United States District Court
Southern District of Texas
ENTERED
July 15, 2026
Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Gene Harney, et al.,	§	
	§	
Plaintiffs,	§	
	§	Civil Action No. 4:25-cv-00392
v.	§	
	§	
Maersk A/S, in personam, et al.,	§	
	§	
Defendants.	§	

MEMORANDUM, RECOMMENDATION, AND ORDER

Multiple motions are pending in this maritime personal injury suit, three of which are motions for summary judgment.[1] Defendants Maersk A/S and A.P. Møller filed a motion for partial summary judgment on Plaintiff Gene Harney's claims for non-pecuniary and punitive damages and for summary judgment on the claims of Harney's wife, Brittany. Dkt. 30. Defendants then moved for summary judgment on liability. Dkt. 43. Plaintiffs moved for partial summary judgment on negligence *per se*, the rule from *The Pennsylvania*, 86 U.S. 125 (1873), and contributory fault. Dkt. 40.

The parties also challenged the admissibility of each other's experts: Plaintiffs moved to exclude Jennifer Pavlik, Dkt. 41, and Defendants moved to

[1] This opinion does not address the pending motions in limine.

exclude S.R. Parthasarathy's opinions, Dkt. 42. And Plaintiffs filed a motion to amend the scheduling order, Dkt. 93, which they later withdrew, Dkt. 95.

After carefully reviewing the motions, responses, Dkts. 32, 46, 47, 48, 49, 94, replies, Dkts. 34, 51, 52, 53, 54, the record, and the applicable law, it is recommended that (a) Defendants' motion for partial summary judgment on Harney's claims for non-pecuniary and punitive damages and for summary judgment on his wife's claims (Dkt. 30) be granted; (b) Plaintiffs' motion for partial summary judgment (Dkt. 40) be denied; and (c) Defendants' motion for summary judgment on liability (Dkt. 43) be denied. It is further ordered that (d) Plaintiffs' motion to exclude the opinions and testimony of Jennifer Pavlik (Dkt. 41) be denied; (e) Defendants' motion to exclude the expert opinion testimony of S.R. Parthasarathy be granted in part and denied in part; and (f) notwithstanding Plaintiffs' withdrawal of their request for continuance, the dates for docket call and trial will be reset for October 2026.

Background

Harney is a Petty Officer in the United States Coast Guard. Dkt. 1 at 1. On October 17, 2024, he and other crewmembers aboard the Coast Guard Cutter Hatchet (the "Hatchet") were constructing a navigation aid in the Houston Ship Channel. *Id.* at 4. The Hatchet was "spud-in" and anchored next to the navigation aid, restricting its ability to maneuver. *Id.* at 5. While the crew was working, the Monte Rosa, a large container ship operated by

Defendant Maersk A/S and owned by Defendant A.P. Møller, passed the Hatchet. *Id.* at 2, 6. According to Plaintiffs, the Monte Rosa was traveling at an excessive speed, causing a wake and surge that threw the Hatchet against the Navigation Aid. *Id.* at 7. Harney was pinned between the Hatchet and the Navigation Aid, crushing his arm. *Id.*

On January 30, 2025, Harney and his wife filed this suit, claiming that Defendants were negligent and negligent *per se* and seeking damages. *Id.* at 9-13. Defendants filed a motion seeking partial summary judgment on Harney's claims for non-pecuniary and punitive damages and summary judgment on his wife's derivative claims for lost consortium, loss of society, and the like. Dkt. 30. Plaintiffs responded, Dkt. 32, and Defendants replied, Dkt. 34. Defendants then filed a motion for summary judgment on liability, Dkt. 43, to which Plaintiffs responded, Dkt. 46, and Defendants replied, Dkt. 52. Plaintiffs, for their part, moved for partial summary judgment on negligence *per se*, the *Pennsylvania* Rule, and contributory fault, Dkt. 40. Defendants responded, Dkt. 49, and Plaintiffs replied, Dkt. 54.

Two motions to exclude expert testimony are also pending. Plaintiffs moved to exclude the testimony of Jennifer Pavlik. Dkt. 41. Defendants responded, Dkt. 48, and Plaintiffs replied, Dkt. 51. Defendants moved to exclude the testimony of S.R. Parthasarathy, Dkt. 42, to which Plaintiffs responded, Dkt. 47, and Defendants replied, Dkt. 53.

Plaintiffs also filed a partly unopposed motion to amend the current scheduling order, Dkt. 93, to which Defendants responded to clarify their position on the issue, Dkt. 94. Plaintiffs then withdrew their request. Dkt. 95. The motions are ripe for resolution.

Legal Standard

Summary judgment is warranted if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A dispute is genuine 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Westfall v. Luna*, 903 F.3d 534, 546 (5th Cir. 2018) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A fact is material if the issue it addresses "could affect the outcome of the action." *Dyer v. Houston*, 964 F.3d 374, 379-80 (5th Cir. 2020) (quoting *Sierra Club, Inc. v. Sandy Creek Energy Assocs., L.P.*, 627 F.3d 134, 138 (5th Cir. 2010)).

When resolving a motion for summary judgment, courts must view the facts and any reasonable inferences "in the light most favorable to the nonmoving party." *Amerisure Ins. Co. v. Navigators Ins. Co.*, 611 F.3d 299, 304 (5th Cir. 2010) (quotation omitted). "[T]he court must disregard all evidence favorable to the moving party that the jury is not required to believe, and should give credence to the evidence favoring the nonmoving party …." *Union Pac. Res. Grp., Inc. v. Rhone-Poulenc, Inc.*, 247 F.3d 574, 584 (5th Cir. 2001).

In addition, courts must credit all reasonable inferences from the evidence, without "weigh[ing] evidence or mak[ing] credibility findings." *Seigler v. Wal-Mart Stores Tex., L.L.C.*, 30 F.4th 472, 476 (5th Cir. 2022). But "[u]nsubstantiated assertions, improbable inferences, and unsupported speculation are not sufficient to defeat a motion for summary judgment." *Luna v. Davis*, 59 F.4th 713, 715 (5th Cir. 2023) (quoting *Brown v. City of Hou.*, 337 F.3d 539, 541 (5th Cir. 2003)).

Analysis

I. Plaintiffs' claims for non-pecuniary damages are barred.

In their motion for partial summary judgment, Defendants contend that maritime law prohibits Harney, a seaman, from recovering non-pecuniary damages against a non-employer third-party tortfeasor. Dkt. 30. They also assert that his wife's derivative claims for non-pecuniary relief are likewise foreclosed. *Id.* at 11. Plaintiffs disagree. Dkt. 32. Fifth Circuit law, however, supports Defendants' position.

Defendants contend, *see* Dkt. 30 at 4-5, and Plaintiffs do not dispute, that Harney qualifies as a "seaman." A person need only be "employed on board a vessel in furtherance of its purpose," "work at sea in the service of a ship" or "contribute to the function of the vessel or to the accomplishment of its mission" to qualify as a seaman. *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 354-55 (1990). By his own account, Harney works aboard a vessel and contributes

to the vessel's mission by "serv[ing] as the Boatswain's Mate in charge of operations" on the Hatchet. *See* Dkt. 1 at 2. That is enough to make Harney a seaman.

The debate concerns whether a seaman like Harney can recover non-pecuniary losses, including punitive damages, against a non-employer third-party tortfeasor. Generally, "punitive damages were available at common law [and were] extended to claims arising under federal maritime law." *Atl. Sounding Co. v. Townsend*, 557 U.S. 404, 411 (2009). But *Miles v. Apex Marine Corporation*, 498 U.S. 19, 32 (1990), recognized an exception to that rule, holding that a seaman cannot recover non-pecuniary damages from his employer, whether through a Jones Act negligence claim or a general maritime claim for unseaworthiness. As *Miles* reasoned, "it would be inconsistent with this Court's place in the constitutional scheme to sanction more expansive remedies for the judicially created unseaworthiness cause of action, in which liability is without fault, than Congress has allowed in cases of death resulting from negligence." *Id.* at 20.

Following *Miles*, some courts construed its holding to "nearly eliminat[e] non-pecuniary damages in maritime personal injury and wrongful death cases." *Wade v. Clemco Indus. Co.*, 2017 WL 434425, at *4 (E.D. La. Feb. 1, 2017). But the Supreme Court later criticized that interpretation as "far too broad." *Townsend*, 557 U.S. at 419. In *Townsend*, the Court held that an

injured seaman can recover punitive damages for his employer's willful failure to pay maintenance and cure, explaining that "[b]ecause punitive damages have long been an accepted remedy under general maritime law, and because nothing in the Jones Act altered this understanding, such damages for the willful and wanton disregard of the maintenance and cure obligations should remain available in … general maritime law." *Id.* at 424.

Relying on *Townsend*, Plaintiffs argue that there is "no basis to exclude punitive damages for negligence where neither Congress nor the Supreme Court has done so." Dkt. 32 at 15-16. Nevertheless, as Defendants note, Dkt. 34 at 1, Plaintiffs fail to acknowledge the Fifth Circuit's decision in *Scarborough v. Clemco Industries*, 391 F.3d 660, 668 (5th Cir. 2004), holding that general maritime law does not authorize non-pecuniary damages against a seaman's employer or a non-employer third party. That decision forecloses Plaintiffs' claims for non-pecuniary relief.

True, as Plaintiffs observe, *see* Dkt. 32 at 17, some district courts have questioned whether *Scarborough* remains good law after *Townsend*. *See, e.g.*, *Collins v. A.B.C. Marine Towing, LLC*, 2015 WL 5254710, at *4 (E.D. La. Sept. 9, 2015) (finding *Scarborough* was "effectively overruled" by *Townsend*, whose "takeaway … is that a seaman can recover punitive damages under general maritime law if the Jones Act is not implicated"); *Hume v. Consolidated Grain & Barge, Inc.*, 2016 WL 1089349, at *2 (E.D. La. Mar. 21, 2016) (adopting

Collins's reasoning). But in an *en banc* decision, the Fifth Circuit rejected the notion that *Townsend* had overruled *Miles*, hewing to the conclusion that a seaman cannot recover nonpecuniary losses, whether under the Jones Act or general maritime law. *See McBride v. Estis Well Servicing LLC*, 768 F.3d 382, 391 (5th Cir. 2014) (en banc) (affirming denial of punitive damages), *cert. denied*, 575 U.S. 1009 (2015). The *McBride* decision strongly signals that *Scarborough*'s prohibition of non-pecuniary and punitive damages remains good law. *See Rinehart v. Nat'l Oilwell Varco L.P.*, 2017 WL 1407699, at *4 (E.D. La. Apr. 20, 2017) (making this observation).

In any event, this Court is not free to disregard *Scarborough*'s binding force. *See In re Bonvillian Marine Serv., Inc.*, 19 F.4th 787, 789 (5th Cir. 2021) (district court is "not free to overturn" binding circuit precedent); *see also Green v. Thomas*, 129 F.4th 877, 890 (5th Cir. 2025) (quoting *Bonvillian*). And under *Scarborough*, 391 F.3d at 668, "a seaman ... cannot recover nonpecuniary damages from a non-employer third party." Those damages are barred, whether sought by Harney or his spouse. *See also Michael v. Total Transp.*, 957 F.2d 186, 191 (5th Cir. 1992) (applying *Miles* to preclude loss of society or lost consortium damages under maritime law). All requests for non-pecuniary damages must be dismissed.

II. Fact issues preclude Plaintiffs' motion for partial summary judgment.

Plaintiffs move for partial summary judgment, contending that the Monte Rosa's violations of four Coast Guard Regulations[2] render Defendants negligent *per se* and trigger the *Pennsylvania* Rule's burden-shifting presumption on causation. Dkt. 40 at 13-19. Plaintiffs also argue that the *in extremis* doctrine precludes any finding of contributory fault by the Hatchet, the Coast Guard, or Mr. Harney. *Id.* at 20-21. Defendants respond that the *Pennsylvania* Rule does not apply, that the Monte Rosa acted reasonably, and that the Hatchet's and Coast Guard's own failures foreclose the *in extremis* doctrine. Dkt. 49 at 11-22.

Summary judgment is not appropriate because Plaintiffs' positions hinge on issues riddled with disputes of material fact. This includes whether Defendants violated the Coast Guard Regulations—the predicate to negligence *per se* and the *Pennsylvania* Rule—and whether the Hatchet acted negligently—the predicate for the *in extremis* doctrine. Plaintiffs' motion for partial summary judgment should be denied.

[2] In their reply brief, Plaintiffs assert that Defendants also violated Inland Rule 5. Dkt. 54 at 1. The Court disregards Plaintiffs' newfound contention because "an argument cannot be raised for the first time in a reply brief …." *Allen v. Hays*, 65 F.4th 736, 746 (5th Cir. 2023) (per curium).

A. There are fact disputes as to whether Defendants violated certain regulatory standards.

As an initial matter, Defendants conflate the question of whether their alleged statutory violations constitute negligence *per se* and whether those violations, if proved, would trigger the *Pennsylvania* Rule's burden-shifting presumption. *See* Dkt. 49 at 3. Those doctrines are related but distinct. And Plaintiffs seek summary judgment on each issue separately. *See* Dkt. 40 at 7, 20 (requesting summary judgment on Defendants' "prima facie liability" and a summary finding that Defendants' violations trigger the *Pennsylvania* Rule). Regardless, genuine issues of material fact as to whether Defendants violated the Coast Guard regulations preclude summary judgment on both doctrines.

Under the doctrine of negligence *per se*, "[w]hen a statute or regulation 'establishes a clear minimum standard of care,'" that standard replaces the general common-law standard of care. *See Targa Midstream Servs. Ltd. P'ship v. K-Sea Transp. Partners, L.P.*, 527 F. Supp. 2d 598, 602-03 (S.D. Tex. 2007) (quoting *Dougherty v. Santa Fe Marine, Inc.*, 698 F.2d 232, 234-35 (5th Cir. 1983) (per curiam)). Specific to this context, "[t]he failure to follow any Coast Guard regulation which is the cause of an injury establishes negligence *per se*." *Dougherty*, 698 F.2d at 235; *see also Florida Marine Transporters, Inc. v. Sanford*, 255 F. App'x 885, 888 (5th Cir. 2007) ("[T]he law of this circuit clearly states that negligence *per se* is established if the facts support a finding that

there was a violation of Coast Guard Regulations."). The relevant regulation must establish a "clear minimum standard of care," otherwise, "the reason for applying the doctrine fades. An ambiguous or contradictory regulatory standard defeats the certainty on which the rule of *per se* liability rests." *Id.* And even if a defendant's conduct is deemed negligent *per se*, "a plaintiff must nonetheless prove causality and damages." *Davis v. Odeco, Inc.*, 18 F.3d 1237, 1241 n.6 (5th Cir. 1994)

The *Pennsylvania* Rule is different. It is an evidentiary rule that presumes a party has caused an accident if that party violated a statutory or regulatory requirement designed to prevent it. *See Pennzoil Producing Co. v. Offshore Express, Inc.*, 943 F.2d 1465, 1472 (5th Cir. 1991) (discussing *The Pennsylvania*, 86 U.S. at 136); *see also Candies Towing Co. v. M/V B &C Eserman*, 673 F.2d 91, 93 (5th Cir. 1982) (the *Pennsylvania* Rule "constitutes an evidentiary rule reversing the burden of proof"). In such a case, the burden shifts to the ship to show "not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been." *The Pennsylvania*, 86 U.S. at 136.

Somewhat analogously to negligence *per se*, the *Pennsylvania* Rule "applies only to violations of statutes that delineate a clear legal duty, not regulations that require judgment and assessment of a particular circumstance." *Stolt Achievement, Ltd. v. Dredge B.E. Lindholm*, 447 F.3d 360,

365 n.9 (5th Cir. 2006) (quoting *Tokio Marine & Fire Ins. Co. v. FLORA MV*, 235 F.3d 963, 966-67 (5th Cir. 2001)). But unlike negligence *per se*, the *Pennsylvania* Rule addresses causation, rather than whether a duty of care was breached. *See In re Mid-South Towing Co.*, 418 F.3d 526, 533-34 (5th Cir. 2005); *see also Otal Invs. Ltd. v. M.V. Clary*, 494 F.3d 40, 50 (2nd Cir. 2007) ("Unlike negligence *per se*, however, the rule in *The Pennsylvania* creates a presumption only as to causation, and not to 'fault' or negligence.").

Arguing for both negligence *per se* and the *Pennsylvania* Rule, Plaintiffs contend that Defendants violated 33 C.F.R. § 83.02 (Inland Navigation Rule 2), § 83.06 (Inland Navigation Rule 6), § 161.12(c), and § 164.11. Dkt. 40 at 13-19. But Defendants proffered evidence raising fact issues on whether they violated those regulations.

As one of their theories, Plaintiffs invoke Rule 2—Responsibility, 33 C.F.R. § 83.02, asserting that Defendants failed to exercise "due regard" for "all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved …." Dkt. 40 at 14-15. In particular, Plaintiffs highlight navigational dangers posed by the spudded-down Hatchet. *Id.* at 15. They rely on testimony from the Monte Rosa's captain that he "only focus[es] on the [ship] channel" and did not see the Hatchet or its crew. *Id.*; Dkt. 40-2 at 16 (PX-B, Captain Tun's deposition). Plaintiffs also observe that neither Captain Tun nor the Monte Rosa's pilot, Captain Scott Reed, heard the

Vessel Traffic Services ("VTS") broadcast about the Hatchet's position and request for wake consideration. *Id.*; *see also* Dkt. 40-2 at 5 (PX-B, Captain Tun's deposition); Dkt. 40-3 at 31 (PX-C, Captain Reed's deposition).

Defendants respond with competing evidence. Far from failing to take any action, Captain Reed had spotted the Hatchet, reduced the Monte Rosa's speed, and maneuvered it to maximize its distance from the Hatchet. Dkt. 49 at 13; *see also* Dkt. 43-2 at, 44, 46, 58 (DX-2, Captain Reed's deposition). And Captain Fazioli, Defendants' expert, testified that the VTS broadcast "was not clearly audible compared to the general background noise" on the Monte Rosa's bridge. Dkt. 49 at 8 (citing Dkt. 43-4 at 13 n.3 (DX-4, Captain Fazioli's report)). That evidence raises disputes of fact on whether Defendants exercised due regard, as Rule 2 requires.

The same is true of Plaintiffs' reliance on 33 C.F.R. §§ 83.06 and 164.11(p)(6). The first of those regulations, called "Rule 6—Safe Speed," requires a vessel to "at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions." 33 C.F.R.§ 83.06. Rule 6 identifies 12 non-exhaustive factors to be "taken into account … [i]n determining a safe speed …." *Intercont'l Terminals Corp.*, 2023 WL 6367697, at *31 (S.D. Tex. Sept. 29, 2023) (quotations omitted). Evaluating whether a particular speed is "safe" under Rule 6 plainly "requires judgment and

assessment of particular circumstances ...."[3] *Id.* (quotations omitted). Section 164.11(p)(6) is similar, requiring that a person directing a vessel's movement "set[ ] the vessel's speed with consideration for ... [t]he damage that might be caused by the vessel's wake ...." 33 C.F.R. § 164.11(p)(6).

At best, Plaintiffs highlight fact questions. Plaintiffs contend the VDR data shows that the Monte Rosa was traveling at 12.5 knots within one mile from the Hatchet. Dkt. 40 at 15; *see also* Dkt. 40-8 at 12 (PX-H, Captain DiNapoli's report). They cite the report of their expert, Captain DiNapoli, who opined that "when passing moored or otherwise nearby vessels that could be adversely impacted by the vessel's wake wave, ship speeds are typically brought down to the 6-8 knot range to reduce the size/force of the wake being generated." *Id.* (citing Dkt. 40-8 at 17). But DiNapoli's opinion about the "typical" speed for reducing wake impacts is purely contextual, and not a fixed threshold—which Defendants aptly observe. Dkt. 49 at 13-14. Moreover, Captain Reed *did* reduce the Monte Rosa's speed to "Dead Slow" upon observing the Hatchet (dropping from 11.5 knots to 9 knots). Dkt. 43-2 at 46

[3] It is far from clear whether Rule 6's judgment- and context-infused standard can provide a basis for negligence *per se* or the *Pennsylvania* Rule. *See Slatten, LLC v. Royal Caribbean Cruises Ltd.*, 2014 WL 5500701, at *5 (E.D. La. Oct. 30, 2014) (*Pennsylvania* Rule inapplicable because Rule 6 "clearly requires judgment and assessment of particular circumstances"). The Fifth Circuit has not resolved the issue. *See Stolt Achievement, Ltd. v. Dredge B.E. Lindholm*, 447 F.3d 360, 366 n.9 (5th Cir. 2006). This Court need not reach the issue either.

(PX-B, Captain Reed's deposition). The Monte Rosa's passing speed of 9.5 knots was also slower than the average of 9.7 knots for the 21 oceangoing vessels that transited the area during the Hatchet's operations on October 15 and 17, 2024. Dkt. 43-4 at 3-4; *see also* Dkt. 43-4 at 11 (DX-4, Captain Fazioli's report). And Defendants' experts calculated that the maximum wave height generated by the Monte Rosa (1.7 feet) was less than the height of wakes generated by two other vessels that transited the same area during the previous two hours. Dkt. 43-3 at 8 (DX-3, Drs. Dick K.P. Yue's and Yuming Liu's report). The appropriateness of the Monte Rosa's speed raises fact issues reserved for trial.

Plaintiffs' reliance on 33 C.F.R. § 161.12(c) likewise highlights fact issues. That regulation requires vessel operators to "maintain a listening watch" on the VTS designated radio frequency. 33 C.F.R.§ 161.12(c). Plaintiffs proffer Captain Reed's testimony that the Houston VTS had broadcasted a warning requesting wake and surge consideration for the Hatchet, but neither Captain Tun nor Captain Reed heard it. Dkt. 40 at 16; *see also* Dkt. 40-2 at 5 (PX-B, Captain Tun's deposition); Dkt. 40-3 at 31 (PX-C, Pilot Reed's deposition). But Defendants note that the Monte Rosa's radio was tuned to and receiving that frequency, and their expert has opined that the VTS broadcast "was not clearly audible compared to the general background noise" on the bridge. Dkt. 49 at 14; Dkt. 43-4 at 13 n.3 (PX-4, Captain Fazioli's

report). A reasonable jury could conclude that the Monte Rosa's crew simply could not hear the broadcast despite maintaining a listening watch. Summary judgment is unwarranted.

B. Disputes of material fact about the Hatchet's negligence preclude applying the *in extremis* doctrine.

Plaintiffs' last argument in favor of partial summary judgment invokes the *in extremis* doctrine, contending that any negligence by the Hatchet resulted from the emergency situation created by the Monte Rosa. Dkt. 40 at 19-20. "[T]he *in extremis* doctrine … requires a court to leniently judge errors in judgment committed by a vessel 'put in sudden peril through no fault of her own.'" *In re Complaint of Magnolia Marine Transp. Co.*, 1995 WL 413005, at *4 (5th Cir. June 13,1995) (per curiam) (quoting *Union Oil Co. of Cal. V. Tug Mary Malloy*, 414 F.2d 669, 674 (5th Cir. 1969)). "[W]here, without prior negligence, a vessel is put in the very center of destructive natural forces and a hard choice between competing courses must immediately be made, the law requires that there be something more than mere mistake of judgment by the master in that decision *in extremis*." *Crescent Towing & Salvage Co., Inc. v. Chios Beauty MV*, 610 F.3d 263, 267-68 (5th Cir. 2010) (quoting *Emps. Ins. of Wausau v. Suwannee River Spa Lines, Inc.*, 866 F.2d 752, 771 (5th Cir. 1989)).

Questions of fact linger concerning the Hatchet's own negligence. Inland Navigation Rule 5 provides "Every vessel shall at all times maintain a proper

look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and the risk of collision." 33 C.F.R. § 83.05. Moored vessels like the Hatchet are not exempt from that obligation. *See In re Graham Offshore Tugs LLC*, 749 F. Supp. 3d 758, 768-69 (E.D. Tex. 2024) (rejecting any such exemption).

Yet as Defendants note, the Hatchet failed to designate a crew member for wake watch. Dkt. 49 at 19. The only person stationed on the bridge was Senior Chief Petty Officer Jacob Davis, and he was only checking the Electronic Chart Display and Information System ("ECDIS"), which "should have" shown the Monte Rosa approaching, "maybe every half hour or so." Dkt. 43-5 at 10, 11 (DX-5, Chief Davis's deposition). When the incident occurred, Chief Davis was "focused on" a weather log—not watching for wakes or other vessels. *Id.* at 11. Nor was anyone on the deck assigned to that task; as Iain Langborgh, the Construction Deck Supervisor, testified, "[w]e kind of relied on the bridge to keep an eye on wakes." Dkt. 43-6 at 9 (DX-6, Langborgh's deposition). That evidence raises a triable question as to whether the Hatchet breached its own duty to maintain a proper lookout. That predicate dispute merits denying Plaintiffs' request for summary judgment on the *in extremis* doctrine.

III. Fact issues foreclose summary judgment on liability.

For their part, Defendants move for summary judgment on liability, contending that the Monte Rosa exercised reasonable care and that its wake was not unusual. Dkt. 43 at 13-18. Defendants also assert that, even if the Monte Rosa was negligent, the Hatchet's actions constitute a superseding cause cutting off the Monte Rosa's liability as a matter of law. *Id.* at 18-20. Plaintiffs maintain that Defendants failed to exercise reasonable care, that the Monte Rosa's wake was unusual, and that the Coast Guard's actions are not superseding causes of Mr. Harney's injuries. Dkt. 46 at 17-21, 23-29.

"Summary judgement is rarely granted in maritime negligence cases because the issue of whether a defendant acted reasonably is ordinarily a question for the trier of fact." *Cornerstone Chem. V. Nomadic Milde M/V*, 603 F. Supp. 3d 387, 391 (E.D. La. 2022) (quotations omitted). This case is no exception because the negligence claim is replete with factual disputes. Summary judgment on liability should be denied.

A. There is competing evidence as to whether the Monte Rosa's wake was unusual.

Under general maritime law, a plaintiff must show: (1) the defendant owed the plaintiff a duty (2) the defendant breached that duty, (3) the breach actually and proximately caused the plaintiff's injury, and (4) the plaintiff sustained an injury. *In re Great Lakes Dredge & Dock Co., LLC*, 624 F.3d 201,

211 (5th Cir. 2010). "A moving vessel owes a duty of reasonable care to appreciate the reasonable effect of its wake and to take reasonable precautions to avoid creating unusual swells that may injure others." *Gregg v. Weeks Marine, Inc.*, 2000 WL 798493, at *4 (E.D. La. June 21, 2000). In this context, liability hinges on whether "the defendant operated the vessel negligently and that this negligence created an excessive wake or swell that caused damage." *M/V Admiral Bulker v. United Bulk Terminals Davant*, 397 F. Supp. 3d 826, 837 (E.D. La. June 19, 2019).

Defendants rely on their experts' analysis, which calculated the Monte Rosa's maximum wake height at .051 meters (1.7 feet) and estimated its speed as 10.9 knots at the point of wake generation. Dkt. 43 at 14-18; Dkt. 43-3 at 8 (DX-3, Drs. Dick K.P. Yue's and Yuming Liu's report). Defendants assert that because a previous decision found that a larger wake generated at a higher speed (2.2 feet at 15 knots) was neither unusual nor negligent, the same conclusion must follow here. Dkt. 43 at 14-15 (invoking *Reed v. Maersk Line, Ltd.*, 649 F. Supp. 3d 428 (S.D. Tex. Jan. 5, 2023)). They also contend that the Monte Rosa's wake must be reasonable because two other vessels had passed the Hatchet two hours earlier and generated larger wakes without incident. *Id.* at 14; *see also* Dkt. 43-4 at 11 (DX-4, Captain Fazioli's report). In response, Plaintiffs argue that the Monte Rosa's wake was unusual, that wake height is not dispositive, and that *Reed* is not determinative. Dkt. 46 at 17-22.

First, Plaintiffs are correct that the decision in *Reed* is not dispositive. Far from pronouncing a categorical rule that certain wake heights are permissible, the court merely resolved a specific vessel's negligence "[b]ased on the evidence submitted at trial." *Reed*, 649 F. Supp. 3d at 446. Construing *Reed* as Defendants insist would violate the fundamental principle that "[t]he facts and circumstances of each particular case determine whether a vessel is responsible for damages created by her swells." *Gregg*, 2000 WL 798493, at *4.

Second, Defendants argue that the determination of wake height is a technical question, and Plaintiffs' lay testimony is insufficient to create a genuine issue of fact. Dkt. 43 at 16-17. But as Plaintiffs observe, *see* Dkt. 46 at 23, Defendants cite no case law supporting their contention that wake height is dispositive. Moreover, a jury could reasonably conclude, based on Plaintiffs' evidence, that the Monte Rosa's wake was unusual. Petty Officer Langborgh, the Construction Deck Supervisor, testified that "the wake that we experienced this day was the largest and most violent I had experienced in my three years" on the Hatchet. Dkt. 40-10 at 6 (PX-J, Langborgh's deposition). And Chief Davis, the Hatchet's officer-in-charge, described it as "the most significant and severe wake that I've ever experienced on a small boat or a cutter" and had "the most severe" impact "by far" on any vessel he had operated during his 18 years' service. *See* Dkt. 40-9 at 4, 36 (PX-I, Chief Davis's deposition). That testimony alone is enough to raise fact issues about the

wake's abnormality or excessiveness. *See, e.g.*, *M/V Admiral Bulker*, 397 F. Supp. 3d at 839 ("Credibility determinations are properly reserved for resolution at trial, where the Court can properly weigh [the eyewitness's] testimony for any inconsistencies and evaluate it against other evidence including objective data and the testimony of expert witnesses.").

B. The Hatchet's alleged negligence is not a superseding cause of Harney's injuries.

Defendants also argue that the Coast Guard's and Hatchet's negligence were superseding causes of Harney's injuries, cutting off Defendants' liability. Dkt. 43 at 18-20. "[T]he common law negligence doctrines of proximate causation and superseding cause apply in admiralty …." *Bommarito v. Belle Chasse Marine Transp., LLC*, 159 F.4th 297, 307 (5th Cir. 2025) (quoting *Stolt Achievement,*, 447 F.3d at 367). "The superseding cause doctrine applies where the defendant's negligence in fact substantially contributed to the plaintiff's injury, but the injury was actually brought about by a later cause of independent origin that was not foreseeable." *Id.* Superseding causation is "predicated on the notion that there must be a terminus somewhere, short of eternity, at which the second party becomes responsible in lieu of the first." *Stolt Achievement*, 447 F.3d at 368 (quotations omitted). "[T]he subsequent negligence … must be so extraordinary that a reasonably prudent person could

not have foreseen its occurrence." *Tidewater Marine, Inc. v. Sanco Int'l, Inc.*, 113 F. Supp. 2d 987, 999 (E.D. La. 2000).

Defendants' contention that the Hatchet did not maintain proper lookout or communication does not qualify as a superseding cause. For starters, the Hatchet's complained-of actions or omissions were *antecedent* to the Monte Rosa's wake, which does not fit the basic definition of a superseding—*i.e. subsequent*—cause. *Compare with Bommarito*, 159 F.4th at 307-08 (plaintiff's overdose on illegal drugs after the shipboard accident, resulting in death, was a superseding cause). Moreover, as Plaintiffs correctly note, Defendants neither argue—much less establish as a matter of law—that any of the Hatchet's alleged acts or omissions were *unforeseeable* such that they could have broken the chain of causation. *See* Dkt. 46 at 28. And, as already concluded, whether the Hatchet was to blame for the accident is a hotly disputed issue.

For instance, fact questions remain as to whether the Hatchet adequately warned the Monte Rosa or whether it maintained a proper lookout. Chief Davis testified that he had an unobstructed 360-degree view from his position on the bridge, allowing him to see the ships traveling through the channel. Dkt. 40-9 at 38 (PX-I, Chief Davis's testimony). The Hatchet issued a wake and surge consideration, which Chief Davis believed had sufficiently warned passing vessels of the Hatchet's presence because other vessels had

passed without issue. *Id.* at 39. Viewing the record in the light most favorable to Plaintiffs, there are genuine issues of material fact about the nature, degree, and extent of the Hatchet's negligence. Summary judgment should be denied.

IV. Motions to exclude experts

The parties have also challenged the admissibility of each other's experts. Defendants move to exclude the opinions of Dr. S.R. Parthasarathy M.D., CLCP, CPLCP, who prepared a life-care plan for Harney that estimated the "nominal value of Mr. Harney's lifetime future medical requirements to mitigate his relevant associated medical conditions and disabilities" at $1,181,803.12. Dkt. 42; Dkt. 42-1 at 5. Plaintiffs, in turn, filed a motion to exclude the opinions of Jennifer Pavlik, whom Defendants retained to rebut Dr. Parthasarathy's opinions. Dkt. 41. The Court finds that some, but not all, of Dr. Parthasarathy's opinions are unreliable and must be excluded. Plaintiffs' motion to exclude Pavlik's opinions is denied in full.

A. Standard governing admissibility of expert testimony

Under Federal Rule of Evidence 702,

> [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 ... (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 upon 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.

Fed. R. Evid. 702. To justify admitting an expert's testimony, the proponent of that testimony must show, by a preponderance of the evidence, "that (1) the expert is qualified, (2) the evidence is relevant to the suit, and (3) the evidence is reliable." *Stage Completions, Inc. v. Dissolvalloy, LLC*, 2021 WL 4888935, at *1 (S.D. Tex. June 21, 2021); *see also Moore v. Ashland Chem. Inc.*, 151 F.3d 269, 276 (5th Cir. 1998).

If an expert witness possesses the requisite qualifications to testify as an expert, the court must then assess the reliability and relevance of the expert's testimony. The reliability inquiry examines "whether the reasoning or methodology underlying the testimony is scientifically valid." *Knight v. Kirby Inland Marine, Inc.*, 482 F.3d 347, 352 (5th Cir. 2007) (quoting *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592-93 (1993)). For this determination, courts consider numerous non-exclusive factors: (1) "whether a theory or technique ... can be (and has been) tested"; (2) whether it "has been subjected to peer review and publication"; (3) "the known or potential rate of error"; and (4) whether the approach is generally accepted within the relevant scientific community. *See Daubert*, 509 U.S. at 593-94. The inquiry, however, is "a flexible one" that focuses "solely on principles and methodology, not on the conclusions they generate." *Id.* at 594-95. The ultimate decision whether to admit an expert's opinions lies in the district court's discretion. *See Whitehouse Hotel Ltd. P'ship v. Comm'r*, 615 F.3d 321, 330 (5th Cir. 2010).

B. Dr. Parthasarathy opinions

Defendants move to exclude Dr. Parthasarathy's opinions, arguing that they are not grounded in reports from Harney's treating physicians or Harney's medical records and are therefore unreliable. Dkt. 42 at 4, 9-10. Defendants also contend that Dr. Parthasarathy's opinions on future medical costs are unreliable because he has not discounted the projected future medical costs to present value. *Id.* at 10.

Plaintiffs respond that Dr. Parthasarathy did not need to rely solely on recommendations from treating physicians because he has the requisite expertise and training to form his own medical opinions. Dkt. 47 at 5. And they argue that the failure to discount costs to present value does not warrant exclusion. *Id.* at 8. The Court finds that Dr. Parthasarathy's recommendations that Harney receive lifetime occupational therapy and psychological treatment must be excluded. But the remainder of his opinions are admissible.

1. Overview of Dr. Parthasarathy's opinion

Dr. Parthasarathy, a board-certified Physical Medicine & Rehabilitation and Pain Medicine Specialist, prepared a life care plan for Harney's future medical treatment and associated expenses. Dkt. 42-1 at 3-4. As described in Dr. Parthasarathy's report, Physical Medicine & Rehabilitation physicians are "considered medical experts in diagnosing and treating patients with disease processes and/or injuries to the musculoskeletal, spine, brain, and nervous

systems." *Id.* at 5. Dr. Parthasarathy drew upon that expertise when forming his opinions after interviewing Harney and reviewing his medical records. *See id.* (declaring that the life care plan was "based on my knowledge, skills, education and training and over 35 years of practice experience treating patients with the same or similar conditions").

All in, Dr. Parthasarathy opined that the costs of Harney's future care would total $1,181,803.12. *Id.* at 6, 25. Those expenses fell into six categories: (1) physician services; (2) diagnostic services; (3) medication; (4) laboratory services; (5) rehabilitation services; and (6) equipment and supplies. *Id.* at 6. Some of the estimated medical expenses contemplate treatments that Harney's treating physicians had neither addressed nor prescribed. For instance, Dr. Parthasarathy estimated future medication costs of $617,340.44, including for pain management medications that were not prescribed by Harney's treating physicians. *See id.* at 10 (listing costs for Ultram (a prescription opioid for pain relief), Celebrex (a related prescription non-steroidal anti-inflammatory drug); Protonoix (an antacid that decreases stomach issues associated with nonsteroidal medications like Celebrex, Dkt. 42-2 at 10); a Fletchor patch; and Biofreeze (over-the-counter topical analgesic for temporary pain relief)). But as Dr. Parthasarathy explained, the crush injury left Harney with "significant loss of muscular function, sensory abnormalities and chronic pain" that "will not heal" and will "require[] ongoing pain management." Dkt. 42-4 at 5-6. That

kind of traumatic injury made it "extremely likely" that Harney would have "ongoing pain and problems" that would require a lifetime of pain-management medication. *Id.* at 11.

Similarly, Dr. Parthasarathy noted that "complications" with Harney's arm injury, including internal scarring, will create "problems and complications over time" and will require yearly visits to an orthopedic hand/upper-extremity surgeon for the rest of his life. *See id.* at 6; Dkt. 42-1 at 9. Dr. Parthasarathy noted his experience "treating patients with these very same injuries," and his "understanding [of] the kinds of issues and problems that develop over time." Dkt. 42-4 at 6.

Relatedly, Dr. Parthasarathy concluded that Harney would require three epidural steroid and medical branch injections over the next year, and annual x-rays, MRIs, and electromyography and nerve conduction studies ("EMG/NCS") for the rest of his life. Dkt. 42-1 at 9-11. According to Dr. Parthasarathy, Harney's chronic back pain and related MRI findings indicated that the steroid injections were warranted, and he estimated three injections is the "standard ... someone receives that [is] frequently helpful." Dkt. 42-4 at 9. Those types of treatments are undertaken as an "initial" approach "that can help to significantly improve it, but not always resolve it." *Id.*

As for x-rays, Dr. Parthasarathy explained that "it's quite common for nerves to be entrapped and scar and for there ... to be bony callus buildup or

bone spurring" with an injury like Harney's. *Id.* at 9. Those "resulting complications" occur "over time in many people." *Id.* Concerns about "nerve entrapment issues over time" also merited annual MRIs. *Id.* Relatedly, annual EMG/NCS tests would be needed to "determin[e] if there is ongoing damage" to a particular nerve that could "require a surgical procedure to mitigate or remove the scar ...." *Id.*

In addition, Dr. Parthasarathy estimated the future costs for a functional capacity evaluation/vocational rehabilitation examination, occupational therapy, and annual psychiatrist and psychologist visits. Dkt. 42-1 at 9-11. According to Dr. Parthasarathy, it is "certainly" unlikely that Harney would be able to "return to the same level of function" in his role with the Coast Guard given his left upper extremity injury, which is why Dr. Parthasarathy included a functional capacity evaluation and vocational rehabilitation assessment. Dkt. 42-4 at 24.

Dr. Parthasarathy did not, however, explain why his life care plan for Harney included lifetime occupational therapy and psychiatric/psychological care. At most, Dr. Parthasarathy described what occupational therapy entails and posited that it is "absolutely" necessary "based on the nature of [Harney's] injuries." Dkt. 42-4 at 12. Although Dr. Parthasarathy asserts that his board certification requires him to diagnose and treat a variety of psychological and psychiatric conditions, *see id.* at 2-3, he did not ground his opinion about

Harney's need for care in anything specific. *Id.* at 2-3. Rather, he simply noted that Harney's injury is a "very different psychological or … psychiatric scenario" from other incidents that caused Harney to seek mental health treatment in the past. *See id.* at 7.

2. Defendants' global reliability challenge fails to account for Dr. Parthasarathy's expertise.

Defendants contend that Dr. Parthasarathy's opinions about Harney's future treatment needs are unreliable because they are not "grounded in Harney's treating physicians' opinions." Dkt. 42 at 9. Plaintiffs respond that Defendants' position ignores Dr. Parthasarathy's training and experience as a board-certified rehabilitative and pain-management medicine physician entitled to apply his own expertise when forming Harney's life care plan. *See* Dkt. 47 at 5-7. Plaintiffs are correct with respect to the bulk of Dr. Parthasarathy's opinions.

"In general, an expert can rely on their observations and experience, but their report becomes unreliable when there is an 'analytical gap between the data and the opinion proffered.'" *Matter of Kirby Inland Marine, LP*, 2024 WL 5256494, at *4 (E.D. Tex. Dec. 11, 2024) (quoting *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997)). "For life-care planners, courts often require the projected cost of future medical care to be based on an assessment by a treating physician." *Id.* (collecting cases). "When a life-care planner has a background

or experience that allows them to make a reliable recommendation for future care, a court may allow the expert to include this opinion in their testimony as long as it is consistent with available evidence." *Id.* "In this situation, a court may also limit a life-care planner to only offer recommendations for future care within their specialty area as a matter of qualifications." *Id.*

Contrary to Defendants' contentions, Dkt. 42 at 5; Dkt. 53 at 8, Dr. Parthasarathy properly applied his qualifications and experience to Harney's medical information when concluding that Harney will need lifelong pain-relief medication. As Dr. Parthasarathy testified, there was no need to consult with Harney's treating physicians on this issue because "[a]s a pain management specialist … I'm going to have a better position to determine" whether to introduce Ultram and the related medications into Harney's regime. Dkt. 42-4 at 10. And he determined that it is "undoubtedly the case" that Harney will require pain medication for the rest of his life "given the nature of his conditions." *Id.* He determined this based on his "knowledge, skills, training, and experience in treating tens of thousands of patients with a verity of nerve injury" that enabled him to "confidently state that [Harney] is extremely likely to have ongoing pain and problems." *Id.* at 11. That explanation adequately connects Dr. Parthasarathy's pain-medication opinions to both his medical expertise and the underlying data regarding Harney's condition.

In much the same way, Dr. Parthasarathy articulated a sufficient basis to opine that Harney will need to see an orthopedic hand and upper-extremity surgeon each year for the remainder of his life. Dkt. 42-1 at 9. Based on his "knowledge, skills, training and experience in treating patients with these very same injuries," Dr. Parthasarathy understood "the kinds of issues and problems that develop over time." Dkt. 42-4 at 6. He testified about seeing "a significant injury to the forearm[,]" like Harney's, "well over 50 times." *Id.* Harney was, in fact "having ongoing pain and limitations" in the arm that was crushed. *Id.* Harney's fracture, with "hardwares placed," caused "ongoing scarring" that would "need to be mitigated and assessed." *Id.* And those issues were likely to persist for the rest of Harney's life. *Id.* at 7. Dr. Parthasarathy training and his familiarity with Harney's type of injury is enough to render his opinion admissible. *See, e.g.*, *Fuselier v. Everest Nat'l Ins. Co.*, 2021 WL 3179810, at *3 (W.D. La. July 26, 2021) (denying motion to exclude life-care-planning expert who "used his expertise as a licensed medical doctor" to formulate opinions about future medical needs that "appear to be supported by either the cited medical records of Plaintiff's treating physicians or an arguable standard of care").

Likewise, Dr. Parthasarathy articulated an adequate basis to conclude that Harney likely needed short-term epidural steroid and medical breach injections and lifetime annual x-rays, MRIs, and electromyography and nerve

conduction studies ("EMG/NGS"). Dkt. 42-2 at 9-11. Dr. Parthasarathy testified, as a "spine specialist," that a three-course treatment of spinal injections was needed because "[t]hat's typically the standard. That's typically the number of injunctions someone receives that are frequently helpful." Dkt. 42-4 at 9. Dr. Parthasarathy based this conclusion on Harney's chronic back pain and prior imaging, explaining that the injections will "further identify[] the specific pain generator in his spine" to determine whether additional treatment, or spinal surgery, is required. *Id.* at 8-9, 21.

Dr. Parthasarathy explained that lifetime annual x-rays and MRIs were necessary because, while Harney's forearm fractures have been repaired, "there's still damage there" and x-rays and MRIs are necessary to detect "bone spurring" because "it's quite common for nerves to be entrapped and scar and for there to be bony callus buildup or bone spurring …." *Id.* at 9. EMG/NGS were likewise necessary to determine "if there is worsening function of the nerve that might … require a surgical procedure to mitigate [or] to remove the scar …." *Id.* Dr. Parthasarathy's explanations link the data to his conclusions about these future medical requirements.

Moreover, Dr. Parthasarathy's opinion that Harney's condition is permanently impairing also justifies his decision to include a functional capacity evaluation and vocational assessment. Part of Dr. Parthasarathy's job entails recognizing when a patient has "occupational and vocational needs"

arising from their physical impairment. *See* Dkt. 42-4 at 18. Here, Dr. Parthasarathy testified how Harney's arm would "never be the same" due to "significant loss of muscular function, sensory abnormalities and chronic pain." *Id.* at 5. Because of that lost function, Dr. Parthasarathy projected that evaluations would be needed to ascertain what activities Harney can safely perform and what future occupations or jobs he can hold. *See id.* at 24; *see also id.* at 13, 17 (purpose of the functional capacity evaluation and vocational assessment). Indeed, Dr. Parthasarathy noted that the Coast Guard only allowed Harney to return to a desk job for two or three years—"a kindness kind of thing"—until Harney could "retire out." *See id.* at 24-25. Those aspects of Dr. Parthasarathy's opinions are admissible.

Defendants further disagree with Dr. Parthasarathy's inclusion of both generic and brand-name medication prices, even though Harney takes certain medications in generic form and with less frequency than Dr. Parthasarathy included. Dkt. 53 at 8 (challenging Dr. Parthasarathy's projected brand-name pricing for Neurontin, Cymbalta, and Trazodone). But Dr. Parthasarathy explained that averaging the costs of brand-name and generic medications is a commonly accepted methodology and that doing so provides the trier of fact with a reasonable estimate of future medication expenses. Dkt. 42-4 at 16. Ultimately, Defendants' disagreement with Dr. Parthasarathy's approach "can be addressed through cross-examination … and the presentation of

countervailing testimony" because they "go to the weight, not the admissibility" of his testimony. *See Fuselier*, 2021 WL 3179810, at *3 (rejecting similar argument).

In addition, Dr. Parthasarathy's recommended dosages for Neurontin (the brand-name version of gabapentin) and Trazodone are supported by the record. Although Harney testified that he only takes gabapentin "as needed," Dkt. 42-5 at 95, Dr. Parthasarathy explained that he recommended a thrice-daily dosage based on his conversation with Harney and Harney's current prescription. Dkt. 42-4 at 4; *see also* Dkt. 42-11 at 1 (300mg gabapentin prescription). And despite Dr. Jeffrey L. Shi's notation that Harney "[d]oes not want to build a tolerance" to Trazadone and "has goals of coming off in the future if able to," Dr. Shi "instructed [Harney] that he can take half tablet of trazodone to two tablets at night" and recommended not taking it nightly if Harney can endure the pain. Dkt. 42-8 at 1. Defendants' disagreement with Dr. Parthasarathy's dosage opinions is fodder for cross-examination, not exclusion. Their motion to exclude the foregoing opinions is denied.

3. Dr. Parthasarathy did not adequately explain why he recommended lifelong occupational therapy or psychological treatment.

Nevertheless, the Court agrees with Defendants that Dr. Parthasarathy failed to adequately explain the basis for his projections that Harney will need lifelong occupational therapy and psychological treatment. *See* Dkt. 42 at 9;

Dkt. 53 at 5; *see* Dkt. 42-1 at 9 (including, under physician services costs, total of $59,508.76 for psychiatrist and psychologist); *id.* at 10 (including, under rehabilitation services costs, $97,219.20 for occupational therapy and $145,874.40 total for two psychotherapy line items). As Defendants observe, Dkt. 53 at 5, Dr. Parthasarathy's cost table does not explain why those treatments are necessary for the projected duration. Dkt. 42-2 at 9-10. More importantly, though, unlike the specifics that Dr. Parthasarathy detailed during his deposition about the reasons for including other items in his charts, nowhere does that testimony illuminate how he determined these therapies and treatments were necessary at the level of frequency and for durations projected in his chart.

The decision in *In re M/V AET Excellence*, 2025 WL 3653552 (S.D. Tex. Dec. 17, 2025), cited by Defendants, Dkt. 53 at 3-4, 5, is on point. There, this Court rejected a physician's life care plan as unreliable because the physician failed to explain "how or why he determined that" specific treatments, not otherwise supported by the record, "are necessary for that duration of time." *In re M/V AET Excellence*, 2025 WL 3653552, at *4.

So too here. Regarding occupational therapy recommendation, Dr. Parthasarathy merely states a lifelong prescription would "absolutely" be required "based on the nature of his injuries." Dkt. 42-4 at 12. That conclusory statement sheds no light on *why* those therapy sessions would be required for

38 years. *See Joiner*, 522 U.S. at 146 ("[N]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ispe dixit* of the expert.").

Likewise, Dr. Parthasarathy does not explain how he determined that Harney must see a psychiatrist once and psychologist six times yearly for the rest of his life. *See* Dkt. 42-1 at 9 (physician services line-items); *id.* at 10 (including two line items for psychotherapy as rehabilitation services costs). Dr. Parthasarathy asserted that he can "recognize and diagnose and treat psychological conditions as part of [his] board certification maintenance." Dkt. 42-4 at 3; *see also id.* at 8. But he did not tie his experience to Harney specifically. To the contrary, Dr. Parthasarathy was not aware if Harney's therapist had noted improvements to Harney's mental health. *See id.* at 13. And Dr. Parthasarathy articulated no basis for projecting that a lifetime of mental health visits would be necessary.

Because Dr. Parthasarathy's failure to explain the basis for recommending lifelong occupational therapy and psychiatric/psychological care, this Court cannot find "that he reliably applied his methodologies to the facts of this case." *See In M/V AET Excellence*, 2025 WL 3653552, at *3-4; *see De Alfaro v. Panther II Transp., Inc.*, 2024 WL 2725047, at *6-7 (S.D. Tex. May 28, 2024) (rejecting physical medicine/rehab specialist's projection about

lifelong future psychiatric care). Those aspects of Dr. Parthasarathy's life care plan are excluded.

4. Dr. Parthasarathy's opinions about future medical costs are not unreliable because they are not discounted to present value.

Defendants also contend that Dr. Parthasarathy's opinions about future medical costs are unreliable because he did not discount the figures to present value. Dkt. 42 at 10; *see also Associated Terminals of St. Bernard, LLC v. Potential Shipping HK Co.*, 324 F. Supp. 3d 808, 825 (E.D. La. 2018) (noting that, under general maritime law, "awards for future medical expenses are discounted to present value"). Plaintiffs argue that failure to discount to present value does not warrant exclusion, and that present-value calculation is a separate economic determination routinely performed by an economist or addressed through jury instruction. Dkt. 47 at 8. The Court agrees with Plaintiffs.

Under general maritime law, awards of future medical expenses must be discounted to present value. *See Culver v. Slater Boat Co.*, 722 F.2d 114, 117-118 (5th Cir. 1983). Citing *Carreon v. King*, 2016 WL 9525670 (N.D. Tex. June 13, 2016), Defendants maintain that a life care plan that fails to reduce future treatment and medication costs to present value is inadmissible. *See* Dkt. 42 at 10; Dkt. 53 at 9.

But Defendants overlook binding precedent holding that expert testimony is unnecessary to establish the appropriate discount. *Bonura v. Sea Land Serv., Inc.*, 505 F.2d 665, 669 (5th Cir. 1974) (applying general maritime law). In *Bonura*'s words, while it is "decidedly the better practice" to provide the jury with expert evidence, "the application of the present worth rule" is not "beyond the understanding and capabilities of most lay persons serving on juries … once they have been instructed to perform this function." *Id.* (agreeing with multiple other circuits).

Although *Bonura* involved future lost wages, its reasoning applies equally to future medical expenses which likewise must be reduced to present value. *See Baham v. Nabors Drilling USA, LP*, 721 F. Supp. 2d 499, 515 (W.D. La. 2010) ("future losses (income and medical expenses) must be discounted to present value" under general maritime law). Under *Bonura*'s reasoning, neither a life care planner nor any other expert must supply that calculation for the jury. *See Sierra v. JST Transportes S.A. de C.V.*, 2025 WL 3760316, at *7 (S.D. Tex. Sept. 26, 2025) (failure of life care plan to reduce future medical costs to present value "does not weigh on the reliability" of life care planner's opinions); *Majoue v. Play 8 Ltd. Inc.*, 2024 WL 476868, at *1-2 (E.D. La. Feb. 7, 2024) (denying request to strike life-care-planner's opinion about future medical expenses because "[t]he lack of an economic expert is not fatal" to

recovery). Defendants' request to exclude all opinions about future medical expenses is denied.

C. Plaintiffs' motion to exclude Jennifer Pavlik's expert testimony is denied.

Defendants retained Jennifer Pavlik as a rebuttal expert "to assess whether the recommendations in Dr. Parthasarathy's life care plan are supported by Harney's medical records and the opinions of his treating physicians." Dkt. 48 at 1. Plaintiffs argue that Pavlik is not qualified to proffer the opinions expressed in her report and that her methodology is unreliable. Dkt. 41. But Plaintiffs' position misconstrues the nature of Pavlik's opinions, which are admissible.

1. Overview of Pavlik's opinion

Pavlik is a Masters-level Rehabilitation Counselor, Licensed Professional Counselor, Certified Rehabilitation Counselor, and Certified Life Care Planner with twelve years of experience and a 120-hour CLCP training program. Dkt. 48 at 2; Dkt. 41-1 at 15-16 (Pavlik's CV). She compared Dr. Parthasarathy's life plan with Harney's pre- and post-treatment medical records, the Independent Medical Examination report of Dr. Gerald T. Gabel, M.D., and Harney's deposition testimony. Dkt. 41-1 at 2. In her report, Pavlik

details which portions of Dr. Parthasarathy's life care plan are unsupported by his medical records or by his treating physicians.[4] *Id.* at 11-12.

2. Pavlik is qualified and her methodology is reliable.

Plaintiffs argue that because Pavlik is not a physician, she is not qualified to "second-guess" Dr. Parthasarathy's medical recommendations. Dkt. 41 at 4-5. But as Defendants note, *see* Dkt. 48 at 5, Pavlik does not purport to evaluate whether any course of treatment would be medically necessary. Rather, Pavlik merely evaluated whether Dr. Parthasarathy's recommendations are supported by Harney's medical records, including his treating physicians. And as a non-physician life care planner, Pavlik is qualified to testify about a plaintiff's future medical care when that testimony is premised on reports and information supplied by other experts. *See Bustillos v. Kumar*, 2025 WL 384049, at *8 (W.D. Tex. Feb. 4, 2025) (a non-physician life care planner may "build on a medical expert's foundation" and "tie his recommendations to independently established qualified expert opinions") (quotations omitted). That is what Pavlik did.

Plaintiffs also argue that Pavlik's report did not apply a specific methodology or reasoning and is "nothing more than Pavlik's *ipse dixit*." Dkt. 41 at 5-6. That, too, is incorrect. As Defendants accurately observe, *see* Dkt.

[4] Plaintiffs chose not to depose Pavlik about her opinions.

48 at 6-7, a non-physician life care planner's entire role *is to do exactly what Pavlik did*—review medical records and opine on future medical costs. *See, e.g.*, *Greger v. C.R. Bard, Inc.*, 2021 WL 3855474, at *14 (E.D. Tex. Aug. 30, 2021) ("The practice of life care planners' relying on physicians' reports and producing estimates of future costs is widely accepted."); *Thomas v. T.K. Stanley, Inc.*, 2014 WL 12910539, at *3 (E.D. Tex. Oct. 27, 2014) ("The medical records and opinions of treating physicians and other medical providers are the sort of evidence that would be reasonably relied upon to create a life care plan."). Pavlik's report appropriately details what portions of Dr. Parthasarathy's plan are supported by Harney's medical record. Plaintiffs have proffered no valid basis for excluding Pavlik's opinions.

V. Docket call and trial will be continued.

As a final issue, Plaintiffs filed a motion requesting that the remaining case deadlines be continued, Dkt. 93, but later withdrew their request, Dkt. 95. Nevertheless, the current docket call and trial dates (August 28, 2026 and August 31, 2026, respectively, Dkt. 89 at 1) leave little time for this Court to review and resolve any objections to the undersigned's recommendations, once fully briefed, and determine whether to adopt those recommendations. And when opposing Plaintiffs' proposal to move up the dates for docket call and trial, while not opposing Plaintiffs' alternative request to reset them for later dates, Defendants emphasized the need for a final ruling on the substantive

motions addressed above. *See* Dkt. 94 at 2-3. That ongoing concern supplies good cause to push docket call and trial until October 2026.

Recommendation and Order

For the foregoing reasons, it is **RECOMMENDED** that Defendants Maersk A/S's and A.P. Møller's motion for partial summary judgment on Plaintiff Gene Harney's claims for non-pecuniary and putative damages and motion for summary judgment on Plaintiff Brittany Harney's claims (Dkt. 30) be **GRANTED**, that Gene Harney's claims for non-pecuniary damages be **DISMISSED**, and that all of Brittany Harney's claims be **DISMISSED**.

It is further **RECOMMENDED** that Plaintiffs Gene Harney's and Brittany Harney's motion for partial summary judgment (Dkt. 40) be **DENIED**.

It is further **RECOMMENDED** that Defendants' motion for partial summary judgment on liability (Dkt. 43) be **DENIED**.

It is **ORDERED** that Defendants' motion to exclude the expert testimony of S.R. Parthasarathy (Dkt. 42) be **GRANTED IN PART** and **DENIED IN PART**. Dr. Parthasarathy's opinions about Mr. Harney's need for occupational therapy and future psychiatric and psychological care are hereby **EXCLUDED**, but the request to exclude all other aspects of his opinions is **DENIED**.

It is further **ORDERED** that Plaintiffs' motion to exclude the expert testimony of Jennifer Pavlik (Dkt. 41) be **DENIED.**

It is further **ORDERED** that although Plaintiffs' motion for continuance (Dkt. 93) has been withdrawn (per Dkt. 95), the current scheduling order (Dkt. 89) is nevertheless **AMENDED** as follows:

6. October 23, 2026 — **DOCKET CALL** is set at 1:30 p.m. in Courtroom 9A.

7. October 26, 2026 — **JURY TRIAL** is set at 9:00 a.m. in Courtroom 9A

The parties have fourteen days from service of this Report and Recommendation to file written objections. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Failure to file timely objections will preclude appellate review of factual findings and legal conclusions, except for plain error. *Ortiz v. City of San Antonio Fire Dep't*, 806 F.3d 822, 825 (5th Cir. 2015).

Signed on July 15, 2026, at Houston, Texas.

Yvonne Y. Ho
United States Magistrate Judge