

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CLINE COCKBURN

CIVIL ACTION

VERSUS

NO. 22-2058

APEX OIL COMPANY, INC., *et al.*

SECTION M (4)

ORDER & REASONS

Before the Court are several motions related to plaintiff's marine safety expert, Captain Ronald Campana, including: (1) a motion *in limine* filed by defendant Apex Oil Company ("Apex") to exclude all evidence and testimony from any witness regarding matters addressed by Campana;¹ (2) a motion *in limine* filed by defendant Buffalo Marine Service, Inc. ("Buffalo Marine") to strike portions of Campana's report and limit his testimony to areas within his expertise, particularly to strike opinions regarding the effect the wakes of passing vessels may have played in the incident;² and (3) Apex's motion to exclude evidence, testimony, and argument concerning passing vessels.³ Plaintiff Cline Cockburn responds in opposition,⁴ and Apex and Buffalo Marine reply in further support of their motions.⁵ Having considered the parties' memoranda, the record, and the applicable law, the Court issues this Order & Reasons.

I. BACKGROUND

This case concerns a personal injury. On July 5, 2021, Cockburn was employed by AmSpec Services, LLC ("AmSpec") as a petrochemical inspector performing work for Marathon

¹ R. Doc. 145.

² R. Doc. 144.

³ R. Doc. 127.

⁴ R. Docs. 177; 179.

⁵ R. Docs. 182; 184; 188.

Petroleum Company, LP aboard *in rem* defendant the M/V *San Roberto*, a vessel owned and operated by defendant Buffalo Marine.⁶ At the time, the *San Roberto* was moored at a dock facility in Mt. Airy, Louisiana, that was owned by Apex.⁷ Cockburn was injured while disembarking from the *San Roberto* when the gangway leading from the barge to the dock “gave way.”⁸ On July 5, 2022, Cockburn filed this suit against Apex, Buffalo Marine, and the *San Roberto*, *in rem*, and amended the complaint on June 21, 2023, alleging claims under Louisiana law, the general maritime law, and the Longshore and Harbor Workers’ Compensation Act, 33 U.S.C. § 905(b).⁹

Cockburn hired Campana, a marine surveyor, as a maritime safety expert.¹⁰ Campana graduated from the United States Merchant Marine Academy, holds numerous maritime master’s licenses with the United States Coast Guard, and has worked in the maritime industry in various capacities for over fifty years.¹¹ He issued two reports in this case.¹² Campana states that he reviewed the available documents and testimony pertaining to the case and applied his knowledge of, and experience concerning, vessels and maritime safety, to form his opinions that both Buffalo Marine and Apex were at fault for the incident.¹³ Specifically, Campana opines:

- The vessel had the responsibility, as per their [c]ompany [p]olicy, to ensure the gangway that was provided by the terminal was properly secured to the barge taking into consideration the movement of the barge up and down and in and out. This they did not do.¹⁴
- The vessel’s crew on watch had the duty to make frequent inspections to adjust the mooring lines as needed and to ensure the gangway was properly secured.¹⁵

⁶ R. Doc. 38 at 3.

⁷ *Id.*

⁸ *Id.*

⁹ R. Docs. 1; 38.

¹⁰ R. Doc. 179-2.

¹¹ R. Doc. 179-1.

¹² R. Doc. 179-2.

¹³ *Id.*

¹⁴ *Id.* at 8, 17.

¹⁵ *Id.*

- The terminal, Apex, had the duty to ensure the gangway met all applicable regulations and to properly place the gangway on the barge. Since the barge was being discharged, the dock man knew the barge would rise higher in the water. I have Mr. Cambre's testimony ... and he as well as others have testified, including the captain of the M/V *San Roberto*, the shore end of the gangway was also secured. It should not have been tightly secured. The gangway needs to be able to move on the dock with the movement of the barge. Many terminal gangways have wheels on the dock end which allows the gangway to roll in and out provided the fixed end on the barge is secured properly. Additionally, this gangway did not have a net underneath as per the CFR regulations. Had a proper safety net been employed, under the gangway, when the gangway became adrift from the barge, it would not have fallen to the dock as more probably than not, assuming the net was properly secured, fallen into the net preventing the sudden hard hit on the dock when Mr. Cockburn stepped on the gangway.¹⁶
- Proper securing techniques are not specified in the company policy of Buffalo Marine and are left to the individual crewmember to decide the best way to secure the gangway. This gangway is allegedly identical to the ones I inspected at the terminal, and they have only one (1) tag line at each end. Tag lines are for the control of the gangway when the crane lifts the gangway in the air. They can be used for securing the gangway, however using two lines is good marine practice and strongly recommended when connecting to the barge. A single line, whether tied as a single line or wrapped around an object, can allow the gangway to become skewed with any fore and aft movement of the barge. By utilizing two lines, one attached to stanchion at the barge end and properly secured to the barge so the gangway cannot move, will only prevent the canting of the orientation of the gangway.¹⁷
- This accident is a result of the failure of both the terminal and vessel to ensure the gangway was properly maintained and secured.¹⁸
- Buffalo Marine established a gangway policy in 2020 and on July 5, 2021, breached their corporate policies regarding gangways.¹⁹
- At 1343 hours, on July 5, 2021, the ATB "Pride," a 705' vessel, was sailing past the dock upriver. It is unknown [i]f this vessel's passage upriver at 8.4 kts affected the barges at the dock, but it is to be expected and the vessel's crew must not only anticipate for barge movement, but they must also adjust the mooring lines as needed to keep the barge tight along the dock to minimize barge movement in and out from the dock. Based on the photograph taken by

¹⁶ *Id.* at 17 (presumably supplanting the prior corresponding paragraph on page 8).

¹⁷ *Id.* at 8 (which paragraph does not appear in the supplemental report on page 17).

¹⁸ *Id.* at 8, 17.

¹⁹ *Id.*

Mr. Cockburn, the crew failed in this responsibility as the barges were at least three (3)' off the dock and therefore breached company policies.²⁰

II. PENDING MOTIONS

Apex moves to exclude all of Campana's opinions because he "has not cited any industry standards, codes, or other similar authorities in support of any of his opinions,"²¹ save two paragraphs of a federal regulation pertaining to general "safety-management objectives" for gangways, including a net, namely, 29 C.F.R. § 1918.22(a)²² and (e).²³ Specifically, Apex takes issue with the fact that Campana does not identify "any specific codes or safety standards that require gangways to not be secured or to be secured loosely on the shore end, [that] require gangways to be secured on the vessel end with two (2) tag lines, or that require gangways to be equipped with wheels."²⁴ Apex also argues that Campana admitted at his deposition that wheels are not required on a gangway and that the gangway was fit for its intended purposed.²⁵ Further, say Apex, the net issue is irrelevant because the purpose of a net is to prevent people from falling into the water, but Cockburn did not fall into the water.²⁶ Although Campana testified at his

²⁰ *Id.* at 9, 17-18.

²¹ R. Doc. 145 at 1.

²² Section 1918.22(a) states:

Whenever practicable, a gangway of not less than 20 inches (.51 m) in width, of adequate strength, maintained in safe repair and safely secured shall be used. If a gangway is not practicable, a straight ladder meeting the requirements of § 1918.24 that extends at least 36 inches (.91 m) above the upper landing surface and is secured against shifting or slipping shall be provided. When conditions are such that neither a gangway nor straight ladder can be used, a Jacob's ladder meeting the requirements of § 1918.23 may be used.

29 C.F.R. § 1918.22(a).

²³ R. Doc. 145-1 at 1-12. Section 1918.22(e) states:

When the gangway overhangs the water so that there is danger of employees falling between the ship and the dock, a net or suitable protection shall be provided to prevent employees from receiving serious injury from falls to a lower level.

29 C.F.R. § 1918.22(a).

²⁴ R. Doc. 145-1 at 7.

²⁵ *Id.* at 3.

²⁶ *Id.* at 3, 10-12.

deposition that a net would have either prevented the gangway from falling or would have lessened its impact when it hit the dock, Apex contends that this opinion is beyond the scope of Campana's expertise and is unreliable because he testified at his deposition that he has neither knowledge of the forces involved when the gangway slipped off the vessel and onto the dock nor any medical training to substantiate the notion that a net would have lessened Cockburn's injuries.²⁷ Finally, Apex urges the Court to exclude any lay opinion testimony that Apex violated industry standards or codes because these issues lie within the province of an expert.²⁸

In addition to Apex's motion to exclude Campana's testimony in its entirety, Apex and Buffalo Marine move to exclude Campana's testimony specifically as to the role passing vessels may have played in the incident.²⁹ They argue that there is no evidence that a vessel was actually passing at the time of the accident.³⁰ Jeff Cambre, the dockman on duty at the time of the incident, testified that he saw the barge move, which could have been the result of passing vessel traffic or simply the tides, as such movement was common, but he did not remember any vessels passing by at the time of the incident.³¹ Campana based his opinion on information obtained from a vessel tracking system called "MRTIS," which shows two vessels approaching the vicinity of the dock shortly after the incident, including the ATB *Pride* (the "*Pride*").³² But, as Apex and Buffalo Marine point out, the *Pride* passed by the dock nearly ten minutes after the incident.³³ Buffalo Marine adds that Campana is not qualified to testify as to the effects the wake of any passing vessel may have had on the barge or gangway because he is not an engineer or physicist and did not

²⁷ *Id.*

²⁸ *Id.* at 13.

²⁹ R. Docs. 127; 144.

³⁰ R. Docs. 127-1 at 2; 144-1 at 8.

³¹ R. Doc. 127-1 at 2.

³² *Id.* at 2-3. MRTIS is an acronym for Mississippi River Traffic Information System. ATB is an acronym for articulated tug barge.

³³ R. Docs. 144-1 at 8; 127-1 at 3-4.

perform any calculations regarding any passing vessel's wake effects on the barge or gangway.³⁴ Buffalo Marine also asserts that Campana's opinion that the barge was at least three feet off of the dock in violation of Buffalo Marine's company policy is unreliable because that opinion is based on a photograph Cockburn took after the incident and Cockburn testified that the barge did not move away from the dock at the time of the incident.³⁵ In sum, Apex and Buffalo Marine contend that evidence regarding a vessel passing the area after the incident does not establish that such a passing vessel contributed to the accident, especially considering that Campana is not qualified to testify as to the physics of any potential wake effect.³⁶

In opposition, Cockburn argues that Campana's testimony is relevant and reliable because, in formulating his opinions, he applies his long experience in maritime safety, examining the facts of the case, as gleaned from witness deposition testimony and his own inspection of the dock and barge, against industry safety standards and federal regulations (particularly, 29 C.F.R. § 1918.22(e)), Buffalo Marine's gangway policy, and the corroborating opinions of Buffalo Marine's maritime safety expert.³⁷ Cockburn contends that all four of the key opinions offered by Campana that Apex seeks to exclude – specifically those related to securing the gangway at the shore end and vessel end, the gangway's lack of wheels, and the lack of a safety net – are relevant and reliable because “[e]ach of these opinions addresses fundamental maritime safety practices grounded in Captain Campana's decades of operational experience, familiarity with industry standards, and review of case-specific evidence, including photographs, depositions, and inspection of the gangway.”³⁸ Cockburn adds that Campana's opinion that the gangway should

³⁴ *Id.* at 1, 5-6.

³⁵ *Id.* at 6-7.

³⁶ R. Docs. 127-1 at 4-5; 144-1 at 8-9.

³⁷ R. Doc. 179 at 15-20.

³⁸ *Id.* at 13. Cockburn also argues that Apex's and Buffalo Marine's motions *in limine* to exclude Campana's testimony should be denied as untimely filed. *Id.* at 2-4; R. Doc. 177 at 1-3. Apex and Buffalo Marine respond that they could not file their motions before the deadline for *Daubert* motions because Campana submitted a report and

have had wheels is bolstered by the testimony of Buffalo Marine’s marine safety expert, Elliot Tullock, who confirmed that having wheels on gangways is the industry standard because wheels allow gangways that are unsecured at the shore end to move freely.³⁹ Cockburn further asserts that Campana’s testimony about the absence of a safety net is relevant because it goes to the suitability of the gangway and shows that the gangway was not secured in accordance with § 1918.22(e).⁴⁰ Finally, Cockburn argues that the Court should not exclude other evidence regarding the proper securing of the gangway or whether it was fit for its use because such evidence “go[es] directly to the heart of the case” and is necessary to prove his claims.⁴¹

Cockburn also opposes Apex’s and Buffalo Marine’s motions *in limine* seeking to exclude Campana’s opinions regarding passing vessels, arguing that he is qualified by his maritime experience to offer expert opinions on passing vessel traffic, mooring safety, gangway rigging, and vessel operations.⁴² Cockburn further contends that Campana’s testimony regarding the effect passing vessel traffic might have had on the barge is relevant because Cambre testified at his deposition that the barge moved and that the dock was particularly vulnerable to the effects of passing vessel traffic.⁴³ Cockburn explains that “Campana’s role as an expert is precisely to interpret such lay observations, together with vessel tracking data and industry knowledge, to explain how vessel wakes and suction forces can act on moored barges and connected equipment.”⁴⁴ He further asserts that Campana can explain that even a vessel that has not yet passed could destabilize the dock and barge by the effects of the “[v]essel-induced hydrodynamic

declaration after the deadline and was also deposed after the deadline. R. Docs. 182 at 3; 184 at 1-4; 188 at 1-2. Although the deadline for *Daubert* motions was not explicitly extended with the trial continuance, defendants had good cause for the late filing. Hence, the Court will not deny the motions as untimely.

³⁹ R. Doc. 179 at 10-11.

⁴⁰ *Id.* at 11, 16-18.

⁴¹ *Id.* at 20.

⁴² R. Doc. 177 at 1-5.

⁴³ *Id.* at 5-8.

⁴⁴ *Id.* at 6-7.

forces, including downdraw, suction, and wake energy,” all of which, says Cockburn, is within Campana’s expertise.⁴⁵ Finally, Cockburn states that such opinions are relevant to determining what caused the gangway to collapse, and Apex and Buffalo Marine’s issues with the testimony goes to its weight, not its admissibility.⁴⁶

Apex and Buffalo Marine reply in support of their motions.⁴⁷ Apex, while acknowledging that there is conflicting testimony (Cockburn and Cambre) regarding whether the barge moved, argues that any testimony about a passing vessel affecting the dock is irrelevant because there is no evidence that a vessel was passing at the time of the incident, as the MRTIS data shows that the *Pride* was 1.08 nautical miles away and passed the dock nine minutes later.⁴⁸ Buffalo Marine adds that Campana’s passing vessel testimony is unreliable because it is based on incorrect data and lacks calculations.⁴⁹

III. LAW & ANALYSIS

A. *Daubert* Standard

A district court has discretion to admit or exclude expert testimony under the Federal Rules of Evidence. *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 139 (1997). In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589 (1993), the Supreme Court held that Rule 702 of the Federal Rules of Evidence requires a district court to act as a gatekeeper to ensure that “any and all scientific testimony or evidence admitted is not only relevant, but reliable.” Rule 702 provides:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

⁴⁵ *Id.* at 8-9 (quote at 9).

⁴⁶ *Id.* at 9-10.

⁴⁷ R. Docs. 182; 188.

⁴⁸ R. Doc. 182 at 2.

⁴⁹ R. Doc. 188 at 2.

- (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert’s opinion reflects a reliable application of the principles and methods to the facts of the case.

The reliability inquiry requires a court to assess whether the reasoning or methodology underlying the expert’s testimony is valid. *See Daubert*, 509 U.S. at 592-93. In *Daubert*, the Supreme Court listed several non-exclusive factors for a court to consider in assessing reliability: (1) whether the theory has been tested; (2) whether the theory has been subjected to peer review and publication; (3) the known or potential rate of error; and (4) the general acceptance of the methodology in the scientific community. *Id.* at 593-95. However, a court’s evaluation of the reliability of expert testimony is flexible because “[t]he factors identified in *Daubert* may or may not be pertinent in assessing reliability, depending on the nature of the issue, the expert’s particular expertise, and the subject of his testimony.” *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 150 (1999) (quotations omitted). In sum, the district court must ensure “that an expert, whether basing testimony upon professional studies or personal experiences, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.” *Id.* at 152. The party offering the testimony must establish its reliability by a preponderance of the evidence. *See Moore v. Ashland Chem. Inc.*, 151 F.3d 269, 276 (5th Cir. 1998).

Next, the district court must determine whether the expert’s reasoning or methodology “fits” the facts of the case and whether it will assist the trier of fact to understand the evidence, *i.e.*, whether it is relevant. *Daubert*, 509 U.S. at 591. An expert’s testimony is not relevant and may be excluded if it is directed to an issue that is “well within the common sense understanding

of jurors and requires no expert testimony.” *Vogler v. Blackmore*, 352 F.3d 150, 155 (5th Cir. 2003). Further, an expert cannot make “legal conclusions reserved for the court,” credit or discredit witness testimony, or “otherwise make[] factual determinations reserved for the trier of fact.” *Highland Cap. Mgmt., L.P. v. Bank of Am., N.A.*, 574 F. App’x 486, 491 (5th Cir. 2014).

Rule 702 also requires that an expert be properly qualified. Generally, if there is some reasonable indication of qualifications, the district court may admit the expert’s testimony, and then the expert’s qualifications become an issue for the trier of fact. *Rushing v. Kan. City S. Ry. Co.*, 185 F.3d 496, 507 (5th Cir. 1999), *superseded in part by statute on other grounds as noted in Lester v. Wells Fargo Bank, N.A.*, 805 F. App’x 288, 291 (5th Cir. 2020). A witness qualified as an expert is not strictly confined to his area of practice but may testify regarding related applications; a lack of specialization goes to the weight, not the admissibility of the opinion. *Cedar Lodge Plantation, L.L.C. v. CSHV Fairway View I, L.L.C.*, 753 F. App’x 191, 195-96 (5th Cir. 2018).

The facts, data, and sources used in an expert’s opinion are generally considered by the jury in weighing the evidence, but “in some cases ‘the source upon which an expert’s opinion relies is of such little weight that the jury should not be permitted to receive that opinion.’” *Jacked Up, L.L.C. v. Sara Lee Corp.*, 807 F. App’x 344, 348 (5th Cir. 2020) (quoting *Viterbo v. Dow Chem. Co.*, 826 F.2d 420, 422 (5th Cir. 1987)). As the gatekeeper, a district judge must “extract evidence tainted by farce or fiction. Expert evidence based on a fictitious set of facts is just as unreliable as evidence based upon no research at all.” *Guillory v. Domtar Indus. Inc.*, 95 F.3d 1320, 1331 (5th Cir. 1996). “Generally, the fact-finder is entitled to hear an expert’s testimony and decide whether the predicate facts on which the expert relied are accurate. At the same time, however, expert testimony that relies on completely unsubstantiated factual assertions is

inadmissible.” *Moore v. Int’l Paint, L.L.C.*, 547 F. App’x 513, 515 (5th Cir. 2013) (internal quotation marks, alterations, and citations omitted). Ultimately, the expert must “‘bring to the jury more than the lawyers can offer in argument.’” *Salas v. Carpenter*, 980 F.2d 299, 305 (5th Cir. 1992) (quoting *In re Air Crash Disaster at New Orleans*, 795 F.2d 1230, 1233 (5th Cir. 1986)).

B. Analysis

Apex seeks to exclude Campana’s opinions that (1) the gangway should not have been tied, or at least not tied so tightly, on the dock end; (2) the gangway should have been secured to the vessel with two ropes instead of one; (3) the gangway should have had wheels; and (4) a safety net should have been installed below the gangway in accordance with 29 C.F.R. § 1918.22(e). Generally, all of these opinions fall within Campana’s expertise in maritime safety and are based on his application of his lengthy experience to the facts of the case. These issues pertain to the particular workings of a gangway and are not within the general knowledge of lay jurors and thus would be helpful. *Contra Trigleth v. Ocean Belt Maritime, Inc.*, 2025 WL 1284259, at *2-5 (E.D. La. May 2, 2025) (striking Campana as an expert witness in a maritime trip-and-fall case where his opinions involved common-sense matters that the jury could evaluate on its own without the application of any specialized knowledge or methodology). Apex’s concerns with this testimony can be addressed through vigorous cross-examination and the presentation of countervailing expert testimony. Moreover, the Court will not, in the abstract, issue a blanket order excluding all testimony from lay witnesses regarding whether Apex violated industry standards or codes. Instead, the Court will rule on contemporaneous objections as the issue arises at trial.

Concerning the net more specifically, Campana can testify that a net should have been under the gangway per federal regulations (29 C.F.R. § 1981.22(e)), but he cannot testify that a net would have prevented the gangway from falling or lessened its impact – and by extension

Cockburn's alleged injuries – when it hit the dock. Campana testified at his deposition that he has no knowledge of the forces involved in the gangway's fall from the vessel to the dock or any medical training to substantiate the notion that a net would have lessened Cockburn's injuries. Thus, any such opinions are irrelevant, unreliable, and inadmissible.

With respect to passing vessels, Campana, by virtue of his five decades of experience in the maritime industry, is qualified to testify, generally, as to the effect a passing vessel may have on docks and vessels moored at docks. He may also testify as to what the MRTIS data shows regarding vessels in the area at the time of the accident. Campana may not, however, offer any testimony or opinions as to the precise impact a specific passing vessel (like the *Pride*) may have had on the *San Roberto* at the time of the accident because he is not qualified to perform, nor has he attempted to perform, the calculations necessary to explain how, and in what directions, a specific passing vessel's wake could have caused the *San Roberto* to move.

IV. CONCLUSION


Accordingly,

IT IS ORDERED that Apex's motion *in limine* to exclude all evidence and testimony from any witness regarding matters addressed by Campana (R. Doc. 145) is GRANTED IN PART and DENIED IN PART.

IT IS FURTHER ORDERED that Buffalo Marine's motion *in limine* to strike portions of Campana's report and limit his testimony to areas within his expertise (R. Doc. 144) is GRANTED IN PART and DENIED IN PART.

IT IS FURTHER ORDERED that Apex's motion to exclude evidence, testimony, and argument concerning passing vessels (R. Doc. 127) is GRANTED IN PART and DENIED IN PART.

New Orleans, Louisiana, this 22nd day of August, 2025.


BARRY W. ASHE
UNITED STATES DISTRICT JUDGE