

No. 25-5958

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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LINDA HORTON, individually and as executrix of the  
estate of Barney Horton, Jr.,

*Plaintiff-Appellee,*

v.

GENERAL ELECTRIC COMPANY,

*Defendant-Appellant,*

CARDINAL INDUSTRIAL INSULATION CO. INC., *et al.*,

*Defendants.*

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On Appeal from the United States District Court  
for the Western District of Kentucky  
Case No. 3:25-cv-100 – Hon. Rebecca Grady Jennings

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**BRIEF OF PLAINTIFF-APPELLEE**

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March 16, 2026

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

# Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: 25-5958

Case Name: Horton v. GE

Name of counsel: Stephanie B. Garlock

Pursuant to 6th Cir. R. 26.1, Linda Horton  
*Name of Party*

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No

### CERTIFICATE OF SERVICE

I certify that on March 16, 2026 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Stephanie B. Garlock  
Stephanie B. Garlock  
Public Citizen Litigation Group

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

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## STATEMENT IN SUPPORT OF ORAL ARGUMENT

Plaintiff-Appellee Linda Horton respectfully requests oral argument. This case presents a question about the scope of the federal-officer removal statute. The district court correctly held that it lacked federal-officer removal jurisdiction after the plaintiff amended her complaint to expressly disclaim any recovery for conduct taken under direction of a federal officer. In asking the Court to reverse that decision, Defendant-Appellant General Electric (GE) invites the Court to adopt an atextual approach to the federal-officer removal statute that several courts of appeals have rejected. Moreover, GE's statement in support of oral argument mischaracterizes the district court's opinion to create a dispute about the standards that govern federal-officer removal where none exists. Mrs. Horton believes that oral argument would assist the Court in clarifying the legal issues presented by the operative complaint.

## INTRODUCTION

Barney Horton, Jr., spent a decade and a half working with machinery and products that contained asbestos at the General Electric (GE) Appliance Park in Louisville, Kentucky. In 2024, Mr. Horton was diagnosed with malignant mesothelioma, an aggressive cancer caused by his exposure to asbestos. Before his death from that disease in 2025, Mr. Horton and his wife brought this state-law action in Kentucky state court against GE and eleven other defendants, alleging that they were responsible for the asbestos exposure that caused his terminal cancer. Their state-court complaint included claims based solely on Mr. Horton's exposure to asbestos within the Commonwealth of Kentucky.

During discovery, the Hortons stated in response to an interrogatory request that Mr. Horton had served in the U.S. Navy, and that he had spent some of that service aboard a World War II-era naval ship as it traveled between New England and the Caribbean. Any exposure to asbestos on that ship was plainly not within Kentucky, and thus not within the scope of the claims pleaded in the Hortons' complaint. Confirming the point, Mr. Horton executed an affidavit expressly waiving any claims arising out of his exposure to asbestos while in the Navy.

GE nonetheless removed this case to federal court, invoking the federal-officer removal statute, 28 U.S.C. § 1442(a)(1). Mrs. Horton—the remaining plaintiff following her husband’s death—amended her complaint to again expressly waive any claims arising out of exposure while on Navy ships and then moved to remand. GE, however, contended that it satisfied the requirements for federal-officer removal jurisdiction, notwithstanding the Hortons’ waivers, because GE asserted that it had been acting under federal-officer direction when it provided the Navy ship on which Mr. Horton served with turbines that may have contained asbestos. The district court rejected that argument and granted the remand motion, consistent with a long line of cases remanding suits where a plaintiff has expressly waived any claims on which federal-officer removal could be based.

In seeking reversal, GE largely contends that the Hortons cannot limit their claims to exposure in Kentucky when Mr. Horton may have been exposed to mesothelioma-causing asbestos elsewhere during his naval service. That argument lacks support in the text of the federal-officer removal statute and in case law applying it, which recognizes that the statute focuses on the conduct over which a plaintiff chooses to sue,

rather than the injury that the plaintiff suffers. This Court recently reaffirmed that plaintiffs may expressly limit the acts for which they seek relief to avoid jurisdiction under that statute, so long as they do not seek to carve up what is really “indivisible federal conduct.” *Ohio ex rel. Yost v. Ascent Health Servs., LLC*, 165 F.4th 999, 1008 (6th Cir. 2026). Here, GE cannot show that any of its conduct with respect to equipment it provided to the Navy in the 1940s is “indivisible” from its conduct in operating an appliance-manufacturing facility in Kentucky decades later. As a result, GE cannot satisfy the requirements of the federal-officer removal statute. The Court should affirm the district court’s remand order.

### **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). 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 THE ISSUE**

Whether federal-officer removal jurisdiction exists where the plaintiff challenges discrete acts that were not taken under federal-

officer direction, and disclaims any recovery for distinct, unrelated acts that may have been taken under federal-officer direction.

## STATEMENT OF THE CASE

### A. Facts and state court proceedings

For more than a decade, Barney Horton, Jr., worked as a millwright at GE's Appliance Park in Louisville, Kentucky. Pls.' Discovery Resps., R. 1-3, Page ID # 40. During his time at GE, Mr. Horton worked with or around various equipment and products that contained asbestos. *Id.*; Compl., R. 1-2, Page ID ## 23, 26–27. Mr. Horton's father had also worked as a millwright in GE's Appliance Park, and Mr. Horton spent his formative years exposed to asbestos dust on the clothes his father wore home from GE. Compl., R. 1-2, Page ID ## 23, 26–27; Pls.' Discovery Resps., R. 1-3, Page ID # 41. In May 2024, Mr. Horton was diagnosed with malignant mesothelioma, an aggressive cancer caused by his exposure to asbestos. Compl., R. 1-2, Page ID ## 23, 27.

That November, Mr. Horton and his wife, Linda Horton, filed suit in the Jefferson County Circuit Court against GE and eleven other defendants that had manufactured, distributed, or maintained asbestos or asbestos-containing products. *See id.*, Page ID ## 20–37. In their state-

court complaint, the Hortons allege that Mr. Horton “contracted malignant mesothelioma, an asbestos related cancer, as a result of his exposure to asbestos containing products ... within the Commonwealth of Kentucky,” and that defendants were responsible for that exposure. *See id.*, Page ID # 28. The complaint is explicit that the Hortons’ claims are limited to Mr. Horton’s exposure within Kentucky. It identifies the relevant defendants as corporations responsible for “asbestos products to which the Plaintiff, Barney Horton, Jr., was exposed within the Commonwealth of Kentucky, thereby causing the Plaintiffs to suffer tortious injuries.” *Id.*, Page ID # 25. The complaint further states that the “claims arise out of acts and/or omissions of each of the Defendants in Kentucky.” *Id.* The Hortons sought recovery on a variety of different claims under Kentucky law, sounding in both strict liability and negligence. *See id.*, Page ID ## 33–36.

In January 2025, GE served an interrogatory requesting all of Mr. Horton’s places of residence. The Hortons responded that Mr. Horton served in the U.S. Navy from 1968 to 1972, and that Mr. Horton had spent some of that service aboard the U.S.S. Cascade, as it traveled between New England and the Caribbean. Pls.’ Discovery Resps., R. 1-3,

Page ID # 40. In those same interrogatory responses, the Hortons reiterated that their claims for exposure to GE products were limited to “various asbestos-containing products manufactured, installed, removed, and/or specified for use at General Electric’s Appliance Park in Louisville, Kentucky.” *Id.*

After reviewing those discovery responses, counsel for GE indicated that GE believed the case should be removed to federal court based on Mr. Horton’s naval service. GE Email (Feb. 3, 2025), R. 20-4, Page ID # 436. According to GE’s records—which GE has never provided to the Hortons or introduced into the record—the U.S.S. Cascade contained marine turbines manufactured by GE. *See* Removal Notice, R. 1, Page ID # 5. That fact, in GE’s view, allowed it to raise a federal officer defense. GE Email (Feb. 3, 2025), R. 20-4, Page ID # 436. Counsel for the Hortons quickly clarified that the Hortons were “not alleging any naval exposure against any defendant.” Horton Email (Feb. 3, 2025), R. 20-5, Page ID # 438.

A week later, the Hortons’ counsel produced several documents to GE related to Mr. Horton’s naval service. *See* Horton Email (Feb. 12, 2025), R. 20-6, Page ID # 440. Among those documents was an affidavit

that Mr. Horton had executed concerning his military service. *See id.* In that affidavit, Mr. Horton attested that, to the best of his knowledge and recollection, he did not work on or around any turbines—including turbines manufactured by GE—during his naval career. Horton Aff., R. 1-6, Page ID # 73. And regardless, Mr. Horton attested that he was “not claiming asbestos exposure to any General Electric turbine, or component thereof, while serving in the Navy” and was “not seeking recovery from General Electric, or any defendant in the lawsuit filed in Jefferson County, Kentucky, for any damages related to [his] service in the Navy.” *Id.*

The Hortons also produced a copy of a claim statement that Mr. Horton had submitted to the Department of Veterans Affairs (VA) in May 2024. VA Claim, R. 1-4, Page ID ## 68–69. In that claim form, Mr. Horton told the VA that he was:

filing a claim for exposure to asbestos, bilateral hearing loss, and bilateral tinnitus as a result of my military service. I worked as a shipfitter and was exposed to asbestos and hazardous noise as a result of my job in the military. I worked on various ships and frequently worked down in the engine room where [I] was exposed to hazardous noises coming from the pipe metal shop and the sheet fitter shops.

*Id.*

## **B. District court proceedings**

On February 20, 2025, GE removed the case to the U.S. District Court for the Western District of Kentucky. *See* Removal Notice, R. 1, Page ID ## 1–11. GE asserted that the federal-officer removal statute, 28 U.S.C. § 1442(a), applied based on “Mr. Horton’s sworn statement to the Department of Veterans Affairs.” *Id.*, Page ID # 4. Because GE read that statement to “indicate[]” that Mr. Horton “was exposed to asbestos during work performed on the USS Cascade,” and because GE’s records indicated that “the USS Cascade contained one or more General Electric marine turbines” manufactured according to Navy specifications, GE contended that removal was proper. *Id.*, Page ID ## 4–5. GE did not submit records to substantiate that it had manufactured turbines for the U.S.S. Cascade under federal oversight. *See* Navy Letter, R. 1-5, Page ID # 71 (providing only Navy letter generally approving ship construction).

In its removal notice, GE acknowledged that Mr. Horton had executed an affidavit waiving any claim seeking recovery for exposure during his naval service. *See* Removal Notice, R. 1, Page ID # 9. But GE argued that “such disclaimer [wa]s ineffective in light of Mr. Horton’s sworn statement to the Department of Veterans Affairs that he was

‘exposed to asbestos’ while serving in the U.S. Navy and that his ‘job in the military’ included ‘work[ing] down in the engine room.’” *Id.* In addition, GE argued that Kentucky’s apportionment statute, Ky. Rev. Stat. § 411.182, made it impossible for the Hortons to defeat removal by waiving claims arising out of naval exposure to asbestos. *See id.*, Page ID ## 9–10. Because that statute requires the trier of fact to allocate fault among defendants to a claim, GE posited that other defendants might try to assign additional fault to GE based on Mr. Horton’s exposure aboard the U.S.S. Cascade—even though Mr. Horton was not seeking to recover for any such exposure. *See id.*

On March 9, 2025, Mr. Horton died from mesothelioma. *See Am. Compl.*, R. 19, Page ID # 359. Two months later, his widow, Linda Horton, was appointed executrix of his estate, allowing her to revive Mr. Horton’s claims. *See id.*, Page ID ## 359–60. On June 6, 2025, Mrs. Horton filed a first amended complaint, raising claims both in her individual capacity and in her capacity as the executrix of Mr. Horton’s estate. *See id.*

In her amended complaint, Mrs. Horton (now the sole plaintiff) again “disclaim[ed] and hereby waive[d] any cause of action or recovery for any injuries caused by or arising out of exposures, of any kind, to

asbestos that occurred while Barney Horton, Jr. served in the U.S. Navy from approximately October 31, 1968 to July 10, 1970 and again for a short time in 1972.” *Id.*, Page ID # 360. Mrs. Horton precisely outlined the scope of her waiver, specifically disclaiming any right to recovery arising from “exposures, of any kind, to asbestos that occurred on any U.S. Naval ship or other military vessel, including the U.S.S. Cascade,” or from exposures “to asbestos as a result of Barney Horton, Jr.’s work on, or in close proximity to others working on, marine turbines, boilers, generators, and insulation present on any U.S. Naval ship or other military vessel, including but not limited to the U.S.S. Cascade.” *Id.* Mrs. Horton stated that “[t]here are no allegations in this matter that Barney Horton, Jr. was exposed to asbestos from products on any U.S. Naval ship or other military vessel, at any U.S. Naval shipyard or other military shipyard, or at any U.S. federal enclave.” *Id.*, Page ID ## 360–61.

Mrs. Horton then moved to remand the case to Jefferson County Circuit Court. *See Remand Mot.*, R. 20, Page ID ## 380–402. In her motion, Mrs. Horton explained that there was no basis for removal in the first place—both because the original complaint “only alleged injuries as a result of GE’s conduct occurring within the Commonwealth of

Kentucky,” and because Mr. Horton had “executed an affidavit unequivocally disavowing any exposure to a GE turbine while in the Navy and waiving his right to recover for such exposure.” *Id.*, Page ID # 386. Mrs. Horton further argued that, even if the Court “conclude[d] evidence exist[ed] to which a colorable federal defense could attach,” remand would still be required based on the disclaimer in the amended complaint. *Id.* Finally, Mrs. Horton argued that Kentucky’s apportionment statute did not stand in the way of remand because, under Kentucky law, “GE could never be held liable” to either the plaintiff or a co-defendant for naval exposure. *See id.*, Page ID # 393.

Opposing remand, GE asserted that, at the time of removal, “Plaintiffs’ claims against GE were based generally on all of GE’s products.” Remand Opp., R. 44, Page ID ## 589–90. In effect, GE read the complaint’s allegations to cover “alleged asbestos exposure aboard the *USS Cascade*,” *see id.*—notwithstanding that the Hortons had limited their claims to acts GE and other defendants had taken that led to Mr. Horton’s exposure in Kentucky, *see Compl.*, R. 1-2, Page ID # 25. GE then contended that Mrs. Horton could not waive any claim arising out of Mr. Horton’s naval exposure aboard the U.S.S. *Cascade*. Remand Opp., R. 44,

Page ID ## 593–96. In GE’s view, while Mrs. Horton could disclaim a specific “*cause of action*,” her waiver tried to improperly “disclaim the *fact* that Mr. Horton submitted a sworn” statement to the VA that, in GE’s reading, conceded that Mr. Horton had been exposed to GE turbines aboard the U.S.S. Cascade. *Id.*, Page ID # 593.

In opposing remand, GE also supplemented the record with a declaration from an expert in naval shipbuilding. *See* Herfel Decl., R. 44-10, Page ID ## 654–65. Although GE represented that this declaration established that GE had “constructed turbines for ... the *USS Cascade*[] in conformity with detailed Navy specifications,” Remand Opp., R. 44, Page ID # 602, the declaration did not in fact substantiate that GE had done so. *See* Herfel Decl., R. 44-10, Page ID ## 658–59 (asserting that GE manufactured turbines used on the U.S.S. Cascade but not providing any records to support assertion); *Id.*, Page ID ## 660–64 (asserting, after discussing general military practice, only that any “asbestos-containing materials” associated with GE’s turbines “would have been specified and approved for use by the U.S. Navy”).

The district court granted the remand motion. *See* Remand Order, R. 58, Page ID ## 762–76. The court first cataloged the wealth of cases

“where federal courts have consistently granted motions to remand based on a plaintiff expressly disclaiming the claims on which federal officer removal was based.” *Id.*, Page ID ## 768–70 (citing, among other cases, *Batchelor v. Am. Optical Corp.*, 185 F. Supp. 3d 1358 (S.D. Fla. 2016), and *Frawley v. Gen. Elec. Co.*, No. 06-cv-15395, 2007 WL 656857 (S.D.N.Y. Mar. 1, 2007)). The court rejected GE’s effort to distinguish those cases based on Mr. Horton’s statement to the VA and related medical records that mentioned potential asbestos exposure in the Navy. *See id.*, Page ID # 769. As the court observed, GE’s argument “confuses a disputed issue of fact relevant at trial with a disputed issue of law relevant to” the remand motion. *Id.* “Mr. Horton’s prior statements about the source of his injury” did not “alter the legal effect of [Mrs.] Horton’s amended complaint, in which she expressly waives all claims based on alleged asbestos exposure in the Navy.” *Id.*

The court was unconvinced by GE’s concerns that a jury would improperly apportion fault to it based on Mr. Horton’s exposure to asbestos during his naval service. *See id.*, Page ID ## 771–74. Such concerns were “misplaced,” the court explained, “because Kentucky’s apportionment statute only permits fact finders to allocate liability for

‘each claim’ in the case”—and the claims here expressly did not cover any “exposure to asbestos resulting from GE’s conduct as a government contractor.” *Id.*, Page ID # 771. The court declined to speculate that, when assigning fault to GE, the jury would “unfairly weigh” Mr. Horton’s purported “admission” that he had been exposed to asbestos aboard the U.S.S. Cascade. *Id.*, Page ID # 772. As the court noted, there was no reason to think the jury would even “know that GE supplied turbines to the USS Cascade,” when that fact was not relevant to Mrs. Horton’s claims arising out of exposure within Kentucky. *Id.* In addition, the court reasoned that any remaining concern about improper apportionment to GE could be mitigated by a limiting instruction in the state court, as well as by holding the plaintiff to Mr. Horton’s sworn admission that he had not been exposed to any turbines (whether manufactured by GE or otherwise) during his Navy service. *Id.*, Page ID ## 772–73.

After concluding that GE could not assert a colorable federal defense to any claims in the case, the district court held that remand was required under *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22 (2025). *Id.*, Page ID # 773.

## SUMMARY OF ARGUMENT

I. When courts evaluate jurisdiction under the federal-officer removal statute, the analysis focuses on the conduct that the plaintiff has chosen to challenge in the claims alleged. Consistent with that approach, courts, including this Court, have recognized that a plaintiff may avoid federal-court jurisdiction by waiving any claims arising out of acts taken under the direction of a federal officer. Of course, as this Court’s recent opinion in *Ascent Health* recognized, disclaimer will not be possible where the claim challenges truly “indivisible conduct” with both federal and non-federal aspects.

GE would have the Court focus on the injury the plaintiff suffers, rather than the conduct the plaintiff challenges. That approach, however, is inconsistent with the statutory text, has been rejected by several sister circuits, and would not serve the purpose of federal-officer removal.

II. Under that conduct-focused test, the district court correctly concluded it lacked jurisdiction under the federal-officer removal statute. The Hortons’ original state-court complaint did not challenge conduct that GE took under federal-officer direction with respect to naval ships. The claims were limited to asbestos exposure that Mr. Horton

experienced within Kentucky; they did not implicate GE activity on a WWII-era ship that Mr. Horton served on in the Atlantic.

The Hortons' two express waivers of claims arising out of Mr. Horton's exposure in the Navy confirmed that the plaintiff's claims do not concern conduct even arguably taken under the direction of a federal officer. While GE seeks support in *Ascent Health*, it cannot establish that its actions that caused Mr. Horton to be exposed to asbestos at the Kentucky Appliance Park are inextricably connected with its WWII-era work on Navy ships. Meanwhile, GE's suggestion that Mr. Horton's mesothelioma is an "indivisible injury" is both legally irrelevant and wrong on its own terms.

The Court should reject GE's invitation to ignore the Hortons' waivers. GE contends that the district court could not consider any post-removal waiver, but it forgets that the Hortons waived any claims tied to Mr. Horton's work on Navy ships before GE removed the case. Regardless, the Supreme Court's decision in *Royal Canin* forecloses GE's argument that the Court, when evaluating remand, may consider only whether jurisdiction existed at the time of removal.

**III.** Remand was also required because GE lacks a colorable federal defense to the Hortons' claims. GE asserts that it will be required to raise a government-contractor defense in state court if the factfinder tries to assign it responsibility for injuries Mr. Horton suffered as a result of his naval exposure. But the plaintiff expressly does not seek any recovery for injuries arising out of his naval service in the operative complaint. There is no chance that GE will be apportioned fault for claims the Hortons have not alleged.

**IV.** Based on the record it put before the district court, GE also has not satisfied its burden to establish federal-court jurisdiction. In particular, the evidence that GE included in opposing remand did not establish by a preponderance of the evidence that Mr. Horton was exposed to any GE turbines while in the Navy, that any turbine GE provided to the Navy contained asbestos, and that any asbestos may have been put there pursuant to government-approved specifications.

### **STANDARD OF REVIEW**

The Court reviews the district court's remand order de novo. *Mays v. City of Flint, Mich.*, 871 F.3d 437, 442 (6th Cir. 2017).

## ARGUMENT

To remove a lawsuit under the relevant provision of the federal-officer removal statute, a defendant “must establish: (1) that it is a federal officer or a ‘person acting under’ a federal officer, (2) that the lawsuit is directed at conduct ‘for or relating to any act under color of [federal] office,’ and (3) that it involves a colorable federal defense.” *Ohio ex rel. Yost v. Ascent Health Servs., LLC*, 165 F.4th 999, 1004 (6th Cir. 2026) (quoting 28 U.S.C. § 1442(a)(1)). “As the party seeking removal,” GE “bear[s] the burden” of satisfying each of these elements and “establishing federal court jurisdiction.” *Mays*, 871 F.3d at 442. Because GE cannot meet its burden, the Court should affirm the district court’s remand order.

**I. The federal-officer removal inquiry focuses on the conduct the plaintiff challenges, not the injury the plaintiff suffered.**

**A. The challenged conduct is the touchstone of the federal-officer inquiry.**

Analysis of whether defendants have properly invoked the federal-officer removal statute focuses on the acts that the plaintiffs challenge with the claims that the plaintiffs allege. That focus flows from the statutory text, which allows removal only where suit is brought “for or

relating to any act under color of” a federal office. 28 U.S.C. § 1442(a)(1). That language “tells us what must relate to what”: “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 Cnty. v. BP P.L.C.*, 94 F.4th 343, 348 (4th Cir. 2024); *see also Georgia v. Meadows*, 88 F.4th 1331, 1344 (11th Cir. 2023) (explaining that the “‘act’ anchoring removal must be defined by the ‘claim’ brought against the defendant”). In other words, as this Court explained in *Ascent Health*, the federal-officer removal statute “demands a sufficient relation ‘between the *charged conduct* and asserted official authority.’” 165 F.4th at 1010 (emphasis added) (quoting *Willingham v. Morgan*, 395 U.S. 402, 409 (1969)). Specifically, there must be “an association, connection, or tie between the *challenged conduct* and the defendant’s acts under color of federal office.” *Id.* (emphasis added).

Given this focus on what the plaintiff has chosen to sue over, courts consistently allow plaintiffs to “disclaim seeking certain kinds of liability to avoid federal jurisdiction.” *Id.* at 1008. GE is right that “[n]ot all disclaimers do the trick,” GE Br. 24, because a plaintiff cannot waive claims based on conduct that is “indivisible” from the conduct over which

it is suing. *See Ascent Health*, 165 F.4th at 1008. But even that point, too, focuses on the conduct over which the plaintiff has chosen to sue.

*Ascent Health* typifies how the point applies in practice. There, the state of Ohio had sued several healthcare companies—known as pharmacy benefits managers—alleging that, in their negotiations with drug manufacturers, they had conspired to drive up the prices of prescription drugs in violation of Ohio law. *See id.* at 1002–03. Two defendants removed on the basis that they provided pharmacy benefit management services to both federal and nonfederal clients, and that they had “conducted a single negotiation on behalf of all their clients.” *Id.* at 1003–04. The Court held that Ohio could not disclaim only the aspect of the negotiation that the defendants had conducted on behalf of federal clients, given the indivisibility of the single negotiation for both private and federal clients. *Id.* at 1009. The Court made clear that it was the indivisibility of the challenged conduct that rendered the disclaimer ineffective. At the same time, the Court reiterated that, in cases where “the challenged conduct ... occurred ‘at a distance from’” any federal work, disclaiming remains possible. *Id.* at 1007 (discussing *Ohio State*

*Chiropractic Ass’n v. Humana Health Plan Inc.*, 647 F. App’x 619, 624 (6th Cir. 2016)).

**B. GE misreads the statute to focus on the nature of the plaintiff’s injury.**

GE repeatedly invites the Court to shift its focus from the charged conduct to the plaintiff’s injury. GE contends that the Court should not consider whether uncharged acts taken under a federal officer’s direction are indivisible from the acts that plaintiff is suing over but instead should consider whether the uncharged acts may have contributed to the plaintiff’s injury. *See* GE Br. 17–18. It similarly asks the Court to hold that a waiver is ineffective where a plaintiff seeks to recover for a purportedly “indivisible” injury that was caused in part by the federally directed acts as to which the plaintiff has waived relief. *See id.* at 25. Both versions of this argument misread the federal-officer removal statute and have been rightly rejected by other courts.

In evaluating the nexus between challenged conduct and federal supervision, courts have repeatedly held that it is not enough that a plaintiff’s *injury* has a relationship with official acts. *See, e.g., District of Columbia v. Exxon Mobil Corp.*, 89 F.4th 144, 156 (D.C. Cir. 2023) (rejecting the argument “that the relevant question is ... the harm that

gives rise to the relevant damages” rather than the plaintiff’s “theory of liability”); *Anne Arundel Cnty.*, 94 F.4th at 348–49 (approving the district court’s focus on “the alleged tortious conduct identified in the complaints,” rather than the asserted “injuries,” “harm,” or “damages”). As the Fourth Circuit observed, “that is not what the statute says or how courts have interpreted it.” *Anne Arundel Cnty.*, 94 F.4th at 348. Focusing on the injury also would not serve the federal-officer removal statute’s purpose, which is to provide a federal forum where a defendant faces liability for or relating to acts it took on the federal government’s behalf—not where that defendant faces liability for *other*, unrelated acts. *See Watson v. Philip Morris Cos., Inc.*, 551 U.S. 142, 150 (2007). Accordingly, in *Ascent Health*, this Court focused on the indivisible nature of the conduct charged and was silent about the nature of the plaintiff’s injury. *See* 165 F.4th at 1006, 1010.

GE’s proposed indivisible-injury approach to disclaimers is likewise unmoored from statutory text, which looks to the acts over which plaintiffs sue rather than the injury for which they seek recovery. *See supra* at 18–21. As the Ninth Circuit explained, “the mere fact that” a plaintiff’s alleged harm “stem[s] from the same type of federal and non-

federal work” that “intermingled in the world is insufficient to enable federal officer removal.” *California ex rel. Harrison v. Express Scripts, Inc.*, 154 F.4th 1069, 1090 (9th Cir. 2025); *see also City of Hoboken v. Chevron Corp.*, 45 F.4th 699, 713 (3d Cir. 2022) (refusing to disregard disclaimer over objection that court “cannot separate harm caused by” military and civilian activity).

It is of no matter that a state court might need to evaluate—either for liability or damages—whether some portion of the plaintiff’s injury is attributable to activity beyond the conduct challenged, including activity related to the federal government. *See Express Scripts*, 154 F.4th at 1089. Courts “regularly adjudicate” such “comparative fault calculations ... in the tort context.” *Id.* That is particularly true in asbestos-exposure cases, where state courts have substantial experience determining whether a given defendant’s products were a sufficient cause of the plaintiff’s injuries, and limiting recovery to that defendant’s contribution. *See, e.g., CertainTeed Corp. v. Dexter*, 330 S.W.3d 64, 73–74 (Ky. 2010) (discussing standards and process of apportionment in asbestos cases, including among empty-chair defendants).

In support of its “indivisible injury” argument, GE relies on the First Circuit’s decision in *Maine v. 3M Co.*, 159 F.4th 129 (1st Cir. 2025). See GE Br. 26. However, *Maine* does not preclude disclaimers whenever a plaintiff suffers a purportedly indivisible injury. In *Maine*, the state plaintiff had brought two separate lawsuits alleging that 3M’s manufacturing of products containing per- and polyfluoroalkyl substances (PFAS) had contaminated the state’s natural resources. See 159 F.4th at 130. One lawsuit focused on a product that 3M had produced in part for use in military facilities, while the other focused on different products produced solely for civilian use. See *id.* The First Circuit held that, in the latter suit, the state could not avoid federal-officer removal jurisdiction by disclaiming any recovery for contamination arising out of 3M’s production for the federal government. See *id.* at 131.

Crucially, *Maine*’s analysis turned in part on the fact that Maine had continued to seek recovery for contamination at certain locations where, according to 3M’s records, military and non-military products were commingled. For that reason, the court concluded that Maine’s disclaimer had “fail[ed]” to “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.” *Id.* at 139 (quoting *Gov’t of Puerto Rico v. Express Scripts, Inc.*, 119 F.4th 174, 187 (1st Cir. 2024)). In other words, the court focused on the commingled nature of the defendant’s conduct, not on the plaintiff’s injury.

Notably, in *Maine*, the First Circuit found that Maine had “waived” any arguments on relatedness, and thus had little need to grapple with the interaction between the plaintiff’s disclaimer and the “nexus” requirement—i.e., whether the charged conduct was related to or for acts taken under color of federal office. *Id.* And while the First Circuit relied on its prior case law concerning “circular” waivers—which do not disclaim any particular legal or factual bases but instead define the set of waived claims as those that would trigger federal jurisdiction—that case law is inapposite here. *See id.* (noting that circular waivers improperly leave the court to “determine the nexus between the charged conduct and federal authority” and citing *Gov’t of Puerto Rico*, 119 F.4th at 187–88). Here, Mrs. Horton *has* carved out specific factual bases for her claims, leaving only conduct that caused exposures in Kentucky.<sup>1</sup>

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<sup>1</sup> The First Circuit erred in concluding that the plaintiff’s disclaimer was an improper “artful pleading.” 159 F.4th at 139. The artful pleading doctrine is a principle of federal-question jurisdiction under 28 U.S.C.

**II. The Hortons’ claims based on Kentucky exposures do not relate to actions GE may have taken under federal-officer direction.**

Given the federal-officer removal inquiry’s focus on the conduct the plaintiff challenges, the district court correctly remanded this case because the claims alleged here do not relate to actions that GE may have taken under the direction of a federal officer.

**A. The Hortons’ state-court complaint did not challenge conduct that GE took under federal-officer direction.**

Although the district court did not rest its decision on the state-court complaint standing alone, the limited nature of the Hortons’ claims as pleaded provided sufficient grounds for remand. *See* Remand Mot., R. 20, Page ID # 386 (raising argument before district court). The Court may affirm on this basis alone. *See Prod. Sols. Int’l, Inc. v. Aldez Containers, LLC*, 46 F.4th 454, 458 (6th Cir. 2022).

Federal officers were not “involved in the key action underlying” the Hortons’ state-court complaint, *Mays*, 871 F.3d at 446, nor is there any

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§ 1331, not federal-officer removal jurisdiction. It is meant to ensure a federal forum for “necessarily federal” claims that have been disguised as state law ones—i.e., those that are subject to complete preemption. 14C Wright & Miller, *Fed. Prac. & Proc. Juris.* § 3722.1 (Rev. 4th ed). That doctrine has no application where, following disclaimer, “there are no federal claims to disguise.” *Hoboken*, 45 F.4th at 713.

relation “between the charged conduct and asserted official authority,” *Ascent Health*, 165 F.4th at 1010. In their complaint, the Hortons only alleged that Mr. Horton “contracted malignant mesothelioma, an asbestos related cancer, as a result of his exposure to asbestos containing products ... within the Commonwealth of Kentucky.” Compl., R. 1-2, Page ID # 28. *See also id.*, Page ID # 25 (alleging that defendants were responsible for Mr. Horton’s asbestos exposure “*within the Commonwealth of Kentucky*, thereby causing the Plaintiffs to suffer tortious injuries” (emphasis added)). Thus, the only acts alleged or conduct charged in the complaint were those that led to exposure in Kentucky. The complaint did not encompass conduct that may have led to exposure aboard a ship in the Atlantic Ocean.

Ignoring the express geographic limitations in the complaint, GE asserts that “plaintiff’s allegations are broad and encompass *all* exposures from GE products that Mr. Horton had in his lifetime,” including “exposures aboard the U.S.S. *Cascade*.” GE Br. 15. While GE focuses on a handful of broadly worded allegations, *see id.* at 3–4 (quoting Compl., R. 1-2, Page ID # 27), those allegations cannot be read in isolation. *See Mayor & City Council of Baltimore v. BP P.L.C.*, 31 F.4th

178, 233 (4th Cir. 2022) (in evaluating removal, reading complaint “as a whole” rather than focusing on references that do not support “the source of tort liability”).

When read in the context of the Hortons’ claims for exposure *within* Kentucky, those allegations could not support any recovery for “exposure aboard the U.S.S. *Cascade*,” see GE Br. 4. The records on which GE relied in its removal notice made clear that Mr. Horton worked and lived aboard the U.S.S. *Cascade* in Rhode Island, Massachusetts, and the Caribbean. See Pls.’ Discovery Resps., R. 1-3, Page ID # 40. And while the court must generally “credit GE’s theory of the case” when evaluating federal-officer removal, GE Br. 15, that theory still “must be understood in relation to the allegations contained in the plaintiff’s complaint,” which the court “is not free to disregard or rewrite.” *Express Scripts*, 154 F.4th at 1080.

**B. The Hortons have waived claims arising out of conduct GE asserted that it took under a federal officer’s direction.**

After GE indicated that it planned to remove this case to federal court despite the clarity of the complaint, the Hortons twice expressly waived any claims arising out of Mr. Horton’s service in the Navy—first pre-removal via Mr. Horton’s affidavit, and then post-removal via Mrs.

Horton's amended complaint. Those waivers make clear that remand was required.

**1. The Hortons' disclaimers confirm that remand was required.**

The Hortons' disclaimers confirmed what was clear from the complaint: that they did not bring any claims or seek recovery for injury that Mr. Horton may have suffered as a result of his exposure to asbestos during his service in the U.S. Navy. Under the well-established law governing disclaimers, those disclaimers each independently confirm remand was appropriate.

In similar circumstances, courts of appeals have credited asbestos plaintiffs' disclaimers waiving claims for exposures on naval vessels. For instance, in *Wood v. Crane Co.*, 764 F.3d 316 (4th Cir. 2014), the Fourth Circuit reviewed a district court's decision to remand a state-law mesothelioma action to state court, after the plaintiff amended his complaint to abandon claims arising out of exposure to valves that the removing defendant had supplied to the Navy. *See id.* at 319–20. The court affirmed the remand because, once the plaintiff had excised claims related to federal activity, no colorable federal defense remained as to any live claim. *Id.* at 321. The court rejected the defendant's assertion

that the disclaimer was a “legal nullity, devoid of real effect,” as the plaintiff would be held to his waiver of any right to recovery in state-court proceedings. *Id.* Numerous courts of appeals have recognized and given effect to similar disclaimers in determining that no federal jurisdiction exists. *See, e.g., Long v. Foster Wheeler Energy Corp.*, No. 24-1557, 2025 WL 752487, at \*1 (9th Cir. Mar. 10, 2025) (affirming remand where the plaintiff had disclaimed “causes of action for any exposures ... on Navy vessels”); *Chapman v. Crane Co.*, 694 F. App’x 825, 827–28 (2d Cir. 2017) (holding that the plaintiffs’ express “abandonment” of claims arising from asbestos exposure at government facilities was valid and eliminated jurisdiction under section 1442(a)(1)).

GE first argues that the district court, in crediting the disclaimer in Mrs. Horton’s amended complaint, applied the wrong legal standard—requiring a causal nexus rather than a mere relationship between the challenged conduct and federal-officer authority. *See* GE Br. 11–15. But the only part of the district court’s analysis to which GE points for support appears in a discussion about the effect of Kentucky’s apportionment statute. *See id.* at 14 (quoting Remand Order, R. 58, Page ID # 771). Indeed, the apparently offending language just quotes that

statute's text. *See* Remand Order, R. 58, Page ID # 771 (quoting Ky. Rev. Stat. § 411.182). Beyond that irrelevant portion of the opinion, GE is left with the district court's recitation of the standard for federal-officer removal before the 2011 amendment to section 1442—a standard that GE itself invited the district court to use. *Compare* Remand Order, R. 58, Page ID # 765, *with* Removal Notice, R. 1, Page ID # 7. The opinion reflects, though, that citation of the pre-2011 standard had no effect on the district court's analysis.

GE next seeks to transform the facts here into the situation presented in *Ascent Health*, by asserting that the Hortons' disclaimers "attempt[ed] to shed the federal aspects of indivisible conduct." GE Br. 25. GE, though, never identifies what it views as the relevant conduct, much less demonstrates why any federal and nonfederal aspects are indivisible. Here, the Hortons' waivers made clear that the only relevant conduct concerns GE's asbestos products at the GE Appliance Park in Louisville, where Mr. Horton worked from 1965 to 1980. *See* Horton Aff., R. 1-6, Page ID # 73; Pls.' Discovery Resps., R. 1-3, Page ID # 40. GE contends that it supplied turbines to the U.S. government in the 1940s and that Mr. Horton later encountered those turbines aboard the U.S.S.

Cascade in Rhode Island, Massachusetts, and the Caribbean in the late 1960s and early 1970s. See Remand Opp., R. 44, Page ID ## 600–01; Pls.’ Discovery Resps., R. 1-3, Page ID # 40. Far from “indivisible,” that alleged federal conduct is temporally and geographically removed from the conduct alleged in the Hortons’ complaint, as the Hortons’ waivers confirmed.

Changing tack, GE argues that the Hortons could not disclaim recovery based on Mr. Horton’s naval exposure because “any asbestos exposure from Mr. Horton’s time in military service may have been a substantial cause of his mesothelioma”—the basis for his injury and the damages claimed here. GE Br. 25. But as discussed above, courts have correctly rejected this kind of indivisible-injury approach to disclaimers. *See supra* at 21–25. GE’s indivisibility argument also fails on its own terms because courts routinely apportion fault among the asbestos exposures that contribute to mesothelioma. And Kentucky law expressly allows juries to allocate fault even when the plaintiff suffers a “single harm.” *See, e.g., Owens Corning Fiberglas Corp. v. Parrish*, 58 S.W.3d 467, 479 (Ky. 2001). Where such tools are available to “accurately calculate portions of tortious harms attributable to federal versus non-

federal sources,” federal courts have confirmed that a plaintiff may waive claims related to the federal activity that contributed to its injury. *See Express Scripts*, 154 F.4th at 1089.

**2. GE’s arguments for overlooking the Hortons’ waivers are unavailing.**

GE asks this Court to disregard both of the Hortons’ waivers, but it identifies no valid basis for doing so.

a. To start, GE ignores Mr. Horton’s pre-removal affidavit, contending that “Plaintiff only attempted to disclaim the connection between her claims and her husband’s federal service *after* the case had been removed.” GE Br. 21. That oversight is inconsistent with the approach GE took in the district court, where it recognized the existence of the affidavit but argued it was ineffective. *See* Removal Notice, R. 1, Page ID ## 9–11; Remand Opp., R. 44, Page ID # 593. Although Mr. Horton’s affidavit did not come in a formal amendment to the complaint, courts have repeatedly held that plaintiffs can effectively disclaim recovery based on exposure related to federal activity via other kinds of “written waiver.” *Westbrook v. Asbestos Defendants (BHC)*, No. 01-cv-1661, 2001 WL 902642, at \*3 (N.D. Cal. July 31, 2001); *see, e.g., Powers v. Allis-Chalmers Corp. Prod. Liab. Tr.*, No. 10-cv-01921 CW, 2010 WL

2898287, at \*1–2 (N.D. Cal. July 21, 2010) (remanding case because plaintiff had, before removal, sent defendant “signed declaration” excluding liability for asbestos exposure on military or government aircrafts); *O’Shea v. Asbestos Corp., Ltd.*, No. 3:19-cv-127, 2019 WL 12345572, at \*11 (D.N.D. Dec. 13, 2019), *report and recommendation adopted* 2020 WL 9848714 (D.N.D. Jan. 8, 2020) (crediting notices of waiver and recognizing that “many courts do not require ... formality in waivers”).

**b.** While GE recognizes the second waiver, contained in Mrs. Horton’s amended complaint, GE contends that it cannot support remand because it “came too late.” GE Br. 21. In effect, GE argues that jurisdiction is frozen at the moment of removal and cannot be altered by post-removal developments, including an amended complaint waiving certain claims. *See id.* at 21–24. But GE forfeited that argument by failing to raise it in the district court, and controlling precedent would defeat the argument even if GE had preserved it.

“When a party neglects to advance a particular issue in the lower court,” this Court “consider[s] that issue forfeited on appeal.” *Greer v. United States*, 938 F.3d 766, 770 (6th Cir. 2019). In the district court, GE

did not argue that Mrs. Horton’s post-removal amendment came too late. *See Remand Opp.*, R. 44, Page ID ## 593–99. This is not the “exceptional case[]” that justifies disregarding the usual rule on forfeiture, *Greer*, 938 F.3d at 770, so the Court should hold this argument forfeited.

On the merits, GE’s argument that anything that happened post-removal is irrelevant runs headlong into binding precedent and an avalanche of persuasive authority. Most importantly, GE’s argument is inconsistent with the Supreme Court’s recent decision in *Royal Canin U.S.A., Inc. v. Wullschleger*, which held that a “post-removal amendment excising all federal claims destroys federal jurisdiction.” 604 U.S. 22, 39 (2025). There, the Supreme Court considered the scenario where a plaintiff in a case removed on the basis of federal-question jurisdiction “amends her complaint to delete all the federal-law claims, leaving nothing but state-law claims behind.” *Id.* at 25. The Court held that the federal court loses jurisdiction over the “now purely state-law suit,” meaning the case must “return to state court.” *Id.* at 25–26. In reaching that conclusion, the Supreme Court relied on the established principle that when “a plaintiff amends her complaint, the new pleading ‘supersedes’ the old one: The ‘original pleading no longer performs any

function in the case.” *Id.* at 35 (quoting 6 Wright & Miller, Fed. Prac. & Proc. § 1476, pp. 636–37 (3d ed. 2010)). The Court declined to find “a special rule for removed cases,” abrogating decisions of some courts of appeals and disavowing dicta in two of its own prior cases. *Id.* at 39–42. Rather, “the presence of jurisdiction, in removed as in original cases, hinges on the amended, now operative pleading.” *Id.* at 39.

Several courts have applied the holding in *Royal Canin* to cases removed under section 1442(a)(1) and recognized that plaintiffs can secure remand by eliminating claims that would give rise to a federal-officer defense post-removal.<sup>2</sup> Plaintiffs may do so in various ways, including by adding an “explicit disclaimer” that “sever[s] from their claims all grounds for federal officer jurisdiction.” *Express Scripts*, 154 F.4th at 1077 n.2. Following that kind of amendment, the principle that federal courts must “hand ... over” a case when they “no longer have[] authorization to resolve a suit” kicks in, as that principle “applies equally in the context of the federal officer removal.” *Id.* at 1078 (quoting *Royal*

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<sup>2</sup> Before *Royal Canin*, courts in federal-officer removal cases had remanded in light of amended complaints, but they generally considered remand discretionary in that circumstance. *See, e.g., Wood*, 764 F.3d at 321; *Frawley v. Gen. Elec. Co.*, No. 06-cv-15395, 2007 WL 656857, at \*3 (S.D.N.Y. Mar. 1, 2007).

*Canin*, 604 U.S. at 26, 28)); *see also Doe v. Endo Health Sols., Inc.*, No. 3:22-cv-00771, 2025 WL 394972, at \*2 (M.D. Tenn. Feb. 4, 2025) (rejecting, as inconsistent with *Royal Canin*, argument that the court need not consider post-removal amendment when evaluating remand in a federal-officer case).

GE contends that *Royal Canin* is irrelevant because the defendant there had argued that supplemental jurisdiction remained after the plaintiff excised claims giving rise to federal-question jurisdiction. *See* GE Br. 21. But the Supreme Court’s core holding is that “jurisdiction follows the operative pleading,” “in a removed no less than in an original case.” *Royal Canin*, 604 U.S. at 39. And where an amended complaint eliminates the basis for federal jurisdiction, remand is required by 28 U.S.C. § 1447(c), which states that “if at any time before final judgment it appears that the district court lacks subject matter jurisdiction, [a removed] case shall be remanded.” Nothing in section 1442’s text or interpretive case law suggests these principles operate differently for federal-officer removal.

GE argues that these principles do not in fact apply because federal-officer removal cases are exceptions to the “well-pleaded complaint rule.”

See GE Br. 21–22. Where that rule applies, such as in assessing federal-question jurisdiction under 28 U.S.C. § 1331, “[f]ederal jurisdiction cannot be predicated on an actual or anticipated defense.” *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009). Federal-officer removal cases do not operate under that rule because, under section 1442, 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). Nevertheless, in federal-officer removal cases, whether a defendant can assert a federal defense still depends on what claims the plaintiff chooses to allege. “If a plaintiff renounces” claims that provided the basis for federal-officer removal, then the defendant “is not entitled to a federal forum in which to raise a defense arising out of his official duties because such a defense pertains to claims that simply do not exist.” *Gov’t of Puerto Rico*, 119 F.4th at 187 (internal citations and quotation marks omitted).

The cases on which GE relies to support its argument that post-removal waivers are irrelevant, GE Br. 23, are either distinguishable or no longer good law in light of *Royal Canin*. In *LeBoeuf v. Huntington Ingalls, Inc.*, No. 24-cv-1695, 2025 WL 1403139 (E.D. La. May 15, 2025),

the post-removal event was not the plaintiff's modification of his claims, but the court's rejection of a government-contractor defense at summary judgment. *See id.* at \*1. In denying the plaintiff's subsequent motion to remand, the court acknowledged that *Royal Canin* requires remand where a plaintiff, post-removal, "excise[s]" a claim that provides the basis for jurisdiction. *Id.* at \*3. The court held, though, that a defendant's failure "to provide evidence that would allow its federal defense to survive summary judgment" does not mean the defense was not "colorable for the purposes of jurisdiction." *Id.* at \*2.

Meanwhile, *Plaquemines Parish v. BP America Production Co.*, 103 F.4th 324 (5th Cir. 2024), on which GE also relies, predated *Royal Canin*. The footnote that GE cites was based on earlier Fifth Circuit precedent, now abrogated by the Supreme Court's decision in *Royal Canin*. *See id.* at 332 n.29 (citing *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002), for the proposition that, "[t]o determine whether jurisdiction is present for removal, we consider the claims in the state court petition as they existed at the time of removal").

### III. GE lacks a colorable federal defense to the Hortons' claims.

GE suggests that, on remand, it will be improperly forced to raise a federal defense if the state-court factfinder determines that Mr. Horton's mesothelioma was caused in part by asbestos exposure aboard the U.S.S. Cascade. *See* GE Br. 25–26. This argument fundamentally misses the effect of the Hortons' waivers and limitation of their claims. Mrs. Horton seeks recovery for damages arising out of Mr. Horton's mesothelioma, to the extent that it was caused by Mr. Horton's exposure to the defendants' asbestos within Kentucky. Mrs. Horton does not seek to recover from GE or any other defendant for injuries caused by other exposures. GE, then, cannot assert a defense to “claims that simply do not exist.” *Gov't of Puerto Rico*, 119 F.4th at 187.

At most, to determine the total level of damages that must be allocated among the responsible tortfeasors, the state court trier of fact may need to determine what portion of Mrs. Horton's *overall* injury can be attributed to the conduct challenged in her operative complaint—rather than to the naval exposure explicitly disclaimed in that pleading. But in such circumstances, “the validity of [GE's] federal defense ... would be immaterial,” as there is no chance that GE would “face liability

related to” exposure expressly excluded from the plaintiff’s complaint. *Joyner v. A.C. & R. Insulation Co.*, No. 12-cv-2294, 2013 WL 2460537, at \*5 (D. Md. June 6, 2013), *aff’d sub nom. Wood*, 764 F.3d at 316. Rather, any fault attributed to Mr. Horton’s naval exposure would be excluded from the plaintiff’s recovery—from GE and every other defendant. The possibility that a state court may have to calculate “some contribution from separate actions not charged in the complaint taken at the behest of federal officials ... is not enough to trigger the federal officer removal statute.” *Express Scripts*, 154 F.4th at 1089–90.

While GE falls back on Kentucky’s apportionment statute, that statute does not create any risk that GE, or anyone else, would be held liable for military exposures. That statute merely requires a court to instruct the jury in tort cases to allocate liability in proportion to each entity’s respective “percentage of the total fault.” Ky. Rev. Stat. § 411.182(1); *see also id.* § 411.182(2) (requiring factfinder to consider “the extent of the causal relation between the conduct and the damages claimed”). Such an instruction does not create liability for uncharged conduct. Nor does it provide co-defendants with a right to recover against GE, whether through a cross claim or otherwise. *See Adams v. Fam.*

*Dollar Stores of Ky., LP*, No. 3:19-cv-167, 2019 WL 6107857, at \*5 (W.D. Ky. Nov. 15, 2019) (citing *Sommerkamp v. Linton*, 114 S.W.3d 811, 817 (Ky. 2003)).

**IV. In any event, GE did not meet its burden to establish the elements of federal-officer removal.**

“As the party seeking removal,” GE “bear[s] the burden of establishing federal court jurisdiction.” *Mays*, 871 F.3d at 442. Where a party seeking remand challenges the factual basis underlying removal, courts have required the removing party to demonstrate “by a preponderance of the evidence that each of the requirements for subject-matter jurisdiction has been met.” *DeFiore v. SOC LLC*, 85 F.4th 546, 553 (9th Cir. 2023); see *Bd. of Cnty. Comm’rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1250 (10th Cir. 2022); *Gilbar v. United States*, No. 3:98-cv-11, 1998 WL 1632693, at \*2 (S.D. Ohio July 10, 1998). Below, GE did not demonstrate by a preponderance of the evidence several key facts necessary to support removal.

First, GE did not submit sufficient evidence to establish that Mr. Horton was in fact exposed to any GE turbines aboard the U.S.S. Cascade, as necessary to show relatedness even under GE’s broad approach to section 1442(a)(1). In its removal notice, GE asserted that

“[b]ased upon General Electric’s records, the USS Cascade contained one or more General Electric marine turbines.” Removal Notice, R. 1, Page ID # 5. The expert declaration that GE submitted in opposition to the plaintiff’s remand motion similarly stated that GE had manufactured “[t]he main propulsion turbines and auxiliary turbines aboard the USS Cascade.” Herfel Decl., R. 44-10, Page ID # 659. But GE never submitted any GE or government records to substantiate this assertion.

Furthermore, the evidentiary record establishes that Mr. Horton was *not* exposed to those turbines during his time in the Navy. Mr. Horton swore in his affidavit that he “did not work on turbines” during his time in the Navy and that he had no memory of working “around any work conducted on turbines” either. Horton Aff., R. 1-6, Page ID # 73. GE insists that Mr. Horton’s affidavit is inconsistent with his sworn statement to the VA. *See* GE Br. 4–5, 15. That argument depends on GE’s mischaracterization of Mr. Horton’s statement, which does not contain any reference to turbines. *See* VA Statement, R. 1-4, Page ID # 68. It was entirely consistent for Mr. Horton to claim benefits from the VA for exposure to asbestos generally during his naval service, while maintaining that this exposure could not have come from marine

turbines that he did not work on during his service. The evidence is thus not sufficient for GE to carry its burden. *See Holste v. 3M Co.*, No. 2:24-cv-09814, 2025 WL 100806, at \*4 (C.D. Cal. Jan. 10, 2025) (holding that removing defendant did not meet its burden where evidence did not “plausibly establish that [the plaintiff] was actually exposed to asbestos while working with or around” the defendant’s products).

Second, GE has not submitted evidence to establish that any turbine it supplied to the U.S.S. Cascade contained asbestos. Its removal notice stated only that “[a]ny use of asbestos in conjunction with such equipment was the direct result of the Navy’s own detailed plans, military specifications and/or regulation.” Removal Notice, R. 1, Page ID # 7. GE’s expert was even less committal, discussing only what might have happened “[t]o the extent the shipbuilder used any asbestos-containing materials related to any GE equipment aboard the USS Cascade.” Herfel Decl., R. 44-10, Page ID # 664 (emphasis added). Thus, GE has not even conceded the presence of asbestos on the Navy turbine, much less that it was attributable to GE.

Third, GE has likewise not met its burden to show that it is even plausible that any asbestos on the turbines it provided to the U.S.S.

Cascade was put there according to precise specifications that the U.S. government approved, as necessary to establish a colorable government contractor defense. *See Bennett v. MIS Corp.*, 607 F.3d 1076, 1089 (6th Cir. 2010). Again, GE did not enter into the record any specific evidence about its turbines, including the relevant specifications or the U.S. government’s approval of those specifications—even as it advised the district court that it possessed documents pertaining to the U.S.S. Cascade. Removal Notice, R. 1, Page ID # 5. GE’s expert declaration was nonspecific and only hypothetical on this point: The Herfel Declaration states only that, “[t]o the extent the shipbuilder used any asbestos-containing materials related to any GE equipment aboard the USS Cascade, those materials would have been specified and approved for use by the U.S. Navy and would have had to meet the Navy’s specifications.” Herfel Decl., R. 44-10, Page ID # 664. Courts have rejected such general testimony as unable to “support even a colorable claim to the government contractor defense.” *Williams v. Gen. Elec. Co.*, 418 F. Supp. 2d 610, 615–16 (M.D. Pa. 2005); *see also Holste*, 2025 WL 100806, at \*4 (holding defense not colorable where submitted “evidence says nothing about whether [the defendant’s] helicopters utilized asbestos, whether the U.S.

government required the use of asbestos, or whether the U.S. government mandated that [the defendant] refrain from issuing warnings relating to asbestos”).

## CONCLUSION

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

March 16, 2026

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## CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B). As calculated by my word processing software (Microsoft Word for Office 365), the brief contains 9,395 words, not counting the parts of the brief excluded by Federal Rule of Appellate Procedure 32(f) and Sixth Circuit Rule 32(b)(1). The brief also complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6). The brief is composed in a 14-point proportional typeface, Century Schoolbook.

/s/ Stephanie B. Garlock  
Stephanie B. Garlock

## CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2026, the foregoing brief has been served through this Court's electronic filing system upon counsel of record for all parties.

/s/ Stephanie B. Garlock  
Stephanie B. Garlock

**ADDENDUM  
DESIGNATION OF RELEVANT DISTRICT COURT  
DOCUMENTS**

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