

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

| | | |
|-------------------------------------|---|---------------------|
| ATLANTIC INDEPENDENT | : | |
| UNION, et al., | : | |
| Plaintiffs, | : | CIVIL ACTION |
| | : | |
| v. | : | |
| | : | |
| SUNOCO, INC, d/b/a MOHAWK | : | |
| HOME COMFORT SERVICES, f/k/a | : | |
| MOHAWK VALLEY OIL, | : | No. 03-4389 |
| Defendant. | : | |

MEMORANDUM AND ORDER

Schiller, J.

June 16, 2004

I. INTRODUCTION

This action involves a dispute regarding overtime wages between Plaintiff Atlantic Independent Union and several of its members (collectively “Plaintiffs”), who are employed as drivers under a collective bargaining agreement, and their employer, Defendant Sunoco, Inc. (“Sunoco”), d/b/a Mohawk Home Comfort Services, Inc., f/k/a Mohawk Valley Oil (“Mohawk”). Plaintiffs assert that: (1) they are entitled to overtime compensation under the Fair Labor Standards Act (“FLSA”) and New York labor law; and (2) they are entitled to compensation during their lunch periods because the New York State Commercial Drivers Manual requires that they remain within 100 feet and in plain view of their vehicles during that time. Defendant contends that because the product transported by Plaintiffs to its ultimate destination travels via interstate commerce, the motor carrier exemption to the FLSA applies and Plaintiffs are not entitled to overtime compensation. Presently before the Court are the parties’ cross-motions for summary judgment. For the reasons set forth below, I find that the motor carrier exemption applies, grant summary judgment in favor of Defendant on this issue, and decline to exercise supplemental jurisdiction over Plaintiffs’ state-law

claims.

II. BACKGROUND

The following facts are relevant to the dispute at issue in the cross-motions, that is, whether the essential character of the shipment of Mohawk's products is interstate or intrastate.¹

A. The Shipment Process

Defendant Mohawk is a division of Sunoco with an established retail, wholesale, and commercial customer base in New York. (Fioretto Aff. ¶ 2; Fioretto Dep. at 9-10; Russell Aff. ¶ 4.) Mohawk purchases the majority of its petroleum products, including heating oil, kerosene, diesel fuel, and gasoline, from Sunoco's refineries in Marcus Hook, Pennsylvania and Philadelphia, Pennsylvania. (Russell Aff. ¶ 8.) The product is then shipped via pipeline to the Buckeye Pipeline facilities in Macungie, Pennsylvania and Linden, New Jersey where the product is transferred to the Buckeye Pipeline Company for shipment to Mohawk's main terminal facility in Marcy, New York. (*Id.* ¶¶ 6, 8.)

From Mohawk's main terminal facility in Marcy, the product is either delivered directly to customers or transported to one of Mohawk's bulk plants for delivery to its final destination. (*Id.* ¶ 6.) The product is not held for sale at the bulk plants; rather the bulk plants are temporary storage locations chosen for their geographic proximity to known customers. (*Id.* ¶ 9.) Mohawk takes ownership of the product at the Buckeye Pipeline facilities and maintains ownership as it moves continuously through the Buckeye Pipeline system to the Mohawk's main terminal in Marcy, New York, to Mohawk's bulk plants and then ultimately to customers. (*Id.* ¶ 8; Russell Dep. at 30.)

¹ As discussed below, pertinent to the determination of whether the motor carrier exemption applies is whether Plaintiffs operated vehicles in interstate activities. *Friedrich v. U.S. Computer Servs.*, 974 F.2d 409, 419 (3d Cir. 1992).

Mohawk does not process or alter the product from the time it obtains title until delivery to its customers. (Russell Dep. at 32-33.)

Mohawk's drivers deliver eighty-five to eight-seven percent of their products. (Fioretto Aff. ¶ 7.) The forty-one drivers are employed at the Marcy terminal and are represented by the Atlantic Independent Union pursuant to a collective bargaining agreement. (*Id.* ¶¶ 2-4.) These drivers are required to have New York commercial driver's licenses and a hazardous materials endorsement. (Pls' Mot. for Summ. J., Ex. B.) The remainder of the product is sold "over the rack" to wholesalers that generally have contracts with Mohawk to pick up their own product. (Fioretto Aff. ¶ 7.) According to Mohawk's delivery procedures, the drivers are given tickets each day indicating delivery amounts, locations and types of product. (Fioretto Dep. at 14-15.) The drivers load the trucks and deliver the product to these specifications. (*Id.*) During the shipment process, the amount of product owned by Mohawk is identifiable by volume and carefully tracked by detailed documentation to each final location. (Russell Aff. ¶ 8; Fioretto Dep. at 15; Russell Dep. at 51-53.)

B. Determining Supply and Demand

Mohawk's business is seasonal and driven by the demands of customers. (Russell Aff. ¶ 4; Fioretto Aff. ¶¶ 5, 6; Fioretto Dep. at 10-14.) Approximately half of Mohawk's revenues are derived from the sale of home heating products to consumers and the other half of its revenue from commercial and wholesale contracts. (Fioretto Aff. ¶¶ 5, 6.) Mohawk does not maintain a standing inventory of product for resale to the general public. (*Id.* ¶ 7.) Approximately fifty-five to sixty percent of the home heating customers have entered into automatic monitoring arrangements with Mohawk. (Fioretto Dep. at 9-12; Fioretto Aff. ¶ 5.) Mohawk determines these customers needs based on temperature. (Fioretto Dep. at 11-13.) Between forty and forty-five percent of the home

heating customers are “will call” customers who have an established relationship with Mohawk, monitor their own usage and contact Mohawk for delivery when they decide they need more product. (Fioretto Aff. ¶ 5; Fioretto Dep. at 11.) In addition, some of Mohawk’s heating oil customers have pre-buy arrangements wherein the customer pre-pays a discounted price for all of the product it anticipates it will need for the upcoming season. (Fioretto Dep. at 17.) Mohawk also has commercial and wholesale contracts for diesel fuel with, for example, farmers and for kerosene and other products with entities such as the State of New York and various New York municipalities. (Russell Dep. at 11-13; Fioretto Aff. ¶ 6).

In the summer months, Mohawk sells a substantial amount of diesel fuel to commercial accounts and farmers. (Russell Aff. ¶ 10.) Diesel fuel is ordered, shipped and then typically remains at the Marcy terminal for less than fifteen days. (*Id.* ¶ 10.) From the end of March to the end of June, Mohawk maintains virtually no inventory of home heating product. (*Id.* ¶ 4.) From October through March, approximately seventy-five percent of Defendant’s annual amount of home heating oil and kerosene is sold. (*Id.* ¶ 5.) During the height of the heating oil season, Mohawk orders heating oil and supplies it to customers as soon as the product arrives at Mohawk’s terminal in Marcy, New York. (*Id.* ¶ 6.) In addition, during this time period, the heating oil proceeds to its customers without significant delay and Mohawk must resupply heating oil about every two weeks. (Russell Dep. at 39-40.)

Mohawk forecasts its demand for home heating oil with a system developed by Theodore Russell, an independent consultant and expert on the supply and distribution of petroleum products. (Russell Aff. ¶¶ 1-5.) In late February or early March, Mohawk creates its initial forecast for the following twelve months. (*Id.* ¶ 4; Russell Dep. at 31.) Mr. Russell’s initial forecast is based on the

prior year's sales to Mohawk's known customer base, assuming that average weather conditions will prevail. (Russell Aff. ¶ 4; Russell Dep. at 31.) The forecast is continually updated until the product is shipped. (Russell Aff. ¶¶ 5, 7; Russell Dep. at 33-38, 47.) The flexibility of this system allows changes to the amount shipped up until seven days before it is received by the customer and thus, permits Mohawk to adjust its shipment based on actual knowledge of customer need. (Russell Dep. at 47.)

III. DISCUSSION

A. Summary Judgment Standard

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” FED. R. CIV. P. 56(c). A genuine issue of material fact exists if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The moving party bears the initial burden of identifying those portions of the record that it believes illustrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 325 (1986). Where the nonmoving party has the burden of proof on a particular issue at trial, the moving party meets its burden by “pointing out to the district court – that there is an absence of evidence to support the nonmoving party’s case.” *Id.* at 325. Once the moving party meets this burden, the nonmoving party must offer admissible evidence that establishes a genuine issue of material fact that should proceed to trial. *Id.* at 324; *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). In order to meet this burden, the opposing party

must point to specific, affirmative evidence in the record and not simply rely on mere allegations, conclusory or vague statements, or general denials in the pleadings. *See Celotex*, 477 U.S. at 325; *Williams v. Borough of West Chester*, 891 F.2d 458, 460-61 (3d Cir. 1989). “Such affirmative evidence—regardless of whether it is direct or circumstantial—must amount to more than a scintilla, but may amount to less (in the evaluation of the court) than a preponderance.” *Williams*, 891 F.2d at 460-61.

A court may grant summary judgment if the nonmoving party fails to make a factual showing “sufficient to establish an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex*, 477 U.S. at 322. In making this determination, the nonmoving party is entitled to all reasonable inferences. *Anderson*, 477 U.S. at 255. A court may not, however, make credibility determinations or weigh the evidence in making its determination. *Id.*; *see also Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150 (2000); *Goodman v. Pa. Tpk. Comm’n*, 293 F.3d 655, 665 (3d Cir. 2002).

B. Motor Carrier Exemption to the Fair Labor Standards Act

Plaintiffs assert that they are entitled to overtime payment under the FLSA, which requires employers to pay overtime wages to employees who work more than forty hours in a week. 29 U.S.C. § 207(a)(1) (2004). Employees who operate vehicles in interstate activities that require them to transport property essential to their job duties, however, are exempt from the overtime compensation requirements of the FLSA. *Friedrich v. U.S. Computer Servs.*, 974 F.2d 409, 419 (3d Cir. 1992). The burden is on the employer to prove the applicability of this exemption. *Id.* at 412 (“It is the employer’s burden to affirmatively prove that its employees come within the scope of the overtime exemption and any exemption from the Act must be proven plainly and unmistakably.”

(citations omitted)).

The motor carrier exemption applies to employees for whom the Secretary of Transportation may prescribe requirements for qualifications and maximum hours of service under the Motor Carrier Act, 49 U.S.C. § 31502. 29 U.S.C. § 213(b)(1) (2004). Under § 31502, the Secretary of Transportation is permitted to set maximum hours for employees of (1) motor carriers and (2) motor private carriers when needed to promote safety of operation. 49 U.S.C. § 31502(b) (2004). A “motor carrier” is defined as “a person providing motor vehicle transportation for compensation.” 49 U.S.C. § 13102(12). A “motor private carrier” is defined as a person, other than a motor carrier, transporting property by motor vehicle when:

- (A) the transportation is as provided in section 13501 of this title;
- (B) the person is the owner, lessee, or bailee of the property being transported; and
- (C) the property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise.

49 U.S.C. § 13102(13) (2004). Section 13501 gives the Secretary of Transportation jurisdiction over transportation by motor carrier if, inter alia, passengers or property are transported by motor carrier:

- (1) between any place in -
 - (A) a State and any place in another State . . .
 - (B) a State and another place in the same State through another State;

49 U.S.C. § 13501 (2004); *see also* 29 C.F.R. § 782.2 (2004). In the present case, the dispute between the parties concerns whether the transportation provided is within § 13501 and, as such, exempts Plaintiffs from the FLSA overtime requirements under the motor carrier exemption.

Although the transportation provided by the drivers in the present case does not cross state lines, the interstate commerce requirement can be satisfied if the products being transported within

the borders of one State are involved in a “‘practical continuity of movement’ in the flow of interstate commerce.” *Friedrich*, 974 F.2d at 413 n.6; *Bilyou v. Dutchess Beer Distrib., Inc.*, 300 F.3d 217, 223 (2d Cir. 2002) (*quoting Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 568 (1943)); *see also* 29 C.F.R. § 782.7 (2004). “The characterization of such transportation as interstate or intrastate depends upon the ‘essential character’ of the shipment.” *Foxworthy v. Hiland Dairy Co.*, 997 F.2d 670, 673 (10th Cir. 1997). “Crucial to a determination of the essential character of a shipment is the shipper’s fixed and persisting intent at the time of shipment.” *Id.* at 673; *see also Project Hope v. M/V Ibn Sina*, 250 F.3d 67 (2d Cir. 2001) (holding whether transportation is of interstate nature can be “determined by reference to intended final destination” of transportation when that ultimate destination was envisaged at time transportation commenced); *Intn’l Bhd. of Teamsters v. ICC*, 921 F.2d 904, 908 (9th Cir. 1990) (holding that essential character of shipment is determined by focusing on “the shipper’s fixed and persisting intent at the time of shipment”).

In the present case, the parties dispute the appropriate test for the Court to employ in order to determine the shipper’s intent. Plaintiffs assert that the Court should use the test developed by the Interstate Commerce Commission (“ICC”) in 1957, whereas Defendants advocate the use of an alternate test developed by the ICC in 1992.

In 1957, the ICC formulated a three-prong test to aid in the determination of a shipper’s “fixed and persisting intent at the time of shipment,” where “the transportation was confined to points in a single State from a storage terminal of commodities which have had a prior movement by rail, pipeline, motor, or water from an origin in a different State.” 29 C.F.R. § 782.7 (*citing Ex Parte No. MC-48* (71 M.C.C. 17, 29)); *Baird v. Waggoner Transp. Co.*, 425 F.2d 407, 409 (6th Cir. 1970) (same); *Foxworthy*, 361 U.S. at 672-73 (same). This test, which is set out in 29 C.F.R.

782.7(b)(2), provides that:

[T]here is not fixed and persisting intent [to ship via interstate commerce] where: (I) At the time of shipment there is no specific order being filled for a specific quantity of a given product to be moved through to a specific destination beyond the terminal storage, and (ii) the terminal storage is a distribution point or local marketing facility from which specific amounts of the product are sold or allocated, and (iii) transportation in the furtherance of this distribution within the single State is specifically arranged only after sale or allocation from storage.

29 C.F.R. 782.7(b)(2).

In *Baird v. Wagoner Transp. Co.*, 425 F.2d 407 (6th Cir. 1970), the Sixth Circuit adopted the ICC's 1957 test. 425 F.2d at 411. In *Baird*, the defendant, Standard Oil, shipped petroleum products from out-of-state to a terminal in Muskegon, Michigan, based upon the "sophisticated" forecasts of its Michigan customers' needs. *Id.* at 409, 411. Customers placed their orders with Standard's sales department either by means of requirements contracts or by placing single orders either regularly or irregularly. *Id.* These orders informed the terminal's manager and the shipper of the quantities and destinations of the deliveries. *Id.* Even though Standard knew the identities of its Michigan customers, it did not know exactly the amount of petroleum products each customer would order when it shipped the products to Muskegon. *Id.* at 411. Using the ICC's three-part test, the Sixth Circuit found the transportation was via intrastate commerce because the terminal where the products were shipped was essentially a "local marketing facility" as: (1) final delivery arrangements were not made until after the product was stored at the terminal; (2) the forecasts were not specific orders, but merely estimates; and (3) the terminal's "through-put rate" was only six times its capacity. As the product at the terminal in *Baird* was "inventory-in-store," the court found that the transportation provided intrastate was not part of a flow of the product in interstate commerce. *Id.*

In subsequent years, courts determined that other factors were relevant to the determination of whether there is a fixed and persisting intent to ship products in interstate commerce including:

the length of time movement of the product is interrupted by storage; whether the product distribution center has a low ‘through-put’ compared to its storage capability; whether the products are shipped on a ‘predetermined’ ordering cycle; whether the carrier is in continuous possession of the product until delivery; whether the product is processed or commingled in any way at the storage location; whether the final destination is designated by the out-of-state shipper or by an in-state intermediary; whether the goods were intended for particular customers; and whether temporary storage simply provides an efficient opportunity to convert the means of delivery from one form of transportation to another.

Foxworthy, 997 F.2d at 673 (citing *Middlewest Motor Freight Bureau v. ICC*, 867 F.2d 458 (8th Cir. 1988); *Texas v. United States*, 866 F.2d 1546, 1556-57 (5th Cir. 1989); *Baird*, 425 F.2d at 412; *Galbreath v. Gulf Oil Corp.*, 413 F.2d 941, 947 (5th Cir. 1969)).

In 1990, the Fifth and Ninth Circuits noted that the 1957 test has been phased out, and the Eighth Circuit specifically declined to adopt it, reasoning that it was “outmoded.” *Roberts v. Levine*, 921 F.2d 804, 812 (8th Cir. 1990) (noting test used in *Baird* is “outmoded” and declining to adopt it); *California Trucking Ass’n v. ICC*, 900 F.2d 208, 213 (9th Cir. 1990) (“Even though the ICC has never explicitly stated that it was abandoning the more structured [1957] test, it appears that its use of that standard has been refined, if not phased out.”); *Central Freight v. ICC*, 899 F.2d 413, 421 (5th Cir. 1990) (stating that ICC “appears to have implicitly recharacterized the applicable test”). These circuit courts approved the more recent test developed by the ICC in its 1986 decision in *Armstrong World, Inc. v. ICC*, 2 I.C.C.2d 63, 69 (1986), affirmed by the Fifth Circuit in *Texas v. United States*, 886 F.2d 1546 (5th Cir. 1989). *Roberts*, 921 F.2d at 812; *California Trucking*, 900 F.2d at 212-13; *Central Freight*, 899 F.2d at 421. In *Armstrong*, the ICC broadened the relevant

inquiry, holding that:

[T]he determination of whether transportation between two points in [a] State is interstate (or foreign) or intrastate in nature depends on the “essential character” of the shipment . . . Crucial to this determination is the shipper’s fixed and persisting intent at the time of shipment. . . [and] is ascertained from all the facts and circumstances surrounding the transportation.

Roberts, 921 F.2d at 812 (quoting *Armstrong* test).

Most recently, in a 1992 Policy Statement and a subsequent 1994 administrative decision involving delivery of petroleum products, the ICC established guidelines to determine the intent of the shipper from the facts and surrounding circumstances. *Policy Statement*, No. MC-207, 8 I.C.C.2d 470, 1992 MCC LEXIS 50 (Apr. 27, 1992); *Advantage Tank Lines, Inc.*, No. MC-C-30198, 10 I.C.C.2d 64 (Mar. 2, 1994). The Policy Statement was derived from cases decided by the ICC, federal courts, and the Supreme Court that explained the differences between interstate and intrastate trucking services provided within a single state. The ICC outlined the following factors to be “considered in establishing that the in-State for-hire motor transportation component is part of a continuing movement in interstate commerce.” 1992 MCC LEXIS 50, at *4. First, the ICC explained that interstate intent may be found where:

Although the shipper does not know in advance the ultimate destination of specific shipments, it bases its determination of the total volume to be shipped through the warehouse on projections of customer demand that have some factual basis, rather than a mere plan to solicit future sales within the State. The factual basis for projecting customer demand may include, but is not limited to, historic sales in the State, actual present orders, relevant market surveys of need.

Id. Additionally, the Commission stated that the following was also indicative of interstate intent:

(1) “no processing or substantial modification of substance occurs at the warehouse or distribution facility”; (2) “[w]hile in the warehouse, the merchandise is subject to the shipper's control and

direction as to the subsequent transportation”; (3) “[m]odern systems allow tracking and documentation of most, if not all, of the shipments coming in and going out of the warehouse or distribution center”; (4) “[t]he shipper or consignee must bear the ultimate payment for transportation charges even if the warehouse or distribution center directly pays the transportation charges to the carrier”; (5) “[t]he warehouse utilized is owned by the shipper”; (6) “[t]he shipments move through the warehouse pursuant to a storage in transit tariff provision.” *Id.*

In their motions for summary judgment, Plaintiffs argue that the 1957 test should be applied whereas Defendants advocate the 1992 test. Many reasons compel the application of the more recent test delineated by the ICC. First and foremost, the determination regarding whether the commerce at issue is interstate or intrastate has always been determined by a totality of circumstances. *Atlantic Coast Line R.R. v. Standard Oil Co.*, 275 U.S. 257, 268, 269 (1927) (holding that in order to determine whether commerce is inter- or intra states, courts must analyze “the essential character of the commerce” by examining the facts). Moreover, since its inception, many courts, including the *Baird* court that first adopted the 1957 test, have treated the test merely as starting point from which to look at the totality of circumstances and have looked to factors outside the three-part test in order to determine a shipper’s intent. *See, e.g., Baird*, 425 F.2d at 412; *Galbreath*, 413 F.2d at 947; *Middlewest*, 867 F.2d at 458; *Foxworthy*, 997 F.2d at 673. Additionally, before the ICC revised its older test, three circuit courts noted that the 1957 test was outmoded. *Roberts* 921 F.2d at 804; *California Trucking*, 900 F.2d at 208; *Central Freight*, 899 F.2d at 413. Finally, the ICC is now using the flexible multi-factor test in its own decisions. *See, e.g., Advantage Tank Lines, Inc., No. MC-C-30198*, 10 I.C.C.2d 64 (Mar. 2, 1994). Therefore, I will apply the 1992 test and consider the seven factors to determine from the totality of the circumstances whether there is a fixed and

persistent intent to ship the product in a practical continuity of movement in the flow of interstate commerce.

Considering these factors, it is clear that Defendant has met its burden to demonstrate that it has a fixed and persistent intent to ship its product via interstate commerce. The record demonstrates that Defendant determines how much product to ship via pipeline and when to ship it based on customer demand projections, which takes into consideration historical need and anticipated weather conditions, rather than solicitation of future sales. (Russell Aff. ¶¶ 5, 7; Russell Dep. at 33-38, 47; Fioretto Dep. at 11-13; Fioretto Aff. ¶¶ 5-7.) Additionally, Mohawk takes title to the product once it enters the pipeline out-of-state and no processing occurs from the time it enters the pipeline to the time it reaches Mohawk's customers. (Russell Aff. ¶ 8; Russell Dep. at 30-33.) Moreover, Mohawk retains title to the product while it is in storage, which during the winter months is a short period of time, and keeps detailed records of each leg of the trip the product takes from origin to destination. (Russell Aff. ¶ 8; Fioretto Dep. at 15; Russell Dep. at 39-40.) Detailed documentation is generated when the product enters the pipeline, when product enters and leaves the terminal, and, in cases where product goes to a bulk plant, when product enters and leaves the bulk plant. (Russell Dep. at 51-53.) All of these factors indicate that Defendant employs Plaintiffs to complete the shipment of its product from an out-of-state location in a continuity of movement to its ultimate destination. Therefore, because the transportation provided by Plaintiffs is part of interstate commerce, the motor carrier exemption to the FLSA applies and summary judgment is granted in Defendant's favor.

C. State Law Claims

Plaintiffs bring claims under New York labor law for overtime payment and ask the Court

to interpret the New York Commercial Drivers' Manual in order to determine whether Plaintiffs are required to remain within 100 feet of their trucks during their lunch periods and thus are entitled to compensation for this time. Defendant requests that this Court decline to exercise supplemental jurisdiction over the remainder of Plaintiffs' state law claims. Under 28 U.S.C. § 1367, a district court may decline supplemental jurisdiction in certain limited circumstances. 28 U.S.C. § 1367 (2004). These circumstances include where: (1) the claim "raises a novel or complex issue of State law;" (2) state law substantially predominates over the federal issue; (3) the district court has dismissed claims over which it had original jurisdiction; or (4) in exceptional circumstances, where there are other compelling reasons for declining jurisdiction. 28 U.S.C. § 1367(c)(1-4); *see also Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc.*, 140 F.3d 478, 487 (3d Cir. 1998); *Borough of West Mifflin v. Lancaster*, 45 F.3d 780, 788 (3d Cir. 1995).

Because summary judgment is granted in favor of Defendant on all federal claims, I decline to exercise supplemental jurisdiction over the state law claims. *Shaev v. Saper*, 320 F.3d 373, 384 (3d Cir. 2003). The principles of judicial economy, fairness, and comity also suggest that dismissal is the appropriate course of action at this juncture as: (1) Plaintiffs seek to amend their complaint to add a claim under their collective bargaining agreement; (2) as pointed out by the parties on numerous occasions, additional discovery is needed on the state claims; and (3) the remainder of Plaintiffs' claims present novel issues of state law, which are more appropriately addressed by New York state courts. *Annulli v. Panikkar*, 200 F.3d 189, 202 (3d Cir. 1999) (holding that decision to decline to exercise supplemental jurisdiction when all federal claims are dismissed is left to sound discretion of district court, and reviewed for abuse of discretion, focusing on whether "dismissal of pendent claims best serves the principles of judicial economy, convenience, fairness, and comity")

(citing *Queen City Pizza, Inc. v. Domino's Pizza, Inc.*, 124 F.3d 430, 444 (3d Cir. 1997); *Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 357 (1988)). For these reasons, I dismiss the remainder of Plaintiffs' claims without prejudice to refiling in state court.

IV. CONCLUSION

Because I find that the motor carrier exemption applies, I grant summary judgment in Defendant's favor on Plaintiffs' FLSA claim and decline to exercise supplemental jurisdiction over the remainder of Plaintiffs' state law claims, dismissing them without prejudice. An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

| | | |
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| ATLANTIC INDEPENDENT | : | |
| UNION, et al., | : | |
| Plaintiffs, | : | CIVIL ACTION |
| | : | |
| v. | : | |
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| SUNOCO, INC, d/b/a MOHAWK | : | |
| HOME COMFORT SERVICES, f/k/a | : | |
| MOHAWK VALLEY OIL, | : | No. 03-4389 |
| Defendant. | : | |

ORDER

AND NOW, this 16th day of **June, 2004**, upon consideration of the parties' cross-motions for summary judgment, all responses and replies thereto, oral argument thereon, and all supplemental briefing, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendant's Motion for Summary Judgment (Document No. 18) is **GRANTED**.
 - a. Because the Motor Carrier Exemption applies, summary judgment is granted on Plaintiffs' claims under the Fair Labor Standards Act. Judgment is entered in favor of Defendant and against Plaintiff on this claim.
 - b. As all federal claims have been dismissed, Plaintiffs' state law claims are **DISMISSED without prejudice**.
2. Plaintiffs' Motion for Summary Judgment (Document No. 20) is **DENIED**.
3. The Clerk of Court is directed to close this case for statistical purposes.

BY THE COURT:

Berle M. Schiller, J.