

No. \_\_\_\_\_

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**IN THE  
Supreme Court of the United States**

JAMES HEYMAN,

*Petitioner,*

v.

LINCOLN NATIONAL LIFE INSURANCE COMPANY,

*Respondent.*

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**On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Sixth Circuit**

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**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH  
TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

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October 2, 2019

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UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

**TO: The Honorable Sonia Sotomayor, Justice of the United States Supreme Court and  
Circuit Justice, United States Court of Appeals for the Sixth Circuit**

Applicant James Heyman (“Mr. Heyman”) respectfully requests an extension of 60 days from November 24, 2019 to January 23, 2020, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

The judgment of the Sixth Circuit from which Mr. Heyman seeks review became final on August 26, 2019—following resolution of his petition for rehearing en banc. Mr. Heyman’s petition for a writ of certiorari is currently due on November 24, 2019. An extension of time up to and including January 23, 2020, would comply with the 60-day period set forth in Rule 13.5 of

the Rules of the Supreme Court of the United States and 28 U.S.C. § 2101(c).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Copies of the opinions of the court of appeals and the district court are attached to this application. A1-A57.

1. This case involves the fundamental issue of a federal court’s jurisdiction to supplant state court jurisdiction—underscoring the principle that federal courts are courts of limited jurisdictions with any doubts as to the existence of jurisdiction resolved in favor of remand to state court. Specifically, this case concerns the removing party’s burden necessary for demonstrating the requisite jurisdictional element—amount-in-controversy— and the impact of the complaint’s requested relief, and pre- and post-removal events on the propriety of remand.

2. Mr. Heyman is a Kentucky resident subject to and protected by Kentucky’s laws and regulations—notably, Kentucky’s insurance code. Mr. Heyman was a governmental employee and, as such, insured under a long-term disability (“LTD”) policy insured by Lincoln National Life Insurance Company (“Lincoln”).<sup>1</sup> While insured, Mr. Heyman was determined disabled under the policy and received LTD benefits for a period of time. However, an issue arose concerning the calculation of his LTD policy benefits—Lincoln’s application of a policy exclusion to reduce his LTD benefits.

3. Based solely on state law, Mr. Heyman filed this lawsuit in Kentucky state court seeking redress for Lincoln’s improper reduction of his LTD benefits. *See* A-3. In his complaint, Mr. Heyman in good faith demanded—and in fact stipulated—that his damages would *not* exceed \$75,000. *Id.* (“In his prayer for relief, Heyman sought ‘all available damages including an

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<sup>1</sup> ERISA is *not* applicable to Mr. Heyman’s claims and is *not* the subject of this petition. *See* 29 U.S.C. § 1003(b)(1) (“The provisions of this subchapter shall not apply to any employee benefit plan if ... such plan is a governmental plan.”).

amount of money sufficient to satisfy his claims (not to exceed \$75,000) ...”).<sup>2</sup> Despite the good faith demand and damages stipulation, based solely on diversity jurisdiction, Lincoln removed the lawsuit to federal court—the U.S. District Court for the Western District of Kentucky.

4. Mr. Heyman subsequently filed a motion to remand the case. *See* A-4.<sup>3</sup> In his motion to remand, Mr. Heyman reiterated his good faith demand and damages stipulation—that he would neither seek *nor* accept more than \$75,000—and further disputed Lincoln’s conclusory calculation of the amount in controversy. *Id.* Lincoln opposed the remand.

5. In reply, Mr. Heyman again reiterated his good faith demand and damages stipulation—again *not* exceeding the \$75,000 jurisdictional requirement. *Id.* Consistent with his complaint, Mr. Heyman provided the Court with an additional written and signed stipulation. The District Court disregarded Mr. Heyman’s good faith demand and damages stipulation in his complaint and declined to consider his additional stipulation based on the finding that it was a post-removal event. The District Court then speculated as to the damages at issue—finding the amount-in-controversy satisfied—and denied the motion to remand. *See* A-5.

6. Mr. Heyman appealed the District Court’s decision to the Sixth Circuit Court of Appeals. *Id.* On July 18, 2019, the Sixth Circuit reversed the District Court’s dismissal of Applicant Heyman’s claims but upheld the District Court’s decision denying the motion to remand. *See* A-23. Applicant Heyman timely submitted a petition for rehearing en banc, but his petition was denied. *See* A-39.

7. The Sixth Circuit’s un-published decision conflicts with its prior holdings, with

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<sup>2</sup> *See also*, 28 U.S.C. § 1446(c)(2) (“the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy”).

<sup>3</sup> Lincoln in turn filed a motion to dismiss—an issue that is *not* before this Court. *See* A-5.

other Circuits, and with the holdings of this Court concerning an important federal issue—subject matter jurisdiction.

8. First, in relying upon speculation as to the amount in controversy, the Sixth Circuit’s opinion disregarded its own binding precedent and created a split with other Circuits. *See e.g. Mays v. City of Flint*, 871 F.3d 437, 442 (6th Cir. 2017) (“removal statutes are to be strictly construed, and all doubts should be resolved against removal.”); *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 753-54 (11th Cir. 2010) (“without facts or specific allegations, the amount in controversy could be ‘divined [only] by looking at the stars’—only through speculation—and that is impermissible.”); *Bartnikowski v. NVR, Inc.*, 307 F. App’x 730, 736 n.12 (4th Cir. 2009) (“an estimate of attorneys’ fees is pure speculation, and thus, on this record, cannot be used to augment the amount-in-controversy calculation.”).

9. Second, relevant to this important federal issue, the Sixth Circuit’s opinion declined to follow this Court’s *Powerex Corp.* decision—holding that post-removal events (e.g. a post-removal stipulation) can impact jurisdiction and warrant remand. *See Powerex Corp. v. Reliant Energy Services, Inc.*, 551 U.S. 224, 232 (2007) (“[A] case can be properly removed and yet suffer from a failing in subject-matter jurisdiction that requires remand.”).

10. Wherefore, Mr. Heyman respectfully requests an extension of time within which to file his petition for a writ of certiorari seeking review of the Sixth Circuit’s ruling and submits that there is good cause for granting the request. Subsequent to the Sixth Circuit’s decision, Counsel for Mr. Heyman have worked diligently to research the applicable law in order to prepare a petition for certiorari. However, during this same time period Counsel have had a number of previously scheduled professional and personal obligations. As a result, additional

time is necessary to prepare Mr. Heyman’s petition for a writ of certiorari, as well as to have it printed for submission for the Court’s consideration.

**CONCLUSION**

For the foregoing reasons, Applicant James Heyman respectfully requests the Court extend the deadline for him to file his petition for a writ of certiorari by sixty (60) days—making his petition due on or before January 23, 2020.

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Respectfully Submitted,



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Dated: October 2, 2019