UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MAXIMO SEQUERA,	§	CIVIL ACTION NO
Plaintiff,	§	4:21-cv-03090
	§	
	§	
vs.	§	JUDGE CHARLES ESKRIDGE
	§	
	§	
DANOS LLC, *et al*,	§	
Defendants.	§	

OPINION AND ORDER ON
CROSS-MOTIONS FOR SUMMARY JUDGMENT

Pending are cross-motions for summary judgment by, on the one hand, Defendants Genesis Energy LP and Genesis Energy LLC, and on the other, Defendant Danos LLC. They dispute whether, pursuant to contract, Danos is obligated defend and indemnify the Genesis Defendants against the claims brought in this action by Plaintiff Maximo Sequera.

In short, Danos isn't. The motion by Danos is granted. Dkt 40. The motion by the Genesis Defendants is denied. Dkt 34.

1. Background

Genesis Energy, LP, is the owner of a fixed platform located on the Outer Continental Shelf off the coast of Louisiana. Dkt 40-2 at 3. The platform was damaged by a hurricane and required extensive repairs. Id at 7.

Genesis Energy, LLC, is a wholly owned subsidiary of Genesis Energy, LP. It agreed to repair the platform by contract with Danos. Dkts 34 at 6 & 40 at 6; see also Dkts 34-3 at 2 & 40-2 at 3. The contract contains the following indemnity provision:

> Contractor's Indemnification. Contractor agrees to RELEASE, DEFEND, INDEMNIFY and HOLD HARMLESS Company Group from and against any and all Claims, Losses and Expenses directly or indirectly arising out of or related to bodily injury or death of or damage to property of Contractor Group, arising out of, or related to, the performance or subject matter of this Agreement or the ingress, egress, loading, or unloading of cargo or personnel, and expressly including any Claims, Losses and Expenses actually or allegedly caused by any negligence, fault or strict liability (of whatever nature or character) of Company Group or any other person or entity or the unseaworthiness or unairworthiness of vessels or craft, whether or not preceding the execution of this Agreement. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH COMPANY AND CONTRACTOR, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS AN INDEMNITY BY CONTRACTOR TO INDEMNIFY AND PROTECT COMPANY GROUP FROM THE CONSEQUENCES OF COMPANY GROUP'S OWN NEGLIGENCE, FAULT OR STRICT LIABILITY, WHETHER THAT NEGLIGENCE, FAULT OR STRICT LIABILITY IS THE SOLE, JOINT OR CONCURRING CAUSE OF THE INJURIES OR DEATH OR PROPERTY DAMAGE (BUT EXPRESSLY EXCLUDING THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF COMPANY GROUP).

Dkt 40-1 at 5. As used there, *Contractor* refers to Danos, and *Company* refers to EPCO Holdings, Inc, and its

affiliates, which were predecessors in interest to the Genesis Defendants. Id at 3.

The repair work required a vessel to house crew and equipment and transport them to the platform. Dkt 34 at 6 & 44 at 6. The vessel used for that purpose was owned by Defendant L&M Botruc Rental, LLC. Dkt 34-6 at 2.

Plaintiff was employed as a member of the crew assigned by Danos to perform repair work on the platform. There appears to be no dispute that he sustained substantial injuries while transferring one day from the platform to the vessel. Dkts 1-5 at ¶9, 34 at 9–10 & 44 at 6.

Plaintiff filed this lawsuit in state court against the Genesis Defendants, Danos, and Botruc, seeking damages for his injuries. See Dkt 1-5. Defendants removed. Dkt 1. Genesis Energy, LP, subsequently filed a cross-claim against Danos seeking a judgment that Danos is obligated under the contract to defend and indemnify the Genesis Defendants against Plaintiff's claims. Dkts 12 & 13.

Discovery is closed. See Dkt 60 (scheduling order). Pending are cross-motions by the Genesis Defendants and Danos seeking to establish whether the indemnity provision in their contract is enforceable. Dkts 34 & 40.

2. Legal standard

Rule 56(a) of the Federal Rules of Civil Procedure requires a court to enter summary judgment when the movant establishes that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." A fact is *material* if it "might affect the outcome of the suit under the governing law." *Sulzer Carbomedics Inc v Oregon Cardio-Devices Inc*, 257 F3d 449, 456 (5th Cir 2001), quoting *Anderson v Liberty Lobby Inc*, 477 US 242, 248 (1986). And a dispute is *genuine* if the "evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Royal v CCC & R Tres Arboles LLC*, 736 F3d 396, 400 (5th Cir 2013), quoting *Anderson*, 477 US at 248.

The summary judgment stage doesn't involve weighing the evidence or determining the truth of the matter. The

task is solely to determine whether a genuine issue exists that would allow a reasonable jury to return a verdict for the nonmoving party. *Smith v Harris County*, 956 F3d 311, 316 (5th Cir 2010), quoting *Anderson*, 477 US at 248. Disputed factual issues must be resolved in favor of the nonmoving party. *Little v Liquid Air Corp*, 37 F3d 1069, 1075 (5th Cir 1994). All reasonable inferences must also be drawn in the light most favorable to the nonmoving party. *Connors v Graves*, 538 F3d 373, 376 (5th Cir 2008), citing *Ballard v Burton*, 444 F3d 391, 396 (5th Cir 2006).

The moving party typically bears the entire burden to demonstrate the absence of a genuine issue of material fact. *Nola Spice Designs LLC v Haydel Enterprises Inc*, 783 F3d 527, 536 (5th Cir 2015); see also *Celotex Corp v Catrett*, 477 US 317, 322–23 (1986). But when a motion for summary judgment by a defendant presents a question on which the plaintiff bears the burden of proof at trial, the burden shifts to the plaintiff to proffer summary judgment proof establishing an issue of material fact warranting trial. *Nola Spice*, 783 F3d at 536. To meet this burden of proof, the evidence must be both "competent and admissible at trial." *Bellard v Gautreaux*, 675 F3d 454, 460 (5th Cir 2012).

When parties file opposing motions for summary judgment on the same issue, the court reviews each motion independently, each time viewing the evidence and inferences in the light most favorable to the nonmoving party. *Amerisure Insurance Co v Navigators Insurance Co*, 611 F3d 299, 304 (5th Cir 2010), quoting *Ford Motor Co v Texas Department of Transportation*, 265 F3d 493, 499 (5th Cir 2001). Each movant must establish that no genuine dispute of material fact exists, such that judgment as a matter of law is in order. *Amerisure Insurance Co*, 611 F3d at 304; see also *Tidewater Inc v United States*, 565 F3d 299, 302 (5th Cir 2009).

3. Analysis

Whether the indemnity provision in the Danos/Genesis contract is enforceable depends on whether federal maritime law applies or whether the Outer Continental

Shelf Lands Act dictates that Louisiana law applies. The parties don't dispute that, if federal maritime law applies, as the Genesis Defendants suggest, the indemnity provision is enforceable. See Dkt 34 at 12–13. And likewise, they don't dispute that, if state law applies via OCSLA, as Danos suggests, the indemnity provision is unenforceable under Louisiana law. See Dkt 40 at 20–21. Key to this choice-of-law question is determining whether the contract is maritime in nature.

a. Points of agreement

OCSLA provides that the law of the adjacent state applies as surrogate federal law in the Outer Continental Shelf in certain circumstances. See 43 USC §1333(a)(2)(A). The Fifth Circuit notes that three conditions "are significant" for determination whether to apply adjacent state law under OCSLA:

> (1) The controversy must arise on a situs covered by OCSLA (i.e. the subsoil, seabed, or artificial structures permanently or temporarily attached thereto). (2) Federal maritime law must not apply of its own force. (3) The state law must not be inconsistent with Federal law.

Union Texas Petroleum Corp v PLT Engineering, Inc, 895 F2d 1043, 1047 (5th Cir 1990).

The parties are in agreement on a number of things. For example, if found to be applicable here, the parties don't dispute that Louisiana is the adjacent state. They also agree that the present controversy arises on a site covered by OCSLA. And they agree that the state law at issue—the Louisiana Oilfield Anti-Indemnity Act—isn't inconsistent with federal law. Dkts 40 at 13–14 & 47 at 2.

The remaining issue is thus whether federal maritime law applies of its own force. The Fifth Circuit employs a two-part test to determine whether federal maritime law applies to a contract:

> First, is the contract one to provide services to facilitate the drilling or production of oil

> and gas on navigable waters? . . . Second, if the answer to the above question is 'yes,' does the contract provide or do the parties expect that a vessel will play a substantial role in the completion of the contract? If so, the contract is maritime in nature.

In re Larry Doiron, Incorporated, 879 F3d 568, 576 (5th Cir 2018). The Fifth Circuit has since emphasized that the *Doiron* analysis is centered on the "nature and character of the contract," but, depending on the particular facts at issue, the court in answering the second question may take into account how the vessel was actually used and where the work was performed. *Earnest v Palfinger Marine USA Incorporated*, 90 F4th 804, 813 (5th Cir 2024).

Again, the parties evince some agreement—that the answer to the first question is *yes*, the contract was for Danos to provide repair services that facilitate drilling or production of oil and gas on navigable waters. Dkts 34 at 16 & 40 at 14–15. As such, the determinative question is the second. Did the contract between the Genesis Defendants and Danos provide, or did the parties expect, that the vessel would play a substantial role in completion of the repairs? If yes, federal maritime law applies, and Danos must defend and indemnify. If not, state law applies as surrogate federal law under OCSLA, and the subject clause is unenforceable under Louisiana law.

The balance of the analysis will address the parties' differing views as to the terms of the contract, their expectations under it, and the actual use made of the vessel during performance.

b. Terms and expectations

The focus of the *Doiron* test is "on the contract and the parties' expectations, and the role of the vessel should be viewed in light of what is considered classically maritime." *Earnest*, 90 F4th at 812. There must be a "direct and substantial link between the contract and the operation of the ship, its navigation, or its management afloat, taking into account the needs of the shipping industry." Id at 810.

As to the terms of the Danos/Genesis contract, it is notably silent as to the use of a vessel. Dkt 34-2. There is a more detailed job plan that sets forth the scope, objectives, and requirements of the work that Danos was to perform. Dkt 40-11. It references the vessel only with respect to housing and transferring crew members to the platform. See id at 7. Per *Earnest*, however, "mere reference to ships or vessels is not enough." Id at 810, citing 1 *Benedict on Admiralty* §182 (Force and Friedell eds 2023).

As to the expectations of the parties regarding the role of the vessel, it appears that discovery largely shows them to be in agreement. The corporate representative for Danos testified that Danos understood that the role of the vessel in the contract would be for "providing the initial transportation and mobilization, and then the living quarters of the crew." Dkt 40-3 at 4. As for the Genesis Defendants, their understanding can be inferred from the separate contract between Genesis Energy, LLC and Botruc, the vessel owner. Botruc understood its assignment under that contract to be transporting equipment, storing materials, and housing crew members. Dkts 40-6 at 10 (deposition of Botruc vessel mate) & 40-7 at 4–5 (deposition of Botruc corporate representative). In fact, those are the only functions Botruc as a company performs. Dkt 40-7 at 5.

Those limited purposes—providing transportation and living quarters—without more don't establish that the vessel played a substantial role in the contract. See *Crescent Energy Services, LLC v Carrizo Oil & Gas, Inc*, 896 F3d 350, 361 (5th Cir 2018) (finding vessel's role is only substantial if it is "being used for more than transporting between the land and the wellsite" and characterizing use of vessel for crew quarters as "incidental"); *Doiron*, 879 F3d at n 47 (significance of vessel to contract does "not include transportation to and from the job site").

The parties dispute whether they expected the role of the vessel to be more substantial than what is typical for a platform-repair project of this type. For example, the Danos project manager admitted that renting a vessel to

maintain a position alongside the platform for the duration of the project to assist in the repair work under the contract was "out of the norm" and "was contemplated by both Danos and Genesis at the time of contracting." Dkt 34-5 at 5. But testimony from at least one other employee states that it's *not* out of the ordinary for crew members to eat and sleep on a separate vessel. Dkt 34-14 at 3 (deposition of Botruc vessel mate).

Taken together, the evidence shows that what was out of the ordinary about this project was that the vessel would maintain a position alongside the platform and remain there for the duration of the project. See Dkt 34 at 19–20. But there's no evidence that the activities performed *on the vessel* were more substantial than in an ordinary project of this type. True, the Danos project manager did testify that "both Danos and Genesis contemplated this substantial use of the [vessel] at the time of contracting for the repair work." Id at 7. But this statement doesn't itself provide evidence of the *actual role* anticipated by the parties for the vessel—and that is the point under consideration. Without more, then, such testimony isn't sufficient to resolve the issue as a matter of law.

In sum, the undisputed evidence as to the terms of the Danos/Genesis contract and the expectations of the parties under it don't clearly establish that they anticipated platform-repair work under the contract to involve a substantial role for the vessel.

c. Work performed on the vessel

As noted above, the Fifth Circuit holds that, where the scope of a contract and the parties' expectations under it aren't determinative, "courts may permit the parties to produce evidence of the work actually performed and the extent of vessel involvement in the job." *Doiron*, 879 F3d at 577; see also *Earnest*, 90 F4th at 813. It's thus pertinent to consider whether the vessel ultimately played a substantial role in the actual work performed under the Danos/Genesis contract.

As to actual performance under the contract, the parties don't dispute that the following activities took place *on the vessel*:

- The job plan stated that the crew would live on the vessel. Crew members would eat breakfast and dinner on the vessel, with lunch being on the platform. Dkt 34-12 at 11 (deposition of Genesis Energy, LP crane operator). Danos didn't charge Genesis for time the crew was sleeping aboard the vessel. Dkt 40-3 at 4 (deposition of Danos corporate representative). To the extent that the Genesis Defendants argue that some Danos crew members were paid for time on board the vessel, Dkt 46 at 13–14, those crew members were only paid on days when the crew didn't work on the platform because of weather and when the vessel was traveling to and from the platform location. See Dkts 38-4 at 5 & Dkt 46-1.
- Equipment was transferred back and forth from the vessel to the platform and stored on the vessel for at least some time. Dkt 40-3 at 5 (deposition of Danos corporate representative). But Danos didn't fabricate, assemble, or use any equipment on the vessel. Id at 4–5.
- The Danos crew signed daily job-safety analyses on the vessel. Dkt 34-7 at 3 (deposition of Danos corporate representative). But full safety meetings were held on the platform. Dkt 48-2 at 4 (deposition of Plaintiff).
- Diesel was pumped from the vessel to assist Danos's work on the platform—but the fuel pumping was done by vessel personnel, not Danos personnel. Dkt 34-12 at 11–12 (deposition of Genesis crane operator) & 40-7 at 3 (deposition of Botruc corporate representative).

The parties also don't dispute that the following activities took place *on the platform*:

- The job plan required Danos to "extend the egress ladder down to plus 12 and install cages around the ladders; replace grating on plus 12; barricade missing handrails and holes in deck; inspect fire extinguishers and life saving devices, and drain oil from CHOPs pig launcher and receiver"—all work that would be performed aboard the platform and not the vessel. Dkt 40-3 at 3–4 (deposition of Danos corporate representative).
- The equipment that Danos charged to Genesis for the job included a tool container, two welding machines, one bottle rack, two sets of rope access gear, and lights—all of which were used on the platform, not the vessel. Id at 5; Dkt 34-12 at 8 (deposition of Genesis Energy, LP crane operator).
- The tool container, which contained the tools used to perform the repairs on the platform, was stored on the platform for the entirety of the job. Dkt 40-5 at 4 (deposition of Plaintiff).
- All of the repair work was performed on the platform. Dkt 40-9 at 3 (deposition of Danos employee Arturo Cornejo).

As noted above, a vessel doesn't play a substantial role if it's used for nothing more than transportation. See *Crescent Energy*, 896 F3d at 361. In *Crescent*, the vessel at issue was used for a contract to plug and abandon wells on offshore platforms. Id at 352. The vessel provided living quarters for the crew, housed equipment, doubled as an additional platform for the plugging and abandoning operations, and permanently housed the only crane involved in the platform work. Id at 352–53, 360. The crane transported equipment and materials back and forth from the vessel to the platform. Id at 360. However, the wireline unit—which was "central" to the contract—was

"substantially controlled from" the vessel. Id at 360–61. Likewise, other equipment that couldn't be moved onto the platforms was also operated from the vessel. Id at 361. The Fifth Circuit held that these activities meant that the vessel was contemplated to have a substantial role in the contract. Ibid.

By contrast here, the vessel didn't play a role beyond transportation and storage. The equipment stored on the vessel under the Danos/Genesis contract didn't remain on the vessel—it was transported to the platform and used only there. And the platform work was in no way controlled from the vessel. As in *Crescent*, the vessel here did transport and store equipment and house the crew, but it didn't do more. *Crescent* thus doesn't indicate that the vessel played a substantial role in the Danos/Genesis contract.

The Genesis Defendants claim that more than just transportation occurred on the vessel because the Botruc vessel logs only list a small percentage of hours spent on transportation. Citation to the logs in this respect isn't meaningful. True, seventy-six percent of hours logged were for "serving as a base of operations/work platform." See Dkt 46 at 12. But those hours didn't involve Danos performing the contracted-for platform repair work onboard the vessel. Instead, those hours are logged as "cargo ops"—meaning transporting equipment and personnel to and from the platform, running "weather patterns," and "drifting GB72" (as in, drifting near the platform). See Dkt 34-17 (vessel logs).

At best, the logs show that three hours of work related to the platform repair contract were performed from the vessel, being the pumping of fuel to the rig at some point after noon on November 26, 2020. Id at 6. But as observed by the Eastern District of Louisiana, "loading and offloading items, called for under the [contract] as part of the transportation process, must be ignored" in determining whether the vessel plays a substantial role. *Matter of Offshore Oil Services, Inc*, 663 F Supp 3d 594, 614 (ED La 2023). Three hours of pumping fuel from the vessel to the

platform simply aren't enough to establish that the vessel was contemplated to have a substantial role in the work.

The Genesis Defendants also cite *Barrios v Centaur, LLC*, 942 F3d 670 (5th Cir 2019). It's inapposite. The Fifth Circuit there held that the parties contemplated the vessel to have a substantial role in a contract to install a concrete containment rail on a dock. Id at 674, 682. As evidence of the substantial role, the court cited the parties' awareness that the vessel was necessary to mix and pour the concrete for the containment rail. Id at 681. The parties also recognized that the vessel was a "necessary work platform" and "a flexible area for other endeavors related to the construction work." Ibid. And the crew used the barge for "activities related to construction, including storing and packing tools, holding safety meetings, taking breaks, and eating lunch." Id at 681–82.

The *Barrios* employees spent more time—and more work-related time—on the vessel than Danos employees spent on the Botruc vessel here. For example, the Danos employees held safety meetings and ate lunch on the platform, not the vessel. They were transferred back and forth only at the beginning and end of each day. There's no evidence of "other endeavors" related to the contracted-for platform repair work occurring on the vessel here. *Barrios* thus doesn't indicate that the Botruc vessel was anticipated to have a substantial role in the contract.

Nor does the Fifth Circuit's recent opinion in *Earnest* dictate finding a substantial role for the vessel. There, the owner of the offshore platform hired contractors to repair lifeboats attached to the platform. *Earnest*, 90 F4th at 806–07. Having characterized lifeboats as vessels, it was clear that the contract to repair the lifeboats was a traditional maritime activity. Id at 812–13. Whereas repairing a vessel is in itself directly linked to "operation of a ship, its navigation, and its management afloat," repairing a platform is decidedly not. See id at 810. Maritime law generally doesn't extend to events that are confined to fixed platforms. *Crescent Energy*, 896 F3d at 355–56. And all contracted-for work here took place on the fixed platform,

not the vessel. And unlike in *Earnest*, the nature of the contract between Danos and the Genesis Defendants wasn't directed toward maritime commerce. The focus was instead on repairs to the fixed offshore platform.

The Genesis Defendants also argue that the parties must have expected the vessel would play a substantial role in the contracted-for repairs because the repairs couldn't have happened if the vessel didn't transport the necessary fuel, house the crew members, and provide access to storage and equipment that couldn't be stored on the damaged platform. See Dkt 46 at 8–11. But that logic is circular. Vessels are *always* necessary to transport staff and equipment offshore. That doesn't mean that the vessel *always* plays a substantial role in the offshore work. Indeed, *Crescent* makes clear that the test for whether a contract is maritime in nature isn't simply whether the work couldn't have been done but-for the vessel. See 896 F3d at 361: "A vessel's being indispensable may not equate to its role being 'substantial.'"

Beyond this, when determining whether the vessel played a substantial role, courts must consider "not only the time spent on the vessel but also the relative importance and value of the vessel-based work to completing the contract." *Doiron*, 879 F3d at 576 n 47. Here, there was no vessel-based work. But even if some of the activities described above as performed on the vessel could be construed as part of the contracted-for work, their relative importance and value to completing the contract is considerably less than the repair work performed on the platform.

In sum, the undisputed facts establish as a matter of law that the Danos/Genesis contract didn't provide, and the parties neither expected, nor did performance actually entail, that the vessel would play a substantial role in the completion of the contracted-for platform repairs.

4. Conclusion

Given the determinations above, the Danos/Genesis contract isn't maritime in nature. This means that federal

maritime law doesn't apply of its own force. Instead, the law of Louisiana, as the adjacent state, applies as surrogate federal law under OCSLA. This means in turn that the indemnity provision is unenforceable, and so Danos isn't obligated to defend or indemnify the Genesis Defendants against Plaintiff's claims in this action.

The motion by Defendants Genesis Energy LP and Genesis Energy LLC for summary judgment is DENIED. Dkt 34.

The cross-motion by Defendant Danos LLC for summary judgment is GRANTED. Dkt 40.

As such, the cross-claim by the Genesis Defendants seeking defense and indemnity with respect to Plaintiff's claims is DISMISSED.

SO ORDERED.

Signed on March 22, 2024, at Houston, Texas.

Hon. Charles Eskridge
United States District Judge