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| Jurisdiction | U.S.A. |
| Tribunal | U.S. District Court for the Western District of Pennsylvania |
| Date of the decision | 12 May 2025 |
| Case no./docket no. | 2:24-CV-01362-JFC-CBB |
| Case name | *Westinghouse Electric Company LLC v. Tyne Engineering, Inc.* |

# Report and Recommendation on Motion to Remand ECF No. 9

## I. Recommendation

This civil action was removed to this Court by Defendant Tyne Engineering, Inc. («Tyne») from the Court of Common Pleas of Allegheny County, Pennsylvania on September 27, 2024. In its state court complaint, Plaintiff Westinghouse Electric Company, LLC («Westinghouse») alleges that Tyne breached contracts with Westinghouse and tortiously interfered with Westinghouse's contracts to design and manufacture engineering systems for a nuclear power plant project in violation of Pennsylvania law. 1

Presently pending before the Court is a motion to remand by Westinghouse pursuant to 28 U.S.C. § 1447(c). ECF No. 9. The motion is fully briefed and ripe for consideration. 2

For the reasons that follow, it is respectfully recommended that the Court grant Westinghouse's motion to remand. 3

## II. Report

### a. Background

According to the Complaint, «Westinghouse[1] is a world leader in the nuclear reactor market and provides clients with innovative designs, products and services to enhance nuclear power plant operations and ensure safety and reliability.» Further, «Tyne[2] has over 25 years of experience in the design and manufacture of complex engineering systems on the fields of process engineering, mechanical engineering, and Instrumentation and Controls («I&C») for nuclear and other industries.» 4

«The Calvert Cliffs Nuclear Power Plant is a Maryland-based nuclear power plant» that has two nuclear reactors – Unit 1 and Unit 2 – and is «owned and operated by Constellation Energy 5

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[1] Westinghouse is a Delaware limited liability company with its principal place of business in Cranberry Township, Butler County, Pennsylvania. Westinghouse is 51% owned by Brookfield Corporation and 49% owned by Cameco Corporation. Both Brookfield and Cameco Corporations are Canadian corporations.

[2] Tyne is a Canadian corporation with its principal place of business in Ontario, Canada.

Generation, LLC.» «Constellation is a long-time client of Westinghouse» and «launched a reactor protection system («RPS») project designed to upgrade and enhance the operations of a critical I&C system for the Unit 1 and Unit 2 reactors. (the «Calvert Cliffs RPS Project»).» As part of this project, «Constellation and Westinghouse entered into a contract that requires Westinghouse to provide certain materials, equipment, documentation and other specified items to Constellation for use in its final, installed configuration for the intended application. Delivery of the first new RPS for Unit 1 was planned for Fall 2023 to accommodate Constellation's installation schedule in Spring 2024.»

«Westinghouse engaged Tyne to assist with certain I&C design and procurement aspects on Westinghouse's Calvert Cliffs RPS Project.» Westinghouse contracted to purchase from Tyne certain goods and services which include, *inter alia*, engineering, labor, technical support during installation, maintenance, repair, commissioning and testing of certain supplies, materials, equipment, and other deliverables which were described in several purchase orders. Relevant here, the parties entered into an initial Purchase Order No. 4500820729 on February 12, 2021 for approximately $40,000 of «pre-work» design («initial Purchase Order), Purchase Order No. 4500846194 on January 26, 2022 for approximately $2,542,098 CAD for certain goods and services, and Purchase Order No. 4500875283 on February 27, 2023 for approximately $384,039 CAD for certain goods and services (collectively «subsequent Purchase Orders»). 6

Before the initial Purchase Order was entered into, the parties negotiated and entered into an agreement related to the Terms and Conditions of the project. ECF No. 10 at 7 (captioned «Terms and Conditions for the Purchase of Safety Related / Engineered Goods, Tyne Engineering December 2020 – GSCS-TC-006 (Revised Tyne Engineering Feb 2021)» (the «Terms & Conditions.»). Westinghouse claims the Terms and Conditions were expressly incorporated into the subsequent Purchase Orders entered into between Westinghouse and Tyne. To this end, the subsequent Purchase Orders both incorporate the Terms and Conditions and state: 7

> Terms and Conditions:
>
> The following documents and all referenced therein form a part of this purchase order.
>
> 1. GSCS-TC-006 (Revised Tyne Engineering Feb 2021)

Tyne «does not dispute» that these Terms and Conditions were «negotiated between Tyne and Westinghouse» and «accepted» by the parties, but maintains these Terms and Conditions only apply to the initial Purchase Order for $40,000 and do not apply to the subsequent Purchase Orders between it and Westinghouse. estinghouse not only claims the Terms and Conditions were expressly incorporated into the subsequent Purchase Orders, but also included a provision that expressly mandated that disputes, if any, be governed by Pennsylvania law rather than the United Nations Convention on Contracts for the International Sale of Goods («CISG»). 8

The relevant section of the Terms & Conditions provides as follows: 9

> **35. GOVERNING LAW, DISPUTES AND VENUE**
>
> The Purchase Order shall be governed by the laws of the Commonwealth of Pennsylvania, USA, excluding its rules and laws governing choice of laws as well as the United Nations Convention on Contracts for the International Sale of Goods. Seller hereby: (i) submits to the exclusive jurisdiction of the federal or State courts located in Allegheny County, Pennsylvania in any litigation, suit, action or proceeding arising out of, or relating to, the Purchase Order; (ii) knowingly, voluntarily and irrevocably consents to the personal jurisdiction and venue of said court; and (iii) waives any right to dismiss or transfer it may have based on improper venue or *forum non conveniens* to the conduct of any proceeding in said court. Seller expressly waives any right to a trial by a jury in any proceeding arising directly or indirectly out of the Purchase Order.
>
> ECF No. 10-1 p. 127; ¶ 35 (the «Choice of Law provision»).

Westinghouse claims Tyne materially breached the subsequent Purchase Orders when it failed to deliver certain deliverables, and when they eventually did, the items were incomplete and/or deficient. Additionally, Westinghouse claims Tyne breached the subsequent Purchase Orders by failing to comply with the Quality Assurance Program under the Terms & Conditions. Westinghouse claims that these breaches resulted in it issuing a stop work order to Tyne, forced Westinghouse to self-perform the remaining work under the purchase orders, and obstructed Westinghouse's ability to meet its third-party contractual obligations for the Calvert Cliffs RPS Project. Westinghouse made several written requests to Tyne to cure the alleged breaches which they allege went unanswered. Thereafter, Westinghouse terminated the purchase orders effective July 15, 2023 and, pursuant to the Terms & Conditions, directed Tyne to transfer the design-related information to Westinghouse that was created or obtained under the purchase orders. 10

On August 27, 2024, Westinghouse initiated this action in the Court of Common Pleas of Allegheny County, Pennsylvania against Tyne asserting two state law claims for Tyne's alleged breaches of the Terms & Conditions: (1) breach of contract; and (2) tortious interference with contractual relations. Tyne timely removed the case to this Court on September 27, 2024 on the basis that the Court has federal question jurisdiction over Westinghouse's claims based on application of the CISG, which is an international treaty. Westinghouse moved to remand the case, arguing the CISG does not apply based on the Terms and Conditions agreed to by the parties. 11

**b. Standard of Review**

A defendant in a state court action can remove a case to federal court if the federal court has original jurisdiction over it. 28 U.S.C. § 1441(a). Federal courts have original jurisdiction over «all civil actions arising under the Constitution, laws, or treaties of the United States.» 28 U.S.C. § 1331. A state court action may be removed to federal court based on federal question jurisdiction if the federal question appears on the face of the plaintiff's well-pleaded complaint. *Lazorko v. Pennsylvania Hosp.*, 237 F.3d 242, 248 (3d Cir. 2000). 12

«[F]ederal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress.» *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996). Therefore, the removal statutes must be «strictly construed against removal and all doubts should be resolved in favor of remand.» *Boyer v. Snap-on Tools Corp.*, 913 F.2d 108, 111 (3d Cir. 1990). If a case is not properly removed to federal court because it lacks original jurisdiction, «the district court must remand it to the state court from which it was removed.» *Fran. Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S. California*, 463 U.S. 1, 8 (1983). On a motion to remand, the removing party has the burden of establishing removal is proper. *Samuel-Bassett v. KIA Motors Am., Inc.*, 357 F.3d 392, 396 (3d Cir. 2004). In «[r]uling on whether an action should be remanded to the state court from which it was removed, the district court must focus on the plaintiff's complaint at the time the petition for removal was filed. In so ruling the district court must assume as true all factual allegations of the complaint[.]» *Steel Valley Auth. v. Union Switch and Signal Div.*, 809 F.2d 1006, 1010 (3d Cir. 1987). **13**

«If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.» 28 U.S.C. § 1447(c). This language «compels a district court to address the question of jurisdiction, even if the parties do not raise the issue. Moreover, the general rule that federal courts have an ever-present obligation to satisfy themselves of their subject matter jurisdiction and to decide the issue *sua sponte* applies equally in removal cases.» *Liberty Mut. Ins. Co. v. Ward Trucking Corp.*, 48 F.3d 742, 750 (3d Cir. 1995). **14**

**c. Discussion**

Tyne removed this case based on federal question jurisdiction and argues that removal is appropriate because the CISG, an international treaty, applies to Westinghouse's claims and gives this court original jurisdiction. Therefore, the only focus here is whether Tyne properly removed this case to federal court and whether Westinghouse's state law claims arise under a federal question giving this Court subject matter jurisdiction. **15**

In the motion to remand and responses thereto, the parties argue extensively whether the Terms and Conditions and subsequent Purchase Orders were properly negotiated and accepted, and how each party's conduct should be construed to show their intent. In fact, each party has gone through great lengths to so argue by submitting declarations from their employees, and a few hundred pages of documents including proposals, the contracts at issue – including marked-up drafts, and emails and correspondence between the parties. Most of these exhibits were not included in the state court complaint, and the parties have not addressed whether it is proper for the Court to consider such documents on a motion to remand. **16**

The issues for the Court to address are, however, much narrower than what the parties argue. Nonetheless, where the issue for remand involves a determination of whether the plaintiff's state law claims are completely preempted[3] by federal claims, like in this case, «a federal court **17**

[3] *See infra* pp. 10-16. Neither party adequately addresses the complete preemption doctrine and its application to the CISG as a basis for federal question jurisdiction over this action. However, this is the only argument to

may look beyond the face of the complaint to determine whether a plaintiff has artfully pleaded his suit so as to couch a federal claim in terms of state law[.]» *Pryzbowski v. U.S. Healthcare, Inc.*, 245 F.3d 266, 274 (3d Cir. 2001) (looking beyond the face of the complaint to determine complete preemption) (cleaned up). *See also Mersmann v. Contl. Airlines*, 335 F. Supp. 2d 544, 548 (D.N.J. 2004) (a complete preemption analysis «looks beyond the complaint to determine if the suit is, in reality, purely a creature of federal law.») (cleaned up); *Thomas R. Peterson, M.D. PC v. Cigna Health and Life Ins. Co.*, No. CV 18-4764-SDW-LDW, 2018 WL 3586273, at *3 (D.N.J. July 25, 2018) (considering the record, including an affidavit contradicting certain exhibits, to determine whether removal based on preemption was proper); § 3722 Removal Based on Federal-Question Jurisdiction, 14C Fed. Prac. & Proc. Juris. § 3722 (Rev. 4th ed.) (in considering whether a complaint has concealed a federal question, «the court may adopt the uncharacteristic posture of looking beyond the letter of the complaint in order to determine whether federal-question jurisdiction exists in the limited circumstances delineated by the artful-pleading [or complete preemption] doctrine. This judicial behavior can be understood as reflecting a desire to protect the defendant's statutory right to remove.»). The Court will only consider the documents to the extent they are relevant. The Court bears in mind that it must also assume all the factual allegations in Westinghouse's complaint to be true, and notes Tyne has the burden of establishing removal is proper with all doubts resolved in favor remand. *Steel Valley Authority*, 809 F.2d at 1010; *Samuel-Bassett*, 357 F.3d at 396; *Boyer*, 913 F.2d at 111.

***i. The United Nations Convention on Contracts for the Sale of Goods («CISG»)***

Tyne removed this case based on federal question jurisdiction under 28 U.S.C. § 1331. **18**
It argues removal is proper because Westinghouse's state law claims arise under a treaty of the United States, specifically, the CISG. The CISG is a treaty governing the international sale of goods between parties that are located in different signatory countries, who have not opted out of CISG coverage at the time of contracting, and creates a private right of action in federal court for contract claims. *Caterpillar, Inc. v. Usinor Industeel*, 393 F. Supp. 2d 659, 673 (N.D. Ill. 2005). The CISG is a self-executing treaty and applies where the agreement for the sale of goods is silent as to the governing choice of law. *Delchi Carrier SpA v. Rotorex Corp.*, 71 F.3d 1024, 1028 (2d Cir. 1995). Parties may elect to «opt out» of the treaty by «explicitly excluding» the application of the CISG or «derogat[ing] from ... the effect of any of its provisions.» CISG, Art. 6. To effectively «opt out,» courts generally require contracting parties to expressly include language which states the CISG does not apply to the contract and «also states what law shall govern the contract.» *BP Oil Intern., Ltd. v. Empresa Estatal Petroleos de Ecuador*, 332 F.3d 333, 337 (5th Cir. 2003). The parties do not dispute that the United States, where Westinghouse is located, and Canada, where Tyne is located, are both signatory countries to the CISG. *See e.g.*, *Chateau des Charmes Wines Ltd. v. Sabate USA Inc.*, 328 F.3d 528, 530

address when considering whether this Court has subject matter jurisdiction over this matter. The Court has no other basis for subject matter jurisdiction other than federal question jurisdiction, as the parties concede there is no basis for diversity jurisdiction because both parties are citizens of Canada, *see* FNs 1 and 2, *supra*, and Westinghouse's complaint facially only asserts state law claims. Because the Court has an obligation to ensure itself of its subject matter jurisdiction at all stages of the litigation, and must do so *sua sponte*, whether the CISG completely preempts Westinghouse's state law claims is the sole issue to decide whether removal is proper.

(9th Cir. 2003) (noting that both the United States and Canada are contracting states to the CISG).

***ii. The Well-Pleaded Complaint Rule and Preemption***

«The question of whether federal question jurisdiction exists is determined by the 'well-pleaded complaint rule,' which requires that a federal question be 'presented on the face of the plaintiff's properly pleaded complaint.'» *Shanefelter v. U.S. Steel Corp.*, 784 F. Supp. 2d 550, 557 (W.D. Pa. 2011) (quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987)). The well-pleaded complaint rule makes «the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law» even if a federal claim is available. *Caterpillar Inc.*, 482 U.S. at 392. In making this determination, the court must only consider whether a federal question exists on the face of the plaintiff's complaint and the court will not have jurisdiction where the federal question is predicated on an actual or anticipated defense or counterclaim. *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009). 19

When a complaint is grounded solely in state law and on its face does not state a federal question, a defendant may nonetheless be able to remove the case to federal court under some limited circumstances. *Trans Penn Wax Corp. v. McCandless*, 50 F.3d 217, 228 (3d Cir. 1995). «The doctrine of complete preemption presents one such circumstance.» *Shanefelter*, 784 F. Supp. 2d at 557. «Under the doctrine of complete preemption, the preemptive force of federal law is 'so powerful as to displace entirely any state cause of action.'» *Gosch v. Intl. Chapter of Horseshoers and Equine Trades, Loc. 947*, 200 F. Supp. 3d 484, 494 (M.D. Pa. 2016) (quoting *Franchise Tax Bd. of State of Cal.*, 463 U.S. at 23). A finding of complete preemption «converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule.» *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 65 (1987). Therefore, «[i]f a federal cause of action completely pre-empts a state cause of action any complaint that comes within the scope of the federal cause of action necessarily arises under federal law[]» and provides for removal jurisdiction. *Franchise Tax Bd. of State of Cal.*, 463 U.S. at 24. 20

Turning to the application of the complete preemption doctrine to the CISG, while federal law interpreting the preemptive effect of the CISG is scant, there is a general consensus among federal courts throughout the country that the CISG preempts state law contract claims[4] falling within its scope. *Asante Techs., Inc. v. PMC-Sierra, Inc.*, 164 F. Supp. 2d 1142, 1152 (N.D. Cal. 2001); *Honey Holdings I, Ltd. v. Alfred L. Wolff, Inc.*, 81 F. Supp. 3d 543, 551–52 (S.D. Tex. 2015); *Caterpillar, Inc.*, 393 F. Supp. 2d at 673; *Geneva Pharm. Tech. Corp. v. Barr Laboratories, Inc.*, 201 F. Supp. 2d 236 (S.D.N.Y. 2002); *Kumpers Composites GmbH & CoKG v. TPI Composites Inc.*, No. CV-23-00214-PHX-SMB, 2025 WL 603734, at *9 (D. Ariz. Feb. 25, 21

[4] It is widely recognized that tort claims, like Westinghouse's tortious interference claim, do not fall within the scope of the CISG, and cannot be a basis for which to confer federal question removal jurisdiction over this action. *Reecon North America, LLC v. Du-Hope International Group*, No. 2:18-CV-00234-JFC, 2019 WL 2542536, at *13, (W.D. Pa. June 20, 2019) («The CISG does not apply to tort claims, including claims of tortious interference with business relations.»); *Perkins Mfg. Co. v. Haul-All Equip. Ltd.*, No. 19 CV 03769, 2020 WL 2219050, at *4 (N.D. Ill. May 7, 2020) (same) *Viva Vino Import Corp*., 2000 WL 1224903, at *1 (same); *Electrocraft Arkansas*, 2009 WL 5181854, at *5 (same).

2025); *Perkins Mfg. Co. v. Haul-All Equip. Ltd.*, No. 19 CV 03769, 2020 WL 2219050, at *3 (N.D. Ill. May 7, 2020); *Dongguan Beibei Toys Indus. Co., Ltd. v. Underground Toys USA, LLC*, No. CV1904993DSFJPRX, 2020 WL 2065034, at *3 (C.D. Cal. Mar. 2, 2020); *Zodiac Seats US LLC v. Synergy Aerospace Corp.*, No. 417CV00410ALMKPJ, 2019 WL 1776960, at *6 (E.D. Tex. Apr. 23, 2019); *Electrocraft Arkansas, Inc. v. Super Electric Motors, Ltd.*, No. 4:09CV00318 SWW, 2009 WL 5181854, at *5 (E.D. Ark. Dec. 23, 2009); *Sino Cent. Dev. Ltd. v. Anatomic Glob., Inc.*, No. CV0903749RGKJWJX, 2009 WL 10675363 (C.D. Cal. July 31, 2009).

Westinghouse maintains that the Choice of Law provision was accepted by Tyne and incorporated into the relevant purchase orders that Tyne is alleged to have breached and it expressly opts-out of the CISG. **22**

Tyne's counters that it opted out of the CISG as to the first purchase order only, and the CISG applies to the subsequent purchase orders. As such, Tyne's argument can be summarized into two categories: contract formation and contract interpretation. It would be inappropriate for the Court to engage in either analysis. **23**

First, Tyne argues that Terms and Conditions containing the Choice of Law provision were not incorporated into the subsequent Purchase Orders for several reasons and are therefore unenforceable. Tyne argues that the Terms and Conditions were only binding on the initial Purchase Order, that the Terms and Conditions are not binding on the subsequent Purchase Orders because they were not enclosed in the emails between the parties when drafting the subsequent Purchase Orders, Tyne rejected one of the subsequent Purchase Order and sent its own amendment which did not contain the Terms and Conditions, and Westinghouse did not reference the Terms and Conditions in a change order that it sent in response to Tyne's amendment. **24**

While Tyne's version of events may be accurate, the Court must accept Westinghouse's allegations that the Terms and Conditions were mutually agreed upon, executed and expressly incorporated into *all* of the purchase orders. This is especially true where the plain language of the purchase orders Tyne allegedly breached supports Westinghouse's assertion that the Terms and Conditions, including the Choice of Law provision expressly opting-out of the CISG, were incorporated into the subsequent Purchase Orders. Accepting Tyne's version of events – that the Terms and Conditions only applied to the initial Purchase Order and were not adequately incorporated into the subsequent Purchase Orders – would require the Court to outright reject the allegations of Westinghouse's complaint. It is inappropriate to do so on a motion to remand, where the Court is required to accept the facts as alleged in the complaint. Even considering the Court's duty to «peak behind» the pleadings to determine whether Westinghouse's state law claims are in actuality federal law claims, this does not mandate a court to believe Tyne's version of events – which are in essence affirmative defenses – over the wellpleaded allegations of the complaint. 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. If a defendant could do so, the plaintiff would be master of nothing. Congress has long since decided that federal defenses do not provide a basis for removal.» *Caterpillar Inc.*, 482 U.S. at 398–99. «Anticipation of a federal preemption defense, such as the defense that **25** federal law prohibits the state claims, is insufficient to establish federal jurisdiction.» *Asante Technologies, Inc.*, 164 F. Supp. 2d at 1150 (citing *Gully v. First Nat. Bank*, 299 U.S. 109, 116 (1936)).

Ultimately, Tyne's arguments that the subsequent Purchase Orders are not governed by the Terms and Conditions which expressly opt-out of the CISG appears to be a matter of ordinary preemption, which in contrast to complete preemption, is a defense and does not provide a basis for federal jurisdiction. *See Honey Holdings I, Ltd.*, 81 F. Supp. 3d at 550. When ordinary preemption applies, the federal court «lacks the power to do anything other than remand to the state court where the preemption issue can be addressed and resolved.» *Colbert v. Union P. R. Co.*, 485 F. Supp. 2d 1236, 1243 (D. Kan. 2007). While Tyne cannot remove this case based on its federal defense, it is free to assert its federal preemption defense in state court.[5] *See Franchise Tax Bd. of State of Cal.*, 463 U.S. at 9–12; *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 152 (1908). **26**

In the alternative, Tyne argues that even if the Terms and Conditions are enforceable, the Choice of Law provision should be interpreted as explicitly including, instead of excluding, the CISG or the Court should find that the provision is ambiguous. This argument similarly fails. **27**

Courts have routinely interpreted choice of law provisions to determine whether the parties opted-out of the CISG, including in the context of a defendant's ability to remove the case based on complete preemption. However, they have done so only where it was undisputed that the parties did not include language expressly excluding the CISG, and instead selected a particular choice of law and argued that amounted to an implied exclusion of the CISG. *See e.g., Asante Techs., Inc. v. PMC-Sierra, Inc.*, 164 F. Supp. 2d 1142, 1147 (N.D. Cal. 2001). That is contrary to the issue Tyne raises here, which asks the Court to find that the express exclusion of the CISG is ambiguous or should be interpreted as actually opting-into the CISG as a basis for federal question jurisdiction. Simply stated, «the determination of CISG preemption is wholly independent of the question of whether a choice-of-law clause in a particular contract is ambiguous or not.» *Asante Technologies, Inc.*, 164 F. Supp. 2d at 1152. As with Tyne's argument related to enforceability, its argument related to contract interpretation is a federal preemption defense which does not provide a basis for federal jurisdiction. **28**

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[5] The Court has found one case that interpreted a choice of law provision explicitly opting-out of the CISG. *N.F. Smith & Associates, L.P. v. Karl Kruse GmbH & Co. KG,* No. 4:22-CV-3877, 2023 WL 7474046, at *5 (S.D. Tex. Oct. 10, 2023), *report and recommendation adopted*, No. 4:22-CV-03877, 2023 WL 7462860 (S.D. Tex. Nov. 9, 2023) (the choice-of-law provision stated: «[t]he Purchase Order shall be governed and construed in accordance with the laws of the state of Texas, exclusive of any provisions of the [CISG].»). While the court engaged in an analysis regarding contract formation of the choice of law provision under the CISG, it was not doing so to determine whether it had federal question jurisdiction under the doctrine of complete preemption. Unlike here, that court independently had diversity jurisdiction over the matter and could engage in that analysis. *Id*.

## II.* Conclusion

Based on the foregoing, Tyne has not met its burden of proving complete preemption applies over Westinghouse's breach of contract claim.[6] Because there are no other grounds for jurisdiction over this matter, it is respectfully recommended that the Court grant Westinghouse's motion and remand the case to the Allegheny County Court of Common Pleas. 29

Therefore, pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), Fed. R. Civ. P. 72, and the Local Rules for Magistrates, the parties have until **May 27, 2025** to object to this report and recommendation. Unless otherwise ordered by the District Judge, responses to objections are due fourteen days after the service of the objections. Failure to file timely objections will waive any appellate rights. *Brightwell v. Lehman*, 637 F.3d 187, 193 n.7 (3d Cir. 2011). 30

* Editor's note: (Mis-)numbering in the original.

[6] The Court also notes a «finding that complete preemption [does] not create federal removal jurisdiction will have no preclusive effect on a subsequent state-court defense of federal preemption.» *In re Blackwater Sec. Consulting, LLC*, 460 F.3d 576, 590 (4th Cir. 2006).