No. 26A___

IN THE

Supreme Court of the United States

DEPUY SYNTHES SALES, INC., TRADING AS DEPUY SYNTHES SPINE, MEDICAL DEVICE BUSINESS SERVICES, INC., AND DEPUY SYNTHES PRODUCTS, INC.,
Applicants,

v.

MARK A. BARRY,
Respondent.

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the United States Court of Appeals for the Federal Circuit:

1. Pursuant to Supreme Court Rules 13.5, 22, and 30, Applicants DePuy Synthes Sales, Inc., trading as DePuy Synthes Spine, Medical Device Business Services, Inc., and DePuy Synthes Products, Inc. (together, "DePuy") respectfully request a 60-day extension of time, up to and including November 16, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit in *Barry v. DePuy Synthes Cos.*, 164 F.4th 896 (Fed. Cir. 2026) (Nos. 2023-2226, 2023-2234). The opinion of the court of appeals is attached as Appendix A. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

2. The court of appeals issued its decision on January 20, 2026. A divided panel reversed the district court's exclusion, under Federal Rule of Evidence 702, of

the testimony of respondent's technical expert and of respondent's survey expert; reversed the district court's grant of judgment as a matter of law in DePuy's favor; and remanded for a new trial. Judge Prost dissented, explaining that the majority's treatment of the excluded testimony as raising only questions of weight for the jury contravenes the principles embraced in the 2023 amendments to Rule 702 and "will undermine district courts' abilities to exercise their important gatekeeping function."

3. DePuy timely petitioned for panel rehearing and rehearing en banc. Four separate amicus filings supported the petition, including a coalition brief by the Chamber of Commerce of the United States of America and the National Association of Manufacturers, and briefs by Lawyers for Civil Justice, the Washington Legal Foundation, and the High Tech Inventors Alliance together with the Software & Information Industry Association. The court of appeals denied rehearing on June 17, 2026. That order is attached as Appendix B.

4. Under Supreme Court Rule 13.3, the time to file a petition for a writ of certiorari will otherwise expire on September 15, 2026. This Application is timely because it is being filed more than ten days before that date. *See* Sup. Ct. R. 13.5. Because the sixtieth day after September 15, 2026 falls on Saturday, November 14, 2026, DePuy requests an extension up to and including Monday, November 16, 2026. *See* Sup. Ct. R. 30.1.

5. There is good cause for the requested extension. The decision below presents a substantial and recurring question concerning the allocation of authority between judge and jury under Federal Rule of Evidence 702: whether a district court,

having heard an expert's trial testimony, may find that the expert did not reliably apply his stated methodology and exclude the testimony on that basis, or whether such defects must instead be submitted to the jury as matters of weight. That question implicates the 2023 amendments to Rule 702, which were adopted precisely to correct the practice of treating "the sufficiency of an expert's basis, and the application of the expert's methodology" as questions of weight rather than admissibility, Fed. R. Evid. 702 advisory committee's note to 2023 amendments, and it implicates the Federal Circuit's own en banc decision in *EcoFactor, Inc. v. Google LLC*, 137 F.4th 1333 (Fed. Cir. 2025) (en banc). The breadth of amicus support for rehearing confirms that the question is one of substantial importance to litigants well beyond this case.

Preparing a petition that properly presents that question will require careful review of the extensive Rule 702 record and the divided decision, as well as analysis of the disagreement among the courts of appeals concerning the proper application of Rule 702 and the decision below's contribution to that conflict. The requested extension will permit counsel to develop that analysis with appropriate care and present the issue to this Court in the clearest possible terms.

The press of other matters also supports the requested extension. Counsel for DePuy have and have had substantial obligations during the period allotted for the petition, including the preparation of an amicus brief before this Court in *RiseandShine Corp. v. Pepsico, Inc.*, No. 24-1016, previously due August 20, 2026 and now due September 15, 2026; oral argument on August 28, 2026, before the Delaware

Court of Chancery in *TIDI Products, LLC v. B-Squared Seller Rep, LLC*, C.A. No. 2026-0394-LWW; an opening brief before the Federal Circuit due September 4, 2026, in *Natera, Inc. v. ArcherDX, Inc.*, No. 2026-1908; and a response brief in support of summary judgment due September 14, 2026, in *International Association of Sheet Metal, Air, Rail and Transportation Workers—Transportation Division v. Union Pacific Railroad Co.*, No. 8:25-cv-00740-RFR (D. Neb.).

The requested extension will not prejudice any party. This is DePuy's first request for an extension of time to file a petition for a writ of certiorari in this case. Counsel for DePuy has conferred with counsel for respondent Mark A. Barry, who does not oppose this request.

WHEREFORE, Applicants respectfully request that an order be entered extending the time to file a petition for a writ of certiorari for 60 days, up to and including November 16, 2026.

August 31, 2026

Respectfully submitted,

/s/ Gregory A. Castanias
GREGORY A. CASTANIAS
Counsel of Record
TRACY A. STITT
BRENDAN D. DUFFY
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-3939
gcastanias@jonesday.com

Counsel for Applicants

PATRICK J. NORTON
THOMAS S. KOGLMAN
JONES DAY
901 Lakeside Avenue
North Point
Cleveland, Ohio 44114
(216) 586-7022
pjnorton@jonesday.com

No. 26A___

In The

Supreme Court of the United States

DEPUY SYNTHES SALES, INC., TRADING AS DEPUY SYNTHES SPINE, MEDICAL DEVICE BUSINESS SERVICES, INC., AND DEPUY SYNTHES PRODUCTS, INC.,
Applicants,

v.

MARK A. BARRY,
Respondent.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Applicants state as follows:

DePuy Synthes Sales, Inc., Medical Device Business Services, Inc., and DePuy Synthes Products, Inc. are each indirect, wholly owned subsidiaries of Johnson & Johnson, a publicly held corporation. No other publicly held corporation owns 10% or more of the stock of any Applicant.