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February 24, 2020

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En Banc Fifth Circuit Clarifies Scope of Federal Officer Removal

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

“State courts may not try federal officers criminally or civilly for acts performed in the course of their duties. That protection rightly extends to federal contractors acting as agents for federal officers.”

—Cory L. Andrews, WLF Vice President of Litigation

WASHINGTON, DC—Sitting *en banc*, the U.S. Court of Appeals for the Fifth Circuit today reversed, under the Federal Officer Removal Statute, a trial court’s decision denying removal to a former Navy contractor in a Louisiana asbestos-liability suit.

The decision was a victory for Washington Legal Foundation (WLF), which filed an *amicus* brief asking the court not only to overturn the decision below but also to reconsider circuit precedent making it more difficult for federal officers and their contractors to remove cases to federal court. In her panel decision reluctantly affirming the trial court, Judge Edith Jones had expressed frustration with the circuit’s caselaw and urged *en banc* review. She got it.

Writing for the *en banc* court without dissent (two of the 14 judges concurred in the judgment only), Judge Jones seized the opportunity to reconsider the circuit’s “extraordinarily confused” precedents in light of Congress’s 2011 amendments to the statute. Relying on the plain language of those amendments, the court aligned with its sister circuits to hold that federal contractors who present a colorable federal defense may remove cases to federal court.

Latiolais, a former Navy machinist, brought a negligence action in Louisiana court against Avondale (now, Huntington Ingalls, Inc.), which owned a shipyard that contracted with the Navy. Alleging that Avondale negligently exposed him to asbestos while working on a Navy ship, Latiolais sued Avondale for allegedly failing to warn him of the dangers of asbestos. With today’s decision, that suit will be adjudicated in federal court.

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