

V.

Having concluded that the district judge was not clearly erroneous in finding appellants' evidence insufficient to establish discriminatory intent or effect, we need not review the other reasons offered by the district court for dismissing appellants' claims on the merits. The judgment of the district court is

AFFIRMED.



Beth A. TALLENTIRE,
Plaintiff-Appellant,

v.

**OFFSHORE LOGISTICS, INC., et
al.,** Defendants,

Air Logistics, Defendant-Appellee.

Corine Ann Soudelier TAYLOR, Individually, as administratrix of the estate of Michael John Taylor, and as natural tutrix of the minor, Leslie Ann Taylor, Plaintiff-Appellant,

v.

**BELL HELICOPTER TEXTRON, A
DIVISION OF TEXTRON, INC.,**
Defendant-Appellee.

Corine Ann Soudelier TAYLOR, etc.,
Plaintiff-Appellant, Cross-Appellee,

v.

AIR LOGISTICS, INC.,
Defendant-Appellee,
Cross-Appellant,

v.

HALLIBURTON SERVICES,
Intervenor-Appellee.

Nos. 83-3296, 83-3328.

United States Court of Appeals,
Fifth Circuit.

Sept. 29, 1986.

Wrongful death actions were brought by representatives of two offshore drilling

platform workers who were killed when helicopter carrying them from platform to shore crashed about 30 miles off Louisiana coast. The United States District Court for the Eastern District of Louisiana, Morey L. Sear, J., awarded damages solely under Death on the High Seas Act, and appeals were taken. The Court of Appeals for the Fifth Circuit, 754 F.2d 1274, vacated and remanded for application of Louisiana wrongful death statute. Certiorari was granted. The Supreme Court, 106 S.Ct. 2485, reversed and remanded. On remand, the Court of Appeals, W. Eugene Davis, Circuit Judge, held that: (1) representative could bring action under Death on the High Seas Act only in admiralty and was not entitled to jury trial; (2) evidence supported district court's conclusion that offshore drilling platform worker was earning nearly \$22,000 per year at time of trial for death of worker and, therefore, supported award of damages for pecuniary loss under Death on the High Seas Act; and (3) representative who failed to establish reasonable expectation of pecuniary benefit or probability that she would have received benefit of inheritance from her father-in-law, if willed to worker, was not entitled to inheritance as part of damages awarded under Death on the High Seas Act.

Affirmed in part, vacated in part, and remanded.

1. Admiralty ⇐21, 80

Representative of offshore drilling platform worker who was killed in helicopter crash some 30 miles off Louisiana coast could bring action under Death on the High Seas Act only in admiralty and was not entitled to jury trial. Death on the High Seas Act, § 1 et seq., 46 U.S.C.A. § 761 et seq.

2. Death ⇐77

Evidence supported district court's conclusion that offshore drilling platform worker was earning nearly \$22,000, rather

than approximately \$39,000, per year at time of trial for wrongful death of worker in crash about 30 miles off Louisiana coast and, therefore, supported award of damages for pecuniary loss under Death on the High Seas Act. Death on the High Seas Act, § 1 et seq., 46 U.S.C.A. § 761 et seq.

3. Death ⇐86(1)

Representative, who was widow of offshore drilling platform worker killed in helicopter crash about 30 miles off Louisiana coast and who failed to establish reasonable expectation of pecuniary benefit or probability that she would have received benefit of inheritance from her father-in-law, if willed to worker, was not entitled to inheritance as part of damages awarded under Death on the High Seas Act. Death on the High Seas Act, § 1 et seq., 46 U.S.C.A. § 761 et seq.

4. Death ⇐77

Evidence supported district court's conclusions that offshore drilling platform worker killed in helicopter crash about 30 miles off Louisiana coast would consume 34% of earnings for personal use, that inflation rate would not be as predicted by representative, and that representative was not entitled to damages for loss of worker's carpentry services as measure of damages under Death on the High Seas Act. Death on the High Seas Act, § 1 et seq., 46 U.S.C.A. § 761 et seq.

Davidson, Meaux, Sonnier & McElligott, V. Farley Sonnier, Lafayette, La., for plaintiff-appellant in 83-3296.

Howard Daigle, Jr., Phelps, Dunbar, Marks, Clavierie & Sims, New Orleans, La., for defendant-appellee in 83-3296.

Charles Hanemann, New Orleans, La., for Taylor.

Johnson & McAlpine, Ronald A. Johnson, New Orleans, La., for Halliburton Services.

Howard Daigle, Jr., New Orleans, La., for Air Logistics, Inc.

Appeals from the United States District Court for the Eastern District of Louisiana.

Before GARZA, JOLLY and DAVIS, Circuit Judges.

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

W. EUGENE DAVIS, Circuit Judge:

In accordance with the opinion of the Supreme Court, — U.S. —, 106 S.Ct. 2485, 91 L.Ed.2d 174, which partially reversed our decision reported at 754 F.2d 1274, we affirm the portions of the judgments rendered by the district court in these consolidated cases that denied recovery of non-pecuniary losses to appellants Taylor and Tallentire.

In *Taylor*, the judgment of the district court is vacated for the limited purpose of allowing the district court to reconsider appellant Taylor's claim for loss of services and her claim for loss of support. After recalculating these items of damage, the district court shall enter judgment for a sum certain.

[1] In *Tallentire*, we concluded that the appellant was entitled to an entire new trial by jury on damages. But the Supreme Court held that the Death on the High Seas Act (DOHSA) is the sole predicate for Offshore Logistic's liability to appellants. Thus, Mrs. Tallentire's action under DOHSA is cognizable only in admiralty and she is not entitled to a jury trial. *Curry v. Chevron*, U.S.A., 779 F.2d 272, 274 n. 1 (5th Cir.1985). Because we held that Mrs. Tallentire would receive a complete new damage trial, we did not consider several arguments raised by her that were directed at the district court's award or refusal to award particular items of damage for pecuniary loss under DOHSA. We have now considered these arguments which we will discuss below.

[2] Mrs. Tallentire first argues that the district court erroneously selected an inordinately low wage base for Mr. Tallentire upon which the loss of support was calculated. Appellant argues that the evidence was uncontradicted that employees equivalent to Mr. Tallentire were earning approxi-

mately \$39,000 per year at the time of trial rather than \$21,850.21 as found by the district court. Mrs. Tallentire's argument is predicated on the testimony of Shelton LeBlanc, a representative of Gator Hawk, the decedent's employer. After carefully reviewing Mr. LeBlanc's testimony, we are persuaded that the district court did not abuse its discretion in declining to accept Mr. LeBlanc's testimony. Mr. LeBlanc, Gator Hawk's business manager, directed another unnamed Gator Hawk employee to select three Gator Hawk employees who were comparable to Mr. Tallentire; Mr. LeBlanc testified that these three employees were earning approximately \$39,000 per year. The district court was apparently not persuaded that these three Gator Hawk employees were indeed comparable to Mr. Tallentire. The district court, of course, has broad discretion in determining whether he will accept or reject the testimony of a witness. The district court did not abuse its discretion in rejecting Mr. LeBlanc's testimony.

Mrs. Tallentire next argues that the district court erred in deducting social security taxes from the decedent's gross wages in arriving at future earnings. This same argument was made by Mrs. Taylor and rejected by us. We reject Mrs. Tallentire's argument for the same reason.

[3] Mrs. Tallentire also complains of the district court's rejection of her claim for loss of inheritance. Her father-in-law, Mr. Tallentire, testified that his net worth at time of trial was approximately \$75,000 and that his son was, before his death, the universal legatee in his will. The district court was not bound to conclude from this evidence, however, that the decedent's father would accumulate substantial property during the remainder of his life. We are persuaded that the district court did not clearly err in concluding that Mrs. Tallentire failed to establish "a reasonable expectation of pecuniary benefit"—or a "probability"—that she would have received the benefit of an inheritance from her father-in-law. *Solomon v. Warren*, 540 F.2d 777, 790 (5th Cir.1976).

[4] Mrs. Tallentire argues that the district court erred in three additional respects: (1) in finding that the decedent would consume thirty-four percent of his earnings for his personal use; (2) in accepting Dr. Boudreaux' predicted inflation rate rather than the rate predicted by her own economist; and (3) in rejecting her claim for the loss of the decedent's services as a carpenter. This latter contention was predicated on the testimony of Mrs. Tallentire and her father-in-law that decedent who was a skilled carpenter, intended to personally construct a family home in his spare time. The record contains evidence which supports each of these findings and they are not clearly erroneous.

Accordingly, the judgment rendered in favor of Mrs. Tallentire by the district court is affirmed. The case is remanded to the district court, however, so that it can enter a judgment for a sum certain in her favor.

AFFIRMED in part, VACATED in part, and REMANDED.



ZIM ISRAEL NAVIGATION CO., LTD.,
Plaintiff-Appellee,

v.

SPECIAL CARRIERS, INC., et
al., Defendants,

Lash Carriers, Inc.,
Defendant-Appellant.

No. 86-3348.

United States Court of Appeals,
Fifth Circuit.

Sept. 29, 1986.

Vessel-owning company, to which carrier corporation had been found liable in