

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

KYLE SMITH, IBRAHIM FETAHI, SHAWN WYNN, ARA SARDARBEGIAN, RYAN FINK, CHRISTOPHER HAMILTON, JOHN THOMPSON, BRETT BONDS, JEFF FONDA, IJANAE JACKSON, THOMAS CATLETT, and ERIC WEINBERG;
individually, and on behalf of others similarly situated,

Plaintiffs,

vs.

TEMPLE UNIVERSITY,

Defendant.

Civil Action No. 2:18-cv-00590-CMR

CLASS ACTION

**CLASS PLAINTIFFS' PROPOSED PLAN OF ALLOCATION AND DISTRIBUTION
OF OMBA SETTLEMENT FUND**

The parties have entered into a Settlement Agreement that resolves a class action lawsuit by students in the Fox School of Business and Management Online MBA Program ("OMBA"), which will provide both financial and non-financial benefits to the following qualified individuals:

All persons who enrolled as students in Temple University's Fox School of Business and Management's Online MBA Program between January 1, 2015 and December 7, 2018 (collectively the "OMBA Settlement Class").

The Settlement Agreement provides for a payment by Temple of \$4 million into the Settlement Fund, as well as non-monetary relief. If the Settlement is finally approved, the Net Settlement Fund (the \$4 million Settlement Fund, less the Court-approved fees and expenses of litigation and settlement administration) will be distributed to all eligible OMBA Settlement Class Members who file timely claims in accordance with the Plan of Allocation and

Distribution approved by the Court. No monies will revert to Temple University if there is final approval of the Settlement by the Court.

A. Preliminary Matters

The settlement amount of \$4 million (which has already been paid into escrow by Temple) and the interest earned thereon is the “Gross Settlement Fund.” From the Gross Settlement Fund will be deducted all Court-approved attorneys’ fees and expenses, incentive awards for class representatives, notice and administration expenses, and tax expenses. The Gross Settlement Fund, less all such deductions, is the “Net Settlement Fund.” The Net Settlement Fund will be disbursed to OMBA Settlement Class Members who file timely claims in accordance with the provisions of the Court-approved Plan of Allocation.

The purpose of this Plan of Allocation is to establish a reasonable and equitable method of distributing the Net Settlement Fund among eligible OMBA Settlement Class Members on a *pro rata* basis.

B. The Notice Plan

Subject to this Court’s approval, Angeion Group LLC (hereinafter “Temple Settlement Administrator”), the claims administrator approved by the Court, will prepare and send the Class Notice as approved and pursuant to the approved Notice Plan. To be eligible to submit a Claim Form, an OMBA Settlement Class Member must have enrolled as a student in Temple University’s Fox School of Business and Management’s Online MBA Program between January 1, 2015 and December 7, 2018. Any OMBA Settlement Class Member who does not submit a Claim Form by the claims deadline will not be entitled to receive any of the proceeds from the Net Settlement Fund but will otherwise be bound by the terms of the Settlement Agreement, including the release and covenant not to sue, unless he or she timely opts-out of the Settlement

Class. Co-Lead Counsel shall have the discretion, but not the obligation, to accept late-submitted claims for processing by the Temple Settlement Administrator, so long as the distribution of the Net Settlement Fund to eligible OMBA Settlement Class Members is not materially delayed.

1. Notice Date

Within thirty (30) days of the Court Order granting Plaintiffs' application for approval of the proposed Class Notice and Notice Plan, the Temple Settlement Administrator shall send the Class Notice and Claim Form to each Settlement Class Member in the "OMBA Settlement Class" in the manners described below.

2. Email Notice and Claim Form

Consistent with Rule 23(c)(2)(B), the Temple Settlement Administrator shall send via email the summary Class Notice and Claim Form to each OMBA Settlement Class Member ("Email Notice"). The Temple Settlement Administrator shall send the Email Notice to each OMBA Settlement Class Member at his/her official Temple email address (at the domain temple.edu) and to any additional email addresses that Temple has provided to Co-Lead Counsel.

3. Settlement Website

The Temple Settlement Administrator will establish a settlement website for the OMBA Settlement Class: www.TempleOMBASettlement.com. In addition, the Class Notice, Claim Form, and website contain toll-free phone numbers for inquiries from OMBA Settlement Class Members. The settlement website will contain the Settlement Agreement and the Order Granting Preliminary Approval issued by this Court; the Court-approved Email Notice, Long Form Class Notice, and Claim Form; an electronic Claim Form which an OMBA Settlement Class Member may complete and submit online; an email address that OMBA Settlement Class Members may

contact to request physical copies of the Long Form Class Notice and Claim Form; the Plan of Allocation; the Motion for Final Approval of the Settlement; and the Petition for Attorneys' Fees, Litigation Expenses and Class Representative Incentive Awards. The settlement website shall remain accessible until the conclusion of the litigation.

4. Long Form Class Notice and Claim Form

For each OMBA Settlement Class Member as to whom Email Notice cannot be delivered either due to a block, hard bounce or other reported error, the Temple Settlement Administrator shall mail a physical copy of the Long Form Class Notice and Claim Form to that OMBA Settlement Class Member at his or her last known address, as provided by Temple. In addition, all OMBA Settlement Class Members may request physical copies of the Long Form Class Notice and Claim Form by emailing the Temple Settlement Administrator or calling Co-Lead Counsel or the toll-free phone numbers listed on the Email Notice, the Long Form Class Notice, and the settlement website.

C. Processing and Review of Claims

The Temple Settlement Administrator will review and process all submitted claims, under the supervision and guidance of Co-Lead Counsel. The Temple Settlement Administrator will determine whether a claim form is timely, properly completed, and signed. In determining whether to accept or reject a late claim, Co-Lead Counsel will consider whether acceptance of the claim would significantly delay the distribution of the Net Settlement Fund or related proceedings.

If the Temple Settlement Administrator reasonably determines that it needs further information or documentation to properly process a claim, it will promptly notify the OMBA Settlement Class Member. The notification will explain how the OMBA Settlement Class

Member can cure the deficiency and provide a reasonable deadline for submitting a corrected claim. If an OMBA Settlement Class Member fails to cure the deficiency within the time specified, the claim may be rejected.

The Temple Settlement Administrator will classify all claims as either “Eligible” or “Ineligible.” It will further classify “Eligible Claims” as: (i) claims recommended for approval as filed; (ii) claims recommended for approval but with modification; or (iii) late claims recommended for acceptance because they would have been Eligible Claims if filed on time and their acceptance will not substantially delay claims administration. The Temple Settlement Administrator will classify as “Ineligible Claims” those claims that it recommends for rejection and will identify the basis for such rejection. If a dispute concerning an OMBA Settlement Class Member’s claim cannot be resolved, Co-Lead Counsel will thereafter present such disputes to the Court in Plaintiffs’ Motion for a Distribution Order.

Co-Lead Counsel will review the list of Eligible and Ineligible Claims and may accept, reject, or modify the Temple Settlement Administrator’s decisions.

D. Calculation of OMBA Settlement Class Members’ *Pro Rata* Shares and Distribution Amounts

Once Co-Lead Counsel determine which claims are recommended for approval (as submitted or as modified), the Temple Settlement Administrator will calculate each OMBA Settlement Class Member’s *pro rata* share of the Net Settlement Fund. Each OMBA Settlement Class Member’s share will be in proportion to the total number of Eligible Claims approved, calculated as a fraction:

1. The numerator being an individual OMBA Settlement Class Member’s total credit hours multiplied by “average credit cost”, as defined below.

2. The denominator being the total number of credit hours multiplied by average credit cost for all OMBA Settlement Class Members who file Eligible Claims.

Average credit cost shall be calculated by adding the applicable costs per credit hour during each semester completed by an OMBA Settlement Class Member and dividing by the number of semesters the courses were taken. To illustrate, if the OMBA Settlement Class Member took 46 OMBA program credit hours during five (5) semesters, at the respective cost per credit hour of \$1,050.00, \$1,095.00, \$1,125.00, \$1,200.00 and \$1,250.00, the average credit cost would be $\$5,720.00 \div 5 = \$1,144.00$. The numerator would be $46 \times \$1,144.00 = \$52,624.00$.

To further illustrate, assume there are 925 Eligible Claims, with 35,150 total OMBA program credit hours (an average of 38 per Class Member) and total average credit cost is \$1,160.00. The denominator would be $35,150 \times \$1,160.00 = \$40,774,000.00$.

The *pro rata* percentage would be $\$52,624/\$40,774,000 = .00129062$.

The Temple Settlement Administrator will multiply the resulting *pro rata* percentage for each OMBA Settlement Class Member by the Net Settlement Fund, to obtain the *pro rata* dollar value of each OMBA Settlement Class Member's distribution payment.

To illustrate, using the figures above, if the Net Settlement Fund is \$2,560,000.00, an OMBA Settlement Class Member's distribution payment in this example would be calculated as follows: $\$2,560,000.00 \times .00129062 = \$3,303.98$.

The Temple Settlement Administrator will cross reference and verify the information contained in the OMBA Settlement Claim Forms with the individual OMBA Settlement Class Member's data provided by Temple.

E. Submission of a Recommended Schedule of Distribution and Proposed Distribution Order

After the Temple Settlement Administrator calculates each OMBA Settlement Class Member's *pro rata* share and estimated distribution from the Net Settlement Fund, Co-Lead Counsel will submit to the Court for its review and approval a list of Eligible Claimants, the amount to be distributed to each such Claimant, and a proposed Distribution Order. Co-Lead Counsel will also submit an accompanying affidavit from the Temple Settlement Administrator that explains the tasks performed and methodologies employed in processing the claims and administering the settlement. Co-Lead Counsel will also list the Ineligible Claims recommended for rejection, if any, and the reason for rejection. To preserve their privacy, OMBA Settlement Class Members will be identified only by claim number in the Recommended Schedule of Distribution and proposed Distribution Order.

F. Payment to Eligible Claimants

Once the Settlement has become final as defined in paragraph 26 of the Settlement Agreement, the Temple Settlement Administrator will issue a check payable to each Eligible Claimant in an amount corresponding to his or her *pro rata* share of the funds to be distributed, as approved by the Court. The Temple Settlement Administrator will use reasonable efforts to locate Eligible Claimants whose checks are returned as undeliverable.

Payments to Eligible Claimants will be accompanied by a communication that includes, as appropriate:

- a. A statement that checks will bear an expiration date and be void after ninety (90) days;
- b. A statement that the tax treatment of the distribution is the responsibility of each OMBA Settlement Class Member and that he/she should consult his or her tax advisor for advice regarding the tax treatment of the distribution; and

c. Contact information for the Temple Settlement Administrator.

In the event that any distribution checks are returned as undeliverable and the Settlement Class Member(s) cannot be located by the Temple Settlement Administrator despite reasonable efforts, Co-Lead Counsel shall seek appropriate guidance from the Court with respect to such funds.

Respectfully submitted,

By: /s Jason T. Brown

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