

No. 18-5942

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Feb 22, 2019  
DEBORAH S. HUNT, Clerk

In re: AMAZON.COM, INC., Fulfillment Center )  
Fair Labor Standards Act (FLSA) and Wage and )  
Hour Litigation. )  
----- )  
NEAL HEIMBACH, et al., )  
 )  
Plaintiffs-Appellants, )  
 )  
v. )  
 )  
AMAZON.COM, INC., et al., )  
 )  
Defendants-Appellees. )

ORDER

Before: GUY, STRANCH, and LARSEN, Circuit Judges.

In this diversity class action seeking compensation under the Pennsylvania Minimum Wage Act (“PMWA”) for time spent undergoing post-shift security screenings, Plaintiffs Neal Heimbach and Karen Salasky appeal the district court’s grant of summary judgment to Defendants Amazon.com, Amazon.com.dedc, and Integrity Staffing Solutions (“Amazon”) based on its conclusion that the Supreme Court’s decision in *Integrity Staffing Solutions, Inc. v. Busk*, 135 S. Ct. 513, 519 (2014), controls. Plaintiffs move to certify a question to the Pennsylvania Supreme Court: “Whether time associated with workplace security screenings conducted at the end of a warehouse employee’s shift can be compensable under the [PMWA] even though, in [*Busk*], the United States Supreme Court deemed such time non-compensable ‘postliminary’ activities under the federal Portal-to-Portal Act, 29 U.S.C. §§ 251, *et seq.*” Amazon opposes certification.

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Whether to certify a question of law is within our “sound discretion.” *Lehman Bros. v. Schein*, 416 U.S. 386, 391 (1974). The Pennsylvania Supreme Court will not “accept certification unless all facts material to the question of law to be determined are undisputed, and the question of law is one that the petitioning court has not previously decided.” Pa. R. App. P. 3341(c). And it will only exercise its discretion to accept certification if “there are special and important reasons,” including when the question of law: (1) is one of first impression and “substantial public importance” requiring a prompt, definitive answer; (2) is one with respect to which there are conflicting decisions in other courts; or (3) concerns an unsettled issue involving the constitutionality, construction, or application of a Pennsylvania statute. Pa. R. App. P. 3341(c)(1)–(3).

“Resort to the certification procedure is most appropriate when the question is new and state law is unsettled.” *Transamerica Ins. Co. v. Duro Bag Mfg. Co.*, 50 F.3d 370, 372 (6th Cir. 1995). We “generally will not trouble our sister state courts every time an arguably unsettled question of state law comes across our desks. When we see a reasonably clear and principled course, we will seek to follow it ourselves.” *Pennington v. State Farm Mut. Auto. Ins. Co.*, 553 F.3d 447, 450 (6th Cir. 2009) (citation and internal quotation marks omitted). Thus, when applying state law, federal courts “anticipate how the relevant state’s highest court would rule in the case and are bound by controlling decisions of that court.” *In re Dow Corning Corp.*, 419 F.3d 543, 549 (6th Cir. 2005). Federal courts give persuasive effect to decisions of the state’s intermediate appellate courts “unless it is shown that the state’s highest court would decide the issue differently.” *Id.*

There is no Pennsylvania Supreme Court or Court of Appeals precedent directly on point for Plaintiffs’ proposed question. The district court’s decision and unpublished decisions from a

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Pennsylvania court and the Third Circuit suggest an open issue is present that may be suitable for certification. Critically, however, the appeal has not yet been briefed. Under these circumstances, we find that the merits panel is better situated to fully consider the arguments raised before determining if certification of the issue is necessary.

The motion to certify is **REFERRED** to the merits panel.

ENTERED BY ORDER OF THE COURT



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Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

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Filed: February 22, 2019

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Re: Case No. 18-5942, *Neal Heimbach, et al v. Amazon.com, Inc., et al*  
Originating Case No. : 3:14-md-02504 : 3:14-cv-00204

Dear Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Jill Colyer on behalf of Karen Fultz  
Case Manager  
Direct Dial No. 513-564-7036

cc: Mr. Michael E. Kenneally  
Mr. David B. Salmons

Enclosure