

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2026 CA 0230

JESSICA CHAUVIN

VERSUS

EXPRESS WELD, L.L.C. AND CHRISTOPHER DESCANT

JUDGMENT RENDERED: SEP 28 2026

Appealed from the Seventeenth Judicial District Court
Parish of Lafourche • State of Louisiana
Docket Number 149005 • Division C

The Honorable Marla M. Abel, Presiding Judge

Jacob G. Powell
New Orleans, Louisiana

COUNSEL FOR APPELLANT
PLAINTIFF—Jessica Chauvin

Brett M. Bollinger
Jeffrey E. McDonald
Brad D. Ferrand
L. Peter Englande
Darren M. Guillot
Michael J. Gautier, Jr.
Covington, Louisiana

COUNSEL FOR APPELLEES
DEFENDANTS—Express Weld,
LLC and Christopher Descant

BEFORE: THERIOT, GREENE, AND EDWARDS, JJ.

Mit
Theriot, J. concurs
J. GREENE, J. concurs.

EDWARDS, J.

Plaintiff, who was employed by Acme Truck Line, Inc., was injured while picking up a delivery at Express Weld, LLC. Plaintiff sued both Express Weld and its employee for personal injuries. The district court granted a motion for summary judgment in favor of Express Weld and its employee, dismissing all of Plaintiff's claims against them with prejudice. Plaintiff appealed. Express Weld and its employee filed an answer to the appeal, seeking reversal of the district court's denial of its motion *in limine* to exclude Plaintiff's expert's report and opinions. For the reasons that follow, we reverse the summary judgment, and we deny the answer to the appeal.

FACTS AND PROCEDURAL HISTORY

On or about June 12, 2023, Plaintiff, Jessica Chauvin, was working as a flatbed truck driver for Acme Truck Line, Inc., a position she held for approximately one year prior. On that date, Acme sent Chauvin to pick up fabricated steel walkway structures ("materials") at Express Weld in Golden Meadow, Louisiana. Chauvin stood nearby in a "safe zone" while an employee of Express Weld, Christopher Descant, loaded the materials onto the Acme truck using a forklift. While attempting to rearrange the materials to make them stable for transport, Descant pushed the materials off the trailer using the forklift, which caused the materials to become tangled. Descant then attempted to drag and separate the materials using the forklift. As he was doing so, Chauvin walked over to the materials to help separate them, and some of the materials fell on her foot. Chauvin suffered severe injuries to her left foot, ultimately requiring amputation of two of her toes.

On December 12, 2023, Chauvin filed a lawsuit against Express Weld and Descant (collectively "Defendants") for failing to train employees, failing to pay proper attention, failing to warn, failing to properly load and secure the materials, failing to adopt or follow policies and procedures, and failing to provide adequate

training. Chauvin also alleged that Descant was, upon information and belief, acting in the course and scope of his employment with Express Weld at the time of the accident.

Defendants filed a motion for summary judgment on March 26, 2025. Therein, Defendants argued (1) Chauvin’s negligence was the sole legal cause of the subject accident and her resultant injury; (2) the hazard was open and obvious; and (3) there was no evidence of substandard conduct on behalf of Defendants. In support of their motion, Defendants attached excerpts from Chauvin’s deposition; certified records from Acme; the affidavit of Jay Ougel, Express Weld’s safety manager; the deposition of Ougel, in his capacity as Express Weld’s corporate designee pursuant to La. C.C.P. art. 1442; and excerpts from Descant’s deposition. Defendants also referred to Chauvin’s petition for damages throughout the motion.¹

Chauvin opposed Defendants’ motion for summary judgment, arguing that Defendants violated several Express Weld policies, Occupational Safety and Health Administration (“OSHA”) standards,² and industry best practices on the date of the accident, which created a dangerous environment that directly caused Chauvin’s injury. Chauvin attached the following evidence to her opposition: Chauvin’s deposition; Descant’s deposition; Ougel’s deposition; and the affidavit of Chauvin’s safety and health expert, Carl Andrew McKewen.

Defendants filed a motion *in limine* to exclude the report and opinions of McKewen on May 23, 2025. Defendants asserted that McKewen’s opinion was

¹ Any document that may be filed or referenced in support of or in opposition to a motion for summary judgment, which is listed in La. C.C.P. art. 966(A)(4)(a) and previously filed into the record of the cause, may be specifically referenced and considered by listing with the motion the document by title and date of filing. See La. C.C.P. art. 966(A)(4)(b). The party shall concurrently with the filing of the motion or opposition furnish to the court and the opposing party a copy of the entire document with the pertinent part designated and the filing information. La. C.C.P. art. 966(A)(4)(b). Failure to comply with the requirements of La. C.C.P. art. 966(A)(4)(b) may be grounds for an objection requesting that the court not consider the referenced document. La. C.C.P. art. 966—2023 Comments, cmt. (b). No such objection was raised here.

² The parties do not dispute that Express Weld is subject to OSHA standards.

inadmissible because “he considered little information, ignored substantive evidence and facts about the incident which contradict his opinion, failed to follow his own stated methodology for accident investigation, and reverse-engineered his opinion to reach a desired, but untenable, conclusion.” Defendants also objected to McKewen’s affidavit in a timely-filed reply memorandum.

In support of their motion *in limine*, Defendants attached the following exhibits: (1) McKewen’s report; (2) excerpts from Descant’s deposition; (3) certified records from Acme; (4) excerpts from Chauvin’s deposition; and (5) excerpts from Ougel’s deposition. Chauvin opposed the motion *in limine*.

The district court held a hearing on Defendants’ motion for summary judgment and motion *in limine* on August 6, 2025. The district court first considered the motion *in limine*. Neither party introduced any evidence into the record in connection with the motion *in limine*; nevertheless, the district court found the elements of La. C.E. art. 702 were met and denied the motion *in limine*. After then hearing argument on Defendants’ motion for summary judgment, the district court granted Defendants’ motion. The district court signed a judgment memorializing its in-court rulings on August 21, 2025, and dismissed Chauvin’s claims against Defendants with prejudice.³

The district court issued written reasons for judgment as to the motion for summary judgment on September 22, 2025, pursuant to Chauvin’s written motion. Therein, the district court stated Chauvin lacked factual support for the cause-in-fact element of her negligence claim based on the undisputed facts that (1) the materials would not have fallen had Chauvin not touched them; and (2) the accident would not have happened if Chauvin had not tried to untangle the materials.

³ Notice of signing of judgment was mailed on August 28, 2025. Chauvin e-filed a motion and order for devolutive appeal on September 8, 2025. The district court signed the order granting Chauvin a devolutive appeal on September 15, 2025.

On appeal, Chauvin listed the following assignments of error:

1. The District Court erred in granting Defendants-Appellees' Motion for Summary Judgment as there are genuine issues of material fact regarding Express Weld's duties as a controlling employer, its breach of those duties, and causation.
2. The District Court erred in its liability and negligence analysis by limiting its review to cause-in-fact and failing to consider Express Weld's duties to conduct hazard assessments, enforce [personal protection equipment ("PPE")] requirements, establish safety protocols, and supervise forklift operations involving third parties.
3. The District Court erred in granting summary judgment when Louisiana's comparative fault system requires jury determination of fault allocation among multiple parties.

Defendants filed an answer to the appeal, arguing that this court should reverse the district court's ruling denying their motion *in limine* to exclude McKewen's opinions.

MOTION IN LIMINE

If a timely objection is made to an expert's qualifications or methodologies in support of or in opposition to a motion for summary judgment, any motion in accordance with La. C.C.P. art. 1425(F)⁴ to determine whether the expert is qualified or the expert's methodologies are reliable shall be filed, heard, and decided prior to the hearing on the motion for summary judgment. La. C.C.P. art. 966(D)(3).

The admissibility of expert testimony is governed by La. C.E. art. 702(A), which creates a five-element test to determine the admissibility of expert testimony.

Crawford v. Ordoyne, 2024-0716 (La. App. 1 Cir. 3/20/25), 410 So.3d 998, 1006.

Article 702(A) provides:

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

⁴ Louisiana Code of Civil Procedure article 1425(F) sets out in detail the procedure which should be followed in order to challenge the qualifications of an expert or the methodology used by the expert in reaching his opinion. **Crawford v. Ordoyne**, 2024-0716 (La. App. 1 Cir. 3/20/25), 410 So.3d 998, 1005-06.

- (1) 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;
- (2) The testimony is based on sufficient facts or data;
- (3) The testimony is the product of reliable principles and methods; and
- (4) The expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

The burden of proof on a motion *in limine* lies with the mover. See Outdoor Powerhouse, LLC v. Brown & Brown of Louisiana, LLC, 2023-0823 (La. App. 1 Cir. 11/7/23), 2023 WL 7410734 (unpublished writ action), writ denied, 2024-00020 (La. 2/27/24), 379 So.3d 1267. The decision to admit or exclude expert testimony in ruling on a motion *in limine* is within the sound discretion of the district court, and its judgment will not be disturbed by an appellate court unless it is clearly erroneous. Vicknair v. Plaisance, 2024-1168 (La. App. 1 Cir. 8/21/25), 420 So.3d 749, 765, writ denied, 2025-01185 (La. 11/25/25), 421 So.3d 532.

In their answer to the appeal, Defendants allege the district court erred in denying their motion *in limine* to exclude the opinions and testimony of Chauvin's expert, McKewen. Upon review of the record before us on appeal, we find Defendants failed to formally admit any evidence at the hearing in support of their motion *in limine*. While certain documentary evidence was made part of the district court record by attaching it to memoranda (and was presumably reviewed by the district court), this evidence was never introduced at the hearing and was not properly made part of the record.

Evidence not properly and officially offered and introduced cannot be considered, even if it is physically placed in the record. Landis Construction Co., L.L.C. v. State, 2015-1167 (La. App. 1 Cir. 2/29/16), 199 So.3d 1, 2-3 (citing Denoux v. Vessel Mgmt. Servs., Inc., 2007-2143 (La. 5/21/08), 983 So.2d 84, 88). Documents attached to memoranda do not constitute evidence and cannot be

considered as such on appeal. **Landis Const. Co.**, 199 So.3d at 3. Appellate courts are courts of record and may not review evidence that is not in the appellate record, or receive new evidence. **Landis Const. Co.**, 199 So.3d at 3. For these reasons, we find Defendants failed to carry their burden of proof on their motion *in limine* and that the district court properly denied the motion *in limine*. See **Outdoor Powerhouse**, 2023 WL 7410734. Accordingly, McKewen's opinions will be considered in opposition to Defendants' motion for summary judgment. See La. C.C.P. art. 966(D)(2).

MOTION FOR SUMMARY JUDGMENT

After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). The summary judgment procedure is favored and is designed to secure the just, speedy, and inexpensive determination of every action. La. C.C.P. art. 966(A)(2).

The only documents that may be filed or referenced in support of or in opposition to the motion are pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, certified copies of public documents or public records, certified copies of insurance policies, authentic acts, private acts duly acknowledged, promissory notes and assignments thereof, written stipulations, and admissions. La. C.C.P. art. 966(A)(4)(a). The court shall consider only those documents filed or referenced in support of or in opposition to the motion for summary judgment but shall not consider any document that is excluded pursuant to a timely filed objection. La. C.C.P. art. 966(D)(2).

The burden of proof is on the mover. La. C.C.P. art. 966(D)(1). Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion, the mover's burden does not require that all essential elements

of the adverse party's claim, action, or defense be negated. Rather, the mover must point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, the adverse party must produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. La. C.C.P. art. 966(D)(1). If, however, the mover fails in his burden to show an absence of factual support for one or more of the elements of the adverse party's claim, the burden never shifts to the adverse party, and the mover is not entitled to summary judgment. **Jablonski v. Capital Pools, L.L.C.**, 2023-0924 (La. App. 1 Cir. 5/8/24), 390 So.3d 924, 930, writ denied, 2024-00946 (La. 11/6/24), 395 So.3d 1173.

In ruling on a motion for summary judgment, the district court's role is not to evaluate the weight of the evidence or to determine the truth of the matter, but instead to determine whether there is a genuine issue of triable fact. **Jablonski**, 390 So.3d at 930. A "genuine" issue is a triable issue, which means that an issue is genuine if reasonable persons could disagree. If on the state of the evidence, reasonable persons could reach only one conclusion, there is no need for a trial on that issue. A fact is "material" when its existence or nonexistence may be essential to a plaintiff's cause of action under the applicable theory of recovery. However, simply showing the presence of disputed facts is insufficient if there is no legal issue presented by those contested facts. **Jablonski**, 390 So.3d at 930.

In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that governs the district court's determination of whether summary judgment is appropriate. **Jablonski**, 390 So.3d at 930-31. Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to the case. **Jablonski**, 390 So.3d at 931.

Negligence Principles

In her petition, Chauvin asserted claims against Defendants based on both negligence under La. C.C. art. 2315⁵ and premises liability under La. C.C. arts. 2317⁶ and 2317.1.⁷ A negligence claim typically focuses on whether the defendant's conduct in allowing an unreasonably dangerous condition to exist on his premises is negligent, while a premises liability claim focuses on whether the thing itself is defective, *i.e.*, unreasonably dangerous. **Cunningham v. Borden Dairy Company of Texas, LLC**, 2024-0104 (La. App. 1 Cir. 12/6/24), 2024 WL 5000134, *3 (unpublished), writ denied, 2025-00030 (La. 4/1/25), 404 So.3d 653. Regardless of whether a claim arises in negligence under La. C.C. art. 2315 or in premises liability under La. C.C. arts. 2317 and 2317.1, the defendant's liability is determined under the same duty/risk analysis. **Farrell v. Circle K Stores, Inc.**, 2022-00849 (La. 3/17/23), 359 So.3d 467, 473.

Under the duty/risk analysis, the plaintiff must prove five separate elements: (1) the defendant had a duty to conform his conduct to a specific standard (the duty element); (2) the defendant's conduct failed to conform to the appropriate standard (the breach element); (3) the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries (the cause-in-fact element); (4) the defendant's substandard conduct was a legal cause of the plaintiff's injuries (the scope of duty element); and

⁵ Louisiana Civil Code article 2315(A) provides: "Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it."

⁶ Louisiana Civil Code article 2317 provides, in pertinent part: "We are responsible, not only for the damage occasioned by our own act, but for that which is caused by the act of persons for whom we are answerable, or of the things which we have in our custody."

⁷ Louisiana Civil Code article 2317.1 provides:

The owner or custodian of a thing is answerable for damage occasioned by its ruin, vice, or defect, only upon a showing that he knew or, in the exercise of reasonable care, should have known of the ruin, vice, or defect which caused the damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care. Nothing in this Article shall preclude the court from the application of the doctrine of *res ipsa loquitur* in an appropriate case.

(5) proof of actual damages (the damages element). If the plaintiff fails to prove any one element by a preponderance of the evidence, the defendant is not liable. **Farrell**, 359 So.3d at 473.

At trial, Chauvin would bear the burden of proving the elements of her claims against Defendants. Thus, to prevail on summary judgment, Defendants were required to show an absence of factual support for one or more of the elements of Chauvin's cause of action. See La. C.C.P. art. 966(D)(1); **Farrell**, 359 So.3d at 473. If Defendants successfully carried their burden, the burden would then shift to Chauvin to produce factual support sufficient to establish the existence of a genuine issue of material fact or that Defendants are not entitled to judgment as a matter of law. See La. C.C.P. art. 966(D)(1).

Discussion

In this case, Defendants argued in their motion for summary judgment that (1) Chauvin's negligence was the sole legal cause of her injuries (or stated differently, Defendants' negligence was not a legal cause of the injuries), which is addressed in the scope-of-the-duty element; (2) the dangerousness of the yard was open and obvious, which is addressed in the breach element⁸; (3) there was no evidence that Defendants' conduct was substandard such that a duty was breached, which is also addressed in the breach element; and (4) there was no evidence Defendants' actions or inactions were a cause of the accident, which is addressed in the cause-in-fact element. Therefore, the district court could grant summary judgment, and this court can affirm, only as to the scope-of-the-duty element, cause-in-fact element, or the breach element. See La. C.C.P. art. 966(F).

⁸ To the extent Defendants argue no duty was owed because the dangerousness of the yard and Descant's operations were "open and obvious," we note at the outset that whether a condition is open and obvious is embraced within the breach of the duty element of the duty/risk analysis and is not a jurisprudential doctrine barring recovery; rather it is only a factor of the risk/utility balancing test. **Farrell**, 359 So.3d at 478.

The Breach Element

Each person has, with limited exception, the duty to exercise reasonable care and keep that which is within his or her custody free from an unreasonable risk of harm. **Farrell**, 359 So.3d at 478. Whether there was a breach of that duty is a question of fact or a mixed question of law and fact. See Farrell, 359 So.3d at 474. Louisiana courts apply the risk/utility balancing test to make this determination. The risk/utility balancing test requires consideration of four pertinent factors: (1) the utility of the complained-of condition; (2) the likelihood and magnitude of harm, including the obviousness and apparentness of the condition; (3) the cost of preventing the harm; and (4) the nature of the plaintiff's activities in terms of social utility or whether the activities were dangerous by nature. **Farrell**, 359 So.3d at 474. If the application of the risk/utility balancing test results in a determination that the complained of hazard is not an unreasonably dangerous condition, a defendant is not liable because there was no duty breached. **Farrell**, 359 So.3d at 478. Whether a risk is unreasonable is a factual matter that must be determined in light of each particular case's facts and circumstances and resolved on a case-by-case basis, not a simple rule of law which can be applied mechanically to the facts of the case. **Blackwell v. Bellsouth Telecommunications, LLC**, 2025-0728 (La. App. 1 Cir. 5/14/26), ___ So.3d ___, ___, 2026 WL 1354465, *5. Summary judgment, based on the absence of liability, may be granted upon a finding that reasonable minds could only agree that the condition was not unreasonably dangerous; therefore, the defendant did not breach the duty owed. **Farrell**, 359 So.3d at 478.

Defendants focused their argument on the "open and obvious" nature of the risks inherent in Express Weld's yard and Descant's forklift operation, which is addressed in the second factor of the risk/utility balancing test—the likelihood and magnitude of the harm. **Farrell**, 359 So.3d at 478. The likelihood of the harm factor asks the degree to which the condition will likely cause harm. **Farrell**, 359 So.3d at

474. If the condition is likely to cause harm, that weighs in favor of finding it unreasonably dangerous. If it is unlikely to cause harm, that weighs in favor of it not being unreasonably dangerous. The magnitude of the harm factor asks whether the condition presents a risk of great or small injury and the likelihood of each. **Farrell**, 359 So.3d at 474. For a hazard to be considered open and obvious, it must be one that is open and obvious to all who may encounter it. **Farrell**, 359 So.3d at 478. The open and obvious concept asks whether the complained-of condition would be apparent to any reasonable person who might encounter it. If so, that reasonable person would avoid it, and the factor will weigh in favor of finding the condition not unreasonably dangerous. **Farrell**, 359 So.3d at 478.

Defendants argued that the materials were obviously heavy and that “[a]ny reasonable person can appreciate the risk inherent in approaching, being in the vicinity of, or attempting to handle the [materials] during that loading activity.” While that may be true, the open and obviousness of the risk inherent in being present in the Express Weld yard during forklift operations is only *one* consideration for *one* element of the risk/utility balancing test for determining whether Defendants breached a duty owed to Chauvin. See Jimenez v. Omni Royal Orleans Hotel, 2010-1647 (La. App. 4 Cir. 5/18/11), 66 So.3d 528, 534 (“[S]imply because a condition may be open and obvious . . . does not *necessarily* result in a consequential finding that the defendant did not create an unreasonable risk of harm.”), writ denied, 2011-1800 (La. 10/21/11), 73 So.3d 385; see also Blackwell, ___ So.3d at ___, 2026 WL 1354465 at *7 (Greene, J., dissenting) (“[E]ven if defendants had pointed to evidence showing that anyone who encountered the wire would obviously have known it was unreasonably dangerous, such does not prove there are no genuine issues as to the remaining duty-risk factors[.]”). Therefore, we consider the remaining three factors herein.

The first factor—the utility of the complained-of condition—asks whether the condition at issue was “meant to be there[.]” See **Bertrand v. Jefferson Arms Apartments, LLC**, 2022-1195 (La. App. 1 Cir. 4/14/23), 366 So.3d 595, 603 (citing **Farrell**, 359 So.3d at 478). If so, the condition often will have social utility, and in the balancing test, will weigh against a finding that the premises were unsafe. **Bertrand**, 366 So.3d at 603. Here, it is undisputed that Express Weld is in the business of “welding and dockside” and loading and unloading trucks and ships. The yard housed forklifts, cranes, and other machinery to perform the work required. On the date of the accident, Descant was using the forklift to load Chauvin’s truck with materials she was picking up for her employer. Since this condition was “meant to be there,” this factor weighs in favor of the complained-of condition not being unreasonably dangerous.

The third factor of the risk/utility balancing test considers the cost of preventing the harm. The record is devoid of any evidence concerning the cost of preventing the harm; therefore, we are unable to consider this factor in applying the risk/utility balancing test. See **Bertrand**, 366 So.3d at 605 (citing **Farrell**, 359 So.3d at 479).

The fourth and final factor of the risk/utility balancing test considers the nature of the plaintiff’s activity in terms of social utility or whether the activities were dangerous by nature. **Bertrand**, 366 So.3d at 605. Defendants attached Ougel’s deposition to their motion for summary judgment. Therein, Ougel stated that it is his responsibility as safety manager to conduct root cause investigations for incidents such as the one at issue here, and he determined the root cause of Chauvin’s accident was Chauvin “leaving a place of safety, approaching the [materials] being untangled by the forklift without the knowledge of the forklift operator, attempting to handle the [materials], and doing so without the proper [PPE].” In other words, Ougel stated that Chauvin’s actions were unnecessary and dangerous.

After considering the evidence offered by Defendants and applying the risk/utility balancing test, we find that Express Weld's yard did not present an unreasonably dangerous condition. As such, Defendants met their initial burden of pointing out the absence of factual support for the breach element of Chauvin's claim. Thereafter, the burden shifted to Chauvin to produce factual support to establish the existence of a genuine issue of material fact or that Defendants were not entitled to judgment as a matter of law. See Blackwell, ___ So.3d at ___, 2026 WL 1354465 at *6 (citing Farrell, 359 So.3d at 479).

In opposition to Defendants' motion for summary judgment, Chauvin argued there are material factual disputes as to whether Defendants' forklift operation in the yard created an unreasonably dangerous condition, whether the danger was visible or avoidable, and whether Express Weld failed to implement proper safety controls, all of which fall squarely within the jury's role as a factfinder and cannot be resolved on summary judgment. Chauvin also argued that Express Weld failed to provide safety instructions, warnings, or verbal communications during the loading operation in derogation of their general duties.

Chauvin attached McKewen's affidavit to her opposition. McKewen opined that Express Weld was the "controlling employer" of the equipment yard pursuant to OSHA standards.⁹ See OSHA Regulation CPL 2-00.124, Multi-Employer Citation Policy. As such, McKewen stated Express Weld owed several duties including the duty to conduct and prepare hazard assessments, or "job safety analyses" ("JSAs"); the duty to ensure proper PPE was utilized; and the duty to provide safety oversight for third parties working on its premises.

⁹ The controlling employer is defined as "[a]n employer who has general supervisory authority over the worksite, including the power to correct safety and health violations itself or require others to correct them."

Express Weld did not have company policies on basic procedures such as where drivers should stand during loading operations nor did it have provisions requiring employees to check visitors to the yard for proper PPE¹⁰; did not complete a JSA before loading Chauvin's truck; and allowed Descant to dislodge the materials with the forklift in a manner McKewen described as "unstable and unsafe." McKewen opined that all of these failures constitute breaches of Express Weld's duties as a controlling employer. According to McKewen, Express Weld's failure to implement basic safety controls contradicted the OSHA Hierarchy of Controls¹¹ and demonstrates a failure to implement appropriate hazard prevention policies.

McKewen further stated that Express Weld's failure to complete a JSA before loading Chauvin's truck is a violation of 29 C.F.R. 1910.132(d)(2).¹² In fact, Express Weld admitted that a JSA should have been completed and would normally be completed for such a task, but Express Weld could not produce a JSA for the task and was unaware if one existed. Chauvin stated in her deposition that she was not given any safety instruction from Descant or anyone else at Express Weld, and Express Weld explicitly agreed that Descant should have communicated with Chauvin about safety prior to beginning the loading process.

¹⁰ Express Weld now requires employees to check people who are coming into the yard for proper PPE. Although subsequent remedial measures are generally not admissible, exclusion is not required when offered for a purpose such as feasibility of precautionary measures. See La. C.E. art. 407.

¹¹ "Controlling exposures to hazards in the workplace is vital to protecting workers. The hierarchy of controls is a way of determining which actions will best control exposures." See "Hierarchy of Controls," National Institute for Occupational Safety and Health (NIOSH), <https://www.cdc.gov/niosh/hierarchy-of-controls/about/index.html> (last accessed August 15, 2026).

¹² 29 C.F.R. 1910.132(d)(2) states:

The employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment.

The evidence presented established that there were two signs in Express Weld's yard warning anyone who entered to wear PPE. Nevertheless, Ougel testified that no one from Express Weld told Chauvin she needed to wear proper PPE before going into the yard and that there was no procedure for educating visitors about safety issues or proper PPE when they enter the yard. In fact, Descant admitted during his deposition that he observed Chauvin in the yard without proper PPE, yet he took no corrective action. McKewen opined that Express Weld's failure to enforce PPE standards under 29 C.F.R. 1910.136(a)¹³ was a breach of Express Weld's duties as a controlling employer.

As to whether Descant was operating the forklift in an advisable manner when attempting to rearrange the materials, Ougel asserted that such an operation "is not always a precise or delicate operation" and that it is not uncommon to partially load and then reload materials to ensure they are stable for transport nor is it uncommon that materials fall off the forklift or the truck while being loaded. Ougel stated that it is standard practice to utilize the forklift to maneuver, separate, or untangle large, heavy objects. Descant also testified that there was no better way to untangle the materials. Nevertheless, McKewen opined that the manner in which Descant removed the materials from the truck with the forklift was a violation of 29 C.F.R. 1910.178(o)(1), which generally warns that "[o]nly stable or safely arranged loads shall be handled." In light of the evidence presented by Chauvin in opposition to Defendants' motion for summary judgment, we find Chauvin successfully demonstrated a genuine issue of material fact as to whether Defendants' breached the duties owed to her.

¹³ 29 C.F.R. 1910.136(a) states, in pertinent part: "The employer shall ensure that each affected employee uses protective footwear when working in areas where there is a danger of foot injuries due to falling or rolling objects[.]"

The Cause-in-Fact Element

To establish cause in fact, a plaintiff must prove a cause-and-effect relationship between a defendant's conduct and the plaintiff's injuries. **Cunningham**, 2024 WL 5000134 at *4. The cause-in-fact element requires a determination of whether the harm would have occurred but for the defendant's alleged substandard conduct, or when concurrent causes are involved, whether the defendant's conduct was a substantial factor in bringing about the harm. **Walker v. City of Independence Police Dep't**, 2018-1739 (La. App. 1 Cir. 2/7/20), 296 So.3d 25, 31 (citing **Granger v. Christus Health Central Louisiana**, 2012-1892 (La. 6/28/13), 144 So.3d 736, 766). Under either method, it is irrelevant in determining cause in fact whether the defendant's actions were lawful, unlawful, intentional, unintentional, negligent or non-negligent. **Roberts v. Benoit**, 605 So.2d 1032, 1042 (La. 1991), on reh'g (May 28, 1992). Rather, the cause-in-fact inquiry is a neutral one, free of the entanglements of policy considerations—morality, culpability, or responsibility—involved in the duty-risk analysis. **Roberts**, 605 So.2d at 1042.

Although the cause-in-fact inquiry is a factual determination best made by the factfinder, summary judgment may be appropriate when there is no evidence to show that the cause-in-fact test has been met. **Cunningham**, 2024 WL 5000134 at *4. Defendants argued there is no evidence that their actions or inactions were a cause of the accident. In support of this assertion, Defendants cited Chauvin's deposition testimony, wherein she admitted the materials did not fall until she maneuvered them by hand and that, had she not approached the lifting operations, she would not have been injured because she would not have been near the materials when they fell. In addition, Ougel, in his affidavit, stated that he conducted a root cause investigation in conjunction with his responsibilities as safety manager and determined the root cause of Chauvin's accident was Chauvin "leaving a place of safety, approaching the [materials] being untangled by the forklift without the knowledge of the forklift

operator, attempting to handle the [materials], and doing so without the proper [PPE].”

Chauvin argues that the district court incorrectly concluded Defendants were entitled to summary judgment on this basis. Rather, Chauvin argues that “but for” Express Weld’s safety failures, she would not have been injured. More specifically, Chauvin stated: (1) “but for” Express Weld’s failure to complete a JSA, she would not have been in the hazard zone when the materials fell; (2) “but for” Express Weld’s failure to establish administrative controls designating safe zones for third parties during forklift operations, Chauvin would not have been permitted near the active loading area; (3) “but for” Descant’s failure to communicate safety instructions or otherwise warn Chauvin to stay clear of the operational zone, Chauvin would not have approached the materials; and (4) “but for” Express Weld’s failure to train Descant on proper protocols for operating forklifts around visitors, including 29 C.F.R. 1910.178(o)(1), Descant would have known to establish communication and ensure the area was clear before manipulating the materials.

McKewen opined each of the cited breaches—Descant’s violation of 29 C.F.R. 1910.78(o)(1) by attempting to dislodge the materials with a forklift while unstable; Express Weld’s failure to implement basic safety controls; Express Weld’s failure to establish a written JSA; and Defendants’ failure to ensure all workers wore appropriate PPE—contributed to Chauvin’s injury. In addition, Chauvin directly testified that she did not cause the materials to fall by touching them.

Under these circumstances, a reasonable jury could find that Defendants’ failures were a cause in fact in bringing about Chauvin’s injuries. As such, Chauvin carried her burden of demonstrating a genuine issue of material fact as to whether Defendants’ breaches were the cause in fact of her injuries.

The Scope-of-the-Duty Element

Defendants lastly argued Chauvin's own negligence was the sole legal cause of the accident. Defendants cited the requirement of both Acme and Express Weld that steel-toed safety shoes be worn, as well as Acme's rule that Chauvin stand at least 15 feet away from loading activity and not enter the loading area until the loading equipment left.

There is no rule for determining the scope of the duty. **Malta v. Herbert S. Hiller Corp.**, 2021-00209 (La. 12/10/21), 333 So.3d 384, 399. The scope-of-the-duty inquiry is fact-sensitive and ultimately turns on a question of policy as to whether the particular risk falls within the scope of the duty. The determination of legal cause/scope of the duty involves a purely legal question. **Malta**, 333 So.3d at 399.

In some instances, a risk may not be found within the scope of a duty where the circumstances of that particular injury to that plaintiff could not be reasonably foreseen or anticipated because there was no ease of association between that risk and the legal duty. **Malta**, 333 So.3d at 399. Foreseeability, as the determining test, is neither always reliable nor the only criterion for comparing the relationship between a duty and a risk. Some risks that arise because of a defendant's conduct are not within the scope of the duty owed to a particular plaintiff simply because they are unforeseeable. Ease of association is the proper inquiry. Such an inquiry questions how easily one associates the plaintiff's complained-of harm with the defendant's conduct. Although ease of association encompasses the idea of foreseeability, it is not based on foreseeability alone. **Malta**, 333 So.3d at 399.

A tortfeasor is liable only for damages caused by his negligent act, not damages caused by separate, independent, or intervening causes. **Talbert v. Affordable Rent-To-Own of Thibodaux, L.L.C.**, 2022-1126 (La. App. 1 Cir. 6/2/23), 370 So.3d 1, 11. In situations where there is an intervening force that comes

into play to produce the plaintiff's injury (or more than one cause of an accident), it has generally been held that the initial tortfeasor will not be relieved of the consequences of his or her negligence *unless* the intervening cause superseded the original negligence and alone produced the injury. If the original tortfeasor could or should have reasonably foreseen that the accident might occur, he or she will be liable notwithstanding the intervening cause. It can be useful to consider whether "too much else has intervened—time, space, people, and bizarreness." **Talbert**, 370 So.3d at 11. In sum, foreseeable intervening forces are within the scope of the original risk, and hence of the original tortfeasor's duty. See Talbert, 370 So.3d at 11 (citing Adams v. Rhodia, Inc., 2007-2110 (La. 5/21/08), 983 So.2d 798, 808).

Defendants argued that it was unforeseeable that Chauvin would come into the loading area without proper PPE and attempt to untangle the materials while Descant was maneuvering them with a forklift. Defendants cite Acme's training and safety regulations, which instruct its employees to remain clear of loading activities. In addition, both Acme and Express Weld require steel-toed shoes to be worn around the yard. According to Defendants, a reasonable person in like circumstances would have worn proper safety shoes and remained at a safe distance during the loading (and unloading/untangling) operations. Defendants inferred it was unforeseeable that Chauvin would act contrary to the regulations of both Acme and Express Weld.

Defendants also cited Descant's deposition testimony. Descant stated he was operating the forklift in a routine manner and in a designated loading area. Descant testified that he observed Chauvin at the back side of her truck, clear of the loading activities, prior to the accident. He also testified that he would "glance every now and then" to make sure Chauvin remained in a safe zone. Descant testified that he did not request Chauvin's assistance or give her any instructions; rather, he gestured with hands for Chauvin to stand clear. However, Descant also testified that he did not know if Chauvin saw the gesture. Descant stated that he did not see Chauvin

approach the load and was not aware of her presence until the materials fell. Again, Defendants inferred it was unforeseeable that Chauvin would approach the forklift and/or the materials.

However, Descant testified that while it was his job to put the materials on the truck, it was Chauvin's job to secure the load. In addition, Chauvin stated during her deposition that Descant could see her approach the load, yet he did not warn her against it. This evidence creates a genuine issue of material fact as to whether Chauvin's actions were foreseeable and therefore as to whether the risk of injury fell within the scope of Defendants' duty.

While we acknowledge Defendants' repeated references to what Chauvin knew or should have known, we note that whether the plaintiff has knowledge of the allegedly dangerous condition is irrelevant in determining whether the thing is defective. **Farrell**, 359 So.3d at 478. The plaintiff's knowledge is appropriately considered in assessing fault but is not appropriate for summary judgment proceedings. Therefore, as applied to this case, Chauvin's knowledge and appreciation of the allegedly hazardous condition is not determinative. Although it would be relevant in a trial on the merits for purposes of potential comparative fault, Chauvin's awareness is irrelevant to Defendants' entitlement to summary judgment. **Farrell**, 359 So.3d at 478; see also La. C.C. art. 2323.

DECREE

For the above and foregoing reasons, the portion of the district court's August 21, 2025 judgment granting summary judgment in favor of Defendants and dismissing all of Plaintiff's claims against Defendants, Express Weld, L.L.C. and Christopher Descant, with prejudice is reversed. In addition, we deny the answer to appeal filed by Defendants, Express Weld, LLC and Christopher Descant. Each party is to bear its own appellate court costs.

REVERSED; ANSWER TO APPEAL DENIED.