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 U.S. DISTRICT COURT
 EASTERN DISTRICT OF LA
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UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF:	*	CIVIL ACTION
	*	
FALCON INLAND, INC., AND	*	NO. 97-0360
FALCON SERVICES COMPANY, INC.,	*	
OF DELAWARE PETITIONING FOR	*	SECTION "J"
EXONERATION FROM OR	*	
LIMITATION OF LIABILITY	*	MAGISTRATE (4)

This matter came on before the Court, sitting without a jury, on July 22, 23, and 26, 1999.

At the conclusion of the trial, the Court took the matter under advisement but held the record open so that the parties could take and submit the deposition of Dr. Robert Mimeles. The Court also took under advisement plaintiff's offer, in his rebuttal case, to introduce portions of the discovery deposition of the witness William McBride, whose perpetuation video deposition was introduced as part of defendants' case. The Court also referred to the merits and took under advisement defendants' motions for judgment as a matter of law.

The Court has received and considered various post-trial memoranda by the respective parties. The Court has read all of the deposition transcripts and viewed the various video depositions which have been introduced, including the post-trial deposition of Dr. Mimeles. The Court has also reviewed a post-trial report by Dr. Daniel Scullin, which was submitted in accordance with instructions of the Court because of the unavailability of certain films at the time of trial. The Court has reviewed the portions of the McBride discovery deposition which plaintiff seeks to introduce into evidence, and finds that this testimony is not in the nature of rebuttal

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evidence and therefore should be excluded.

Having considered all of the evidence introduced, the memoranda and argument of counsel for the respective parties, the Court renders the following Findings of Fact and Conclusions of Law in accordance with Federal Rule of Civil Procedure 52 (a):

FINDINGS OF FACT

I. The Parties

1. Claimant John Rachal seeks damages for personal injury sustained on or about July 26, 1995 while working aboard Rig 21, an inland drill barge owned and operated by defendants Falcon Inland, Inc. and Falcon Services Company, Inc. of Delaware ("Falcon").
2. At all material times, Falcon had contracted to perform an inland water drilling operation for Shell Western E&P ("Shell").
3. Defendant Baker-Hughes Oilfield Operations, Inc. ("Baker") sold to Shell a specialized tool called a packer, which is intended for use downhole as part of a wireline operation. Baker also sent one of its employees, John Martin, to Rig 21 to insure that the packer was properly used and installed.
4. John Rachal was employed by Dia-Log, Inc. (now Di-Lo, Inc., hereinafter "Di-Lo") as part of a wireline crew. Di-Lo had contracted with Shell to provide wireline services aboard Falcon Rig 21.
5. Falcon filed a complaint in this Court seeking exoneration from or limitation of liability. John Rachal filed an answer and claim in the limitation proceeding.

II. Liability

6. On the evening of July 26, 1995, the Di-Lo wireline crew, including John Rachal and an operator, Joseph Baudoin, were aboard Falcon Rig 21 to perform wireline operations. Part of the wireline work involved lowering and setting the Baker packer downhole. The purpose of the packer was to block or seal the hole at a certain depth, to then allow the well to be deviated or drilled at an angle to the original well.
7. The Baker packer had been shipped to the rig several days earlier and offloaded by crane from a vessel and placed onto the piperack of the rig. At that time, the packer was contained in a crate which was part of cargo offloaded in a metal basket.
8. The Baker hand, John Martin, was sent out to the rig to insure proper installation of the packer by the wireline crew. As part of his duties, Martin was responsible for preparing the packer for its use and seeing that it was in proper position so it could be made up to the setting tool owned by Di-Lo.
9. Prior to the time of the accident, Martin had the still crated packer lifted out of the metal basket and placed directly onto the piperack. This was accomplished, at Martin's direction, by Falcon hands using one of the rig's cranes. Martin decided where the crate was set down on the piperack. It was placed on the piperack somewhere between the living quarters and the V-door.
10. Once the crate was on the piperack, Martin uncrated the packer and prepared it for attachment to the Di-Lo setting tool. The packer is a heavy and awkward

object. It is a cylindrical shape, 9 5/8 inches in diameter, and weighing 300 pounds. There are no handles or places to grip as it is lifted.

11. Later that same evening, once the packer was ready, Martin decided to move it from the piperack onto the catwalk near the V-door ramp to the drill floor. This is where the packer needed to be located for its attachment to the setting tool. Once the attachment was made, the Di-Lo wireline crew was responsible for using the wireline to drag the packer up the V-door ramp, onto the drill floor, and lower it into the hole to set the packer.
12. At the time Martin decided to move the packer, the wireline crew was in the process of making a "dummy run" into the hole. This was done by running a gauge ring and junk basket down the hole approximately 9,400 feet. It was Martin's decision to move the packer at that time, rather than wait until the wireline crew had completed its dummy run.
13. The wireline unit was located on the catwalk, at the end nearest the living quarters. The catwalk was a walkway elevated about a foot above the piperack deck and which ran down the center of the piperack from near the living quarters and led to the V-door ramp. The wireline itself ran from the unit on an angle above the catwalk, over the V-door ramp and up to the drill floor.
14. When the wireline unit was running, it is unsafe for men to be working under the line or for a crane to operate near the catwalk.
15. The Baker hand, John Martin, asked John Rachal to help move the packer. Rachal suggested using one of the rig's cranes, but Martin rejected that suggestion and

decided to move the packer manually.

16. In order to help move the packer, the Falcon supervisor, driller Percy Vincent, sent two of his floorhands down to the piperack. There is a dispute as to who requested assistance from Falcon, that is, whether help was requested by the Baker hand, John Martin, or by plaintiff, John Rachal. Since it was the Baker hand's responsibility to move the packer into its intended location, the Court finds that Falcon's assistance was requested by Baker, either directly or through John Rachal.
17. When he sent the Falcon floorhands to the piperack to assist in moving the packer, the Falcon supervisor knew or should have known that the men were going to move the packer manually. Vincent knew that the wireline was operating at that time and that the crane could not be used safely under those circumstances.
18. At least one of the Falcon floorhands asked the Baker hand, John Martin, if he wanted to use the crane to move the packer, but Martin refused this offer.
19. The four men lifted the packer from the deck of the piperack, holding it about waist high, and began carrying it toward the catwalk nearest to the V-door. As they neared the catwalk, the men had trouble controlling the packer due to its weight and awkward shape. As John Rachal suggested that they set it down on the piperack, the other three men either slipped or suddenly let go of the packer, causing its entire weight to come down on Rachal, who was still holding onto his end. As a result, Rachal overextended his lower back.
20. There is a dispute as to the how the packer was being moved and the distance the

men had moved the packer before the accident occurred. Defendants contend that the packer was only moved 1-2 feet from the piperack onto the catwalk, and that it was not lifted and carried, but "walked" onto the catwalk by lifting one end at a time. On the other hand, John Rachal claims that the men lifted and carried the packer about 30 feet. While Rachal may have overstated the distance involved, the Court finds his testimony as a whole entirely credible. Moreover, the testimony of Joseph Baudoin, the Di-Lo wireline operator, was that he saw the four men *lifting and carrying the packer about waist high, that someone slipped and that the weight of the packer was caught by Rachal.* The testimony of the other men that they never lifted the packer completely off the deck was contradicted not only by Rachal and Baudoin, but is also refuted by the Accident Report and Supervisor's Investigation Report prepared by Falcon's toolpusher after the accident. The Court finds that whatever the exact distance, the men had lifted the packer about waist high and were carrying the packer some distance from the piperack towards the catwalk near the V-door when the accident occurred.

21. There is no dispute that there were two cranes located on or near the piperack aboard Falcon Rig 21, and that these cranes were operable and could have been used to move the packer.
22. It is Falcon's policy that only Falcon employees have authority to operate the cranes on its vessel.
23. Falcon's safety rules, as interpreted by the Falcon toolpusher, required that manual

lifting of heavy, awkward objects be avoided if possible, and that mechanical means be used instead.

24. The packer was a heavy and awkward piece of equipment which dictated that it be moved mechanically with the use of a crane rather than manually. Edward Robert, qualified as a drilling operations and safety expert, testified that it was unsafe to attempt to manually lift and carry the packer, considering its 300 pound weight and its awkward shape. Calvin Barnhill, defendants' drilling and safety expert, admitted that heavy and awkward equipment should generally be moved by mechanical means. He agreed that the packer was a heavy and awkward object.
25. Since only Falcon hands had authority to operate the rig's cranes, and because Falcon's supervisor knew or should have known that the men would attempt to move the packer by hand, Falcon should have intervened and required that one of the cranes be used instead. As owner of the vessel, Falcon had authority to require use of the crane if safety warranted it.
26. In order to use the crane, the wireline operation would have had to be shut down temporarily or the moving of the packer could have awaited completion of the dummy run by the wireline crew. Rachal testified he offered to have the wireline shut down so the crane could be used, but this offer was rejected by the Baker hand, John Martin. All agreed that moving the packer could have waited until the wireline crew finished its task, and that this would have added perhaps 15 or 20 minutes to the overall operation.
27. Baker's hand, John Martin, was primarily responsible for moving the packer at the

time of the accident. Although he requested and received assistance, it was Martin's decision as to when, where and how the packer would be moved. Rather than using mechanical means, Martin instead rejected such suggestions from both Rachal and a Falcon hand. Rather than take an additional 15 or 20 minutes to await completion of the wireline operation so the crane could be used safely, Martin decided to move the packer while the wireline was still operating.

III. Injuries and Damages

28. John Rachal is presently 38 years old and has a 10th grade education. He has no other formal education or training. He does not have a GED. For the past 21 years, Rachal has worked only in the oilfields.
29. In 1980, Rachal went to work for Di-Lo, initially as a helper and later as an operator. Other than for a brief period in 1982, Rachal has been steadily employed by Di-Lo since that time.
30. Prior to this accident, John Rachal was physically able to do his work without any disability. Although he had incurred a medical problem with his shoulder while serving in the U.S. Navy, it was not disabling in his work.
31. Rachal has been married to his wife, Scarlet, for over 21 years. They have three children.
32. Prior to the accident, John Rachal had earned an average of approximately \$40,000 annually during the previous three years with Di-Lo. At the time of the accident, Rachal's base salary was \$3,000 per month plus overtime. Because of the nature of the wireline industry, Rachal's work schedule was 26 days on and 1 days off. Some

of his working days were spent working in the Di-Lo shop, but generally he worked as assigned to different oilfield locations until the job was completed. In 1995, Rachal earned \$32,124 through July 26, 1995, the date of his injury. Dr. G. Randolph Rice, an economist, calculated an annualized earnings base of \$56,919 per annum. Di-Lo also provided certain fringe benefits to Rachal, including free lodging and meals while working offshore, hospitalization and disability insurance, as well as life insurance and a savings plan (for which the company provided a 50% match).

33. Less than one hour following his injury on Rig 21, Rachal was sent in for medical treatment. He was initially treated in the emergency room at a hospital in Morgan City. Subsequently, Rachal was referred by his employer to Dr. Andre Cenac, an orthopedist in New Iberia.
34. Dr. Cenac ordered a lumbar MRI test which was interpreted as abnormal at two levels: disc herniation at L4-L5 and disc desiccation at L5-S1.
35. Dr. Cenac also had an EMG-Nerve Conduction Study performed, which he interpreted as indicative of nerve root irritation. Dr. Cenac thought surgery might be necessary, but prescribed a course of conservative treatment initially.
36. Di-Lo also referred Rachal to a neurosurgeon, Dr. Jack Hurst, in Lafayette. Dr. Hurst concurred in the interpretation of the diagnostic testing, and thought surgery might be needed. However, before recommending surgery, Dr. Hurst suggested that a lumbar myelogram be performed.
37. Dr. Cenac's testimony substantiated that Rachal was in a great deal of pain at this time. He administered two injections of medication into Rachal's spine, but this did

not provide much relief. Dr. Cenac also sent Rachal to several weeks of physical therapy without improvement. Finally, Dr. Cenac, who does not perform back surgery himself, felt that he had done all he could do for his patient through conservative, non-surgical treatment.

38. Rachal next came under the care of Dr. Joseph Rauchwerk, an orthopedic surgeon in New Orleans. After examining Rachal and reviewing the previous diagnostic testing, Dr. Rauchwerk believed surgery would likely be necessary. However, before recommending surgery, Dr. Rauchwerk referred Rachal for a lumbar discogram procedure
39. The lumbar discogram is somewhat controversial among orthopedic surgeons. Some orthopedists do not do discograms and do not find them to be sufficiently reliable. Others do discograms, but with varying criteria for when and under what circumstances the procedure should be done. There is also some disagreement about what constitutes a positive (abnormal) discogram and the meaning of a positive result. The Court notes, however, that discograms are performed at a number of well known medical institutions in the New Orleans area, including Tulane Medical Center. The chairman of the Tulane Department of Orthopedics, Dr. Thomas Whitecloud, not only performs lumbar discograms, but teaches the technique to Tulane orthopedic residents. Apparently there is general agreement that the discogram is in part objective, and in part subjective, and should be only one part of the overall clinical and diagnostic work-up prior to surgery.
40. In this case, the radiologist who performed the discogram, Dr. Gerald Tassin, and the

