In the United States District Court for the Southern District of Texas

GALVESTON DIVISION

No. 3:19-cv-313

FLEET OPERATORS, INC., *ET AL.*, *PLAINTIFFS*,

v.

NAUTILUS INSURANCE COMPANY, *ET AL.*, *DEFENDANTS*.

MEMORANDUM OPINION AND ORDER

JEFFREY VINCENT BROWN, *UNITED STATES DISTRICT JUDGE*:

Two defendants, Nautilus Insurance Company and Mistras Group, Inc., f/k/a The Nacher Corporation, have filed a joint motion for summary judgment. Dkt. 61. The court has considered their arguments, the summary-judgment evidence, and the applicable law, and grants the motion.[1]

I. Background

Raylin Boudreaux alleges he was injured when he fell from a crane's personnel basket while employed by Nacher as an x-ray technician aboard the *M/V Piper*, an offshore utility vessel owned by ADS Marine, LLC, and

[1] The plaintiffs did not respond to the motion.

operated by Fleet Operators, Inc. Dkts. 1-1 (*Boudreaux* Complaint); 7 at 5. At the time Boudreaux was injured, the *M/V Piper* had been chartered through Kilgore Marine Services, LLC, to Fieldwood Energy, LLC. Dkt. 7 at 6; *see generally* 7-1 (Master Time Charter Agreement). Boudreaux sued, and eventually settled with, ADS, Fleet, Fieldwood, and Island Operating Company, the crane operator. Dkt. 57 at 4.

In this action, ADS, Fleet, and Zurich America Insurance Company seek indemnification from Nautilus and its insured, Nacher. ADS and Fleet contend they are third-party beneficiaries under two contracts: (1) a liability-insurance policy that Nautilus issued to Nacher ("the Policy"), and (2) a master service contract ("the MSC") between Nacher and Fieldwood. In the Policy, Nautilus agrees to defend its named insured, Nacher,[2] and in the MSC, Nacher designates Fieldwood as an additional insured. In a counterclaim, Nautilus seeks a declaratory judgment that it has no obligation to either defend or indemnify ADS or Fleet under either contract.

Previously, Nautilus and Nacher moved for partial summary judgment on choice of law, arguing that Louisiana law controls the interpretation and

[2] The Policy states that additionally insured parties, to be eligible for the Policy's additional-insured blanket coverage, must be included in relevant written contracts before performance. Dkt. 1 ¶ 4.1. Fleet and ADS state Nacher is contractually obligated to defend and indemnify them under the MSC with Fieldwood, which appears to extend (by their argument) the blanket coverage Nautilus provided Nacher in the liability-insurance instrument. Dkt. 7 ¶¶ 26–27.

enforcement of both the Policy and the MSC. Dkt. 43. The plaintiffs also filed a motion for partial summary judgment on choice of law, contending that maritime law controls the MSC but taking no position on which law controls the Policy. Dkt. 45. This court granted Nautilus and Nacher's motion and denied the plaintiffs'. Dkt. 57.

Nautilus and Nacher now move for summary judgment on the plaintiffs' claims. Dkt. 61.

II. Legal Standard

Summary judgment is proper when "there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). The court must view the evidence in the light most favorable to the nonmovant. *Coleman v. Hous. Indep. Sch. Dist.*, 113 F.3d 528, 533 (5th Cir. 1997). The movant bears the burden of presenting the basis for the motion and the elements of the causes of action on which the nonmovant will be unable to establish a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then shifts to the nonmovant to offer specific facts showing a genuine dispute for trial. *See* Fed. R. Civ. P. 56(c); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986). "A dispute about a material fact is 'genuine' if the evidence is such that a reasonable jury could return a verdict for the

nonmoving party." *Bodenheimer v. PPG Indus., Inc.*, 5 F.3d 955, 956 (5th Cir. 1993) (citation omitted).

The court "may not make credibility determinations or weigh the evidence" in ruling on a summary-judgment motion. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). But when the nonmoving party has failed "to address or respond to a fact raised by the moving party and supported by evidence," then the fact is undisputed. *Broad. Music, Inc. v. Bentley*, No. SA-16-CV-394-XR, 2017 WL 782932, at *2 (W.D. Tex. Feb. 28, 2017). "Such undisputed facts may form the basis for summary judgment." *Id.*

A motion for summary judgment "cannot be granted simply because there is no opposition." *Hetzel v. Bethlehem Steel Corp.*, 50 F.3d 360, 362 n.3 (5th Cir. 1995). When no response is filed, the court may accept as undisputed the facts set forth in support of the unopposed motion and grant summary judgment when a *prima facie* showing for entitlement to judgment is made. *See Eversley v. MBank Dallas*, 843 F.2d 172, 174 (5th Cir. 1988); *Rayha v. United Parcel Serv., Inc.*, 940 F. Supp. 1066, 1068 (S.D. Tex. 1996). The court may grant summary judgment on any ground supported by the record, even if the ground is not raised by the movant. *United States v. Houst. Pipeline Co.*, 37 F.3d 224, 227 (5th Cir. 1994).

III. Analysis

The defendants argue that under Louisiana law, Nautilus and Nacher have no duty to indemnify the plaintiffs under either the Policy or the MSC. Dkt. 61 at 3. A brief review of Louisiana law, and specifically the Louisiana Oilfield Indemnity Act (LOIA), is helpful to the court's analysis.

A. LOIA

1. History

In 1981, the Louisiana Legislature passed legislation to "protect Louisiana oilfield contractors from overreaching principals who force the contractors through indemnity agreements to bear the risk of the principal's negligence." *Roberts v. Energy Dev. Corp.*, 104 F.3d 782, 784 (5th Cir. 1997). The legislation expressed the legislature's intent

> to declare null and void and against public policy of the state of Louisiana any provision in any agreement which requires defense and/or indemnification, for death or bodily injury to persons, where there is negligence or fault (strict liability) on the part of the indemnitee, or an agent or employee of the indemnitee, or an independent contractor who is directly responsible to the indemnitee.

La. Rev. Stat. § 9:2780(A). At around the same time, courts were concluding that allowing a party to insulate itself from its own negligence creates a disincentive to provide a safe workplace. *See, e.g., U.S. Fid. & Guar. Co. v. Loop, Inc.*, 769 F. Supp. 210, 212 (E.D. La. 1991).

2. Language

The resulting legislation was LOIA. *Loop*, 769 F. Supp. at 212. In part, LOIA provides:

> Any provision contained in, collateral to, or affecting an agreement pertaining to a well for oil, gas, or water, or drilling for minerals which occur in a solid, liquid, gaseous, or other state, is void and unenforceable to the extent that it purports to or does provide for defense or indemnity, or either, to the indemnitee against loss or liability for damages arising out of or resulting from death or bodily injury to persons, which is caused by or results from the sole or concurrent negligence or fault (strict liability) of the indemnitee, or an agent, employee, or an independent contractor who is directly responsible to the indemnitee.

La. Rev. Stat. § 9:2780(B). Thus, "[t]hrough LOIA, the Louisiana Legislature declared null and void and against public policy of the State of Louisiana any provision in such agreements which require the defense or indemnification for death or bodily injury to persons caused by the negligence or fault of the indemnitee." *Rogers v. Samedan Oil Corp.*, 308 F.3d 477, 480–81 (5th Cir. 2002).

But LOIA does not stop there. It also provides:

> Any provision in any agreement arising out of the operations, services, or activities listed in Subsection C of this Section of the Louisiana Revised Statutes of 1950 which requires waivers of subrogation, additional named insured endorsements, or any other form of insurance protection which would frustrate or circumvent the prohibitions of this Section, shall be null and void and of no force and effect.

La. Rev. Stat. § 9:2780(G). Thus, "LOIA also applies to certain insurance coverage supplied by the contractor." *Rogers*, 308 F.3d at 481.

Accordingly, "[c]onsistent with the express language of Subsection G, courts generally hold that contractual provisions requiring the contractor to extend its insurance coverage to cover the principal's acts of negligence or fault are void under the LOIA because these insurance arrangements frustrate the purpose of the Act." *Id.* Even more broadly, "LOIA prohibits contracting parties from using insurance agreements to circumvent the law's anti-indemnity provisions." *Cardoso-Gonzalez v. Anadarko Petroleum Corp.*, 326 F. Supp.3d 273, 283 (E.D. La. 2018).

Furthermore, LOIA is "broadly written and has been broadly interpreted by the Louisiana courts and [the Fifth Circuit]." *Roberts*, 104 F.3d at 784; *Loop*, 769 F. Supp. at 212 ("It is clear from the case law that the LOIA must be construed broadly."). Its language clearly declares "Louisiana's explicit and unambiguous public policy against indemnification agreements in any form." *Roberts v. Energy Dev. Corp.*, 235 F.3d 935, 943 (5th Cir. 2000).

3. Two-Part Test

The Fifth Circuit has formulated a two-part test to determine whether LOIA applies. *Tetra Techs., Inc. v. Cont'l Ins. Co.*, 814 F.3d 733, 743 (5th Cir. 2016). "First, there must be an agreement that 'pertains to' an oil, gas or water well." *Id.* (quoting *Transcon. Gas Pipe Line Corp. v. Transp. Ins. Co.*, 953 F.2d 985, 991 (5th Cir. 1992)). "In determining whether an agreement pertains to a well, 'the decisive factor in most cases has been the functional nexus between an agreement and a well or wells.'" *Id.* at 743 (quoting *Verdine v. Ensco Offshore Co.*, 255 F.3d 246, 252 (5th Cir. 2001)).

In considering this first factor, the particular job that resulted in the injury is irrelevant. "Whether the LOIA applies should be considered in relation to the nature of the contract, rather than the task or activity that led to the incident." *Cardoso-Gonzalez*, 326 F. Supp.3d at 282. "As a result, the activities giving rise to the claim need not have been rendered at the offshore site or in connection with the drilling or operation of a particular site in order to fall within the bounds of the LOIA." *Id.*

Second, "[i]f the agreement 'has the required nexus to a well,' the court examines 'the contract's involvement with operations related to the exploration, development, production, or transportation of oil, gas, or water.'" *Tetra*, 814 F.3d at 743 (quoting *Transcon.*, 953 F.2d at 991). The

above two-part test "'requires a fact intensive case by case analysis.'" *Id.* at 743 (quoting *Verdine*, 255 F.3d at 251).

B. Application

The court next applies the Fifth Circuit's two-part test to determine whether LOIA applies on these facts.

1. Step One: Nexus to a Well

In *Transcontinental*, the Fifth Circuit provided a "non-exclusive list" of ten factors to consider when determining whether a contract pertains to a well. *Verdine*, 255 F.3d at 252 n.4. But where, as here, the agreement at issue "does not directly concern the transportation of oil or gas," five of the factors are not relevant and the court should consider only the five that are:

> (1) whether the structures or facilities to which the contract applies or with which it is associated are part of an in-field production system;
>
> (2) what is the geographical location of the structure or facility relative to a well or wells;
>
> (3) what is the purpose or function of the facility or structure in question;
>
> (4) who owns and operates the relevant facility or structure;
>
> (5) and "any number of other details affecting the functional and geographic nexus between 'a well' and the structure or facility that is the object of the agreement . . . ."

Broussard v. Conoco, Inc., 959 F.2d 42, 44–45 (5th Cir. 1992) (quoting *Transcon.*, 953 F.2d at 994–95).

Significantly, none of the five factors requires an actual connection to any particular well. *See Broussard*, 959 F.2d at 44–45. That is intentional; "[t]he Louisiana legislature clearly envisioned [LOIA]'s application to agreements for services on structures that were not developing, producing or transporting oil or gas or geographically connected to a specific well." *Verdine*, 255 F.3d at 253. Accordingly, the Fifth Circuit

> do[es] not interpret the legislature's requirement that an agreement pertain to a well in such a restrictive manner that we overlook agreements to which [LOIA] was intended to apply. [LOIA] encompasses agreements for services on structures intended for use in the oil and gas industry, so long as the agreement pertains to a well or wells.

Id. at 253–54.

Here, each of the factors points to the application of LOIA.

a. Structures or Facilities

A platform is obviously a structure. *See Hyde v. Chevron U.S.A., Inc.*, 697 F.2d 614, 618 (5th Cir. 1983); *Olsen v. Shell Oil Co.*, 365 So. 2d 1285, 1290 (La. 1978). Indeed, the Fifth Circuit specifically lists "production platforms" as one of the "structures or facilities" to which the contract can apply or be associated with to satisfy this factor. *See, e.g.*, *Verdine*, 255 F.3d at 252 n.4; *Transcon.*, 953 F.2d at 994. The accident in this case occurred on

a production platform. Dkts. 45 at 3; 45-2 at 4; 61-8. Specifically, it happened on Eugene Island Platform 175C, which Fieldwood owned. Dkts. 45 at 3, 57 at 4.

In their motion for partial summary judgment on choice of law, Dkt. 45, and in their response to Nautilus and Nacher's motion for partial summary judgment on choice of law, Dkt. 48, the plaintiffs repeatedly acknowledge—and cite evidence to prove—that the MSC applies to and is associated with Fieldwood's platforms. *See, e.g.*, Dkts. 45 at 7 ("The MSC's definition of 'Work' shows that Fieldwood had an obligation to hire or charter vessels to support NACHER personnel and equipment throughout the Gulf of Mexico as NACHER serviced Fieldwood offshore platforms."); Dkt. 48 at 10 ("These essential vessel services in support of Fieldwood's oil and gas operations were anticipated by the language in the Fieldwood-NACHER MSC and played a substantial role in Fieldwood's ability to man and operate these platforms.").

The court took the plaintiffs at their word when it ruled on the competing choice-of-law motions that Louisiana law applies. Dkt. 57. Specifically, the court noted that "[w]hile the [MSC itself] does little to establish where Nacher would perform the majority of its work, the other . . . evidence suggests that the majority of Nacher's performance

occurred on platforms on the seabed of Eugene Island." Dkt. 57 at 13–14. Moreover, the court held that the MSC is indeed "a contract to provide services to facilitate the drilling or production of oil and gas." *Id.* at 15, 18. "[A]ll signs point to the contracted-for services facilitating oil-and-gas production." *Id.* at 18.

The court reaffirms that the MSC applies to and is associated with Fieldwood's platforms. *See Tetra*, 814 F.3d at 746 (LOIA applies to contract for salvaging platform); *Alleman v. Omni Energy Servs. Corp.*, 580 F.3d 280, 285 (5th Cir. 2009) (LOIA applies to contract "to provide helicopters and other aircraft to ferry workers between platforms and the shore"); *Copous v. ODECO Oil & Gas Co.*, 835 F.2d 115, 117 (5th Cir. 1988) (LOIA applies to contract to renovate living quarters on platform); *Dennis v. Bud's Boat Rental, Inc.*, 987 F. Supp. 948, 952 (E.D. La. 1997) (LOIA applies to master service contract for installing and repairing communication equipment where the "contract clearly contemplated performance on an oil platform"). And ample, uncontested summary-judgment evidence shows that Fieldwood's platforms are part of an in-field production system.[3] *See* Dkt. 48 at 10; 45 at 3, 7; 61-8 at 2; 61-9 at 2–3.

[3] This conclusion is unremarkable: the very purpose of production platforms is, of course, to facilitate in-field production. *See Thibodeaux v. Grasso Prod. Mgmt., Inc.*, 370 F.3d 486, 494 (5th Cir. 2004) ("purpose" of production platform "is to further drilling for oil and gas"); *Teaver v. Seatrax of La., Inc.*, No. CIV.A.

b. Geographical Location

As stated above, the accident happened on Eugene Island Platform 175C ("EI 175-C"), a production platform permanently affixed to the seabed off the coast of Louisiana. Dkts. 45 at 3; 57 at 4; 61-8.

EI 175-C has eight incoming and three outgoing pipelines. *Id.* These pipelines directly connect EI 175-C with multiple wells, all within five miles. *Id.*; *see* also Dkts. 61-8, 61-9. This geographical proximity makes it more likely that the MSC pertains to a well. *Cf. Hughes v. Pogo Producing Co.*, No. CJIV.A. 06-1894, 2009 WL 667186, at *7 n.8 (W.D. La. Mar. 11, 2009) (holding LOIA did not apply where there was "evidence there were no active production wells within five miles of the Grand Isle 115 platform," but noting that if a well had been nearby, "perhaps the analysis would be different and more akin to *Broussard*").

c. Purpose or Function

There is no doubt that EI 175-C's purpose is the production of oil and gas. *See Thibodeaux*, 370 F.3d at 494 ("purpose" of production platform "is to further drilling for oil and gas"); *Teaver*, 2012 WL 5866042, at *5

10-1523, 2012 WL 5866042, at *5 (E.D. La. Nov. 19, 2012) (production platform's "purpose was to assist in oil and gas production"); *DeHart v. BP Am., Inc.*, No. 09 CV 0626, 2010 WL 231744, at *1 (W.D. La. Jan. 14, 2010) (production platform "was . . . erected for the purpose of oil and gas exploration, production and development").

(production platform's "purpose was to assist in oil and gas production"); *DeHart*, 2010 WL 231744, at *1 (production platform "was . . . erected for the purpose of oil and gas exploration, production and development"). Ample uncontroverted summary-judgment evidence establishes the same. Dkts. 61-8; 61-9.

d. Owner/Operator

Fieldwood, an oil-and-gas exploration and production company[4] and a party to the MSC, owns and operates EI 175-C. Dkts. 45 at 3; 61-9. Accordingly, the fourth factor is met. *See Cardoso-Gonzalez*, 326 F. Supp. 3d at 277, 281–82 (holding LOIA applied where owner and operator of platform was party to master service contract under which indemnity was sought); *Simar v. Tetra Techs., Inc.*, No. CV 15-01950, 2017 WL 4274348, at *1, 13 (W.D. La. Sept. 26, 2017) (holding LOIA applied where owner and operator of platform was party to master service agreement under which indemnity was sought).

e. Other Details

The last factor to be considered is "any number of other details affecting the functional and geographic nexus between 'a well' and the

[4] "Fieldwood Energy is a premier independent E&P company in the Gulf of Mexico. With operations in both the United States and Mexico, Fieldwood is focused on the exploration and development of offshore oil and gas assets in the Shallow and Deepwater Gulf of Mexico and the Gulf Coast region." Dkt. 45 at 5.

structure or facility that is the object of the agreement under scrutiny." *Transcon.*, 953 F.3d at 995.

Regarding a geographical nexus, as stated above, EI 175-C has eight incoming and three outgoing pipelines, each less than five miles long, directly connecting it with multiple wells. Dkts. 61-8; 61-9.

Regarding a functional nexus, the incoming pipelines take the oil and gas from the wells to EI 175-C to be processed. Dkts. 61-8; 61-9. In fact, "EI 175-C was the central facility that produced, separated, treated, and thereafter transported to shore oil and natural gas from wells associated with EI 175-C." Dkt. 61-9.

EI 175-C's outgoing pipelines take the product to multiple facilities for various reasons. Dkt. 61-8. For example, outgoing oil pipeline Segment #044 transports oil to EI 176-A, where there is a subsea tie-in to Segment #2896, from where oil is eventually transported back to the Louisiana coastal region. Dkt. 61-8; *see also* 61-9 (stating that the outgoing pipelines transport oil to shore). The outgoing gas pipelines also take gas to multiple facilities to be used as gas-lift wells, where the gas "is pumped into production tubing, creating additional pressure to push oil to the surface." Dkt. 61-8.

EI 175-C is part of Fieldwood's in-field oil and gas production and operation, which is conducted across several platforms. Dkts. 61-8; 61-9.

Product—either oil or gas—that is extracted from the seabed is partially processed or separated at EI 175-C. Dkts. 61-8; 61-9. That is the function of EI-175C. Dkt. 61-8.

Certainly, there is a close geographical nexus between EI 175-C and the wells. Equally clear, there is a strong functional nexus—"additional details" show that EI 175-C and the wells work together for the production of oil and gas. The last factor favors the application of LOIA.

f. Conclusion regarding Step One

As shown above, there is an agreement that pertains to a well. In other words, there is a functional nexus between the MSC and a well. *See Verdine*, 255 F.3d at 253 (first part of test satisfied even where platform that was to be refurbished under master service contract "sat idle in the . . . fabrication yard" and "was not participating in in-field exploration, production, or transportation of oil or gas"); *Simar*, 2017 WL 4274348, at *12 (first part of test met even where wells to which platform related were "wells which had been plugged and abandoned").

When a court "determine[s] that the contract has the required nexus to a well," it then "proceed[s] to the second step of the process, examination of the contract's involvement with operations related to the exploration,

development, production, or transportation of oil, gas, or water." *Transcon.*, 953 F.2d at 991.

2. Step Two: Related to Oil, Gas, or Water Operations

"If the agreement 'has the required nexus to a well,' the court examines 'the contract's involvement with operations related to the exploration, development, production, or transportation of oil, gas, or water.'" *Tetra*, 814 F.3d at 743 (quoting *Transcon.*, 953 F.2d at 991).

There is no doubt, given the uncontroverted evidence, that the MSC directly facilitates operations that are related to the exploration and production of oil and gas. *See generally* Dkts. 45 at 2, 5, 12; 48 at 9. Therefore, the second prong of the LOIA test is satisfied. *See Simar*, 2017 WL 4274348, at *12 (second part of analysis met where master service agreement called for repair and replacement of handrails on platform even where platform was to be removed and well had been plugged and abandoned); *Verdin v. ENSCO Offshore Co.*, 104 F. Supp. 2d 682, 690 (W.D. La. 2000) (second part of analysis satisfied where contract was to renovate living quarters and galley of platform), *aff'd*, *Verdine v. Ensco Offshore Co.*, 255 F.3d 246 (5th Cir. 2001).

Since both parts are satisfied, the court finds LOIA applies to the MSC. And when LOIA applies to an agreement, any purported obligations to

indemnify are voided, and summary judgment is proper. *Grand Isle Shipyard, Inc. v. Seacor Marine, LLC*, 589 F.3d 778, 781, 789 (5th Cir. 2009) (en banc); *Simar*, 2017 WL 4274348, at *13. Accordingly, Nautilus and Nacher are entitled to summary judgment on the plaintiffs' indemnity claims against them.

* * *

For the reasons above, the court grants Nautilus and Nacher's motion for summary judgment, Dkt. 61, and dismisses the plaintiffs' claims against them.

Signed on Galveston Island this 18th day of July, 2022.

JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE