

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

PATRICK CUNNINGHAM,

Plaintiff,

v.

Case No. 3:09cv568/LAC

KCS INTERNATIONAL, INC., and
THE SHIPS CHANDLER MARINE
SALES OF DESTIN, INC.,

Defendants.

ORDER REMANDING CASE TO STATE COURT

THIS CAUSE comes before on Plaintiff's Motion for Remand (doc. 5), this case having been removed by Defendant KCS International, Inc., (KCS) on December 23, 2009. Defendant has responded to the motion, conceding that this action should be remanded because Co-Defendant The Ships Chandler Marine Sales of Destin, Inc., (Ships Chandler) did not consent to removal.

Plaintiff also seeks attorney fees, which KCS opposes. KCS acknowledges Plaintiff's assertion that, in and around the time of removal, Ships Chandler had indicated that it would not consent to removal. However, KCS also states that counsel for Ships Chandler had also represented that it was seeking legal representation from its insurer – which ultimately the

insurer would decline. KCS's made efforts at the time to reach the insurer in order to learn of its position on removal in the event the insurer should it elect to represent Ships Chandler, but failed. Under these circumstances, KCS contends that it was appropriate to file the notice of removal in order to preserve its rights to do so under the pending removal deadline.

Under 28 U.S.C. § 1447(c), a court may award attorneys' fees upon remand if it is determined that the removing party lacked an objectively reasonable basis for removal and thereby appeared to have removed the case simply for delay or to impose costs on the opposing party. *See Hansard v. Forsyth County*, 191 Fed.Appx. 844, 846-847 (11th Cir. 2006). Here, the Court finds that Defendant KCS's actions, taken to preserve its rights as they existed at the time of removal, were reasonably based.

The Court's ruling in this matter may therefore be summarized as follows:

1. Plaintiff's Motion for Remand (doc. 5) is **GRANTED** to the extent that this case shall be remanded but is denied to the extent it seeks attorneys' fees.
2. The above entitled action is **REMANDED** to the First Judicial Circuit Court in and for Okaloosa County, Florida.
3. The Clerk is directed to send a certified copy of this order to the Clerk of the First Judicial Circuit Court in and for Okaloosa County, Florida.

ORDERED on this 28th day of January, 2010.

s/L.A. Collier

Lacey A. Collier
Senior United States District Judge