

## Navy Asbestos Case Leads 5th Circ. To Reset Removal Test

By **Katie Pohlman**

*Law360 (February 24, 2020, 8:43 PM EST)* -- The full Fifth Circuit on Monday unraveled its "extraordinarily confused" court precedent on federal removal requirements, ruling a former U.S. Navy machinist's asbestos exposure suit against shipbuilder Huntington Ingalls Inc. belongs in federal court because it relates to a government contract.

The en banc opinion overturns a three-judge panel's March decision and an earlier federal district court ruling that the case belongs in Louisiana state court. The earlier rulings — following circuit precedent — determined the case didn't meet the causal nexus requirement, which would involve the government having control over whether Huntington Ingalls imposed and followed safety standards that are the basis for former machinist James A. Latiolais' suit.

In its opinion, the panel had called for en banc rehearing to reconsider circuit precedent and align it with the amended Federal Officer Removal statute. Congress broadened the statute in 2011 from only covering acts directed by a federal office to acts relating to directions from a federal office.

"This appeal was reconsidered en banc because Fifth Circuit precedents concerning the scope of the revised Federal Officer Removal statute ... were extraordinarily confused," the court said. "Having reconsidered, we strip away the confusion, align with sister circuits, and rely on the plain language of the statute, as broadened in 2011."

The full circuit found Huntington Ingalls — formerly known as Northrop Grumman Shipbuilding Inc. and Avondale Industries Inc. — had established a connection between Latiolais' asbestos lawsuit and its government contract to refurbish Navy ships in the 1960s and 1970s. Huntington Ingalls argued it performed the refurbishments pursuant to government contracts, which often required asbestos to be used for thermal insulation, according to the opinion.

Latiolais had argued for state court jurisdiction, saying the broadened definition only referred to the act's preceding subsection of the amendment, which discusses standalone subpoenas and other discovery matters. But the circuit dismissed that argument, ruling an act's subsection title cannot defeat the ordinary meaning of the text, according to the opinion.

"Any subsection title with contrary meaning would be unavailing because, in a war between text and title, text wins," the court said.

In his lawsuit, Latiolais claims his exposure to asbestos while working on the refurbishment of the USS Tappahannock led to his 2017 diagnosis of mesothelioma. He died from the disease that same year.

Exposure to asbestos is a top cause of mesothelioma, with about eight in 10 people with the disease having been exposed to asbestos, according to the American Cancer Society.

Latiolais accuses Huntington Ingalls of being negligent by failing to warn him about asbestos hazards and failing to provide adequate safety equipment.

Huntington Ingalls removed the case to federal court in November 2017, but it was ordered back to state court in May 2018 when a judge found that the government didn't have control over the shipbuilder's safety practices.

A Fifth Circuit panel upheld the remand to state court, finding the suit didn't meet a causal nexus requirement, which calls for a demonstrable link between the defendant's actions, under a federal officer's directions, and the claims.

Counsel for both parties didn't immediately respond to requests for comment Monday.

Latiolais is represented by Cameron R. Waddell and Jody E. Anderman of Waddell Anderman LLC.

Huntington Ingalls is represented by Gregory G. Garre and Charles S. Dameron of Latham & Watkins LLP, Gus A. Fritchie, Timothy F. Daniels, David M. Melancon, Edward E. Trapolin, Alison A. Spindler and Alex T. Robertson of Irwin Fritchie Urquhart & Moore LLC.

The case is James A. Latiolais v. Huntington Ingalls LLC, case number 18-30652, in the U.S. Court of Appeals for the Fifth Circuit.

--Additional reporting by Kaitlyn Burton. Editing by Michael Watanabe.