

March 25, 2008

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

RENEE ATWELL; VIVIAN
BRADLEY; TERRY LEE; YVETTE
MARTINEZ HOCHBERG; ODIN
GOMEZ; MEKELA RIDGWAY;
CATHIE GORDON; KATIE MOORE;

Petitioners,

v.

No. 08-501

PATRICIA GABOW; GREG
ROSSMAN; WENDY ALEXANDER;
DENVER HEALTH AND HOSPITAL
AUTHORITY,

Respondents.

ORDER

Before **TACHA**, **McCONNELL** and **HOLMES**, Circuit Judges.

This matter is before the court on the plaintiffs' petition for permission to appeal the district court's order denying class certification. *See* Fed. R. App. P. 5; Fed. R. Civ. P. 23(f). The decision whether to grant the petition is purely discretionary. *See* Fed. R. Civ. P. 23(f), 1998 advisory committee notes (this discretion is "unfettered ... akin to the discretion exercised by the Supreme Court in

acting on a petition for certiorari.”).

Upon a careful review of the materials filed with this court and the applicable law, we conclude that this matter is not appropriate for immediate review. None of the concerns noted by this court and other circuits to justify an interlocutory appeal is present here. *See Carpenter v. Boeing Co.*, 456 F.3d 1183, 1189 (10th Cir. 2006); *In re Lorazepam & Clorazepate Antitrust Litigation*, 289 F.3d 98, 99-100 (D.C. Cir. 2002). *See also In re Delta Airlines*, 310 F.3d 953, 959 (6th Cir. 2002) (“Rule 23(f) appeals will be the exception, not the norm.”), *cert. denied sub. nom, Northwest Airlines Corp. v. Chase*, 539 U.S. 904 (2003).

Accordingly, the petition for permission to appeal is **DENIED**. It is further ordered that the exhibits attached to the defendants’ response are to be placed under seal.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



Ellen Rich Reiter
Deputy Clerk/Jurisdictional Attorney