

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

UNITED MINE WORKERS OF AMERICA 1974 PENSION
PLAN, *et al.*,

Applicants

v.

ENERGY WEST MINING COMPANY,

Respondent

APPLICATION FOR EXTENSION OF TIME TO FILE A
PETITION FOR A WRIT OF CERTIORARI

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Rule 29.6 Statement

Pursuant to this Court's Rule 29.6, Applicant United Mine Workers of America 1974 Pension Plan states that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

To Chief Justice John G. Roberts, Circuit Justice of the United States Court of Appeals for the District of Columbia Circuit:

1. Under this Court's Rules 13.5 and 22, Applicants United Mine Workers of America 1974 Pension Plan and its trustees respectfully request an additional 60 days to file a petition for writ of certiorari. The petition will challenge the D.C. Circuit's decision in *United Mine Workers of Am. 1974 Pension Plan v. Energy W. Mining Co.*, 39 F.4th 730 (D.C. Cir. 2022). The Court of Appeals issued its opinion, attached to this application, on July 8, 2022. Applicants timely filed a petition for rehearing en banc, which was denied on September 6, 2022. Without an extension, the petition for a writ of certiorari will be due on December 5, 2022. With the requested extension, the petition would be due on February 4, 2023. This Court's jurisdiction will be based on 28 U.S.C. § 1254(1).

2. This case presents important questions about withdrawal liability under Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"). The MPPAA was enacted to reduce the risk that multiemployer pension plans would experience a "death spiral" of withdrawing employers if the plan became financially troubled. *UMWA 1974 Pension Plan*, 39 F.4th at 734. In recent years, withdrawing employers and plans have been fighting over whether and to what extent the MPPAA regulates the discount rate that actuaries use to calculate employers' withdrawal liability. In its opinion in this case, the D.C. Circuit held that actuaries must select a discount rate based on a plan's rate of investment return.

3. On October 14, the Pension Benefit Guarantee Corporation (“PBGC”) issued a notice of proposed rulemaking related to these discount-rate issues. *See Actuarial Assumptions for Determining an Employer’s Withdrawal Liability*, 87 Fed. Reg. 62316-01. In its proposal, the PBGC recognized that “[t]here has been increasing litigation over withdrawal liability determinations, centered on the interest rate assumption used to discount liabilities of ongoing plans.” *Id.* at 62317. The PBGC also recognized that “[c]ourt decisions have varied.” *Id.* The PBGC proposes to promulgate a rule that would specifically allow actuaries to select discount rates that are *not* based on a plan’s rate of investment return. *Id.*

4. For the following reasons, Applicants respectfully request that the due date for their petition for writ of certiorari be extended 60 days to February 4, 2023. The PBGC’s recent notice, both the preamble and the proposed rule, bears directly upon the questions presented in this case. Applicants and their counsel need additional time to study the PBGC’s proposal and determine its effect on a petition for a writ of certiorari. However, over the next month, Applicants’ counsel is engaged on two other significant matters—a reply in support of another petition for writ of certiorari in *United Mine Workers of America 1992 Benefit Plan, et al., v. United States Pipe & Foundry Co., et al.* (No. 22-115), and an oral argument in the Second Circuit in *In re: Tronox Incorporated* (No. 21-627).

Respectfully submitted,

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