THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO.: 3:14-CV-577-RJC-DCK

US AIRLINE PILOTS ASSOCIATION, Plaintiff, vs. ROGER VELEZ, on behalf of himself and all similarly situated former America West Pilots, and LEONIDAS, LLC, Defendants.	)	**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO REMAND**

Pursuant to Local Rule 7.1(c), Plaintiff US Airline Pilots Association ("USAPA" or "the Association") submits this Brief in Support of Plaintiff's Motion to Remand.

INTRODUCTION

This matter was commenced on September 16, 2014 in the Superior Court of North Carolina, General Court of Justice Division, Mecklenburg County. On October 16, 2014, Defendants Leonidas, LLC ("Leonidas") and Roger Velez ("Velez") (collectively the "Defendants") removed the action on the grounds that this Court has original subject matter jurisdiction pursuant to 28 U.S.C. §1332(a) based on diversity of citizenship and amount in controversy exceeding $75,000. Defendants also removed on the ground that because, in their view, Plaintiff's claims arise under the Railway Labor Act and the Labor Management Reporting and Disclosure Act, this Court has original federal question jurisdiction pursuant to 28 U.S.C. §1331.

Defendants are incorrect. None of the alleged grounds for removal are present. USAPA, as an unincorporated non-profit association, is a citizen of every state and there is no complete

diversity of citizenship. USAPA has not alleged any amount in controversy, and indeed does not seek damages. USAPA does not allege any claims arising under the Railway Labor Act or the Labor Management Reporting and Disclosure Act. Moreover, those statutes do not completely preempt USAPA's state law claims, and that defendants raise those statutes as defenses cannot serve as a basis for removal to federal court. Accordingly, this matter should be remanded pursuant to 28 U.S.C. § 1447(c).

STATEMENT OF RELEVANT FACTS

On September 16, 2014, USAPA commenced an action in the Superior Court of North Carolina, Mecklenburg County, seeking a declaration as to the validity of certain actions taken by the duly elected National Officers of the Association pursuant to their constitutional authority as provided for in USAPA's Constitution and Bylaws. USAPA is a private, unincorporated non-profit association existing and operating under the laws of North Carolina. Doc. 1-1, Complaint, ¶¶1, 44, annexed as Exhibit "1" to Notice of Removal. From April 18, 2008, when it was certified by the National Mediation Board ("NMB") as the certified bargaining representative of US Airways pilots, until its decertification on September 16, 2014, USAPA represented the pilots of US Airways for purposes of collective bargaining and the administration and enforcement of the collective bargaining agreements it had with US Airways. *Id.*, ¶¶45, 51. Upon its decertification by the NMB, USAPA ceased being a labor organization within the meaning of the Railway Labor Act ("RLA"), but continued and continues to exist as a non-profit association pursuant to North Carolina law. *Id.*, ¶51.

In recognition of the fact that USAPA was an association created and maintained to represent only one group of employees and that a subsequent merger with a larger airline could result in its decertification as the NMB certified bargaining representative of that group, the

USAPA Constitution and Bylaws provide for specific dissolution procedures in the event of its decertification.[1] *Id.*, ¶53. The dissolution language takes into account the fact that airline industry mergers often result in drawn out and contentious proceedings to integrate the pre-merger pilot seniority lists. As such, the Constitution and Bylaws allow USAPA's National Officers to defer commencement of USAPA's dissolution and to continue the Association for the purposes of representing the US Airways pilots in collective legal action, including seniority integration proceedings. *Id.*, ¶54.

In April, 2012, US Airways announced its intention to merge with American Airlines to become a single airline known as New American Airlines. *Id.*, ¶¶55, 59. In anticipation of the merger closing, USAPA, US Airways, American and the Allied Pilots Association ("APA"), the

[1] Article I, Section 3 of the USAPA Constitution and Bylaws, entitled "Duration and/or Dissolution" provides as follows:

A. The duration of USAPA shall be perpetual, or until dissolved as provided for in this Constitution and Bylaws. Subject to the deferral provisions of paragraphs B. and C. of this section, in the event of dissolution of the Association, the officers of USAPA shall act as agents for the membership and dispose of all of the physical assets of the Association by suitable means. All assets shall be liquidated and, less any indebtedness, shall hen be prorated to the active members in good standing of USAPA as of the time of such dissolution in proportion to the monies paid by each such member in the twelve (12) months immediately preceding dissolution.

B. Dissolution of the Association may be affected through a representation vote conducted by the National Mediation Board (NMB) in accordance with the Railway Labor Act (RLA) that results in the Association's certification being extinguished or pursuant to a two-thirds vote of the Board of Pilot Representatives subsequently ratified in accordance with Article XI, Paragraph D. of this Constitution and Bylaws. In either case, the commencement of dissolution is subject to the deferral provisions of C. of this section.

C. Within three (3) business days or either the NMB decision or membership vote triggering the dissolution (hereinafter, the "commencement date"), the National Officers shall make a determination as to whether existing circumstances present, or may present in the future, the need for collective legal action on behalf of the pilot group, including, but not limited to, representation in seniority integration proceedings. In the event the majority of the National Officers determine that such a need exists, the dissolution commencement date will be deferred until, in the judgment of a majority of the National Officers, the need for collective legal representation no longer exists. If, in the judgment of a majority of the National Officers, available funds exceed the expected costs of collective legal representation, the excess monies may be distributed in accordance with paragraph A of this section. The President shall break any tie votes among the National Officers.

D. Notwithstanding any other provisions of the Constitution and Bylaws, the full operating authority of USAPA shall reside with the National Officers as of the dissolution commencement date indicated in Paragraph A of this section. The President or the Acting President shall appoint an individual who was an active member as of the commencement date to fill any vacancies arising among the National Officers after the commencement date.

Doc. 1-1, Exhibit B to Compl.

union representing the American pilots, entered into a four-party Memorandum of Understanding Regarding a Contingent Collective Bargaining Agreement ("MOU"). *Id.*, ¶56. The merger closed on December 9, 2013, at which time US Airways and American began integrating the operations of the two airlines. *Id.*, ¶¶57-58.

The MOU provides that within 30 days of the NMB certification of the collective bargaining representative of the New American Airlines pilots, negotiations for a Joint Collective Bargaining Agreement ("JCBA") will commence or re-commence. *Id.*, ¶63. The MOU also provides that seniority integration cannot commence until the JCBA is complete. *Id.*, ¶64. On September 16, 2014, the NMB certified the APA as the certified bargaining representative of the New American Airlines pilots, and USAPA was decertified as the bargaining representative of the pre-merger US Airways pilots. *Id.*, ¶61. The NMB's certification of the APA, and its concomitant decertification of USAPA, gave rise to the dissolution provisions in the USAPA Constitution and Bylaws. *Id.*, ¶¶61, 62.

On September 16, 2014, a majority of the USAPA National Officers determined to defer the commencement date of USAPA's dissolution, finding that existing circumstances present, or may present in the future, the need for collective legal action on behalf of the US Airways pilots, including seniority integration proceedings. *Id.*, ¶66. At the time and continuing to the present, there are various ongoing legal proceedings in which USAPA is either a named party on behalf of US Airways pilots, or otherwise represents the interests of US Airways pilots. *Id.*, ¶69. In addition, under the terms of the Seniority Integration Protocol Agreement entered into by USAPA, the APA, US Airways, and American, the USAPA Merger Committee will continue to exist notwithstanding USAPA's decertification, and both USAPA and the USAPA Merger Committee will continue to be involved in seniority integration proceedings. *Id.*, ¶¶70-72.

On September 16, 2014, consistent with the authority granted exclusively to them, the National Officers also determined to defer distribution of the assets of the Association, in whole or in part, to "members in good standing", as provided for in subdivision A of Section 3 of Article 1 of the USAPA Constitution and Bylaws. *Id.*, ¶66. The bases for this decision included, *inter alia*, USAPA's potential liability in proceedings in which it is a defendant, including the *Addington* litigation, the continued roles of USAPA and the USAPA Merger Committee in the seniority integration proceedings, and USAPA's outstanding obligations to vendors, service providers, and creditors. *Id.*, ¶¶73-74; Doc. 1-1, Exhibit C to Compl.

The dissolution provisions, including the deferral provisions of the USAPA Constitution and Bylaws, are clear and unambiguous, and a permissible exercise of the power provided to an unincorporated non-profit association to govern its internal affairs pursuant to its formative documents. *Id.*, ¶67. The provisions provide the National Officers the sole discretion to (a) determine whether or not to defer dissolution, and (b) to determine whether or not to distribute excess monies to the pilots in the interim notwithstanding the deferred dissolution. *Id.*, ¶68.

There has been a long history of contentious litigation resulting from the 2005 US Airways/America West merger that to date has not been resolved. *Id.*, ¶14. A group of dissident US Airways pilots who had formerly been employed by America West filed two class action lawsuits, both dismissed, alleging that USAPA has breached its duty of fair representation to its members. *Id.* Defendant Velez was a named Plaintiff and class representative in both lawsuits, and both lawsuits were funded and aided by Defendant Leonidas. *Id.*

In a June 18, 2014 update, Leonidas threatened yet another lawsuit against USAPA in the event USAPA is decertified as the certified bargaining representative of the US Airways pilots. *Id.*, ¶16. By letter dated September 12, 2014, Velez, writing on behalf of himself and the class of

West Pilots, demanded of USAPA: (a) its immediate dissolution; and (b) immediate distribution of USAPA's assets. *Id.*, ¶15; Doc. 1-1, Exhibit A to the Compl.

In light of these two demands, the prior litigation between USAPA, Velez, and the West Pilots, the potential for on-going liability, and the unlikelihood of a non-judicial resolution, it is practically certain that Defendants will commence another lawsuit against USAPA challenging, *inter alia*, the National Officer's determination to defer dissolution and distribution of USAPA's assets. Doc. 1-1, ¶24. As such, USAPA seeks a judicial determination as to the validity of the National Officers' decision, as per the Constitution and Bylaws, to defer dissolution of USAPA and defer immediate distribution of its assets.

ARGUMENT

POINT I
LEGAL STANDARD ON A MOTION TO REMAND

Removal jurisdiction is not favored by the courts and as such, courts "construe it strictly in light of the federalism concerns inherent in that form of federal jurisdiction." *In re Blackwater Security Consulting, LLC*, 460 F.3d 576, 583 (4th Cir. 2006), *cert. denied, Blackwater Sec. Consulting, LLC v. Nordan*, 549 U.S. 1260 (2007); *see also Lontz v. Tharp*, 413 F.3d 435, 440 (4th Cir. 2005). The party seeking removal bears the burden of establishing federal jurisdiction. *In re Blackwater Security Consulting, LLC*, 460 F.3d at 583-84 (citing *Mulcahey v. Columbia Organic Chemicals Co., Inc.*, 29 F.3d 148, 151 (4th Cir. 1994)). "If federal jurisdiction is doubtful, a remand is necessary." *Mulcahey*, 29 F.3d at 151.

A defendant has the right to remove a case to federal court only if "the district courts of the United States have original jurisdiction" over it. 28 U.S.C. § 1441(a). Removal to federal court is appropriate in three circumstances. First, a defendant may remove a case to federal court if there is complete diversity of citizenship. 28 U.S.C. § 1332(a). Thus, if the matter in controversy does

not exceed the sum or value of $75,000 and/or the parties are citizens of the same state, there exists no complete diversity and the federal courts lack subject matter jurisdiction. For diversity of citizenship purposes, an unincorporated association is a citizen of the state of each of its members. *Chapman v. Barney*, 129 U.S. 677, 9 S.Ct. 426 (1889); *New York State Teachers Retirement System v. Kalkus*, 764 F.2d 1015, 1017 (4th Cir. 1985).

Second, removal to federal court is appropriate "if the face of the complaint raises a federal question." *Lontz*, 413 F.3d at 439. Thus, "[a] civil action 'arising under the Constitution, laws, or treaties of the United States' can be brought originally in federal district court." *King v. Marriott Intern. Inc.*, 337 F.3d 421, 424 (4th Cir. 2003) (quoting 28 U.S.C. § 1331). "Under the firmly settled well-pleaded complaint rule, however, merely having a federal defense to a state law claim is insufficient to support removal, since it would also be insufficient for federal question jurisdiction in the first place." *Lontz*, 413 F.3d at 439; *see also Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc.*, 535 U.S. 826, 831, 122 S.Ct. 1889, 1893 (2002) ("[A] counterclaim – which appears as part of the defendant's answer, not as part of the Plaintiff's complaint – cannot serve as the basis for 'arising under' jurisdiction."). "Thus, the Supreme Court unwaveringly has maintained that '[t]o bring a case within [§ 1441], a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the Plaintiff's cause of action.'" *Lontz*, 413 F.3d at 439 (quoting *Gully v. First Nat'l Bank*, 299 U.S. 109, 112, 57 S.Ct. 96 (1936)). As such, courts "look no further than the Plaintiff's complaint in determining whether a lawsuit raises issues of federal law capable of creating federal-question jurisdiction under 28 U.S.C. § 1331." *Custer v. Sweeney*, 89 F.3d 1156, 1165 (4th Cir. 1996).

The third circumstance in which removal to federal court is appropriate is an exception to the well-pleaded complaint rule. Under the "complete preemption" doctrine, "if the subject matter

of a putative state law claim has been totally subsumed by federal law – such that state law cannot even treat on the subject matter – then removal is appropriate." *Lontz*, 413 F.3d at 439-440. Complete preemption is distinct from ordinary preemption, the latter merely a federal defense to the allegations in the complaint, and thus not a basis for removal to federal court. *Id.* In contrast, "when complete preemption exists, there is 'no such thing' as the state action . . . since the federal claim is treated as if it appears on the face of the complaint because it effectively displaces the state cause of action." *Id.*, at 441 (internal citations omitted). For a court to find complete preemption "congressional intent that state law be entirely displaced must be clear in the text of the statute." *Id.* "[T]he preemption statute must not only create a federal cause of action, but must also show that Congress intended it to 'provide *the exclusive* cause of action' for claims of overwhelming national interest." *Id.*, quoting *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 9, 11, 123 S.Ct. 2058 (2003).

"Recognizing that complete preemption undermines the Plaintiff's traditional ability to plead under the law of his choosing," the Supreme Court is "reluctant" to find complete preemption, and indeed, has "found complete preemption in only three statutes": the National Bank Act, ERISA § 502(a), and the Labor Management Relations Act ("LMRA") § 301. *Id.*, citing *Beneficial*, 539 U.S. at 10-11, 123 S.Ct. 2058 (National Bank Act); *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 66-67, 107 S.Ct. 1542 (1987) (ERISA § 502(a)); *Avco Corp. v. Aero Lodge No. 735, Int'l Ass'n of Machinists*, 390 U.S. 557, 560, 88 S.Ct. 1235 (1968) (LMRA § 301), *rehearing denied*, 391 U.S. 929 (1968); *see also McFadden v. Federal Nat. Mortg. Ass'n*, 525 Fed.Appx. 223, 235 (4th Cir. 2013) (same).

POINT II
THIS MATTER SHOULD BE REMANDED BECAUSE THIS COURT LACKS SUBJECT MATTER JURISDICTION

A. Complete diversity of citizenship does not exist.

This court does not have original jurisdiction over Plaintiff's claim unless there is complete diversity of citizenship. 28 U.S.C. § 1332. If plaintiff and any defendant are citizens of the same state, diversity of citizenship is destroyed and this court lacks subject matter jurisdiction. *Id.*

Defendants removed this action on the ground, *inter alia*, that because USAPA is a private, unincorporated non-profit association existing and operating under the laws of North Carolina, and the Defendants are citizens of Arizona, complete diversity of citizenship exists between the parties. *See* Notice of Removal, Doc. 1 at 3. An unincorporated association is a citizen of the state of each of its members. *Chapman*, 129 U.S. at 677, 9 S.Ct. 426; *Kalkus*, 764 F.2d at 1017. USAPA has 4,500 members, and 927 of its members reside in the state of Arizona. Declaration of Robert Streble, ¶¶4-5. Thus, for diversity of citizenship purposes, complete diversity does not exist, and this Court lacks subject matter jurisdiction.

B. The amount of controversy does not exceed $75,000.

Defendants removed also on the ground that the amount in controversy, exclusive of interest and costs, exceeds $75,000. Doc. 1 at 4. In support, they claim that USAPA "is attempting to avoid liquidating its assets, which are far in excess of $75,000 . . ." *Id.* Defendants are incorrect and Plaintiff's complaint does not meet the jurisdictional amount necessary for federal jurisdiction.

Ordinarily, the jurisdictional amount is determined by the amount pled in the plaintiff's complaint. *Wiggins v. North America Equitable Life Assur. Co.*, 644 F.2d 1014, 1016 (4th Cir. 1981). Here, USAPA has not made a claim for damages. Indeed, all USAPA seeks is a determination as to the validity of the National Officers' decision to defer dissolution and to defer

distribution of USAPA's assets. That the assets may be in excess of $75,000 is irrelevant to the relief USAPA seeks. This Court lacks subject matter jurisdiction.

C. <u>No federal question is raised in the complaint</u>.

Defendants removed this action to federal court also on the ground that plaintiff's complaint involves issues and seeks to determine rights and obligations arising under the Railway Labor Act ("RLA") and the Labor Management and Reporting and Disclosure Act ("LMRDA"). Doc. 1 at 5-6. The well-pleaded complaint rule defeats removal.

Under the well-pleaded complaint rule, courts "look no farther than the plaintiff's complaint in determining whether a lawsuit raises issues of federal law capable of creating federal-question jurisdiction under 28 U.S.C. § 1331." *Custer*, 89 F.3d at 1165. The "rule enforces the principle that the plaintiff is the master of his complaint and generally permits plaintiffs to 'avoid federal jurisdiction by exclusive reliance on state law.'" *Id.*, quoting *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 2429-30 (1987).

On its face, the complaint neither asserts a claim under the RLA nor the LMRDA. *See Custer*, 89 F.3d at 1165 (Courts "look no further than the plaintiff's complaint in determining whether a lawsuit raises issues of federal law capable of creating federal-question jurisdiction under 28 U.S.C. § 1331."); *Gully*, 299 U.S. at 112-13, 57 S.Ct. 96, 97-98 (A case arising under the Constitution or laws of the United States "must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal."). Instead, the complaint seeks a judicial determination as to the validity of the National Officers' decision to defer USAPA's dissolution, and to defer an immediate distribution of USAPA's assets because the Association has continued liabilities and obligations in a variety of areas. These include USAPA's potential liability in proceedings in which it is a defendant, including the *Addington* litigation, the continued roles of

USAPA and the USAPA Merger Committee in the seniority integration proceedings, and USAPA's outstanding obligations to vendors, service providers, and creditors. *Id.*, ¶¶73-74; Doc. 1-1, Ex. C to Compl.

Contrary to Defendants' assertion (Doc. 1 at 5), the complaint does not invoke the RLA as it contains no allegation or claim asserting continued representational rights following USAPA's decertification. Nor does it seek to determine rights and obligations found in the LMRDA. *See* Doc. 1 at 5. Plaintiff's claims are not intertwined with any collective bargaining agreement ("CBA") and require no analysis of a CBA, and thus do not fall within the purview of the RLA and LMRDA. *See Magnuson v. Burlington Northern*, 576 F.2d 1367 (9th Cir. 1978) (In affirming district court dismissal of the complaint, finding that the case was properly removed to the federal court because Plaintiff's complaint based on intentional infliction of emotional distress following his alleged wrongful discharge was inextricably intertwined with the grievance machinery of the CBA and the RLA), *cert. denied*, 439 U.S. 930 (1978); *Gerow v. Kleinerman*, 2002 WL 1625417, at *4 (D.N.J. July 2, 2002) (Finding that the court lacks subject matter jurisdiction over Plaintiff's tort claims because, *inter alia*, Defendants failed to support their assertion that the claims cannot be litigated without interpretation of the CBA and the LMRDA). Indeed, the validity of the National Officers' actions will be evaluated, not under the RLA or the LMRDA, but by looking to USAPA's internal governing documents. *See* N.C. General Statutes § 59B-3. A plain reading of the complaint paragraphs 63-66 cited by Defendants shows that no right or immunity created by the Constitution or laws of the United States is an element of Plaintiff's causes of action. *Lontz*, 413 F.3d at 439. Defendants' claim of federal preemption is at most a defense to Plaintiff's suit. *Metro. Life Ins. Co. v. Taylor*, 481 U.S. at 63, 107 S.Ct. 1542, 1546. "As a defense, it does not appear on the face of a well-pleaded complaint, and, therefore,

does not authorize removal to federal court." *Id.; see also Lontz*, 413 F.3d at 439; *Holmes Group, Inc.*, 535 U.S. at 831, 122 S.Ct. 1889, 1893 (A counterclaim which does not appear on the face of a well-pleaded complaint does not authorize removal to federal court.). The matter should be remanded back to the state court.

D. <u>There is no complete preemption</u>.

While not specifically asserted in the Notice of Removal, it appears that defendants are in fact attempting to assert a right to remove on a theory of complete preemption. As discussed above, the Supreme Court has found complete preemption in only three statutes: the National Bank Act, ERISA § 502(a), and the Labor Management Relations Act ("LMRA") § 301. *Beneficial*, 539 U.S. at 10-11, 123 S.Ct. 2058 (National Bank Act); *Metro. Life Ins. Co.*, 481 U.S. at 66-67, 107 S.Ct. 1542 (ERISA § 502(a)); *Avco Corp.*, 390 U.S. at 560, 88 S.Ct. 1235 (LMRA § 301); *see also McFadden*, 525 Fed.Appx. at 235 (same). The complaint does not assert a claim under those three statutes, nor do Defendants claim it does.

Moreover, "the *sine qua non* of complete preemption is a pre-existing *federal* cause of action that can be brought in the district courts." *Lontz*, 413 F.3d at 442 (citing *Beneficial*, 539 U.S. at 9, 123 S.Ct. 2058) (emphasis in original). Defendants fail to allege any federal cause of action encompassing Plaintiff's claims – the validity of the National Officers' decisions as set forth in USAPA's Constitution and Bylaws. Defendants argue the claims fall within the purview of the RLA because USAPA argues that it "continues to maintain some representational rights following its decertification as an exclusive bargaining representative by the National Mediation Board." Doc. 1 at 5. However, USAPA does not assert such a claim or right. It does not seek a determination from the court as to its rights and obligations as a certified collective bargaining representative. Nor does it invoke the LMRDA. Plaintiff is not seeking "a determination that its

officers' actions . . . are not breaches of its officers' fiduciary duties." *See id.* On the contrary, Plaintiff seeks a determination as to whether the decisions by the National Officers to defer dissolution and defer distribution of assets, were "proper, valid, and enforceable exercise[s] of their constitutional authority and consistent with the Constitution and Bylaws of USAPA." Doc. 1-1, ¶¶81, 88. That the parties involved are union members does not convert Plaintiff's claims into federal claims. *See Gerow*, 2002 WL 1625417, at *3 (Rejecting defendants' argument that because Plaintiff's tort claims arose out of a union election, they are federal in character.). That section 501 of the LMRDA may provide a defense to Plaintiff's claims does not provide this Court with original federal question jurisdiction. *See Lontz*, 413 F.3d at 441 ("Even if preemption forms the very core of the litigation, it is insufficient for removal."). Moreover, "[t]he Supreme Court has never held that there is complete preemption under the LMRDA." *Sowell v. Int'l. Bhd. of Teamsters*, 2009 WL 4255556, at *4 (S.D.Tex. Nov. 24, 2009).

Given the factual assertions in the Complaint and the cases discussed above, neither the RLA nor the LMRDA provide for complete preemption of Plaintiff's claims. This Court does not have federal question jurisdiction over Plaintiff's claims, and the matter should be remanded back to state court.

POINT III
USAPA SHOULD BE AWARDED ATTORNEYS' FEES AND COSTS INCURRED IN MAKING THIS MOTION

Section 1447(c) provides that "[a]n order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." 28 U.S.C. § 1447(c). An award of attorneys' fees is within the court's discretion. *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 136-40, 126 S.Ct. 704, 708-10 (2005).

As discussed above, this Court has neither subject matter or federal question jurisdiction over Plaintiff's claims and the matter should be remanded back to state court pursuant to 28 U.S.C. § 1447. Defendants had no "objectively reasonable basis" for removal. *Martin*, 546 U.S. at 136, 126 S.Ct. 704, 708. It has long been held that an unincorporated association is a member of the state of each of its members. The complaint obviously does not meet the jurisdictional amount necessary for subject matter jurisdiction as no damages are sought. It is clear from the face of the complaint that Plaintiff is not asserting a claim under either the RLA or the LMRDA. Regardless, neither statute provides for complete preemption. Defendants' improper removal has delayed resolution of Plaintiff's claims, imposed unnecessary costs on the parties, and has wasted judicial resources. *See id.* An award of attorneys' fees and costs in making this motion is appropriate.

CONCLUSION

For the reasons set forth above, Plaintiff's Motion to Remand should be granted in its entirety and Plaintiff should recover its attorneys' fees.

This the 17th day of November, 2014

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO REMAND with the Clerk of the Court using the CM/ECF system. In the event that notification pursuant to the CM/ECF system cannot be sent to counsel for Defendants, I hereby certify that the foregoing document was duly served upon counsel for Defendants by depositing a copy hereof in a first-class, postage-prepaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, addressed as follows:

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This the 17th day of November, 2014.

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