

## Publications

### **Oil and Gas Alert: Water Haulers of Hydraulic Fracturing Company are Entitled to Overtime**

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A recent opinion from the federal district court for the Middle District of Pennsylvania determined that drivers who transported water to drilling rigs were not exempt from the overtime requirements of the Fair Labor Standards Act (FLSA) or Pennsylvania law. In so holding, the court denied the company's summary judgment motion and set the case for trial on the drivers' overtime claims.

In *Mazzarella v. Fast Rig Support LLC*, Fast Rig's drivers transported water from sources within Pennsylvania to natural gas rigs located within Pennsylvania. During the normal course of their jobs the drivers did not travel outside of Pennsylvania. The drivers routinely worked more than 40 hours per week and were paid \$20 to \$22 per hour, but only received overtime for hours worked over 45 (unless the employee is otherwise exempt, the FLSA and Pennsylvania law require that overtime be paid for all hours over 40). The drivers sued for overtime under the FLSA and Pennsylvania law.

Fast Rig claimed that the drivers were exempt from the FLSA's overtime requirements because of an exemption in the federal Motor Carrier Act (MCA). The MCA exempts employees from the maximum hours and overtime provisions of the FLSA over whom the U.S. Secretary of Transportation has regulatory authority (like Fast Rig's drivers). Pennsylvania law contains a similar exemption. The motor carrier exemption applies when employees are transporting property in interstate commerce on public highways when the employees' activities affect safe operations. For its drivers to be exempt, Fast Rig had to prove both that the water being hauled was "property" for purposes of the MCA and that the intrastate trips made by the drivers to haul water constituted a "practical continuity of movement in interstate commerce."

Turning to the first question, the court found that water used in fracking was "property" under the MCA because the water has economic value. "It is owned by gas-drilling companies who retain the rights to use and transfer water as they choose." Further, the water is accounted for by the gallon and the companies must dispose of the

water in compliance with state and federal regulations.

As to the second question, the court explained that purely intrastate transportation of goods can still be part of interstate commerce (and, hence, covered by the MCA) if that transportation is part of a “continuous stream of interstate travel” and if there is a “practical continuity of movement” between the intrastate and overall interstate flow. The court determined that the water was not used in a continuous stream of commerce.

According to the court, Fast Rig’s trucking activities constituted two separate commercial transactions – (1) delivering untainted water to drilling rigs and (2) picking up and disposing of the tainted water in Ohio. Here, the drivers’ final destination of the water was the site of the rigs in Pennsylvania – they never drove the water to Ohio. And the interstate movement of the water is interrupted by the fracking process because the fresh water becomes contaminated before being delivered to Ohio. Thus, “there is not a practical continuity of movement between the intrastate hauling of the clean water by the plaintiff drivers and the subsequent interstate transportation by different drivers of the chemically transformed water for disposal.” Consequently, the drivers were not engaged in interstate commerce under the MCA exemption and so were entitled to make a claim for overtime under the FLSA and the PMWA.

This opinion highlights the complex interrelationship among different federal statutes and state law in determining how to properly compensate a particular employee or category of employees. Contact your Vorys lawyer if you have questions about how the FLSA and MCA may affect your employees.