

No. 20-_____

**In The
Supreme Court of the United States**

JUDITH KERNS; MARCIA NALLEY; AND SANDRA STEWART;
ON BEHALF OF THE CLASS,
APPLICANTS/PETITIONERS,

v.

CATERPILLAR, INC.,
RESPONDENT.

**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**

**APPLICATION TO THE HONORABLE
JUSTICE SOMA SOTOMAYOR AS CIRCUIT JUSTICE**

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January 30, 2020

Application for Extension of Time

Pursuant to Rule 13.5 of the Rules of this Court, Applicants/Class Representatives/Plaintiffs Judith Kerns, Marcia Nalley and Sandra Stewart, on behalf of all class members, hereby request a 36-day extension of time within which to file a petition for a writ of certiorari up to and including Wednesday March 18, 2020.

Judgment for Which Review is Sought

The judgment for which review is sought is *Kerns, et al., v. Caterpillar, Inc.*, Sixth Circuit case no. 18-5384 (November 13, 2019) (attached as Exhibit 1). Unless extended, the time to file a petition for a writ of certiorari will expire on February 11, 2020. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the filing date for the petition. The jurisdiction of this Court will be invoked under 28 U.S.C. §1254(1).

Reasons Justifying an Extension of Time

Applicants respectfully request this 36-day extension of time and submit that it is supported by good cause. Class counsel has been working diligently on the petition and related tasks, but has had several significant intervening matters that require additional time.

1. At the time the Sixth Circuit decision was issued on November 13, 2019, class counsel was on a reduced work schedule due to a medical leave for an October 15, 2019 inpatient surgery. Class counsel in the hospital and then at an in-patient rehabilitation facility until November 1 and was on medical leave from October 15 through November 4, 2019. Counsel returned to work on November 5 on a significantly reduced hours schedule, which continued until about December 2, 2019. Thus, for about 19 days (from the date of the decision on November 13 until December 2, 2019), counsel was medically-restricted from working full duty.

2. In addition to the press of regular business, counsel has been representing several different unions in collective bargaining negotiations which became more intensive and time-sensitive in November 2019 through January 2020. First, with Wayne County, Michigan and its Government Bar Association (for a unit of over 100 public prosecutors and corporation counsel whose collective bargaining agreement expiration date was September 30, 2019) and for which, after at least 11 bargaining dates, the new contract ratification took place on December 12, 2019. Second, with Livingston County, Michigan and its Deputy Sheriffs Association (for a unit of sheriff deputies, corrections officers, road patrol officers, etc. whose collective bargaining agreement expired December 31, 2019) and for which, after 9 bargaining dates, the new contract ratification took place January 7-8, 2020. Third, with the Downriver, Detroit, Oakland, Macomb Wholesalers Association, Inc. (4 different employers) and Teamsters Local 1038 (for over 600 drivers and warehouse employees whose contract expired on March 31, 2019) and for which at least 11 bargaining dates have taken place with Federal Mediator Anthony Baumann participating (and which remains unresolved with additional dates scheduled). Fourth, with Ascension Genesys Hospital in Grand Blanc, MI and Teamsters Local 332 (for a unit of over 1,000 registered nurses) and for which 2 bargaining dates have been held since January 14, 2020 and 18 additional dates are scheduled. Since the Sixth Circuit decision and before the current writ due date, counsel has or had at least 16 separate bargaining sessions on 4 different contracts. Each bargaining date requires additional dates for preparation, research, and follow up.

3. Counsel prepared for a complex unfair labor practice trial before the Michigan Employment Relations Commission Office of Hearings and Rules that was scheduled for January 6, 2020 in the 2 consolidated cases of *MEA-NEA Local 1 Anchor Bay v. Anchor Bay School District*, docket no. 17-011501-MERC; case no. C17 E-042; and *Anchor Bay School District v.*

MEA-NEA Local 1 Anchor Bay, docket no. 18-013248-MERC; case no. CUI8 F-021 (Administrative Law Judge Travis Calderwood). That case settled after appearing for trial on January 6, 2020.

4. Counsel also prepared for a class action contract grievance arbitration case before Arbitrator Thomas Barnes in *Teamsters Local 1038 v. McLaren Flint Medical Center*, American Arbitration Association case no. 01-19-0001-6097, that was scheduled for trial on Tuesday, January 14 but settled on Friday, January 10, 2020.

5. Counsel represents several ERISA plans. Since the Sixth Circuit decision, counsel has attended quarterly meetings of those plans' Boards of Trustees on at least 4 dates (December 10, 2019 for Shopmens Local 508 Health and Welfare Plan; December 12, 2019 for the Michigan UFCW Unions and Employer Joint Prepaid Legal Services Plan; and January 28-29, 2020 for the UWUA Power for America Training Trust Fund). Each plan meeting date also requires additional dates for preparation, research, and follow up.

6. This case involves a complex class action of over 554 surviving spouses of Caterpillar UAW retirees in their claims for collectively-bargained, vested, lifetime health care benefits without premiums under the Labor Management Relations Act, 29 U.S.C. §185, and the Employee Retirement Security Act of 1974, 29 U.S.C. §1132. The Sixth Circuit ruled differently for 2 different subgroups of the class, which raises the possibility of the need for further proceedings to amend the class description to create the pertinent subclasses, etc. prior to filing the writ. The additional time sought would provide the opportunity to more fully review the complex procedural and substantive issues necessary.

Conclusion

For the foregoing reasons, Applicants respectfully request that this Court grant an extension of 36 days, up to and including March 18, 2020, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,

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By: 

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Class Counsel for Applicants/Petitioners

January 30, 2020

CERTIFICATE OF SERVICE

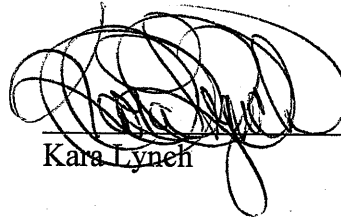
I, Kara Lynch, declare under penalty of perjury that on January 30, 2020, I sent a copy of this pleading to the following by UPS Overnight Letter:

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I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 30, 2020



Kara Lynch