

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**FAIRHOLME FUNDS, INC., ACADIA INSURANCE
COMPANY, ADMIRAL INDEMNITY COMPANY,
ADMIRAL INSURANCE COMPANY, BERKLEY
INSURANCE COMPANY, BERKLEY REGIONAL
INSURANCE COMPANY, CAROLINA CASUALTY
INSURANCE COMPANY, CONTINENTAL
WESTERN INSURANCE COMPANY, MIDWEST
EMPLOYERS CASUALTY INSURANCE COMPANY,
NAUTILUS INSURANCE COMPANY, PREFERRED
EMPLOYERS INSURANCE COMPANY, THE
FAIRHOLME FUND, ANDREW T. BARRETT,**
Plaintiffs-Petitioners

v.

UNITED STATES,
Defendant-Respondent

2020-121

On Petition for Permission to Appeal pursuant to 28
U.S.C. Section 1292(d) from the United States Court of
Federal Claims in No. 1:13-cv-00465-MMS, Chief Judge
Margaret M. Sweeney.

**FAIRHOLME FUNDS, INC., ACADIA INSURANCE
COMPANY, ADMIRAL INDEMNITY COMPANY,
ADMIRAL INSURANCE COMPANY, BERKLEY
INSURANCE COMPANY, BERKLEY REGIONAL
INSURANCE COMPANY, CAROLINA CASUALTY
INSURANCE COMPANY, CONTINENTAL
WESTERN INSURANCE COMPANY, MIDWEST
EMPLOYERS CASUALTY INSURANCE COMPANY,
NAUTILUS INSURANCE COMPANY, PREFERRED
EMPLOYERS INSURANCE COMPANY, THE
FAIRHOLME FUND, ANDREW T. BARRETT,**
Plaintiffs-Respondents

v.

UNITED STATES,
Defendant-Petitioner

2020-122

On Petition for Permission to Appeal pursuant to 28
U.S.C. Section 1292(d) from the United States Court of
Federal Claims in No. 1:13-cv-00465-MMS, Chief Judge
Margaret M. Sweeney.

ON PETITION

Before O'MALLEY, WALLACH, and STOLL, *Circuit Judges*.

STOLL, *Circuit Judge*.

O R D E R

Fairholme Funds, Inc. et al. (collectively, "Fairholme")
and the United States separately petition pursuant to 28

FAIRHOLME FUNDS, INC. v. US

3

U.S.C. § 1292(d)(2) to appeal the interlocutory order certified by the United States Court of Federal Claims. Both petitions are unopposed. Owl Creek Asia I, L.P. et al.; Appaloosa Investment Limited Partnership I et al.; Akanthos Opportunity Fund, L.P.; CSS, LLC; and Mason Capital L.P. et al. (collectively, “Owl Creek”) move for leave to file a brief *amici curiae* in support of neither party.

This court determines for itself whether it will grant permission to appeal an interlocutory order certified by a trial court. See *In re Convertible Rowing Exerciser Patent Litig.*, 903 F.2d 822, 822 (Fed. Cir. 1990). We agree with the Claims Court and the parties that at least one of the issues raised by the certified order appears to satisfy the criteria set forth in § 1292(d) and warrants immediate review. We deem it proper to grant both petitions, leaving it ultimately up to the merits panel to decide what issues are appropriate to address on interlocutory appeal.

Accordingly,

IT IS ORDERED THAT:

(1) The petitions are granted. This case is transferred to the regular docket. The appeals will be consolidated. Fairholme’s appeal will be designated as the lead appeal, and the government’s appeal will be designated as a cross-appeal. Fairholme’s opening brief is due within 60 days of the date of filing of this order.

(2) Owl Creek’s motion is granted to the extent that the *amicus* brief is accepted for filing. Any request for further relief from the court should be made after docketing.

FOR THE COURT

June 18, 2020
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

s28