

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

)	
In re:)	Chapter 11
)	
CENGAGE LEARNING, INC., <i>et al.</i> ,)	Case No. 13-44106 (ESS)
)	Case No. 13-44105 (ESS)
)	Case No. 13-44107 (ESS)
)	Case No. 13-44108 (ESS)
)	
Debtors.)	(Jointly Administered)
)	

**ORDER (A) APPROVING APPOINTMENT OF A MEDIATOR AND SCHEDULING
MEDIATION IN CONNECTION WITH CONFIRMATION OF THE DEBTORS' PLAN,
(B) SCHEDULING CERTAIN HEARING DATES AND DEADLINES IN CONNECTION
WITH CONFIRMATION OF THE DEBTORS' PLAN, AND (C) SCHEDULING
CERTAIN HEARING DATES AND DEADLINES IN CONNECTION WITH CERTAIN
CONTESTED ISSUES RELATING TO THE DEBTORS' PLAN**

Upon the motion (the “*Motion*”)¹ of the Debtors for entry of an order (this “*Order*”) scheduling certain hearing dates and deadlines in connection with confirmation of the Plan and related to certain disputed assets and contested issues; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and it appearing that no other notice need be given; and all objections to the Motion, if any, having been withdrawn, resolved, or overruled; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors’ estates,

¹ All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion.

their creditors, and other parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein, it is hereby ORDERED:

1. The Motion is granted to the extent set forth herein.

2. Subject to the availability of the mediator, the following schedule shall apply to issues related to the appointment and consultation with a mediator regarding issues related to confirmation of the Plan:

- a) September 13, 2013: By no later than this date, the Court shall approve a mediator.
- b) September 20, 2013: By no later than this date, the advisors to the Debtors, the Committee, the Ad Hoc First Lien Group, the First Lien Credit Facility Administrative Agent, and, to the extent they are interested in participating in the mediation, the First Lien Indenture Trustee, the Second Lien Indenture Trustee, Apax Partners, and Centerbridge (collectively, the “*Parties*”) shall have an initial meeting with the Court-approved mediator to discuss case status and to give the Parties’ perspectives on what issues need to be address through mediation.
- c) October 4, 2013: By no later than this date, the Parties shall have a second mediation session.
- d) October 11, 2013: By no later than this date, the Parties shall have a third mediation session.²

3. The following schedule shall apply to the process for consideration and confirmation of the Plan:

- a) September 20, 2013: Deadline to serve discovery requests (if any) that are non-duplicative of prior requests.
- b) October 11, 2013: By no later than this date, the Debtors shall have filed a revised Plan and Disclosure Statement.
- c) October 14, 2013: Deadline to serve additional discovery requests (if any) that are strictly limited to new issues raised in the revised Plan and Disclosure Statement.³

² Further mediation sessions shall be scheduled by the Parties on an as-needed basis.

- d) October 15, 2013: Deadline for the Debtors to file full valuation and liquidation analysis exhibits to the Disclosure Statement; deadline to file standing motion.
- e) October 21, 2013: Deadline to provide responses to discovery (if any).
- f) October 22, 2013 at 4:00 p.m. (prevailing Eastern Time): Deadline to object to the Disclosure Statement.
- g) October 23, 2013: Deadline to notice fact depositions (if any).
- h) October 25, 2013:* Hearing on the Disclosure Statement.
- i) October 28–30, 2013: Fact depositions (if any).
- j) November 1, 2013: Deadline to submit simultaneous briefs and/or expert reports regarding the Primary Confirmation Issues.⁴
- k) November 4, 2013: Deadline to produce all facts or data considered by the expert in forming his or her opinions.
- l) November 6–8, 2013: Expert depositions.
- m) November 15, 2013: Deadline to submit responses to briefs and/or expert reports regarding the Primary Confirmation Issues.
- n) November 21, 2013: Deadline to file the Plan Supplement.
- o) November 25, 2013: Deadline to object to the Plan (non-Primary Confirmation Issues).
- p) December 6, 2013: Deadline to file confirmation brief.
- q) December 8, 2013: Deadline to file a reply to any objection filed to confirmation of the Plan (non-Primary Confirmation Issues).

³ The proposed schedule for all issues covered by this Order does not address third-party discovery and the Parties reserve their rights in that regard. Third-party discovery, if necessary, will be addressed by separate stipulation or order.

⁴ “**Primary Confirmation Issues**” means the Debtors’ total enterprise value, issues related to substantive consolidation, claims (if any) related to the 2007 LBO, issues related to the amount of the claims of the First Lien Lenders against each Debtor, issues related to the Additional 14,000 Disputed Copyrights (to the extent not resolved), and issues related to the use of the trust structure to address any case issues that are not resolved or adjudicated by the time of the Debtors’ emergence from bankruptcy, including the structure and governance of the trust, the assets or value to be included in the trust, and the reorganized Debtors’ ongoing right to use the trust assets to operate the business. The Debtors believe that other issues that are not Primary Confirmation Issues need to be resolved, but can be resolved after the company emerges from bankruptcy if they have not been resolved or adjudicated prior to emergence.

r) December 10, 2013:* Hearing on confirmation of the Plan shall begin.

4. The following schedule shall apply for actions relating to the Other Issues:⁵

- a) September 13, 2013: Debtors to file declaratory judgment action on the Disputed Cash and adversary proceedings to avoid liens on “1,500” Disputed Copyrights and the Additional “14,000” Disputed Copyrights.
- b) September 16–17, 2013: Parties to meet and confer to establish stipulated facts.
- c) September 20, 2013: Deadline to serve discovery requests (if any) that are non-duplicative of prior requests.
- d) September 30, 2013: Deadline to provide responses to discovery (if any).
- e) October 4, 2013: Deadline for answer and dispositive motions (e.g., cross-motions for summary judgment).
- f) October 7–9, 2013: Depositions (if any).
- g) October 11, 2013: Deadline for dispositive motion responses.
- h) October 15, 2013: Deadline for Parties to file motions for standing to pursue Other Issues.
- i) October 18, 2013: Reply Deadline.
- j) October 23, 2013:* Hearing, if necessary.

5. The following schedule shall apply for the resolution of issues relating to the Intercompany Obligations:

- a) September 16, 2013: Deadline to serve discovery requests (if any) that are non-duplicative of prior requests.
- b) September 25, 2013: Deadline to provide responses to discovery (if any).
- c) September 30, 2013: Deadline for Debtors to file factual summary.
- d) October 20, 2013: Deadline for the Parties to file motions with respect to allowance and characterization of Intercompany Claims.

⁵ “**Other Issues**” means the Disputed Cash, the “1,500” Disputed Copyrights, and any other claims or issues identified by the Parties, including claims against Apax Partners, if any.

- e) October 30, 2013: Deadline for answer and dispositive motion responses.
- f) November 10, 2013:* Hearing, if necessary.

6. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion and the requirements of the E.D.N.Y. Local Bankruptcy Rules are satisfied by such notice.

7. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

9. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Exhibit B

Local Rule 9019-1

- (i) the documents to be filed under seal (the “sealed documents”) and the proposed sealing order in an envelope clearly marked “Under Seal”; and
 - (ii) an electronically stored documents submitted in physical form containing the sealed documents in “pdf” format and the proposed sealing order in a word processing format.
- (c) *Destruction of Documents Filed Under Seal.*

Sealed documents shall be destroyed when the bankruptcy case is closed.

REFERENCE: General Order on Electronic Case Filing

Rule 9019-1 ALTERNATIVE DISPUTE RESOLUTION -- MEDIATION

- (a) *Assignment of a Matter to Mediation.*

The Court may direct any dispute arising in any case or proceeding (collectively, “Matter”) to mediation *sua sponte* or upon the request of one or more party in interest. The Court may determine which parties in interest shall participate in the mediation. If a Matter is assigned to mediation, the parties shall comply with all applicable pleading, discovery, and other deadlines and scheduling requirements.

- (b) *Appointment of a Mediator.*

The mediation participants shall select a mediator and at least one alternate from the Mediation Register of approved mediators kept by the Clerk within 7 days of the entry of the order assigning the matter to mediation. If the mediation participants cannot agree within that time, or if the Court determines that selection of a mediator by the Court is appropriate, then the Court shall appoint a mediator. Within 7 days of the selection of a mediator, the mediation participants and the mediator shall submit a proposed consent order appointing the mediator and describing the mediation procedures, including the terms of the mediator’s compensation and expense reimbursement (the “Mediation Order”). Procedures that are not set forth in the Mediation Order shall be governed by agreement of the parties, by this rule, or by the mediator.

The proposed Mediation Order shall be accompanied by a verified statement by the mediator stating that such person does not hold or represent an interest adverse to the estate, except as specifically disclosed therein, and that such person is disinterested.

- (c) *Mediation Procedures.*

- (i) Unless the Court orders otherwise, the mediator and the mediation participants shall agree on the time and location for the initial mediation conference, which shall take place

as soon as practicable after the entry of the Mediation Order, but no later than 30 days after the entry of the Mediation Order. The mediator may require the mediation participants to submit or exchange documents or information, including a mediation statement, before the initial mediation conference.

- (ii) Each mediation participant that is an individual shall attend the mediation conference in person. Each mediation participant that is a government entity shall attend in person by a representative who has, to the extent practicable, authority to settle the matter. All other mediation participants shall attend the mediation conference in person through a representative with authority to settle the matter. The mediator may permit telephonic or video participation in the mediation conference in appropriate circumstances.
 - (iii) The mediator shall determine the time and place for the mediation, including mediation conferences and caucuses between the mediator and a mediation participant, and the submission or exchange of documents or information. The mediator may not require a mediation participant who is represented by counsel to meet with the mediator without counsel present.
 - (iv) The mediator may set a deadline for the mediation participants to respond to a settlement proposal, including a settlement proposal by the mediator.
 - (v) Additional mediation procedures for the mediation may be agreed upon by the mediator and the mediation participants during the mediation process.
- (d) *Settlement Proposals by the Mediator.*

The mediator may, but shall not be required to, make a settlement proposal to the mediation participants. A settlement proposal by the mediator that is not accepted by the mediation participants shall not be disclosed to the Court.

- (e) *Failure to Comply with the Mediation Rule.*

If a mediation participant willfully fails to participate in good faith in the mediation process, then the mediator shall submit to the Clerk and serve on the mediation participants a report of the failure to participate. The report shall not be electronically filed, shall state on the first page at the top right corner that it is being submitted to the attention of the Clerk, and shall state that it is a report of a failure to mediate in good faith

that should not be filed or given to the Judge. The report shall not be sent to the Judge presiding over the matter. The Clerk shall deliver the report to the Judge designated by the Chief Judge for mediation, who will take appropriate action, including holding a conference or hearing in person or telephone, and whom may, in appropriate circumstances, impose sanctions.

(f) *Post-Mediation Procedures.*

- (i) If the mediation participants reach an agreement, then the mediator shall serve upon the parties and file electronically with the Court a report stating that the matter has been settled.
- (ii) If the mediation participants do not reach an agreement, and the mediator concludes that the mediation is at an impasse, then the mediator shall serve upon the parties and file with the Court a report stating that the mediation has reached an impasse and should be concluded.
- (iii) Upon the filing of the mediator's report, the mediation will be placed in suspense and the mediator will be excused from undertaking any further actions, unless otherwise requested by the mediation participants or directed by the Court.

(g) *Withdrawal from Mediation.*

At any time, the Court may withdraw a matter from mediation if the Court determines that the mediation referral is no longer appropriate. At any time, a party in interest, the United States trustee, or the mediator may request a conference with the Court or file a motion to withdraw a matter from mediation for cause.

(h) *Mediator Compensation.*

The mediator shall be compensated on terms that are satisfactory to the mediator and the mediation participants. The mediator's compensation shall be subject to Court approval if the estate is to pay any part of the expense. The mediator and the mediation participants shall set forth the terms of the mediator's compensation in the Mediation Order. Absent an agreement or order to the contrary, the mediation participants shall pay equal shares of the mediator's compensation. If the mediator and the mediation participants cannot agree on compensation terms, the Court shall fix terms that are reasonable and just. The Court may also request the mediator serve *pro bono* or on a reduced fee basis.

(i) *Qualifications of the Mediator.*

The Clerk shall maintain a Mediation Register. Appointments to the Mediation Register shall be for 5-year terms. To qualify for appointment to the Mediation Register, a person must:

- (i) file an application in the form established by the Clerk;
- (ii) not have been suspended from a professional organization or have had a professional license revoked, not have pending any proceeding to suspend or revoke such license, not have resigned from any applicable professional organization while a n i nvestigation i nto a llegations of misconduct which would warrant suspension, disbarment, or professional license revocation was pe nding; a nd not been convicted of a felony;
- (iii) not have been employed by the Court during the 36-month period preceding the date of such person's appointment to the Mediation Register; and
- (iv) meet the following minimum qualifications:
 - (A) For Lawyers Applying to be a Mediator: A lawyer must:
 - (1) be, or have been, a member in good standing of the New York State bar for at least 5 years;
 - (2) be admitted to practice in one of the district courts i n t he Second Circuit;
 - (3) have completed at least 12 hours of mediation training;
 - (4) be w illing t o unde rtake a minimum of 5 *pro bono* mediation assignments during the course of the 5-year term;
 - (5) file w ith the a pplication original a nd c urrent certificates of good s tanding

from the department of the Supreme Court of New York Appellate Division in which he or she is admitted and from one of the district courts within the Second Circuit, or if retired, have been a member in good standing in such courts; and

(6) be certified by the Chief Judge.

(B) For Other Professionals Applying to be a Mediator: A person must:

- (1) be, or have been, authorized to practice for at least 5 years under the laws of the State of New York as a professional, including but not limited to, an accountant, real estate broker, appraiser, engineer, or other professional occupation;
- (2) be an active member in good standing and submit to the Clerk proof of his or her professional status, or if retired, have been a member in good standing, of any applicable professional organization;
- (3) have completed a mediation course or courses consisting of at least 12 hours of training;
- (4) be willing to undertake a minimum of five *pro bono* mediation assignments during the course of the 5-year term; and

- (5) be certified by the Chief Judge.

The Chief Judge may waive any of the requirements of this subdivision for good cause set forth in the application. Each person certified as a mediator shall take an oath or affirmation before his or her appointment to the Mediation Register.

- (j) *Removal from the Mediation Register.*

A person may be removed from the Mediation Register at the person's request or by the Chief Judge.

- (k) *The Mediation Register.*

The Clerk shall maintain the Mediation Register at the Court's Website and in the Clerk's office. The Mediation Register shall list the persons appointed to the Mediation Register, together with a brief biography and fee information supplied by the mediator to the Clerk. The Clerk shall also maintain for public inspection the applications filed by persons appointed to the Mediation Register.

- (l) *Confidentiality.*

Any oral or written statements made by the mediator, the mediation participants, or others during the mediation process shall not be disclosed by any of the mediation participants, their agents, or the mediator, except that such statements may be disclosed to a Judge designated to hear a matter under subdivision (e) of this rule. Matters not to be disclosed include, without limitation:

- (i) views expressed or suggestions made by a participant with respect to a possible settlement of the dispute;
- (ii) whether a participant indicated a willingness to accept a proposal for settlement made by the mediator;
- (iii) proposals made or views expressed by the mediator;
- (iv) statements or admissions made by a participant; and
- (v) documents prepared for use in the mediation.

Records, reports, or other documents received by a mediator shall be confidential and shall not be provided to the Court except as required by subdivision (e) of this rule. The mediator shall not be compelled to testify or disclose any information concerning the mediation in any forum or proceeding, except as required by subdivision (e) of this rule. Unless the mediation participants and the mediator agree or the Court orders otherwise, 60 days after the mediator files a report under subdivision (f) of this rule, the mediator

may discard the submissions made by the mediation participants and any other documents or information relating to the mediation.

Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule, common law, or judicial precedent relating to the privileged nature of settlement discussions, mediation, or other alternative dispute resolution procedure shall apply to statements and information that may not be disclosed pursuant to this rule. Information otherwise discoverable or admissible in evidence shall not be immunized from discovery or inadmissible in evidence because it was disclosed in the mediation.

(m) *Immunity.*

The mediator shall be immune from claims arising out of acts or omissions arising from or relating to his or her service as a Court appointee, to the maximum extent allowed by law.

REFERENCE: Federal Rule of Evidence 408

Rule 9021-1 ENTRY OF ORDERS, JUDGMENTS AND DECREES

(a) *Entry.*

The Clerk shall enter all orders, decrees, and judgments of the Court in the Electronic Case Filing system which shall constitute docketing of the order, decree, or judgment for all purposes. The Clerk's notation in the appropriate docket of an order, judgment, or decree shall constitute the entry of the order, judgment, or decree.

(b) *Official Location.*

Each Court maintains a separate index of judgments signed by the Judges located at that site.

**Rule 9023-1 COSTS; NEW TRIALS;
MOTIONS FOR RECONSIDERATION**

(a) *Costs.*

The expense of any party in obtaining all or any part of a transcript for purposes of a new trial or amended findings may be a cost taxable against the losing party.

(b) *Motions for Reconsideration.*

A motion for reconsideration of an order may be made pursuant to Bankruptcy Rule 9023.