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United States District Court, E.D. Louisiana.
Corine Ann Soudelier TAYLOR, et al.
v.
AIR LOGISTICS, INC., et al.

CIV. A. No. 80–5015.
July 13, 1988.

MEMORANDUM AND ORDER
MINUTE ENTRY

SEAR, District Judge.

BACKGROUND

I. *The Trial*

***1** On August 6, 1980, plaintiff's husband was killed when the defendant's helicopter, in which he was traveling, crashed in the Gulf some 35 miles offshore Louisiana. Plaintiff filed a wrongful death suit, raising claims under DOHSA, OCSLA, and Louisiana law. The owner/operator, Air Logistics (a division of Offshore Logistics), admitted liability, and the trial was limited to the question of damages.[FN1]

On defendants' motion for summary judgment, this court ruled that DOHSA provides the exclusive remedy for death on the high seas, and dismissed the plaintiff's claims based upon the Louisiana wrongful death statute. Because DOHSA limits recovery to pecuniary loss, the award to the plaintiff did not include damages for non-pecuniary losses. This court's opinion was issued on April 21, 1983; judgment was signed April 29, 1983, and entered May 3, 1983.

II. *On Appeal to the Fifth Circuit*

Plaintiff appealed the dismissal, and the Fifth Circuit held that the plaintiffs also had a cause of action under Louisiana law. *See Tallentire v. Offshore Logistics, Inc.*, 754 F.2d 1274 (5th Cir.1985). The Fifth Circuit also intimated that, in computing the damages award to Taylor,[FN2] this court should have awarded damages for loss of services, and "remand[ed] this element for reconsideration." *Id.* at 1288. Similarly, the Fifth Circuit held that this court should not have used the $40,000 "guess" of a witness as the annual income figure used as the base for calculating the future earnings of the decedent, and "remand[ed] this aspect of Taylor's damages award for reconsideration." *Id.* The Fifth Circuit concluded:

Other than the amount of Taylor's annual earnings and the claim for loss of services by his survivors," the Fifth Circuit found "no error in the trial court's computation of Taylor's award under DOHSA.

The judgment in *Taylor* is VACATED, however, for reconsideration of the above discussed items under DOHSA and for further proceedings necessary for the district court to consider plaintiff's claims for non-pecuniary losses under Article 2315 of the Louisiana Civil Code.

Id. at 1288–89. The Fifth Circuit also added a footnote:

All parties correctly assert that the district court should enter judgment for a sum certain, rather than simply setting out the method by which damages are to be calculated. On remand, the district court should require the parties to provide the necessary assistance to permit it to enter judgments for a definite sum.

Id. at 1289 n. 26.

III. *Supreme Court*

The Supreme Court, holding that neither OCSLA nor DOHSA requires or permits the application of Louisiana law in this case, reversed the judgment of the Fifth Circuit, and remanded the case for further proceedings consistent with this opinion. *Offshore Logistics v. Tallentire*, 106 S.Ct. 2485 (1986).

IV. *On Remand to the Fifth Circuit*

On remand, the Fifth Circuit declared:

***2** 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.

Tallentire v. Offshore Logistics, Inc., 800 F.2d 1391, 1392 (5th Cir.1986).

V. *On Remand to this Court*

The parties have disputed various legal issues, including the scope of the remand, the law to be applied, and the calculation of interest. There was also an unusual, albeit minor, factual dispute.

DISCUSSION:

Prior to trial on remand, the parties requested ruling on the scope of the remand and the law to be applied.

The Fifth Circuit on appeal found no error with the findings of fact "other than the amount of Taylor's annual earnings and the claim for loss of services by his survivors." Although on remand the Fifth Circuit simply referred to "Taylor's claim for loss of services and her claim for loss of support," I have perceived no intention on the part of the Fifth Circuit to widen the scope of the remand from that carefully delineated in the initial opinion.

In *Culver v. Slater Boat Co.*, 722 F.2d 114 (5th Cir.1983) (en banc) (*Culver II*), the Fifth Circuit established new principles for the calculation of damages, overruling *Culver v. Slater Boat Co.*, 688 F.2d 280 (5th Cir.1982) (*Culver I*). However, in *Culver II* the Fifth Circuit ordered that the new principles "shall not apply to any case in which, before the date this opinion was published, ... a judge made findings of fact fixing damages pursuant to ... [*Culver I*]." *Culver II* at 123. Because the original opinion in this case was issued before the date in which the *Culver II* opinion was published, the damage award in this case was calculated under the principles enunciated in *Culver I.* I have found that it would be contrary to *Culver II* and its implicit concern for judicial economy, outside the scope of the remand, and inequitable to alter the method of calculation of damages on remand.[FN3]

At trial, the parties stipulated to the amount of Taylor's annual earnings, the only fact remaining to be determined prior to calculation of the value of the loss of the decedent's wages and profit sharing. Nevertheless, even employing the same factual data, the economists of the two parties still arrived at different figures.

In the case of loss of support due to loss of decedent's wages, the economists conjectured that the minor differences resulted from their use of slightly different methods of calculating the tax liability on the wage earnings and/or simply from the imprecision inherent in performing extensive numerical calculations on computers.[FN4] In the case of loss of support due to lost profit sharing plan benefits, which amount was in part dependent on the amount of lost wages, further inquiry revealed that the defendant's economist used the tax rates that would have existed in the year 2007 A.D., while the plaintiff's economist used an approximation of the tax rates that actually existed.[FN5] Finding the latter method to be more practical, I accepted the opinion of the plaintiff's expert with regard to both of these figures.

Regarding the claim for loss of services, the economists' opinions differed substantially.[FN6] The plaintiff's economist based his calculations on a study made by persons at Cornell University on the value of household work, originally published in 1973 and updated in 1980.[FN7] The defendant's economist based his calculations on an award of $1,000 to Mrs. Taylor in the year of her husband's death, which number defendant's counsel obtained from case law. I found the plaintiff's economist's method likely to be more reliable and accurate, and again accepted his recommendation.

***3** The defendants have suggested that the original award of $14,400 for loss of nurture, care, and guidance, having been based on a finding of $150 per month for the eight remaining years of the minority of decedent's daughter, still requires discounting to the date of the accident,[FN8] prior to the addition of prejudgment and post-judgment interest. I am unwilling to disturb the assessment of $14,400, taken as the already-discounted value as of the date of the accident, on the grounds that to do so would be outside the scope of the

remand.[FN9]

The total of the damages for loss of wages, $294,347.02, plus the damages for loss of profit sharing, $53,168.23, plus the damages for loss of services, $34,075.48, all valued as of the date of the accident, equals $381,590.73. The damages for loss of nurture and guidance, also valued as of the date of the accident, equals $14,400. Thus the total damages, valued at the date of the accident, equals $395,990.73.

Finally, the parties dispute the proper calculation of interest. In the original opinion, I awarded pre-judgment interest from the date of death until the date of judgment at the rate of 10.25%. Post-judgment interest was awarded in accordance with 28 U.S.C. § 1961. Now the parties dispute whether the date at which pre-judgment interests terminates and post-judgment interest begins to run is the date of entry of the first judgment, May 3, 1983, or the date of entry of the judgment that will follow this opinion.[FN10] The parties also dispute whether the pre-judgment interest should be simple or compound, and if compounded, compounded annually or daily.

Where the original judgment is "substantially affirmed" on appeal, even though the case is "nominally reversed in part and remanded, the case is to be treated for interest purposes as though the portions of the judgment unaffected by the reversal and remand were affirmed." *Brooks v. United States*, 757 F.2d 734, 740 (5th Cir.1985). "[T]he original judgment is the relevant judgment for the starting of the accrual of interest to the extent that it was permitted to stand on appeal and remand." *Id.* at 741 n. 8; *accord*, *Perkins v. Standard Oil Co. of California*, 487 F.2d 672, 676 (9th Cir.1973). More broadly, several cases indicate that if a judgment is later modified by the district court or an appellate court, whether the award is reduced *or increased*, interest on the revised award will run from the date of the original judgment. *Brooks*, 757 F.2d at 741; *Cooper Liquor, Inc. v. Adolph Coors Co.*, 701 F.2d 542, 545 (5th Cir.1983) (en banc); *Perkins*, 487 F.2d at 676. Defendant concludes that the pre-judgment interest, set at 10.25%, should run only until the date of the first judgment, May 3, 1983, and then the post-judgment interest, at 8.98%, should begin.[FN11]

On the other hand, in all of the preceding cases, had the court not found post-judgment interest to run from the date of the original judgment, the plaintiff would have received no interest at all on the damages from the date of the original judgment to the date of the subsequent judgment, and consequently the courts were moved by equitable considerations to find that the post-judgment interest ran from the date of the original judgment. *See Turner v. Japan Lines, Ltd.*, 702 F.2d 752 (9th Cir.1983) (explaining at length the case law and theories under 28 U.S.C. § 1961, including the equitable construction traditionally given by the Fifth Circuit cases). In an admiralty case, the court has the power to award pre-judgment interest, and, indeed, generally does so, for similar equitable reasons. *Graham v. Milky Way Barge, Inc.*, 811 F.2d 881, 895 (5th Cir.1987). It has been suggested that "where the verdict or decision in favor of plaintiff itself in some manner explicitly takes into account damages up to the date of entry of judgment, then section 1961 properly applies only from the date of entry of the actual judgment." *Turner*, 702 F.2d at 757 n. 7. At least one admiralty court has indeed taken the position that pre-judgment interest should run to the date of the judgment upon remand. *See Todd Shipyards Corp. v. Turbine Service, Inc.*, 592 F.Supp. 380, 386 (E.D.La.1984) (Cassibry, J.) (original opinion was affirmed in part, modified in part, reversed in part, and remanded), *aff'd in relevant part*, 763 F.2d 745, 753 (5th Cir.1985). Plaintiff concludes that the pre-judgment interest of 10.25% should run until the date of entry of the judgment following this opinion.[FN12]

***4** I find the reasoning in *Turner*, and its concrete application in *Todd*, persuasive. The Fifth Circuit has given 28 U.S.C. § 1961 an equitable construction, allowing for the award of interest in some cases prior to the judgment after remand. Where admiralty law, operating on the basis of the same equitable concern, and with greater flexibility, has already explicitly provided for the award of pre-judgment interest, there is no inequity to be undone by way of an equitable expansive application of the post-judgment statute.[FN13]

Regarding whether the pre-judgment interest should

be simple or compound, and if compound, whether compounded annually or daily, I hold that the pre-judgment interest in this case shall be calculated in the same manner as under 28 U.S.C. § 1961(b): it shall be compounded annually.[FN14] My original opinion not having specified any particular method, I find this to be the normal and usual method of calculation of pre-judgment interest, absent a contrary indication. *See Federal Barge Lines, Inc. v. Granite City Steel*, 664 F.Supp. 453, 454 (E.D.Mo.1987) (Limbaugh, J.).[FN15]

Date	Interest	Balance
08–06–80		395,990.73
08–06–81	40,589.05	436,579.78
08–06–82	44,749.43	481,329.21
08–06–83	49,336.24	530,665.45
08–06–84	54,393.21	585,058.66
08–06–85	59,968.51	645,027.17
08–06–86	66,115.28	711,142.45
08–06–87	72,892.10	784,034.55
08–06–88	80,363.54	864,398.09

Consequently, the total balance due on August 6, 1988 is $864,398.09.

***5** From August 6, 1988 until the date of entry of judgment, interest is computed daily, at a rate of $242.74 per day.[FN17] The daily interest is added to the $864,398.09, and the resulting sum provides the basis upon which the post-judgment interest is calculated pursuant to 28 U.S.C. § 1961.

resolved.

Accordingly,

IT IS ORDERED that there be judgment in favor of the plaintiff and against Air Logistics, in the amount of $864,398.09, plus daily interest of $242.74 per day for each day after August 6, 1988 until the date of entry of judgment, plus post-judgment interest pursuant to 28 U.S.C. § 1961 calculated from the date of entry of the judgment following this opinion, compounded annually, The total damages, valued at the date of the accident, August 6, 1980, equals $395,990.73. Pre-judgment interest on $395,990.73 at the rate of 10.25% from August 6, 1980 to August 6, 1981, equals $40,589.05, so that the new principal on August 6, 1981 equals $436,579.78.[FN16] Following this same procedure for succeeding years gives the following table:

and computed daily to the date of payment, plus costs pursuant to Fed.R.Civ.P. 54(d).

IT IS FURTHER ORDERED that there be judgment in favor of Avco Corporation and Bell Helicopter and against plaintiff, dismissing plaintiff's claims against Avco Corporation and Bell Helicopter.

IT IS FURTHER ORDERED that there be judgment in favor of Halliburton Services and against the plaintiff in the amount of $39,517.24, plus post-judgment interest pursuant to 28 U.S.C. § 1961 calculated from May 3, 1983 at the rate of 8.98%, compounded annually, and computed daily to the date of payment.

FN1. Plaintiff also sued the manufacturer, Bell Helicopter (a division of Textron, Inc.) and the manufacturer of the helicopter engine, Avco Corporation.

Avco Corporation was dismissed from the

suit on motion for summary judgment.

Bell Helicopter did not admit liability, but agreed to pay any judgment that Air Logistics was unable to satisfy. No evidence of Bell's liability was introduced at trial, and no party appealed the judgment in its favor. *Tallentire v. Offshore Logistics, Inc.*, 754 F.2d 1274, 1277 (5th Cir.1985).

Halliburton Services, a division of Halliburton Co., Mr. Taylor's employer, intervened to recover survivor benefits it paid to Mrs. Taylor as a result of her husband's death. The parties stipulated that Halliburton Services paid $39,487.24 in survivors benefits and $30.00 in expenses to plaintiff.

FN2. On remand, the other plaintiff, Tallentire, would be entitled to a jury trial.

FN3. Thus, for example, I have directed the parties to use the same 10.25% discount rate as used in the original opinion. I have directed the parties to employ the same 5.3% annual increase in wages over the base rate, even though the actual earnings of special operators from 1982 through 1986 are now known. Similarly, I have not taken into consideration the changes in the tax law since the original opinion. Regarding whether the decedent's personal consumption should be taken out of pre-tax or post-tax income, I maintain the position of the original opinion that Mr. Taylor's personal consumption is subtracted from “his take home income,” i.e. after-tax (and after social security).

FN4. The plaintiff's economist, Dr. Goodman, recommended a figure of $294,347.02, while the defendant's economist, Dr. Boudreaux, recommended a figure of $294,002.00, as the value of lost wages discounted to the date of accident. Dr. Goodman utilized the average tax liability on estimated earnings over the entire period of the loss, while Dr. Boudreaux calculated his estimate on a year-to-year basis. Neither suggested that his method, or his computer, was significantly superior to the other's.

FN5. Dr. Goodman recommended a figure of $53,168.23; Dr. Boudreaux recommended a figure of $49,146.00.

FN6. Dr. Goodman recommended a figure of $34,075.48; Dr. Boudreaux recommended a figure of $25,002.00.

In the original opinion, I selected a discount rate of 10.25%, to be applied to the loss of support to the plaintiff from the decedent's wage income and the profit sharing plan benefits, in order to arrive at the present value of the loss of support as of the date of Mr. Taylor's death. The parties assumed in calculating the damage figures, and I agree, that the 10.25% discount rate should be applied to the value for loss of services as well.

FN7. The study valued household services at market values, usually at or near the minimum wage, and classified households according to a number of criteria, including, for example, the fact that the decedent's wife was not employed outside the house.

FN8. Applying the discount rate utilized in the original opinion, the defendant represents that the value on the date of the accident of the income stream would be $11,030.

FN9. Alternatively, I note that the assessment of the decedent's services at “$150 per month” over an eight year period contemplated not “nominal” dollars, but “real” (or discounted) dollars, measured by the value of the dollar in 1980, the last year in which the decedent was alive to give such services. I found, in other words, that the real value of the decedent's nurture per month would remain constant over the eight year period, rather than decline over the years, as the defendant's analysis implies. (The adoption of the same rate for discounting and

for pre-judgment interest had the implicit result of finding a real interest rate of 0%.)

FN10. The parties have assumed that it is the date of the signing of the judgment that matters; I note that the significant date is the date of *entry* of judgment, *see* 28 U.S.C. § 1961, which is the date on which the clerk enters the judgment on the docket sheet, *see* Fed.R.Civ.P. 58, 79.

FN11. Presumably, under defendant's theory, the interest will continue to run at the rate of 8.98% after the date of entry of the judgment following this opinion, regardless of any further appeal, notwithstanding the fact that the interest rate that would be applied to the judgment to be entered following this opinion will most likely fall somewhere between 7 and 8%. (The rate that would be applied under 28 U.S.C. § 1961 to a judgment entered today would be 7.59%.)

FN12. Presumably, under plaintiff's theory, post-judgment interest would then begin to run at the current rate, which will most likely be somewhere in the neighborhood of 7 to 8%.

FN13. Alternatively, on more technical grounds, both *Brooks* and *Copper Liquor* involved original judgments that were affirmed in part, reversed in part, and remanded, *see Brooks,* 695 F.2d 984, 991 (5th Cir.1983); *Copper Liquor,* 624 F.2d 575, 584 (5th Cir.1980) and thus could be said to have been "substantially affirmed," *see Brooks,* 757 F.2d at 740, or "modified," see *Copper Liquor,* 701 F.2d at 545, on appeal. Here, the judgment was "vacated," albeit for a "limited purpose." *Tallentire v. Offshore Logistics, Inc.,* 800 F.2d at 1392 (5th Cir.1986). Interest does not accrue on a vacated judgment. *Hysell v. Iowa Public Service Co.,* 559 F.2d 468, 474 (8th Cir.1977); *see Turner,* 702 F.2d at 754, 757 n. 7.

Moreover, also on technical grounds, "where a court of appeals ha[s] remanded a case with directions to enter judgment for plaintiff, the district court could not exact interest from the date of the first judgment unless so ordered by the mandate of the court of appeals." *Gele v. Wilson,* 616 F.2d 146 (5th Cir.1980) (applying F.R.A.P. 37).

I note that the part of the original judgment in favor of Halliburton Services for $39,517.24 has not been questioned by any party or any court at any time. Consequently, notwithstanding the technical grounds that might suggest otherwise, I award Halliburton post-judgment interest pursuant to 28 U.S.C. § 1961 beginning on May 3, 1983, the date of entry of the original judgment.

FN14. Although the parties have not raised the issue, lest there be any doubt, interest shall be computed daily to the date of payment, in the same fashion as called for in 28 U.S.C. § 1961(b).

FN15. I also believe it to be the method I contemplated upon entering the original opinion, and, alternatively, if discretion remains now for me to select a method, it is the method I choose, primarily on the grounds that it is the normal method and the one I would naturally have had in mind at the time of selecting the 10.25% rate of interest.

Plaintiff raised the question whether post-judgment interest accrues on the sum of the principal and pre-judgment interest, or only upon the principal. To its credit, defendant has not even suggested the latter proposition, which would be wholly contrary to common sense. Post-judgment interest accrues on the sum of the principal and accumulated pre-judgment interest.

FN16. 395,990.73 x .1025 = 40,489.05; and 395,990.73 + 40,489.05 = 436,579.78. I have rounded off to the nearest penny.

FN17. 864,398.09 x .1025 = 88,600.80; 88,600.80/365 = 242.74.

E.D.La.,1988.
Taylor v. Air Logistics, Inc.
Not Reported in F.Supp., 1988 WL 76258 (E.D.La.)

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