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ADMIRALTY-MAINTENANCE AND CURE

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COMMENTS

ADMIRALTY—MAINTENANCE AND CURE—The recent decision of *Warren v. United States*[1] marks another instance of the growing inter-

[1] 340 U.S. 523, 71 S.Ct. 432 (1951), discussed infra.

est of the Supreme Court in the remedies given injured seamen. The right of the seaman to maintenance and cure can be found in the earliest formulations of a law of the sea and is present in our admiralty law today. The ancient terminology is still used but the tendency is to construe the language liberally in favor of the seaman.

This comment is intended as a short survey of the development of the remedy in this country as represented by the landmark cases. It will not be concerned with the infinite variety of factual situations which may be found in the lower court decisions, but rather will deal only with the broad outline of the subject matter. Questions incidental to the remedy—e.g., who is a seaman, who is the owner, what will be considered to be a ship—will not be considered. Likewise, the obviously related problem of negligence in furnishing maintenance and cure does not fall within the scope of this comment.

I. *Nature of the Remedy*

Maintenance and cure was introduced into our admiralty law by the case of *Harden v. Gordon*[2] decided in 1823. The Circuit Court of Maine, after an extensive review of Continental and English authorities, concluded that the ship should bear the cost of the medical expenses of a seaman who became sick without fault on his part while in the service of the vessel. The philosophy behind such a holding is that:

> "Seamen are by the peculiarity of their lives liable to sudden sickness from change of climate, exposure to perils, and exhausting labors. They are generally poor and friendless, and acquire habits of gross indulgence, carelessness and improvidence. If some provision be not made for them in sickness at the expense of the ship, they must often in foreign ports suffer the accumulated evils of disease, and poverty, and sometimes perish from the want of suitable nourishment. Their common earnings in many instances are wholly inadequate to provide for the expenses of sickness. . . ."[3]

This is similar to a part of the underlying rationale of the more recent workmen's compensation remedies given workmen in general. However, the seaman's remedy is but a rough approximation of the remedies accorded in the workmen's compensation statutes.

The extent of the duty of the vessel and its owner was defined by Justice Story in *Reed v. Canfield*[4] as being that:

[2] 11 Fed. Cas. 480, No. 6,047 (1823).
[3] Id. at 483.
[4] 20 Fed. Cas. 426 at 429, No. 11,641 (1832).

> "The seaman is to be cured at the expense of the ship, of the sickness or injury sustained in the ship's service. It must be sustained by the party, while in the ship's service; and he is not to receive any compensation, or allowance for the effects of the injury. But so far, and so far only, as expenses are incurred in the cure, whether they are of a medical or other nature, for diet, lodging, nursing or other assistance, they are a charge on, and to be borne by, the ship. The sickness or other injury may occasion a temporary or a permanent disability; but that is not a ground for indemnity from the owners. They are liable only for the expenses necessarily incurred from the cure; and when the cure is completed, at least so far as the ordinary medical means extend, the owners are freed from all further liability."[5]

This formulation of the duty is couched in terms found in the ancient laws of the sea from which our admiralty law is derived.[6]

Justice Brown drew heavily on the foregoing cases in *The Osceola*,[7] the first authoritative statement by the Supreme Court on the remedy. The law was settled at that time, 1903, on the following points:

> "(1) That the vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued. . . . (4) That the seaman is not allowed to recover an indemnity for the negligence of the master, or any member of the crew, but is entitled to maintenance and cure, whether the injuries were received through negligence or accident."

As in the case of workmen's compensation no fault of the employer or vessel is required[8] and the right of the seaman has a relational basis rather than a contractual basis.[9] Recovery by the seaman is not based upon a theory of damages but rather upon actual expenses incurred in the

[5] The seaman is entitled to the ordinary maintenance and cure given seamen generally. The City of Alexandria, (D.C. N.Y. 1883) 17 F. 390; The Bouker No. 2, (2d Cir. 1917) 241 F. 831. It also includes travel expenses to the home port when the seaman is discharged in a foreign port. The William Penn, (D.C. N.Y. 1925) 1925 A.M.C. 1316; Lombard S.S. Co. Ltd. v. Anderson, (4th Cir. 1904) 134 F. 568.

[6] For a statement of the ancient laws see JUSTICE, SEA LAWS, 3d ed., 76 et seq. (1705); see also Laws of Oleron, 30 Fed. Cas. 1171.

[7] 189 U.S. 158 at 158, 23 S.Ct. 484 (1903).

[8] Seville v. United States, (9th Cir. 1947) 163 F. (2d) 296; Cornell Steamboat Co. v. Fallon, (2d Cir. 1909) 179 F. 293, cert. den. 216 U.S. 623, 30 S.Ct. 577 (1910).

[9] Sims v. United States War Shipping Adm., (3d Cir. 1951) 186 F. (2d) 972. For the purposes of the statute of limitations it is contractual because the relationship arose out of a contract. Cresci v. Standard Fisheries, (D.C. Cal. 1925) 7 F. (2d) 378. Only the vessel and its owner are liable for maintenance and cure and not a negligent third party causing the injury. The Federal No. 2, (2d Cir. 1927) 21 F. (2d) 313.

maintenance and cure.[10] If no actual expenses are incurred there can be no recovery of maintenance and cure.[11]

Included in the classic statement of the remedy is the right of the seaman to wages for the duration of the voyage for which he signed on regardless of the amount of time during which he was unable to perform his tasks.[12] This has been extended in some cases to the contractual period for which the seaman signed up when it was for a longer period than one voyage.[13]

The right to wages cannot, apparently, be defeated by ordinary negligence, gross negligence or willful misconduct of the seaman.[14] The one possible exception is where the seaman has deserted his ship.[15]

It is possible for the seaman to lose his right to maintenance and cure. Ordinary negligence does not defeat the seaman's remedy but if he was guilty of gross negligence[16] or if the injury occurred as a result of the seaman's own misconduct it will.[17] Thus if the seaman has

[10] Calmar S.S. Corp. v. Taylor, 303 U.S. 525, 28 S.Ct. 651 (1938); Robinson v. Swayne & Hoyt, Ltd., (D.C. Cal. 1940) 33 F. Supp. 93; Ward v. American President Lines, (D.C. Cal. 1951) 95 F. Supp. 609. It is not necessary that the seaman be under the care of a physician; it is sufficient if he is undergoing recommended self-treatment. Seville v. United States, (9th Cir. 1947) 163 F. (2d) 296; Triantafilos v. United States, (D.C. Pa. 1949) 1949 A.M.C. 1625.

[11] Johnson v. United States, 333 U.S. 46, 68 S.Ct. 391 (1948); Barnes v. American-Hawaiian S.S. Co., (D.C. Cal. 1948) 79 F. Supp. 699.

[12] The City of Alexandria, (D.C. N.Y. 1883) 17 F. 390; Olsen v. Whitney, (D.C. Cal. 1901) 109 F. 80; The Ipswich, (D.C. Md. 1930) 46 F. (2d) 136; The William Penn, (D.C. N.Y. 1925) 1925 A.M.C. 1316; The William Penn, (D.C. N.Y. 1925) 1925 A.M.C. 943; The Coniscliff, (5th Cir. 1921) 270 F. 206; McManus v. Marine Transport Lines, Inc., (2d Cir. 1945) 149 F. (2d) 969; The Hawaiian, (D.C. Md. 1940) 33 F. Supp. 985; Leahy v. United States, (D.C. N.Y. 1945) 63 F. Supp. 11; Ward v. American President Lines, (D.C. Cal. 1951) 95 F. Supp. 609.

[13] Great Lakes S.S. Co. v. Geiger, (6th Cir. 1919) 261 F. 275; Endchasson v. Freeport Sulphur Co., (D.C. Tex. 1925) 7 F. (2d) 674. If the injury was caused by the employment of the seaman he is entitled to wages for a reasonable time after the end of the voyage. The Alector, (D.C. Va. 1920) 263 F. 1007.

[14] The Robert C. McQuillen, (D.C. Conn. 1899) 91 F. 688; The New York, (2d Cir. 1913) 204 F. 764; The Coniscliff, (5th Cir. 1921) 270 F. 206; Leahy v. United States, (D.C. N.Y. 1945) 63 F. Supp. 11 (ashore directly against orders and was badly sunburned).

[15] The Lafcoma, (D.C. N.Y. 1931) 1932 A.M.C. 196.

[16] France & Canada S.S. Corp. v. Storgard, (2d Cir. 1920) 263 F. 545, cert. den. 252 U.S. 585, 40 S.Ct. 394 (1920); Cornell Steamboat Co. v. Fallon, (2d Cir. 1909) 179 F. 293, cert. den. 216 U.S. 623, 30 S.Ct. 577 (1910); The New York, (2d Cir. 1913) 204 F. 764; Chandler v. United States, (D.C. N.Y. 1949) 94 F .Supp. 581; The City of Alexandria, (D.C. N.Y. 1883) 17 F. 390.

[17] When the seaman contracts venereal disease it is classified as willful misconduct on his part. The Alector, (D.C. Va. 1920) 263 F. 1007; The Coniscliff, (5th Cir. 1921) 270 F. 206; Zambrano v. Moore-McCormack Lines, Inc., (2d Cir. 1942) 131 F. (2d) 537; Trimm v. United Fruit Co., (D.C. N.Y. 1941) 41 F. Supp. 395. Cf. Lindgren v. Shepard S.S. Co., (2d Cir. 1940) 108 F. (2d) 806. Likewise when the seaman is injured in a drunken brawl. Adams v. United States, (D.C. N.Y. 1940) 1940 A.M.C. 951; Lortie

disobeyed orders or has deserted his ship he is not entitled to maintenance and cure.[18] A like result is reached in those cases where the seaman has refused maintenance and cure tendered by the vessel or its owners.[19]

The Osceola left several questions unanswered. The first was the interpretation to be given the requirement that the seaman be "in the service of the ship" at the time that he was injured or fell ill. The second was as to the duration of the duty to maintain and cure the seaman.

II. *In the Service of the Ship*

In many instances it is clear that the seaman was in the service of the ship when he was injured, e.g., if he was injured by a winch while loading cargo. It is equally clear that the seaman is not in the service of the ship if he has not signed on the vessel or has signed off the vessel at the time of the injury.[20] Here we are concerned only with those borderline cases where the seaman is undeniably a member of the crew of the ship and is injured or falls ill when he is not pursuing the duties of his employment.

In 1917 the second circuit, in *The Bouker No. 2*,[21] considered the case of an engineer on a harbor tug who was injured while a part of the crew of the vessel but when he was off duty. The court, in holding that he was entitled to maintenance and cure, stated: "It is not necessary that the wound or illness should be directly caused by some proven

v. American-Hawaiian S.S. Co., (9th Cir. 1935) 78 F. (2d) 819; Oliver v. Calmar S.S. Co., (D.C. Pa. 1940) 33 F. Supp. 356. *Contra:* Nowery v. Smith & Johnson, (D.C. Pa. 1946) 1946 A.M.C. 1702.

[18] Leahy v. United States, (D.C. N.Y. 1945) 63 F. Supp. 11; The Lafcoma, (D.C. N.Y. 1931) 1932 A.M.C. 196.

[19] If the seaman refuses to enter the Marine Hospital, where he is given free maintenance and cure, it is treated as a rejection. Stewart v. United States, (D.C. La. 1928) 25 F. (2d) 869; The Alpha, (D.C. Pa. 1942) 44 F. Supp. 809; United States v. Loyola, (9th Cir. 1947) 161 F. (2d) 126; Bailey v. City of New York, (2d Cir. 1946) 153 F. (2d) 427; June v. Pan-American Petroleum and Transportation Co., (5th Cir. 1928) 25 F. (2d) 457. A like result is reached where the seaman leaves the Marine Hospital before treatment is completed or if he is discharged for disciplinary reasons. The Santa Barbara, (2d Cir. 1920) 263 F. 369; The Saguache, (2d Cir. 1940) 112 F. (2d) 482.

[20] Lombard S.S. Co. Ltd. v. Anderson, (4th Cir. 1904) 134 F. 568; The W. H. Hoodless, (D.C. Pa. 1941) 38 F. Supp. 432. Cf. The Michael Tracy, (4th Cir. 1924) 295 F. 680. But if the seaman falls ill during his period of employment from a disease contracted or injury occurring prior to his employment he will be entitled to maintenance and cure. Neilson v. The Laura, Fed. Cas. No. 10,092, 2 Sawy. 242 (1872); Warner Co. v. Loverich, (3d Cir. 1941) 118 F. (2d) 690, cert. den. 313 U.S. 577, 61 S.Ct. 1105 (1941); Spahn v. United States, (4th Cir. 1949) 171 F. (2d) 980; Sanz v. Isbrandtsen Co., Inc., (D.C. N.Y. 1949) 1949 A.M.C. 688.

[21] (2d Cir. 1917) 241 F. 831.

act of labor; it is enough that he was, when incapacitated, subject to the call of duty as a seaman, and earning wages as such."[22]

The doctrine enunciated in the *Bouker* case was further clarified by the court in *Meyer v. Dollar S. S. Line.*[23] It interpreted the phrase as being closely analogous to the term "in the line of duty" as used in the armed forces. In the case before it the seaman was injured in a good-natured scuffle on shipboard while off duty. The court held that the seaman was in the service of the ship when he was off duty but when he started to scuffle he was no longer in the service of the ship and hence was not entitled to maintenance and cure.[24] The *Meyer* case interpretation led the courts to the conclusion that a seaman on shore leave was not in the service of the ship and denied the remedy to him when he was injured while on leave.[25]

In *Aguilar v. United States*[26] the Supreme Court considered the question of whether a seaman on an authorized shore leave was in the service of the ship. He was injured while traversing the dock which furnished the only means whereby he could reach the public street in order to start his shore leave. The Court took the position that shore leave was a necessary adjunct to the service of a seaman and hence a seaman on shore leave was in the service of the ship.[27] This position did not, of course, negative the possibility of defeat of the right to maintenance and cure because of the gross negligence or willful misconduct of the seaman.

The Supreme Court affirmed the *Aguilar* doctrine in *Farrell v. United States.*[28] The seaman was returning from shore leave and was

[22] *Contra:* The President Coolidge, (D.C. Wash. 1938) 23 F. Supp. 575.

[23] (9th Cir. 1931) 49 F. (2d) 1002.

[24] Id. at p. 1003: "An injury suffered or a disease contracted by a sailor is considered to have been 'in the line of duty' unless it is actually caused by something for which he is responsible which intervenes between his service or performance of duty and the injury or disease. He will be responsible for an intervening cause if (1) it consists of his own willful misconduct, or (2) it is something which he is doing in pursuance of some private avocation or business, or (3) it is something which grows out of relations unconnected with the service or is not the logical incident of probable effect of duty in the service." Cf. Sundberg v. Washington Fish & Oyster Co., (9th Cir. 1943) 138 F. (2d) 801.

[25] See, for example, Collins v. Dollar S.S. Lines, Inc., (D.C. N.Y. 1938) 23 F. Supp. 395.

[26] 318 U.S. 724, 63 S.Ct. 930 (1943).

[27] But of course there is no recovery if it is an unauthorized shore leave. Leahy v. United States, (D.C. N.Y. 1945) 63 F. Supp. 11. The lower courts did not confine the Aguilar case to its facts, but rather applied it to cases where the seaman was injured or fell ill while enjoying his shore leave some distance away from the ship. See Ellis v. American-Hawaiian S.S. Co., (9th Cir. 1948) 165 F. (2d) 999; Muise v. Abbott, (1st Cir. 1947) 160 F. (2d) 590; Paul v. United States, (D.C. La. 1943) 54 F. Supp. 60; Smith v. United States, (4th Cir. 1948) 167 F. (2d) 550; Nowery v. Smith & Johnson, (D.C. Pa. 1946) 1946 A.M.C. 1702.

[28] 336 U.S. 511, 69 S.Ct. 707 (1949).

injured when he fell into a dry dock after being misdirected as to how he could reach his ship. He had overstayed his leave, and some question arose as to the characterization to be given to his failure to see the dry dock, but the Court felt that neither was sufficient to defeat his right to maintenance and cure. This case differed from the *Aguilar* case only in that the seaman was returning from his authorized shore leave by a route other than that which was normally used. The Court was agreed that the rationale of the *Aguilar* case would cover this variation in the factual situation and permitted the seaman to have his remedy of maintenance and cure.

In the recent case of *Warren v. United States*[29] the same question was considered. The seaman was injured while on an authorized shore leave when an iron rod which he was using as a support broke. The majority, speaking through Justice Douglas, felt that the rationale of the *Aguilar* case could be extended to cover cases where the injury occurred while the seaman was relaxing on his shore leave.[30] Justices Jackson and Clark dissented on the ground that the *Aguilar* case should apply only when the seaman has no choice as to his actions and not when he has a choice as to when and where he will spend his time. Logically this type of reasoning might lead to the conclusion that the seaman on board the ship, but off duty, when injured was not entitled to maintenance and cure, but it is more likely that the dissenting Justices would confine their remarks to cases involving an authorized shore leave. Justice Frankfurter dissented on the ground that the seaman was guilty of gross negligence, and perhaps even willful misconduct.

The only open question in the interpretation of the term today is the factual query as to whether the seaman has been guilty of gross negligence or willful misconduct. Intoxication of the seaman would probably be considered to be at least gross negligence by a majority of the Court today,[31] as would also the case where the seaman has contracted venereal disease.[32]

[29] 340 U.S. 523, 71 S.Ct. 432 (1951).

[30] The seaman had been drinking, but the majority felt that the question of intoxication of the seaman was not presented because of the small amount consumed. The Court also considered the effect of the Shipowners Liability Convention of 1936, 54 Stat. L. 1693 (1939), and held that it was merely declaratory of the admiralty practice of the United States.

[31] Cf. cases cited in note 16.

[32] Ibid.

III. *Duration of Maintenance and Cure*

The duration of the duty of the vessel and its owners to maintain and cure when there is a permanent or long-continuing disability of the seaman has been a subject of controversy. One of the earlier views was that the duty continued only so long as the seaman was entitled to wages.[33] The more general rule was that the duty continued for a reasonable time after the end of the voyage.[34] A third, more modern, view was that it continued until the point of maximum cure was attained.[35]

The Supreme Court first considered the problem in *Calmar Steamship Corp. v. Taylor*.[36] In this case the seaman fell ill of an incurable disease while in the service of the ship, but it was not caused by his employment. The Court stated, "We can find no basis for saying that, if the disease proves to be incurable, the duty extends beyond a fair time after the voyage in which to effect such improvement in the seaman's condition as reasonably may be expected to result from nursing, care and medical treatment."

With the scope of the duty thus defined the Court held that the seaman was not entitled to a lump sum payment for maintenance and cure for life based upon mortality tables.

In the *Farrell* case the seaman had permanently injured himself when he fell into the dry dock. The Supreme Court refused to make a distinction between injuries suffered as a result of his employment and those which were not despite an intimation to the contrary in the *Calmar* case.[37] The majority and minority were agreed that the duty to maintain and cure the seaman continued until such time as the

[33] The City of Alexandria, (D.C. N.Y. 1883) 17 F. 390; The William Penn, (D.C. N.Y. 1925) 1925 A.M.C. 1316; The William Penn, (D.C. N.Y. 1925) 1925 A.M.C. 943; Great Lakes S.S. Co. v. Geiger, (6th Cir. 1919) 261 F. 275; Cornell Steamboat Co. v. Fallon, (2d Cir. 1909) 179 F. 293, cert. den. 216 U.S. 623, 30 S.Ct. 577 (1910).

[34] Storgard v. France & Canada S.S. Corp., (2d Cir. 1920) 263 F. 545, cert. den. 40 S.Ct. 394 (1920); The E. H. Russell, (D.C. N.Y. 1930) 42 F. (2d) 568; The Bouker No. 2, (2d Cir. 1917) 241 F. 831; The Ipswich, (D.C. Md. 1930) 46 F. (2d) 136; The Mars, (3d Cir. 1907) 149 F. 729; if caused by the employment: The Alector, (D.C. Tex. 1925) 7 F. (2d) 674; Loverich v. Warner Co., (3d Cir. 1941) 118 F. (2d) 690, cert. den. 313 U.S. 577, 61 S.Ct. 1105 (1941); The Alpha, (D.C. Pa. 1942) 44 F. Supp. 809; Moyle v. National Petroleum Transport Corp., (2d Cir. 1945) 150 F. (2d) 840.

[35] Luksich v. Misetich, (9th Cir. 1944) 140 F. (2d) 812; McManus v. Marine Transport Lines, Inc., (2d Cir. 1945) 149 F. (2d) 969; Frame v. City of New York, (D.C. N.Y. 1940) 34 F. Supp. 194; InterOcean S.S. Co. v. Behrendsen, (6th Cir. 1942) 128 F. (2d) 506; Muruaga v. United States, (2d Cir. 1949) 172 F. (2d) 318; Lindgren v. Shepard S.S. Co., (2d Cir. 1940) 108 F. (2d) 806.

[36] 303 U.S. 525, 58 S.Ct. 651 (1938).

[37] *Accord:* InterOcean S.S. Co. v. Behrendsen, (6th Cir. 1942) 128 F. (2d) 506; Muruaga v. United States, (2d Cir. 1949) 172 F. (2d) 318.

maximum cure was achieved. The minority, consisting of Justices Douglas, Black, Murphy, and Rutledge, dissented on the ground that cure should also include expenses for maintaining a condition of maximum cure if that was necessary.[38]

The duration of the duty of maintenance and cure has been definitively settled by the Supreme Court and today the only question remaining is as to when the maximum cure has been achieved in the particular case.

IV. *Summary*

The shape of the remedy of maintenance and cure has been clearly defined. There are, of course, a number of peripheral questions remaining but the broad outline is clear.

The seaman is entitled to his wages until the end of the voyage or for the period for which he signed on, if longer. He is entitled to maintenance and cure for injuries or illnesses which occur while he is in the service of the ship, but the right may be defeated if the injury or illness arose out of the seaman's gross negligence or willful misconduct. The seaman on shore leave or off duty is considered to be in the service of the ship. The fault of the vessel or its owners is not a requirement of liability. The measure of the maintenance and cure to which the seaman is entitled is the ordinary maintenance and cure given seamen generally. The duty of the vessel and its owners continues only until such time as the maximum cure has been effected.

In line with present day philosophies the trend has been to expand the remedy in favor of the seamen. Justice Douglas is an able spokesman for the majority with its liberalizing tendencies. However, Justices Jackson and Clark appear to have some doubts as to the desirability of further expansion of the remedy.

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[38] Also denied in Muruaga v. United States, (2d Cir. 1949) 172 F. (2d) 318.