

IN THE SUPREME COURT OF THE UNITED STATES

No. A-_____

HOWMEDICA OSTEONICS CORP., APPLICANT

v.

DEPUY SYNTHES SALES, INC. AND JONATHAN WABER

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 NINTH CIRCUIT

Pursuant to Rules 13.5 and 30.2 of this Court, counsel for Howmedica Osteonics Corp. (HOC) respectfully requests a 30-day extension of time, to and including September 14, 2022, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case. The United States Court of Appeals for the Ninth Circuit entered its judgment on March 14, 2022. App., infra, at 1a. That court denied a timely petition for rehearing on May 16, 2022. App., infra, at 26a. Unless extended, the time for filing a petition for a writ of certiorari will expire on August 15, 2022. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. This case arises out of a dispute between HOC and one of its former sales associates, Jonathan Waber. App., infra, at 5a-6a. Waber signed an agreement with forum-selection and choice-

of-law clauses, which required that all contract disputes be adjudicated in New Jersey under New Jersey law. App., infra, at 6a & n.1. The agreement also contained a one-year non-compete clause. App., infra, at 6a. But Waber left to work for a competitor, DePuy Synthes Sales, Inc. (DePuy). App., infra, at 6a. In this new role, Waber served the same California region where he had worked at HOC. App., infra, at 6a.

2. After leaving, Waber sent a letter to HOC invoking California Labor Code § 925. App., infra, at 6a. Section 925 provides that employment contracts are “voidable by the employee” if they “require an employee who primarily resides and works in California” to take certain actions, id. § 925(a)-(b), including “to adjudicate outside of California a claim arising in California,” or to forgo “the substantive protection of California law with respect to a controversy arising in California,” id. § 925(a)(1)-(2). If the employee successfully invalidates the contract, the dispute must be adjudicated in California under California law. Id. § 925(b).

3. Waber and DePuy then brought a declaratory judgment action against Stryker (HOC’s parent company) and later HOC itself in the Central District of California. App., infra, at 8a-9a. As relevant here, the district court held that § 925 invalidated the forum-selection and choice-of-law clauses in Waber’s employment contract. App., infra, at 8a-9a. The court denied HOC’s motion to transfer under 28 U.S.C. § 1404(a), and granted summary judgment in favor of Waber and DePuy. App., infra, at 9a-10a.

4. The Ninth Circuit affirmed in a published opinion. App., infra, at 1a. See also 28 F.4th 956 (9th Cir. 2022). The Court

held that state law, not federal law, governs the validity of a forum-selection clause. App., infra, at 17a-18a. The court rejected HOC's arguments that this Court's precedents, including Stewart Organization, Inc. v. Ricoh Corp., 487 U.S. 22 (1988), and Atlantic Marine Construction Co. v. United States District Court for the Western District of Texas, 571 U.S. 49 (2013), required a different result. App., infra, at 18a-21a.

Nevertheless, the Ninth Circuit acknowledged that this Court has not resolved the choice-of-law issue, which "has long divided courts." App., infra, at 16a-17a n.4 (quoting Barnett v. DynCorp Int'l, LLC, 831 F.3d 296, 301 (5th Cir. 2016)). The Ninth Circuit also suggested that the issue has "divided the commentators and split the circuits." App., infra, at 16a-17a n.4 (quoting Lambert v. Kysar, 983 F.2d 1110, 1116 n. 10 (1st Cir. 1993)).

The Ninth Circuit denied a timely petition for rehearing en banc on May 16, 2022. App., infra, at 26a.

5. Counsel for applicant respectfully requests a 30-day extension of time, to and including September 14, 2022, within which to file a petition for a writ of certiorari. The court of appeals' decision in this case presents complex choice-of-law issues. Undersigned counsel did not represent applicant below and was only recently retained.

Undersigned counsel is also in the process of preparing for argument and to file briefs in several other cases in this Court and other courts. In particular, counsel is preparing to submit petitioner's brief on the merits in this Court in Bartenwerfer v. Buckley, No. 21-908, on July 19, 2022, and is preparing to submit

respondent's brief on the merits in this Court in Andy Warhol Foundation for the Visual Arts, Inc., v. Goldsmith, No. 21-869, on August 8, 2022. Counsel also has an opening brief due in the Third Circuit in Greenberg v. Lehocky, No. 22-1733, on a date to be determined by the court. Further, counsel has an upcoming oral argument in the First Circuit in In Re Zofran (Ondansetron) Products Liability Litigation, No. 21-1517, on July 26, 2022. Additional time is therefore needed to prepare the petition in this case.

Respectfully submitted.

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