IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA MACON DIVISION

VC MACON GA, LLC	
v.	, , ,
VIRGINIA COLLEGE, LLC; and EDUCATION CORPORATION OF AMERICA,)
Defendants.	

Civil Action No. 5:18-cv-00388-TES

MOTION BY NON-PARTY UNITED STATES OF AMERICA FOR EXTENSION OF TIME TO FILE A STATEMENT OF INTEREST AND TO RESCHEDULE HEARING ON RECEIVER'S MOTION <u>TO CONFIRM AND APPROVE SETTLEMENT</u>

The United States of America, on behalf of its departments and agencies, including the Department of Education ("ED") and Department of Veterans Affairs ("VA") requests an extension of the deadline to object to and the hearing on the *Receiver's Motion to Confirm and Approve Settlement, and for Entry of a Bar Order, and Findings of Fact* (Doc. 529, Dec. 19, 2022) ("Motion"). In short, given the objection deadline of December 30 and the hearing date of January 3, the United States has been afforded insufficient time to evaluate the proposed settlement agreement ("Agreement") and proposed order that bars and releases claims.

The United States is not a party to this receivership and did not receive the filing through the ECF system when it was filed, but receiver's counsel e-mailed a copy of the Motion and related filings to undersigned counsel at the Department of Justice on December 21 at 3:21 p.m. The email stated in part, "The Receiver has reached a settlement with certain former officers and directors of ECA. We have moved the Court to approve this settlement. . . .

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[T]he Court has set an in-person hearing on January 3, 2023 at 10:00 am ET regarding the settlement, and the Court has ordered that any and all objections are due Friday, December 30, 2022." For the reasons demonstrated below, the United States respectfully requests more time to determine whether to file a Statement of Interest with this Court.

As a non-party, any formal Statement of Interest by the United States must be authorized by the Attorney General or his delegate. See 28 U.S.C. § 517.¹ The United States needs more time to review the Agreement's terms and the proposed order to determine whether it purports to affect any federal rights to recover tens of millions of dollars in aid that the United States provided to students who attended schools operated by the Education Corporation of America. Almost all individuals at the Department of Justice, ED, and VA who have responsibility for evaluating and pursuing potential claims related to ECA were on leave for at least parts of the period from December 20 through today. Undersigned counsel was on leave starting on December 20 through December 27, but forwarded receiver counsel's e-mail and filings to agency counsel on Thursday, December 22. Together with the federal holiday for Christmas on Monday, December 26 and the federal holiday for New Year's Day on January 2, the United States has been unable to reasonably assess the proposed settlement agreement and proposed order. Any Statement of Interest addressing concerns of the United States would first need a recommendation from agency counsel and officials, as well as approval by the Principal Deputy Assistant Attorney General in charge of the Civil Division at the Department of Justice.

¹ Under 28 U.S.C. § 517, "[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." *Id.*; *see also Jones Truck Lines, Inc. v. AFCO Steel, Inc.*, 849 F. Supp. 1296, 1305 n.4 (E.D. Ark. 1994) (recognizing that the United States may "assert to a court its position . . . in matters of significant interest").

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The United States is unaware of any prejudice to the parties to the settlement or the receiver for the brief extension of time sought by this motion. Reaching the proposed settlement took three separate mediation efforts that began – according to receiver's litigation counsel – in January 2021, almost two years ago with the third mediation held in August 2022. Affidavit of Ronald J. Schutz, at 7, 9 (Doc. 529-4, Dec. 19, 2022). Three more months passed before the parties formalized a draft settlement on December 16, 2022, just two weeks ago.

Under these circumstances, the United States requests that the deadline for submitting a response or objection to the Motion be extended by two weeks to Friday, January 13 and the hearing date be adjourned to Tuesday, January 17.

December 30, 2022

BRIAN BOYNTON Principal Deputy Assistant Attorney General

PETER D. LEARY United States Attorney

BERNARD SNELL Assistant United States Attorney Respectfully submitted,

<u>/s/ John R. Kresse</u> RUTH A. HARVEY MICHAEL J. QUINN JOHN R. KRESSE Attorneys United States Department of Justice P.O. Box 875, Ben Franklin Station Washington, D.C. 20044-0875 Phone: (202) 598-3811 Email: john.kresse@usdoj.gov

Attorneys for the United States

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 30, 2022, I electronically filed the foregoing MOTION BY NON-PARTY UNITED STATES OF AMERICA FOR EXTENSION OF TIME TO FILE A STATEMENT OF INTEREST AND TO RESCHEDULE HEARING ON RECEIVER'S MOTION TO CONFIRM AND APPROVE SETTLEMENT with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

> <u>s/ John R. Kresse</u> John R. Kresse Trial Attorney U.S. Department of Justice