

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-3797  
Summary Calendar

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MONICA LYNN, INC.,

Plaintiff-Appellant,

versus

TRITON 4, a remotely operated  
vehicle, in rem and SONSUB, INC.,  
in personam,

Defendants-Appellees.

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Appeal from the United States District Court for the  
Eastern District of Louisiana  
(CA 93-423 H)

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(September 15, 1994)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:\*

The F/V MONICA LYNN ("MONICA LYNN") salvaged an underwater remotely operated vehicle off the coast of Louisiana. The district court awarded the boat's owner, Monica Lynn, Inc. ("Monica Lynn"),

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

a salvage award of \$25,000 against the defendant, Sonsub. We affirm this judgment.

I

On March 5, 1992, the defendant Sonsub was in the process of retrieving its remotely operated vehicle, the TRITON 4 ("TRITON 4"), from a dive when the umbilical cord broke, casting the underwater vehicle adrift in the Gulf of Mexico. Sonsub immediately began a sea and air search for the TRITON 4. The company also attempted to track the vehicle by radar. Sonsub distributed approximately 200 flyers offering a \$5,000 reward for the recovery of the TRITON 4 to area marinas, boat companies, dock facilities, air/seaports, and diving companies. The search for the TRITON 4 continued until March 15 without success, costing Sonsub over \$12,500.

On the morning of March 16, the plaintiff Monica Lynn's shrimp boat MONICA LYNN, having picked up its nets, was proceeding east approximately 60 miles southwest of the TRITON 4's last known position when its Captain, Jerry Wilkes, spotted something floating in the water. Initially believing the object to be a dead turtle, Captain Wilkes altered his course to take a look at it. When the MONICA LYNN pulled alongside of the object, a crew member decided that it was simply a piece of floating debris. Upon further examination, however, Captain Wilkes discovered that it was a piece of sophisticated equipment, the TRITON 4.

Captain Wilkes decided to bring the object on board. The weather at the time was fair and calm with two- to three-foot seas and a five- to ten-knot breeze from the west or southwest. A deckhand went overboard and tied ropes to the unlit, unmarked TRITON 4. The crew then spent the next one and one-half hours working to hoist the vehicle onto the ship. The recovery effort scraped paint on the MONICA LYNN and bent one of its bulwarks.

Once the TRITON 4 was on board, Captain Wilkes radioed the only boat in the immediate area, a seismographic boat located five to six miles south of the MONICA LYNN, to see if the boat knew anything about the recovered vehicle. The seismographic boat was not aware that the TRITON 4 had been lost; however, someone from a distant oil rig came on the radio and advised Captain Wilkes that the TRITON 4's owners had been searching about a week for the craft and were offering a \$5,000 reward for its return. After Captain Wilkes located Sonsub's name and telephone number on the TRITON 4's identification plate, the person from the oil rig called Sonsub with the news of the recovery. Sonsub requested that the MONICA LYNN transport the TRITON 4 to Martin Fuel Dock at Belle Pass, Louisiana. The MONICA LYNN, with the TRITON 4 aboard, then departed from the fishing area located 45 miles south-southwest of Belle Pass and arrived at Martin Fuel Dock late that afternoon.

On the morning of March 17, Captain Wilkes spoke with Monica Lynn's attorney and faxed him a copy of the reward flyer, which he had obtained after arriving at the port. The attorneys for the

parties negotiated conditions of the salvage for a number of days. On March 24 the MONICA LYNN released the TRITON 4 to Sonsub, and the shrimp boat returned to fishing. At the time of the incident, the TRITON 4 was insured for approximately \$705,000.

## II

The plaintiff Monica Lynn filed a complaint demanding an appropriate salvage award against the defendants, Sonsub and TRITON 4, in the United States District Court for the Eastern District of Louisiana on February 5, 1993. The defendants timely answered the complaint. After a bench trial on October 20, 1993, the district court granted a salvage award in favor of Monica Lynn in the amount of \$25,000, plus interest, from the date of the salvage. This award consisted of \$10,000 to compensate the MONICA LYNN for the time it could not shrimp and a \$15,000 reward for the salvage. The plaintiff appealed the award, claiming errors in the judge's findings of fact and seeking a higher salvage award.

## III

Monica Lynn presents three issues for review:

1. Whether the trial court's finding that "it [was] virtually certain that the [Triton 4] would be found in any event" is clearly erroneous.

2. Whether the trial court's conclusion that the salvaged TRITON 4 was worth \$450,000 is clearly erroneous.

3. Whether in assessing a salvage award of only \$25,000 the trial court erred as a matter of law.

IV

The parties urge the court to use the clearly erroneous standard to evaluate the district court's findings on the first two issues raised by the plaintiff. Because these first two issues are also factors in the determination of the award, we need not reach these issues if we first evaluate the award. We have held that the amount of the award "allowed [in salvage actions] is to be decided by the district court in its sound discretion and an award will be altered only if it was based upon incorrect principles of law or misapprehension of the facts or it is either so excessive or so inadequate as to indicate an abuse of discretion." Allseas Maritime v. M/V Mimosa, 812 F.2d 243, 246 (5th Cir. 1987).

V

A

There is no precise method for calculating salvage awards. Allseas Maritime, 812 F.2d at 246. Since 1869, however, courts have used a set of six considerations to evaluate an award according to the case's individual circumstances. The Blackwall, 77 U.S. (10 Wall.) 1, 14 (1869); Platoro Ltd. v. The Unidentified Remains of a Vessel, Her Cargo, Apparel, Tackle, and Furniture, in a Cause of Salvage, Civil and Maritime, 695 F.2d 892, 904 n.16 (5th Cir.), cert. denied, 464 U.S. 818 (1983). These factors are as follows:

1. the degree of danger from which the lives and property are rescued;

2. the value of the property saved;
3. the risk incurred by the salvors in securing the property from the impending peril;
4. the promptness, skill and energy displayed by the salvors in rendering the service and saving the property;
5. the value of the property employed by the salvors in rendering the service and the danger to which such property was exposed; and
6. the time and labor expended by the salvors in rendering the salvage services.

Platoro Ltd., 695 F.2d at 904 n.16. These considerations guide the trial court in promoting the public policy behind salvage awards: "encouraging seamen to render prompt service during maritime emergencies." Allseas Maritime, 812 F.2d at 246. These awards provide incentive for seamen to undertake salvage operations, and thus salvagers are not limited to a strict award in quantum meruit. Id. Instead, we view these awards in the nature of bounties to reward the seamen for their efforts. Id.

With the "bounty nature" of the award in mind, the district court evaluated the salvage operation and appropriate award using the considerations set out in The Blackwall. We hold that the district court did not abuse its discretion in determining the award.

B

We thus turn to the Blackwall factors to examine the district court's reasoning in determining the award.

(1)

The degree of danger from which the lives and property are rescued. Based on the testimony presented at trial, the district court concluded that the rescue of the TRITON 4 was a virtual certainty. From the evidence presented, the court conceded that had the TRITON 4 not been rescued some danger existed that the vehicle could have been damaged. Characterizing the danger as "relatively insignificant," the court, nevertheless, found that the location in which the TRITON 4 was found was a well-traveled area such that the vehicle would have been spotted, even without being marked or lit.

(2)

The value of the property saved. Based upon expert testimony, the court determined that the TRITON 4 as a part of an overall retrieval system would be worth \$650,000 and worth \$250,000 as scrap, even though it was insured for \$705,000. The court allowed a \$200,000 deduction for depreciation and valued the unit at \$450,000. The court stated that it did not place a great emphasis on this consideration because it felt virtually certain that the vehicle would have been located. Furthermore, the district court stated that the value of the property becomes much more significant where the potential salvor is faced with danger in conducting the operation. The court also expressed a desire to guarantee a just

award so that in the future potential rescuers would believe it worth their while to salvage lost items.

(3)

The risk incurred by the salvors in securing the property from the impending peril. The court found that by the captain's own statement no risk existed to his equipment and crew during the salvage operation. The seas were calm, and the weather was fair. Furthermore, the captain testified that he would not have put a crew member overboard to rescue the vehicle had there been great risk involved.

(4)

The promptness, skill and energy displayed by the salvors in rendering the service and saving the property. The captain of the MONICA LYNN testified that when he spotted the TRITON 4 he immediately altered his course to reach it. He stated that he was not trained in salvaging operations and that only the shrimping equipment located on board was used to lift the TRITON 4 onto the boat. The TRITON 4 was salvaged within 90 minutes of its discovery. Although the court did not comment directly on this consideration, the court repeated throughout its judgment that it wanted to justly reward people for their efforts in salvaging operations. Because the salvage was accomplished quickly and without a great degree of effort by the MONICA LYNN, the award was commensurate with the boat's effort.



(5)

The value of the property employed by the salvors in rendering the service and the danger to which such property was exposed. At trial, the owner of the MONICA LYNN testified that the boat was worth approximately \$200,000. The court evaluated the risk to the boat and the danger involved and decided that there was virtually no risk to the MONICA LYNN in this salvage operation.

(6)

The time and labor expended by the salvors in rendering the salvage services. The court found that the MONICA LYNN lost eight days of shrimping during the salvage operation and the ensuing negotiation period. The crew was idle during that time and thus was not paid. The court found that an award of \$10,000 would generously compensate the crew for its down time.

Considering the above factors and the \$10,000 for lost shrimp revenue, the court decided that the MONICA LYNN was entitled to a bounty for its efforts. The court determined that an additional award of \$15,000 would adequately reward the crew for its efforts in the rescue. Thus, the court awarded a total of \$25,000 to the MONICA LYNN for its effort.

VI

We think that this award to the MONICA LYNN was based upon the exercise of sound discretion. The district court evaluated the amount of the award based upon the Blackwell factors. Although the district court did not accord each factor the same weight, we hold

that the district court did not abuse its discretion in its evaluation. Furthermore, the district court did not base its award upon incorrect principles of law, nor a misapprehension of the facts. The court reviewed the overall circumstances of the salvage and determined that little danger nor effort was involved in the operation. The bounty awarded adequately compensates the MONICA LYNN for its loss of revenue and its effort under the circumstances. We thus conclude that the district court did not abuse its discretion in determining the salvage award.

Because we find there was no abuse of discretion in the computation of the salvage award, we need not specifically address the plaintiff's first two points of error. The judgment of the district court is, therefore,

A F F I R

M E D.