

No. 11-0514

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 07, 2012
LEONARD GREEN, Clerk

In re: GILLIAN MILLER, et al.,)

Petitioners.)

ORDER

Before: CLAY, GILMAN, and STRANCH, Circuit Judges.

The plaintiffs in this multi-district litigation petition for leave to appeal a district court order denying their motion for class certification of their disparate impact claims brought under the anti-discrimination provisions of the Equal Credit Opportunity Act, the Fair Housing Act, and the Civil Rights Act. Plaintiffs assert interlocutory appeal is warranted because the appeal would raise an important, unsettled issue concerning class certification in disparate impact cases following *Wal-Mart Stores v. Dukes*, 131 S. Ct. 2541 (2011). The defendants, collectively “Countrywide,” oppose the petition. The plaintiffs also moves to file their petition and the appendix under seal. Countrywide moves to file its response under seal.

Federal Rule of Civil Procedure 23(f) “provides appellate courts with discretion to hear an interlocutory appeal from an order granting or denying class certification.” *Pipefitters Local 636 Ins. Fund v. Blue Cross Blue Shield of Mich.*, 654 F.3d 618, 629 (6th Cir. 2011). This circuit “eschew[s] any hard-and-fast test in favor of a broad discretion to evaluate relevant factors that weigh in favor of or against an interlocutory appeal.” *In re Delta Air Lines*, 310 F.3d 953, 959 (6th Cir. 2002). There are four specific factors that guide the court’s consideration of a petition to appeal under Rule 23(f). First, the “death-knell” factor recognizes “that the costs of continuing litigation for either a

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plaintiff or defendant may present such a barrier that later review is hampered.” *Id.* at 960. Second, a case that raises a novel or unsettled question may be a candidate for interlocutory review. Third, the likelihood of the petitioner’s success on the merits is a factor to be considered. Fourth, the posture of the case in the district court is relevant. *Id.*

The plaintiffs have sufficiently demonstrated that these factors weigh in their favor. The petition for permission to appeal is **GRANTED**. The motions to file the petition, appendix, and response under seal are **GRANTED**.

ENTERED BY ORDER OF THE COURT



Clerk