

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

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In the  
Supreme Court of the United States  
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CALLAN CAMPBELL, KEVIN C. CHADWICK (INDIVIDUALLY AND THROUGH HIS COURT-APPOINTED ADMINISTRATORS, JAMES H. CHADWICK AND JUDITH STRODE CHADWICK), JAMES H. CHADWICK, JUDITH STRODE, CHADWICK, THE TYLER JUNSO ESTATE (THROUGH KEVIN JUNSO, ITS PERSONAL REPRESENTATIVE), NIKI JUNSO, AND KEVIN JUNSO, all on their own behalf and on behalf of a class of all others similarly situated,

Petitioners,

v.

UNITED STATES,

Respondent.  
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ON APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT  
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PETITIONERS' APPLICATION FOR EXTENSION OF TIME  
TO FILE A PETITION FOR A WRIT OF CERTIORARI  
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Steve Jakubowski  
ROBBINS, SALOMON & PATT, LTD.  
180 North LaSalle Street, Suite 3300  
Chicago, Illinois 60601  
Telephone: (312) 456-0191  
Email: [sjakubowski@rsplaw.com](mailto:sjakubowski@rsplaw.com)

Co-counsel for Petitioners  
Dated: January 29, 2020

Robert H. Thomas  
*Counsel of Record*  
DAMON KEY LEONG KUPCHAK  
HASTERT  
1003 Bishop Street, 16th Floor  
Honolulu, Hawaii 96813  
Telephone: (808) 531-8031  
Facsimile: (808) 533-2242  
Email: [rht@hawaiilawyer.com](mailto:rht@hawaiilawyer.com)

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**PETITIONER’S APPLICATION TO EXTEND TIME  
TO FILE A PETITION FOR A WRIT OF CERTIORARI**

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**To the Honorable Chief Justice John R. Roberts, as Circuit Justice for the United States Court of Appeals for the Federal Circuit:**

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.3, petitioners Callan Campbell, Kevin C. Chadwick (individually and through his court-appointed administrators, James H. Chadwick, and Judith Strode Chadwick), James H. Chadwick, Judith Strode Chadwick, the Tyler Junso Estate (through Kevin Junso, its personal representative), Niki Junso, and Kevin Junso, all on their

own behalf and on behalf of a class of all others similarly situated (collectively, the “Petitioners”) respectfully request that the time to file a petition for a writ of certiorari in this case be extended for sixty days to April 20, 2020. Petitioners will ask this Court to review a judgment by the United States Court of Appeals for the Federal Circuit entered on August 1, 2019, a copy of which is attached hereto as Appendix 1. Absent an extension of time, the petition would be due on February 20, 2020. Petitioner is filing this application at least ten days before that date. *See* Rule 13.5 of the Supreme Court Rules. This Court has jurisdiction under 28 U.S.C. § 1257 to review this case.

### **Background**

Petitioners are natural persons, court-appointed administrators, decedents’ estates, and representatives and others (collectively, the “Accident Victims”) that hold allowed prepetition claims (the “Personal Injury Claims”) in the bankruptcy case of *In re Motors Liquidation Company, et al., f/k/a General Motors Corp.*, No. 09-50026 (Bankr. S.D.N.Y) (the “Bankruptcy Case”) based on deaths or personal injuries caused by defective motor vehicles (or component parts thereof) manufactured, sold, or delivered by General Motors Corporation (“Old GM”) before June 1, 2009, the date Old GM commenced its Bankruptcy Case. Petitioners represent a putative class consisting of approximately 2,000 Accident Victims with aggregate liquidated claims of approximately \$320 million.

On July 10, 2009, the Government closed on and thereby consummated its purchase of substantially all of Old GM’s operating assets through a wholly-owned,

government-sponsored enterprise formed on the eve of Old GM's bankruptcy filing ("New GM"). The sale agreement through which the government's acquisition was consummated (the "Sale Agreement") provided that New GM would voluntarily assume in full approximately \$60 billion in prepetition unsecured liabilities, including the unsecured claims of trade vendors, senior executives, unions and pensions.

The order of the bankruptcy court approving the Sale Agreement (the "Sale Order") provided that any claim not expressly assumed in the Sale Agreement at the closing of the sale would be permanently enjoined from being pursued against New GM as successor. Because Petitioners' claims were not expressly assumed in the Sale Agreement, Petitioners were prohibited from pursuing successor liability claims against New GM. Petitioners' complaint alleged that New GM was the legal successor to Old GM under Michigan law and would have been liable to consumers injured by GM's product defects. The Sale Order's injunction, however, prevented the Accident Victims from suing New GM after the sale. Significantly, few of the other general unsecured claimants left behind (*e.g.*, the bondholders whose claims represented approximately 85% of the general unsecured claim pool) had successor liability rights against New GM under Michigan law because there was no identity of interest among the owners of Old GM (*i.e.*, the public) and the owners of New GM (*i.e.*, the government and the unions).

The Sale Order was entered on July 5, 2009, but the Sale Order, by its own terms, provided that the effectiveness of the Sale Order would be delayed until July

9, 2009 at noon eastern. The sale closed on July 10, 2009, on which date, Petitioners' successor liability claims died aborning.

On July 9, 2015, Petitioners commenced a takings action in the United States Court of Federal Claims against the United States. Petitioners' complaint alleged that the Government's targeting of Petitioners' successor liability claims against New GM for elimination in the bailout "went too far" because the government was financially indifferent to assumption of these claims yet it forced the Accident Victims to absorb a disproportionate burden of the costs of the bailout that in all fairness and justice should have been borne by the public as a whole.

The United States Court of Federal Claims dismissed the action, holding: (i) Petitioners' successor liability claims against New GM were not property interests protected under the Fifth Amendment and (ii) the case was filed four days too late as it should have been filed no later than six years after the entry *of the sale order*.

The United States Court of Appeals for the Federal Circuit affirmed on statute of limitations grounds alone. The Federal Circuit (Dyk, J.) held that Petitioners' takings claims was a regulatory takings claim and accrued under the Tucker Act on the date the Government made its final decision to not assume Petitioners' successor liability claims in the sale. According to the Federal Circuit, Petitioners' takings claims accrued when that final decision was made, even if that decision occurred "before the effect of the regulatory action [was] felt." (Op. at 11). On November 22, 2019, the Federal Circuit denied the Petition for Panel Rehearing.

## Opinions Below

A. The United States Court of Appeals for the Federal Circuit issued its opinion in the case on August 1, 2019. Appendix 1.

B. The Federal Circuit denied Petitioners' Combined Petition for Panel Rehearing and Rehearing *en banc* on November 22, 2019 (the "Petition for Panel Rehearing"). Appendix 2.

## Jurisdiction

This Court has jurisdiction under 28 U.S.C. § 1257.

### Reasons for Granting an Extension of Time

The time to file a petition for a writ of certiorari should be extended for sixty days, to April 20, 2020 for several reasons, which constitute "good cause" for granting an extension under Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c):

1. The forthcoming petition for certiorari to be filed on behalf of the Petitioners presents an important federal constitutional question: specifically, does a regulatory takings claim accrue for purposes of the six-year statute of limitations under the Tucker Act, 28 U.S.C. § 2501, upon the occurrence of a final regulatory decision even if the effect of that regulatory action had not yet been felt by the plaintiff?

2. Additional time is necessary and warranted because Petitioners have just recently retained Robert H. Thomas and the law firm of Damon Key Leong Kupchak Hastert to serve as co-counsel. Mr. Thomas has significant experience in

regulatory takings cases. He independently learned about the case after the Federal Circuit entered its decision on August 1, 2019 and his concerns about the implications of this decision for takings jurisprudence generally led him to represent the Center for Auto Safety in the filing of an amicus brief in support of the Petition for Panel Rehearing. As co-counsel for the Petitioners, Mr. Thomas and his team will need to review the extensive briefing and record in the case, research applicable case law and federal constitutional law, and assist in preparation of a clear and concise petition for certiorari for the Court's review.

3. No prejudice to the United States would arise from the extension.

4. On January 16, 2020, Mr. Jakubowski sent the Solicitor General of the United States an email communication asking whether he would consent to Petitioners' request for an extension of time to file its petition for certiorari. The Solicitor General had not responded to Petitioners' communication as of the time of filing of this application.

## Conclusion

For good cause shown, the time to file a petition for a writ of certiorari in this matter should be extended sixty days through and including April 20, 2020.

Respectfully submitted.

Steve Jakubowski  
ROBBINS, SALOMON & PATT, LTD.  
180 North LaSalle Street, Suite 3300  
Chicago, Illinois 60601  
Telephone: (312) 456-0191  
Email: [sjakubowski@rsplaw.com](mailto:sjakubowski@rsplaw.com)

Co-counsel for Petitioners  
Dated: January 29, 2020



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Robert H. Thomas  
*Counsel of Record*  
DAMON KEY LEONG KUPCHAK  
HASTERT  
1003 Bishop Street, 16th Floor  
Honolulu, Hawaii 96813  
Telephone: (808) 531-8031  
Facsimile: (808) 533-2242  
Email: [rht@hawaiilawyer.com](mailto:rht@hawaiilawyer.com)



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**PROOF OF SERVICE**

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I HEREBY CERTIFY that on January 29, 2020, a true and correct copy of the foregoing documents were served upon the following parties by email and by U.S. Mail:

The Honorable Noel Francisco, Solicitor General of the United States  
Office of the Solicitor General  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
Tel: (202) 514-2203

- and -

John J. Todor, Esq.  
Senior Trial Counsel

Commercial Litigation Branch  
Civil Division  
Department of Justice  
P.O. Box 480  
Ben Franklin Station  
Washington, D.C. 20044  
Tel: (202) 616-2382

Nashville, Tennessee, January 29, 2020.



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Robert H. Thomas  
DAMON KEY LEONG KUPCHAK  
HASTERT  
1003 Bishop Street, 16th Floor  
Honolulu, Hawaii 96813  
Tel: (808) 531-8031  
Email: [rht@hawaiilawyer.com](mailto:rht@hawaiilawyer.com)