

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

IN RE: LUMBER LIQUIDATORS)
CHINESE-MANUFACTURED FLOORING)
PRODUCTS MARKETING, SALES)
PRACTICES AND PRODUCTS LIABILITY)
LITIGATION)
_____)

MDL No. 1:15-md-2627 (AJT/TRJ)

This Document Relates Only to the Following Case:
1:15-cv-02639 (AJT/TRJ) (*Loehn v. Lumber Liquidators
and Liberty Mutual Insurance Company*)

ORDER

Presently pending before the Court is Thomas E. Loehn and Rachel Loehn’s Motion to Remand [Doc. No. 554]. Upon consideration of the Motion, the memoranda in support thereof and in opposition thereto, and the reasons stated herein, the Motion is DENIED.

On January 5, 2015, plaintiffs filed in Louisiana state court their original Petition for Damages, as to which defendants filed an answer on February 26, 2015. On March 4, 2015, plaintiffs filed in Louisiana state court Plaintiffs [sic] First Supplemental and Amended Petition for Damages (the “Amended Petition”), in which plaintiffs first made class action allegations that established grounds for removal to federal court based on federal jurisdiction under the Class Action Fairness Act (“CAFA”). See 28 U.S.C. §1332(d)(2). Plaintiffs did not file a separate motion for leave to amend, but rather, in the Amended Petition itself, stated that they “MOVE to Amend their Petition to assert the following additional causes of action as against the defendants . . . by amending this Petition to read as follows: . . .” On March 10, 2015, the Louisiana state court ordered that “plaintiffs . . . be granted leave to file this Amended Petition for Damages.” Defendants were served with the Amended Petition on March 13, 2015. In response to

plaintiffs' Amended Petition, defendants filed a Notice of Removal from Louisiana state court to the United States District Court for the Eastern District of Louisiana on April 7, 2015, more than 30 days after the filing of the Amended Petition. *See* Notice of Removal, *Loehn v. Lumber Liquidators and Liberty Mut. Ins. Co.*, 2:15-cv-1088 (E.D. La., April 7, 2015). Plaintiffs now contend that defendants' Notice of Removal was untimely because the 30-day statutory period for removing the action commenced on March 4, 2015, the date that plaintiff filed its Amended Petition.

Because defendants had already filed an answer to the original petition, the plaintiffs were required to obtain leave of court to file their Amended Petition. *See* La. Code Civ. Proc. Ann. art. 1151 ("a plaintiff may amend his petition without leave of court at any time before the answer thereto is served . . . [o]therwise, the petition and answer may be amended *only by leave of court or by written consent of the adverse party.*") (emphasis added). For this reason, the Amended Petition did not become an operative pleading before leave of court was obtained, and therefore that pleading did not provide the basis for removal until it became an operative pleading. Likewise, the statutory period to file a Notice of Removal based on the Amended Petition was not triggered until the Amended Petition became an operative pleading, which occurred, at the earliest, on March 10, 2015, the day that the Louisiana state court granted the plaintiff's motion for leave to amend. *See* 28 U.S.C. § 1446(b)(3) (" . . . [I]f the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of the 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.") *Hibbs v. Consolidation Coal Co.*, 842 F. Supp. 215, 217-218 (N.D. W. Va. 1994). The 30-day time period for removal therefore commenced, at the earliest, on

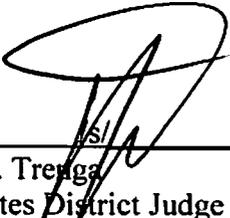
March 10, 2015, the date that the state court granted plaintiffs' leave to amend. Defendants' Notice of Removal was therefore timely.

After removal to this Court, plaintiffs further amended their claims to eliminate the class action allegations that allowed this case to be removed based on 28 U.S.C. §1332(d)(2); and based on that amendment, plaintiffs seek remand to state court on the grounds that there is no longer any basis for federal jurisdiction. But for the purposes of removal, the Court's jurisdiction is determined on the date of removal, and not thereafter; and for that reason, plaintiffs may not eliminate the Court's removal jurisdiction by amending its claims to eliminate the class action allegations that allowed the case to be removed. *Francis v. Allstate Insurance Co.*, 709 F.3d 362, 367 (4th Cir. 2013); *Fastmetrix, Inc. v. ITT Corp.*, 924 F. Supp. 2d 668, 672-73 (E.D. Va. 2013). As of the date of removal from state court to the Eastern District of Louisiana, federal removal jurisdiction existed and therefore, jurisdiction in this Court continues, plaintiffs' amended claims notwithstanding.

For the foregoing reasons, the Court finds that removal was timely and remains proper. Accordingly, it is hereby

ORDERED that Plaintiffs' Motion to Remand [Doc. No. 554] be, and the same hereby is, DENIED.

The Clerk is directed to forward copies of this Order to all counsel of record.



Anthony J. Trenga
United States District Judge

October 22, 2015
Alexandria, Virginia