

**Adjudication Against Private, For-Profit Education  
Institutions from January 2011 - August 2013**

Rick Waltman  
Legal Intern  
Center for Public Interest Law / Children's Advocacy Institute  
University of San Diego School of Law  
2013

## CONTENTS

Introduction.....	1
Visual Litigation Matrix.....	4
Apollo Group, Inc.....	5
Bridgepoint Education, Inc.....	5
Career Education Corporation.....	6
Corinthian Colleges, Inc.....	9
Daymar Colleges Group.....	11
Delta Career Education Corporation.....	11
DeVry, Inc.....	12
Education Affiliates.....	12
Education Management Corporation.....	12
ITT Educational Services, Inc.....	13
Kaplan, Inc.....	14
National Institutes of Technology.....	14
Stephens Institute.....	15
Strayer University.....	15
Virginia College.....	15
Walden University.....	16

Following is a collection of summaries of lawsuits brought by students, the United States, individual states, and stockholders against private, for-profit educational institutions and members of their governing boards. The suits are organized alphabetically by each parent corporation, with the subsidiary universities and colleges also listed in alphabetical order within the corresponding corporation section. Individual lawsuits are organized by the type of plaintiff (student, U.S., etc.) and are chronologically organized starting from January 1, 2011.

In the last year, there have been a relatively high number of cases brought by and on behalf of the United States for violation of the False Claims Act, mostly for misrepresentation of information during the student enrollment process—the misrepresentation is seemingly aimed at maximizing the flow of Title IV funds. Education Management Corporation has seen the brunt of this increase in litigation. Further, defendant universities and colleges have seen continued success through the use of arbitration clauses within their student and employee agreements. RETS Tech. Center (National Institutes of Technology), Everest College (Corinthian Colleges, Inc.), and the California School of Culinary Arts (Career Education Corporation) are the only schools that have seen arbitration denied by courts. See Rude v. NUCO Educ. Corp., 966 N.E.2d 894 (2012); Ferguson v. Corinthian Colleges, 2012 U.S. Dist. LEXIS 1358 (included in Matthew's compendium as well); and Banks, et al. v. California School of Culinary Arts, Class Action Reporter (as of July 10, 2013). In Banks, while the older agreements in dispute did not move the court to compel arbitration, the two more recent agreements were—like many other contemporary corporate agreements—successful in bringing the lawsuits to arbitration. In this case, the 54 plaintiffs that signed the more recent contract with the California School of Culinary Arts are currently set for hearing with the American Arbitration Association.

The spreadsheet on the next page offers a broad, visual overview of all recent private, for-profit adjudication initiated by students, governmental bodies, and shareholders. An interactive version of this spreadsheet entitled “Private, For-Profit Litigation Matrix 2011-2013” is attached. It contains all pertinent information from this document, with links to imbedded summaries from the boxes of each corresponding case on the overview matrix, and can easily stand alone. The excel matrix and corresponding summary chart (the second tab on the excel file) are optimized for printing, but may require some adjustments within the printer page setup on some versions of Microsoft Office. This PDF document is simply more generally printer friendly.

		Private-For Profit Educational Institution Lawsuits From January 2011 to August 2013																																			
Company/School Name		= Student(s)						= United States/ex rel.						= Shareholders						A = Arbitration clause						= Class Action											
Year		2011												2012												2013											
<b>Apollo Group, Inc.</b>																																					
Apollo Group generally														S S S																							
University of Phoenix																				U																	
<b>Bridgepoint Education, Inc.</b>																																					
Ashford University														A												A											
<b>Career Education Corporation (CEC)</b>																																					
American Intercontinental University								U																													
California Culinary Acad.																				S						A											
California School of Culinary Arts																										S						A					
CEC generally								S S																													
International Acad. of Design & Technology																				A						A											
International Acad. of Merchandising & Design																				A						A											
Sanford Brown College		S S A A A A A A						A A A						A						A																	
<b>Corinthian Colleges, Inc.</b>																																					
Corinthian Colleges generally														S S																							
Everest College		A A												A																							
Florida Metropolitan University														A																							
Rhodes College		A																																			
<b>Daymar Colleges Group, LLC</b>																																					
Daymar generally								KY						A																							
<b>Delta Career Education Corporation</b>																																					
Miami-Jacobs Career College																										A											
<b>DeVry, Inc.</b>																																					
DeVry University														S																							
<b>Education Affiliates</b>																																					
Education Affiliates																										A											
<b>Education Management Corporation (EMC)</b>																																					
EMC generally																				U						* U											
<b>ITT Educational Services, Inc.</b>																																					
ITT Educational Services														S												U											
ITT Technical Institute														S																							
<b>Kaplan, Inc.</b>																																					
Kaplan		U																								U											
<b>National Institutes of Technology</b>																																					
RETS Tech. Center														A																							
<b>Stephens Institute</b>																																					
Academy of Art University														S																							
<b>Strayer University</b>																																					
Strayer Education, Inc.														S																							
<b>Virginia College</b>																																					
Virginia College														A																							
<b>Walden University</b>																																					
Walden University		S																																			

## Apollo Group, Inc.

### U.S. v. INSTITUTION

- United States ex rel. Hoggett v. Univ. of Phoenix, 2013 U.S. Dist. LEXIS 31910 (E.D. Cal. Mar. 6, 2013).
  - Relators brought suit in May 2004 based on FCA and CA-FCA claims over awarding incentive pay to University of Phoenix employees for "directly or indirectly" securing enrollments." The 2004 suit was dismissed, but the 9th Circuit reversed in 2006. This was the latest appeal for a motion to dismiss, which was denied.

### SHAREHOLDERS v. INSTITUTION

- Teamsters Local 617 Pension & Welfare Funds v. Apollo Group, Inc., 282 F.R.D. 216, 2012 U.S. Dist. LEXIS 45794, 2012 WL 1094454 (D. Ariz. March 2012).
  - A stockholder **class action** suit brought against Apollo group for violation of the Securities and Exchange Act. Specifically, Apollo was accused of backdating financial reports, misleading financial reports, and contemporaneous insider trading. Apollo's motion to dismiss was granted due to insufficient pleadings. Reconsideration was denied.
- In re Apollo Group, Inc. Secs. Litig., 2012 U.S. Dist. LEXIS 87223, Fed. Sec. L. Rep. (CCH) P96,924, 2012 WL 2376378 (D. Ariz. June 22, 2012).
  - Consolidated stockholders **class action** proceeding based on claims of false and misleading statements of material fact regarding Apollo's enrollment and revenue growth, financial condition, organizational values and management integrity in violation of the Securities Exchange Act of 1934. Plaintiffs allege that these statements and omissions resulted in artificial inflation of Apollo stock. The action was dismissed due to insufficient details in the pleadings. Judgement affirmed.
- Smith v. Sperling, 2012 U.S. Dist. LEXIS 104695, 2012 WL 3064261 (D. Ariz. July 25, 2012).
  - Plaintiff brought a shareholder derivative **class action** against officers and directors, alleging that students were targeted with deceptive marketing without regard to their likelihood of success. The District court dismissed the claim, but gave leave to amend to correct deficiencies. It appears the plaintiff did not amend.

## Bridgepoint Education, Inc.

### STUDENTS v. INSTITUTION

- Rosendahl v. Bridgepoint Educ., Inc., 2012 U.S. Dist. LEXIS 26139, 2012 WL 667049 (S.D. Cal. Feb. 28, 2012).

- Initiated October 17, 2011 by student asserting claims for violation of Unfair Competition Law, False Advertising Act, Consumer Legal Remedies Act, negligent misrepresentations and fraud. Petition for **arbitration** was granted.
- Guzman v. Bridgepoint Educ., Inc., 2013 U.S. Dist. LEXIS 20315, 2013 WL 593431 (S.D. Cal. Feb. 13, 2013).
  - Proposed nationwide **class action** of "all persons who enrolled in and/or attended classes at Ashford University" suing for misleading recruitment tactics, concealing material information of cost, quality of instruction, and employment potential. The complaint also contained allegations of strategically targeting military members. All portions of the claim were initially dismissed for insufficient pleading, but class certification and the military tort allegations were reversed, and allowed to move forward; the breach of implied duty claim remained stricken.

## Career Education Corporation (CEC)

### STUDENTS v. INSTITUTION

- Barnes v. Career Educ. Corp., 2011 U.S. Dist. LEXIS 64719 (E.D. Mo. June 13, 2011).
  - Suit brought by student against CEC and Sanford Brown College, alleging that an employee fraudulently induced her to enroll. Defendants attempted to remove this to federal court based on diversity jurisdiction, and the court gave them 7 days to amend to establish subject matter jurisdiction. It appears they never did file an amendment, and I can find no indication of how the state court ruled on this case.
- Chisholm v. Career Educ. Corp., 2011 U.S. Dist. LEXIS 130955, 2011 WL 5524552 (E.D. Mo. Nov. 14, 2011).
  - Plaintiff brought suit against defendants, CEC and Sanford Brown College, for misrepresentations or omissions concerning career prospects in violation of Missouri Merchandising Practices Act and common law fraud and concealment jurisprudence. Defendants removed to federal court and moved to compel **arbitration** and stay the proceedings until arbitration concluded. The defendant's motions were granted.
- Kenner v. Career Educ. Corp., 2011 U.S. Dist. LEXIS 136484 (E.D. Mo. Nov. 29, 2011).
  - Ex-student filed this suit on three claims: 1) fraudulent misrepresentation; 2) fraud by concealment and omission; 3) and violation of Missouri Merchandising Practices Act. Plaintiff brought this claim based on allegations originally brought in a 2007 lawsuit, voluntarily dismissed without prejudice. This was originally filed in Missouri state court, then defendants removed based on diversity jurisdiction, presumably in order to obtain **arbitration** enforcement; it was enforced. On January 10, 2012, three of the other thirty-six students in the original 2007 suit each filed an identical suit. See Mueller v. Career Educ. Corp., 2012 U.S. Dist. LEXIS 2588; Shewcraft v. Career Educ. Corp., 2012 U.S. Dist. LEXIS 2717; Shumate v. Career Educ. Corp., 2012 U.S. Dist. LEXIS 2758.
- Hubbard v. Career Educ. Corp., 2011 U.S. Dist. LEXIS 137232, 2011 WL 5976070 (E.D. Mo. Nov. 30, 2011).

- Plaintiff brought suit against defendants, CEC and Sanford Brown College, for misrepresentations or omissions concerning career prospects in violation of Missouri Merchandising Practices Act and common law fraud and concealment jurisprudence. Defendants removed to federal court and moved to compel arbitration and stay the proceedings until arbitration concluded. The defendant's motions were granted.
- Mitchell v. Career Educ. Corp., 2011 U.S. Dist. LEXIS 137941, 2011 WL 6009658 (E.D. Mo. Dec. 1, 2011).
  - Student alleged staff was "trained to manipulate potential students to enroll," bringing action for fraud and misrepresentation, violation of Missouri's Merchandising Practices Act, and fraud by concealment and omission. Defendants removed to federal court to move to compel arbitration and stay the claim. They were successful.
- Wilson v. Career Educ. Corp., 2011 U.S. Dist. LEXIS 138696, 2011 WL 6012172 (E.D. Mo. Dec. 2, 2011).
  - Wilson, a former student in the paralegal program at Sanford Brown College, filed suit for various misrepresentations concerning the school's program and career opportunities throughout her recruitment, enrollment, and attendance at SBC. Defendant's moved to compel arbitration and stay the proceedings. The District court granted the motion.
- Womack v. Career Educ. Corp., 2011 U.S. Dist. LEXIS 138699, 2011 WL 6010912 (E.D. Mo. Dec. 2, 2011).
  - A former student in the medical coding and billing program at Sanford Brown College, filed suit for various misrepresentations concerning the school's program and career opportunities throughout her recruitment, enrollment, and attendance at SBC. Defendant's moved to compel arbitration and stay the proceedings. The District court granted the motion.
- Hill v. Career Educ. Corp., 2012 U.S. Dist. LEXIS 5001, 2012 WL 75337 (E.D. Mo. Jan. 10, 2012).
  - Plaintiff brought suit against defendants, CEC and Sanford Brown College, for misrepresentations or omissions concerning career prospects in violation of Missouri Merchandising Practices Act and common law fraud and concealment jurisprudence. Defendants removed to federal court and moved to compel arbitration and stay the proceedings until arbitration concluded. The defendant's motions were granted.
- Fox v. Career Educ. Corp., 2012 U.S. Dist. LEXIS 50780 (E.D. Mo. Apr. 11, 2012).
  - Plaintiff sued CEC and Sanford Brown College for employee misrepresentation regarding the quality of training, prospective salary, and ability to transfer credits to other colleges. She alleged she relied on these representations to make a decision to attend. The court enforced the arbitration clause, and stayed this action pending the result.
- Love v. Career Educ. Corp., 2012 U.S. Dist. LEXIS 67762, 2012 WL 1684572 (E.D. Mo. May 15, 2012).
  - Plaintiff brought suit for false representations that induced her to enroll at Sanford Brown College. Defendant's removed to federal court and successfully moved to compel arbitration.
- Lilley v. Career Educ. Corp., 2012 IL App (5th) 100614-U, 2012 Ill. App. Unpub. LEXIS 2583, 2012 WL 7069056 (Ill. App. Ct. 5th Dist. 2012).
  - This is a **class action** brought by four Sanford Brown Students on behalf of all persons who attended from July 1, 2003 until June 2012. Plaintiffs allege misinforming with respect to validity of entrance exams, salary statistics, transferability of credits, and payment schedules. The class was initially certified, but the Appellate Court of Illinois reversed certification, stating that the four named plaintiffs could proceed with the action for damages, attorney's fees, and injunctive relief. The Supreme Court of



Illinois refused to hear the appeal. This is returning to the appellate court to assess the claims of the four named plaintiffs.

- Brainard, et al. v. Career Education Corporation, 2012 U.S. Dist. (M.D. Fla. Sept. 11, 2012).
  - **Class action** of "current and former students" of Sanford Brown College, alleging violations of Florida's Deceptive and Unfair Trade Practices Act, RICO, and common law claims. CEC and Sanford Brown successfully moved to compel **arbitration** on March 11, 2013.
- Cernohorsky v. Career Educ. Corp., 2013 U.S. Dist. LEXIS 91244, 2013 WL 3287070 (M.D. Fla. June 28, 2013).
  - Plaintiffs, Cernohorsky and other students similarly situated, brought this **class action** against CEC and International Academy of Merchandising and Design, Inc. for violation of Florida's Deceptive and Unfair Trade Practices Act, the Federal Racketeer Influenced and Corrupt Organizations Act, and common law claims of unjust enrichment and breach of fiduciary duty. The defendants successfully moved to compel **arbitration** and stay the proceedings.
- Houck v. Career Educ. Corp., 2013 U.S. Dist. LEXIS 91230, 2013 WL 3287063 (M.D. Fla. June 28, 2013).
  - **Class action** of "current and former students" of IADT, alleging violations of Florida's Deceptive and Unfair Trade Practices Act, RICO, and common law claims. IADT moved to compel **arbitration**; action is now in arbitration.
- Cohen v. Career Educ. Corp., 2013 U.S. Dist. LEXIS 91237, 2013 WL 3287083 (M.D. Fla. June 28, 2013).
  - **Class action** of "current and former students" of IADT, alleging violations of Florida's Deceptive and Unfair Trade Practices Act, RICO, and common law claims. IADT moved to compel **arbitration**; action is now in arbitration. Same judge, date, and application as Houck and Cernohorsky.
- Banks, et al. v. California School of Culinary Arts, Class Action Reporter, as of July 10, 2013.
  - Roughly 1,052 plaintiffs in a consolidation of 8 "multiple plaintiff actions" against the school for fraud, violation of the CA Unfair Competition Law, and violation of California's Consumer Legal Remedies Act for conduct and statements made by institution employees during the admissions process. See Banks; Abrica v. CSCA; Aguilar, et al. v. CSCA; Alday v. CSCA; Ackerman, et al. v. CSCA; Arechiga, et al. v. CSCA; Arechiga, et al. v. CSCA; Anderson, et al. v. CSCA; and Allen v. CSCA. In June 2012, defendants successful moved to compel arbitration with respect to two more recent arbitration agreements. The court denied **arbitration** with respect to plaintiffs who signed all earlier agreements. 54 individuals signed the later agreements, and are set for a hearing with the American Arbitration Association by September 2013.
- Test cases v. California Culinary Academy (CCA), Class Action Reporter, 2013-2014.
  - Students from four suits filed since June 3, 2011, alleging fraud, constructive fraud, violation of California's Unfair Competition law, and violation of the California Consumer Legal Remedies Act for misrepresentations during the admissions process regarding reputation, value of education, competitiveness, and employment statistics. See Abarca v. CCA (2011); Andrade, et al. v. CCA (2011); Aprieto, et al v. CCA (2011); Coleman, et al v. CCA (2013). There are 80 plaintiffs with counsel and 4 pro se plaintiffs that were opt-outs or non-class members of a 2007 class action suit (Amador, et al. v. CCA) with essentially the same claims. The court will likely set a trial date on test cases in late 2013 or 2014.

## U.S. v. INSTITUTION

- United States ex rel. Powell v. Am. Intercontinental Univ. Inc., 2012 U.S. Dist. LEXIS 97587, 2012 WL 2885356 (N.D. Ga. July 12, 2012).
  - Filed on behalf of U.S. in June 2010, this was the 2nd time in district court, after plaintiffs were successful in both district court and on appeal. FCA and regional (SACS) fraud suit brought for misstating facts on Title IV forms. The FCA claim was dismissed because of a first-to-file bar from previous “pending” suits brought on the same facts. The SACS accreditation fraud claim remained in favor of the plaintiffs/U.S.

## SHAREHOLDERS v. INSTITUTION

- Cook v. McCullough, 2012 U.S. Dist. LEXIS 114621, 2012 WL 3488442 (N.D. Ill. Aug. 13, 2012)
  - Brought against CEC’s board on behalf of CEC by shareholder, Amy Cook. Court found that : “(1) CEC overstated its growth prospects by engaging in illegal and improper recruiting activities which also artificially inflated CEC's reported results and future growth prospects”; (2) CEC overstated its financial results because the student loan repayment rates and job placement rates at CEC schools were well below the levels required for receipt of federal funding; and (3) "CEC failed to maintain adequate systems of internal operational and financial controls." Suit survived a motion to dismiss. Perhaps why CEC now pushes for arbitration. (See Houck and Cohen)
- Ross v. Career Educ. Corp., 2012 U.S. Dist. LEXIS 155037, Fed. Sec. L. Rep. (CCH) P97,068, 2012 WL 5363431 (N.D. Ill. Oct. 30, 2012).
  - In a class action of individual and corporate investors in CEC stock from February 2009 through November 2011, plaintiffs allege that defendants knowingly made materially false public statements about CEC placement rates, regulatory compliance, and accreditation status. This was said to have artificially inflated the price. On October 30, 2012, the District court granted one executive's motion to dismiss, and denied all other dismissal motions. A hearing was scheduled for June 13, 2013 to address the amended complaint. The result is currently unknown.

## **Corinthian Colleges, Inc.**

### STUDENTS v. INSTITUTION

- Montgomery v. Corinthian Colleges, Inc., 2011 U.S. Dist. LEXIS 31651, 2011 WL 1118942 (N.D. Ill. Mar. 25, 2011).

- **Class action** of former students in Medical Assisting program at Everest College, alleging a deceptive marketing scheme that coerced thousands of students in to pursuing a useless education. Corinthian successfully moved for individual **arbitration**.
- Miller v. Corinthian Colleges, Inc., 2011 U.S. Dist. LEXIS 48418, 2011 WL 1740153 (D. Utah May 5, 2011).
  - Students suing Everest College under the Utah Consumer Sales Practices Act, for fraudulent misrepresentation, and negligent misrepresentation. Compelled to individual **arbitration**, and the plaintiffs' objection was denied.
- Kimble v. Rhodes College, Inc., 2011 U.S. Dist. LEXIS 59628, 2011 WL 2175249 (N.D. Cal. June 2, 2011).
  - Plaintiff brought claims for violation of California Business and Professions Code Sec. 17200 (Fraud) and violation of the California Consumers Legal Remedies Act. The District court granted the defendant's motion to compel **arbitration**.
- Ferguson v. Corinthian Colleges, 2012 U.S. Dist. LEXIS 1358, 2012 WL 27622 (C.D. Cal. Jan. 5, 2012).
  - Sandra Muniz v. Cornithian Heald College was merged in to this **class action** case on April 15, 2011. The two classes, with effectively congruent claims of fraud and misrepresentation, consist of those who attended within a four year period any Everest or Corinthian colleges, with a Corinthian Heald subclass. The court denied the defendant's motion to compel individual **arbitration**\*\*\*. Defendant's motion to stay the District court's ruling for injunctive relief was denied. This is still being considered for appeal.
- Reed v. Fla. Metro. Univ., 681 F.3d 630 (5th Cir. Tex. 2012).
  - **Class action** brought by Reed, ex student, on behalf of other ex students, for misrepresenting accreditation, graduate school entrance capabilities, and employment prospects. Everest moved for class arbitration, where the arbitrator granted an award. 5<sup>th</sup> Circuit Court found that *the contract offered no basis for class arbitration*, so reversed their ruling, and remanded for bilateral arbitration.

## SHAREHOLDERS v. INSTITUTION

- In re Corinthian Colleges S'holder Derivative Litig., 2012 U.S. Dist. LEXIS 188623, 2012 WL 8502955 (C.D. Cal. Jan. 30, 2012).
  - David Realty Company filed this shareholder's derivative suit on behalf of Corinthian Colleges, Inc. against a number of current and former directors and officers for misleading recruiting practices, breach of fiduciary duty for allowing false statements to be issued, and unjust enrichment. The complaint was dismissed for lack of pleading specificity. Though plaintiff was given leave to amend, it appears they did not file an amended complaint.
- Karam v. Corinthian Colleges, 2012 U.S. Dist. LEXIS 188594, 2012 WL 8499135 (C.D. Cal. Aug. 20, 2012).
  - This **class** action involves investors in Corinthian's privately traded securities between October 30, 2007 and August 19, 2010. They brought suit for for fraud and misrepresentation, alluding to Corinthian's "predatory business model." The case was dismissed for failure to show the scienter of fraud.

## Daymar Colleges Group

### STUDENTS v. INSTITUTION

- Albury v. Daymar Colleges Group, LLC, 2012 U.S. Dist. LEXIS 48936 (W.D. Ky. Apr. 5, 2012).
  - **Class action** of "current and prior attendees" brought suit against Daymar in state court for fraudulent and misleading claims regarding job prospects and availability of financial aid. Plaintiffs from Lancaster v. Daymar Colleges Group, LLC, 2012 U.S. Dist. LEXIS 19946, 2012 WL 524459 (W.D. Ky. Feb. 14, 2012), Wiggins v. Daymar Colleges Group, LLC, 2012 U.S. Dist. LEXIS 34350, 2012 WL 884907 (W.D. Ky. Mar. 13, 2012), and Arbury were aggregated due to stemming from the same material facts (both, after being removed to Federal court). The class sought remand back to state court, which was never granted.

### STATE v. INSTITUTION

- Commonwealth ex rel. Conway v. Daymar Learning, Inc., 2012 U.S. Dist. LEXIS 39221, 2012 WL 1014989 (W.D. Ky. Mar. 22, 2012).
  - The AG of Kentucky brought this suit because Defendants engaged in unfair, false, and misleading conduct regarding the transferability of credits and financial aid. This was removed to Federal Court by Daymar, and then remanded back to state court.

## Delta Career Education Corporation

### SHAREHOLDERS v. INSTITUTION

- Deck v. Miami Jacobs Bus. College Co., 2013 U.S. Dist. LEXIS 14845 (S.D. Ohio Jan. 31, 2013).
  - This student **class action** against Miami-Jacobs Career College involves allegations of breach of contract, fraudulent misrepresentation with respect to material enrollment information, and violation of the FCA. The court enforced arbitration for all claims, staying only the FCA claim, and dismissing all others.

## DeVry, Inc.

### SHAREHOLDERS v. INSTITUTION

- Boca Raton Firefighters' & Police Pension Fund v. DeVry Inc., 2012 U.S. Dist. LEXIS 41305, 2012 WL 1030474 (N.D. Ill. Mar. 27, 2012).
  - Plaintiff Fund purchased DeVry common stock, and brought suit based on fraudulent practices in recruiting and securing funds, as well as reporting employment rates. This caused stock to be "artificially inflated." This was ultimately dismissed because of insufficient facts within the allegations.

## Education Affiliates

### STUDENTS v. INSTITUTION

- Asbell v. Educ. Affiliates, 2013 U.S. Dist. LEXIS 59096, 2013 WL 1775078 (M.D. Tenn. Apr. 24, 2013).
  - **Class of current** or former students at Fortis Institute brought action for breach of contract, good faith, and fair dealing, for violation of the Tennessee Consumer Protection Act, and fraud in misrepresenting material information regarding enrollment and career prospects. Defendant's motion for individual **arbitration** was granted.

## Education Management Corporation

### U.S. v. INSTITUTION

- United States v. Educ. Mgmt. LLC, 2013 U.S. Dist. LEXIS 53462, 2013 WL 1601346 (W.D. Pa. Apr. 12, 2013).
  - False Claims Act suit brought for violation of Incentive Compensation Ban, 20 U.S.C. sec. 1094(a)(20). Final decision rendered in favor of U.S. by W.D. Pa.
- United States ex rel. Sobek v. Educ. Mgmt., LLC, 2013 U.S. Dist. LEXIS 76354, 2013 WL 2404082 (W.D. Pa. May 31, 2013).
  - False Claims Act action for shady recruiting tactics aimed only at maximizing EDMC's profits via Title IV funds. United States, after filing numerous extensions for intervention, decided not to intervene. EDMC lost motion to dismiss on three of six claims: recruiters making misrepresentations as to program

accreditation, job placement, and monitoring of student progress. EDMC was given until June 14<sup>th</sup>, 2013 to file answer to these causes of action. On July 23rd, EDMC filed for an interlocutory appeal of the court's denial of their motion to dismiss, which was unsuccessful. See 2013 U.S. Dist. LEXIS 102552. I assume an appeal is on its way.

- United States v. Educ. Mgmt. LLC, 2013 U.S. Dist. LEXIS 104176 (W.D. Pa. May 14, 2013).
  - Relator filed against EDMC alleging violation of the FCA due to falsely certifying that its institutions were in compliance with the Incentive Compensation Ban. This case is in the midst of discovery motions.

#### SHAREHOLDERS v. INSTITUTION

- Gaer v. Educ. Mgmt. Corp., 2011 U.S. Dist. LEXIS 111803, 2011 WL 7277578 (W.D. Pa. Sept. 29, 2011).
  - **Class action** brought by shareholders who purchased EDMC common stock from October 1, 2009 through August 13, 2010. Plaintiffs alleged violation of the Securities Act's disclosure requirements, and for fraud based on EDMC's reports regarding growth, recruiting, and Title IV eligibility. The district court initially granted EDMC's motion for summary judgment because of plaintiff's insufficient allegation of facts indicating fraud and violation; the decision was sustained.

## ITT Educational Services Inc.

#### STUDENTS v. INSTITUTION

- Marshall v. ITT Tech. Inst., 2012 U.S. Dist. LEXIS 60806, 2012 WL 1565453 (E.D. Tenn. May 1, 2012).
  - Plaintiff student brought action against institution alleging misrepresentation of job prospects, financials, and other material facts to make an informed decision on attendance. The pleadings were insufficiently specific. Case dismissed.

#### UNITED STATES v. INSTITUTION

- Leveski v. ITT Educ. Servs., 2013 U.S. App. LEXIS 13722, 2013 WL 3379343 (7th Cir. July 8, 2013).
  - Brought by employee, Debra Leveski, on behalf of US pursuant to the FCA's provision prohibiting employee pay based on recruitment levels. This was originally dismissed for lack of subject matter jurisdiction--the district court found that Leveski was not the original source of the allegation. The 7th Circuit reversed and remanded back to district court.

## SHAREHOLDERS v. INSTITUTION

- In re ITT Educ. Servs., 859 F. Supp. 2d 572, 2012 U.S. Dist. LEXIS 65754, 2012 WL 1632762 (S.D.N.Y. 2012).
- **Class action** brought by Wyoming Retirement System on behalf of other stakeholders for misrepresentation and fraud between Oct 23, 2007 and Aug. 13, 2010. The court found that the discrepancy between what was claimed and what was promised was immaterial, and did not likely lead to a drop in value.

## Kaplan, Inc.

### UNITED STATES v. INSTITUTION

- United States ex rel. Gillespie v. Kaplan Univ., 2013 U.S. Dist. LEXIS 99093, 2013 WL 3762445 (S.D. Fla. July 16, 2013).
- Prompted by a former employee on August 7<sup>th</sup>, 2011, Kaplan was accused of violated FCA due to failure to comply with Section 504 of the Rehabilitation Act and for grade inflation. Gillespie made motion for leave to amend the complaint to offer specific allegations regarding Rehabilitation Act. The District Court, after allowing Gillespie to amend the complaint, ultimately ruled in favor of Kaplan for a summary judgment motion.
- United States ex rel. Torres v. Kaplan Higher Educ. Corp., 2011 U.S. Dist. LEXIS 94003, 2011 WL 3704707 (S.D. Fla. Aug. 22, 2011).
- Ex-Director of Admissions initiated suit, alleging that Kaplan was deemed eligible for Title IV funds because they used monetary incentives and bonuses for recruiters that secured enrollment and financial aid. Dismissed due to the FCA's first-to-file rule.

## National Institutes of Technology

### UNITED STATES v. INSTITUTION

- Rude v. NUCO Educ. Corp., 131 Ohio St. 3d 1540, 2012 Ohio 2025, 966 N.E.2d 894, 2012 Ohio LEXIS 1060, 2012 WL 1605560 (May 9, 2012).
- Two nursing students at Rets Tech Center brought suit under Ohio state law based on institutional misrepresentations regarding their accreditation. The school, a subsidiary of the National Institutes of Technology ) dba NUCO Education Corp., tried to enforce an **arbitration** provision, but the court found the provision procedurally unconscionable due to "disparity in bargaining power," the school's "sales tactics," and that students lacked understanding. Holding affirmed.

## Stephens Institute

- STUDENTS v. INSTITUTION
  - Senger v. Acad. of Art Univ., 2012 Cal. App. Unpub. LEXIS 8954
    - Plaintiff, student and RA, sued the Academy for fraud in job description and misrepresentation of employer status. Statute of limitations barred suit for either.

## Strayer University

### SHAREHOLDERS v. INSTITUTION

- Kinnett v. Strayer Educ., Inc., 2012 U.S. Dist. LEXIS 37733, Fed. Sec. L. Rep. (CCH) P96,771 (M.D. Fla. Mar. 20, 2012).
  - The Oklahoma Firefighters Pension and Retirement System was the lead plaintiff, filing on behalf of a class of purchasers of Strayer Education, Inc.'s (public holding company for Strayer) common stock between November 2007 and January 2011, in this consolidated securities fraud **class action** lawsuit. Plaintiff brought claims under the Private Securities Litigation Reform Act, and the Securities Exchange Act of 1934 for securities fraud. Defendants moved to dismiss the plaintiff's amended complaint, which the magistrate judge recommended for approval. The District court heeded the magistrate's inclination, and dismissed the case.

## Virginia College

### STUDENTS v. INSTITUTION

- Anderson v. Va. College, LLC, 2012 U.S. Dist. LEXIS 130619, 2012 WL 4052198 (S.D. Miss. Sept. 13, 2012).
  - 12 music students at Virginia College alleged misrepresentations about quality of education, career opportunities, and for targetting African-Americans and women. The motion to compel **arbitration** was granted.



# Walden University

## STUDENTS v. INSTITUTION

- Johnson v. Walden Univ., 839 F. Supp. 2d 518, 2011 U.S. Dist. LEXIS 141805, 2011 WL 6140925 (D. Conn. 2011).
- Former student claimed fraudulent misrepresentation, negligent misrepresentation, and breach of implied contract based on material promises made by recruiter. The claims survived summary judgment. Walden made an interlocutory motion to strike lost earnings from the damages, and the motion was granted. Johnson v. Walden Univ., Inc., 2012 U.S. Dist. LEXIS 79723, 2012 WL 2087414 (D. Conn. June 8, 2012).