

IN THE SUPREME COURT OF THE UNITED STATES

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No. 23-1209

M & K EMPLOYEE SOLUTIONS, LLC, ET AL., PETITIONERS

v.

TRUSTEES OF THE IAM NATIONAL PENSION FUND

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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MOTION OF THE UNITED STATES  
FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE  
AND FOR DIVIDED ARGUMENT

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Pursuant to Rules 21, 28.4, and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae and for divided argument, and respectfully requests that the United States be allowed ten minutes of argument time. The United States has filed a brief as amicus curiae supporting respondents. Respondents have consented to this motion and agreed to cede ten minutes of their argument time to the United States. Accordingly, if this motion were granted, the argument time would be divided as follows: 30 minutes for petitioners, 20 minutes for respondents, and 10 minutes for the United States.

Under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 et seq., when an employer withdraws from a multiemployer pension plan, it must pay its share of the plan's unfunded vested benefits. 29 U.S.C. 1381(a). The amount owed, the employer's "withdrawal liability," ibid., must be calculated "as of" the last day of the plan year preceding the withdrawal, which is commonly called the measurement date. 29 U.S.C. 1391. This case concerns whether ERISA permits an employer's withdrawal liability to be calculated using actuarial assumptions that were adopted after, but based on information available as of, the measurement date. At the invitation of the Court, the United States filed a brief as amicus curiae at the petition stage of this case. At the merits stage, the United States has filed a brief in support of respondents, arguing that the actuarial assumptions for withdrawal liability may be adopted after the measurement date.

The Pension Benefit Guaranty Corporation (PBGC), a wholly owned United States government corporation, operates insurance programs and administers various provisions of ERISA for multiemployer pension plans, including provisions involving withdrawal liability. See 29 U.S.C. 1302(a); see also, e.g., 29 U.S.C. 1393(a), 1431. The assessment of withdrawal liability is important to ensuring the long-term solvency of multiemployer plans. See PBGC v. R.A. Gray & Co., 467 U.S. 717, 721-725 (1984). The United

States therefore has a substantial interest in the resolution of the question presented.

The United States has previously presented oral argument in other cases involving the interpretation and application of ERISA. See, e.g., Cunningham v. Cornell Univ., 604 U.S. 693 (2025); Hughes v. Northwestern Univ., 595 U.S. 170 (2022); Intel Corp. Inv. Policy Comm. v. Sulyma, 589 U.S. 178 (2020); Retirement Plans Comm. of IBM v. Jander, 589 U.S. 49 (2020); Tibble v. Edison Int'l, 575 U.S. 523 (2015). In light of the substantial federal interest in the question presented, the United States' participation in oral argument could materially assist the Court in its consideration of this case.

Respectfully submitted.

D. JOHN SAUER  
Solicitor General  
Counsel of Record

OCTOBER 2025