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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GARRETT PROCKNOW,

Plaintiff,

No. C 11-03589 WHA

v.

WABASH METAL PRODUCTS, INC.,
ACS GROUP, INC. and DOES 1
through 20, inclusive,

Defendants.

**ORDER DENYING PLAINTIFF'S
MOTION TO REMAND AND
VACATING HEARING**

INTRODUCTION

In this personal injury action, plaintiff moves to remand this action to state court to be joined with a similar action regarding the same events. For the following reasons, plaintiff's motion to remand is **DENIED**.

STATEMENT

In May 2011, plaintiff was allegedly injured while operating a machine manufactured by defendant Wabash Metal Products, Inc. Plaintiff was working when the machine allegedly malfunctioned and resulted in plaintiff's arm being amputated below the elbow (Br. 2).

Plaintiff commenced this action in June 2011 against defendants Wabash and ACS Group, Inc. in state court. Plaintiff alleged the following causes of action: (1) negligence; (2) product liability: failure to warn; (3) product liability: defective design; and (4) product

1 liability: strict product liability (Dkt. No. 1, Exh. A). Wabash then removed here on the basis of
2 diversity jurisdiction. In its notice of removal, Wabash asserted (Dkt. No. 1, at 2):

3 Complete diversity of citizenship exists in that:
4 Plaintiff . . . is a citizen of the State of California, and
5 Defendant, Wabash Metal Products, Inc. was and is a
6 corporation incorporated under the laws of the State of
7 Wisconsin with its principal place of business in Wabash,
8 Indiana, and is the only defendant that has been served with
9 a summons and complaint in this action.

7 Then, Travelers Property Casualty Company of America commenced an action in state
8 court against Wabash for subrogation related to the same injuries sustained by plaintiff (Br.
9 Exh. A). Specifically, Travelers asserted four causes of action against Wabash: (1) subrogation;
10 (2) subrogation: strict product liability; (3) subrogation: breach of express and implied
11 warranties; and (4) subrogation: negligence (Br. Exh. A).

12 Plaintiff now seeks to remand the present action pursuant to Section 1447 and *Colorado*
13 *River Water Conservation District v. United States*, 424 U.S. 800 (1976), to state court in
14 San Francisco so that it can be joined with Travelers’ subrogation action against Wabash,
15 also in that court. Wabash opposes. No other defendant has responded. This order follows
16 full briefing.

17 ANALYSIS

18 As a preliminary matter, plaintiff does not question whether federal jurisdiction was
19 properly conferred over the subject matter of the complaint after removal. Defendant correctly
20 notes that subject-matter jurisdiction exists here based on diversity of citizenship (Opp. 3–4).
21 Plaintiff states in one sentence that this motion is made pursuant to Section 1447, but fails to
22 elaborate (Br. 1). Section 1447(c) provides for the remand of actions where the court lacks
23 subject-matter jurisdiction or “on the basis of any defect.” Because plaintiff does not challenge
24 the validity of subject-matter jurisdiction nor does he allege any other defect in the removal
25 process, this order finds that this motion is not properly brought under Section 1447.

26 *Colorado River* abstention is therefore the only basis for remand considered by this order.
27 Plaintiff’s claims are for money damages, which presents a problem for the application of
28 abstention principles. While the Supreme Court has held that “federal courts may stay actions

1 for damages based on abstention principles,” it has not held that “those principles support the
2 outright dismissal or remand of damages actions.” *Quackenbush v. Allstate Ins. Co.*, 517 U.S.
3 706, 721 (1996). The Court held, “[u]nder our precedents, federal courts have the power to
4 dismiss or *remand* cases based on abstention principles *only where the relief sought is equitable*
5 *or otherwise discretionary.*” *Id.* at 731 (emphasis added). Plaintiff made no attempts to
6 distinguish *Quackenbush* and in fact did not even cite to it. *Quackenbush* states that an action
7 for money damages *cannot* be remanded.

8 Even if the Colorado River factors were considered, they would hardly warrant
9 abstention. Because this order agrees with defendant that this action should not be remanded to
10 state court under *Colorado River*, it does not reach defendant’s other theory that plaintiff waived
11 his right to seek remand. Plaintiff’s motion to remand is therefore **DENIED**.

12 **CONCLUSION**

13 For the foregoing reasons, plaintiff’s motion to remand is **DENIED**. The hearing set for
14 December 8 is **VACATED**.

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16 **IT IS SO ORDERED.**

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18 Dated: December 6, 2011.

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21 WILLIAM ALSUP
22 UNITED STATES DISTRICT JUDGE
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