

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

LEONARD GREEN
CLERK

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Filed: January 31, 2006

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RE: 05-508
In Re: Southtec LLC
District Court No. 04-00072

Enclosed is a copy of an order which was entered today in the above-styled case.

Very truly yours,
Leonard Green, Clerk


Julie Brock
Case Manager

Enclosure

Certified Copy:
Honorable John T. Nixon
Mr Keith Throckmorton

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

JAN 31 2006

LEONARD GREEN, Clerk

In re: SOUTHTEC, LLC; L & W ENGINEERING)
CO.,)
)
Petitioners.)
)
)

ORDER

Before: GUY, SUTTON, and McKEAGUE, Circuit Judges.

The defendants petition for leave to appeal an interlocutory order of the district court granting the plaintiffs' motion for class certification in this Title VII case. *See* Fed. R. App. P. 23(f). The plaintiffs have filed a response in opposition; the defendants have filed a reply.

The Committee Note accompanying Rule 23(f) states that “[p]ermission to appeal may be granted or denied on the basis of any consideration that the court of appeals finds persuasive.” 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). The Rule 23(f) appeal is “never to be routine” and “some assessment of the merits of a class certification decision must weigh into the initial determination of whether to grant the interlocutory appeal.” *Id.* at 959-960.

In assessing the merits of the district court’s class certification decision, we note that the court did not have the benefit of this circuit’s recent opinion in *Reeb v. Ohio Dep’t of Rehabilitation and Correction*, No. 04-3994, slip op. (6th Cir. Jan. 24, 2006). For that reason, the Rule 23(f)

petition is **GRANTED**. The district court's class certification decision is **VACATED** and this case is **REMANDED** for further consideration in light of *Reeb*.

ENTERED BY ORDER OF THE COURT


Clerk

A TRUE COPY

Attest:

LEONARD GREEN, Clerk

By



Deputy Clerk