

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)
)
ITT EDUCATIONAL SERVICES, INC., *et al.*¹) Case No. 16-07207-JMC-7A
)
Debtors.) Jointly Administered

TRUSTEE’S MOTION FOR AUTHORITY TO DESTROY CERTAIN DOCUMENTS REMOVED FROM THE DANIEL WEBSTER COLLEGE, INC. CAMPUS AND TO PAY THE COSTS ASSOCIATED WITH THE DESTRUCTION

Deborah J. Caruso, the chapter 7 trustee in this case (the “Trustee”), by counsel, requests entry of an order, pursuant to 11 U.S.C. §§ 105 and 503, authorizing the Trustee to shred and destroy certain documents removed from the Daniel Webster College, Inc. campus, currently stored in New Hampshire, and to pay the costs associated with the shredding and destruction as an administrative expense on the following grounds:

I. JURISDICTION

1. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for relief are sections 105 and 503 of Title 11 of the United States Code (the “Bankruptcy Code”).

II. BACKGROUND

4. On September 16, 2016 (the “Petition Date”), ITT Educational Services, Inc. (“ITT”), ESI Service Corp. (“ESI”) and Daniel Webster College, Inc. (“DWC,” and together with ITT and ESI, the “Affiliated Debtors”) filed voluntary petitions for relief under chapter 7 of

¹ The debtors in these cases, along with the last four digits of their respective federal tax identification numbers are ITT Educational Services, Inc. [1311]; ESI Service Corp. [2117]; and Daniel Webster College, Inc. [5980].

the Bankruptcy Code. The Trustee was appointed interim trustee in each of the Affiliated Debtors' bankruptcy cases on the Petition Date pursuant to section 701(a)(1) of the Bankruptcy Code, and thereafter became the case trustee in each of the Affiliated Debtors' bankruptcy cases following the conclusion of the first meeting of creditors on November 1, 2016, pursuant to section 702(d) of the Bankruptcy Code.

5. On October 4, 2016, the Court entered its *Order Granting Motion for Joint Administration of Chapter 7 Cases* [Docs 221 & 222], directing the Affiliated Debtors' bankruptcy cases to be jointly administered for procedural purposes only.

6. The Trustee's property manager, G&E Real Estate Management Services, Inc. d/b/a Newmark Grubb Knight Frank ("NGKF") previously identified certain documents for removal and storage before the auction of the DWC campus. Pursuant to the Court's *Order Granting Trustee's Motion for Authority to Enter into Postpetition Contracts with Synergy Self Storage LLC Effective Nunc Pro Tunc as of October 12, 2017 for Storage of Documents* [Doc 2162], the Trustee entered into certain contracts with Synergy Self Storage LLC ("Synergy") for the storage of the following documents identified by NGKF:

- (a) Approximately 500 legal size boxes of records;
- (b) Approximately 40 4-drawer filing cabinets containing records; and
- (c) Approximately 70 recyclable totes containing documents

(collectively, the "Documents").

7. Since the removal of the Documents from the DWC campus, such Documents have been maintained by the Trustee and stored with Synergy; provided however, the Trustee did previously destroy the Documents contained in the approximately 70 recyclable totes. *See Order*

Granting Trustee's Motion for Authority to Destroy Certain Documents and to Pay the Costs Associated with the Destruction [Doc 2165].

8. The remaining Documents at Synergy are not believed to contain any information that is relevant to the administration of the Affiliated Debtors' bankruptcy estates, and therefore, the Trustee believes it is in the best interest of the Affiliated Debtors' bankruptcy estates to proceed with the shredding and disposal of such remaining Documents in an environmentally responsible manner.

9. The Trustee has obtained a quote from New England Security Shredders, LLC ("NESS") for the shredding and destruction of the remaining documents and the disposal of the approximately 40 filing cabinets. The estimated cost is approximately \$5,000.00.

III. RELIEF REQUESTED

10. The Trustee requests entry of an order, pursuant to sections 105 and 503 of the Bankruptcy Code, (a) authorizing the Trustee to retain and pay NESS to shred and destroy the remaining Documents in an environmentally responsible manner and to dispose of the approximately 40 filing cabinets, and (b) directing that all costs associated with the shredding and destruction of the remaining Documents and the disposal of the approximately 40 filing cabinets shall be an administrative expense to be paid by the DWC estate.

IV. GROUNDS FOR GRANTING RELIEF

11. Section 105(a) of the Bankruptcy Code provides that "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

12. In addition, pursuant to section 503(b)(1)(A) of the Bankruptcy Code, after notice and a hearing, the Court can allow administrative expenses for "the actual, necessary costs and

expenses of preserving the estate.” A claim is entitled to administrative status when such claim (a) arises from a postpetition transaction with the estate, and (b) the consideration for such payment is supplied to and benefited the estate. *See Matter of Jartran, Inc.*, 732 F.2d 584, 586 (7th Cir. 1984).

13. The Trustee, in her business judgment, has determined that it is in the best interest of the bankruptcy estates to destroy the remaining Documents and to dispose of the approximately 40 filing cabinets. The shredding and destruction of the remaining Documents will benefit the bankruptcy estates in that it will eliminate the ongoing costs associated with the maintenance and storage of the remaining Documents and will ensure that such Documents are shredded and destroyed in an environmentally responsible way. In addition, the approximately 40 filing cabinets have no economic value to the bankruptcy estates, and therefore, there is no benefit in continuing to store such filing cabinets after the destruction of the remaining Documents. Accordingly, the cost associated with the shredding and destruction of the remaining Documents and the disposal of the filing cabinets is an actual, necessary cost and expense of preserving assets of the Affiliated Debtors’ bankruptcy estates.

V. NOTICE

14. Pursuant to the *Notice, Case Management and Administrative Procedures* (the “Case Management Procedures”) approved by the Court on October 4, 2016 [Doc 220], the Trustee will serve a copy of this motion on the following (as defined in the Case Management Procedures): (a) the Core Group; (b) the Request for Notice List; and (c) the Appearance List.

NOTICE IS GIVEN, that pursuant to the Case Management Procedures, any objection to this motion must be in writing and filed with the Bankruptcy Clerk by no later than **4:00 p.m.** (prevailing Eastern time) on **October 6, 2021**. Parties not represented by an attorney may deliver any written objection to this motion as follows: (a) by U.S. mail, courier, overnight/express mail at Clerk, United States Bankruptcy Court, Re: *In re ITT Educational Services, Inc., et al.*, 116 U.S. Courthouse, 46 East Ohio Street, Indianapolis, IN 46204; or (b) by

publicly accessible drop box available at the Indianapolis Division located at the New York Street and Pennsylvania Street entrance.

The objecting party must also serve a copy of the written objection upon the Trustee's counsel, at Counsel for Trustee Deborah J. Caruso, Rubin & Levin, P.C., 135 N. Pennsylvania Street, Suite 1400, Indianapolis, IN 46204 (mtheisen@rubin-levin.net). **If an objection is NOT timely filed, the requested relief may be granted without a hearing.**

NOTICE IS FURTHER GIVEN that in the event an objection to this motion is timely filed, a hearing on this motion and such objection will be conducted on **October 13, 2021** at **2:15 p.m.** (prevailing Eastern Time), in Room 325 of the United States Courthouse, 46 East Ohio Street, Indianapolis, IN 46204. Interested parties may also participate at the hearing by conference call by calling 1-888-273-3658, passcode 6349352#.

WHEREFORE, the Trustee respectfully requests entry of an order (i) authorizing the Trustee to retain and pay NESS to shred and destroy the remaining Documents in an environmentally responsible manner and to dispose of the approximately 40 filing cabinets, (ii) directing that all costs associated with the shredding and destruction of the remaining Documents and the disposal of the approximately 40 filing cabinets shall be an administrative expense to be paid by the DWC estate, and (iii) granting the Trustee all other just and proper relief.

Respectfully submitted,

RUBIN & LEVIN, P.C.

By: /s/ Meredith R. Theisen

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CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2021, a copy of the foregoing *Trustee's Motion for Authority to Destroy Certain Documents Removed from the Daniel Webster College, Inc. Campus and to Pay the Costs Associated with the Destruction* was filed electronically. Pursuant to Section IV.C.3(a) of the Case Management Procedures, notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on September 21, 2021, pursuant to Section IV.C.3(c) of the Case Management Procedures, a copy of the foregoing *Trustee's Motion for Authority to Destroy Certain Documents Removed from the Daniel Webster College, Inc. Campus and to Pay the Costs Associated with the Destruction* was emailed to the following:

CEC Red Run, LLC: Alan M. Grochal at agrochal@tydingslaw.com
SWRE Deal V Building, LLC: Paul Weiser at pweiser@buchalter.com
Tarrant County/Dallas County: Elizabeth Weller at dallas.bankruptcy@publicans.com
Northwest Natural Gas Company: Ashlee Minty at Ashlee.Minty@nwnatural.com
Solar Drive Business, LLC: Chris W. Halling at challing@hallingmeza.com
Market-Turk Company: Jordan A. Lavinsky at jlavinsky@hansonbridgett.com
Taxing Authority for Harris County, Texas: John P. Dillman at houston_bankruptcy@lgbs.com
Texas Comptroller of Public Accounts: Rachel Obaldo at rachel.obaldo@oag.texas.gov
Clear Creek Independent School District: Carl O. Sandin at csandin@pbfc.com
Synchrony Bank: Recovery Management Systems Corporation at claims@recoverycorp.com
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Florida Department of Education: Jason Borntreger at jason.borntreger@fldoe.org
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Marathon Ventures, LLC: Daniel M. Karger at kargerlaw@gmail.com
Oklahoma County Treasurer: Tammy Jones at tammy.jones@oklahomacounty.org
JM Partners LLC: John Marshall at jmarshall@jmpartnersllc.com

/s/ Meredith R. Theisen
Meredith R. Theisen