No. 21A-

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IN THE

# Supreme Court of the United States

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY AND
STATE FARM FIRE AND CASUALTY COMPANY,

*Applicants*,

v.

DAWN CARAPELLA, AS BANKRUPTCY TRUSTEE OF THE ESTATE OF
KRISTINA GAIME, DEBTOR,

*Respondent*.

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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 ELEVENTH CIRCUIT

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TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT:

Pursuant to this Court's Rule 13.5, State Farm Mutual Automobile Insurance Company ("State Farm Auto") and State Farm Fire and Casualty Company ("State Farm Fire," and, collectively with State Farm Auto, "State Farm") respectfully request a 60-day extension of time, to and including June 13, 2022, within which to file a petition for a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit.

The Eleventh Circuit issued its decision on November 16, 2021. *In re Gaime*, 17 F.4th 1349 (11th Cir. 2021). The Eleventh Circuit denied State Farm's timely petition for rehearing en banc (with panel rehearing) on January 14, 2022. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). Unless extended, the time within which to file a petition for a writ of certiorari will expire on April 14, 2022.

A copy of the Eleventh Circuit's opinion is attached hereto as Exhibit A. A copy of the Eleventh Circuit's order denying rehearing en banc (with panel rehearing) is attached hereto as Exhibit B.

1. Kristina Gaime was convicted in Florida for the second-degree murder of her son Matthew and second-degree attempted murder of her son Adam in 1999. *In re Gaime*, 17 F.4th at 1351.[1] Gaime held State Farm automobile and home insurance at the time. While Gaime was incarcerated, in 2001, Gaime's former husband, their surviving son Adam, and the estate of their deceased son Matthew (collectively "the Rotells") sued Gaime in Florida state court for wrongful death and bodily injury. Gaime tendered her defense to State Farm, and State Farm Fire appointed an attorney. State Farm then sought and obtained declaratory judgments establishing that they had no coverage obligation for Gaime's crimes and no duty to defend. Gaime's counsel was then permitted to withdraw.

Shortly before counsel withdrew, the Rotells sought leave to amend their Fourth Amended Complaint in the wrongful death and bodily injury action, and the state court granted leave to file a Fifth Amended Complaint within 20 days. The Rotells did not do so until March 2016, nearly four years after the court's deadline. Gaime, still incarcerated, did not respond, and the Rotells

[1] Unless otherwise stated, all factual assertions are drawn from the Eleventh Circuit's opinion in this case. *See In re Gaime*, 17 F.4th at 1351–53.

obtained a default judgment as to liability. Following a jury trial as to damages only at which Gaime did not appear or present any defenses, judgment was entered against Gaime for $504,802,368. State Farm did not receive notice of the trial or judgment.

Because Gaime was insolvent, the Rotells petitioned the bankruptcy court for involuntary Chapter 7 bankruptcy proceedings against her for the half-billion-dollar judgment, and the bankruptcy court appointed Dawn Carapella as trustee. In that capacity, Carapella sued State Farm in Florida state court, alleging that State Farm acted in bad faith by rejecting a 2011 settlement offer by the Rotells in the wrongful death action that Gaime wished to accept.

State Farm then sought to intervene, post-judgment, in the Rotells' wrongful death action against Gaime, seeking to vacate the judgment on the grounds that the Fifth Amended Complaint was untimely by nearly four years and that the judgment was therefore void. Because Gaime was in bankruptcy, State Farm sought relief from the automatic stay, which prohibits, as relevant here, the "continuation … of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement [of the bankruptcy]." 11 U.S.C. § 362(a)(1). State Farm argued that the stay did not apply to its motion to intervene, or, in the alternative, that the court should exercise discretion to lift the stay.

The bankruptcy court denied State Farm relief from the stay, and the Eleventh Circuit affirmed. The Eleventh Circuit held that the automatic stay provision applies to State Farm's motion to intervene, notwithstanding the fact that State Farm's motion intended to relieve the debtor's estate of a half-billion dollar liability. The Eleventh Circuit concluded that, irrespective of the fact that Gaime would benefit from State Farm's intervention, the automatic stay barred State Farm's motion to intervene because it arose in the context of a case originally filed "against" Gaime. *In re Gaime*, 17 F.4th at 1353.

2. The Court's review would be sought on the ground that the Eleventh Circuit's decision—which permits a bankruptcy trustee to use the automatic stay as an offensive weapon to tie the hands of third parties against whom the trustee is pursuing relief—conflicts with the decisions of other Circuits and with the text and purpose of the automatic stay provision.

Other Circuits, including the Ninth and Seventh Circuits, have adopted the principle that the purpose of the automatic stay provision is to protect the assets of the estate during the pendency of the proceedings. *See, e.g.*, *In re Palmdale Hills Prop., LLC*, 654 F.3d 868, 871 (9th Cir. 2011) ("An automatic stay imposed by 11 U.S.C. 362(a) bars actions that would *diminish* the estate of a debtor in bankruptcy . . . ." (emphasis added)); *Martin-Trigona v. Champion Fed. Sav. & Loan Ass'n*, 892 F.2d 575, 577 (7th Cir. 1989) (explaining that "[t]he fundamental purpose of bankruptcy . . . is to prevent creditors from trying to steal a march on each other"). If State Farm were to obtain vacatur of the procedurally infirm state-court judgment against Gaime, it would be relieving her estate of its "only liability." *In re Gaime*, 17 F.4th at 1352. State Farm's intervention therefore does not—and could not—"diminish" the bankruptcy estate. *In re Palmdale Hills Prop., LLC*, 654 F.3d at 871.

Moreover, State Farm's action—seeking intervention so as to obtain vacatur of a state-court default judgment against the incarcerated and unrepresented Gaime based on a complaint filed nearly four years too late—is defensive, having been filed in response to the trustee pursuing a bad faith claim against State Farm based on its actions in the wrongful-death litigation. Multiple Circuits—including the Third, Ninth, District of Columbia, and Federal Circuits—have held that defensive litigation actions are not barred by the automatic stay. *See Maritime Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir. 1991); *In re Palmdale Hills Prop., LLC*, 654 F.3d at 871 (9th Cir. 2011); *Brown v. Armstrong*, 949 F.2d 1007, 1009–10 (8th Cir. 1991); *Checkers*

*Drive-in Rests., Inc. v. Comm'r of Patents & Trademarks*, 51 F.3d 1078, 1082 (D.C. Cir. 1995); *Seiko Epson Corp. v. Nu-Kote Int'l, Inc.*, 190 F.3d 1360, 1364 (Fed. Cir. 1999); *In re Bryner*, 425 B.R. 601, 604 (B.A.P. 10th Cir. 2010). The Eleventh Circuit, therefore, established itself as an outlier in holding that this distinction between offensive and defensive actions simply "doesn't matter." *In re Gaime*, 17 F.4th at 1353.

The Eleventh Circuit's analysis was flawed in other respects that may also form the basis for a petition. For instance, it held in a single paragraph without citation that the "action" to be stayed for purposes of Section 362(a) is "the Rotells' state-court wrongful-death action," 17 F.4th at 1353, which overlooks a distinction recognized by other Circuits that have refused to "lump[ ] together" all claims within a single case "for purposes of the automatic stay analysis," but instead engage in a practice called "disaggregation" under which courts may consider different claims brought by different parties to be separate actions for Section 362(a) purposes, *Halmar Robicon Grp., Inc. v. Toshiba Int'l Corp*., 127 F. App'x 501, 502-03 (Fed. Cir. 2005) (quoting *Maritime Elec. Co.*, 959 F.2d at 1204-05). In failing to apply the disaggregation principle, the Eleventh Circuit again established itself as an outlier in its approach to the automatic stay.

3. State Farm has good cause for a 60-day extension of time to file a petition for certiorari. State Farm recently retained Gibson, Dunn & Crutcher LLP as new counsel of record for the purpose of identifying issues for certiorari and preparing a petition for a writ of certiorari. Due to the complexity of the case, including a review of multiple state-court actions dating back to 2001 that all may be relevant to the presentation of issues, newly retained counsel would benefit from additional time to review the record and consider the issues that may be suitable for this Court to consider. Gibson, Dunn & Crutcher has not previously represented State Farm in this litigation or in the related state-court litigation.

For the foregoing reasons, State Farm respectfully requests that the time for filing a petition for a writ of certiorari in this case be extended by 60 days, to and including June 13, 2022.

Respectfully submitted,

/s/ Theodore J. Boutrous, Jr.
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