NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

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112 GENESEE STREET, LLC, et al.,
Plaintiffs-Respondents

v.

UNITED STATES,
Defendant-Petitioner

2025-108

On Petition for Permission to Appeal pursuant to 28 U.S.C. Section 1292(d)(2) from the United States Court of Federal Claims in No. 1:23-cv-01876-RAH, Judge Richard A. Hertling.

ON PETITION

Before DYK, CUNNINGHAM, and STARK, *Circuit Judges*.

CUNNINGHAM, *Circuit Judge*.

O R D E R

Pursuant to 28 U.S.C. § 1292(d)(2), the United States petitions for permission to appeal an order of the United States Court of Federal Claims denying its motion to dismiss Respondents' complaint. Respondents oppose.

Under § 1292(d)(2), the Court of Federal Claims may certify that an order that is not otherwise immediately appealable is one involving a controlling question of law as to which there is substantial ground for difference of opinion and for which an immediate appeal may materially advance the ultimate termination of the litigation. Ultimately, this court must exercise its own discretion in deciding whether to grant permission to appeal an interlocutory order. *See In re Convertible Rowing Exerciser Pat. Litig.*, 903 F.2d 822, 822 (Fed. Cir. 1990). In this case, we exercise our discretion to permit the interlocutory appeal.

Accordingly,

IT IS ORDERED THAT:

The petition for permission to appeal is granted. This case is transferred to the regular docket. The United States's opening brief is due within 60 days of the date of entry of this order.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

January 17, 2025
Date