

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 24, 2018

**Elisabeth A. Shumaker
Clerk of Court**

LISA WEST; STORMY HOPSON;
AUBURN CLOYES; DOUGLAS
CLOYES; DELL LIVSEY; JULIA
WHITE; DALE WHITE,

Petitioners,

v.

CHESAPEAKE OPERATING, LLC;
EQUAL ENERGY U.S., INC.;
FAIRFIELD OIL & GAS CORP.; NEW
DOMINION, LLC; PHOENIX OIL &
GAS, INC.; TRANSPRO ENERGY, LLC;
WHITESTAR PETROLEUM, LLC,
FDBA American Energy Woodford, LLC,

Respondents.

No. 18-600
(D.C. No. 5:16-CV-00264-F)
(W.D. Okla.)

ORDER

Before **BRISCOE**, **McHUGH**, and **EID**, Circuit Judges.

This matter is before the court on *Plaintiffs' Petition for Permissive Appeal Pursuant to Fed. R. Civ. P. 23(f)*, in which they request permission to appeal the district court's order granting defendants' motion to strike the class allegations contained in plaintiffs' Second Amended Complaint. *See* Fed. R. App. P. 5; Fed. R. Civ. P. 23(f). Defendants responded in opposition to plaintiffs' petition.

“An order striking class allegations is functionally equivalent to an order denying class certification and therefore appealable under Rule 23(f).” *See Microsoft Corp. v. Baker*, 137 S. Ct. 1702, 1711 n.7 (2017) (citations and internal quotation marks omitted). However, the decision whether to grant the petition is purely discretionary. *See* Fed. R. Civ. P. 23(f); *Vallario v. Vandehey*, 554 F.3d 1259, 1262 (10th Cir. 2009) (this discretion is “‘unfettered’ and ‘akin to the discretion exercised by the Supreme Court in acting on a petition for certiorari’”) (quoting Fed. R. Civ. P. 23(f) advisory committee's note). And, “the grant of a petition for interlocutory review constitutes the exception rather than the rule.” *Id.* (citations and internal quotation marks omitted).

Upon a careful review of the materials filed with this court and the applicable law, the court concludes this matter is not appropriate for immediate review. *See id.* at 1263-64.

Accordingly, the court denies the petition for permission to appeal.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink, appearing to read "LA Lee".

by: Lisa A. Lee
Counsel to the Clerk