

Fifth Circuit Court of Appeal State of Louisiana

No. 26-C-379

JEREMIAH BELL

versus

ATALCO, LLC, ATALCO GRAMERCY, LLC, ET AL.

IN RE ATALCO, LLC AND ATALCO GRAMERCY, LLC
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-THIRD JUDICIAL DISTRICT
COURT, PARISH OF ST JAMES, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
CODY M. MARTIN, DIVISION "B", No. 42,282

TRUE COPY

September 23, 2026



LINDA TRAN
DEPUTY CLERK

Panel composed of Judges Susan M. Chehardy,
Fredericka Homberg Wicker, and Jude G. Gravois

WRIT DENIED

Relators, Atalco, LLC and Atalco Gramercy, LLC (Atalco), seek supervisory review of the trial court's July 15, 2026 judgment denying their motion for summary judgment. After *de novo* review, for the reasons that follow, we deny the writ application.

BACKGROUND

This litigation concerns claims for personal injury arising from the alleged injurious exposure of Plaintiff, State Trooper Jeremiah Bell, to a hazardous chemical during a traffic stop. On June 11, 2024, Plaintiff filed suit wherein he alleged that, on July 17, 2023, he was exposed to sodium hydrosulfide vapor released from a

tanker truck shortly after it departed Atalco's facility in Gramercy, Louisiana. Plaintiff sued Atalco (the buyer of the chemical); TDC, LLC (the seller of the chemical); Davison Transportation Services, LLC and Genesis Energy, LLC (the transporter of the chemical); and Seymour Scaife (the driver of the chemical tanker truck), alleging claims of intentional tort,¹ statutory negligence,² negligence *per se*,³ *res ipsa loquitor*,⁴ and general negligence.⁵

¹ Paragraph 24 of Plaintiff's Second Supplemental and Amending Petition for Damages for Chemical Exposure alleges:

The actions of Defendants were willful and in violation of the applicable safety standards and statutes and in the failure to perform proper testing and inspection procedures on the facility and in its equipment and vehicles and, as a result, Defendants' conduct constitutes *negligence per se*.

² See n.1, *supra*.

³ See n.1, *supra*.

⁴ Paragraph 25 of Plaintiff's Second Supplemental and Amending Petition for Damages for Chemical Exposure alleges:

The injuries and damages suffered by petitioner were caused by acts and omissions of Defendants which acts or omissions may be beyond proof of plaintiff herein, but which are within the knowledge and control of Defendants, in that the release of hazardous and/or toxic substances should not have occurred had Defendants exercised the degree of care imposed upon Defendants in the handling of hazardous and/or toxic substances, and plaintiff therefore pleads the doctrine of *res ipsa loquitor*.

⁵ Paragraph 26 of Plaintiff's Second Supplemental and Amending Petition for Damages for Chemical Exposure alleges against Atalco specifically:

The negligence of ATALCO, their agents, servants, and/or employees, included but not limited to the following acts and/or omissions:

A. In allowing to exist a hazardous situation consisting of the opened valve which emitted noxious gas;

B. In habitually allowing to exist a hazardous situation consisting of opened valves on delivery trucks which emitted noxious gas;

C. In failing to discover or close the open valve;

D. In failing to properly inspect the tank truck to assure that equipment and personnel were fit for its intended purpose;

E. In instructing Defendant SCAIFE, and other similarly situated drivers, to leave the valve open when he left the plant;

F. In acting in a careless and negligent manner without due regard for the safety of others;

As it relates to Atalco, Plaintiff asserted that Atalco owed and breached a duty to him to ensure that the driver (Scaife) of the transporter's (Davison) truck depressurized the tanker prior to leaving the unloading pad at the Atalco facility, and that this omission was a cause of his exposure and alleged injuries. On May 4, 2026, Atalco moved for summary judgment, seeking dismissal of Plaintiff's claims against it on the basis that it did not owe a duty to Plaintiff and, alternatively, that, even if it did, there is no evidence it breached said duty. In support of its motion, Atalco submitted seven exhibits, including the deposition transcripts of Plaintiff, Mr. Scaife, Trooper Barry Domangue (the investigating officer), Nicholas Fangue and Paul Prewitt (Atalco corporate representatives), and James Johnson (an Atalco employee), as well as TDC's responses to Atalco's discovery requests with multiple attachments, including the Atalco purchase order, the sales contract between Atalco and TDC, and the terms and conditions governing those agreements.

In opposition, Plaintiff likewise submitted seven exhibits, including the deposition transcripts of Plaintiff, Mr. Scaife, Trooper Domangue, Mr. Fangue, Mr. Prewitt, and Mr. Johnson, as well as the Affidavit of Trooper Domangue and attached incident report, which included a copy of Atalco's standard operating procedures. Davison also opposed Atalco's motion and likewise submitted seven exhibits, including the deposition transcripts of Plaintiff, Mr. Scaife, Trooper Domangue, Mr. Fangue, Mr. Prewitt, and Mr. Johnson, as well as Plaintiff's petition for damages. The crux of the opposition is that Atalco owed Plaintiff a general duty

G. In failing to promulgate, implement and enforce rules and regulations pertaining to the safe operation of the task being employed at the time of the accident which, if they had been so promulgated, implemented and enforced, would have averred said accident;

H. Failing to take appropriate action to avoid or mitigate the accident; and

I. Negligent implementation of policies and procedures to maintain and operate the plant.

to exercise reasonable care and breached that duty by directing Mr. Scaife to leave the unloading area before he completed the depressurization process, leading Mr. Scaife to depart the facility with the tanker's vent valve open after delivering the chemical to Atalco.

The matter came for hearing before the trial court on July 6, 2026. Following oral argument, the court ruled from the bench, finding that Atalco did owe Plaintiff a general duty under La. C.C. art. 2315 and that there are genuine issues of material fact as to whether Atalco breached that duty. As a result, the trial court denied summary judgment, assigning the following reasons:

[I] think the fact that we've been here for an hour, going back and forth on some of this stuff, I think that the crux of what this Court needs to determine in its mind was: Is there a duty to the Plaintiff in this matter, or is there a legally recognized duty? And then I think if we get past that issue, then I think just the facts of this particular case, in and of itself, show that there are genuine issues of material fact all over the place that need to go to a fact finder.

I don't see anything here that's some kind of statutory duty, but I do believe that there is a general negligence duty that's going to ultimately probably result in a comparative fault determination between Davison and Atalco, if there's any fault found, then a comparative analysis. But it seems like this is what this particular case comes down to.

So, for the summary judgment that has been filed, I'm going to deny the summary judgment on the record at this time. I am going to find that there is at least a duty under 2315, a general negligence duty. Based upon the standard operating procedures and just based on 2315 in and of itself, for the particular plaintiff at issue here, there is a duty not to be exposed to these chemicals, using the standard operating procedure and the testimony that was given to determine that it was at least recognized by the parties here that there was some potential harm that could be caused to a third party for the reasons that there is a standard operating procedure on, "Let's make sure a procedure is followed to prevent a particular harm."

So, the Court will find that there is a duty, that this is probably a comparative fault case that needs to go to the fact finder, and I'm going to deny summary judgment at this time on the record.

On July 15, 2026, the trial court issued a signed judgment denying Atalco's motion for summary judgment. This timely writ application followed.

DISCUSSION

Appellate courts review summary judgment rulings *de novo*, applying the same criteria as the trial court. *Millet v. Moran Foods, LLC*, 23-227 (La. App. 5 Cir. 3/13/24), 384 So.3d 1074, 1076. Summary judgment is proper only when the evidence shows no genuine issue of material fact and the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). It is not appropriate where the trier of fact must weigh conflicting evidence or make credibility determinations. *Warden v. Richoux*, 06-702 (La. App. 5 Cir. 2/27/07), 952 So.2d 828, 832, *writ denied*, 07-918 (La. 6/22/07), 959 So.2d 499.

The existence of a duty is a question of law. Louisiana recognizes an “almost universal duty” to exercise reasonable care to avoid injury to others. *Rando v. ANCO Insulations, Inc.*, 08-1163 (La. 5/22/09), 16 So.3d 1065, *abrogated by statute on unrelated grounds recognized in Pete v. Boland Marine & Mfg. Co., LLC*, 23-170 (La. 10/20/23), 379 So.3d 636, *reh’g denied*, 23-170 (La. 12/7/23), 374 So.3d 135. Louisiana Civil Code Article 2315 provides that every act of man that causes damage to another obliges the person at fault to repair it. Article 2316 extends this principle, providing that every person is responsible for damage occasioned not merely by his act, but by his negligence, imprudence, or want of skill. The “no duty” defense is “seldom appropriate” and applies only where a clear rule of law forecloses liability. *Zimko v. American Cyanamid*, 03-658 (La. App. 4 Cir. 6/8/05), 905 So.2d 465, 482, *writ denied*, 05-2102 (La. 3/17/06), 925 So.2d 538. Here, the record contains Atalco’s own Standard Operating Procedures requiring depressurization before departure, testimony acknowledging that failure to depressurize would violate those procedures, and evidence that Atalco had no designated area for depressurization and no system to ensure compliance. These materials support the trial court’s

conclusion that Atalco owed a general duty of reasonable care to prevent foreseeable harm associated with chemical releases.

The record also contains conflicting evidence regarding breach. Mr. Scaife testified that there was nowhere at the facility for him to close the valve and no designated blow-down area. Plaintiff and Trooper Domangue testified to prior incidents involving venting tankers leaving the same facility, contradicting Atalco's claim of having no knowledge of prior issues. Atalco's corporate representatives acknowledged that operators did not consistently oversee unloading procedures despite Atalco's written requirements to do so, and the only operator on duty during the subject incident had no recollection of the driver or what instructions were given to him. These disputes bear directly on whether Atalco breached its duty.

On the showing made, Atalco did not meet its burden of demonstrating the absence of genuine issues of material fact or entitlement to judgment as a matter of law. Based on our *de novo* review, we find that there are genuine issues of material fact at this time regarding whether Atalco exercised operational control, whether its procedures were followed, whether its facility afforded a safe location to depressurize, and whether its conduct contributed to Plaintiff's exposure. Summary judgment is therefore inappropriate at this time.

CONCLUSION

For the foregoing reasons, we deny the writ application.

Gretna, Louisiana, this 23rd day of September, 2026.

**FHW
SMC
JGG**

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
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JUDGES



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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **09/23/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-C-379

E-NOTIFIED

23rd Judicial District Court (Clerk)
Honorable Cody M. Martin (DISTRICT JUDGE)
Dan Boudreaux (Respondent)
Ross F. Lagarde (Respondent)

Brett M. Bollinger (Relator)
Jeffrey E. McDonald (Relator)
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