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# On Appeal

## **THIRD CIRCUIT GRANTS RULE 23(f) PETITION OF A CLASS-CERTIFICATION ORDER WITHOUT A DEFINED CLASS**

*Laudato v. EQT Corp.*, 23 F.4th 256 (3d Cir. 2022)

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In *Laudato v. EQT Corp.*, the Third Circuit held it was within its jurisdiction under Federal Rule of Civil Procedure 23(f) to review a district court’s grant of a class certification, despite the district court’s refusal to define a class. The Court reviewed, and granted, the petition to appeal under Rule 23(f) because of the pressure the certification placed on petitioners to settle and the Court’s opportunity to facilitate development of the law on class certification.

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## THIRD CIRCUIT GRANTS RULE 23(f) PETITION OF A CLASS-CERTIFICATION ORDER WITHOUT A DEFINED CLASS —

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### Background

In July 2018, roughly one hundred Pennsylvania landowners filed a class-action complaint against EQT Corporation (“EQT”) alleging that EQT was utilizing the landowners’ underground pore space in its storage of natural gas without due compensation. In May 2020, all landowners, except for one, dismissed their claims without prejudice. The one landowner who did not dismiss his case, Domenic Laudato, later moved for class certification in February 2021, seeking approval of a class defined as all landowners who have not received compensation from EQT for natural gas storage rights.

The district court rejected Laudato’s proposed class definition but nevertheless granted class certification, stating that “it would seem in everyone’s best interests to resolve this case on a class basis.” The court then directed the parties to meet and confer on an appropriate class definition. EQT filed a petition to appeal the class certification order under Rule 23(f).

### Arguments to the Court

Rule 23(f) states, in pertinent part, “[a] court of appeals may permit an appeal from an order granting or denying class-action certification under this rule, but not from an order under Rule 23(e)(1). A party must file a petition for permission to appeal with the circuit clerk within 14 days after the order is entered ....”

EQT argued that the Court should allow the appeal because: (1) review was necessary to correct the district court’s errors; (2) review would enable the Court to reiterate the need for a “rigorous analysis of all of the Rule 23 requirements” based on the legal elements of the claims; and (3) the district court magnified the usual pressure to settle inherent in a grant of class certification by its “avowed effort” to leverage certification to drive settlement.

In response, Laudato argued that the Court should not allow the appeal. He contended: (1) since class certification was preliminarily granted, the litigation was not effectively terminated by a denial of class certification; (2) the order did not, and could not, place pressure on EQT to settle because there was no definition of the class; and (3) the order did not implicate or adjudicate any unsettled questions of law because it simply determined that the matter should proceed.

### Third Circuit’s Decision

The Third Circuit granted EQT’s Rule 23(f) petition. In analyzing the district court’s order, the Court held that it “clearly stated a grant of class certification,” despite the lack of a class definition, and thus the Court could exercise its jurisdiction under Rule 23(f). Although the Committee Notes from a 1998 amendment to Rule 23 describe an appellate court’s discretion under Rule 23(f) as the same discretion used by the Supreme Court in granting certiorari, the Court explained that it exercises a “very broad discretion using a more liberal standard.” One of the circumstances where the Court has deemed appellate review appropriate is when class certification places inordinate pressure on defendants to settle.

The Court agreed with EQT that interlocutory review was appropriate because “a class-action-certification order that leaves unresolved a crucial element—the class definition—is no less likely to exert substantial pressure on a defendant to settle than a standard class-action-certification order.” A reasonable reading of the district court’s order and its related suggestions could imply an “attempt to nudge” EQT to settlement, which would serve to increase such pressure. The district court even went so far as to recommend that EQT entertain alternative dispute resolution to settle rather than continuing to litigate. Lastly, the panel explained that permitting the appeal would provide the Court “an opportunity to facilitate development of the law on class certification.”

Thus, given the pressure the class certification order placed on EQT to settle, and the opportunity to develop the law on class certification, the Court granted EQT’s petition for permission to appeal under Rule 23(f).

### Conclusion

It has been some time since the Third Circuit has issued an opinion on the standards for reviewing a petition for permission to appeal under Rule 23(f). One practical takeaway from this case is the Court’s explanation of the factors it considers when granting a Rule 23(f) petition, including the emphasis on the pressure to settle that the purported certification placed on the petitioner. Additionally, *Laudato* demonstrates that the Court will view a Rule 23(f) appeal as appropriate even if the district court has not defined the class. Moreover, the Court noted that its opinion in this case was “an opportunity to facilitate development of the law on class certification,” and it is thus expected to provide guidance for practitioners going forward.

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