

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

3
4 DAVID PHILLIPS,

No. C 13-5655 CW

5 Plaintiff,

ORDER GRANTING
MOTION TO REMAND
(Re: Docket No.
27)

6 v.

7 ASBESTOS CORPORATION LIMITED, et
8 al.,

9 Defendants.
10
11 _____/

12 Plaintiff David Phillips moves to remand this case back to
13 San Francisco superior court. Defendant Crane Co. opposes. The
14 Court finds this motion suitable for disposition without oral
15 argument pursuant to Civil Local Rule 7-1(b). Having considered
16 the papers submitted by the parties, the Court GRANTS Phillips'
17 motion to remand.

18 FACTUAL BACKGROUND

19 On December 20, 2011, Phillips filed suit in San Francisco
20 superior court against Crane and other defendants, asserting
21 negligence and other state law claims for causing him asbestos-
22 related injuries. Specifically, Phillips worked at several
23 locations containing asbestos, including the Mare Island Naval
24 Shipyard, and now suffers from asbestos-related pleural disease
25 and asbestosis, serious lung diseases that are associated with the
26 inhalation of asbestos fibers. In his complaint, Phillips
27 expressly waived claims against Crane relating to his exposure to
28 asbestos at military and federal government jobsites, or from U.S.
military vessels, aircraft, or equipment. Complaint ¶ 6.

1 On December 6, 2013, Crane removed this action to federal
2 court. Phillips now moves to remand the suit back to San
3 Francisco superior court.

4 DISCUSSION

5 Crane argues that it properly removed this action under the
6 federal officer removal statute, which provides that an action may
7 be removed by "any officer of the United States or any agency
8 thereof, or person acting under him, for any act under color of
9 such office." 28 U.S.C. § 1442(a)(1). Suits against federal
10 officers are exceptional in that they may be removed to federal
11 court despite the nonfederal nature of the complaint. Jefferson
12 County v. Acker, 527 U.S. 423, 431 (1999). Although removal under
13 § 1441 is strictly construed, with any doubt resolved in favor of
14 remand, the removal rights of § 1442 are broader than those
15 provided by § 1441 because it is important to the federal
16 government to protect its officers. See Gaus v. Miles, Inc., 980
17 F.2d 564, 566 (9th Cir. 1992); Durham v. Lockheed Martin Corp.,
18 445 F.3d 1247, 1252 (9th Cir. 2006). The Ninth Circuit instructs
19 that there is a "clear command from both Congress and the Supreme
20 Court that when federal officers and their agents are seeking a
21 federal forum, we are to interpret section 1442 broadly in favor
22 of removal." Durham, 445 F.3d at 1252 (quoting Arizona v.
23 Manypenny, 451 U.S. 232, 242 (1981)).

24 Thus, the fact that Phillips' complaint expressly disavows
25 any federal claims is not determinative. Rather, removal is
26 proper under the federal officer removal statute if the removing
27 party: (1) demonstrates that it acted under the direction of a
28 federal officer; (2) raises a colorable federal defense to the

1 plaintiff's claims; and (3) demonstrates a causal nexus between
2 the plaintiff's claims and the defendant's acts performed under
3 color of federal office. Mesa v. California, 489 U.S. 121, 124-
4 25, 134-35 (1989); Fung v. Abex Corp., 816 F. Supp. 569, 571-72
5 (N.D. Cal. 1992).

6 Here, Crane claims that the federal defense of military
7 contractor immunity shields it from liability. This doctrine
8 provides, "Liability for design defects in military equipment
9 cannot be imposed, pursuant to state law, when (1) the United
10 States approved reasonably precise specifications; (2) the
11 equipment conformed to those specifications; and (3) the supplier
12 warned the United States about the dangers in the use of the
13 equipment that were known to the supplier but not to the United
14 States." Boyle v. United Technologies Corp., 487 U.S. 500, 512
15 (1988). The justification for this defense is that liability for
16 independent contractors performing work for the federal government
17 constitutes a uniquely federal concern. Id. at 505.

18 In the present case, however, Phillips has expressly
19 disclaimed and waived any claim arising out of or related to any
20 asbestos exposure aboard federal jobsites and navy vessels. This
21 removes any claims to which military contractor immunity might act
22 as a defense. The Court sees no reason not to hold Phillips to
23 this waiver; this same waiver language was found to justify remand
24 in many cases in this district with very similar facts.¹ The

25 ¹ See, e.g., Pratt v. Asbestos Corp., Ltd., 2011 WL 4433724
26 (N.D. Cal.); Dobrocke v. Allis-Chalmers Corp. Product Liability
27 Trust, 2009 WL 1464153 (N.D. Cal.); Madden v. A.H. Voss Co., 2009
28 WL 341377 (N.D. Cal.); Westbrook v. Asbestos Defendants, 2001 WL
902642 (N.D. Cal.).

1 waiver justifies remand. If Phillips later attempts to reverse
2 course, and is allowed to do so by the state court despite his
3 express waiver, Crane can remove once again.²

4 IT IS SO ORDERED.

5 Dated: 2/26/2014


6 CLAUDIA WILKEN
7 United States District Judge
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25 ² See 28 U.S.C. § 1446(b)(3) ("if the case stated by the
26 initial pleading is not removable, a notice of removal may be
27 filed within thirty days after receipt by the defendant . . . of a
28 copy of an amended pleading, motion, order or other paper from
which it may first be ascertained that the case is one which is or
has become removable.").