

IN THE  
SUPREME COURT OF THE UNITED STATES

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No. \_\_\_\_

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GENERAL MOTORS LLC,  
*Applicant,*

v.

MICHAEL BAVLSIK; KATHLEEN SKELLY,  
*Respondents.*

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**APPLICATION TO THE HON. NEIL M. GORSUCH  
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 EIGHTH CIRCUIT**

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Pursuant to Supreme Court Rule 13(5), General Motors LLC (“GM”) hereby moves for an extension of time of 30 days, to and including Friday, February 23, 2018, for the filing of a petition for a writ of certiorari to review the decision of the United States Court of Appeals for the Eighth Circuit Circuit dated August 31, 2017 (Exhibit 1). A petition for rehearing was denied October 26, 2017 (Exhibit 2). The jurisdiction of this court is based on 28 U.S.C. §1254(1).

1. Unless an extension is granted, the deadline for filing the petition for certiorari will be Wednesday, January 24, 2018.

2. This case involves the exceptionally important question of whether partial retrials limited to damages violate the Seventh Amendment if the trial record indicates the jury may have reached a compromise verdict—*i.e.*, awarding low damages to resolve non-unanimity over liability. During jury deliberations in this

products-liability case, the jury asked the district court whether one of the plaintiffs, who was rendered quadriplegic after hitting his head on the roof of his GM vehicle during a rollover accident, could receive damages as compensation for past medical expenses “regardless of our decision.” After the district court responded that the jury would first have to find GM liable, the jury promptly returned a verdict that rejected all of the claims in this case—except one. Although the jury found that the seatbelt restraint system in the vehicle at issue here contained *no design defects*, the jury nonetheless found GM liable for failing to adequately test the non-defective seatbelt restraint system and that this negligence somehow caused injury. The jury then awarded the quadriplegic plaintiff \$1 million as compensation for past damages, but it refused to award him any future damages despite his obvious continuing needs and refused to award any past or future loss-of-consortium damages to his wife.

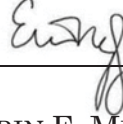
3. Although this case bears all the hallmarks of an impermissible compromise verdict, which requires a full retrial on both liability and damages, the Eighth Circuit concluded below that the plaintiffs could receive a damages-only retrial because the court was “not convinced the record so *clearly* demonstrates a compromise verdict.” The Eighth Circuit reached that conclusion even while admitting that GM had made “a strong case” that the jury rendered a compromise verdict. Thus, civil defendants in the Eighth Circuit may now be forced to live with adverse findings of liability despite serious concerns that the jury never agreed on liability and may be forced to participate in one-sided partial retrials in which a plaintiff’s damages award can only increase.

4. That result cannot be reconciled with this Court's decision in *Gasoline Products Co. v. Champlin Refining Co.*, 283 U.S. 494, 500 (1931), which held that partial retrials are consistent with the Seventh Amendment only if "it clearly appears that the issue to be retried is so distinct and separable from the others that a trial of it alone may be had without injustice." The Eighth Circuit's decision also adds to a longstanding split of authority that developed in the wake of *Gasoline Products* regarding the legal standard that a litigant must satisfy to receive a new trial on both liability and damages when alleging a compromise verdict.

5. Counsel of Record, Erin E. Murphy, was not involved in the proceedings below and requires additional time to research the extensive factual record and complex legal issues presented in this case. Furthermore, before the current due date of the petition, Ms. Murphy has substantial briefing obligations, including a brief in opposition in *North Carolina v. Alcoa Power Generating, Inc.*, No. 17-863 (U.S.), a response brief in *Duncan v. Becerra*, No. 17-56081 (9th Cir.), and a reply brief in *Aptim Corporation v. McCall*, No. 17-30772 (5th Cir.).

For the foregoing reasons, applicant requests that an extension of time to and including Friday, February 23, 2018, be granted within which applicant may file a petition for a writ of certiorari.

Respectfully submitted,



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ERIN E. MURPHY  
*Counsel of Record*  
KIRKLAND & ELLIS LLP  
655 Fifteenth Street, NW  
Washington, DC 20005  
(202) 879-5000  
erin.murphy@kirkland.com

January 3, 2018