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WLF Urges Fifth Circuit to Broaden Contractors' Right to Remove Cases to Federal Court

(*Latiolais v. Huntington Ingalls, Inc.*)

“The federal officer removal statute should be broadly construed to allow federal officers (and those acting under them) to remove cases to federal court. Congress has long endorsed those defendants’ rights to a federal forum so they avoid potential bias in state court.”

—Marc Robertson, WLF Staff Attorney

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Fifth Circuit to uphold the right of federal contractors to remove cases to federal court whenever, as here, the contractors have articulated a colorable federal defense. In an *amicus curiae* brief filed in an *en banc* proceeding, *Latiolais v. Huntington Ingalls, Inc.*, WLF argues that prior Fifth Circuit decisions have adopted an inappropriately narrow construction of the federal officer removal statute.

The initial panel decision in the case, involving a shipyard (Avondale) hired by the Navy to refurbish one of its ships, upheld a district court order remanding the case to state court. But the decision’s author, Judge Edith Jones, criticized Fifth Circuit precedent that required a narrow interpretation of the removal statute and urged the court to rehear the case *en banc*. The court voted in May to do so.

The plaintiff is a former Navy sailor who was assigned to a ship that Avondale refurbished in the 1960s. He contends that he developed a fatal illness as a result of exposure to the asbestos that Avondale used during the refurbishing process. He faults Avondale for failing to warn him of the dangers of asbestos. Avondale is asserting the federal-contractor defense, under which a federal contractor is immune from suit if the federal government imposes reasonably precise specifications for the installation of asbestos on one of its vessels and the contractor complies with those specifications.

The federal officer removal statute authorizes removal by any officer of the United States “or any person acting under that officer,” “for or relating to any act under color of such office.” In its brief, WLF urges the court to read the statute broadly so as to encompass removal by any federal contractor who raises a “colorable federal defense” (such as the federal-contractor defense asserted by Avondale). WLF notes that Congress broadened the scope of the removal statute in 2011 by adding the words “or relating to” so that removal is now authorized in a lawsuit “for or relating to” any act under color of federal law. WLF argues that the Fifth Circuit should eliminate its current requirement that the defendant establish a “causal nexus” between explicit federal government orders and the plaintiff’s injury.

Celebrating its 42nd year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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