IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

ALBERT LEWIS, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 4:14-cv-0004
	)	
KANSAS CITY CHIEFS FOOTBALL CLUB, INC.	)	
	)	
	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO REMAND

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Plaintiffs, by and through undersigned counsel, respectfully submit this Memorandum in Support of their Motion to Remand.

INTRODUCTION

In an attempt to expand this Court's jurisdiction beyond those explicitly set by Congress and the Constitution, Defendant Kansas City Chiefs Football Club, Inc. (referred to hereinafter as the "Chiefs" or "Defendant") asserts in its Notice of Removal that Plaintiffs' occupational-disease claims are preempted by section 301 of the Labor Management Relations Act ("LMRA"), thus presenting a federal question removable under 28 U.S.C. § 1441. (*See* Doc. No. 1.) Defendant is wrong. Plaintiffs make no allegations in their Petition that "are substantially dependent on analysis of a collective-bargaining agreement," nor are Plaintiffs claims "founded directly on rights created by collective-bargaining agreements." (*See id.*, p. 5-6.) As evidenced by the Petition, Plaintiffs' occupational-disease claims arise under the Missouri Workers' Compensation Law and Missouri's common and statutory laws provide the relief sought.

In fact, Plaintiffs' claims are based on injuries sustained by them during a period throughout which there was ***no*** collective-bargaining agreement ("CBA") in effect. Plaintiffs contend that throughout the period during which there was no CBA in effect, Defendant's conduct directly caused or directly contributed to cause the Plaintiffs' occupational diseases. Thus, Defendant cannot rely upon the LMRA and 28 U.S.C. § 1441 as establishing federal question jurisdiction. In any event, because Plaintiffs claims arise independent of any CBA, whether in effect or not, § 301 is inapplicable.

Equally fatal is Defendant's brazen avoidance of 28 U.S.C. § 1445(c). Section 1445(c) unambiguously provides that "[a] civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States."

A civil action arising under Missouri's Workers' Compensation Law is non-removable *even if* it presents a federal question. Since Plaintiffs' occupational disease claims unquestionably arise under Missouri's Workers' Compensation Law, this action is non-removable. Since this Court's jurisdiction is expressly limited by section 1445(c), this case should be remanded forthwith and the Defendant be ordered to pay the just costs and expenses, including attorney fees, incurred as a result of its removal. *See* 28 U.S.C. § 1447(c).

BACKGROUND

Plaintiffs are eleven former professional football players that were employed by the Kansas City Chiefs during various times between September 1, 1987 and March 28, 1993. (Pet. ¶¶ 1 – 46.) Like all employers in Missouri, Defendant owed a non-negotiable duty to maintain a safe working environment, a duty not to expose Plaintiffs to unreasonable risks of harm, a duty to warn employees about the existence of dangers and a duty to exercise reasonable care so as not to expose Plaintiffs to an unreasonable risk of injuries. Defendant breached each of these non-negotiable duties through various acts, errors, omissions and misrepresentations which caused or contributed to cause Plaintiffs' occupational-disease injuries. (Id., 51 - 105.)

ARGUMENT

I. Standard on Motion for Remand

Federal courts are courts of limited jurisdiction, possessing only that power authorized by Constitution and statute. *Kokkonen v. Guardian Life Ins. Co. of Am*., 511 U.S. 375, 377 (1994). It is therefore presumed that a cause of action lies outside this Court's limited jurisdiction. *Id*. The burden of establishing jurisdiction, therefore, rests squarely on the party asserting federal jurisdiction. *Cent. Iowa Power Co-op. v. Midwest Indep. Transmission Sys. Operator, Inc*., 561 F.3d 904, 912 (8th Cir. 2009).

Notably, removal based on "federal-question jurisdiction is governed by the 'well-pleaded-complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Id.* (quoting *Caterpillar Inc. v. Williams,* 482 U.S. 386, 392, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987)). Because this well-pleaded complaint rule makes Plaintiffs the master of their claim, Plaintiffs may avoid federal jurisdiction by exclusive reliance on state law. *Id.*

Moreover, try as they might, Defendant is "not permitted to inject a federal question into an otherwise state-law claim and thereby transform the action into one arising under federal law." *Id.* (internal citation omitted). It is, in fact, "firmly established that a federal defense, including a preemption defense, does not provide a basis for removal, even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue in the case." *Id.* (internal quotation omitted).

Finally, any doubt about the propriety of federal jurisdiction must be resolved in favor of remand under 28 U.S.C. § 1447(c). *In re Business Men's Assur. Co. of Am.*, 992 F.2d 181 (8th Cir. 1993).

II. This Case is Not Removable Pursuant to 28 U.S.C. § 1445(c)

Federal law "unambiguously provides that '[a] civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States.' " *Barnhill v. Allied Waste Indus.*, 13-00804-CV-W-JTM, 2013 WL 6070012 (W.D. Mo. Nov. 18, 2013) (quoting 28 U.S.C. § 1445(c)). As a result, when Section 1445(c) is applicable, "a case is nonremovable, even if it presents a federal question or there is diversity." *Humphrey v. Sequentia,* 58 F.3d 1238, 1246 (8th Cir .1995); *Id*. The dispositive question, then, is whether this action arises under the Missouri Workers' Compensation Law.

The question is easily answered by examining Plaintiffs' well-pleaded complaint and the statute itself. The Missouri legislature has decreed that Chapter 287 "shall be known as 'The Worker's Compensation Law.' " Mo.Rev.Stat. § 287.010. Section 287, first enacted in the 1925 version of the Missouri workers' compensation law, has long been recognized as the "Workmen's Compensation Law." *See Barnhill v. Allied Waste Indus.*, 13-00804-CV-W-JTM, 2013 WL 6070012 (W.D. Mo. Nov. 18, 2013) (citing *State ex rel. Brewen–Clark Syrup Co. v. Missouri Workmen's Compensation Commission,* 320 Mo. 893, 8 S.W.2d 897, 900 (Mo.1928) (*en banc*)).

In relevant part, section 287.110(2),[1] entitled "Scope of chapter as to injuries and diseases covered," provides:

> This chapter ***shall apply to all*** injuries received and ***occupational diseases contracted in this state***, regardless of where the contract of employment was made, ***and also to all*** injuries received and ***occupational diseases contracted outside of this state under contract of employment made in this state***, unless the contract of employment in any case shall otherwise provide[.]

R.S.Mo. 287.110(2) (emphases added). Since Plaintiffs allege in the Petition that they contracted occupational diseases in the State of Missouri [*this state*] and while under contract of

[1] Hereinafter, all statutory references, in this section, are to RSMo. 2005.

employment made in the State of Missouri [*this state*], the Workers' Compensation Law very clearly applies to Plaintiffs' action.

Indeed, as the Missouri Courts of Appeals recently observed, employer liability for occupational disease claims ***necessarily*** arises under the Workers' Compensation Law. *Amesquita v. Gilster-Mary Lee Corp*., 408 S.W.3d 293, 301 (Mo. Ct. App. 2013) ("Section 287.110 broadly states that: 'This chapter shall apply to all injuries received *and occupational diseases* contracted in this state....' ") (emphasis in the original); *see also State ex rel. KCP & L Greater Missouri Operations Co. v. Cook*, 353 S.W.3d 14, 28-29 (Mo. Ct. App. 2011)(observing that "repeat-exposure occupational disease claims are covered by and compensable under the Act"). Moreover, while Plaintiffs admittedly seek a judicial ***remedy***, as opposed to an administrative one, section 1445 speaks of "*actions*," not remedies. Thus, removal of Plaintiffs' occupational-disease claims is expressly prohibited. 28 U.S.C. § 1445(c). Plaintiffs therefore respectfully request that the case be summarily remanded in accordance with § 1445(c).

III. Even if this Case were Otherwise Removable, Section 301 of the Labor Management Relations Act is Inapplicable and Cannot be Relied Upon as Grounds for Federal Jurisdiction.

A. Plaintiffs' Claims Arise out of the Breach of Duties Owed to them Independent of any Provisions in any CBA, whether Existing or Not.

In contravention of the "well-pleaded-complaint rule" and 28 U.S.C. § 1445(c), Defendant insists that this case presents a federal question in light of section 301 of the Labor Management Relations Act. Defendant relies on the "complete pre-emption" doctrine. For the reasons set forth below, Defendant's reliance is misplaced.

Section 301 of the LMRA provides:

> Suits for ***violation of contracts*** between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district

> court of the United States having jurisdiction of the parties, without respect of the amount in controversy or without regard to the citizenship of the parties. 29 U.S.C. § 185(a).

Caterpillar Inc., 482 U.S. at 393-94 (emphasis added). Thus, an essential and necessary prerequisite for federal jurisdiction under § 301 of the LMRA is the existence of, and the alleged ***violation of***, a ***contract***. *See* 29 U.S.C. § 185(a). Indeed, it is axiomatic that without the existence of a contract, the breach of which is the basis of the action, there simply cannot be § 301 pre-emption. *Miner v. Local 373*, 513 F.3d 854, 865 (8th Cir. 2008)("Without a valid CBA…Section 301 does not preempt a claim for breach of an individual employment contract because there is no CBA upon which resolution of a state-law claim can depend.").

In this case, Plaintiffs have chosen to sue their former employer for occupational diseases contracted in the State of Missouri and contracted outside of the State of Missouri under contract of employment made in Missouri. Each of Plaintiffs' claims is based exclusively on Missouri law that proscribes conduct and establishes rights and obligations independent of any labor contract.[2] Section 301, therefore, simply does not apply.

Indeed, as the United States Supreme Court has stated, "it would be inconsistent with congressional intent under [§ 301] to pre-empt state rules that proscribe conduct, or establish

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[2] In this action, unlike each of those cited by Defendant, the core question is whether Plaintiffs' employer failed to discharge five specific duties relevant to safety that are imposed on every employer in the State of Missouri:

> (1) to provide a safe workplace; (2) to provide safe equipment in the workplace; (3) to warn employees about the existence of dangers of which the employees could not reasonably be expected to be aware; (4) to provide a sufficient number of competent fellow employees; and (5) to promulgate and enforce rules governing employee conduct for the purpose of enhancing safety.

Hansen v. Ritter, 375 S.W.3d 201, 208-09 (Mo. Ct. App. 2012), reh'g and/or transfer denied (July 31, 2012), transfer denied (Sept. 25, 2012) (internal quotation and citations omitted).

rights and obligations, independent of a labor contract." *Caterpillar Inc.*, 482 U.S. at 395 (quoting *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 212 (1985)). Since § 301 says nothing about the content or validity of state laws that proscribe employer conduct or establish employer obligations independent of a labor contract, § 301 cannot possibly serve as the basis for federal jurisdiction.

Moreover, even assuming, *arguendo*, that Plaintiffs' claims *were* based on substantial rights provided them under a collective bargaining agreement, it remains that where claims are based on events occurring ***after*** a CBA has expired, or ***prior to*** the commencement of a CBA, as in this case, § 301 cannot provide the basis for jurisdiction. *See e.g. Office & Professional Employees Ins. Trust Fund v. Laborers Funds Administrative Office, Inc.*, 783 F.2d 919, 912 (9th Cir. 1986); *Lumber Prod. Indus. Workers v. W. coast Indus. Rel.*, 775 F.2d 1042, 1046 (9th Cir. 1985); *Maynard v. Mare-Bear, Inc.* 712 F.Supp. 795, 798-99 (D. Nev. 1989) *See also Derrico v. Sheehan Emergency Hosp.*, 844 F.2d 22, 25 (2d Cir. 1988) ("[A]fter expiration of the CBA there is no contract subject to section 301 and there can be…no [ ] preemption under section 301.").

By Defendant's own admission, the contract between the NFL Management Council (notably, ***not the Defendant***) and the NFL Players Association expired on August 31, 1987. A new CBA was not signed until 5 and ½ years later on March 29, 1993. (Doc. No. 1, ¶¶ 6 – 7). Since there was ***no*** CBA in effect during the period of Plaintiffs' alleged injuries, § 301 of the LMRA cannot provide the basis for federal jurisdiction. (*See* Pet. ¶ 45).

Conceding that Plaintiffs' claims are not preempted by a CBA in effect during the period for which Plaintiffs seek redress, Defendant relies instead on agreements ***not in effect*** during the period for which Plaintiffs seek redress. (Doc. No. 1, ¶¶ 6, 13, 15, 17). Both agreements are wholly irrelevant. Nevertheless, in its attempt to justify removal, Defendant contends that

Plaintiffs' tort claims are pre-empted by § 301 because Plaintiffs' claims "hinge on provisions of the [expired or as-yet-created] CBAs relating to player medical care and rule making" or that "the Chiefs' duty to Plaintiffs is created and informed by the CBAs." (*Id.*, ¶ 13.) Defendant's contention – that there is § 301 pre-emption absent an *existing* contract – is neither supported by law nor congressional intent. Indeed, none of the cases relied upon by Defendant support its radical view, nor should this venerable Court.

As fatal, in its effort to establish pre-emption, Defendant cites only vague and indefinite obligations purportedly included in CBAs ***not in effect*** during the period for which Plaintiffs seek redress. (Doc. No. 1, ¶¶ 6, 13) Defendant states, for example, that "[t]he [expired] CBAs include, among other terms, provisions relating to player medical care and safety…" (*Id.*, ¶ 6.) Defendant's reliance on inapplicable and ambiguous obligations is untenable and inconsistent with congressional intent and Supreme Court precedent. *See Arceneaux v. Amstar Corp.*, 2004 WL 574718 (E.D. La. Mar. 22, 2004) (unpublished) ("To hold otherwise would provide employers and labor unions the opportunity to place broad terms such as 'health and safety' in a CBA in order to skirt liability under state law. This is not the purpose of Section 301 preemption.").

B. Defendant's Reliance on *Duerson* and other Prior Cases is Misplaced.

In a final attempt to justify removal, Defendant asserts that it is "implausible" for Plaintiffs to prove their case without reference to periods during which a CBA was in effect. (Doc. No. 1, ¶ 18.) At the outset, the Chiefs seem to misapprehend Plaintiffs' claims. Plaintiffs assert claims for occupational disease arising under Missouri's Workers' Compensation Law. Though Plaintiffs are seeking redress for injuries sustained during the period for which there was

no effective CBA, Plaintiffs claims arise wholly independent of a CBA, whether one was in effect or not.

Moreover, Defendant's assertion that Plaintiffs cannot prove their claims without reference to injuries sustained in periods during which a CBA was in effect cannot be used as the basis to *establish* federal jurisdiction. *See Caterpillar Inc.*, 482 U.S. at 399 (holding that "the presence of a federal question, even a § 301 question, in a defensive argument does not overcome the paramount policies embodied in the well-pleaded complaint rule-that the plaintiff is the master of the complaint, that a federal question must appear on the face of the complaint, and that the plaintiff may, by eschewing claims based on federal law, choose to have the cause heard in state court"). "[A] defendant cannot, merely by injecting a federal question into an action that asserts what is plainly a state-law claim, transform the action into one arising under federal law, thereby selecting the forum in which the claim shall be litigated." *Id. See also, Williams v. National Football League*, 582 F.3d 863, 879 (8th Cir. 2009) ("[T]he NFL's defenses to liability under the CBA are not relevant to our section 301 analysis."). *See also Bogan v. Gen. Motors Corp.*, 500 F.3d 828, 833 (8th Cir. 2007) (holding that employer's defenses to liability are irrelevant with respect to pre-emption). However, even assuming, *arguendo*, that Defendant could establish federal jurisdiction by way of asserting it as a defense, Defendant is nevertheless incorrect in its insistence that the Court or jury will necessarily have to refer to CBAs in effect from 1978 to 1987 and after 1993.

In support of its position that Plaintiffs may not defeat federal jurisdiction be limiting their claims to the period during which there was no CBA, Defendant relies almost exclusively on the unpublished decision, *Duerson v. Nat'l Football League*, No. 13 C 2513, 2012 WL 1658353 (N.D. Ill. May 11, 2012). Significantly, *Duerson* was a wrongful death case asserted

against the NFL and a helmet manufacturer, ***neither of which was decedent's employer.*** Since Plaintiffs in the case *sub judice* are suing their former employer, the *Duerson* opinion is wholly irrelevant. Indeed, whereas in *Duerson* and in other cases against non-employer defendants (including *Maxwell, Pear, Barnes* and *Stringer*), the resolution of plaintiffs' claims necessarily involve an analysis of the duties, obligations, and standards of care imposed on the parties by the contractual provisions of a CBA, this case requires only the interpretation and construction of Missouri law. *See Lingle v. Norge Div. of Magic Chef, Inc*., 486 U.S. 399, 407, fn. 7 (1988) ("most state laws that are not pre-empted by § 301 will grant nonnegotiable rights that are shared by all state workers").

Just as every other employer in the State of Missouri, the Kansas City Chiefs owed Plaintiffs each of the following non-delegable and nonnegotiable duties:

> (1) to provide a safe workplace; (2) to provide safe equipment in the workplace; (3) to warn employees about the existence of dangers of which the employees could not reasonably be expected to be aware; (4) to provide a sufficient number of competent fellow employees; and (5) to promulgate and enforce rules governing employee conduct for the purpose of enhancing safety.

Hansen v. Ritter, 375 S.W.3d 201, 208-09 (Mo. Ct. App. 2012), reh'g and/or transfer denied (July 31, 2012), transfer denied (Sept. 25, 2012) (internal quotation and citations omitted). Thus, quite unlike the claims against helmet manufacturers (e.g., Riddell) and trade associations (e.g., the NFL) in *Duerson* and other cases, there is no need in this case for the interpretation of a CBA to determine the existence of and the scope of duties owed by Defendant. In fact, it would be "inconsistent with congressional intent that § 301 be used to preempt state rules that proscribe conduct, or establish rights and obligations of employers and employees independent of a labor contract." *Allis*-Chalmers, 471 U.S. at 212-13. *See also Livadas v. Bradshaw*, 512 U.S. 107, 123 (1994) (cautioning that section 301 "cannot be read broadly to pre-empt nonnegotiable rights

conferred on individual employees as a matter of state law"). Accordingly, *Duerson* cannot be relied upon as establishing that § 301 necessarily applies. In fact, it clearly does not.[3, 4]

Similarly, whether the Chiefs failed to perform the duties imposed upon it by Missouri law will involve "purely factual questions pertaining to the conduct of the employee and the conduct and motivation of the employer." *Lingle* 486 U.S. at 407. Thus, neither the Court nor jury will be required to interpret ***any*** CBA, whether in effect or not, in order to resolve Plaintiffs' claims.

Finally, in proving that Plaintiffs' injuries were the result of Defendant's wrongful conduct, Plaintiffs must show the Defendant's negligent conduct more probably than not was a cause or a contributing cause to the injury. *Wagner v. Bondex Intern., Inc.*, 368 S.W.3d 340 (Mo.App. W.D. 2012) *quoting Sill v. Burlington N. R.R.,* 87 S.W.3d 386, 394 (Mo.App. S.D.2002) (internal quotes and citations omitted.). *See also* Mo. Approved Jury Instr. (Civil) 19.01 (7th ed). Thus, Plaintiffs need not show that injuries sustained during the period for which relief is sought are the exclusive cause, nor must Plaintiffs identify particular concussive injuries attributable to the Chiefs. *Id.* Indeed "[t]he question of whether an injury in fact was caused by

[3] In addition, in *Duerson*, the Complaint did limit the period for which redress was sought to the timeframe during which no CBA was in effect. More importantly, the proposition upon which the Duerson court relied—that it is "exceedingly implausible to contend that the CTE was caused only by trauma suffered from 1987 through early1993"—is contrary to both medical science and Missouri law, as discussed below.

[4] Defendant also cannot rely upon *Williams v. National Football League*, 582 F.3d 863 (8th Cir. 2009), for the proposition that the existence and scope of a legal duty cannot be determined without examining a CBA. As stated above, unlike in *Williams,* there was no CBA in effect during the period for which Plaintiffs seek redress. Moreover, and perhaps more significant, neither *Williams* nor *Duerson* are on point. Here, the Plaintiffs' legal relationship with the Defendant is that of employer-employee. Thus, the duties owed by the Chiefs and the relevant scope of those duties arise from the common and statutory law of Missouri and not from a CBA.

negligence is for the jury," and thus, not an issue upon which this court need opine. *Id.* (internal quotation omitted). Insofar as *Duerson* holds otherwise, it is not applicable in Missouri.[5]

C. Defendant May Not Establish Federal Jurisdiction on the Basis of Facts not Alleged in the Petition.

Though Defendant may have preferred that Plaintiffs pled a different set of facts, Defendant cannot justify removal on the basis of facts not alleged in the Petition. As the Supreme Court in *Caterpillar Inc.*, 482 U.S. 386, aptly stated:

> [Defendant]'s basic error is its failure to recognize that a plaintiff covered by a collective-bargaining agreement is permitted to assert legal rights *independent* of that agreement, including state-law contract rights, so long as the contract relied upon is *not* a collective-bargaining agreement. [Defendant] impermissibly attempts to create the prerequisites to removal by ignoring the set of facts (i.e., the individual employment contracts) presented by respondents, along with their legal characterization of those facts, and arguing that there are different facts respondents might have alleged that would have constituted a federal claim. In sum, Caterpillar…attempts to justify removal on the basis of facts not alleged in the complaint. The "artful pleading" doctrine cannot be invoked in such circumstance.

Id., at 396-97.

Try as it might to establish federal jurisdiction, Defendant simply cannot "overcome the paramount policies embodied in the well-pleaded complaint rule-that the plaintiff is the master of the complaint, that a federal question must appear on the face of the complaint, and that the plaintiff may, by eschewing claims based on federal law, choose to have the cause heard in state court." *Caterpillar*, 482 U.S. at 398-99. Moreover, the 8th Circuit has adopted a narrow approach for analyzing complete pre-emption. *Meyer v. Schnucks Markets, Inc*., 163 F.3d 1048, 1051 (8th

[5] Although it's unclear which law Judge Holderman applied in the *Duerson* decision, it's clear that he was not interpreting Missouri law. Presumably, he applied Illinois law which does not have the same standard jury instruction for causation: "When I use the expression 'proximate cause,' I mean a cause that, in the natural or ordinary course of events, produced the plaintiff's injury. [It need not be the only cause, nor the last or nearest cause. It is sufficient if it combines with another cause resulting in the injury.]" Ill. Pattern Jury Instr. – Civ. 15.01

Cir. 1998) ("We think that the narrower approach to LMRA preemption…is more faithful to the Supreme Court's holding in *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 399 [ ] (1987)."). According to *Meyer*, unless Defendant can prove (which they have not) that Plaintiffs' claims "require the interpretation of *some specific provision of a CBA*," then there is no pre-emption. *Id.*, at 1051 (emphasis added). Furthermore, mere reference or consultation of a CBA provision during the course of state litigation, should it occur, does not trigger pre-emption. *Cochran v. Union Pacific R. Co.*, 2010 WL 3398841 (W.D. Mo. Aug. 23, 2010) (Chief Judge Gaitan) (rejecting defendant's complete preemption argument and granting plaintiff's motion to remand).

Accordingly, Plaintiffs' state-law claims for occupational disease must be remanded.[6, 7]

CONCLUSION

For the reasons provided herein, Plaintiffs respectfully request that the Court enter an order remanding the case and requiring that Defendant pay just costs and actual expenses, including attorney fees, in accordance with 28 U.S.C. § 1447(c).

Respectfully submitted, this 21st day of January, 2014.

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[6] Plaintiffs' spouses' claims for loss of consortium are derivative of Plaintiffs' claims and thus rise or fall based on Plaintiffs' underlying claims. *See Fox v. Parker Hannifin Corp*., 914 F.2d 795, 802-03 (6th Cir. 1990) (since husband's intentional infliction of emotional distress claim was not preempted, wife's loss of consortium claim did not require independent section 301 preemption analysis). *See also Johnson v. Annheuser Busch, Inc.*, 876 F.2d 620, 625 (8th Cir. 1989).

[7] Defendant says nothing its Notice of Removal with regards to Plaintiffs' negligent misrepresentation and fraudulent concealment claims. (Doc. No. 1.) Presumably, Defendant concedes that neither the negligent misrepresentation nor fraudulent concealment claim substantially depend upon or are inextricably intertwined with any specific provisions of any CBA, whether in effect or not.

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I hereby certify that on the 21st day of January, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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