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Maintenance and Cure: Experimental and Speculative Treatments

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The duty to provide maintenance and cure is of ancient vintage. Its origins can be traced back to the medieval sea codes. Thomas J. Schoenbaum, 1 Admiralty and Maritime Law § 6-28 (5th ed. 2017). The duty to provide maintenance and cure was incorporated into American admiralty law by Justice Story in *Harden v. Gordon*, 11 F. Cas. 480, 482-83 (C.D.D. Me. 1823). The duty was first recognized and defined by the United States Supreme Court in *The Osceola*, 189 U.S. 158, 175 (1903).

The intent was to ensure that seamen have adequate funds to cover basic living expenses and medical care during their recovery. While the lot of the "poor and friendless" seaman, *Harden*, 11 F. Cas. at 483, has improved considerably over the past two hundred years, the Supreme Court has shown no inclination to depart from its historic solicitude of seamen. They continue to be viewed by the law as "wards of the admiralty." David W. Robertson, *Punitive Damages in U.S. Maritime Law: Miles, Baker, and Townsend*, 70 La. L. Rev. 463, 479 n. 107 (2010) ("The Supreme Court has called seamen 'wards of admiralty' in at least twenty-four decisions.").[1]

[1] In addition to maintenance and cure, seaman can take advantage of certain substantive aspects of maritime law which differ from traditional tort law. For example, under the Jones Act, the seaman has a more lenient standard of proximate cause. He can recover against his employer if the employer's negligence contributed "in the slightest degree" to the seaman's injury or death. *Gautreaux v. Scurlock Marine, Inc.*, 107 F.3d 331, 335 (5th Cir. 1997). The seaman can also recover under the general maritime law for unseaworthiness. This action does not require proof of negligence by the seaman's employer. Rather, it requires proof that the vessel was not reasonably fit for its intended purpose, and there was a causal connection between the unseaworthiness and the seaman's injury. *Johnson v. Offshore Exp., Inc.*, 845 F.2d 1347, 1354 (5th Cir. 1988).

THE LAW REGARDING MAINTENANCE AND CURE

A seaman's right to maintenance and cure is implied in the employment contract between a seaman and his employer. *Brister v. A.W.I., Inc.*, 946 F.2d 350, 360 (5th Cir. 1991). To recover for maintenance and cure, the seaman need only show that he was injured while in service to the vessel and lost wags or incurred expenditures relating to the treatment of his injury. *Loftin v. Kirby Inland Marine, L.P.*, 568 F.Supp.2d 754, 761 (E.D. Tex. 2007). The burden of proof is "relatively light since recovery is not dependent on the negligence or fault of the vessel or its owner." *Freeman v. Thunder Bay Transp. Co., Inc.*, 735 F.Supp. 680, 681 (M.D. La. 1990); *see also Aguilar v. Standard Oil Co. of N.J.*, 318 U.S. 724, 730-31 (1943) ("So broad is the shipowner's obligation that negligence or acts short of culpable misconduct on the seaman's part will not relieve him of the responsibility."). Maintenance is a daily stipend for living expenses, i.e., food and lodging the seaman would have received aboard the vessel. *Hall v. Noble Drilling (U.S.) Inc.*, 242 F.3d 582, 586-90 (5th Cir. 2001). Cure involves the payment of therapeutic, medical, and hospital expenses associated with the treatment of a seaman's injury or illness. *Cooper v. Diamond M Co.*, 799 F.2d 176, 179 (5th Cir. 1986).

A seaman is entitled to maintenance and cure until the point of "maximum cure."[2] *McBride v. Estis Well Service, L.L.C.*, 853 F.3d 777, 783 (5th Cir. 2017). Maximum cure occurs when it appears probable that further treatment will result in no betterment of the seaman's condition. *Pelotto v. L & N Towing Co.*, 604 F.2d 396, 400 (5th Cir. 1979). Thus, where it appears that the seaman's condition is incurable, or that future treatment will

[2] Also referred to as "maximum medical recovery," "maximum medical improvement," or "MMI". *Weeks Marine, Inc. v. Watson*, 190 F.Supp.3d 588, 596-97 (E.D. La. 2016).

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