

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-20212
Summary Calendar

GAINES TOWING AND TRANSPORTATION, INC.,

Plaintiff-Appellant,

versus

ATLANTIA TANKER CORPORATION;
NORTH AMERICAN SHIP AGENCIES;
M/T ATLANTIA; GENERAL SHIP SERVICE,
INC.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(H-96-CV-2339)

September 19, 2000

Before POLITZ, DAVIS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Gaines Towing and Transportation, Inc., appeals the judgment on remand awarding it \$65,349 for repair damages and \$15,000 for lost profits. We affirm.

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Background

Gaines Towing filed this action seeking recovery for damages to its tug caused by the wake of the defendants' passing tanker. After a bench trial the court awarded \$198,868 for repair damages and \$15,000 for lost profits. On appeal we reversed the *in rem* judgment, affirmed judgment on *in personam* liability, and vacated and remanded for reconsideration of quantum.

On remand, after revisiting the issue of damages, the trial court awarded the sums noted above. Gaines Towing timely appealed.

Analysis

On remand we directed the court to determine whether plaintiff's vessel was a constructive total loss because of the damages sustained, or whether its repair was economically practicable. If the latter, any lost profit award was to be based on actual profits lost during the reasonable period of repairs. The trial court invited and received briefs on the issue of the appropriate measure of damages.

Reviewing the court's quantum judgment on remand in light of the record, we find no reversible error. The damage award of \$65,349 is an appropriate recovery after deleting from the earlier award expenses which were related to facts the prior panel viewed as questionable. We accordingly affirm the award for the

repair damages.

We likewise affirm the award for lost profits. It is abundantly clear from the record that the time taken for repairs was excessive, approaching if not reaching three times as long as it reasonably should have taken. The \$15,000 awarded is consistent with Gaines Towing's historical earnings, measured against a reasonable time for repairs.

The judgment appealed is in all respects **AFFIRMED**.