

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

DANNY HANNA

Plaintiff,

v.

SHELL EXPLORATION AND  
PRODUCTION, INC., BRUNEL  
ENERGY, INC., CHARLES PERILLIAT,  
MARK TIPTON, 123 INSURANCE  
COMPANY, and XYZ INSURANCE  
COMPANY

Defendants.

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\* CIVIL ACTION  
\* NO.  
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\* SECTION  
\* JUDGE  
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\* MAG. DIV.  
\* MAG. JUDGE  
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**DEFENDANTS' JOINT NOTICE OF REMOVAL**

**NOW INTO COURT**, through undersigned counsel, come defendants, Brunel Energy, Inc., Shell Exploration and Production Company, Shell International Exploration and Production, Inc., Charles Perrilliat and Mark Tipton (collectively "Defendants")<sup>1</sup>, and, with a full reservation of rights, file this Notice of Removal to the United States District Court for the Eastern District of Louisiana, for the reasons set forth below:

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<sup>1</sup> The caption in the state court Petition misidentified Shell Exploration and Production Company as Shell Exploration and Production, Inc. and Charles Perrilliat's name was misspelled as Perilliat. In his Second Amended and Supplemental Petition for Damages, plaintiff named as defendant Shell Exploration and Production Company. State Court Record, Ex. "A," Second Amended Petition ¶¶ I.1.A. Plaintiff also added Shell International Exploration and Production, Inc. as a defendant. For purposes of this Notice of Removal, Defendants have left the caption as originally stated in plaintiff's Petition.

**Procedural Background**

1.

On or about August 8, 2012, the plaintiff filed a civil suit in the Civil District Court for the Parish of Orleans, State of Louisiana, captioned *Danny Hanna v. Shell Exploration and Production, Inc., Brunel Energy, Inc., Charles Perilliat, Mark Tipton, 123 Insurance Company, and XYZ Insurance Company*, and bearing Suit No. 2012-7799. Service of the Petition for Damages was thereafter made upon the defendants. A complete copy of the State Court record is attached *in globo* as Exhibit “A.” The Petition does not disclose the existence of a federal claim.

2.

On or about September 7, 2012, the plaintiff filed an Amended and Supplemental Petition for Damages. *See* Ex. “A,” State Court Record, Amended and Supplemental Petition for Damages. Service of the Amended and Supplemental Petition for Damages was made on the defendants through their counsel of record. The plaintiff filed a Second Amended and Supplemental Petition for Damages on November 19, 2012, and service was thereafter made on the defendants through their counsel of record. *See* Ex. “A,” State Court Record, Second Amended and Supplemental Petition for Damages (“Second Amended Petition”). The Second Amended Petition does not disclose the existence of a federal claim.

3.

The plaintiff’s Second Amended Petition asserts state law claims allegedly based on contract services he performed as the Cost Management Lead on a Shell project known as the Cardamom Project.

4.

Specifically, the plaintiff's Second Amended Petition alleges that he was terminated from his employment with Brunel and Shell Exploration and Production Company and/or Shell International Exploration and Production, Inc. (collectively "Shell") in retaliation for his making "numerous complaints about fraudulent reports" authored, edited, and/or submitted by his supervisor, Charles Perrilliat, in violation of various employment contracts, Shell's own business policies and standards, Brunel's own policies and standards, and Louisiana law. *Ex. "A,"* State Court Record, Second Amended Petition, ¶ 15. Alternatively, the Second Amended Petition alleges that the plaintiff was terminated in retaliation for making a worker's compensation claim, in violation of Louisiana law. The Second Amended Petition also alleges all manner of tortious actions stemming from his alleged wrongful termination and preceding employment, including tortious interference with an employment contract, intentional infliction of emotional distress, employment discrimination under Louisiana law, negligence, defamation, and violations of the Louisiana Unfair Trade Practices Act, La. Rev. Stat. § 51:1405 *et seq.* *See Ex. "A,"* State Court Record, Second Amended Petition, ¶¶ 15-33.

#### **Federal Question Jurisdiction**

5.

The plaintiff's petitions purportedly allege only violations of Louisiana state law, and it was not evident from the face of the petitions that this case stated a federal claim and was therefore removable to this Honorable Court. However, recent deposition testimony indicates that the plaintiff's claims arise under the laws of the United States, specifically the Public Accounting Reform and Corporate Responsibility Act, 15. U.S.C. § 7201 *et seq.*, more

commonly known as the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”). As such, this case is now removable pursuant to 28 U.S.C. § 1441(c).

6.

On April 14, 2014, and May 2, 2014, counsel for the defendants took the plaintiff’s deposition. Relevant portions of the plaintiff’s deposition are attached as Exhibit “B” and incorporated herein by reference. During the course of plaintiff’s deposition on April 14, plaintiff specifically clarified the nature of his claims against the defendants as including a claim under Sarbanes-Oxley:

Q. [By Counsel for Shell, Ms. James] So you’re claiming that you were terminated because you made complaints of fraudulent and illegal activity?

A. I still don’t know the reasons why I was terminated, ma’am. It’s several different reasons, not just the reprisal of this.

Q. Okay. Do you believe that you were terminated because you made complaints of fraudulent and illegal activity?

A. Yes, ma’am.

Q. Okay. What illegal activity do you claim you complained of?

A. The illegal activity was based off of my first attorneys that Shell had hired out from under me, that we were going to file some SOX compliance -- Sarbanes Oxley non-compliance that had -- three days before we were filing these, my law firm called me in and said that they could no longer represent me because it would be a conflict of interest, that they were working for Shell now. That is based off of, you know, all of this illegal activity that they were not compliant with some of the SOX and Sarbanes Oxley compliances.

Q. Who was not complying with SOX and Sarbanes Oxley?

A. That would have been Charles Perrilliat and filing -- filing false numbers and stuff.

Ex. "B," Deposition of Danny Hanna, taken April 14, 2014, and May 2, 2014, pp. 94-95.

7.

On April 15, 2014, the day after the plaintiff testified regarding an alleged violation of Sarbanes Oxley, plaintiff's counsel took the deposition of Marilyn Jordan, a deposition noticed by plaintiff in support of his claims. Ms. Jordan preceded Mr. Hanna in providing contract services as the Cost Management Lead on the Cardamom Project for Shell. Relevant excerpts of Ms. Jordan's deposition transcript are attached as Exhibit "C" and incorporated herein by reference.

8.

During the course of Ms. Jordan's deposition, plaintiff's counsel, Mr. Robert, inquired about Sarbanes-Oxley and specifically asked whether the alleged "fraudulent reports" at the center of the plaintiff's allegations constituted a violation of Sarbanes-Oxley:

Q. *Mr. Robert:* I think you testified earlier that manipulation of the SAP<sup>2</sup> numbers **could be a violation of Sarbanes Oxley**, correct?

*Ms. James:* Object to the form.

A. Yes.

Q. And if somebody input false numbers into SAP, **that would be a violation of Sarbanes Oxley**, correct?

A. I would assume, yes.

Q. And if Charles Perrilliat is providing false numbers to Kimberly McNeely and they get put into the SAP, **that would be a violation of Sarbanes Oxley**, correct?

*Ms. James:* Object to the form.

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<sup>2</sup> SAP is a computer software tool that Shell uses to manage certain financial information and other functions of its business.

A. I can't answer that. I don't think Kimberly would enter them if they were wrong.

Q. If you didn't catch it and they were submitted without your knowledge, they would get input, correct?

*Ms. James:* Object to the form.

A. They could if she didn't question it.

Q. And Charles Perrilliat was intentionally changing those numbers, correct?

*Ms. James:* Object to the form.

A. Yes.

*Mr. Robert:* That's all I have.

*See Ex. "C,"* Deposition of Marilyn Jordan, taken April 15, 2014, pp. 17, 95-96 (emphasis added).

9.

Plaintiff's counsel, not counsel for any defendant, initiated the above line of questioning concerning Sarbanes-Oxley during Ms. Jordan's deposition, confirming plaintiff's desire and intent to pursue a Sarbanes-Oxley claim in this matter.

10.

The above-mentioned deposition testimony by the plaintiff and deposition questions by plaintiff's counsel demonstrates that the plaintiff is asserting a claim under Sarbanes-Oxley, and, therefore, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331.

11.

Pursuant to 28 U.S.C. § 1446(b), when an action is not initially removable, a defendant has 30 days after it receives "a copy of an amended pleading, motion, order or other paper from

which it may first be ascertained that the case is one which is or has become removable[.]” 28 U.S.C. § 1446(b) (emphasis added).

12.

Deposition testimony, including that of a non-party, constitutes “other paper” for purposes of Section 1446(b) where the testimony giving rise to removal is a voluntary act of the plaintiff. *See, e.g., Brinkley v. Universal Health Services, Inc.*, 194 F. Supp. 2d 597, 599 (S.D. Tex. 2002); *see also, e.g., Peters v. Lincoln Elec. Co.*, 285 F.3d 456, 466-67 (6<sup>th</sup> Cir. 2002).

13.

Plaintiff’s counsel’s questioning of Ms. Jordan regarding Sarbanes-Oxley constitutes a voluntary act of the plaintiff, as does plaintiff’s clarification of the nature of his claims during his own deposition. *See Brinkley*, 194 F. Supp. 2d at 599; *see also Peters*, 285 F. 3d at 466-67.

#### **Procedural Requirements**

14

In accordance with 28 U.S.C. §§ 1441 and 1446, this Notice of Removal is timely filed, it being filed less than 30 days after receipt of Danny Hanna’s or Marilyn Jordan’s deposition testimony and notice of the plaintiff’s federal claim.

15.

The United States District Court for the Eastern District of Louisiana encompasses Orleans Parish, the parish in which the state court action is now pending. Therefore, venue is proper pursuant to 28 U.S.C. § 1441(a).

16.

All defendants served with summons and complaint have jointly filed this Notice of Removal.

17.

The defendants have provided notice to the Clerk of Court for the Civil District Court for the Parish of Orleans through the filing of its Notice of Filing Notice of Removal into the record of the state court proceeding, and further notified the plaintiff by delivery of same to his counsel of record. The State Court Notice of Filing Notice of Removal is attached as Exhibit "D."

18.

Pursuant to 28 U.S.C. § 1446(d), the filing of the Notice of Removal in this Court and the filing of the Notice of Filing Notice of Removal with the state court serves immediately to confer upon this Court exclusive jurisdiction over this action and simultaneously to divest the state court of jurisdiction with respect to this action.

19.

Defendants specifically reserve their right to amend and/or supplement this Notice of Removal.



WHEREFORE, defendants, Brunel Energy, Inc., Shell Exploration and Production Company, Shell International Exploration and Production, Inc., Charles Perrilliat and Mark Tipton respectfully pray that this matter be removed to the United States District Court for the Eastern District of Louisiana for further proceedings and disposition.

Respectfully submitted,

**BAKER DONELSON BEARMAN  
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PRODUCTION, INC., MARK TIPTON, AND  
CHARLES PERRILLIAT**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13th day of May, 2014 I electronically filed the foregoing with the Clerk of the Court using the ECF system and I further certify that I have mailed by United States Mail, postage prepaid, the document to all known counsel of record:

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*s/ Kathlyn G. Perez*  
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