# 7.11 Maintenance and Cure—Elements and Burden of Proof

On the plaintiff’s maintenance and cure claim, the plaintiff has the burden of proving each of the following elements by a preponderance of the evidence:

First, the plaintiff was a seaman;

Second, the plaintiff was injured or became ill while in the service of the vessel; and

Third, the amount of maintenance and cure to which the plaintiff was entitled.

If you find the plaintiff has proved each of the elements on which [he] [she] has the burden of proof, your verdict should be for the plaintiff. If, on the other hand, the plaintiff has failed to prove any of these elements, your verdict should be for the defendant.

Maintenance is the reasonable cost of food, lodging and transportation to and from a medical facility. The plaintiff is not entitled to maintenance while hospitalized because hospitalization includes food and lodging.

The rate of maintenance includes the cost of obtaining room and board on land. In determining this amount, you may consider the actual costs incurred by the plaintiff but shall not award an amount in excess of that of a seaman living alone in the plaintiff’s locality.

Cure is the cost of medical attention, including the services of physicians and nurses, as well as the cost of hospitalization, medicines, and medical apparatus.

[When the defendant’s failure to provide [maintenance] [[and] [or]] [cure] worsens the plaintiff’s injury, the plaintiff may recover resulting damages and expenses, including pain and suffering, and additional medical expenses.]

The injury or illness need not be work-related so long as it occurs while the plaintiff is in the service of the vessel. Neither maintenance nor cure may be reduced because of any negligence on the part of the plaintiff. [A plaintiff may not recover for maintenance [and] [or] cure when the illness or injury results from the plaintiff’s own willful misbehavior.]

The plaintiff is entitled to receive maintenance and cure even though he was not injured as a result of any negligence on the part of his employer or any unseaworthy condition of the vessel. The plaintiff is entitled to recover maintenance and cure from the date of departure from the ship to the time of maximum cure under the circumstances. Maximum cure is the point at which no further improvement in the plaintiff’s medical condition may be reasonably expected.

There can be no double recovery for the plaintiff. If you find that the plaintiff is entitled to an award of damages under [the Jones Act negligence claim] [the unseaworthiness claim], and if you include medical expenses in the damage award relating to either of these claims, then cure cannot be awarded for the same expenses.

**Comment**

*See Day v. Am. Seafoods Co.*, 557 F.3d 1056, 1057-58 (9th Cir. 2009); *Lipscomb v. Foss Maritime Co.*, 83 F.3d 1106, 1108 (9th Cir. 1996); *Gardiner v. Sea–Land Serv.*, 786 F.2d 943,

945-46 (9th Cir. 1986); *Kopczynski v. The Jacqueline*, 742 F.2d 555, 557-58 (9th Cir. 1984).

The shipowner’s duty to provide maintenance and cure arises irrespective of whether the illness or injury is suffered in the course of the seaman’s employment, and negligence on the seaman’s part will not relieve the shipowner of responsibility. *Vella v. Ford Motor Co.*, 421 U.S. 1, 4-5 (1975). A plaintiff may not recover for maintenance and cure when the injury or illness results from the plaintiff’s own willful misbehavior. *See Omar v. Sea–Land Serv.*, 813 F.2d 986, 989-90 (9th Cir. 1987).

Only “medical expenses” would be duplicative of “cure.” As the Ninth Circuit has explained, “the maintenance obligation is independent of that to compensate for lost wages and exists without regard to the fact that lost wages may be computed on the basis of employment ashore.” *Crooks v. United States,* 459 F.2d 631, 635 (9th Cir. 1972); *see also Colburn v. Bunge Towing, Inc.*, 883 F.2d 372, 378 (5th Cir. 1989) (“Maintenance is neither a substitute for wages nor is it to be considered in lieu of seaman’s wages, in whole or in part” “[A]n award of

maintenance by the trial court in addition to a general damage award that includes past and future wages is proper.”).

Failure to pay maintenance and/or cure when due renders the defendant liable for not only the quantum of maintenance and/or cure that was not paid but also for any resulting harm. *See Cortes v. Baltimore Insular Line, Inc.* 287 U.S. 367, 371 (1932) (“If the failure to give maintenance or cure has caused or aggravated an illness, the seaman has his right of action for the injury thus done to him; the recovery in such circumstances including not only necessary expenses, but also compensation for the hurt.”). The bracketed paragraph on this point should be included only when the plaintiff is making a claim for such compensation.

A plaintiff can seek punitive damages for an employer’s alleged willful and wanton disregard of its maintenance and cure obligation. *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404, 424 (2009).

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