Nos. 25-2693, 25-2722 & 25-2824

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

IGNATUS PAPPAGALLO, et al.,

Plaintiffs-Appellees,

v.

REDCO CORP., et al.,

Defendants.

John Crane Inc., Appellant in 25-2693

General Electric Co. and ViacomCBS, Inc., Appellants in 25-2722

Foster Wheeler, LLC, Appellant in 25-2824.

Appeal from the United States District Court
for the Eastern District of Pennsylvania
Case No. 5:25-cv-01852 - Hon. John M. Gallagher

BRIEF OF PLAINTIFFS-APPELLEES

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INTRODUCTION

In 2022, Raffaele (Ralph) Pappagallo, who had worked in machinery in shipyards for forty years, died from lung cancer, caused by his exposure to asbestos. His survivors subsequently brought this action in Pennsylvania state court against 47 manufacturers and distributors of the asbestos products to which he had been exposed.

After two years of litigation in state court, one of the defendant manufacturers, John Crane International (JCI), removed the action to federal court, invoking the federal-officer removal statute, 28 U.S.C. § 1442(a)(1), as its sole basis for jurisdiction. JCI argued that deposition testimony of one of Ralph's co-workers that he "imagined" Ralph had worked on a handful of Naval and Coast Guard ships in addition to thousands of commercial ships meant that the Pappagallos' claims arose out of, or related to, actions that JCI had taken under direction of a federal officer in producing materials for military vessels. The Pappagallos timely moved to remand the action for lack of subject-matter jurisdiction and, without conceding that federal-officer removal jurisdiction had ever existed, expressly waived any claims arising out of exposures that may have occurred while Ralph was working on military

vessels. In light of the Pappagallos' disclaimer, the district court held that this case involves no claims for or relating to an act under color of federal office, as would be necessary for removal jurisdiction under 28 U.S.C. § 1442(a)(1), and remanded the case.

Arguing the district court erred, Defendant-Appellants JCI, General Electric, ViacomCBS, and Foster Wheeler assert that, even if the Pappagallos are not suing over exposure to asbestos on military ships, federal-officer removal jurisdiction exists because JCI's products on military ships may have contributed to the "indivisible injury" of Ralph's cancer and death. This Court, however, has already rejected this "indivisible injury" theory of federal-officer removal jurisdiction. *See City of Hoboken v. Chevron Corp.*, 45 F.4th 699, 713 (3d Cir. 2022). That precedential decision is consistent with the statutory text and Supreme Court precedent, which recognize that the federal-officer removal statute requires a relationship between the acts over which the plaintiff is suing (not the injury he has suffered) and federal-officer direction.

Appellants' argument that the Pappagallos cannot prevail on the merits of their claims if they are not suing for JCI's military work is irrelevant to the analysis under section 1442(a)(1); whether they are

correct is a state-law question for the Pennsylvania courts to decide. With no risk of liability for acts connected to the federal government, and no defense grounded in federal law, the federal-officer removal statute has no application.

Appellants' alternative argument, that the district court had admiralty jurisdiction under 28 U.S.C. § 1333(1), is based on a flawed interpretation of that statute and its "saving to suitors" clause. The saving to suitors clause carves out at-law claims like those brought by the Pappagallos from the scope of section 1333(1)—not only, as Appellants concede, as a basis for removal jurisdiction, but also for determining the existence of original jurisdiction. Whether or not this action was properly removed ab initio, such removal did not convert the Pappagallos' savings-clause claims into admiralty claims subject to the exclusive original jurisdiction created by section 1333(1).

STATEMENT OF JURISDICTION

As explained in detail below, the district court correctly held it lacked subject-matter jurisdiction over this action under 28 U.S.C. § 1442(a)(1) or 28 U.S.C. § 1333(1).

This Court has appellate jurisdiction to review the district court's remand order under 28 U.S.C. §§ 1291 and 1447(d).

COUNTER-STATEMENT OF ISSUES

1. Whether federal-officer removal jurisdiction exists under section 1442(a)(1), where the plaintiffs challenge only acts that were not taken under federal-officer direction.

2. Whether, despite the Pappagallos' election to seek legal remedies under state law and the saving to suitors clause in section 1333(1), JCI's removal of this action converted the Pappagallos' legal claims into ones brought at admiralty and thus ones that are subject to the exclusive jurisdiction conferred upon district courts under section 1333(1).

STATEMENT OF RELATED CASES AND PROCEEDINGS

Plaintiffs-Appellees are unaware of any other case or proceeding related to this action.

STATEMENT OF THE CASE AND FACTS

I. Facts and state court proceedings

From 1961 through 2002, Ralph Pappagallo worked in machinery at Bethlehem Steel and Kearny Marine, where he was exposed to various

asbestos-containing products. Compl., Appx84. In 2022, Ralph was diagnosed with lung cancer, caused by his exposure to asbestos. *Id.* He died from that illness in December 2022. *Id.*

In April 2023, Ralph's son, Ignatius Pappagallo[1], as Executor of Ralph's estate, and his widow, Anna Pappagallo, commenced this state-law wrongful death action in the Philadelphia Court of Common Pleas, against 47 manufacturers and distributors of asbestos and asbestos-containing products. Compl., Appx75–86. Pursuant to a procedure adopted by that court nearly forty years ago for asbestos cases, he filed a "short form complaint," which incorporated by reference a "Master Long Form Complaint" filed in 1986. *Id.* at Appx83; Long-Form Compl., Appx150–263. That master complaint includes state-law claims sounding in negligence and strict liability, and includes claims based on defendants' design defects, failure to warn, failure to test, and conspiracy. Long-Form Compl., Appx238–60. The complaint seeks legal remedies against the defendants *in personam*. *Id.* Appx260.

[1] Mr. Pappagallo's first name was spelled incorrectly as "Ignatus" in the notice of removal. *Compare* Notice of Removal, Appx55 with Short-Form Compl., Appx79.

The parties litigated the action in the Court of Common Pleas for nearly two years, in accordance with that court's Master Case Management Order for Asbestos-Related Personal Injury Claims. *See* Phila. Courts Docket Sheet, Appx447–488. In March 2025, JCI deposed Antonio Albanese, a co-worker of Ralph's. JCI's counsel asked Mr. Albanese if he had worked on any Naval or Coast Guard ships while working for Bethlehem Steel. Albanese Depo. Trans., Appx139–40. Mr. Albanese responded that he had worked on "a few" Navy ships and some Coast Guard ships, and that he "imagine[d] it being the same" for Ralph. *Id.* He further stated that Navy ships were "a small percentage of the ships" on which he had worked, *id.* Appx142, and that "most" of the ships he worked on were commercial container ships, *id.* Appx139, Appx140. While Mr. Albanese remembered working on two specific Navy ships, he had no specific recollection of working with Ralph on those ships—although he recalled working on a few thousand commercial ships with him. *Id.*, Appx141, Appx143.

II. District court proceedings

On April 10, 2025, JCI removed the action to the U.S. District Court for the Eastern District of Pennsylvania. Notice of Removal, Appx57. The

sole basis for jurisdiction invoked by JCI was the federal-officer removal statute, 28 U.S.C. § 1442(a)(1). *Id.* JCI asserted that statute applied because, in its view, "the very acts that form the basis of Plaintiff's claims—JCI's supply of asbestos-containing products to the U.S. Navy for use on Navy ships and its alleged failure to warn about asbestos hazards—are acts that JCI performed in accordance and compliance with directions from the Navy." *Id.*, Appx68. JCI further asserted that it was entitled to invoke the "government contractor" defense and the defense of so-called derivative sovereign immunity. *Id.*, Appx69–70.

On May 9, 2025, the Pappagallos moved to remand the action to state court. In their motion, they expressly waived "any potential claims arising out of any work that Ralph Pappagallo may have done in maintaining and repairing U.S. Navy ships and U.S. Coast Guard ships." Mot. to Remand, Appx501. The Pappagallos specified they were "only seeking damages attributable to [Ralph's] exposures that occurred outside the context of his work" on such ships. *Id.* Therefore, they explained, there was no jurisdiction under section 1442(a)(1), because there was no relationship between their claims and actions taken under federal direction, *id.*, Appx502–03, and because the government

contractor defense could not provide a colorable defense to their claims, *id.*, Appx503–05.

Of the 47 defendants, only three opposed remand—JCI, Paramount Global (Paramount) (now ViacomCBS), and General Electric (GE). In its opposition, JCI argued that "[s]ection 1442 deprives Plaintiffs of the power" to waive claims arising out of military exposures, and that the "indivisible nature of Mr. Pappagallo's lung cancer" secured federal-officer removal jurisdiction. JCI Opp'n to Remand, Appx589–90. In their joint opposition, Paramount and GE raised a similar "indivisible injury" theory, Paramount Opp'n to Remand, Appx579, and also argued that the district court had admiralty jurisdiction, *id.*, Appx580–83. The district court subsequently ordered the Pappagallos to file a supplemental brief in response to JCI, Paramount, and GE's indivisible injury arguments, and allowed the defendants to respond. ECF 68.

On August 29, 2025, the district court granted the Pappagallos' motion to remand. *See* Order, Appx10. In its accompanying opinion, the court concluded that, to the extent there was "ambiguity," the Pappagallos had "clarified" that they were not "bringing claims for Mr. Pappagallo's navy and Coast Guard asbestos exposure." Mem. Op.,

Appx18. Explaining that their disclaimer of such claims was valid, the court noted that courts around the country had made "a distinction between 'jurisdictional' disclaimers and 'express claim' disclaimers." *Id.*, Appx15. "Jurisdictional disclaimers," the court explained, "are technical legal disclaimers designed to circumvent federal officer removal by waiving, for example, 'any cause of action or claim for recovery that could give rise to federal subject matter jurisdiction,'" and have generally been found ineffective to defeat a claim of federal-officer removal jurisdiction. *Id.* (quoting *Dougherty v. A O Smith Corp.*, No. CV 13-1972-SLR-SRF, 2014 WL 3542243, at *3 (D. Del. July 16, 2014), *report and recommendation adopted*, 2014 WL 4447293 (D. Del. Sept. 8, 2014)), and citing *In re Asbestos Prods. Liab. Litig.*, 770 F. Supp. 2d 736, 742 (E.D. Pa. 2011)). On the other hand, the district court noted that courts had generally found "express claim" disclaimers—"disclaimers that clearly carve out certain factual bases, whether by time span or location, such that any alleged injury could not have happened under the direction of a federal officer"—sufficient to "defeat the basis for federal officer removal." *Id.* at Appx16–17 (quoting *In re Insulin Pricing Litig.*, NO. 2:23-md-03080 (BRM), 2025 WL 1576940, at *4 (D.N.J. June 4, 2025)

(cleaned up), and discussing *Dougherty*, 2014 WL 354224 at *9–10, 14–16; *Long v. 3M Co.*, No. 3:23-CV-1325-AR, 2024 WL 866819, at *4 (D. Or. Jan. 31, 2024), *report and recommendation adopted*, 2024 WL 865872 (D. Or. Feb. 29, 2024), *aff'd sub nom. Long v. Foster Wheeler Energy Corp.*, No. 24-1557, 2025 WL 752487 (9th Cir. Mar. 10, 2025); *Heilner v. Foster Wheeler LLC*, No. 1:22-CV-00616, 2022 WL 3045838, at *3 (M.D. Pa. Aug. 2, 2022); *Martincic v. A.O. Smith Corp.*, No. 2:20-CV-958-WSS, 2020 WL 5850317, at *3 (W.D. Pa. Oct. 1, 2020)). The Pappagallos' "unambiguous location-based disclaimer," the court explained, fell into this latter category. *Id.*, Appx18.

The court next turned to Defendants' argument that the disclaimer was ineffective because Ralph's "asbestos exposure is an indivisible injury" and, therefore, that allowing waiver would "cause Plaintiffs' remaining claims to fail as a matter of law in state court." *Id.*, Appx19–20. That argument was "not relevant to the jurisdictional inquiry," the court explained, but rather went solely to the merits, noting that "Plaintiffs will bear the burden of proving that non-government exposures caused Mr. Pappagallo's injury in the state court proceedings." *Id.*, Appx20. The court also addressed the First Circuit's decision in

Puerto Rico v. Express Scripts, 119 F.4th 174 (1st Cir. 2024), on which Defendants had relied. There, the First Circuit distinguished "between private conduct that occurs simultaneously with federal conduct and is therefore indivisible from it, and private conduct that occurs in a different location or on different property and can be disconnected from a defendant's work for the federal government." Mem. Op., Appx21, (citing 119 F.4th at 192–93). Here, the court explained, "Plaintiffs' disclaimer is purely location-based and is of a type which the First Circuit would agree is sufficient to block removal." *Id.* The court further distinguished other cases cited by the defendants as involving distinguishable facts. *Id.* Appx23–24 (discussing *Maryland v. 3M Co.*, 130 F.4th 380 (4th Cir. 2025); *Baker v. Atl. Richfield Co.*, 962 F.3d 937 (7th Cir. 2020)).

The court also rejected Paramount and GE's admiralty argument. The court explained that, "even assuming Plaintiffs' remaining claims qualify as maritime claims," "under the 'saving to suitors' clause, these maritime claims are not removable to federal court based on admiralty jurisdiction alone." *Id.*, Appx25 (quoting *Cty. of San Mateo v. Chevron Corp.*, 32 F.4th 733, 763–64 (9th Cir. 2022)).

Last, treating the disclaimer as a post-removal dismissal of claims, and relying on case law that pre-dated the Supreme Court's decision in *Royal Canin U.S.A., Inc., v. Wullschleger*, 604 U.S. 22 (2025), the district court examined whether it should exercise supplemental jurisdiction over the remaining claims pursuant to 28 U.S.C. § 1367. The court declined to do so and, thus, ordered the action remanded.[2] Mem. Op., Appx24–25.

SUMMARY OF ARGUMENT

I. The district court properly found federal-officer removal jurisdiction lacking. The Pappagallos' claims are based on the manufacture, sale, and distribution of *commercial* products—actions that no party suggests were taken under federal officer direction. There is no connection between those acts and a federal office, and thus the "acting under" and "nexus" requirements of section 1442(a)(1) are not satisfied. In arguing otherwise, Appellants attempt to shift the focus of the inquiry from the acts underlying the Pappagallos' claims, to the injury for which the Pappagallos seek to recover. But the text of the statute and the

[2] In *Royal Canin*, the Supreme Court made clear that once a plaintiff waives any "claims that enabled removal, the federal court loses its supplemental jurisdiction over the related state-law claims." 604 U.S. at 25.

interpretations given to it by this Court and the Supreme Court, as well as by other courts of appeals, confirm that the touchstone of the inquiry is the conduct challenged by the plaintiff. Appellants' argument that, where a defendant invokes section 1442(a)(1), a plaintiff's choice of what acts to sue over is irrelevant is based on an incorrect understanding of the role of the well-pleaded complaint and artful pleading doctrine—which apply only in analyzing federal question jurisdiction under 28 U.S.C. § 1331. And it is irreconcilable with this Court's decision in *Hoboken*, as well as decisions from several other courts of appeals.

In addition, federal officer removal is available only where the defendant has a colorable federal defense to the claims alleged. Defendants have no colorable federal defense here. Because the Pappagallos are not bringing claims based on acts taken pursuant to federal contracts, the government contractor and derivative sovereign immunity defenses—which preclude liability only where the acts were taken pursuant to federal contracts—are irrelevant. To the extent that Defendants may introduce evidence of federal acts to challenge causation or the allocation of damages, that evidence would go solely to state-law

questions—questions which cannot provide a basis for exercising jurisdiction under Article III.

II. The district court did not have jurisdiction over this action under section 1333(1). The "saving to suitors" clause in that provision protects the right of maritime suitors to choose to bring claims at law, rather than at admiralty. As this Court has previously held, when a maritime suitor exercises that right and chooses to proceed at law, section 1333(1) does not provide a basis for original jurisdiction. That rule applies whether a case was filed initially in federal court or in state court. The Pappagallos' election to bring claims at law thus precludes exercising original jurisdiction under section 1333(1).

STANDARD OF REVIEW

This Court reviews de novo a district court's decision to remand for lack of subject-matter jurisdiction. *Att'y Gen. of New Jersey v. Dow Chem. Co.*, 140 F.4th 115, 119 (3d Cir. 2025).

ARGUMENT

I. The district court lacks federal-officer removal jurisdiction.

There are four requirements for jurisdiction under section 1442(a)(1): (1) the removing defendant must be a "person" within the

meaning of the statute, (2) the plaintiff's "claims against [the defendant] must center on its conduct when 'acting under' the Government," (3) the plaintiff's "claims against [the defendant] must be for, or relating to an act under color of federal office," and (4) the defendant "must raise a colorable federal defense." *Dow Chemical*, 140 F.4th at 119 (cleaned up). "The defendant bears the burden of establishing that each requirement is met." *Mohr v. Trs. of Univ. of Pa.*, 93 F.4th 100, 104 (3d Cir. 2024) (citing *Avenatti v. Fox News Network LLC*, 41 F.4th 125, 130 (3d Cir. 2022)). Here, in light of the Pappagallos' disclaimer, neither the second, "acting under," nor the third, "nexus," requirements are met. JCI also does not satisfy the colorable federal defense requirement.

A. The "acting under" and "nexus" requirements are not satisfied.

1. The section 1442(a)(1) inquiry focuses on the conduct challenged by the plaintiff.

In analyzing whether the "acting under" and "nexus" requirements are satisfied, the inquiry focuses on the acts that the plaintiff has challenged. For "the 'acting under' requirement, the defendant must show that the *plaintiff's allegations* 'involve conduct that occurred when the defendant was "acting under" the direction of a federal officer or

agency,'" i.e., that those "'allegations are directed at the relationship between' the federal government and the defendant." *Mohr*, 93 F.4th at 104–05 (quoting *Papp v. Fore-Kast Sales Co.*, 842 F.3d 805, 813 (3d Cir. 2016); *In re Commonwealth's Motion to Appoint Counsel Against or Directed to Def. Ass'n of Phila.*, 790 F.3d 457, 470 (3d Cir. 2015)) (emphasis added); *see also Maglioli v. All. HC Holdings LLC,* 16 F.4th 393, 404 (3d Cir. 2021) (holding that *"the plaintiff's claims* must be based upon the defendant 'acting under' the United States, its agencies, or its officers" (emphasis added)). For the "nexus" requirement, a defendant must demonstrate a "connection or association between the *act in question* and the federal office." *Papp*, 842 F.3d at 813 (quoting *Defender Ass'n*, 790 F.3d at 471).

This Court's consistent formulation of the statutory requirements as connected to the plaintiff's claims is consistent with the Supreme Court's recognition that removal under section 1442(a)(1) requires a relationship "between the charged conduct and asserted official authority." *Jefferson Cnty. v. Acker*, 527 U.S. 423, 431 (1999) (quoting *Willingham v. Morgan*, 395 U.S. 402, 409 (1969)); *see Watson v. Phillip Morris, Inc.*, 551 U.S. 142, 147 (2007) (holding that removal is only

available where the defendant, "in carrying out the acts that are the subject of the [plaintiff's] complaint, was acting under" a federal agency or officer (cleaned up)); *Maryland v. Soper (No. 1)*, 270 U.S. 9, 32 (1926) (holding that a federal officer could remove a criminal prosecution only if his "acts or his presence at the place in performance of his official duty constitute the basis … of the state prosecution").

The focus on the challenged acts derives from the statutory text, which "tells us what must relate to what." *Anne Arundel Cnty. v. BP P.L.C.*, 94 F.4th 343, 348 (4th Cir. 2024). Section 1442(a)(1) applies to actions "against or directed to…" federal officers or those acting under them "for or relating to any act under color of such office," and allows removal only by such persons. "It is the 'act' for which the defendant is being sued—not the plaintiff's entire civil action in a general sense—that must relate to the asserted federal duty." *Anne Arundel*, 94 F.4th at 348. Or, as the Eleventh Circuit put it, "the act anchoring removal must be defined by the claim brought against the defendant." *Georgia v. Meadows*, 88 F.4th 1331, 1344 (11th Cir. 2023) (cleaned up). Therefore, "to obtain removal under Section 1442(a)(1), a defendant must show it is being sued for an act or acts that it claims were done under—or related

to acts done under—federal authority." *Anne Arundel*, 94 F.4th at 349. Where there is a "mismatch between the business practices that [a defendant] asserts were subject to federal control and supervision … and the business practices of which [the plaintiff] complains," the requirements of section 1442(a)(1) are not satisfied. *Connecticut v. Exxon Mobil Corp.*, 83 F.4th 122, 145 (2d Cir. 2023).

Contrary to Appellants' arguments, that a plaintiff's *injury* may have some relationship with official acts is not sufficient to satisfy the "acting under" and "nexus" requirements. *See D.C. v. Exxon Mobil Corp.*, 89 F.4th 144, 156 (D.C. Cir. 2023) (rejecting the argument "that the relevant question is not the [plaintiff]'s theory of liability but the harm that gives rise to the relevant damages"); *Anne Arundel*, 94 F.4th at 348–49 (rejecting defendants' argument that the court should "focus on whether the acts that allegedly caused the injuries for which the [plaintiffs] seek to recover were directed by federal officers" (marks omitted)). Focusing on the injury both would lack a basis in the statutory text and would not serve the statutory purpose: providing a federal forum where a defendant faces liability for, or relating to, acts that it took on the federal government's behalf.

Here, the only conduct challenged relates to commercial vessels. Acts undertaken by JCI (or anyone else) with respect to military vessels are not "acts in question" in this case and, thus, cannot provide the basis for removal. *See Papp*, 842 F.3d at 813.

2. Section 1442 does not displace the principle that plaintiffs may choose which acts to sue over.

Despite this Court and the Supreme Court's repeated focus on the plaintiffs' claims and allegations, Appellants argue that, for purposes of federal officer removal, a plaintiff's choice to limit their claims to specific acts is to be disregarded. According to Appellants, "the defendant is essentially the master of the pleadings for purposes of § 1442(a)(1)," and "the plaintiff cannot defeat removal jurisdiction by artfully limiting his claim." ViacomCBS Br. 21, 26 n.11; *see also* JCI Br. 1, 15. This argument wrongly conflates distinct legal principles: the well-pleaded complaint rule and the prohibition on artful pleading, which have no relevance here, and the master-of-the-complaint doctrine, which does.

ViacomCBS and GE emphasize that section 1442(a)(1) is an exception to the well-pleaded complaint rule. *See* ViacomCBS Br. 2, 7, 19, 20, 25, 26. That point, while true, has nothing to do with the issues before this Court. The well-pleaded complaint rule states, that for purposes of

federal-question jurisdiction under 28 U.S.C. § 1331, "a court determines whether a claim 'arises under' federal law from a plaintiff's complaint." *Wood v. Prudential Ins. Co. of Am.*, 207 F.3d 674, 678 (3d Cir. 2000) (citing *Metropolitan Life v. Taylor*, 481 U.S. 58, 62 (1987)). Where the well-pleaded complaint rule applies, "[f]ederal jurisdiction cannot be predicated on an actual or anticipated defense." *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009); *see also Bracken v. Matgouranis*, 296 F.3d 160, 163–64 (3d Cir. 2002) (discussing well-pleaded complaint rule). This rule does not apply in determining whether jurisdiction exists under the federal-officer removal statute, where it is the asserted federal *defense* to the claim alleged, not the claim itself, "that constitutes the federal law under which the action against the federal officer arises for Art. III purposes." *Mesa v. California*, 489 U.S. 121, 136 (1989). Thus, the fact that the Pappagallos brought no claims that, on their face, implicate federal law is not dispositive of whether there is jurisdiction under section 1442(a)(1), as it would be under section 1331. But that does not mean that the Pappagallos' choice of which acts to sue over is irrelevant to section 1442(a)(1).

Similarly, the "artful pleading" doctrine that ViacomCBS and GE invoke, ViacomCBS Br. 26, is used to determine whether a claim arises under federal law for purposes of section 1331. Most frequently invoked in the context of complete preemption, the doctrine stands for the principle that "a plaintiff cannot frustrate a defendant's right to remove by pleading a case without reference to any federal law when the plaintiff's claim is necessarily federal." Wright & Miller, 14C Fed. Prac. & Proc. Juris. § 3722.1 (Rev. 4th ed.); *see also Rivet v. Regions Bank of Louisiana,* 522 U.S. 470, 475 (1998); *Hoboken*, 45 F.4th at 713. Here, Appellants do not argue that the Pappagallos' state-law claims are disguised federal ones—they argue only that JCI has a federal defense to those state-law claims. The artful pleading doctrine is thus irrelevant. *See Hoboken*, 45 F.4th at 713.

These principles of federal-question jurisdiction are different from the broader "master-of-the-complaint" principle, which "can be understood more generally as describing the high value our legal system places on the autonomy of parties asserting claims, specifically the interest of a party in determining what claims to assert and whom to sue." Patrick Woolley, *Counterclaims, Civil Actions, and the Elusive*

Reach of the Well-Pleaded Complaint Rule, 108 Iowa L. Rev. 801, 824 (2023). And as the Supreme Court recently reaffirmed, this rule allows plaintiffs "to structure their case in [a] way" that keeps their case out of federal court. *Hain Celestial Grp., Inc. v. Palmquist*, No. 24-724, 607 U.S. __, 2026 WL 501733, at *7 (Feb. 24, 2026). To be sure, the well-pleaded complaint rule has been recognized as an application of the master-of-the-complaint doctrine, but the master-of-the-complaint doctrine is broader and applicable in several other contexts as well. In *Hain*, for example, the Court applied the rule to respect a plaintiff's choice to sue non-diverse defendants. *Id.* And in *Dianoia's Eatery, LLC v. Motorists Mutual Insurance Co.*, 10 F.4th 192 (3d Cir. 2021), this Court held that, in determining whether the Declaratory Judgment Act applies, "it is irrelevant whether a plaintiff *could* have sought legal relief as well," because "[t]he plaintiff, as master of the complaint, may make a genuine choice to limit the relief sought." *Id*. at 204. Similarly, as *Dianoia's* notes, it is a "long-accepted practice" that a plaintiff may "limit his or her damages claim to an amount below the amount-in-controversy threshold in order to avoid removal based on diversity jurisdiction." *Id.* (citing *St.*

Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 294 (1938); *Morgan v. Gay*, 471 F.3d 469, 474–75 (3d Cir. 2006)).

The inapplicability of the well-pleaded complaint rule to the federal-officer removal statute is inherent in section 1442's creation of federal jurisdiction *without* a federal claim appearing on the face of the complaint. Yet section 1442 offers no basis to abandon the master-of-the-complaint principle whenever a defendant seeks to remove pursuant to the federal-officer removal statute. To the contrary, the statute respects the choice of the plaintiff, as master of the complaint, to avoid federal jurisdiction through the choice of whom to sue. Section 1442(a) allows removal only by a defendant who itself satisfies the criteria of the statute, and only a defendant whom the action is "against or directed to" may invoke section 1442(a). A non-defendant cannot remove an action, whether or not their acts played a role in the plaintiff's "indivisible injury." And a defendant cannot remove an action based on the theory that a non-defendant federal officer contributed to the plaintiff's injury. Thus, if the Pappagallos had omitted JCI from the list of defendants in this case, JCI would not have been able to remove, and no other defendant could remove if, as Appellants suggest, JCI's work for the

military contributed to the injury over which the Pappagallos were suing. In short, that the Pappagallos are suing JCI for actions it took unrelated to its work under a federal officer no more implicates federal government interests protected by section 1442 than a lawsuit that did not name JCI at all.

Appellants err as well in suggesting that honoring the plaintiffs' choice of what claims to bring is inconsistent with this Court's recognition that, "when a dispute requires [a court] to choose between competing factual accounts, [it] must 'credit the [defendant's] theory of the case.'" *Dow Chemical*, 140 F.4th at 118 n.2 (quoting *Acker*, 527 U.S. at 432), *cited in* ViacomCBS Br. 20; *see* JCI Br. 15 (citing *Acker*). As the Ninth Circuit recently explained:

> When a court adjudicates a motion to remand in the federal officer removal context, … it has to both credit the defendants' theory of the case as laid out in the notice of removal and supporting documentation, while also taking the allegations in plaintiff's complaint as true. In other words, defendants' theory of the case must be understood in relation to the allegations contained in the plaintiff's complaint. In the process of crediting defendants' theory of the case, a court is not free to disregard or rewrite the allegations plaintiff has chosen to include in its complaint.

California v. Express Scripts, Inc., 154 F.4th 1069, 1080 (9th Cir. 2025). But that is what Appellants are asking the Court to do here.

Furthermore, contrary to Appellants' assertion, *Acker*, where the "credit the defendant's theory" language first appeared, does not adopt Appellants' view that a removing defendant becomes the master of the complaint. In that case, the phrase appears in a discussion about the scope of the applicable law. Specifically, the defendant and the Solicitor General as amicus posited different readings of a local ordinance. Declining to adopt the Solicitor General's reading, the Court said that "choos[ing] between those readings of the Ordinance [would be] to decide the merits of this case" and require "an airtight case on the merits in order to show" the causal connection needed to establish jurisdiction. *Acker*, 527 U.S. at 432. The Court said nothing about the master-of-the-complaint rule or the plaintiff's ability to choose what claims to bring, much less what acts to sue over. To the contrary, *Acker* reaffirmed that removal under section 1442 requires a connection "between the *charged conduct* and asserted official authority," *id.* at 431—a standard that definitionally focuses on the acts over which the plaintiff has chosen to sue.

3. This Court's decision in *Hoboken* controls.

Appellants' argument that removal pursuant to section 1442(a)(1) divests a plaintiff of his ability to choose what acts he is suing over is irreconcilable with this Court's decision in *Hoboken*. There, this Court affirmed the remand orders issued in two actions initially filed in state court, asserting that the defendants had committed various state-law torts in their production, marketing, and sale of fossil fuels, all of which contributed to climate change. 45 F.4th at 706. The defendants removed the actions, invoking multiple bases for jurisdiction, including section 1442(a)(1). In that regard, they asserted that the statute applied because some of the oil they produced was "provided to the federal government" for military uses. *Id.* at 713. Like the Pappagallos here, the plaintiffs argued that the defendants' supply of products for military use was irrelevant, relying on explicit statements "that they [we]re not suing over emissions caused by fuel provided to the federal government." *Id.* And like Appellants here, the defendants argued that such a disclaimer by the plaintiffs could not defeat removal, because it was impossible "to separate harm [to the environment] caused by military fuel use from harm caused by civilian fuel use." *Id.*

This Court agreed with the plaintiffs, explaining that their disclaimers were "no ruse." *Id.* Despite the defendants' assertion that the injury the plaintiffs sought to recover for was indivisible, the plaintiffs were free to "carve out a small island" and escape federal jurisdiction. *Id.* Such a holding is irreconcilable with Appellants' assertion that it is their theory of injury, not the claims the plaintiffs are bringing, that governs.

Although *Hoboken* is binding precedent, Appellants ask this Court to disregard it. For its part, JCI argues that *Hoboken* is distinguishable because, here, the Pappagallos' allege that Ralph's "cumulative exposure to asbestos … caused his lung cancer" and because the Pappagallos are seeking to hold "JCI jointly and severally liable for the entirety of that indivisible injury." JCI Br. 28. But the defendants in *Hoboken* made the same argument as to why the disclaimers should be ignored, asserting that "Plaintiff's alleged injuries necessarily arise from the total accumulation of all greenhouse-gas emissions, and Plaintiff offers no method to isolate its alleged climate-related injuries from federally directed conduct, and courts have held that there is no realistic possibility of doing so." Defs.-Applts' Reply Br. (Doc. 108) at 28, *City of Hoboken v. Exxon Mobil Corp.*, No. 21-2728 (3d Cir. Jan. 14, 2022)

(citations omitted); *see also* Defs.-Applts' Reply Br. (Doc. 187) at 23, *Delaware v. BP Am. Inc.*, No. 22-1096 (3d Cir. May 22, 2022). The *Hoboken* defendants' argument as to the inability to divide harm caused by federally directed and non-federally directed conduct cannot be meaningfully distinguished from JCI's argument of "indivisible injury." Moreover, the argument is irrelevant, given *Hoboken*'s recognition that plaintiffs are free to "carve out" acts from their claims if they so choose. JCI's theory that it is impossible to separate harm caused by military asbestos exposure from harm caused by civilian asbestos exposure does not go to jurisdiction, but to the state-law question of whether the Pappagallos may prevail on their theory of liability based on the acts that they challenge.[3] Whether they can or they cannot does not speak to whether the challenged acts were taken under federal authority.[4]

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[3] The Pappagallos dispute Appellants' assertion that it is impossible to divide Ralph's injury here. As the Ninth Circuit explained in a similar case, "it could be possible to produce statistical models that can accurately calculate proportions of tortious harms attributable to federal versus non-federal sources." *California v. Express Scripts*, 154 F.4th at 1089. Whether or not such division is possible raises a state-law question that "[state] courts using existing adversarial rules of procedure are competent to adjudicate." *Id.*

[4] JCI "alternatively contends" that *Hoboken* "was wrongly decided." JCI Br. 28 n.4. But, under this Court's rules, "the holding of a panel in a

ViacomCBS and GE relegate their discussion of *Hoboken* to a footnote, suggesting that the decision stands for the proposition that removal under section 1442(a)(1) is not available where a defendant's "conduct while 'acting under' a federal officer was so *de minimis* in comparison to its non-'federal officer'-related activity that the 'federal officer' conduct cannot reasonably be viewed as a meaningful cause-in-fact of the claimed harm." ViacomCBS Br. 26 n.11. That is an implausible reading of *Hoboken*'s holding, particularly given the Court's rejection of the defendants' "artful pleading" argument and the defendants' request that the Court "disregard [the plaintiffs'] disclaimers" based on the inability to "separate harm" between challenged and unchallenged acts. *Hoboken*, 45 F.4th at 731. The Court's concluding reference to an amicus brief estimating that "the Department of Defense is responsible for less than 1/800th of the world's energy consumption," *id.*, on which ViacomCBS and GE focus, is not only dicta, but highlights a similarity, not a distinction, between that case and this one: At the deposition that prompted JCI's removal notice, Mr. Albanese testified that military

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precedential opinion is binding on subsequent panels." Third Circuit I.O.P. 9.1.

vessels were a "small percentage of the ships" on which he himself had worked at Bethlehem Steel, that he had no recollection of working with Ralph on a Navy ship, and that he recalled working on a few *thousand* commercial ships with Ralph. Appx143. If, as ViacomCBS and GE suggest, *Hoboken* is about the relatively small percentage of emissions that came from military fuel use as opposed to civilian fuel use, that same logic would support the inapplicability of section 1442 here.

4. Focus on the plaintiffs' challenged acts is supported by case law from other circuits.

This Court's focus in *Hoboken* on the acts challenged by the plaintiffs is consistent with decisions of other courts of appeals that treat plaintiffs' choices not to sue over acts taken under federal-officer direction as precluding removal under section 1442(a)(1). Cases implicating the impact of unchallenged conduct on federal-officer removal have arisen in four different factual scenarios: cases like this one involving asbestos exposure and product liability, cases like *Hoboken* challenging the sales or marketing of fossil fuels with a resulting injury to the climate, cases against pharmacy benefit managers arising out of a range of conduct, and cases alleging environmental contamination by chemicals manufacturers.

a. As to asbestos cases, each of the three courts of appeals to consider the issue has held that a plaintiff's decision not to pursue claims arising out of military exposures eliminates federal-officer removal jurisdiction.[5] Most recently, in *Long v. Foster Wheeler Energy Corp.*, No. 24-1557, 2025 WL 752487 (9th Cir. Mar. 10, 2025), affirming a decision relied upon by the district court here, *see* Mem. Op., Appx17–19, the Ninth Circuit held that, where a shipworker disclaimed claims arising out of asbestos exposure on Navy vessels, he was not "challeng[ing] any act … performed under the direction of the Navy or other military branch," and thus there was no nexus between his claims and actions taken under federal officer direction. *Long*, 2025 WL 752487, at *1 (cleaned up).

Likewise, the Fourth Circuit gave effect to a plaintiff's disclaimer of claims arising from military exposures in *Wood v. Crane Co,* 764 F.3d

[5] Dozens of district court opinions have addressed this issue as well, including those cited by the district court in this case, *see* Mem. Op., Appx15–17, 19–20, and by ViacomCBS and GE, *see* ViacomCBS Br. 21–22, and reached differing conclusions. *Compare, e.g.*, *Dougherty*, 2014 WL 3542243, at *9–*16 (in case removed by JCI, finding plaintiffs' "post-removal claim" disclaimer eliminated federal-officer removal jurisdiction), *with Corley v. Long-Lewis, Inc.*, 688 F. Supp. 2d 1315, 1335 (N.D. Ala. 2010) (concluding otherwise).

316 (4th Cir. 2014). There, the manufacturer of asbestos-containing valves and gaskets invoked section 1442(a)(1) to remove a state-law mesothelioma action, asserting that the plaintiff's exposure, in part, arose from valves it had supplied pursuant to military specifications. *Id.* at 319. The plaintiff subsequently disclaimed any claims relating to those valves. *Id.* at 319–20. Reasoning that there was no longer a colorable federal defense, the district court remanded the action. *Id.* at 320. On appeal, the Fourth Circuit rejected the manufacturer's assertion that the plaintiff's "disclaimer [wa]s a legal nullity devoid of real effect," and affirmed the district court's remand.[6] *Id.* at 321.

Similarly, in *Chapman v. Crane Co.*, 694 F. App'x 825, 827–28 (2d Cir. 2017), the Second Circuit held that the plaintiffs' express "abandonment" of claims arising from asbestos exposure at government facilities was valid and eliminated jurisdiction under section 1442(a)(1).

b. The asbestos cases are consistent with decisions in the second category—the climate change cases like *Hoboken*, where courts of

[6] In *Wood*, the district court had declined to exercise supplemental jurisdiction after federal-officer removal jurisdiction was eliminated. The Supreme Court's subsequent decision in *Royal Canin* establishes that remand is mandatory, not discretionary, in such circumstances. 604 U.S. at 25.

appeals have unanimously rejected fossil fuel producers' attempts to remove based on unchallenged conduct. In two such cases, *Anne Arundel*, 94 F.4th at 348, and *D.C. v. Exxon Mobil*, 89 F.4th at 156, the Fourth and D.C. Circuits, respectively, explicitly rejected defendants' arguments that focused on the plaintiff's injury as opposed to the challenged acts. *See also Connecticut v. Exxon Mobil*, 83 F.4th at 145 (finding nexus requirement unsatisfied based on unchallenged acts); *Minnesota v. Am. Petroleum Inst.*, 63 F.4th 703, 715–16 (8th Cir. 2023) (same); *Rhode Island v. Shell Oil Prods. Co.*, 979 F.3d 50, 60 (1st Cir. 2020), vacated, 141 S. Ct. 2666 (2021), reinstated in relevant part by *Rhode Island v. Shell Oil Prods. Co.*, 35 F.4th 44, 52 n.6 (1st Cir. 2022) (same).

c. The cases against pharmacy benefit managers (PBMs) are also consistent with *Hoboken* and, like that case, focus on the acts challenged by the plaintiffs. In those cases, the defendants provided services for both federal health benefit plans and private ones. In cases where the challenged acts were performed, in whole or in part, pursuant to a federal-officer relationship, courts found that the inability to disentangle the federal and non-federal aspects of those *acts* made disclaimers ineffective in eliminating section 1442(a)(1) jurisdiction. Specifically, in

cases targeting negotiations between PBMs and drug manufacturers that allegedly resulted in increased drug prices, courts have rejected disclaimers where the PBMs were concurrently wearing both federal and non-federal hats when they negotiated. *See Ohio ex rel. Yost v. Ascent Health Servs., LLC*, 165 F.4th 999, 1006 (6th Cir. 2026) (finding disclaimer ineffective because "the targeted negotiations were handled holistically"); *West Virginia v. CaremarkPCS Health*, 140 F.4th 188, 195 (4th Cir. 2025) (same because "the conduct for which [the defendant] is being charged…includes indivisible federal and non-federal conduct"); *Puerto Rico v. Express Scripts*, 119 F.4th 174, 191–93 (1st Cir. 2024) (same since the "charged conduct is alleged to be indivisibly federal and non-federal"). In such cases, unlike here, it was the *challenged acts* that the courts found to be indivisible—not the injury.

By contrast, in *California v. Express Scripts*, the Ninth Circuit found a disclaimer effective where the "[d]efendants' federal and non-federal work was divisible." 154 F.4th at 1086. There, the plaintiff challenged actions that the defendants took in administering various prescription drug plans, which the plaintiffs alleged had substantially contributed to the opioid epidemic. *Id.* at 1075. Unlike in the PBM cases,

though, the defendants had not performed the challenged acts simultaneously in federal and non-federal capacities; rather, the defendants argued that they performed the same *type* of work for federal and non-federal clients. 154 F.4th at 1085. Accordingly, the defendants failed to "show their actions in the non-federal market which gave rise to Plaintiff's claims resulted from their work for the federal government." *Id.* at 1085 (cleaned up). Further, the court rejected an indivisible injury theory similar to that raised here, explaining that "the mere fact that Defendants' alleged public nuisance harms stem from the same type of federal and non-federal work and intermingled in the world is insufficient to enable federal officer removal." *Id.* at 1090. This was so, the court explained, even if a state court would be required to, using expert evidence, calculate what proportion of the total "harm derived from work for non-federal clients" for purposes of apportionment. *Id.* at 1089.

These cases all support the district court's decision in this case. Here, Appellants argue that the injury is indivisible. They do not suggest that JCI's actions in designing, manufacturing, and supplying parts to commercial vessels were indivisible from the work it did subject to

detailed military specifications with respect to Navy and Coast Guard vessels.

d. Appellants' briefs rely exclusively on cases from the fourth category of cases—which the district court described as involving "claims of contamination or pollution resulting from defendants' manufacture of products containing hazardous chemicals." Mem. Op., Appx23. Those cases do not provide a persuasive basis to depart from the principles discussed above, or from the opinions of this Court and others following them.

First, Appellants cite the Seventh Circuit's decision in *Baker v. Atlantic Richfield Co.*, 962 F.3d 937 (7th Cir. 2020). *See* JCI Br. 25–26; ViacomCBS Br. 22–24. There, housing complex residents sued nine manufacturing companies in state court for polluting the soil in and around their later-built homes. *Baker*, 962 F.3d at 939. Some of the companies removed, invoking section 1442(a)(1), arguing that their production in the relevant time period was done under federal military direction. *Id.* at 939–40. The plaintiffs filed a motion to remand, which the district court granted, resting on the notion that "the bulk of the Companies' operations occurred outside the wartime period." *Id.* at 945.

On appeal, the Seventh Circuit reversed—not because it was declining to give credit to any disclaimer of the plaintiffs, but because a *non*-de minimis amount of the challenged acts were done under federal officer direction.[7] *Id.* The court grounded its holding in the principle that, if even one claim in a case is removable, the entire action is removable. For that reason, "[t]hat some of the Residents' allegations of soil contamination d[id] not relate to the Companies' acts under color of federal office" did not defeat removal. *Id.* at 945. Here, unlike in *Baker*, the issue is not that *some* of the Pappagallos' allegations of unlawful conduct by JCI do not relate to its acts under color of federal office. Rather, even putting aside the question whether Ralph ever worked on military vessel, by virtue of the disclaimer, *none* of them relate to JCI's acts under color of federal office.

The Seventh Circuit did not, as Appellants ask this Court to do, shift its focus from the claims brought by the plaintiffs to claims *not* brought by them. To the contrary, the court quoted this Court's decision

[7] In *Baker*, the plaintiffs' disclaimer applied to only one of the two defendants that the Seventh Circuit concluded was acting under a federal officer and was discussed only in a brief footnote. 962 F.3d at 941, 945 n.3.

in *Defenders Ass'n* for the proposition that the "acting under" element requires "'allegations … directed at the relationship' between the [defendants] and the federal government." *Baker,* 962 F.3d at 944–45 (quoting 790 F.3d at 470). And it quoted the Second Circuit's decision in *Isaacson v. Dow Chemical Co.*, 517 F.3d 129, 138 (2d Cir. 2008), for the proposition that the nexus requirement requires defendants to "establish that the act that is the subject of Plaintiffs' attack occurred *while* Defendants were performing their official duties." *Baker,* 962 F.3d at 944–45. This formulation of the relevant inquiry is inconsistent with that proposed by Appellants.

The other two cases on which Appellants rely, *Maryland v. 3M Co.*, 130 F.4th 380, 389–90 (4th Cir. 2025), petition for cert. pending, No. 25-517, *cited in* JCI Br. 22–24 and ViacomCBS Br. 24–25, and *Maine v. 3M Co.*, 159 F.4th 129 (1st Cir. 2025), *cited in* JCI Br. 18–21 and ViacomCBS Br. 21, 24, were wrongly decided. In both cases, states had brought lawsuits relating to the contamination of waterways by per- and polyfluoroalkyl substances (PFAS)—one relating to 3M's production of PFAS-containing firefighting foam (AFFF), including production for military purposes, and one relating solely to other PFAS-containing

products. 3M removed both the AFFF and non-AFFF cases, arguing that the federal-officer removal statute applied to the latter cases, even though none of the non-AFFF products were manufactured under federal direction, because PFAS from military AFFF "inseparably contributed to any alleged non-AFFF PFAS contamination." *Maryland*, 130 F.4th at 386; *see Maine*, 159 F.4th at 134. The district courts had remanded the cases due to the lack of a connection between the plaintiffs' claims and 3M's federal work, but the Fourth and First Circuits reversed. In so doing, both courts relied on the same misunderstanding of the artful pleading doctrine, section 1442's status as an exception to the well-pleaded complaint rule, and the master-of-the-complaint doctrine discussed above. *See Maryland*, 130 F.4th at 388–91; *Maine*, 159 F.4th at 137–38. Further, as Judge Floyd stated in his dissent in *Maryland*, the courts did not reconcile their holdings with the statutory requirement of a connection between "the complained-of conduct" and "relevant federal authority." 130 F.4th at 396 (Floyd, J., dissenting). While acknowledging that there was no risk of recovery "for PFAS contamination from Military AFFF," the Fourth Circuit suggested that the mere fact that the defendants might introduce evidence of unchallenged acts that were

taken under federal direction was sufficient to satisfy the statute. *Maryland*, 130 F.4th at 392. And in *Maine*, the First Circuit did not meaningfully address the nexus requirement at all, first stating that that jurisdictional requirement was "waived," and then summarily stating that its (incorrect) conclusion that 3M had a colorable federal defense necessarily meant the nexus requirement was satisfied. 159 F.4th at 139.

B. Defendants have no colorable federal defense to the claims in this action.

In addition to JCI's failure to satisfy the acting under and nexus requirements, section 1442(a)(1) does not provide jurisdiction over the Pappagallos' claims for an independent, though related, reason. In addition to showing that a plaintiff's claims relate to an action taken by a defendant as part of its relationship with the federal government, a removing defendant must also identify "a colorable federal defense to the plaintiff's claims." *Mohr*, 93 F.4th at 104 (quoting *Maglioli*, 16 F.4th 393 at 404). For such purposes, a federal defense is a defense that "depends on federal law." *Acker*, 527 U.S. at 431.

Here, Appellants have not raised any colorable questions of federal law. JCI points to the government contractor defense and the so-called derivative sovereign immunity defenses. *See* JCI Br. 17. But those

defenses could be colorable only if the Pappagallos were bringing claims based upon acts that JCI took pursuant to federal government direction. The government contractor defense provides that a federal contractor cannot be held liable under state law for actions taken pursuant to certain federal contracts. *See Papp*, 842 F.3d at 814. Similarly, what Appellants refer to as the derivative sovereign immunity defense is simply a qualified immunity for work that contractors "do pursuant to their contractual undertakings with the United States." *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 166 (2016).[8] Where, as here, the plaintiffs have disclaimed any possible recovery for actions taken pursuant to federal contracts, neither defense has any relevance. In short, JCI "cannot assert a defense to claims 'that simply do not exist.'" *California v. Express Scripts*, 154 F.4th at 1089 (quoting *Batchelor v. Am. Optical Corp.*, 185 F. Supp. 3d 1358, 1364–65 (S.D. Fla. 2016)).

[8] Whether there is a "derivative sovereign immunity" defense as opposed to the limited defense recognized by this Court in *Yearsley v. W.A. Ross Construction Co.*, 309 U.S. 18 (1940), is currently before the Supreme Court in *GEO Group v. Menocal*, No. 24-2758, argued November 10, 2025. *See also Gay v. A.O. Smith Corp.*, No. 23-2078, 2024 WL 2558735, at *2 (3d Cir. May 24, 2024) (referring to *Yearsley* defense and derivative sovereign immunity interchangeably).

What JCI actually raises as a defense to the claims that *do* exist is its argument that the Pappagallos cannot prevail on the merits of those claims because they are not *also* challenging JCI's work for the military. Whether that argument is correct is a question of *state* law, as evidenced from JCI's own brief, which relies exclusively on Pennsylvania law. *See* JCI Br. 30. And regardless of how a court rules as to that argument, the government contractor and derivative sovereign immunity defenses will remain inapplicable. Either the Pappagallos will be able to prevail with claims based only on civilian exposures, or they will not be able to prevail on any claims at all. Either way, no court will have to answer the federal-law question of whether JCI is immune for actions it took in manufacturing, selling, and distributing military equipment.

For their part, ViacomCBS and GE assert that the question that "must be decided in federal court" is "whether, and to what extent, asbestos exposure on Navy and Coast Guard ships was a cause-in-fact of Mr. Pappagallo's injury." ViacomCBS Br. 25–26. Even if a court has to decide that question, or the question of whether to offset some amount of damages to account for un-challenged acts, those questions of causation and allocation are not defenses rising under federal law. They therefore

do not provide the necessary basis for jurisdiction under Article III. *See California v. Express Scripts*, 154 F.4th at 1090 (holding that need for a state court to calculate how much harm was caused by non-federal acts did not implicate a colorable federal defense). That actions taken under federal direction may be introduced as *evidence* to support a state-law defense does not transform the defense into a colorable federal defense.

II. The district court lacks admiralty jurisdiction.

Appellants separately argue that remand was improper because the district court had original jurisdiction under 28 U.S.C. § 1333(1). It did not.

Section 1333(1) provides district courts with "original jurisdiction, exclusive of the courts of the States, of … [a]ny civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." The final clause of that provision, known as the "saving to suitors" clause, allows a plaintiff to seek a remedy at law (rather than in admiralty) for a maritime claim—and thus to exempt that case from the exclusive jurisdiction otherwise created by the statute.

As a general matter, maritime suitors have three options in commencing suit: "filing their claims in federal court under admiralty jurisdiction, in federal court on the 'law' side, or in state court." *Strom v. Lockwood Boat Works Inc.*, No. CV 24-09179 (RK) (RLS), 2025 WL 90101, at *2 (D.N.J. Jan. 14, 2025) (quoting *Sea-Land Serv., Inc. v. J & W Imp./Exp., Inc.*, 976 F. Supp. 327, 330 (D.N.J. 1997) (cleaned up)). Only in the first instance does section 1333(1) provide original jurisdiction. *See Sipe v. Amerada Hess Corp.*, 689 F.2d 396, 405 (3d Cir. 1982) (holding that section 1333(1) provides original jurisdiction only over "those maritime causes of action begun and carried on as proceedings in rem" (quoting *Madruga v. Superior Court*, 346 U.S. 556, 560–61 (1954))). Section 1333(1) "does not confer jurisdiction upon the district courts to entertain civil actions in which common law remedies are sought for the enforcement of rights arising under the maritime law." *Jordine v. Walling*, 185 F.2d 662, 666 (3d Cir. 1950). To bring such an action in federal court, there must be "an independent basis for jurisdiction," such as diversity. *Ghotra by Ghotra v. Bandila Shipping, Inc.*, 113 F.3d 1050, 1055 (9th Cir. 1997). As the Supreme Court held in *Romero v.*

International Terminal Operating Co, 358 U.S. 354, 368 (1959), Congress did not vest the federal courts with general maritime jurisdiction.

In arguing that the Pappagallos' claims are subject to original jurisdiction under section 1333(1), Appellants mischaracterize the saving to suitors provision as an anti-removal rule and suggest that it becomes irrelevant once a case is properly removed on another jurisdictional ground.[9] But even in such cases, the saving to suitors clause preserves a plaintiff's choice to pursue remedies at law instead of at admiralty. "[A] plaintiff's election to sue at common law in state court 'forever prevents the federal district courts from obtaining admiralty jurisdiction.'" *Vincent v. Regions Bank*, No. 808-CV-1756-T-23EAJ, 2008 WL 5235114, at *1 (M.D. Fla. Dec. 15, 2008) (quoting *J. Aron & Co. v. Chown*, 894 F. Supp.

[9] Paramount and GE assert that the Pappagallos "waived" any argument as to whether there was jurisdiction at the time of removal. Because section 1442(a)(1) "provides both a procedural mechanism and subject matter jurisdiction," a failure to satisfy its requirements cannot be waived, because a substantive challenge to removal may be an implicit challenge to the court's subject matter jurisdiction. *Orange Cnty. Water Dist. v. Unocal Corp.*, 584 F.3d 43, 50 (2d Cir. 2009); *see Golden v. N.J. Inst. of Tech.*, 934 F.3d 302, 309 (3d Cir. 2019) (recognizing that the court of appeals has an independent obligation to ensure that the elements of federal-officer removal jurisdiction were satisfied); *Brown v. Francis*, 75 F.3d 860, 864 (3d Cir. 1996) (recognizing that a "jurisdictional prerequisite to removal is an absolute, non-waivable requirement").

697, 699 (S.D.N.Y. 1995)); *see also Glazer v. Honeywell Int'l Inc.,* No. CV 16-7714, 2017 WL 1943953, at *3 (D.N.J. May 10, 2017) ("[W]hen a maritime claim is filed in state court under the savings-to-suitors clause, it is transformed into a case at law, as opposed to admiralty." (quoting *Sanders v. Cambrian Consultants (CC) Am., Inc.*, 132 F. Supp. 3d 853, 858 (S.D. Tex. 2015)) (cleaned up)). Since there would have been no section 1333(1) jurisdiction over the Pappagallos' claims had they been filed initially in federal court, there can be no jurisdiction now.

The case of *Trentacosta v. Frontier Pacific Aircraft Industries, Inc.*, 813 F.2d 1553, 1559 (9th Cir. 1987), is instructive. There, the plaintiff brought Jones Act and maritime-law in personam claims against several defendants, invoking federal-question jurisdiction over the Jones Act claims and pendent jurisdiction over the maritime-law (*i.e.*, savings-clause) claims. *Id.* at 1555, 1559. After dismissing the Jones Act claims against most defendants, the district court dismissed without prejudice the maritime claims against the same defendants because the elimination of the federal claims eliminated any basis for continued subject-matter jurisdiction. *Id.* On appeal, the Ninth Circuit agreed, explaining that the fact that the plaintiff had chosen "to invoke

jurisdiction on the 'law side' of the court (as opposed to the 'admiralty side,' 28 U.S.C. § 1333(1))," such that federal jurisdiction was premised solely on the Jones Act, barred recharacterization of his maritime-law claims as admiralty claims. *See id.* at 1559, 1560, 1561 n.6.

The Fifth Circuit's decision in *Alleman v. Bunge Corp.*, 756 F.2d 344 (5th Cir. 1984), also makes clear that removal does not convert a plaintiff's state law claims into ones subject to admiralty jurisdiction. There, defendants removed a longshoreman's workplace injury claims on the basis of diversity jurisdiction. *Id.* at 345. After an adverse preliminary decision, one of the defendants attempted to take an interlocutory appeal pursuant to 28 U.S.C.§ 1292(a)(3), which applies in "admiralty cases." In dismissing the appeal for lack of jurisdiction, the Fifth Circuit held that the action had not become one within the admiralty jurisdiction created by section 1333(1); the defendant "could not alter" the plaintiffs' election to proceed with non-admiralty claims under the savings clause by virtue of the diversity-based removal. *Id.* at 345–46; *see also Barker v. Hercules Offshore, Inc.*, 713 F.3d 208, 222 (5th Cir. 2013) (holding that, though statutory federal-question jurisdiction authorized removal, "admiralty jurisdiction is not present in this suit because [the plaintiff] filed in state

court, therefore invoking the saving-to-suitors exception to original admiralty jurisdiction").

None of the cases invoked by Appellants support a different conclusion. Notably, the cursory discussion of admiralty jurisdiction in *Morris v. Princess Cruises, Inc.,* 236 F.3d 1061, 1069 (9th Cir. 2001) (cited in ViacomCBS Br. 17–18), was based on the erroneous supposition that any action that is governed by "federal maritime law" is within section 1333(1)'s grant of original jurisdiction. That supposition was incorrect, as this Court has recognized. *See Sipe*, 689 F.2d at 405; *Jordine*, 185 F.2d at 66; *see also Coronel v. AK Victory*, 1 F. Supp. 3d 1175 (W.D. Wash. 2014) (holding, notwithstanding *Morris*, that under Supreme Court and Ninth Circuit precedent, "28 U.S.C. § 1333 alone does not provide federal subject matter jurisdiction over maritime claims on the law side of the court").

Like the plaintiffs in *Alleman* and *Trentacosta*, the Pappagallos elected to bring claims at law, rather than to invoke the admiralty jurisdiction of the federal courts. The saving to suitors clause protects that election. As a result, even if some other basis for federal jurisdiction had existed, jurisdiction under section 1333(1) did not.

CONCLUSION

For the foregoing reasons, the Court should affirm the district court's remand.

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Adam R. Pulver

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2026, the foregoing brief has been served through this Court's electronic filing system upon counsel of record for all parties.

/s/ Adam R. Pulver
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