

ENTERED

February 14, 2025

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

CHRISTOPHER SALAZAR,

Plaintiff,

VS.

BAY, LTD., *et al.*,

Defendants.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 2:22-CV-00306

MEMORANDUM AND RECOMMENDATION

In November 2022, Plaintiff Christopher Salazar filed a state court complaint alleging negligence, gross negligence, negligence per se, and premises liability against various defendants. (D.E. 1-1). In December 2022, Defendants Bay, Ltd., Berry Contracting, LP, and Berry Operating Company, LLC (collectively, “Bay”), removed the case to this Court based on federal question jurisdiction or, alternatively, admiralty jurisdiction. (D.E. 1 at 1-2). In April 2023, Salazar filed a second amended complaint against the following defendants: (1) Bay; (2) Shell Offshore, Inc. (“Shell Offshore”); (3) Shell USA, Inc. (“Shell USA”); (4) Chet Morrison Contractors, Inc. (“CMC”); (5) BP Exploration & Production Inc. (“BP”); and (6) Shell Pipeline Company LP (“Shell Pipeline”). (D.E. 43).¹ Salazar’s claims arise out of an incident in which he fell and injured

¹ The claims against Bay have since been dismissed. (D.E. 65).

himself on the West Delta 143 “A” platform in the Gulf of Mexico. Two separate motions for summary judgment are currently pending, one filed by CMC and the other filed by Shell Offshore, Shell USA, and BP (collectively, “Shell Defendants”).² (D.E. 62, 64, 66, 67, 68).

For the reasons discussed further below, it is recommended that CMC’s motion for summary judgment (D.E. 62) be **GRANTED** and the Shell Defendants’ motion for summary judgment (D.E. 64) be **GRANTED IN PART** and **DENIED IN PART**.

I. ALLEGATIONS

Salazar alleges the following in his second amended complaint. (D.E. 43). In August 2022, he was working on the West Delta 143 “A” platform (“the Platform”), an offshore oil rig, in the Gulf of Mexico (“the Gulf”). (*Id.* at 3). He fell from an unsecured and uneven walkway into the Gulf, sustaining injuries to his back, knees, legs, wrists, and other body parts. The walkways had been in an unreasonably dangerous condition long enough for Defendants to be aware of the hazard. Defendants failed to properly inspect, repair, and install guardrails and walking areas. (*Id.*).

The Platform was owned by the Shell Offshore and BP, but operated by Shell Pipeline. (*Id.*). The Shell Defendants were responsible for maintaining the platform in a reasonably safe condition. (*Id.* at 4). Despite not operating the Platform, the Shell Defendants maintained control over the details of the work being performed and the right

² Although this memorandum will refer to this grouping of defendants as the Shell Defendants for convenience, Defendant Shell Pipeline is not included.

of control over the work being performed. They were responsible for safety at the platform and owed Salazar a duty to exercise reasonable care to insure that all contractor work at the Platform was done in a safe manner. The Shell Defendants knew or should have known that the area where Salazar was injured was unreasonably dangerous. (*Id.*). Salazar entered the premises with the Shell Defendants' knowledge, and they had a duty to warn him of the unreasonably dangerous condition. (*Id.* at 4-5). The Shell Defendants breached their duties by failing to warn Salazar and failing to correct the unreasonably dangerous condition. (*Id.*).

CMC was hired or contracted by the Shell Defendants and Shell Pipeline to perform inspection, welding, and fabrication services on the Platform. (*Id.* at 10). While Salazar was working on the Platform, he witnessed people working for CMC and CMC had performed welding and fabrication services on the Platform. (*Id.* at 10-11). CMC was responsible for inspecting, repairing, and installing guardrails and walkways on the Platform, along with rectifying dangerous conditions. (*Id.* at 11). CMC created, or failed to repair, the uneven walkway despite having inspected it before Salazar's incident. (*Id.*). CMC failed to exercise reasonable care in undertaking the services it owed to the Shell Defendants and Shell Pipeline, and this failure caused Salazar's injuries. (*Id.* at 11-12). CMC also had a duty to warn Salazar of the dangerous condition, but failed to do so. (*Id.* at 12).

Salazar alleges that the Shell Defendants were negligent and grossly negligent in various ways relating to his injury, including failing to maintain the walkways and

handrails, failing to warn Salazar of the dangerous condition, and creating an unsafe condition on the Platform, among others. (*Id.* at 14-15). The Shell Defendants acted willfully with conscious disregard to safety and health, and were therefore grossly negligent. (*Id.* at 15). They were aware of the extreme risk caused by the conditions on the Platform, but failed to take any action to correct them. (*Id.* at 15-16). Salazar further alleges that CMC was negligent and grossly negligent for many of the same reasons. (*Id.* at 19-20). CMC was responsible for inspecting, repairing, and installing guardrails and walking areas, and accordingly was aware of the unsafe areas with uneven walkways and no guardrails. (*Id.* at 20). These areas posed an extreme risk to Salazar, but CMC neither rectified the danger nor warned Salazar of it. (*Id.* at 20-21).

Salazar further alleges that the Shell Defendants and CMC were negligent per se because they failed to adhere to regulations and industry standards regarding the installation and maintenance of guardrails on offshore platforms. (*Id.* at 21). As a result, Salazar suffered severe pain, physical impairment, discomfort, disfigurement, distress, mental anguish, and other medical problems that required him to obtain medical care and suffer lost time and earnings from work. (*Id.*). These losses are likely to continue in the future. (*Id.* at 22). Salazar was also prevented from engaging in his usual pastimes and pursuits. Further, Salazar alleges that the Shell Defendants and Shell Pipeline are subject to premises liability as the entities that owned, operated, maintained, and controlled the area where the injury occurred. (*Id.*). These Defendants knew or should have known of the dangerous condition, but failed to rectify the condition or warn Salazar of it. (*Id.* at 22-

23). Alternatively, the Shell Defendants and Shell Pipeline, as owners and custodians of the Platform, are responsible for Salazar's injuries that occurred as a result of their failure to repair the platform and as a result of a defect in its original construction. (*Id.* at 23). Salazar's injuries could have been prevented had these Defendants exercised reasonable care. (*Id.*). Salazar seeks actual and punitive damages. (*Id.* at 24-25).

II. SUMMARY JUDGMENT STANDARD

Summary judgment is proper if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A genuine issue exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The Court must examine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 251-52. In making this determination, the Court must consider the record as a whole by reviewing all pleadings, depositions, affidavits and admissions on file. *Caboni v. Gen. Motors Corp.*, 278 F.3d 448, 451 (5th Cir. 2002). The Court may not weigh the evidence or evaluate the credibility of witnesses. *Id.* The Court must view the facts in the light most favorable to the non-moving party and draw all reasonable inferences in its favor. *Salazar-Limon v. City of Houston*, 826 F.3d 272, 274-75 (5th Cir. 2016). In doing so, the Court can credit "evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that the evidence comes from disinterested witnesses." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150-51 (2000).

The moving party bears the initial burden of showing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party demonstrates an absence of evidence supporting the nonmoving party's case, then the burden shifts to the nonmoving party to come forward with specific facts showing that a genuine issue for trial does exist. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). To sustain this burden, the nonmoving party cannot rest on the mere allegations of the pleadings. *Anderson*, 477 U.S. at 248. "After the nonmovant has been given an opportunity to raise a genuine factual issue, if no reasonable juror could find for the nonmovant, summary judgment will be granted." *Caboni*, 278 F.3d at 451.

III. SUMMARY JUDGMENT EVIDENCE

a. Document Evidence

According to a 2021 press release, the Platform is owned by Shell Offshore, with a 71.5% ownership stake, and BP, with a 28.5% ownership stake. (D.E. 64-4 at 1). The Platform is operated by Shell Pipeline. (*Id.*).

Shell Pipeline contracted CMC to provide "general construction services including, but not limited to, mechanical, civil, structural, electrical, automation and/or instrumentation construction services." (D.E. 66-4 at 4, 85). The scope of CMC's work depended on the contents of individual purchase orders. (*Id.* at 4, 16). CMC confirmed that, before entering the contract, it had "investigated the [Platform] and all relevant topographical, subsoil, riverbed, and seabed condition reports as may be provided by [Shell Pipeline] (as needed specifically for each project) as a prudent contractor experienced in

the types of work to be carried out under the CONTRACT and acting in accordance with the STANDARDS OF PRACTICE.” (*Id.* at 17-18).

Shell Offshore contracted with Dynamic Industries, Inc. (“Dynamic”) for painting and blasting services in February 2015. (D.E. 64-2 at 1-3). Dynamic later became Gulf Island. (*See, e.g.*, D.E. 66-1 at 11[38]).³ The contract stated that Gulf Island was an independent contractor with respect to the scope of the contract and had “complete control, supervision and direction of the method and manner of” completing the contracted work. (*Id.* at 11).

Shell Pipeline issued a permit to work for Gulf Island that specified safety requirements. (D.E. 67-4 at 1-3). This permit was signed off on by Jimison, acting for Shell Pipeline, and representatives from Intertek and Gulf Island. (*Id.* at 2).

In an expert report, Edward Ziegler, a professional engineer and certified safety professional, stated that various federal regulations and internal Shell guidelines mandated the installation of guardrails where Salazar was working. (D.E. 66-8 at 10-13). Specifically, the Shell internal guidelines mandated the installation of a guardrail on any walkway with a drop of more than four feet. (*Id.* at 12).

³ The Shell Defendants state that they have attached an assignment and novation agreement as Exhibit B to their motion for summary judgment. (D.E. 64 at 2). This document purportedly shows that Dynamic assigned the contract to Gulf Island. (*Id.*). However, the document attached as Exhibit B is instead an excerpt from Jimison’s deposition. (D.E. 64-3).

b. Deposition Testimony

Salazar testified to the following in his deposition. (D.E. 66-1). He worked as a sandblaster and painter for a company called Gulf Island. (*Id.* at 11[39]).⁴ West Delta 143 was an area in the Gulf where various Shell platforms were located, and this was the only location he worked at as an employee of Gulf Island. (*Id.* at 11[40]). Gulf Island determined which platform he was working on and what he was doing. (*Id.* at 14[51]). He saw CMC employees working on the waterline level of the Platform, but he did not know what type of work they were doing. (*Id.* at 16[61-62]). The areas Salazar worked were visible to everyone working on that level. (*Id.* at 17[65]). Inspectors from Shell and Intertek would conduct a walk-through of an area and then tell Gulf Island what work needed to be completed. (*Id.* at 17-18[65-66]). Gulf Island had a daily job safety analysis meeting for its employees where they would discuss any potential hazards. (*Id.* at 19[70]). Salazar completed a walk-through of the entire waterline level of the Platform in June 2022, and all work was done on that level from June until the date of his accident in August. (*Id.* at 20[74]). No one brought up any issues with the guardrails or the walkway grating during the walk-through. (*Id.* at 20[75]). They would sometimes discuss the unevenness and loose feeling of the walkway. (*Id.* at 20[75-76]).

Salazar further testified that he did not see anyone from CMC on the date of the incident. (*Id.* at 22[84]). During the incident, his sandblasting hose became stuck on a

⁴ The depositions contain four mini-pages on each page. This memorandum cites to the specific mini-page in brackets.

corner, and as he was freeing the hose, he tripped on uneven grating and fell off the edge of the Platform. (*Id.* at 23-24[89-90]). He did not know what CMC's scope of work was. (*Id.* at 24[93]). There were no guardrails on the outside edge of the Platform. (*Id.* at 25[97]). Salazar had to wear fall protection for his safety due to the lack of a guardrail. (*Id.* at 26[99-100]). He did not believe he would have fallen into the water if there had been a guardrail. (*Id.* at 26[100]). He had seen CMC employees installing and welding walkway grating. (*Id.* at 27[102]). He thought having no handrail was dangerous, but he assumed that it was okay because his supervisors thought it was safe with fall protection and they got approval from Shell. (*Id.* at 44-45[173-74]).

Christopher Jimison testified to the following in his deposition. (D.E. 66-3). He worked for Shell Pipeline. (*Id.* at 4[9]). On the day of Salazar's incident, he was in charge of all activities on the Platform. (*Id.* at 6[18]). CMC was the company responsible for installing and repairing grating if necessary, but they were not responsible for walking the Platform and inspecting the grating. (*Id.* at 27[103]). Shell Pipeline used a third-party inspector for CMC's work. (*Id.* at 27[104]).

In a second deposition in the role of corporate representative for Shell Offshore, Shell Pipeline, and Shell USA, Jimison testified to the following. (D.E. 66-5). The Platform was owned by Shell Exploration or Shell Offshore, and BP also owned some part. (*Id.* at 7[27]). Shell Pipeline operated the Platform. (*Id.* at 7-8[28-29]). That meant that Shell Pipeline ran the day-to-day operations of the Platform, but it did not have full control over budgets and other issues. (*Id.* at 8[29-30]). Contractors had to get approval to start a

job from Shell Pipeline. (*Id.* at 8[31]). Shell Pipeline did not need permission from any other entity to approve work on the Platform so long as it was preventative or corrective maintenance. (*Id.*). For larger projects like replacing a crane, Shell Pipeline would need to get approval from the ownership entities. (*Id.* at 8[31-32]). There was no guardrail on the outer perimeter of the deck where Salazar was working, and the Platform was designed to not have guardrails on that level. (*Id.* at 17-18[68-70]). Contractors could bring safety hazards to Shell's⁵ attention, but it was Shell's decision whether the safety issue would be resolved. (*Id.* at 30[118-19]). CMC was not working on the deck that Salazar was on, and it was the paint crew's responsibility to identify safety hazards on that level, not CMC's. (*Id.* at 32[125]). CMC's job was to complete repair work assigned to them, not to inspect the Platform. (*Id.* at 32[126]). Shell hired other contractors to perform inspections. (*Id.*). However, everyone on the Platform had a responsibility to bring up any hazards they found. (*Id.* at 32[127]).

Ches Morrison, in the role of corporate representative for CMC, testified to the following in his deposition. (D.E. 66-6). Shell directed the work that CMC completed on the Platform. (*Id.* at 4[15]). Before agreeing to the contract, it was fair to say that CMC had to go throughout the Platform and identify problems to be fixed to ensure the project was not too large for them. (*Id.* at 7[26-28]). Replacing grating or guardrails was CMC's

⁵ Counsel regularly refers to merely "Shell" in the deposition, but it is unclear which specific Shell entities are being referred to at any given time. Jimison or opposing counsel occasionally specify Shell Pipeline, but other times do not.

job. (*Id.* at 8[30-31]). If CMC recognized a problem with grating or with a guardrail, it would notify Shell. (*Id.* at 8[32]).

IV. CMC'S MOTION FOR SUMMARY JUDGMENT (D.E. 62)

In its motion for summary judgment, CMC first argues that it had no duty to inspect the area where Salazar was working. (D.E. 62 at 3-4). CMC argues that its contract with Shell Pipeline required it to perform specific tasks set out in purchase orders from Shell Pipeline, and there was never a request for CMC to repair or replace guardrails or grating where the incident occurred. (*Id.* at 3). CMC argues that the duty to inspect Salazar's work area fell on Gulf Island Services ("Gulf Island"), which was Salazar's employer, or Intertek, which was the inspection company hired by Shell Pipeline. (*Id.* at 4). CMC contends that it did not owe a duty to another subcontractor's employee to inspect his work area, had nothing to do with the decision to not put guardrails in the area, and was not aware of any defect in the grating. (*Id.* at 6).⁶

Salazar responds that CMC was hired by Shell Pipeline to perform maintenance and repair work on the Platform. (D.E. 66 at 4). He argues that CMC was on the platform before Salazar's work crew and was on the platform at the time of the incident to fix or repair issues, including repairing or installing guardrails and repairing grating. (*Id.* at 4-5). Salazar argues that CMC owed him a duty because an independent contractor owes other contractors a duty to exercise reasonable care, as do those involved in maintenance and

⁶ CMC also states that "[i]f one found that a duty existed, the breach element would become interesting." (D.E. 62 at 5). However, the motion does not raise any argument on the breach element. (*See generally id.*).

repairs. (*Id.* at 6). Further, he contends that a duty arose when CMC voluntarily agreed to inspect, maintain, install, replace, and make repairs to the Platform. (*Id.* at 7). Salazar asserts that CMC’s corporate representative admitted that it was required to inspect the entire platform to uncover any deficiencies, and further, that its contract with Shell Pipeline required it to conduct periodic inspections. (*Id.* at 8-9). Salazar argues that various regulatory systems, including Occupational Safety and Health Administration (“OSHA”) regulations, require that workers be protected from falling and that walkways must be sound and level. (*Id.* at 9-10). He asserts that, by failing to eliminate the hazards on the Platform, CMC breached its duty. (*Id.* at 11). Further, Salazar contends that CMC breached its duty when it failed to report the hazards. (*Id.* at 11-14). Finally, Salazar argues that CMC breached its duty by failing to install the necessary guardrails and repair the grating. (*Id.* at 14-16).

CMC did not file a reply.

It is undisputed that Louisiana substantive law applies to this case. *See, e.g.*, 43 U.S.C. §§ 1331, 1333(a)(2)(A).⁷ Under Louisiana negligence law, “[e]very act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.” La. C.C. Art. 2315. A plaintiff must prove five elements to establish negligence, including showing that: “(1) the defendant had a duty to conform his conduct to a specific standard

⁷ Under the Outer Continental Shelf Land Act, “the law of the adjacent state applies unless the principles of the applicable state law conflict with any federal law.” *Galbraith v. Constr. Tech. Servs., Inc.*, No. CIV.A. 13-00449-SDD-, 2015 WL 542305, at *2 (M.D. La. Feb. 10, 2015). There is no conflict here.

(the duty element); (2) the defendant's conduct failed to conform to the appropriate standard (the breach element); (3) the defendant's substandard conduct was a cause in fact of the plaintiff's injuries (the cause-in-fact element); (4) the defendant's substandard conduct was a legal cause of the plaintiff's injuries (the scope of liability or scope of protection element); and (5) the actual damages (the damages element)." *Audler v. CBC Innovis Inc.*, 519 F.3d 239, 249 (5th Cir. 2008)

"Whether an alleged tortfeasor owes a duty to protect others from a particular risk of harm is a legal question to be determined by the trial court." *Joyner v. Ensco Offshore Co.*, No. CIV. A. 99-3754, 2001 WL 118599, at *4 (E.D. La. Feb. 9, 2001). "An independent contractor owes its fellow contractors a duty to exercise reasonable care." *Stokes v. Freeport-McMoran, Inc.*, 2015 WL 8276240 at *3 (E.D. La. Dec. 7, 2015). "[P]arties who voluntarily assume certain duties for workplace safety must perform those duties in a reasonable and prudent manner." *Bujol v. Entergy Servs., Inc.*, 2003-0492 (La. 5/25/04), 922 So. 2d 1113, 1129, *adhered to on reh'g* (Jan. 19, 2006). "[A]n assumption of duty arises when the defendant (1) undertakes to render services, (2) to another, (3) which the defendant should recognize as necessary for the protection of a third person." *Id.*

Here, the evidence does not establish a genuine issue of material fact regarding whether CMC owed a duty to Salazar. As an initial matter, there is no evidence in the record indicating that the missing guardrail or uneven grating were caused by defective repair work from CMC. Instead, Salazar relies on CMC's purported responsibility to

inspect the Platform, identify defects and hazards, and report those problems to Shell. (*See generally* D.E. 66). CMC’s contract with Shell Pipeline indicates that CMC was to provide “general construction services including, but not limited to, mechanical, civil, structural, electrical, automation and/or instrumentation construction services.” (D.E. 66-4 at 4, 85). However, the contract also limits CMC’s work to projects outlined in specific purchase orders given by Shell Pipeline. (*Id.* at 4, 16). CMC confirmed that it had investigated the Platform prior to signing the contract as necessary to prepare for the “types of work to be carried out under the contract,” but this language did not indicate that it was CMC’s responsibility to inform Shell Pipeline of what work needed to be completed, nor did it indicate that CMC had a continuing responsibility to conduct inspections. (*Id.* at 17-18).

Salazar does not cite any specific contract provisions that required CMC to independently inspect the Platform and inform the Shell Defendants of defective guardrails, grating, or any other repair work that needed to be done. Salazar cites only to one provision of the contract, which provides that CMC “will continuously manage the [health, safety, security, and environment (“HSSE”)] risks associated with the SCOPE ... The risk management activities will demonstrate that HAZARDS (and associated risks) are identified and where the HAZARD cannot be eliminated, the risks are managed to [as low as reasonably practicable].” (D.E. 66-4 at 107) (emphasis in original). However, the context of this provision indicates that it required CMC to manage safety risks related to the completion of its own work, not to manage all safety risks on the Platform. (*See id.* at 105-08). The contract specifically states that the purpose of this section is to ensure that

CMC followed HSSE requirements “in execution of SCOPE”—in other words, in execution of CMC’s own work. (*Id.* at 105). This provision did not create a contractual requirement for CMC to inspect the entire Platform and inform Shell Pipeline of unsafe conditions, but rather only required CMC to ensure its own working conditions were safe when completing work assigned to it by Shell Pipeline.

The deposition testimony also does not establish a genuine issue of material fact on the duty element. Jimison testified in both his personal deposition and in his role as a corporate representative that CMC’s job was to repair defects as identified and assigned to them by Shell Pipeline. (D.E. 66-3 at 27[103-04]; D.E. 66-5 at 32[125-27]). He explicitly stated in both depositions that CMC was not required to conduct inspections of the Platform to uncover problems, and Shell Pipeline contracted with other companies for those inspections. (*Id.*). Morrison also testified that CMC only completed the work assigned to them by Shell Pipeline. (D.E. 66-6 at 4[15]). Notably, this testimony is consistent with the contract language, as discussed above.

To the extent that Salazar argues that CMC assumed a duty to perform inspections beyond the explicit contractual requirements, the testimony does not establish that CMC assumed a duty to proactively inspect the Platform and tell Shell Pipeline of any potential defects or hazards. Morrison stated in his deposition that if CMC noticed a defect, it would notify Shell. (D.E. 66-6 at 8[32]). He also acknowledged that it was fair to say that CMC would have inspected the Platform prior to signing the contract to ensure they could complete the necessary work. (*Id.* at 7[26-28]). This is consistent with the contractual

language confirming that CMC had investigated the Platform prior to signing the contract as necessary to prepare for the “types of work to be carried out under the contract.” (D.E. 66-4 at 17-18). As noted above, however, it does not establish that it was CMC’s responsibility to inform Shell Pipeline of what work needed to be completed, nor does it establish that CMC undertook to render ongoing inspection services not provided for in the contract. *See Bujol*, 922 So. 2d at 1129 (discussing the necessary elements for an assumption of duty). Finally, although Jimison testified that everyone on the Platform had a responsibility to bring up any hazards they found, this general policy applied to everyone, even the “catering crew.” (D.E. 66-5 at 32[127]). This general policy is not sufficient to establish that CMC voluntarily assumed a duty to conduct inspections and report hazards when that was beyond their contractual responsibilities and the evidence shows Shell contracted with others to conduct such inspections. (D.E. 66-5 at 32[126]); *Bujol*, 922 So. 2d at 1129.

Accordingly, it is recommended that CMC’s motion for summary judgment (D.E. 62) be granted.

V. SHELL DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT (D.E. 64)

In their motion for summary judgment, the Shell Defendants argue that Shell Offshore and BP owned the Platform, but Shell Pipeline operated the platform. (D.E. 64 at 1). They argue that Shell Offshore and BP, as owners, generally cannot be held liable for the negligent acts of an independent contractor under Louisiana law. (*Id.* at 5-6). Specifically, they argue that Gulf Island was an independent contractor and maintained

complete control over the method and manner of its own work. (*Id.* at 6). The Shell Defendants acknowledge that there are two exceptions to this rule, but argue that neither applies. (*Id.* at 7-8). First, they argue that painting and sandblasting is not an “ultrahazardous activity.” (*Id.* at 7). Second, they argue that Shell Offshore and BP did not retain any operational control over the work completed by Gulf Island, either contractually or as exercised. (*Id.* at 7-10). The Shell Defendants further argue that they are not liable under a theory of custodial liability because the Platform was not in their control or custody. (*Id.* at 10-11). Instead, they argue that Shell Pipeline was the operator of the platform. (*Id.* at 11). Similarly, the Shell Defendants contend that they are not liable under a theory of premises liability because they had no control over the platform, which was operated by Shell Pipeline. (*Id.* at 11-13). Finally, the Shell Defendants argue that Shell USA is completely unrelated to this incident. (*Id.* at 13).

Salazar responds that Shell Offshore’s and BP’s independent-contractor defense is inapplicable here because they do not argue that Gulf Island was negligent, and Gulf Island had no responsibility to repair uneven grating. (D.E. 67 at 5-6). Further, Salazar contends that Shell Offshore and BP are liable as owners of the Platform because they: (1) knew of the lack of guardrails and unstable grating; (2) exercised control and had to sign off on any construction done on the Platform; and (3) failed to exercise reasonable care by failing to perform periodic inspections of the Platform. (*Id.* at 6-11). Next, Salazar argues that Shell Offshore and BP, as owners of the Platform, had a duty to provide him with a safe place to

work, but breached that duty by allowing defects in the guardrails and grating. (*Id.* at 12-13).

BP, replying individually, argues that Salazar has not raised a genuine issue of material fact as to BP because his evidence barely mentions BP. (D.E. 68 at 1-2). BP contends that the independent-contractor defense is applicable here and it is unnecessary to specifically argue that an independent contractor was negligent. (*Id.* at 2). Finally, BP argues that it is a minority owner that did not operate the platform and did not retain control of the Platform or have responsibility to repair defects. (*Id.* at 2-3).

Under Louisiana negligence law, “a principal is not liable for the negligent acts of an independent contractor acting pursuant to the contract.” *Coleman v. BP Expl. & Prod., Inc.*, 19 F.4th 720, 727 (5th Cir. 2021). Courts consider five factors to determine whether an entity qualifies as an independent contractor, including whether: (1) “there is a valid contract between the parties;” (2) “the work being done is of an independent nature such that the contractor may employ non-exclusive means in accomplishing it;” (3) “the contract calls for specific piecework as a unit to be done according to the independent contractor’s own methods, without being subject to the control and direction of the principal, except as to the result of the services to be rendered;” (4) “there is a specific price for the overall undertaking agreed upon;” and (5) “the duration of the work is for a specific time and not subject to termination or discontinuance at the will of either side without a corresponding liability for its breach.” *Id.* at 727-29 (internal brackets omitted).

There are two exceptions to the independent-contractor rule. First, a defendant is still liable if they exercise operational control over the contractor. *Id.* at 729. Second, “a principal may not avoid liability for injuries resulting from ultrahazardous activities performed by its contractors on behalf of the principal.” *Cormier v. W & T Offshore, Inc.*, No. CIV.A. 10-1089, 2013 WL 1567406, at *8 (W.D. La. Apr. 12, 2013).

Under a theory of custodial liability, a party is responsible for damage caused by things in its custody. La. Civ. Code Ann. art. 2317. “The owner or custodian of a thing is answerable for damage occasioned by its ruin, vice, or defect, only upon a showing that he knew or, in the exercise of reasonable care, should have known of the ruin, vice, or defect which caused the damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care.” La. Civ. Code Ann. art. 2317.1. A plaintiff raising a claim under Article 2317.1 must prove that: “(1) the thing which caused damages was in the control or custody of the defendant; (2) the thing had a defect that created an unreasonable risk of harm; (3) the injuries were caused by the defect; and (4) the defendant had actual or constructive knowledge of the defect.” *Terese v. 1500 Lorene LLC*, No. CIV.A. 09-4342, 2010 WL 4702369, at *4 (E.D. La. Nov. 12, 2010). “Custody” is not determined by ownership, “but involves the right of supervision, direction, and control as well as the right to benefit from the thing controlled.” *Haydel v. Hercules Transp., Inc.*, 654 So. 2d 408, 414 (La. App. 1 Cir. 1995). “Although there is a presumption that an owner has custody of the thing he owns, the presumption is rebuttable and a non-owner defendant may have custody over property if he exercises direction and

control of the thing and derives some benefit from it.” *Hammons v. Forest Oil Corp.*, No. CIV.A. 06-9173, 2008 WL 348765, at *4 (E.D. La. Feb. 7, 2008) (internal quotation marks omitted).

Under a theory of premises liability, “[t]he owner of a building is answerable for the damage occasioned by its ruin, when this is caused by neglect to repair it, or when it is the result of a vice or defect in its original construction. However, he is answerable for damages only upon a showing that he knew or, in the exercise of reasonable care, should have known of the vice or defect which caused the damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care.” La. Civ. Code Ann. art. 2322. “Under Article 2322, a plaintiff must prove the following elements to hold the owner of a building liable for the damages caused by the building’s ruin or a defective component: (1) ownership of the building; (2) the owner knew or, in the exercise of reasonable care, should have known of the ruin or defect; (3) the damage could have been prevented by the exercise of reasonable care; (4) the defendant failed to exercise such reasonable care; and (5) causation.” *Broussard v. State ex rel. Off. of State Bldgs.*, 2012-1238 (La. 4/5/13), 113 So. 3d 175, 182-83.

Here, as an initial matter, Salazar has not addressed the argument that Shell USA is wholly unrelated to this case, and he specifically identifies Shell Offshore and BP in all of his arguments. (*See generally* D.E. 67). There is no evidence in the record regarding Shell USA. Accordingly, it is recommended that the Shell Defendants’ motion be granted as to Shell USA.

As to Shell Offshore and BP, to the extent that Salazar's claims allege that his injuries were caused by negligence on the part of Gulf Island or other independent contractors, Shell Offshore and BP are shielded by the independent-contractor rule. The evidence shows that Gulf Island was an independent contractor under the requirements of the rule. (*See generally* D.E. 64-2); *Coleman*, 19 F.4th at 727-29. This memorandum does not analyze the application of the independent-contractor rule in more detail because, ultimately, Salazar does not dispute that the independent-contractor rule would bar negligence claims arising from the negligent acts of a contractor. (D.E. 67 at 1-2, 5-6). Instead, Salazar asserts that the independent-contractor rule is inapplicable because his claims against Shell Offshore and BP are not based on their vicarious liability for another contractor's negligence, but rather on custodial liability under Articles 2317 and 2317.1 and premises liability under Article 2322. (D.E. 67 at 2).

Beginning with premises liability, Salazar has established a genuine issue of material fact regarding Shell Offshore's liability. Applying the five elements, first, the evidence establishes that Shell Offshore and BP owned the Platform. (D.E. 64-4 at 1); *Broussard*, 113 So. 3d at 182-83. Second, Jimison, as a corporate representative for Shell Offshore and Shell Pipeline, testified that there was no guardrail where Salazar was working and never had been a guardrail there, indicating that the Shell Defendants knew of at least one of the defects Salazar identifies and that the defect existed since the Platform's original construction. (D.E. 66-5 at 17-18[68-70]). Further, Salazar has presented evidence from an expert witness that, in addition to regulations, Shell's own

policies dictated that any open-sided walkway with a drop of more than six feet was required to have a guardrail. (D.E. 66-7 at 12). Shell Offshore has not disputed this evidence. Third, the damage could have been prevented by the exercise of reasonable care because Salazar testified that he did not believe he would have fallen into the water if there had been a perimeter guardrail on the Platform. (D.E. 66-1 at 26[100]). This belief is not disputed. Fourth, it is undisputed that Shell Offshore failed to install a guardrail where Salazar was working. (D.E. 66-1 at 23-24[89-90], 25[97]). Finally, a genuine issue of material fact exists as to causation given that the evidence indicates that Salazar lost his balance and fell off the Platform in an area where Shell Offshore failed to install a guardrail. (*Id.*). The evidence is sufficient on each of the five necessary elements to create a genuine issue of material fact regarding premises liability for Shell Offshore.

Salazar has not established a genuine issue of material fact regarding BP's liability, however. Specifically, although the evidence establishes the first element because BP was an owner of the Platform, it does not establish the second element. Jimison testified as a corporate representative for Shell Pipeline, Shell Offshore, and Shell USA only. (D.E. 66-5 at 2[5]). Without Jimison's testimony, the record does not show that BP knew or should have known of the defects in the grating and guardrail. *Broussard*, 113 So. 3d at 182-83. Instead, the record shows that Jimison, an employee of Shell Pipeline and a corporate representative only for the Shell companies, was the person-in-charge on the Platform at the time of the incident. (D.E. 66-3 at 6[18]). In short, the evidence establishing a genuine issue of material fact as to Shell Offshore's potential premises liability does not apply

equally to BP because Jimison did not testify as a representative of BP, and there is no other evidence in the record establishing a genuine issue of material fact as to BP on this issue.

A similar split analysis applies to Salazar's claims of custodial liability under Article 2317 and 2317.1. Shell Offshore specifically challenges the first element, whether the Platform was in its custody or control at the time of the incident. Although the evidence shows that Shell Pipeline was the day-to-day operator of the Platform, Jimison also testified that it did not have full control over budgets and other issues. (D.E. 66-5 at 8[29-30]). While small repair projects could be approved by Shell Pipeline alone, larger projects needed approval from ownership. (*Id.* at 8[31-32]). Moreover, as noted above, the questioning and Jimison's testimony during the deposition regularly refers only to "Shell" without delineating between Shell Offshore and Shell Pipeline. (*See, e.g.*, D.E. 66-5 at 30[117-20]). Given Jimison's testimony indicating that Shell Pipeline did not have full control over the operations of the Platform and the unclear distinction between Shell Offshore and Shell Pipeline throughout the deposition, Salazar has established a genuine issue of material fact on the control element. *See Haydel*, 654 So. 2d at 414 (noting that custody depends not own ownership, but on the right of supervision, direction, and control). Second, as discussed in the premises liability analysis, evidence in the record indicates that there was a defect that created an unreasonable risk of harm—the lack of a guardrail—and that Salazar's injuries were caused by this defect. Finally, also as discussed in the premises liability analysis, Jimison's testimony as a corporate representative establishes that Shell

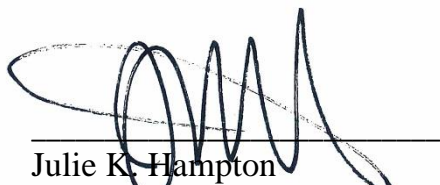
Offshore was aware of the lack of a guardrail. (D.E. 66-5 at 17-18[68-70]). The evidence is sufficient on each of the four necessary elements to create a genuine issue of material fact regarding custodial liability for Shell Offshore. However, for the same reasons discussed above regarding premises liability, the evidence does not establish a genuine issue of material fact as to BP because Jimison did not testify as a BP representative.

Accordingly, it is recommended that the Shell Defendants' motion be granted as to Shell USA and BP, but denied as to Shell Offshore.

VI. RECOMMENDATION

Accordingly, it is recommended that CMC's motion for summary judgment (D.E. 62) be **GRANTED** and the Shell Defendants' motion for summary judgment (D.E. 64) be **GRANTED IN PART** and **DENIED IN PART**.

Respectfully submitted on February 14, 2025.



Julie K. Hampton
United States Magistrate Judge

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within FOURTEEN (14) DAYS after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to Fed. R. Civ. P. 72(b), 28 U.S.C. § 636(b)(1), General Order No. 2002-13, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within FOURTEEN (14) DAYS after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (*en banc*).