Plaintiffs,

v.

ILLINOIS INSTITUTE OF ART-CHICAGO,
LLC, et al.,

Defendants.

Case No. 19-cv- 809

Hon. Jeffrey I. Cummings

(Reassignment from Judge Lefkow)

JOINT INITIAL STATUS REPORT FOR REASSIGNED CASE

Pursuant to Federal Rule of Civil Procedure 26(f), Plaintiffs Emmanuel Dunagan, Jessica Muscari, Robert J. Infusino, Stephanie Porreca, Keishana Mahone, and Lakesha Howard-Williams (“Plaintiffs”) and Defendants Brent Richardson, Chris Richardson, Shelly Murphy, and the Dream Center Foundation (“DCF”) (collectively, “Defendants”), and Third-Party Defendant Higher Learning Commission (“HLC”), hereby present their Joint Initial Status Report for Reassigned Case, which was reassigned from Judge Lefkow on October 26, 2023 (Dkt. 252).¹

I. Nature of the Case

A. Attorneys of Record (full contact information in signature lines below)

Plaintiffs are represented by Daniel Edelman and Cassandra Miller of Edelman, Combs, Lattuner & Goodwin, and by Eric Rothschild and Alex Elson of the National Student Legal Defense Network. Defendant DCF is represented by John Ochoa, Gary Zhao, and Eric Samore of Amundsen Davis. Defendants Brent and Chris Richardson are represented by Raj Shah, Eric Roberts, Kenneth Schmetterer, and Yan Grinblat of DLA Piper LLP (US). Defendant Shelly Murphy is represented by Howard Rosenberg of Kopecky Schumacher & Rosenberg. Third-Party Defendant HLC is represented by Amy Rapoport Gibson of Aronberg Goldgehn.

B. Basis for Federal Jurisdiction

The Court’s subject matter jurisdiction over Plaintiffs’ complaint is based on diversity, 28 U.S.C. § 1332(a). Plaintiffs are domiciled in Illinois. Defendants Brent and Chris Richardson are domiciled in Arizona. Defendant Shelly Murphy is domiciled in Arizona. Defendant DCF is a California non-profit corporation domiciled in California. Defendants Illinois Institute of Art-Schaumburg, LLC (“IIA-Schaumburg”), Illinois Institute of Art, LLC (“IIA, LLC”), and Dream Center

¹ This case was originally assigned to Judge Norgle. Upon his retirement, it was transferred to Judge Lefkow on October 6, 2022 (Dkt. 190).

Educational Holdings, LLC (“DCEH”) are all Arizona limited liability companies domiciled in California. Defendant IIA-Schaumburg’s sole member is Defendant IIA, LLC; Defendant IIA, LLC’s sole member is The Arts Institutes International, LLC (an Arizona limited liability company); The Arts Institute International, LLC’s sole member is Defendant DCEH; Defendant DCEH’s sole member is Defendant DCF (which is domiciled in California).

The Court’s supplemental subject matter jurisdiction over Defendants Brent Richardson, Chris Richardson, Shelly Murphy, and DCF’s Third-Party Complaint against Third-Party Defendant HLC arise under 28 U.S.C. § 1367(a). Third-Party Defendant HLC is an Illinois non-profit corporation domiciled in Illinois.

C. Nature of the Claims & Procedural History

i. Plaintiffs’ Claims

Plaintiffs—former students of the Illinois Institute of Art in Chicago and Schaumburg, Illinois (collectively, “IIA”)—bring this putative class action lawsuit seeking to recover damages based on their allegations that Defendants’ concealed and misrepresented IIA’s accreditation status following DCEH’s purchase of many for-profit colleges, including IIA.

Plaintiffs allege that IIA lost its accreditation status in January 2018 and that for six months afterwards, Defendants made false and misleading statements to Plaintiffs and other IIA students regarding IIA’s accreditation status, including stating that IIA “remain[ed] accredited.” Plaintiffs further allege that Defendants actively concealed that IIA was unaccredited while simultaneously promoting the benefits that students would experience under the new ownership. As a result, Plaintiffs assert, on behalf of themselves and a putative class of IIA students, claims under the Illinois Consumer Fraud and Deceptive Practice Act, 815 ILCS 505/2, and for fraudulent concealment, and negligent misrepresentation.

Defendants deny any wrongdoing, vigorously contest the allegations material to Plaintiffs’ Complaint, and have asserted numerous affirmative defenses in their Answers. Defendants also contest that Plaintiffs’ claims are appropriate for class treatment and contest that any class should be certified in this matter. Defendants have nonetheless filed a Third-Party Complaint against Third-Party Defendant HLC for contribution based on HLC’s alleged pattern of negligent and material omissions regarding IIA’s accreditation status. To the extent Plaintiffs were injured (which Defendants also deny), Defendants contend that Plaintiffs’ alleged injuries were based on HLC’s wrongdoing, not anything Defendants did. The contribution action asserts two counts against HLC—negligent misrepresentation and negligence.

ii. Procedural History²

1. This Case

IIA closed on December 28, 2018, three weeks after Plaintiffs filed their Complaint. On January 18, 2019, DCEH and IIA went into federal receivership in the Northern District of Ohio. *See*

² Due to the lengthy procedural history of this case, Plaintiffs believe this section will be helpful to the Court’s understanding.

Dig. Media Sols. V. South Univ. of Ohio, No. 1. 19-cv-145 (N.D. Ohio) (“Receivership”). On February 7, 2019, Defendant IIA-Schaumburg filed a notice of removal, Dkt. 1, after which this case was assigned to Judge Charles Norgle. On May 6, 2019, Judge Norgle entered an Agreed Order staying this matter against Receivership entities DCEH, IIA, and IIA-Schaumburg pending dissolution of the Receivership (Dkt. 37), but not staying the claims against DCF.

On January 25, 2021, Plaintiffs filed their Third Amended Complaint, adding as defendants former DCEH alleged officers or employees Brent Richardson, Chris Richardson and Shelly Murphy in their individual capacity (collectively, “Individual Defendants”) (Dkt.106).

Both DCF and the Individual Defendants filed motions to dismiss (the Individual Defendants’ motion was based on lack of jurisdiction). On January 6, 2020, the Court denied DCF’s motion (Dkt. 68). On August 5, 2021, the Court denied the Individual Defendants’ motion (Dkt. 155).

On August 26, 2021, Plaintiffs filed a Fourth Amended Complaint, the operative complaint in this case (Dkt. 165). DCF and the Individual Defendants first answered the Fourth Amended Complaint on September 9, 2021 (Dkt. Nos. 166-67). Following Plaintiffs’ motion to strike (Dkt. 168), the Individual Defendants, now represented by new counsel, amended their answers and affirmative defenses to the Fourth Amended Complaint (Dkts. 220, 226).

2. The Ohio Receivership and Sixth Circuit Appeal

After Plaintiffs filed this case, a creditor of DCEH filed a separate case in federal court in Ohio, seeking \$250,000 in unpaid invoices and requesting the appointment of a receiver over DCEH and its assets and subsidiaries. *Digital Media Solutions v. South University of Ohio, et al.*, No. 1:19-cv-00145 (N.D. Ohio, filed Jan. 18, 2019). That same day, Mark Dottore was appointed as Receiver over defendants DCEH and IIA, but not over DCEH’s parent, defendant DCF, or the Individual Defendants. Receivership Dkt. 8. The four original named plaintiffs in this case were permitted to intervene on February 13, 2019. Receivership Dkt. 49.

On February 18, 2021, the Receiver announced that he reached a “global settlement” of his claims with DCF and a large group of former alleged officers and directors of Dream Center entities, including the Individual Defendants. Receivership Dkt. 674. The settlement was contingent upon the receivership court permanently barring Plaintiffs from proceeding with this litigation in Illinois, against both Receivership and non-Receivership entities. *Id.* The four original named plaintiffs in this case objected to the bar order, in their capacity as intervenors. On October 20, 2021, Judge Polster, the receivership judge, approved the bar order over Intervenors’ objections. Receivership Dkt. 757.

On October 22, 2021, Judge Norgle issued a *sua sponte* order staying this case “until the parties...received proper approval to proceed in compliance with any and all orders in the receivership litigation.” Dkt. 183.

Plaintiffs appealed the Receivership Court’s decision and, on February 7, 2023, the Sixth Circuit Court of Appeals reversed Judge Polster’s bar order, after which litigation in this case resumed. *See Digital Media Sols., LLC v. S. Univ. of Ohio, LLC*, 59 F.4th 772 (6th Cir. 2023) (attached at Dkt.199-1).

3. Third-Party Complaint for Contribution Against HLC

DCF filed a Third-Party Complaint for contribution against HLC (IIA's accreditor). On March 30, 2021, the Court granted HLC's motion to dismiss the third-party complaint (Dkt. 128). On June 11, 2021, DCF filed a motion for reconsideration, which was originally denied as moot without prejudice following entry of the bar order (Dkt. 183). On April 17, 2023, following reversal of the bar order, DCF renewed its motion for reconsideration (Dkt. 217). On May 10, 2023, the Court granted DCF's renewed motion and changed the dismissal order to one that was without prejudice (Dkt. 223). The Individual Defendants were granted leave to join DCF's Third-Party Complaint (Dkt. 229).

On June 5, 2023, DCF and the Individual Defendants filed the operative Third-Party Complaint against HLC (Dkt. 232), and on July 10, 2023, HLC moved to dismiss the Third-Party Complaint (Dkt. 238). HLC's motion to dismiss has been fully briefed since September 5, 2023 (Dkt. 247) and remains pending before this Court.

D. Relief Sought

Plaintiffs seek certification of the class, designation of the named Plaintiffs as class representatives, judgment in their favor, actual damages in an amount to be proven at trial, punitive damages, attorneys' fees and costs, and any other relief the Court deems just and appropriate. Plaintiffs estimate damages in excess of \$20 million for the class.

Defendants and Third-Party Plaintiffs Brent Richardson, Chris Richardson, Shelly Murphy, and DCF deny that class certification is appropriate, deny any liability and deny all allegation of wrongdoing asserted against them. However, to the extent they are deemed liable, they demand judgment against HLC for contribution of all or part of any sums that may be adjudged against them, and for all costs, attorneys' fees, interest, and any further relief the Court deems fair and just.

E. Parties Who Have Not Yet Been Served: All parties have been served.

II. Discovery and Pending Motions

A. Pending Motions

On July 10, 2023, HLC moved to dismiss the operative Joint Third-Party Complaint (Dkt. 238) for contribution filed by Defendants. HLC's motion has been fully briefed since September 5, 2023 (Dkt. 247).

Non-party witnesses David Harpool and Ron Holt filed a motion to quash Plaintiffs' subpoena in the District of Kansas on November 1, 2023.

B. Current Discovery Schedule

On October 18, 2023, Judge Lefkow entered an order approving the following discovery schedule (Dkt. 251):³

- Plaintiffs' Rule 26(a)(2) expert disclosures: February 1, 2024

³ HLC anticipates requesting a stay of discovery (as to HLC) until after the Court rules on its motion to dismiss.

- Defendants' Rule 26(a)(2) expert disclosures: April 16, 2024
- Plaintiffs' rebuttal expert reports: April 30, 2024
- All expert discovery completed: May 31, 2024
- Plaintiffs' Motion for Class Certification: June 14, 2024
- Defendants' Opposition to Class Certification: July 19, 2024
- Plaintiffs' reply in support of Class Certification: August 16, 2024
- Any motion for summary judgment:⁴ September 30, 2024

C. Discovery Conducted To Date

The parties and non-party witness have exchanged over 54,000 documents, including those requested through third-party subpoenas. Plaintiffs have taken the following depositions: (1) Chris Richardson (before he was added as a party); (2) jurisdictional discovery deposition of Defendant Brent Richardson; (3) jurisdictional discovery deposition of Defendant Chris Richardson; (4) jurisdictional discovery deposition of Defendant Shelly Murphy; (5) Dr. Ellyn McLaughlin, former DCEH Vice President for Accreditation and Assessment; (6) Josh Pond, former President of IIA; (7) Reverend Johnnie Moore, former DCF board member; (8) Pastor Matthew Barnett, Co-Founder and President of DCF and former member of DCEH's Board of Managers; (9) John Crowley, former DCEH Chief Operating Officer; (10) Christopher Del Santo; and (11) Stacy Sweeney. Plaintiffs have also noticed the depositions of Jennifer Ramey, former President of IIA, and David Harpool and Ron Holt, former outside counsel to DCF, DCEH, and IIA.

DCF noticed the four original Plaintiffs for depositions in May 2021, prior to the filing of the Fourth Amended Complaint. After Plaintiffs provided available dates, DCF postponed the depositions. Fact and expert discovery is ongoing.

D. Substantive Rulings To Date

January 6, 2020: DCF's Motion to Dismiss Second Amended Complaint or, in the alternative, Stay Litigation was DENIED (Dkt. 68).

March 30, 2021: HLC's Motion to Dismiss DCF's Third-Party Complaint for Contribution Against HLC was GRANTED (Dkt. 128). (Note the discussion above allowing a new Third-Party Complaint to be filed against HLC, which was filed (Dkt. 232) which HLC' has moved to dismiss (Dkt. 238). That motion to dismiss has been fully briefed since September 5, 2023.)

August 5, 2021: The Court entered an Omnibus order (1) denying the Individual Defendants' Motion to Dismiss for Lack of Jurisdiction; (2) granting Plaintiffs' motion to compel further deposition testimony from Chris Richardson; and (3) granting Plaintiffs' Motion seeking Expenses and Reasonable attorney's fees against Defendant Shelly Murphy. (Dkt. 155).

⁴ Plaintiffs' position is that the motion for class certification should be fully briefed and decided before the parties begin briefing Rule 56 summary judgment motions to avoid any one-way intervention objections or waiver arguments. *Peritz v. Liberty Loan Corp.*, 523 F.2d 349, 352-55 (7th Cir. 1975); *Mendez v. The Radec Corp.*, 260 F.R.D. 38, 44-46 (W.D.N.Y. 2009). If this Court certifies Plaintiffs' proposed class, notice of the pendency of the action will need to be provided to each class member before the Court enters any dispositive orders that may affect their claims.

E. Anticipated Motions

Plaintiffs anticipate filing a motion for class certification, due by June 14, 2024. Defendants anticipate filing motions for summary judgment, due by September 30, 2024.

III. Trial

Plaintiffs and Defendants and Third-Party Plaintiffs have demanded a jury trial, but a trial date has not yet been scheduled. The Parties have not filed a Final Pretrial Order. The Parties anticipate the trial will last approximately three weeks.

IV. Settlement, Referrals, and Consent

- A. Settlement Discussions:** On June 14, 2023, the Parties—along with the Receiver, and Defendants’ D&O insurers—participated in an in-person court-mandated settlement conference before Judge Polster and Magistrate Judge Parker in Ohio. The objective of the settlement conference was to resolve claims and issues pending in the DCEH Receivership, as well as this case. The parties were unable to reach agreement.
- B. Magistrate Judge Referral:** This case was originally assigned to Magistrate Judge Schenkier. After he retired, a new Magistrate Judge was not assigned to this case. The parties do not consent to proceeding before a Magistrate Judge for all purposes.
- C. Request for Settlement Conference:** The Parties are amenable to discussing participation in a settlement conference before a Magistrate Judge, once one is assigned to the case, but have not yet reached agreement on that.

V. Other: There is nothing else that the parties wish to remark on at this time.

Dated: November 9, 2023

Respectfully submitted,

/s/ Cassandra P. Miller

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CERTIFICATE OF SERVICE

I, Cassandra P. Miller, hereby certify that on November 9, 2023, I filed the foregoing document via the CM/ECF System, which caused notification of such filing to be sent to all counsel of record.

/s/ Cassandra P. Miller
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