

## Crossland v. Huntington Ingalls

United States District Court for the Eastern District of Louisiana

March 2, 2021, Decided

CIVIL ACTION NO. 20-3470 SECTION "R" (2)

### Reporter

2021 U.S. Dist. LEXIS 38511 \*

LINDA CROSSLAND VERSUS HUNTINGTON  
INGALLS INCORPORATED, ET AL.

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## Core Terms

removal, clock, initial pleading, federal official, exposures, **asbestos**, vessels

## Opinion

### [\*1] ORDER AND REASONS

Before the Court is plaintiff Linda Crossland's motion to remand.<sup>1</sup>

Defendants Huntington Ingalls Incorporated, Albert L. Bossier, Jr., and Lamorak Insurance Company ("Avondale") oppose the motion.<sup>2</sup> Defendant Hopeman Brothers, Inc. also opposes the motion.<sup>3</sup> Because the Court finds that Avondale timely removed to federal court, the Court denies plaintiff's motion.

### I. BACKGROUND

This case arises from plaintiff's alleged exposure to **asbestos**. Plaintiff

alleges that she breathed **asbestos** fibers floating from Avondale Shipyards

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R. Doc. 7. R. Doc. 12. R. Doc. 13.

into her neighborhood, that her father and husband worked at Avondale and unknowingly brought **asbestos** into the family home, and that she worked at Avondale's "Main Yard" from 1966 through the 1970s.<sup>4</sup> Plaintiff filed suit in the Civil District Court for the Parish of Orleans on September 16, 2020.<sup>5</sup>

Plaintiff was deposed on December 11, 2020,<sup>6</sup> and Avondale removed to this Court on December 20, 2020.<sup>7</sup>

### II. LEGAL STANDARD

The Federal Officer Removal Statute authorizes removal of a suit by the "United States or any agency thereof or any officer (or any person acting under that officer) of the United States or any agency thereof, [\*2] in an official or individual capacity, for or relating to any act under color of such office . . . ." [28 U.S.C. § 1442\(a\)\(1\)](#). The party asserting jurisdiction under this statute bears the burden of establishing that federal jurisdiction exists.

[Winters v. Diamond Shamrock Chem. Co., 149 F.3d 387, 397 \(5th Cir. 1998\)](#). To remove an action under [§ 1442\(a\)](#), a defendant must show: (1) it has asserted a colorable federal defense, (2) it is a "person" within the meaning

4 removable." *Id.* Put another way, a defendant may  
 5 remove to federal court thirty days after the "receipt" of  
 6 an "order or other paper" that indicates, for the first time,  
 7 that the matter is removable.

### A. Initial Pleading

R. Doc. 1-2 at 3-4, ¶ 4.

*Id.* at 1.

R. Doc. 12-1 at 1.

R. Doc. 1.

2 Defendants contend that the initial pleading was not  
 removable because the federal officer defense was not  
 apparent on the face of the petition.<sup>11</sup> In

of the statute, (3) that has acted pursuant to a federal  
 officer's directions, and

(4) the charged conduct is connected or associated with  
 an act pursuant to a federal officer's directions. [Latiolais  
 v. Huntington Ingalls, Inc., 951 F.3d 286, 296 \(5th Cir.  
 2020\)](#).

### III. DISCUSSION

Plaintiff does not contest that the requirements of the  
 Federal Officer Removal Statute are met.<sup>8</sup> Rather,  
 plaintiff contests only the timeliness of removal.<sup>9</sup>  
 Generally, a defendant has thirty days from service to  
 remove a matter to federal court. See [28 U.S.C. §  
 1446\(b\)\(1\)](#) ("The notice of removal of a civil action or  
 proceeding shall be filed within 30 days by the  
 defendant, through service or otherwise, a copy of the  
 initial pleading setting forth the claim for relief upon  
 which such action or proceeding is based . . ."). But the  
 statute creates an exception when a case "by the  
 initial [\*3] pleading is not removable." See [28 U.S.C. §  
 1446\(b\)\(3\)](#). In those cases, "a notice of removal may be  
 filed within 30 days after receipt by the defendant,  
 through service or otherwise, of a copy of an amended  
 pleading, motion, order or other paper from which it may  
 be ascertained that the case is one which is or has  
 become

8 federal question jurisdiction. See [Leffall v. Dallas Indep.  
 Sch. Dist., 28 F.3d 521, 525 \(5th Cir. 1994\)](#) ("[T]he  
 9 removal clock began to run . . . only when the  
 defendants received a pleading that revealed on its face  
 that [plaintiff] was asserting a cause of action based on  
 federal law."). Further, a court in the Eastern District of  
 Louisiana, addressing a nearly identical situation to the  
 one presented here, found that *Chapman's* rule applies  
 in cases involving federal officer removal. [Waguespack  
 v. Avondale Indus., Inc., No. 20-1986, 2020 WL  
 5250340, at \\*3 \(E.D. La. Sept. 3, 2020\)](#) ("[T]he Court is  
 persuaded that in the context of federal officer removal  
 the initial pleading triggers the start of the 30-day  
 removal clock only when it affirmatively reveals on its  
 face the allegations that support removal."). The Court  
 finds that the *Chapman* rule applies here.

See R. Doc. 7.

*Id.*

3 Plaintiff's argument goes to Avondale's subjective  
 knowledge of the cause of plaintiff's exposures, and

their relation to federal vessels under construction [\*5] at Avondale.12 But under *Chapman*, whether Avondale had subjective knowledge of the federal connection to the exposures is not the test. 969 F.2d at 163. Instead, for the petition to be removable, the allegations in it must facially support removal. *Id.* On its face, the pleading contains no reference to federal vessels at Avondale, or other allegations that

12 R. Doc. 7-1 at 4.

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support removal. Indeed, plaintiff expressly disclaimed all causes of actions for asbestos exposures that occurred in a "federal enclave," or at the direction of an officer or any person acting under an officer of the United States.13 *Cf. Uzee v. Huntington Ingalls Inc., No. 18-6856, 2018 WL 4579827, at \*2 (E.D. La. Sept. 25, 2018)* ("To say that a petition expressly disclaiming removable claims 'affirmatively reveals on its face' that the case is removable defies reason."). The Court finds that the initial state-court petition did not affirmatively reveal on its face that the action was removable. Consequently, the 30-day removal clock did not begin to run on the date Avondale received the state-court petition.

**B. Other Papers**

Instead, defendants had 30 days to remove from the time they received "an amended pleading, motion, order or other paper from which" removability could be ascertained. 28 U.S.C. § 1446(b). Information supporting removal [\*6] under § 1446(b)(3) must be "unequivocally clear and certain" to start the removal clock. *Morgan v. Huntington Ingalls, Inc., 879 F.3d 602, 608-09 (5th Cir. 2018)* (citing *Bosky v. Kroger Texas, LP, 288 F.3d 208, 211 (5th Cir. 2002)*). Similar to removal based on the initial pleading, the defendant's subjective knowledge is not enough to render a case

13 R. Doc. 1-2 at 4-5, ¶ 10.

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removable. See *S.W.S. Erectors, Inc. v. Infax, Inc., 72 F.3d 489, 494 (5th Cir. 1996)*.

Plaintiff contends that Avondale could have ascertained the removability of this matter based on employment records she provided to defendants on September 18, 2020.14 Those records consist of a single page with plaintiff's name, her "clock no.," an address, a phone

number, the foreman, and the date, title, and rate of plaintiff's compensation.15 The document contains no "unequivocally clear and certain" indication that plaintiff worked on federal vessels, or that her alleged asbestos exposures were otherwise related to the federal vessels at Avondale. The Court finds that removability could not be ascertained from the employment records, and defendant's receipt of them did not start the 30-day removal clock.

The first unequivocally clear and certain indication that plaintiff's exposures occurred aboard or were related to work on federal vessels at Avondale was during plaintiff's deposition, taken December 11, 2020.16 At her deposition, [\*7] plaintiff stated that she had boarded two federal ships while they were under construction, and that she breathed "dust" created by

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R. Doc. 7-1 at 2, 4.

R. Doc. 7-5 at 2.

R. Doc. 12-1.

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workers who were working on the walls of those ships.17 The deposition transcript constitutes "other paper" containing an "unequivocally clear and certain" statement showing that this case was removable under the Federal Officer Removal Statute. See *Morgan, 879 F.3d at 612* (holding that § 1443(b)(3)'s 30-day "removal clock begins ticking upon receipt of the deposition transcript"). Because Avondale removed to this Court on December 30, 2020, the Court finds that its removal was timely. The Court must deny plaintiff's motion.

**IV. CONCLUSION**

Accordingly, plaintiff's motion to remand is DENIED.

New Orleans, Louisiana, this 2nd day of March, 2021.

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SARAH S. VANCE

UNITED STATES DISTRICT JUDGE

17 R. Doc. 12-1 at 6, 12-13.