

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

July 22, 2025

Christopher M. Wolpert
Clerk of Court

STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY,

Petitioner,

v.

PAULA GULICK; SHARON
SCHELHUBER,

Respondents.

No. 25-602
(D.C. No. 2:21-CV-02573-TC-TJJ)
(D. Kan.)

THE CHAMBER OF COMMERCE OF
THE UNITED STATES OF AMERICA;
THE AMERICAN PROPERTY
CASUALTY INSURANCE
ASSOCIATION; THE NATIONAL
ASSOCIATION OF MUTUAL
INSURANCE COMPANIES,

Amici Curiae.

ORDER

Before **McHUGH**, **MORITZ**, and **CARSON**, Circuit Judges.

This matter is before the court on Petitioner State Farm's *Petition for Permission to Appeal Under Rule 23(f)*. See Fed. R. App. P. 5(a); Fed. R. Civ. P. 23(f). Respondents filed a response in opposition. Respondents also filed an unopposed motion to file

portions of the response under seal, and State Farm also filed an unopposed motion for leave to file a reply, which includes a proposed reply. As an initial matter, the motion to file portions of the response under seal and the motion for leave to file a reply are GRANTED. The reply shall be filed as of the date it was received.

“A court of appeals *may* permit an appeal from an order granting or denying class-action certification” Fed. R. Civ. P. 23(f) (emphasis added). This discretion is “‘unfettered’ and ‘akin to the discretion exercised by the Supreme Court in acting on a petition for certiorari.’” *Vallario v. Vandehey*, 554 F.3d 1259, 1262 (10th Cir. 2009) (quoting Fed. R. Civ. P. 23(f) advisory committee’s note). “[T]he grant of a petition for interlocutory review constitutes the exception rather than the rule.” *Id.* (internal quotation marks omitted).

Vallario described three situations in which interlocutory review of a class certification order may be appropriate: (1) “death knell” situations, “in which a questionable class certification order is likely to force either a plaintiff or a defendant to resolve the case based on considerations independent of the merits,” (2) situations in which a class certification order involves “an unresolved issue of law relating to class actions that is likely to evade end-of-case review, and [that is] significant to the case at hand, as well as to class actions generally,” and (3) situations in which the class certification order is “manifestly erroneous.” *Id.* at 1263. State Farm asks us to permit an interlocutory appeal to correct manifest error.

After careful consideration of the parties' filings, the district court's order, and the applicable law, we are not persuaded that a permissive interlocutory appeal is warranted to correct manifest error. Accordingly, the Petition is DENIED.

Entered for the Court

A handwritten signature in black ink, appearing to read 'C. M. Wolpert', with a long horizontal flourish extending to the right.

CHRISTOPHER M. WOLPERT, Clerk