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## ADMIRALTY-DURATION OF DUTY TO PROVIDE MAINTENANCE AND CURE

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## RECENT DECISIONS

**ADMIRALTY—DURATION OF DUTY TO PROVIDE MAINTENANCE AND CURE—** Libellant, while employed as engineer on a vessel operated by the United States, suffered a heart attack. He was paid maintenance and cure from May 31, 1946, when he was discharged from the hospital, until May 26, 1947. This action was brought to recover maintenance and cure from that date until March 25, 1951, when he returned to work, less two periods during which he had been employed for 60 and 93 days. Since April 1947, libellant had received treatment consisting of sedatives and medications designed to relieve chest pains and other discomforts. It was acknowledged there had been little physiological improvement in the damaged heart tissue since shortly after the original attack. *Held*, recovery for libellant, since any treatment which relieved him of physical pain and attendant mental anguish under the circumstances was "curative" even though the damage to the heart might never be further repaired. *Gibson v. United States*, (D.C. Pa. 1951) 100 F. Supp. 954.

The duration of the duty of the shipowner to provide maintenance and cure for seamen who become permanently disabled while in the service of the ship<sup>1</sup> was considered by the Supreme Court in *Farrell v. United States*.<sup>2</sup> In that case the seaman was totally and permanently blinded and suffered convulsions which were recurrent and without possibility of further cure. He required further medical care to ease attacks of headaches and epileptic convulsions after discharge from the hospital, but no recovery was allowed for such treatment. The majority of the court held that the liability of the shipowner did not extend beyond the time when the maximum possible restoration had been accomplished<sup>3</sup> and did not include necessary expenses for maintaining a condition of maximum cure.<sup>4</sup> While this decision laid down the principle for determining when the shipowner's liability terminates where there is permanent disability, the principal case illustrates a further problem faced by lower courts in attempting to

<sup>1</sup> The general extent and duration of this duty were discussed in 50 *MICH. L. REV.* 435 (1952). See also ROBINSON, *ADMIRALTY* §36 (1939).

<sup>2</sup> 336 U.S. 511, 69 S.Ct. 707 (1949). The impact of the Farrell case on the doctrine of maintenance and cure is considered at length by Morrison, "Maintenance and Cure and Farrell v. U.S.," 6 *MILAMI L.Q.* 168 (1952).

<sup>3</sup> "That the duty of the ship to maintain and care for the seaman after the end of the voyage only until he was so far cured as possible, seems to have been the doctrine of the American admiralty courts prior to the adoption of the Convention by Congress, despite occasional ambiguity of language or reservation as to possible situations not before the court. It has been the rule of Admiralty Courts since the Convention." *Farrell v. United States*, supra note 2, at 518. The Shipowners' Liability Convention of 1936 was ratified by the United States in 1938. Article 4, §1, provides: "The shipowner shall be liable to defray the expense of medical care and maintenance until the sick or injured person has been cured, or until the sickness or incapacity has been declared of a permanent character." 54 Stat. L. 1693 (1939).

<sup>4</sup> A four judge minority, of which Justice Douglas was spokesman, felt that the liability of the shipowner extended to continuing needed care even though a maximum cure had been effected. *Farrell v. United States*, supra note 2, at 523.

apply this principle:<sup>5</sup> how is "treatment of a curative nature"<sup>6</sup> designed to achieve maximum possible restoration<sup>7</sup> to be distinguished from mere maintenance of the seamen's condition at a level of maximum cure. The court in the principal case found that although the treatment received by the libelant did nothing further to repair damage to his heart, it relieved mental strain and worry and thus lessened the possibility of recurrent attacks. By extending liability of the shipowner during the period in which the partially disabled seaman is being "rehabilitated" to the maximum possible extent, the court avoids the difficulties which would result from trying to define and apply "treatment of a curative nature" in technical medical terms.<sup>8</sup> The decision is in line with the traditional admiralty liberality in looking after its own. The question arises: should the shipowner be held liable to provide maintenance and cure for a period of five years after a seaman's discharge from the hospital for a heart disease which probably had little causal relation to his employment. Seamen are not covered by state workmen's compensation acts;<sup>9</sup> thus the duty of the shipowner to provide maintenance and cure gives the seaman a kind of substitute for the benefits which workers in other industries receive under these laws, though both the origin<sup>10</sup> and the extent<sup>11</sup> of the protection vary considerably. Though seamen have traditionally opposed substitution of a workmen's compensation act for their

<sup>5</sup> Other recent decisions dealing with the duration of the shipowner's duty are *Robinson v. United States*, (D.C. Ala. 1949) 85 F. Supp. 408, *affd.* (5th Cir. 1949) 177 F. (2d) 582, concerning another heart disease victim; *Bandy v. Keystone Shipping Co.*, (D.C. Pa. 1951) 100 F. Supp. 985; *Gaynor v. United States*, (D.C. Pa. 1950) 90 F. Supp. 751; *Reabe v. Carnegie-Illinois Steel Corp.*, (D.C. Pa. 1951) 100 F. Supp. 728.

<sup>6</sup> "The Government does not contend that if Farrell receives future treatment of a curative nature he may not recover in a new proceeding the amount expended for such treatment and maintenance while receiving it." *Farrell v. United States*, *supra* note 2, at 519.

<sup>7</sup> When the seaman is undergoing treatment *intended* to improve his condition he may recover maintenance and cure for such period even though the treatment fails to effectuate any actual change in his condition. *Triantafilos v. United States*, (D.C. Pa. 1949) 87 F. Supp. 965.

<sup>8</sup> "The term cure was probably employed originally in the sense of *taken charge* or *care* of the disabled seaman, and not in that of positive healing." *The Atlantic*, *Abb. Adm.* 451, 480, *Fed. Cas. No. 620* (1849). "Cure is care, including nursing and medical attention, during such period as the duty continues." *Calmar S.S. Corp. v. Taylor*, 303 U.S. 525 at 528, 58 S.Ct. 651 (1938). It seems clear that in speaking of treatment of a "curative" nature, the court in the Farrell case must have had some other concept of cure in mind. See note 6 *supra*.

<sup>9</sup> This is a result of the exclusive nature of the federal admiralty jurisdiction. *Southern Pacific v. Jensen*, 244 U.S. 205, 37 S.Ct. 524 (1916).

<sup>10</sup> The admiralty duty originated in the old maritime codes of the middle ages. ROBINSON, *ADMIRALTY* §36 (1939).

<sup>11</sup> The duty of maintenance and cure is not restricted to those cases where the seaman's injury or illness is caused by his employment. There are other distinctions. *The Bouker* No. 2, (2d Cir. 1917) 241 F. 831, 833, *cert. den.* 245 U.S. 647 (1917); *Aguilar v. Standard Oil of N.J.*, 318 U.S. 724, 63 S.Ct. 930 (1943); *Farrell v. United States*, *supra* note 2; *Warren v. United States*, 340 U.S. 523, 71 S.Ct. 432 (1951); *Smith v. United States*, (4th Cir. 1948) 167 F. (2d) 550; *Koistinen v. American Export Lines, Inc.*, 83 N.Y.S. (2d) 297 (1948), commented on in 34 *CORN. L.Q.* 603 (1949).

admiralty protection,<sup>12</sup> legislation limiting the duration of the shipowner's duty will perhaps eventually result should Congress become dissatisfied with the manner in which the federal courts work out the problem of determining the bounds of this admiralty remedy.<sup>13</sup>

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<sup>12</sup> "Seamen, organized and unorganized . . . most energetically oppose a compensation act for American seamen. . . . The present laws adequately protect." Hearings before the House Committee on Merchant Marine and Fisheries, on H.R. 6726 and H.R. 6881, 76th Cong., 1st sess., p. 85 (1939).

<sup>13</sup> In England, Parliament has provided that the liability of the shipowner to pay for maintenance and medical attention ceases when the seaman is brought back to home port. The Merchant Shipping Act, 6 Edw. 7, c. 48, §§34, 41 (1906). Sixteen weeks was once suggested to Congress as a limitation on duration of liability of the shipowner by a representative of the shipping industry. Hearings before the House Committee on Merchant Marine and Fisheries on H.R. 6726 and H.R. 6881, 76th Cong., 1st sess., p. 128 (1939).