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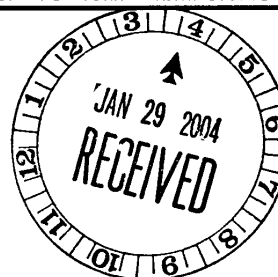
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January 29, 2004

Via Messenger

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
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Public Record



RE: STB Finance Docket No. 34354, *Emergency Petition of Maumee & Western Railroad Corporation and RMW Ventures, LLC for Declaratory Order – Condemnation of Main Line Tracks by the City of Napoleon, Ohio*

Dear Secretary Williams:

Pursuant to 49 C.F.R. § 1117.1, the City of Napoleon (“Napoleon”) hereby respectfully petitions the Surface Transportation Board to accept the attached “Memorandum Opinion and Order” of the United States District Court for the Northern District of Ohio (Western Division), City of Napoleon, Ohio v. Maumee & Western Railroad, LLC, Case No. 3:03 CV 7265 (January 28, 2004), as supplemental authority in the above-captioned proceeding, in support of Napoleon’s previously filed “Opposition to Emergency Petition for Declaratory Order” and “Opposition to Motion for Procedural Order.” The District Court’s related “Judgment Entry” (also attached) remands Napoleon’s state law condemnation lawsuit against Maumee and Western Railroad, LLC, Maumee and Western Railroad, Inc., and RMW Ventures, LLC (collectively “M&W”) to the Court of Common Pleas of Henry County, OH. The District Court’s ruling supports the position that Napoleon has advocated in this proceeding before the Board, that the Court of Common Pleas is the appropriate forum to resolve the issues raised in Napoleon’s condemnation lawsuit.

The original and ten (10) copies of this petition are enclosed. An extra copy is also enclosed for stamping and return to our offices.

Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Sincerely,

Jeffrey O. Moreno
Michael H. Higgins

Attorneys for The City of Napoleon

Cc: Richard R. Wilson, Esq., counsel for M&W

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DOWD, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

City of Napoleon, Ohio,	)	
	)	CASE NO. 3:03 CV 7265
Plaintiff(s),	)	
	)	
v.	)	<u>MEMORANDUM OPINION</u>
	)	<u>AND ORDER</u>
Maumee & Western Railroad, LLC, et al.,	)	
	)	
Defendant(s).	)	
	)	

The above-captioned case was reassigned to the docket of the undersigned on January 6, 2004. See Doc. No. 16. At the time, there were two pending motions: (1) plaintiff's motion to remand (Doc. No. 10); and (2) defendants' motion for leave to file an amended notice of removal (Doc. No. 13). Both motions are at issue and ripe for determination. For the reasons set forth below, Doc. No. 13 is denied and Doc. No. 10 is granted.

I. BACKGROUND

On May 16, 2003, the City of Napoleon, Ohio filed a Petition for Appropriation in the Henry County Court of Common Pleas¹ seeking "to appropriate a fee simple interest and/or right-of-way

¹ Common Pleas Court Case No. 03CV087.

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interest in the real property described” in exhibits attached to the petition.² There were three named defendants identified as “[t]he owners, and others having, claiming, or appearing to have an interest in the [subject] property,” including, Maumee and Western Railroad, LLC (listed with an Indiana address); Maumee and Western Railroad, Incorporation (listed with an Ohio address); and RMW Ventures, LLC (also listed with an Indiana address).

On June 2, 2003, the defendants filed a Notice of Removal wherein they alleged: (1) that Maumee & Western Railroad Corp. is an Indiana corporation licensed to do business in Ohio and engaging in business in Ohio as a common carrier railroad; and (2) that RMW Ventures, LLC is an Indiana Limited Liability Company that acquired the rail line and associated real estate, improvements, and appurtenances, and leases the rail line to Maumee & Western Railroad Corporation, retaining a residual common carrier rail service obligation for the line. (Doc. No. 1, ¶¶ 2-3). Defendants asserted

² On September 16, 2002, the City Council had passed Resolution No. 121-02, a resolution of intent to appropriate certain real estate, and declared the Resolution to be “an emergency measure necessary for the immediate preservation of the public peace, health or safety of the City and its inhabitants, and for the further reason that this legislation must be in effect at the earliest possible time to allow for the eminent domain action to proceed expeditiously . . .” Then, on October 7, 2002, Council passed Ordinance No. 126-02 authorizing the appropriation of a “right-of-way . . . by way of an easement . . . for the public purposes as follows: (a) to open and/or extend streets; (b) to allow for construction and maintaining of sewers and drains; (c) to allow for the placement and maintenance of public utilities, including natural and/or artificial gas lines, electric lines and lighting and for supplying the product thereof; (d) to allow for the protection of public buildings and their environs and the usefulness of public grounds occupied by public buildings; (e) to allow for the providing of a water supply for the City and its inhabitants by the construction and/or maintaining of water pipes, and for the protection thereof; and, (f) to the extent permitted by law, to promote economic development and/or to allow for the placement and maintenance of other public utilities not specifically named in (c) above, pursuant to the Charter of the City of Napoleon, Ohio, the Ohio Revised Code and the Ohio Constitution.” See also, n.6, infra.

Apparently, the appropriation petition was filed only after failure of efforts to get the owners of the premises to agree to the appropriation and to an amount of compensation for the appropriation. See Ohio Rev.Code § 163.04.

It was also filed after an Emergency Petition for Declaratory Order was filed before the Surface Transportation Board (“STB”), Docket No. FD34354, a matter which remains pending before the STB. The STB is the statutorily-created successor to the Interstate Commerce Commission (“ICC”).

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removal jurisdiction under 28 U.S.C. § 1441 and subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1337,³ arguing that the “Petition for Appropriation presents a federal question which requires application of federal law to enforce exclusive federal jurisdiction over railroad rights-of-way.” (Doc. No. 1, ¶5). They claim that the relevant federal law, the ICC Termination Act of 1995 (ICCTA),⁴ “expressly preempts” the City’s use of eminent domain procedures under Ohio Rev. Code §§ 719.01, 163.01 to 163.22 to appropriate an easement over rail lines. (Doc. No. 1, ¶¶ 6, 8B). In the alternative, they argue that the ICCTA “completely preempts” any State law eminent domain claim. (Doc. No. 1, ¶ 8C).

In their motion for leave to file an amended notice of removal, the defendants assert for the first time an alternative basis for subject matter jurisdiction, namely, diversity of citizenship under 28 U.S.C. § 1332.⁵

³ Section 1331 provides that “[t]he district courts shall have original jurisdiction of all civil actions *arising under* the Constitution, laws, or treaties of the United States.” (emphasis added). Section 1337 provides, in relevant part, that “[t]he district courts shall have original jurisdiction of any civil action or proceeding *arising under* any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies[.]”

⁴ Pub. L. No. 104-88, 109 Stat. 803 (1995).

⁵ Section 1332 provides in relevant part:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between--

(1) citizens of different States; . . .

(c) For the purposes of this section and section 1441 of this title --

(1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business[.]

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The plaintiff has filed a motion to remand (Doc. No. 10)⁶ on the ground that, under the well-pleaded complaint rule, this Court lacks subject matter jurisdiction.

II. DISCUSSION

A. The Proper Context of This Discussion

Before embarking on a discussion of the merits of the parties' respective positions, the Court wants to make very clear the necessity of "keeping one's eye on the ball." The question presently before this Court is whether this lawsuit, which clearly sets forth only a State law eminent domain claim, was properly *removed* from State to federal court because it is founded on a claim or right arising under federal law. 28 U.S.C. § 1441(b).

This "arising under" analysis raises questions of preemption which make the Court's analytical task a delicate one. A preemption dispute raises jurisdictional issues which, of course, must be determined before this Court can even proceed with the case. But, in order to decide whether claims are preempted, the Court must delve to some extent into substantive law. Since, as discussed herein, *ordinary* preemption in the form of a defense does not supply a basis for *removal*, the difficulty is in deciding how deeply to delve into the preemption dispute as part of the jurisdictional analysis on a motion to remand. See Mary P. Twitchell, Characterizing Federal Claims: Preemption, Removal, and

⁶ In this motion, the City describes more simply than in Ord. No. 126-02 what its intended purpose is: "The purpose of the easement is to construct a public road across the [rail] line that will connect Napoleon to an industrial park that is under development. The public road will establish a second access route to the park, necessary for both efficient service and sufficient police and fire protection. In addition to building the road, Napoleon plans to use the easement to maintain and extend public utilities." (Doc. No. 10, Memorandum in Support, at 2).

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the Arising-Under Jurisdiction of the Federal Courts, 54 Geo.Wash.L.Rev. 812 (1986). Obviously, once this Court decides it has no subject matter jurisdiction, it loses all authority to decide any substantive issue. Therefore, the underlying substantive question of whether there is indeed a viable federal defense of ordinary preemption is *not* the question at this point in the proceedings. Here, the focus is solely on whether something in federal law converts what would otherwise be a State claim into a claim “arising under” federal law – which permits removal.⁷

B. Removal Jurisdiction

“[A]ny civil action brought in a State court of which the district courts of the United States have *original jurisdiction*, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a) (emphasis added). Federal courts have original jurisdiction either because an action is one “arising under the Constitution, laws, or treaties of the United States,” 28 U.S.C. § 1331 (federal question jurisdiction), or because “the matter in controversy exceeds the sum or value of \$75,000 . . . and is between – (1) citizens of different States[.]” 28 U.S.C. § 1332(a) (diversity jurisdiction).

As a threshold matter, the Court denies the defendants’ motion for leave to amend the notice of removal to assert diversity jurisdiction (Doc. No. 13) because such amendment would be to no avail.

⁷ Defendants have exhibited this tendency to lose sight of the focus. Many of the cases which they cite have no bearing on the question of whether this Court has original (i.e., removal) jurisdiction. Rather, they go directly to the question of whether there is a defense of preemption, a matter which should only be decided by a court that actually has jurisdiction.

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All of the defendants, as corporations, are citizens of both their State of incorporation and the State where they have their principal place(s) of business. See 28 U.S.C. § 1332(c)(1). Clearly these defendants have a principal place of business in Ohio and, therefore, there is no complete diversity of citizenship.⁸

Aside from diversity, the only other basis for removal would be if the plaintiff's State court petition was, in actuality, "founded on a claim or right arising under the Constitution, treaties or laws of the United States[.]" 28 U.S.C. § 1441(b). Clearly, the Petition for Appropriation filed by the City contains, on its face, only a State law eminent domain claim. Ordinarily, the plaintiff is the master of the complaint and, under the "well-pleaded complaint rule," can avoid federal jurisdiction by pleading only State claims. Caterpillar, Inc. v. Williams, 482 U.S. 386, 398-99 (1987); Louisville & Nashville R.R. v. Motley, 211 U.S. 149, 152-54 (1908) (federal issue must be part of plaintiff's initial pleading).

The Supreme Court has, however, identified exceptions to the well-pleaded complaint rule. "[A] state claim may be removed to federal court in only two circumstances -- when Congress expressly so provides, . . . or when a federal statute wholly displaces the state-law cause of action through complete pre-emption." Beneficial Nat. Bank v. Anderson, -- U.S. --, 123 S.Ct. 2058, 2063 (2003) (footnote omitted).

In their Notice of Removal, the defendants argue that both exceptions exist in this case. They cite 49 U.S.C. § 10501(b)(2) as supplying authority for their argument that the eminent domain

⁸ In addition, there is nothing in the record to show the \$75,000 amount required for diversity jurisdiction.

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proceeding is both *expressly* preempted and/or *completely* preempted. The Court will examine each exception individually.

1. Removal Based on Express Provision in a Statute

Title 49, Section 10501(b) is found in Subtitle IV of the ICCTA,⁹ a subtitle dealing with Interstate Transportation. It is specifically located in Chapter 105 of Part A (a part which deals with rail transportation).¹⁰ The section provides:

(b) The jurisdiction of the [Surface Transportation] Board over –

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

⁹ The subtitles of the ICCTA include: I. Department of Transportation; II. Other Government Agencies; III. General and Intermodal Programs; IV. Interstate Transportation; V. Rail Programs; VI. Motor Vehicle and Driver Programs; VII. Aviation Programs; VIII. Pipelines; IX. Commercial Space Transportation; and X. Miscellaneous.

¹⁰ Part B deals with “Motor Carriers, Water Carriers, Brokers, and Freight Forwarders” and Part C addresses “Pipeline Carriers.” Each of the three parts has a chapter dealing with “Jurisdiction.” In Part A, the part applicable to the instant case, Jurisdiction is found in Chapter 105.

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Defendants argue that this section *expressly* authorizes removal to federal court. The weakness in this position is best illustrated by examining the Price-Anderson Act pointed to by the Supreme Court in Beneficial Nat. Bank as an example of a statute which expressly provides for removal of tort actions arising out of nuclear accidents, even when such actions are brought in state court and assert only State law claims. The Price-Anderson Act provides that a “public liability action,” as defined by the statute, “shall be deemed to be an action arising under section 2210 of this title[.]” 42 U.S.C. § 2014(hh). Section 2210, in turn, provides that “the United States district court in the district where the nuclear incident takes places, . . . shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy[.]” 42 U.S.C. § 2210(n)(2), and “any such action pending in any State court . . . shall be removed or transferred to the United States district court having venue under this subsection.” Id.

The language of the 49 U.S.C. § 10501(b)(2) bears not even a remote resemblance to the clear language in the Price-Anderson Act. It certainly makes no mention that actions involving railroads can be *removed* from state court to federal court. Section 10501 deals only with the jurisdiction of the STB.

The defendant has pointed to no other section of the ICCTA as expressly providing for removal and the Court’s independent examination of the statute leads to the conclusion that the ICCTA does not *expressly* provide for removal of an eminent domain action to federal court.

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2. Removal Based on Complete Preemption of State Law Claim

The only other way that the defendants can escape the well-pleaded complaint rule is if the ICCTA was intended by Congress to wholly displace state law eminent domain actions -- that is, by application of the principle known as “complete preemption.”¹¹ The Supreme Court has had this to say about complete preemption:

When the federal statute completely pre-empts the state-law cause of action, a claim which comes within the scope of that cause of action, even if pleaded in terms of state law, is in reality based on federal law. This claim is then removable under 28 U.S.C. § 1441(b), which authorizes any claim that “arises under” federal law to be removed to federal court.

Beneficial Nat. Bank, 123 S.Ct. at 2063. The Supreme Court made clear, however, that it had, to date, identified only two categories of cases where it had found complete preemption, namely, certain causes of action under the Labor Management Relations Act (“LMRA”) and certain causes of action under the Employee Retirement Income Security Act (“ERISA”).¹² The Court noted that these statutes not only “provided the exclusive cause of action for the claim asserted [but] also set forth procedures and remedies governing that cause of action.” Beneficial Nat. Bank, 123 S.Ct. at 2063 (citing 29

¹¹ It is unfortunate that this concept is named “complete preemption” because it is too easily confused with the concept of “ordinary preemption.” “Complete” preemption is really a concept of *transfer* of jurisdiction. As explained herein, a defense of “ordinary” federal preemption can be decided by a State court and, although resulting in displacement (or obliteration) of a State cause of action, it does not automatically create a federal cause of action over which the district court would have original jurisdiction.

¹² The Court also noted that it has held that federal courts have subject matter jurisdiction over “possessory land claims under state law brought by Indian tribes[.]” 123 S.Ct. at 2063, n.4 (citing Oneida Indian Nation of N.Y. v. County of Oneida, 414 U.S. 661, 667 (1974)). However, this is “because of the uniquely federal ‘nature and source of the possessory rights of Indian tribes.’ ” Id. The Court expressly noted that Oneida “does not assist the present analysis.” Id.

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U.S.C. § 1132, setting forth procedures and remedies for civil claims to enforce ERISA rights, and 29 U.S.C. § 185, describing procedures and remedies for suits under the LMRA).¹³ The Beneficial Nat. Bank Court then established the National Bank Act as a third category of cases where complete preemption would permit removal.

A distinction must be drawn between “complete” preemption (which establishes a basis for removal) and “ordinary” preemption (which does not guarantee removal). One commentator describes it as follows:

[C]omplete preemption does not just represent a difference in the scope of the preemption of a state cause of action by federal law; rather it is a difference in kind. In complete preemption a federal court finds that Congress desired to control the adjudication of the federal cause of action to such an extent that it did not just provide a federal defense to the application of state law; rather, it replaced the state law with federal law and made it clear that the defendant has the ability to seek adjudication of the federal claim in a federal forum.

Wright, Miller & Cooper, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION 3D § 3722.1 (2003).

The Sixth Circuit has also recently discussed the distinction between the concept of removal jurisdiction and the concept of preemption. In Warner v. Ford Motor Co., 46 F.3d 531 (6th Cir.

¹³ For example, if a plaintiff brings an action in state court alleging breach of contract for failure to pay benefits under an ERISA plan, that action is “completely preempted” and may be removed to the federal district court under the authority of 29 U.S.C. § 1132(f), which provides that “[t]he district courts . . . shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties” over actions to recover ERISA benefits. Even so, ERISA does not *require* removal, since it also expressly provides that both state courts of competent jurisdiction and federal courts “shall have concurrent jurisdiction” over actions brought under § 1132(a)(1)(B). What ERISA does require is that whichever court resolves the action, state or federal, it must “regard[] [the action] as arising under the laws of the United States in similar fashion to those brought under section 301 of the Labor-Management Relations Act of 1947.” Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 66 (1987) (quoting H.R.Conf.Rep No. 93-1280, p. 327).

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1995) (en banc), overruling Van Camp v. AT&T Information Systems, 963 F.2d 119 (6th Cir.), cert denied, 506 U.S. 934 (1992), the court explained:

Removal and preemption are two distinct concepts. "The fact that a defendant might ultimately prove that a plaintiff's claims are pre-empted" -- for example under ERISA -- "does not establish that they are removable to federal court." Caterpillar, 482 U.S. at 398, 107 S.Ct. at 2432. The federal preemption defense in such nonremovable cases would be decided in state court and would be subject to review on certiorari in the U.S. Supreme Court. Removal jurisdiction based on original federal jurisdiction under § 1441 is therefore not as broad as federal appellate jurisdiction which extends to federal defenses. See Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304, 4 L.Ed. 97 (1816); Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 738, 6 L.Ed. 204 (1824).

Warner, 46 F.3d at 535. The Sixth Circuit criticized (and overruled) the case of Van Camp v. AT&T Information Systems, 963 F.2d 119 (6th Cir. 1992), upon which the Warner district court had relied, because it had "allowed removal in a [29 U.S.C.] § 1144(a) preemption case not covered by [29 U.S.C.] § 1132(a)(1)(B) and then dismissed plaintiff's discrimination claim." In Van Camp, a former employee of AT&T filed state law claims of age and sex discrimination in state court claiming that, due to the discrimination, he was forced to retire and, as a result, lost certain benefits. AT&T removed the action to federal court on the ground that the claims "relate[d] to" a pension plan covered by ERISA. The district court denied plaintiff's motion to remand and then dismissed the action. The Warner court stated:

The Court in Van Camp did not keep complete preemption removal and ordinary preemption doctrine separate and distinct. It mistakenly allowed removal in a case not covered by § 1132(a)(1)(B) and only arguably covered by § 1144(a). It said erroneously that plaintiff's state cause of action arises under federal law for purposes of removal but then dismissed it because federal law grants no superseding or related cause of action. Van Camp failed to distinguish for removal purposes between a

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section of a federal statute, § 1132(a)(1)(B), designed to occupy the regulatory field with respect to a particular subject and to create a superseding cause of action (namely, an action to enforce ERISA contracts by beneficiaries) and a statutory section creating ordinary preemption where conflicting state laws are arguably “superseded” without creating the right of removal, as is the case with § 1144(a). Thus the Van Camp case must be overruled. Our decision here is in accord with the results reached in a similar case by the Second Circuit. Lupo v. Human Affairs Int’l, Inc., 28 F.3d 269 (2d Cir.1994) (even if state law claim preempted by ERISA, removal not authorized).

Warner, 46 F.3d at 535. Here, the defendants have made the same mistake as that of the Van Camp court by attempting to remove a claim solely on the basis of a federal defense of preemption.

This Court finds no authority for defendants’ proposition that the ICCTA *completely* preempts an eminent domain proceeding, which is “traditionally associated with sovereignty[.]” Jackson v. Metropolitan Edison Co., 419 U.S. 345, 353 (1974). First, such a proceeding does not come within any one of the three complete-preemption categories already identified by the Supreme Court. Second, the ICCTA does not contain any comprehensive language that might suggest Congress’s intent that the law “occupy the entire field” of actions involving railroads. Certainly the single statutory reference made by the defendants (i.e., 49 U.S.C. § 10501(b)) does not establish a parallel and supervening federal cause of action akin to eminent domain that would render the City’s claim federal in character. Third, having examined the legislative history of the ICCTA, this Court found nothing to suggest complete preemption of eminent domain proceedings was intended by Congress. In fact, the Conference Report states that Section 10501 is intended to preempt only “State economic regulation of railroads.” H.R. Conf. Rep. 104-422, 1995 U.S.C.C.A.N. 850, 852. Although federal remedies with respect to the regulation of rail transportation are exclusive, the Conference Report states that the

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“exclusivity is limited to remedies with respect to rail regulation--not State and Federal law generally.”

Id. The statute does not displace laws that “do not generally collide with the scheme of economic regulation (and deregulation) of rail transportation.” Id. It is apparent that Congress did not intend to *completely* preempt any and all causes of action relating to railroads for purposes of removal jurisdiction.

There is nothing that this Court has found in the ICCTA (and defendants have pointed to nothing) which would suggest that Ohio’s eminent domain law has been replaced, i.e., completely preempted, by the ICCTA. Therefore, the doctrine of complete preemption does not supply a basis for removal.

III. CONCLUSION and ORDER

This Court concludes that the ICCTA neither *expressly provides for removal* nor *completely preempts* the State court proceeding for the purpose of establishing a right of removal under § 1441(b).

Having so stated, this Court further makes clear that it has no opinion as to whether the Petition for Appropriation is subject to the doctrine of *ordinary* preemption in the form of a federal defense which asserts that the Surface Transportation Board is the only appropriate body to decide the right-of-

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way questions raised by the eminent domain proceedings. These are matters for the State court to decide on remand.¹⁴

Accordingly, by separate judgment entry, this matter will be remanded to the Court of Common Pleas of Henry County, Ohio.

Further, pursuant to 28 U.S.C. § 1447(c), the Court will narrowly retain jurisdiction solely to determine what, if any, fees and costs should be awarded the plaintiff. To that end, the plaintiff shall have until February 25, 2004 to file a motion for fees and costs. Thereafter, defendants shall have until March 24, 2004 to file their responses. The Court will then take the matter under advisement.

IT IS SO ORDERED.

January 28, 2004

Date

/s/ David D. Dowd, Jr.

David D. Dowd, Jr.
U.S. District Judge

¹⁴ The Court takes judicial notice of two petitions for declaratory orders that are presently pending before the Surface Transportation Board. These public records are available on the STB's website. See <http://www.stb.dot.gov/filings> (Docket No. FD_34354_0). Perusal of these filings reveals that the petitions deal with very the same subject matter as this lawsuit.

DOWD, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

City of Napoleon, Ohio,	)	
	)	CASE NO. 3:03 CV 7265
Plaintiff(s),	)	
	)	
v.	)	<u>JUDGMENT ENTRY</u>
	)	
Maumee & Western Railroad, LLC, et al.,	)	
	)	
Defendant(s).	)	
	)	

For the reasons set forth in the Memorandum Opinion and Order filed contemporaneously with this Judgment Entry, IT IS HEREBY ORDERED, ADJUDGED and DECREED that the above-captioned case is REMANDED to the Court of Common Pleas of Henry County, Ohio.

The Court will retain jurisdiction, pursuant to 28 U.S.C. § 1447(c), over the sole issue of whether to award plaintiff fees and costs; however, this does not require that the case remain open. Accordingly, case closed.

January 28, 2004
Date

/s/ David D. Dowd, Jr.
David D. Dowd, Jr.
U.S. District Judge