

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

April 9, 2024

Christopher M. Wolpert
Clerk of Court

PROGRESSIVE DIRECT INSURANCE
COMPANY,

Petitioner,

v.

MICHAEL CURRAN, individually and on
behalf of all others similarly situated,

Respondent.

No. 24-700
(D.C. No. 1:22-CV-00878-NYW-MEH)
(D. Colo.)

ORDER

Before **MATHESON, BRISCOE**, and **BACHARACH**, Circuit Judges.

This matter is before us on the *Petition Under Fed. R. Civ. P. 23(f) for Review of Class Certification* (“Petition”) filed by Defendant Progressive Direct Insurance Company (“Progressive”). We also have a response from Plaintiff Michael Curran, on behalf of himself and all others similarly situated (“Curran”), a motion seeking leave to file a reply in support of the Petition and a proposed reply from Progressive, and Curran’s response in opposition to Progressive’s motion seeking leave to file a reply. Additionally, we have before us unopposed motions filed by both Progressive and Curran to seal the unredacted versions of the Petition and Response and accompanying materials.

Preliminarily, we grant Progressive’s motion for leave to file a reply in support of the Petition. The reply shall be filed as of the date it was received. Further, we grant both motions to seal.

Turning to the merits of the Petition, under Fed. R. Civ. P. 23(f), “[a] court of appeals *may* permit an appeal from an order of a district court 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.*

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 issue 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. The Petition asks us to permit an interlocutory appeal on all three of these grounds.

After careful consideration of the parties’ filings, the district court’s order, and the applicable law, we are not persuaded that any of the three grounds identified in *Vallario*

apply here to support interlocutory review of the district court's class certification order in this case. Accordingly, the Petition is DENIED.

Entered for the Court

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

CHRISTOPHER M. WOLPERT, Clerk