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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 ALAN MCMANN and DONNA  
9 MCMANN,

10 Plaintiffs,

11 v.

12 AIR & LIQUID SYSTEMS  
CORPORATION, et al.,

13 Defendants.

CASE NO. C13-5721 BHS

ORDER GRANTING MOTION  
TO REMAND

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15 This matter comes before the Court on Plaintiffs Alan and Donna McMann's  
16 ("McManns") motion to remand (Dkt. 46). The Court has considered the pleadings filed  
17 in support of and in opposition to the motion and the remainder of the file and hereby  
18 grants the motion for the reasons stated herein.

19 **I. PROCEDURAL HISTORY**

20 On July 16, 2013, the McManns filed a complaint against numerous defendants,  
21 including Crane Co. ("Crane"), in Pierce County Superior Court for the State of  
22 Washington. Dkt. 1, Exh. 1 ("Comp").

1 On August 21, 2013, Crane removed the matter to this Court under the federal  
2 officer removal statute, 28 U.S.C. § 1442(a)(1). Dkt. 1, ¶ 6.

3 On September 6, 2013, the McManns filed a motion to remand. Dkt. 46. On  
4 September 23, 2013, Crane responded. Dkt. 50. On September 27, 2013, the McManns  
5 replied. Dkt. 51.

## 6 II. FACTUAL BACKGROUND

7 The McManns allege that Mr. McMann developed mesothelioma by exposure to  
8 Crane's as well as other defendants' products that contained asbestos. Comp. at 2–3. In  
9 the instant motion, the McManns assert that the “*only* claims . . . maintained regarding  
10 naval asbestos products that Mr. McMann was exposed to relate to [Crane's] *failure to*  
11 *warn* about the hazards of asbestos.” Dkt. 46 at 6 (emphasis in original).

12 Crane removed this matter on the basis of a federal officer defense. With regard to  
13 the failure to warn claim, Crane contends that

14 Given the proof of significant Navy control over the warnings in  
15 conjunction with the Navy's significant knowledge of asbestos hazards,  
16 Crane Co. has established a colorable government contractor defense to [the  
17 McManns'] failure-to-warn and design-defect claims.

18 Dkt. 1, ¶ 13. Crane submitted two declarations in support of its assertion of “proof of  
19 significant Navy control.” The first declaration is from Rear Admiral David Sargent, Jr.  
20 Dkt. 3. Although Mr. Sargnet provides extensive and detailed knowledge of Navy  
21 construction and procedures, he fails to identify any specific facts as to Navy  
22 specifications or warnings as to Crane's products that Mr. McMann may have been  
exposed to during his Navy service.

1 The other declaration is from Dr. Samuel Forman. Dkt. 5. Dr. Forman declares  
2 that he was selected to “become part of a team to locate, digest and organize government  
3 documents for production in asbestos litigation.” *Id.* ¶ 9. Although he has extensive  
4 knowledge of such documents, he fails to cite any specific document relating to Mr.  
5 McMann’s allegations.

### 6 III. DISCUSSION

7 Crane bears the burden of establishing that removal is proper. *Gaus v. Miles*, 980  
8 F.2d 564, 566 (9th Cir. 1992). A party removing under 28 U.S.C. § 1442(a)(1) must  
9 show that (1) it is a “person” within the meaning of the statute, (2) there is a “causal  
10 nexus” between its actions, taken pursuant to a federal officer’s directions, and plaintiffs’  
11 claims, and (3) it can assert a colorable federal defense. *Durham v. Lockheed Martin*  
12 *Corp.*, 445 F.3d 1247, 1251 (9th Cir. 2006).

13 In this case, the McManns argue that Crane has failed to meet its burden on the  
14 second and third elements of the federal officer removal criteria. With regard to a  
15 colorable federal defense, Crane asserts the “government contractor defense” because the  
16 Navy’s procurement of military equipment preempts the McManns’ failure to warn  
17 claims. Under this theory, the Supreme Court set forth a three-part test wherein the  
18 contractor must establish that

19 (1) the United States approved reasonably precise specifications; (2) the  
20 equipment conformed to those specifications; and (3) the supplier warned  
21 the United States about the dangers in the use of the equipment that were  
22 known to the supplier but not to the United States.

1 *Boyle v. United Technologies Corp.*, 487 U.S. 500, 512 (1988). Crane fails to  
2 meet its burden on each element of this test because its evidence is entirely  
3 speculative. Crane has not submitted a reasonably precise specification as to its  
4 relevant products. Crane has not submitted any evidence of conformity. Most  
5 importantly, Crane has failed to submit any evidence that it warned the Navy  
6 about the dangers of asbestos. While the Court agrees with Crane that it is not  
7 obligated to prove its case at this stage of the proceeding, Crane must produce  
8 more than speculation and hypothetical interactions. Based on Crane’s  
9 submissions, the most that can be shown is that its contract with the Navy  
10 subjected it to precise specifications and, if it had warned the Navy, the Navy  
11 would have rejected that warning. The Court finds that such a showing fails to  
12 establish a colorable federal defense.

13         With regard to the causal nexus element, Crane fails to meet its burden on this  
14 element as well. As one court stated, a “contract with the government is not a one-way  
15 ticket to federal court.” *Early v. Northrop Grumman Corp.*, 2013 WL 3872218, \*6 (C.D.  
16 Cal. 2013). Because Crane has failed to allege any actual interaction regarding any actual  
17 product that Mr. McMann would have actually been exposed to during his service aboard  
18 the USS *Firedrake* from 1961–1965, Crane has failed to show any nexus, let alone a  
19 causal nexus. Therefore, the Court concludes that Crane failed to show that it is entitled  
20 to removal pursuant to 28 U.S.C. § 1442(a)(1).

1 **IV. ORDER**

2 Therefore, it is hereby **ORDERED** that the McManns' motion to remand (Dkt.  
3 46) is **GRANTED**.

4 Dated this 22nd day of October, 2013.

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7 BENJAMIN H. SETTLE  
8 United States District Judge  
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