

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: WELDING ROD PRODUCTS LIABILITY LITIGATION	:	Case No. 1:03-CV-17000 (MDL Docket No. 1535)
	:	
	:	
	:	
THIS DOCUMENT RELATES TO:	:	JUDGE O'MALLEY
<u>Arredondo v. Lincoln Elec. Co.</u> , 1:04-CV-17362	:	
<u>Solis v. Lincoln Elec. Co.</u> , 1:04-CV-17363	:	<u>MEMORANDUM AND ORDER</u>
	:	

For the reasons stated below, the motion to remand filed in Arredondo v. Lincoln Elec. Co., 1:04-CV-17362, is **GRANTED**, and the case is **REMANDED** to the County Court at Law Number One in Nueces County, Texas, where it was originally filed. The motion to remand filed in companion case Solis v. Lincoln Elec. Co., 1:04-CV-17363, is **DENIED**.

* * * * *

Plaintiffs Claudio Arredondo and Ernesto Solis, who are not related, filed a single complaint in Texas state court, claiming their inhalation of fumes from welding rods caused them to suffer injuries. The defendants removed the case to Texas federal court, and the plaintiffs then moved for remand back to state court. See Texas federal court docket no. 12 (motion to remand). Before the Texas federal court could rule on the remand motion, however, the case was transferred to this Court, as related to Multi-District Litigation Docket No. 1535.

After transfer of the case, this Court ordered severance of the two plaintiffs, to comport with Fed. R.

Civ. P. 21. See case no. 03-CV-17000, master docket no. 59. Thus, the motion to remand filed in Texas federal court was effectively filed in both Arredondo's and Solis's current, separate cases. The Court now concludes the motion is well-taken in the former case, but not the latter.

The defendants assert two jurisdictional grounds to argue that Solis's case is properly before this Court: (1) federal officer removal; and (2) federal enclave jurisdiction. Although the Court had not addressed these arguments when originally made, the Court has since done so. See Second Remand Order at 12-24 (master docket no. 224) (discussing federal officer removal); Interlocutory Order at 1-4 (master docket no. 404) (denying a motion to take an interlocutory appeal from the Second Remand Order); Fourth Remand Order at 10-12 (master docket no. 810) (discussing federal enclave jurisdiction). Application of the Court's earlier analyses establishes that the defendants have asserted colorable arguments of federal jurisdiction in Solis's case.

In particular, the defendants have adduced jurisdictional evidence showing that Solis spent 24 years welding at the Naval Air Station at Corpus Christi, Texas ("NASCC"). There is no dispute that the NASCC is a federal enclave, and the evidence makes clear that Solis spent more than superficial amounts of time close to welding fumes" while at NASCC. Accordingly, for the reasons discussed in the Court's Fourth Remand Order, the Court has federal enclave jurisdiction over Solis's case.

Further, there is no dispute that, during his 24 years of welding at NASCC, Solis worked on projects for the United States Navy, and the welding rods he used on these projects complied with the Navy's "Mil specs." As the Court explained earlier, the defendants have presented evidence that the federal government "demand[ed] or heedfully approv[ed] reasonably precise specifications for (or warnings about) the welding rods" when the Navy adopted the Mil Specs, Second Remand Order at 19, and these MIL specs "speak

directly to the precise aspects of the welding rods that the plaintiffs allege caused their injury – the manganese content and warning labels,” *id.* at 23. Accordingly, the “factual basis for the defendants’ military contractor defense is not so anemic that there is only a tenuous connection between the defendants’ ‘federally-colored’ conduct and the plaintiffs’ claims.” *Id.* Accordingly, the Court also has federal officer removal jurisdiction over Solis’s case.

The analysis is different, however, for Arredondo. In response to the original motion to remand, the defendants “concede[d] that the Court properly could remand Arredondo’s claims,” because Arredondo did not weld in a federal enclave or on federal projects. The defendants suggest that the Court could, in its discretion, retain Arredondo’s claims as pendent to Solis’s claims. The Court is generally not disposed to exercise pendent party jurisdiction, however, and this inclination only increases when the pendent party has been severed for improper joinder.¹ Accordingly, the motion to remand Arredondo’s case, for lack of federal jurisdiction, is well-taken.

IT IS SO ORDERED.

s/Kathleen M. O’Malley
KATHLEEN McDONALD O’MALLEY
UNITED STATES DISTRICT JUDGE

DATED: January 13, 2005

¹ Under 28 U.S.C. §1367(c)(3), a district court may decline to exercise supplemental jurisdiction over pendent party state law claims if the federal claims over which it had original jurisdiction have all been dismissed. “[I]f the federal claims are dismissed before trial, . . . the state claims should be dismissed as well.” *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966) (emphasis added); *Williams v. City of River Rouge*, 909 F.2d 151, 157 (6th Cir. 1990). The claims and defenses in Arredondo’s case, examined alone, have never had any federal nexus.

