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I. THE NATURE OF THE MAINTENANCE AND CURE OBLIGATION

An employer's obligation to provide for a seaman who becomes sick or injured while in the service of his ship is an ancient one.¹⁷ The duty is implicit in every seaman's employment contract. *Aguilar v. Standard Oil Co.*, 318 U.S. 724, 730 n. 6 (1942); *Bertram v. Freeport-McMoran, Inc.*, 35 F.3d 1008, 1013 (5th Cir. 1994). However it is not, strictly speaking, a contract right. "It is the fact of employment, or more accurately, the fact that the seaman is engaged in the service of the ship which creates the right and not the form of contract." *Gilmore & Black, Law of Admiralty*, 287 (2d ed. 1975). See *Vaughan v. Atkinson*, 369 U.S. 527, 533 (1962): Maintenance and cure provide a seaman with food and lodging when he becomes sick or injured while in the service of his ship, and the right to the benefits "extends during the period when he is incapacitated to do a seaman's work and continues until he reaches maximum medical recovery." *Vaughan*, 369 U.S. at 531. Maintenance and cure are due without regard to the negligence of the employer or seaworthiness of the ship, and give the seaman, without willful

17. Article VII of the Laws of Oleron (12th Century) states:

If it happens that sickness seizes on any of the mariners, while in the service of the ship, the master ought to set him ashore, to provide lodging and candlelight for him, and also to spare him one of the ship-boys, or hire a woman to attend him, and likewise to afford him such diet as is usual in the ship, that is to say, so much as he had on shipboard in his health, and nothing more, unless it pleased the master to allow it him; and if he will have better diet, the master shall not be bound to provide it for him, unless it be at the mariner's own cost and charges, and if the vessel be ready for her departure, she ought not to stay for the said sick party, but if he recover, he ought to have his full wages, deducting only such charges as the master has been at for him. And if he dies, his wife or next kin shall have it.

Article XIX of the Laws of Wisbuy (Circa 13th Century) is similar:

If a seaman falls ill of any disease, and it is convenient to put him ashore, he shall be feed as he was aboard, and have somebody to look after him there; and when he is recovered, be paid his wages; and if he dies his wages shall be paid to his widow or heirs.

Article XLV of the Laws of the Hanse Towns [1597] provides:

If any mariner falls sick of any disease he shall be put ashore and maintained in like manner as if he was on shipboard, and be attended by another mariner. However, the master is not obligated to stay for him; if he recovers his health, he shall be paid his wages as much as if he had served out the whole voyage; in case he dies his heirs shall have what is due to him.

Article XI of the Marine Ordinances of Louis XIV (1681) provides:

If a seaman be wounded in the service of a ship, or fall sick during the voyage, he shall be paid his wages, and treated as a charge of the ship, and if he would be wounded in fighting against enemies or pirates, he shall be cured at the charge of the ship and cargo.

All the above are quoted from the marine laws reprinted at 30 Fed. Cas. 1171, *et seq.*

misbehavior on his part, subsistence, lodging and care to the point where maximum cure has been achieved. *Johnson v. Marlin Drilling Co.*, 893 F.2d 77, 78-79 (5th Cir. 1990).

"Maintenance" represents a *per diem* living allowance, which is paid so long as the seaman resides outside the hospital and has not reached the point of maximum cure. *Cooper v. Diamond M Co.*, 799 F.2d 176, 179 (5th Cir. 1986), *cert. denied*, 481 U.S. 1048 (1987). On the other hand, "cure" involves the actual payment of therapeutic, medical and hospital expenses not otherwise furnished to the seaman, which is made until the point of maximum cure. *Id.*; *Pelotto v. L&N Towing Co.*, 604 F.2d 396, 400 (5th Cir. 1979). The Supreme Court has recognized the policy of liberally applying the remedies of maintenance and cure. "When there are ambiguities or doubts, they are resolved in favor of the seaman." *Vaughan*, 369 U.S. at 532.

The employer may be able to recover its maintenance and cure payments from a third-party tortfeasor. *Bertram v. Freeport-McMoran, Inc.*, 35 F.3d 1008, 1014-16 (5th Cir. 1994).

Other affirmative duties arise with the obligation to pay maintenance and cure. For instance, it has been recognized that the employer must take steps to insure that the sick or injured seaman actually receives proper medical care and treatment. *DeZon v. American President Lines, Ltd.*, 318 U.S. 660, 667-68 (1943) (holding vessel owner/employer liable under Jones Act for negligence of ship's physician); *Central Gulf S.S. Corp. v. Sambula*, 405 F.2d 291 (5th Cir. 1968); *Sykiotis v. Sea Enterprises Corp.*, 327 F.2d 82 (4th Cir. 1964); *Rodgers v. United States Lines Co.*, 189 F.2d 226, 229 (4th Cir. 1951) (requiring ordinary and reasonable medical care under the circumstances). If necessary medical treatment is not available aboard the vessel, it may be incumbent upon the Master to put the vessel into port where medical assistance is available. *THE IROQUOIS*, 194 U.S. 240, 241-42 (1904); *Holliday v. Pacific Atlantic S.S. Co.*, 197 F.2d 610, 611-12 (3d Cir. 1952), *cert. denied*, 345 U.S. 922 (1953) (finding liability for failure to timely summon doctor to vessel in port); *Joshua Hendy Corp. v. Clavel*, 189 F.2d 37, 38 (9th Cir. 1951); but see *Medina v. Erickson*, 226 F.2d 475, 480-81 (9th Cir. 1955), *cert. denied*, 351 U.S. 912 (1956) (holding that ordinary prudent master standard applies when deciding whether to terminate voyage and proceed to port) and *Payne v. Tanker Co., Inc.*, 1955 A.M.C. 694 (E.D. Va. 1954) (recognizing no duty to deviate voyage where injuries do not appear life threatening). If hospitalization is required, the vessel owner or Master must see that proper travel arrangements are made. See *Spellman v. American Barge Line Co., Inc.*, 176 F.2d 716, 719-20 (3d Cir. 1949); *Murphy v. American Barge Line Co.*, 169 F.2d 61, 64 (3d Cir.), *cert. denied*, 335 U.S. 859 (1948). If proper care is not tendered, and the seaman's condition is worsened, the employer may be liable not only for the increased medical expenses and maintenance that may become necessary, but also for the resulting damages. *Cortes v. Baltimore Insular Line, Inc.*, 287 U.S. 367, 371 (1932); *Ladjimi v. Pacific Far East Line*, 97 F. Supp. 174, 179 (N.D. Cal. 1951).

Concomitant with the duty to provide the necessary maintenance and cure, maritime law also imposes upon the employer the duty to promptly investigate claims made by the seaman. See *Vaughan*, 369 U.S. at 530; *Harrell v. Air Logistics*, 805 F.2d 1173, 1175 (5th Cir. 1986). In cases where the employer's investigation of the claim is deficient, e.g., failure to consult with the treating physician or review any medical records, the employer exposes itself to compensatory and other damages for denying benefits. *Morales v. Garijak, Inc.*, 829 F.2d 1355, 1361 (5th Cir.

1987); *Breese v. AWI, Inc.*, 823 F.2d 100, 103-104 (5th Cir. 1987). On the other hand, an employer need not immediately begin payments, but is entitled to investigate and can require corroboration of the claim. *McWilliams v. Texaco, Inc.*, 781 F.2d 514, 519-20 (5th Cir. 1986).

II. DETERMINING HOW MUCH MAINTENANCE IS OWED

Because maintenance represents a subsistence allowance payable to the seaman for food and lodging until the time he has reached maximum cure, the nature of the injury should not affect the amount to be paid. *Catfield v. AC&D Marine, Inc.*, 633 F.2d 1129, 1132 (5th Cir. 1981). Maintenance is intended to cover the reasonable costs of food and lodging comparable to that which was received by the seaman on the vessel. *Springborn v. American Commercial Barge Lines, Inc.*, 767 F.2d 89, 94 (5th Cir. 1985). One of the fundamental rules for recovering maintenance is that the seaman must actually incur the costs, and thus, if the seaman stays with his parents or even at his own house during his convalescence, maintenance benefits may be reduced or eliminated. *Nichols v. Barwick*, 792 F.2d 1520, 1524 (11th Cir. 1986); *Harper v. Zapata Off-Shore Co.*, 741 F.2d 87, 91 (5th Cir. 1984); *Curry v. Fluor Drilling Services, Inc.*, 715 F.2d 893, 896 (5th Cir. 1983). However, the employer may not be able to take advantage of this if its wrongful failure to pay maintenance forced the seaman to live with friends or relatives when he would not have otherwise done so. *McMillan v. Tug JANE A. BOUCHARD*, 885 F. Supp. 452, 464 (E.D. N.Y. 1995).

Courts will often determine the actual amount of maintenance owed based upon evidence of the plaintiff's actual expenditures for food and lodging in the locality. *Nichols*, 792 F.2d at 1523-24; *Springborn*, 767 F.2d at 94-95; *Gauthier v. Crosby Marine Service, Inc.*, 752 F.2d 1085, 1090 (5th Cir. 1985). Evidence of the seaman's actual expenditures is often given determinative weight on the maintenance rate issue. *McWilliams v. Texaco, Inc.*, 781 F.2d 514, 517 (5th Cir. 1986); *Tate v. American Tugs, Inc.*, 634 F.2d 869, 870 (5th Cir. 1981); *Incandela v. American Dredging Co.*, 659 F.2d 11, 14 (2d Cir. 1981).

Or the Evidence can be what the "average single seaman" cost of living would be in a locality. Because the time and effort to produce this type of evidence is usually not economically justified, the courts recognize that local standardized rates are often used. Of course these rates go up from time to time due to inflation. \$25 a day has been the informally accepted rate in the western gulf coast for the last 10 years or so. See *Wolf v. Cal Dive* 2009 Lexis 15190 (E.D. La. 2009) upholding \$25 a day and denying a motion to increase it. However the \$25 figure is not mandatory, and the seaman can get more if he can prove his entitlement. In this regard see *Hall v. Noble Drilling (US) Inc.* 242 F.3d 582 (5th Cir. 2001) where the court approved a little more than \$30/day based upon evidence of the cost of his mortgage, insurance, utilities and food. Accord, *Harrison v. Diamond Offshore* 2008 Lexis 17120 (E.D. La. 2008) applying a \$37 a day rate on the basis that the *Hall* decision in 2001 approved a \$31 rate and with inflation this would now be \$37.

Many times, the seaman's articles of employment will regulate the payment of maintenance. While the Supreme Court has recognized that an employer cannot contractually abrogate or restrict its duty to pay maintenance, *Cortes v. Baltimore Insular Line*, 287 U.S. 367, 371 (1932), some courts have allowed an employer to contractually regulate the amount of maintenance payments. *Dowdle v. Offshore Express, Inc.*, 809 F.2d 259, 263 (5th Cir. 1987).

III. DEFINING CURE

As noted above, "cure" may be defined as the reasonable medical expenses for treatment until the seaman is found fit for duty, or until "maximum cure" is reached. Once it is determined that the seaman's condition is permanent in nature, or that additional medical treatment merely serves to alleviate pain and suffering but does not otherwise improve the seaman's condition, maximum cure is deemed to have been reached. *Vella v. Ford Motor Co.*, 421 U.S. 1, 2 (1975); *Morales v. Garifak*, 829 F.2d 1355, 1359 (5th Cir. 1987); *Springborn v. American Commercial Barge Co.*, 767 F.2d 89, 95 (5th Cir. 1985); *Pelotto v. L&N Towing Co.*, 604 F.2d 396, 400 (5th Cir. 1979); *Cox v. Dravo Corp.*, 517 F.2d 620, 623 (3d Cir. 1975); *Crooks v. United States*, 459 F.2d 631 (9th Cir. 1972). Treatment resulting in a "betterment" of the seaman's condition needs to be distinguished from that which is "palliative."

The actual determination of if and when the seaman has reached maximum cure is a medical question which is determined by the trier of fact. *Breese v. AWI, Inc.*, 823 F.2d 100, 104-105 (5th Cir. 1987). Given the longstanding principle that seamen are treated as wards of the court, it has been held that ambiguities as to whether maximum cure has been reached must be resolved in favor of the seaman. *Kratzer v. Capital Marine Supply, Inc.*, 490 F. Supp. 222, 230 (M.D. La. 1980), *aff'd*, 645 F.2d 477 (5th Cir. 1981). *Musielak v. Rowan International, Inc.*, 814 F. Supp. 556, 557-58 (S.D. Tex. 1993) ("fact that a doctor has determined seaman has reached maximum medical improvement, does not necessarily preclude the possibility an employer acted callously and indifferently in denying maintenance and cure benefit" where another doctor reached a different conclusion).

Of concern for employers is the lack of a set time limit on the employer's liability for maintenance and cure, so long as there remains a chance of improvement in the seaman's condition. See *Calmar S.S. Corp. v. Taylor*, 303 U.S. 525, 531 (1938); *Farrell*, 336 U.S. at 516-19. Such fears are tempered somewhat by the Supreme Court's holding in *Calmar S.S. Corp.*, limiting payments of maintenance and cure in the future to those treatments which are expected "in the immediate future" as recommended by the physician. *Calmar S.S. Corp.*, 303 U.S. at 531-32; *Bonneau v. Guidance Fishing Corp.*, 919 F. Supp. 46, 48 (D. Mass. 1996).

Significantly, the origin or cause of the seaman's disability, the fact that it may have pre-existed the voyage in which it became symptomatic, whether it originated on another vessel, or was due to the fault of another vessel, may be determined to be irrelevant to the employer's duty to provide maintenance and cure under the particular facts of any case. *Stevens v. McGinnis, Inc.*, 82 F.3d 1353, 1358-59 (6th Cir.), *cert. denied*, 117 S.Ct. 433 (1996) (allowing maintenance and cure for removal and treatment of brain tumor that was possibly symptomatic during service aboard vessel, but was not diagnosed until five months after discharge); *Gauthier v. Cosby Marine Service, Inc.*, 499 F. Supp. 295, 299 (E.D. La. 1980), on reconsideration, 536 F. Supp. 269 (E.D. La. 1982), *aff'd*, 752 F.2d 1085 (5th Cir. 1985); *Petition of the United States*, 303 F. Supp. 1282, 1311 (E.D. N.C. 1969), *aff'd*, 432 F.2d 1357 (4th Cir. 1970) (recognizing validity of maintenance and cure claim where lung cancer manifested itself while in service of ship); *George v. Chesapeake & D. Ry.*, 348 F. Supp. 283, 287 (E.D. Va. 1972) (maintenance and cure allowed where malignancy was present, but not known, during service on ship); *Meade v. Skip Fisheries, Inc.*, 385 F. Supp. 725 (D. Mass. 1974) (citing cases). Employer required to provide

ongoing cognitive rehabilitation for brain-injured seaman. Petition of RJF International Corp (Dist. R.I. 5/7/03 CA No. 01-588S). *Witman v. Miles* 387 F.3d 68 (5th Cir 2004) (No Maintenance and Cure due to seaman with Multiple Sclerosis where treatment would only slow deterioration but not improve condition.)

IV. THE SEAMAN'S RIGHT TO UNEARNED WAGES

A seaman's right to recover unearned wages is a corollary of the right to maintenance and cure, and thus, all three are frequently at issue. *Dailey v. Alcoa S.S. Co.*, 219 F. Supp. 601, 603-604 (E.D. La. 1963), *aff'd*, 337 F.2d 611 (5th Cir. 1964). Under usual circumstances, "unearned wages" represent an entitlement to those wages that the seaman would have earned had he been able to complete the terms of his employment. *Archer v. TransAmerican Services, Ltd.*, 834 F.2d 1570, 1574-75 (11th Cir. 1988). *Warren v. United States*, 75 F. Supp. 836, 838 (D. Mass. 1949). Historically, unearned wages were paid until the "end of the voyage" on which the seaman fell ill. *Farrell v. United States*, 336 U.S. 511 (1949).

It is not uncommon for a crewman's counsel to allege that a seaman who has been denied his unearned wages is entitled to recovery of the double wage penalty provided in 46 U.S.C. § 10313. The reported decisions to date have reached a contrary result. *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496, 1510 n.13 (5th Cir. 1995) (*en banc*).

V. THE RECOVERY OF ATTORNEYS' FEES AND PUNITIVE DAMAGES

Many decisions held a "callous", "recalcitrant", or "willful and persistent" refusal to pay maintenance and cure could result in the imposition of attorneys' fees and even punitive damages. These cases principally rely upon the Supreme Court's decision in *Vaughan v. Atkinson*, 369 U.S. 527 (1962), which held that attorneys' fees may be awarded in maintenance and cure cases where the defendants' failure to pay is "callous" or "willful and persistent" in nature. Although punitive damages as such were not before the Court in *Atkinson*, the recent decision in *Atlantic Sounding v. Townsend*, ___ US ___ (2009) has confirmed punitive damages are available.

VI. THE EMPLOYER'S POTENTIAL DEFENSES

The Supreme Court's decision in *Aguilar v. Standard Oil Co. of New Jersey*, 318 U.S. 724 (1943), made clear that an employer's defenses to a seaman's claim for maintenance and cure are few, and narrowly construed. As recognized by the court:

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. *Peterson v. The Chandos*, 6 Sawy 544, 4 F 645 (DC); see also *The J. F. Card*, 43 F 92 (DC); *The Ben Flint*, 1 Abb. (US) 126, 1 Biss 562, Fed Cas No 1,299 (DC). Conceptions of contributory

negligence, the fellow-servant doctrine, and assumption of the risk have no place in the liability or defense against it. Only some willful misbehavior or deliberate act of indiscretion suffices to deprive the seaman of his protection. *The Ben Flint*, 1 Abb (US) 126; 1 Biss. 562, F Cas No. 1,299 (DC) *supra*. The traditional instances are venereal disease and injuries received as a result of intoxication,...

Id. at 730-31. The willful misbehavior of a seaman allows the employer to assert a defense to maintenance, cure and unearned wages. However, the employer bears the burden of proving any asserted defenses to claims for maintenance and cure. *Gulledge v. United States*, 337 F. Supp. 1108, 1112 (E.D. Pa. 1972). Moreover, despite an injury having been sustained due to the willful misbehavior of the seaman, the employer may remain obligated to provide emergency medical treatment, although continuing non-emergency treatment up to maximum cure may not be required. See *Barlow v. Pan Atlantic S.S. Corp.*, 101 F.2d 697, 698 (2d Cir. 1939). A brief summary of the typical defenses asserted to maintenance and cure claims is provided below:

A. Willful Misconduct

Where a seaman's injuries are the result of his own willful misconduct, the employer may be relieved of the duty to provide maintenance and cure. For instance, in the classic example of *Matthews v. Gulf & South American S.S. Co.*, 1964 A.M.C. 305 (E.D. La.), *aff'd*, 339 F.2d 702 (5th Cir. 1964), a seaman who sustained injuries in a fight with men attempting to collect from him for the services of a prostitute was found to have been engaged in willful misconduct. Other willful misconduct include:

- (1) Gross inebriation - *Dailey v. Alcoa Steamship Co.*, 611, 612-13 F.2d 337 (5th Cir. 1964); *Bloomquist v. T.J. McCarthy Steamship Co.*, 263 F.2d 590, 593 (7th Cir. 1959). However, in some instances more drunkenness will not bar recovery of maintenance and cure. *Bently v. Albatross S.S. Co.*, 203 F.2d 270, 274 (3d Cir. 1953); *The Quaker City*, 1 F. Supp. 840, 843 (E.D. Pa. 1931). Indeed, the Eleventh Circuit's opinion in *Garay v. Carnival Cruise Line, Inc.*, recognized gross inebriation is not a defense where the employer tacitly approved drunkenness on the part of the crew. 904 F.2d 1527, 1531-32 (11th Cir. 1990)
- (2) Alcoholism - Unsurprisingly, some seamen have been found to be alcoholics, with all resulting complications, including liver disease. In such instances, at least one court has recognized that long term alcoholism may qualify as misconduct barring recovery for resulting disability. *Des Jardins v. Foss Maritime Co.*, 1993 A.M.C. 2233, 2239 (W.D. Wa. 1993).
- (3) Fighting - In cases where the seaman is involved in a fight and sustains injuries while acting as the aggressor, courts have recognized such qualify as willful misconduct. *Gulledge v. United States*, 337 F. Supp. 1108, 1112 (E.D. Pa.), *aff'd*, 474 F.2d 1340 (3d Cir. 1972); *Fountain v. John E. Graham & Sons*, 1993 A.M.C. 1978, 1984 (S.D. Ala. 1993); *Mears v. American Export Lines, Inc.*, 457 F. Supp. 846, 848 (S.D.N.Y. 1978).

- (4) **Sexually Transmitted Disease** - Perhaps the classic incidents are claims for maintenance and cure resulting from venereal diseases which have incapacitated the seaman. See *Ressler v. States Marine Lines, Inc.*, 517 F.2d 579, 581-82 (2d Cir. 1975). The decision in *Bynum v. Premier Cruise Lines, Ltd.*, 1994 A.M.C. 2178 (N.D. Fla. 1994) is an example of how this defense has been successfully applied in the context of an HIV case. However, as noted therein, the contraction of HIV is not necessarily willful given the numerous means of transmission of the disease. Mellman, "AIDS, The American Seaman, and the Law of Personal Injury," 13 Tul. Mar. L.J. 101 (1989).
- (5) **Drug Abuse** - Where the seaman's injuries can be traced to drug abuse, maintenance and cure may be denied on the basis of willful misconduct. *Silmon v. Can Do II, Inc.*, 89 F.2d 240, 242-43 (5th Cir. 1996).

B. Misrepresentation or Willful Concealment of Medical Condition

It has long been recognized that a seaman's willful concealment of a significant medical condition at the time of employment may provide a defense to maintenance and cure for disabilities that result from the concealed condition. For instance, where the employer requires a seaman to submit to a physical and the seaman intentionally lies or conceals material information about his condition, the disclosure of which to the employer would plainly be desired, the seaman may be denied maintenance and cure if there is a causal link between the pre-existing disability that was concealed and the disability incurred. *Brown v. Parker Drilling* 410 F.3d 166 (5th Cir. 2005); *Deisler v. McCormack Aggregates, Co.*, 54 F.3d 1074, 1080-81 (3d Cir. 1995); *McCorpen v. Central Gulf Steamship Corp.*, 396 F.2d 547, 548-49 (5th Cir.), cert. denied, 393 U.S. 894 (1968).

C. Failure to Provide Proper Documentation

The seaman's failure to provide medical reports which document his claim for maintenance and cure may render the employer's failure to pay maintenance and cure reasonable. See *Morales v. Garijak, Inc.*, 829 F.2d 1355, 1360 (5th Cir. 1987) (recognizing that the failure to pay maintenance and cure is reasonable if the seaman does not submit medical reports to document his claims).

D. Failure to Mitigate Damages

A seaman may forfeit his right to receive maintenance and cure if he fails to mitigate his damages. For instance, where a seaman fails to follow his treating physician's directives and such impedes his medical recovery, the employer may assert such conduct as a defense to the payment of additional maintenance and cure. *Coulter v. Ingram Pipeline, Inc.*, 511 F.2d 735, 737-38 (5th Cir. 1975); *Diddlebock v. Alcoa S.S. Co.*, 234 F. Supp. 811, 814 (E.D. Pa. 1964).

Where there is medical care available to the seaman through a union health care plan, the seaman must first take advantage of that. *Al-Zawarkhi v. American S.S. Co.*, 871 F.2d 585, 589-590 (6th Cir. 1989); *Gosnell v. Sea-Land Service, Inc.*, 782 F.2d 464, 468 (4th Cir. 1986). While the courts have generally found the tender of cost-free treatment to the seaman satisfies the employer's cure obligation, the same result has not been reached where the employer, at its expense, has tendered the treatment of a specific health care provider, but the seaman has obtained treatment elsewhere. In such cases, the seaman will potentially be responsible only for the amount which the cost of care he received exceeded the cost of the care tendered him by his employer. *Oswalt v. Williamson Towing Co., Inc.*, 488 F.2d 51, 54-55 (5th Cir. 1974); *Caulfield v. AC&D Marine, Inc.*, 633 F.2d 1129, 1134 (5th Cir. 1981). However, the burden of proof that the charges incurred by the seaman were higher than necessary is the employer's. *Id.* at 1135.

E. Outside of Course and Scope of Employment

The employer's obligation to provide maintenance and cure extends to injuries or illnesses even if they occur, or manifest themselves, while the seaman is temporarily absent from the vessel. *Aguilar v. Standard Oil Co.*, 318 U.S. 724 (1943). Typically, the inquiry is whether, at the time of the injury or illness, the seaman was "subject to the call of duty as a seaman and earning wages as such." *Id.* at 732. The outcome may be substantially different if the injury occurs while the seaman is injured going to or coming from his employment on the ship. *Foret v. Co-Mar Offshore Corp.*, 508 F. Supp. 980 (E.D. La. 1981). Similarly, offshore rig workers who work a set number of days offshore, with a certain number of days off, do not qualify for maintenance and cure benefits if injured in their own vehicles on the way to crew change or on the way home. *Sellers v. Dixilyn Corp.*, 433 F.2d 446, 448 (5th Cir. 1970); *Daughdrill v. Diamond M. Drilling Co.*, 447 F.2d 781, 783-84 (5th Cir. 1971).

F. Limitations/Res Judicata

Most likely, the equitable doctrine of laches still applies to the issue of whether a seaman has timely brought a maintenance and cure claim. Nonetheless, one court has squarely held that the three year Federal Uniform Maritime Tort Limitations, 46 U.S.C. § 763a, applies. *Chacon-Gordon v. Eugenio "C"*, 1987 A.M.C. 1886, 1887 (S.D. Fla. 1987).

Res judicata does not ordinarily bar subsequent maintenance and cure claim. The right to is ongoing and serial suits may be brought to collect payments as they come due. *Pelotto v. L & N Towing* 604 F.2d 396 (5th Cir. 1986). However, where seaman pleaded right to maintenance and cure in earlier suit, and then dismissed suit with prejudice, he could not bring subsequent maintenance and cure claim. *Frank Brooks v. Raymond Dugat Co. LLC* 2003 Lexis 15384 (5th Cir. 6/21/03)

G. Settlement

A settlement of a seaman's personal injury claims may include settlement of future maintenance and cure benefits, if that is the intent of the parties. *Guidry v. Halliburton Geophysical Services, Inc.*, 976 F.2d 938, 941 (5th Cir. 1992). However, a judgment denying a recovery for maintenance and cure, does not preclude a seaman from pursuing another action for

maintenance and cure in the future should circumstances warrant. *Calo v. Ocean Ships, Inc.*, 57 F.3d 159, 163 (2d Cir. 1995) (citing cases).

VAUGHAN v. ATKINSON ET AL.

No. 323

SUPREME COURT OF THE UNITED STATES

369 U.S. 527; 82 S. Ct. 997; 8 L. Ed. 2d 88; 1962 U.S. LEXIS 2142

March 22, 1962, Argued

May 14, 1962, Decided

PRIOR HISTORY: CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

DISPOSITION: 291 F.2d 813, reversed.

SYLLABUS

Petitioner, a seaman, was discharged from respondents' ship at the end of a voyage, and the master gave him a certificate to enter a Public Health Service Hospital, which admitted him as an inpatient, treated him for suspected tuberculosis for several weeks and then treated him as an outpatient for over two years before declaring him fit for duty. When he was admitted to outpatient status, petitioner sent the shipowner an abstract of his medical record and requested payment for maintenance and cure; but his request was not complied with, and he worked as a taxi driver to support himself while receiving outpatient treatment. Finally he employed counsel and brought this suit in admiralty to recover (a) maintenance and cure, and (b) damages for failure to pay for maintenance and cure. The District Court awarded him maintenance, minus the amount of his earnings as a taxi driver, but denied him damages. *Held:*

1. On the record in this case, petitioner was entitled to reasonable counsel fees as damages for failure to pay for maintenance. Pp. 530-531.

2. On the record in this case, petitioner was entitled to pay for maintenance without deduction of the amount of his earnings as a taxi driver. Pp. 531-534.

COUNSEL: Jacob L. Morewitz argued the cause and filed a brief for petitioner.

Walter B. Martin, Jr. argued the cause for respondents. With him on the brief was Barron F. Black.

JUDGES: Warren, Black, Douglas, Clark, Harlan, Brennan, Stewart, Frankfurter took no part in the decision of this case; White took no part in the consideration of decision of this case.

OPINION BY: DOUGLAS

OPINION

[*527] [***90] [***998] Opinion of the Court by MR. JUSTICE DOUGLAS, announced by MR. JUSTICE BRENNAN.

This is a suit in admiralty brought by a seaman to recover (a) maintenance and cure and (b) damages for [*528] failure to pay maintenance and cure. ¹ The District Court, while disallowing the claim for damages, granted maintenance, less any sums earned by the libellant during the period in question. 200 F.Supp. 802. The Court of Appeals affirmed, Chief Judge Sobeloff dissenting. 291 F.2d 813. The case is here on a writ of certiorari. 368 U.S. 888.

¹ Claims for damages for the illness and for wages, disallowed below, are not presented here.

Libellant served on respondents' ² vessel from November 26, 1956, to March 2, 1957, when he was

discharged on termination of a voyage. On March 7, 1957, he reported to a United States Public Health Service Hospital for examination and was admitted on March 18, 1957, as an inpatient, and treated for suspected tuberculosis. On June 6, 1957, he was discharged to an outpatient status and he remained in that status for over two years. On August 25, 1959, he was notified that he was fit for duty as of August 19, 1959.

2 The owner was American Waterways Corp., and National Shipping & Trading Corp. was its agent, both being respondents. Respondent Atkinson was the Master.

The hospital records show a strong probability of active tuberculosis. The Master furnished libellant a certificate to enter the hospital on his discharge, March 2, 1957. Though libellant forwarded to the owner's agent an abstract of his clinical record at the hospital in 1957, the only investigation conducted by them was an interrogation of the Master and Chief Engineer, who stated that the libellant had never complained of any illness during his four months' service. The owner made no effort to make any further investigation of libellant's claim for maintenance and cure, and according to the findings did not bother even to admit or deny the validity [*529] of that claim. Nearly two years passed during which libellant was on his own. Ultimately he was required to hire an attorney and sue in the courts to recover maintenance and cure, agreeing to pay the lawyer a 50% contingent fee. Even so, the District Court held that no damages for failure to furnish maintenance and cure had been shown. In its view such damages are payable not for attorney's fees incurred but only when the failure to furnish maintenance and cure caused or aggravated [**999] the illness or other physical or mental suffering.

[***91] The District Court first allowed maintenance at the rate of \$ 8 a day from June 6, 1957, to February 18, 1959. Since libellant during that period had worked as a taxi driver, the District Court ordered that his earnings be deducted from the amount owed by respondents. Subject to that credit, the order also provided that maintenance at \$ 8 per day be continued until such time as the libellant reached the maximum state of recovery. The District Court allowed in addition 6% interest for each week's maintenance unpaid. Subsequently the District Court extended the maintenance to cover the period from March 7, 1957, to

March 17, 1957, and from February 18, 1959, through August 25, 1959, these later awards being without interest.

The Court of Appeals denied counsel fees as damages, relying on the conventional rule that in suits for breach of contract the promisee is not allowed that item in computing the damages payable by the promisor. And the Court of Appeals, following *Wilson v. United States*, 229 F.2d 277, and *Perez v. Swanee S. S. Co.*, 239 F.2d 180, from the Second Circuit, held that a seaman has the duty to mitigate damages and that since "the purpose of maintenance and cure is to make the seaman whole," "he will get something more than he is entitled to" unless his [*530] earnings during the period are deducted. 291 F.2d at 814, 815.

We disagree with the lower courts on both points.

I.

[**LEdHR1] [1]Equity is no stranger in admiralty; admiralty courts are, indeed, authorized to grant equitable relief. See *Swift & Co. v. Compania Caribe*, 339 U.S. 684, 691-692, where we said, "We find no restriction upon admiralty by chancery so unrelenting as to bar the grant of any equitable relief even when that relief is subsidiary to issues wholly within admiralty jurisdiction."

[**LEdHR2] [2] [**LEdHR3] [3]Counsel fees have been awarded in equity actions; as where Negroes were required to bring suit against a labor union to prevent discrimination. *Rolax v. Atlantic Coast Line R. Co.*, 186 F.2d 473, 481. As we stated in *Sprague v. Ticonic Bank*, 307 U.S. 161, 164, allowance of counsel fees and other expenses entailed by litigation, but not included in the ordinary taxable costs regulated by statute, is "part of the historic equity jurisdiction of the federal courts." We do not have here that case. Nor do we have the usual problem of what constitutes "costs" in the conventional sense. Cf. *The Baltimore*, 8 Wall. 377. Our question concerns damages. Counsel fees were allowed in *The Apollon*, 9 Wheat. 362, 379, an admiralty suit where one party was put to expense in recovering demurrage of a vessel wrongfully seized. While failure to give maintenance and cure may give rise to a claim for damages for the suffering and for the physical handicap which follows (*The Iroquois*, 194 U.S. 240), the recovery may also include "necessary expenses." *Cortes v. Baltimore Insular Line*, [***92] 287 U.S. 367, 371.

***LEdHR4] [4] In the instant case respondents were callous in their attitude, making no investigation of libellant's claim and [*531] by their silence neither admitting nor denying it. As a result of that recalcitrance, libellant was forced to hire a lawyer and go to court to get what was plainly owed him under laws that are centuries old. The default was willful and persistent. It is difficult to imagine a clearer case [*1000] of damages suffered for failure to pay maintenance than this one.³

3. ***LEdHR5] [5]

Whether counsel fees in the amount of 50% of the award are reasonable is a matter on which we express no opinion, as it was not considered by either the District Court or the Court of Appeals.

II.

***LEdHR6] [6] ***LEdHR7] [7] Maintenance and cure is designed to provide a seaman with food and lodging when he becomes sick or injured in the ship's service; and it extends during the period when he is incapacitated to do a seaman's work and continues until he reaches maximum medical recovery. The policy underlying the duty was summarized in *Calmar S. S. Corp. v. Taylor*, 303 U.S. 525, 528:

"The reasons underlying the rule, to which reference must be made in defining it, are those enumerated in the classic passage by Mr. Justice Story in *Harden v. Gordon*, Fed. Cas. No. 6047 (C. C.): the protection of seamen, who, as a class, are poor, friendless and improvident, from the hazards of illness and abandonment while ill in foreign ports; the inducement to masters and owners to protect the safety and health of seamen while in service; the maintenance of a merchant marine for the commercial service and maritime defense of the nation by inducing men to accept employment in an arduous and perilous service."

***LEdHR8] [8] Admiralty courts have been liberal in interpreting this duty "for the benefit and protection of seamen who are [*532] its wards," *Id.*, at 529. We noted in *Aguilar v. Standard Oil Co.*, 318 U.S. 724, 730, that the shipowner's liability for maintenance and cure was among "the most pervasive" of all and that it was not to

be defeated by restrictive distinctions nor "narrowly confined." *Id.*, at 735. When there are ambiguities or doubts, they are resolved in favor of the seaman. *Warren v. United States*, 340 U.S. 523.

***LEdHR9] [9] ***LEdHR10] [10] Maintenance and cure differs from rights normally classified as contractual. As Mr. Justice Cardozo said in *Cortes v. Baltimore Insular Line*, *supra*, 371, the duty to provide maintenance and cure⁴ [*1001] "is imposed by the [*533] law itself as one annexed to the employment. . . . Contractual" [*93] it is in the sense that it has its source in a relation which is contractual in origin, but given the relation, no agreement is competent to abrogate the incident."

4 It derives from Article VI of the Laws of Oleron, 30 Fed. Cas. 1171, 1174:

"If any of the mariners hired by the master of any vessel, go out of the ship without his leave, and get themselves drunk, and thereby there happens contempt to their master, debates, or fighting and quarrelling among themselves, whereby some happen to be wounded: in this case the master shall not be obliged to get them cured, or in any thing to provide for them, but may turn them and their accomplices out of the ship; and if they make words of it, they are bound to pay the master besides: but if by the master's orders and commands any of the ship's company be in the service of the ship, and thereby happen to be wounded or otherwise hurt, in that case they shall be cured and provided for at the costs and charges of the said ship."

Justice Story, in holding that maintenance and cure was a charge upon the ship, said concerning its history:

"The same principle is recognized in the ancient laws of Wisbuy (Laws of Wisbuy, art. 19), and in those of Oleron, which have been held in peculiar respect by England, and have been in some measure incorporated into her maritime jurisprudence. The Consolato del Mare does not speak particularly on this point; but from the provisions of this venerable collection of maritime usages in cases nearly allied, there is every reason to infer, that a similar rule then prevailed in the Mediterranean. Consolato del Mare, cc. 124, 125;

Boucher, *Consulat de la Mer*, cc. 127, 128; Molloy evidently adopts it as a general doctrine of maritime law (Molloy, b. 2, c. 3, § 5, p. 243); and two elementary writers of most distinguished reputation have quoted it from the old ordinances without the slightest intimation that it was not perfectly consonant with the received law and usage of England. Abb. Shipp, p. 2, c. 4, § 14; 2 Brown, *Adm.* 182-184. There is perhaps upon this subject a greater extent and uniformity of maritime authority, than can probably be found in support of most of those principles of commercial law, which have been so successfully engrafted into our jurisprudence within the last century." *Harden v. Gordon*, 11 Fed. Cas. 480, 483.

[***LEHR11] [11] In *Johnson v. United States*, 333 U.S. 46, we held that a seaman who while an outpatient was living on his parents' ranch without cost to himself was not entitled to maintenance payments. There maintenance and cure was wholly provided by others. Here the libellant was on his own for nearly two years and required to work in order to survive. It would be a sorry day for seamen if shipowners, knowing of the claim for maintenance and cure, could disregard it, force the disabled seaman to work, and then evade part or all of their legal obligation by having it reduced by the amount of the sick man's earnings. This would be a dreadful weapon in the hands of unconscionable employers and a plain inducement, as Chief Judge Sobeloff said below (291 F.2d at 820), to use the withholding of maintenance and cure as a means of forcing sick seamen to go to work when they should be resting, and to make the seamen themselves pay in whole or in part the amounts owing as maintenance and cure. This result is at war with the liberal attitude that heretofore has obtained and with admiralty's tender regard for seamen. We think the view of the Third Circuit (see *Yates v. Dann*, 223 F.2d 64, 67) is preferable to that of [*534] the Second Circuit as expressed in *Wilson v. United States* and *Perez v. Swanee S. S. Co.*, *supra*, and to that of the Fourth Circuit in this case.

Reversed.

MR. JUSTICE FRANKFURTER took no part in the decision of this case.

MR. JUSTICE WHITE took no part in the

consideration or decision of this case.

DISSENT BY: STEWART

DISSENT

MR. JUSTICE STEWART, whom MR. JUSTICE HARLAN joins, dissenting.

I agree with the Court that whether earnings received by a disabled seaman prior to his maximum medical recovery are to be credited [***94] against the shipowner's obligation for maintenance is an issue which should not be resolved by a mechanical application of the rules of contract law relating to mitigation of damages. But I cannot agree that in this case the petitioner's earnings should not have been set off against the maintenance owed to him. Nor can I agree with the Court's conclusion that the petitioner is entitled as a matter of law to damages in the amount of the counsel fees expended in his suit for maintenance and cure.

The duty to provide maintenance and cure is in no real sense contractual, and a suit for failure to provide maintenance or cure can hardly be equated therefore with an action for breach of contract. "The duty is one annexed by law to a relation, and annexed as an inseparable incident without heed to any expression of the will of the contracting parties." *Cortes v. Baltimore Insular Line*, 287 U.S. 367, 372. Moreover, if the seaman's accountability for earnings were to be determined solely by reference to damage mitigation principles of contract law, the breach of the shipowner's duty to pay maintenance [*535] would become crucial, since without such a breach on his part no duty to mitigate would arise. The assignment of such a dispositive role to [***1002] the shipowner's failure to perform his obligation would create an unwarranted incentive for refusing to perform it.

1 McCormick, *Damages*, §§ 158-160; Restatement, *Contracts*, § 336 (1); 5 Corbin, *Contracts*, § 1041.

The issue should be decided, rather, with reference to the scope of the duty which the admiralty law imposes. The obligation of a shipowner, irrespective of fault, to provide maintenance and cure to a seaman injured or taken ill while in the ship's service has lost much of its original significance in this era of relaxed

circumstances, however, where adequate treatment is not available at a marine hospital, expenses incurred for hospitalization elsewhere may be chargeable to the shipowner. *Williams v. United States*, 133 F.Supp. 319, aff'd, 228 F.2d 129.

6 Actual earnings during a period prior to maximum cure have been allowed as an offset against maintenance payments in many reported cases, usually without discussion. *Rodgers v. United States Lines Co.*, 189 F.2d 226; *Inter Ocean S. S. Co. v. Behrendsen*, 128 F.2d 506; *Loverich v. Warner Co.*, 118 F.2d 690; *Colon v. Trinidad Corp.*, 188 F.Supp. 97; *Scott v. Lykes Bros. S. S. Co.*, 152 F.Supp. 104; *Benton v. United Towing Co.*, 120 F.Supp. 638; aff'd, 224 F.2d 558; *Steinberg v. American Export Lines, Inc.*, 81 F.Supp. 362; *Burch v. Smith*, 77 F.Supp. 6; *The Eastern Dawn*, 25 F.2d 322. In *Wilson v. United States*, 229 F.2d 277, the court held, after discussion, that the shipowner should be permitted to offset potential earnings, the seaman having failed to establish that he could not have secured work. The seaman had done some work during the period, and had not sought maintenance for the days he was actually employed. The same court subsequently ruled that under *Wilson* a recuperating seaman must account for actual earnings. *Perez v. Suwanee S. S. Co.*, 239 F.2d 180.

In three cases setoff of actual earnings has been denied. In *Yates v. Dann*, 124 F.Supp. 125, the district judge found that the seaman had been "in need" throughout the whole period and should not be "penalized" because he returned to work. The case was reversed on other grounds, 223 F.2d 64, the court sustaining the ruling of the District Court on this point with the statement that "the circumstance that appellee was forced by financial necessity to return to his regular employment is not legally a bar to his recovery." 223 F.2d, at 67. See also *Hanson v. Reiss Steamship Co.*, 184 F.Supp. 545; 550 ("Liability for maintenance and cure does not necessarily cease when the injured person obtains gainful occupation where such employment is compelled or induced by economic necessity."); *Melrino v. Gulf Oil Corp.*, 170 F.Supp. 515, 517 ("The fact that libellant returned to work because of

economic necessity while he was in need of medical care and attention does not deprive him of his right to maintenance and cure.").

7 A seaman whose condition is actually aggravated by reason of the shipowner's dereliction in making maintenance and cure payments may of course seek damages above and beyond the maintenance and cure payments due. *Cortes v. Baltimore Insular Line*, 287 U.S. 367. But the availability of this remedy does not detract from the importance of avoiding the harmful effects of a premature return to work.

The need for prompt payment and the desirability of avoiding any rule which might force a seaman back to work to the detriment of his recovery might well [*1004] require that no compulsion to seek employment be placed on a convalescing seaman, and that a setoff be allowed only with respect to actual, as opposed to potential, earnings. But this question is not presented by the record before us. Similarly, it may well be that a seaman should not be held to account for actual earnings to a shipowner whose dereliction in making payments compels the seaman, as [*539] a matter of economic necessity, to obtain gainful employment. But that question is not presented by the present case either, for there is no showing here that the seaman's return to work was brought on by economic necessity. So far as the record before us indicates, the petitioner's return to work was completely voluntary, and not the result of the shipowner's failure to pay maintenance. Holding the seaman accountable for his earnings in such circumstances carries out the basic purpose of making the seaman whole, and creates neither an undue incentive for withholding payments, nor pressure compelling a premature return to work. I therefore think that the District Court and the Court of Appeals were right in holding that the petitioner was not entitled to maintenance for the period during which he was gainfully employed as a taxicab driver.⁸

8 I would, however, remand the case to the District Court for recomputation of its award. Maintenance is a day-by-day concept, and in my view maintenance should be reduced or denied only as to days during which the petitioner was gainfully employed. Instead, the District Court computed the total amount of maintenance due, and then deducted the total amount earned by the petitioner. Compare *Perez v. Suwanee S. S. Co.*,

unseaworthiness and negligence concepts. But the obligation is of ancient origin,² first recognized in our law in *Harden v. Gordon*, 11 Fed. Cas. 480, No. 6,047, and *Reed v. Canfield*, 20 Fed. Cas. 426, No. 11,641.³ The duty was historically imposed in order to alleviate the physical and financial hardships which otherwise would have beset a sick or injured seaman put ashore, perhaps in a foreign port, without means of support, or hope of obtaining medical care. See *Harden v. Gordon*, *supra*, at 483 (Story, J.). The law [*536] of the sea sought to alleviate these hardships, partly for humanitarian reasons, and partly because of the strong national interest in maintaining the morale and physical effectiveness of the merchant marines. *Calmar S. S. Corp. v. Taylor*, 303 U.S. 525, 528.

2 The earliest codifications of the law of the sea provided for medical treatment and wages for mariners injured or falling ill in the ship's service. These early maritime codes are, for the most part, reprinted in 30 Fed. Cas. 1171-1216. See Arts. VI and VII of the Laws of Oleron, 30 Fed. Cas. 1174-1175; Arts. XVIII, XIX, and XXXIII of the Laws of Wisbuy, 30 Fed. Cas. 1191, 1192; Arts. XXXIX and XLY of the Laws of the Hanse Towns, 30 Fed. Cas. 1200; and Title Fourth, Arts. XI and XII, of the Marine Ordinances of Louis XIV, 30 Fed. Cas. 1209. These provisions may also be found reprinted in 2 Norris, *The Law of Seamen*, § 537. Other provisions rather similar to the present maintenance and cure remedy may be found in the Ordinances of Trani, Art. X, 4 Black Book of the Admiralty (Twiss' ed. 1876) 531; The Tables of Amalphi, Art. 14, 4 Black Book of the Admiralty (Twiss' ed. 1876) 13.

3 See *Gilmore and Black, Admiralty*, 253.

But [*95] "the duty does not extend beyond the seaman's need." *Calmar S. S. Corp. v. Taylor*, *supra*, at 531. It ends absolutely when a point of maximum medical recovery has been reached. *Id.*, at 530; *Farrell v. United States*, 336 U.S. 511. And when the seaman has not incurred expense, the shipowner has no obligation to make payment.⁴ Thus a seaman hospitalized without expense in a marine hospital is not entitled to maintenance and cure for that period. *Calmar S. S. Corp. v. Taylor*, *supra*, at 531. Nor must the shipowner pay maintenance to a seaman who convalesces at the home of his parents without incurring expense or liability for his support. *Johnson v. United States*, 333 U.S. 46, 50.

4 See *Stankiewicz v. United Fruit S. S. Corp.*, 229 F.2d 580; *Williams v. United States*, 228 F.2d 129; *Dodd v. The M/V Peggy G.*, 149 F.Supp. 823; *Nunes v. Farrell Lines, Inc.*, 129 F.Supp. 147, affirmed as to this point, 227 F.2d 619; *Ballard v. Alcoa S. S. Co., Inc.*, 122 F.Supp. 10; *Gilmore and Black, Admiralty*, 266; 2 Norris, *The Law of Seamen*, § 568.

Since the limited purpose of maintenance is to make the seaman whole, it would logically follow that there should be no such duty for periods when the seaman, though not yet at the point of maximum cure, either does in fact obtain equivalently gainful employment or is able to do so.⁵ Moreover, no rule which [*1003] keeps able workers idle can [*537] be deemed a desirable one.⁶ But there are countervailing policies involved [*96] in resolving the issue. The adequate protection of an injured or ill seaman against suffering and want requires more than the assurance that he will [*538] receive payments at some time in the indefinite future. Payments must be promptly made, at a time contemporaneous to the illness or injury. And for this reason the maintenance remedy should be kept simple, uncluttered by fine distinctions which breed litigation, with its attendant delays and expenses. See *Farrell v. United States*, 336 U.S. 511, 516. A shipowner should therefore not be encouraged to withhold maintenance payments in the hope that economic necessity will force the seaman back to work and thereby reduce the shipowner's liability. Moreover, maintenance payments are designed to meet the living expenses of the seaman until maximum cure is reached. The ultimate goal is the recovery of the seaman, and this requires the avoidance of pressures which would force him to obtain employment which hinders his recovery.⁷

5 [*1003] LEHR12 [12]

Similarly, there is generally no duty to make payments for cure if marine hospital service is available, and a seaman seeks hospitalization elsewhere. *United States v. Loyola*, 161 F.2d 126; *United States v. Johnson*, 160 F.2d 789; *Marshall v. International Mercantile Marine Co.*, 39 F.2d 551; *Zackey v. American Export Lines, Inc.*, 152 F.Supp. 772; *Benton v. United Towing Co.*, 120 F.Supp. 638. See *Kossick v. United Fruit Co.*, 365 U.S. 731, 737; *Calmar S. S. Corp. v. Taylor*, 303 U.S. 525, 531. In exceptional

239 F.2d 180, with *Wilson v. United States*, 229 F.2d 277. See the full discussion of this aspect of the problem in Note, 37 N. Y. U. L. Rev. 316, 320-321.

The [***97] second issue presented in this case is whether the petitioner should have been awarded damages in the amount of the counsel fees incurred in bringing his action for maintenance and cure. The Court held in *Cortes v. Baltimore Insular Line, supra*, at 371, that "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." But neither the *Cortes* decision, nor any other that I have been able to find, furnishes a basis for holding as a matter of law that a seaman [*540] forced to bring suit to recover maintenance and cure is also entitled to recover his counsel fees. *Cortes* dealt with compensatory damages for a physical injury, and the opinion in that case contains nothing to indicate a departure from the well-established rule that counsel fees may not be recovered as compensatory damages. *McCormick, Damages*, § 61.

However, if the shipowner's refusal to pay maintenance stemmed from a wanton and intentional

disregard of the legal rights of the seaman, the latter would be entitled to exemplary damages in accord with traditional concepts of the law of damages. *McCormick, Damages*, § 79. While the amount so awarded would be in the discretion of the fact finder, and would not necessarily be measured by the amount of counsel fees, indirect compensation for such expenditures might thus be made. See *Day v. Woodworth*, 13 How. 363, 371. On this issue I would accordingly remand the case to the District Court, so that the circumstances which motivated the respondents' failure to make maintenance payments could be fully canvassed.

604 FEDERAL REPORTER, 2d SERIES

Glynn J. PELOTTO, Plaintiff-Appellant,

v.

L & N TOWING COMPANY et al.,
Defendants-Appellees.

No. 79-1098

Summary Calendar.*

United States Court of Appeals,
Fifth Circuit.

Oct. 12, 1979.

Before BROWN, Chief Judge, KRAV-
ITCH and JOHNSON, Circuit Judges.

JOHN R. BROWN, Chief Judge:

A seaman's right to maintenance and cure may sometimes require the filing of successive suits, and so it has been said that: "[t]hus the seaman is to keep biting at his cherry."¹ That principle and several others are at issue in this admiralty suit. The able District Judge granted defendants' motion for summary judgment, dismissing plaintiff's action for maintenance and cure. After a climb amongst several branches of admiralty and summary judgment procedure, we conditionally agree with the District Judge's expression of legal principles as to the claim for cure, but find it necessary to reverse and remand for further determinations. As to maintenance, we find that summary judgment was improperly granted, and reverse and remand as to that claim also.

The First Nibble

The present controversy is rooted in the events of October 13, 1972. Plaintiff, Glynn Pelotto, was a seaman employed on the tugboat M/V CHET G. While aboard that day, he severely injured his knee. Those events "bore fruit" a year and a half later, when Pelotto filed a complaint against his employers, defendants L&N Towing Co., Eveline Towing, Inc., and Larry Towing, Inc.² That action initially sought damages under the Jones Act and under the general maritime doctrine of unseaworthiness. Subsequently, however, but without amending his complaint, Pelotto filed a motion for partial summary judgment, asserting seaman's status and claiming the additional right to maintenance and cure. The motion was never heard, how-

2. *Pelotto v. L&N Towing Co.*, Civ. Action No. 74-943 (E.D.La., filed April 5, 1974).

PELOTTO v. L & N TOWING CO.

Cite as 604 F.2d 390 (1979)

ever, since on September 3, 1974, the parties reached an agreement concerning the maintenance and cure claims.

That agreement³ contains several provisions. First, defendants agreed to pay all of the maintenance claimed and cost of cure incurred by Pelotto up until the date of the agreement. Beyond that date, defendants agreed to "recommend the continuance of maintenance payments upon [defendants' insurer] being furnished with appropriate medical reports." The parties dispute the precise nature of the provision for further cure payments, though the provision itself states that the issue would be "temporarily resolved by an agreement that any further operations or treatment by private physicians will be done at plaintiff's expense, reserving to him the right to claim for reimbursement on trial." (Emphasis supplied).⁴ It is undisputed, however, that the letter agreement of September 3, 1974, tendered to Pelotto further cure services free of charge, as provided at the United States

Public Health Service Hospital in New Orleans, and that the tender was rejected.⁵

Fifteen months later, the Jones Act and unseaworthiness claims came to trial.⁶ As of that time, Pelotto had received the maintenance and cure payments due under the September agreement. In addition, Pelotto was paid maintenance throughout the September 1974 to December 1975 interim. On December 10, 1975, Pelotto was awarded a judgment of \$75,000. Shortly thereafter, on December 15, Pelotto's interim maintenance payments came to an abrupt halt.

The Second Bite

The present action is the second bite. This action was brought on July 26, 1976, six months after the entry of the Jones Act and unseaworthiness judgment, and the cessation of maintenance payments. Pelotto first alleges that the defendants arbitrarily and capriciously refused to continue maintenance payments beyond December 15,

3. Mr. Barry J. Tachian
Attorney at Law
3531 I-Ten Frontage Road
Metairie, Louisiana 70002

Re: Lynn J. Pelotto v.
L & N Towing Company, et al
C. A. No. 74-943-G
Our File 16,083

Dear Barry:

This confirms our conversation concerning the maintenance and cure problem in the captioned case. It was agreed that we would recommend that maintenance be brought current and that the cure issue would be temporarily resolved by an agreement that any further operations or treatment by private physicians will be done at plaintiff's expense, reserving to him the right to claim for reimbursement on trial. Further, it was agreed that it is stipulated that further care was tendered to plaintiff free of charge, as of September 3, 1974, at the United States Public Health Service Hospital in New Orleans.

According to advices from United States F & I Agency, maintenance is due from September 21, 1973, with a credit for 20 days for hospitalization at the St. Charles Hospital between October 13 and October 26, 1973.

If you will sign and return a copy of this letter at the place indicated below to evidence your agreement, I will order a check payable to Mr. Pelotto for the payment of maintenance up to and including September 30, 1974, and / the continuance of maintenance payments upon United States F & I Agency's being furnished with appropriate medical reports.

Very truly yours,

TERESA BERRY, CARROLL, YANCEY & PARRELL

By:

Theresa Berry
TERESA BERRY

RE/gm

AGREED:

Darryl J. Tachian
DARRYL J. TACHIAN
Attorney for Lynn J. Pelotto

4. It is a disputed issue of fact as to the precise meaning of these words of reservation.

5. Although his counsel (then and now) does not dispute his agreement, the deposition testimony by Pelotto reflects some question as to whether he was aware of the tender and rejection of cure. For summary judgment purposes this testimony might, under some circumstances, cast doubt on the validity of the stipulation. Cf. *Aguilez-Nunez v. Carnival Cruise Lines, Inc.*, 5 Cir., 1978, 584 F.2d 76 (improper to grant summary judgment when validity of seaman's release at issue); *Cates v. United States*, 5 Cir., 1971, 451 F.2d 411, 414-16.

However, that contention was not raised by the plaintiff at either the trial court proceedings or on appeal. Moreover, Pelotto's interrogatory answers and his brief on appeal admit that he received a tender of free cure and rejected it as of September 3, 1974. Hence it is undisputed that the stipulation of tender was received and presumably rejected by Pelotto.

6. It is undisputed that no maintenance or cure claims as such were presented at trial. Although the parties introduced medical testimony at that trial which might have indicated that Pelotto's knee was incapable of further improvement, the defendants have failed to clearly establish that the testimony indicated such a condition.

1975. Second, he alleges that defendants have arbitrarily and capriciously refused to allow him to receive care from private physicians at defendants' expense. Since Pelotto admitted that he has yet to receive any treatment from a private (or public) physician, the cure claim must be viewed as a claim for damages due to the defendants' failure to agree to provide cure.

Based upon the above facts, the District Judge, as to each of the claims, granted defendants' motion for summary judgment on two grounds: (i) that the claims were barred by *res judicata* and collateral estoppel, and (ii) that Pelotto improperly rejected an offer of free cure and thereby lost his right to receive maintenance and cure from the defendants.

In this appeal, Pelotto asserts that the District Judge erred in several respects. First, he argues that the failure to claim maintenance and cure damages in his original action does not estop such claims in the present action. Second, Pelotto argues that maintenance and cure are due so long as further treatment will effect an improvement in the condition of his knee. That determination, he argues, is a disputed factual question which precludes the use of summary judgment. Third, Pelotto asserts that he has adequately disputed the competency of or adequacy of treatment afforded by the United States Public Health Service Hospital thus creating a factual question concerning the effect of his rejection of that hospital's facilities.

[1-4] Maintenance and cure are centuries old remedies under the general maritime law. A seaman's right to maintenance and cure is implicit in the contractual relationship between the seaman and his employer, and is designed to ensure the recovery of these individuals upon injury or sickness sustained in the service of the ship. *Calmar S.S. Corp. v. Taylor*, 1938, 303 U.S. 525, 58 S.Ct. 651, 82 L.Ed. 993, 1938 A.M.C. 341; *Harden v. Gordon*, C.C.D.Me., 1823, 11 Fed.Cas. 480, Cas. 6,047; 1B R. Benedict, Admiralty § 48 (6th ed. 1976); 1 M. Norris, *The Law of Seaman* §§ 536-39, 545 (2d ed. 1962). Maintenance and cure are due with-

out regard to the negligence of the employer or the unseaworthiness of the ship. *Aguilar v. Standard Oil of New Jersey*, 1943, 318 U.S. 724, 730, 63 S.Ct. 930, 933, 87 L.Ed. 1107, 1112-13, 1943 A.M.C. 451, 456-57; *Calmar S.S. Corp. v. Taylor*, *supra*. Maintenance is a *per diem* living allowance, paid so long as the seaman is outside the hospital and has not reached the point of "maximum cure." Cure involves the payment of therapeutic, medical, and hospital expenses not otherwise furnished to the seaman, again, until the point of "maximum cure." *Farrell v. United States*, 1949, 336 U.S. 511, 69 S.Ct. 707, 93 L.Ed. 858; 1949 A.M.C. 613; *Myles v. Quinn Menhaden Fisheries, Inc.*, 5 Cir., 1962, 302 F.2d 146, 150, 1962 A.M.C. 1626-1629-31.

[5, 6] Plotting the point of "maximum cure" is a troublesome task both factually and as a matter of law. The accepted legal standard holds that maximum cure is achieved when it appears probable that further treatment will result in no betterment of the seaman's condition. *Farrell v. United States*, *supra*; *Brown v. Aggie & Millie, Inc.*, 5 Cir., 1973, 485 F.2d 1293, 1973 A.M.C. 2465; *Myles v. Quinn Menhaden Fisheries, Inc.*, *supra*. Thus, where it appears that the seaman's condition is incurable, or that future treatment will merely relieve pain and suffering but not otherwise improve the seaman's physical condition, it is proper to declare that the point of maximum cure has been achieved. *Stewart v. Waterman S.S. Corp.*, E.D.La., 1968, 288 F.Supp. 629, *aff'd*, 5 Cir., 1969, 409 F.2d 1045, 1969 A.M.C. 1648, *cert. denied*, 1970, 397 U.S. 1011, 90 S.Ct. 1239, 25 L.Ed.2d 423; H. Baer, *Admiralty Law of the Supreme Court* § 1-2, at 6-10 (3d ed. 1979).

[7, 8] In dismissing the present action for maintenance and cure, the trial judge seemed overly preoccupied with the failure of Pelotto to litigate his maintenance and cure claims—and in particular the issue of whether maximum cure had been attained—at the trial of his initial Jones Act and unseaworthiness suit. It is certainly true that a seaman may join his maintenance and cure claims with those under the

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Jones Act and unseaworthiness.⁷ Further, the medical testimony at such consolidated proceedings may well constitute a declaration that maximum cure has been reached, where that testimony is directed towards the issue of maximum cure.⁸ Moreover, it is true that the doctrines of *res judicata* and collateral estoppel apply to admiralty proceedings.⁹

[9, 10] In applying the doctrines of *res judicata* and collateral estoppel to this suit for maintenance and cure, however, the District Judge failed to account for the peculiar nature of the maintenance and cure remedies. First, maintenance and cure for the future are ordinarily not awarded in a lump sum. The award may "cover future maintenance and cure of a kind and for a period definitely ascertained or ascertainable . . ." *Calmar S.S. Corp. v. Taylor*, supra, 303 U.S. at 530-31, 58 S.Ct. at 654. Since the defendants were satisfying all of Pelotto's maintenance and cure claims as of the date of his initial trial, Pelotto's only possible maintenance and cure claims at

that time would have been either: (i) an action for definitely ascertainable future maintenance and cure—an action which defendants do not claim was possible; or (ii) an action asking for a declaration that payments be made until Pelotto reached maximum cure—an action of very doubtful utility to Pelotto. See *Lirette v. K&B Boat Rentals, Inc.*, 5 Cir., 1978, 579 F.2d 968, 970. Thus *res judicata* does not preclude the present action.

[11, 12] The rule of *res judicata* (and collateral estoppel), recognizable in admiralty,¹⁰ is subject to the substantive limitation that seamen have always been accorded the right to bring serial suits to collect maintenance payments as they come due. *Farrell v. United States*, supra, 386 U.S. at 519, 69 S.Ct. 707; *Calmar S.S. Corp. v. Taylor*, supra, 303 U.S. at 530-31, 58 S.Ct. 651; 1 M. Norris, supra, § 564, at 637 & n.19 ("Because of the continuing nature of the shipowner's obligation to furnish maintenance and cure a previous award cannot be regarded as *res judicata*.").¹¹ Hence, even

7. In *Fitzgerald v. United States Lines Co.*, 1963, 374 U.S. 16, 18-19, 83 S.Ct. 1646, 1649, 10 L.Ed.2d 720, 723, 1963 A.M.C. 1093, 1095, the Supreme Court stated:

Although remedies for negligence, unseaworthiness, and maintenance and cure have different origins and may on occasion call for application of slightly different principles and procedures, they nevertheless, when based on one unitary set of circumstances, serve the same purpose of indemnifying a seaman for damages caused by injury, depend in large part upon the same evidence, and involve some identical elements of recovery. Requiring a seaman to split up his lawsuit, submitting part of it to a jury and part to a judge, unduly complicates and confuses a trial, creates difficulties in applying doctrines of *res judicata* and collateral estoppel and can easily result in too much or too little recovery.⁶

In footnote 6, the Court continued: "This Court has held that recovery of maintenance and cure does not bar a subsequent action under the Jones Act, . . . but of course, where such closely related claims are submitted to different triers of fact, questions of *res judicata* and collateral estoppel necessarily arise . . ." *Id.* at 19, n.6, 83 S.Ct. at 1649 n.6. See generally G. Gilmore & C. Black, *The Law of Admiralty* 293, 295 (2d ed. 1975) (discussing propriety of joining related claims).

8. *Vella v. Ford Motor Co.*, 1975, 421 U.S. 1, 95 S.Ct. 1381, 43 L.Ed.2d 682, 1975 A.M.C. 563. As discussed, there may have been medical testimony in Pelotto's initial suit that indicated maximum cure had been achieved. See note 6, supra. That testimony was not directed toward maintenance and cure issues, however, and no one has pointed out, one way or the other, whether there was any finding, express or implied, as to maximum recovery by the court in that suit. Cf. H. Baer, supra, at §§ 1-2.1 & 1-2.2 (arguing that under some circumstances the lower court's finding of maximum cure may be relevant).

9. *Fitzgerald v. United States Lines Co.*, supra, 374 U.S. at 19, 83 S.Ct. 1646; *Runyan v. Great Lakes Dredge & Dock Co.*, 6 Cir., 1944, 141 F.2d 396, 397, 1944 A.M.C. 614, 615-16. Cf. *Jenkins v. Roderick*, D.C. Mass., 1957, 156 F.Supp. 299, 304-06, 1957 A.M.C. 2325, 2332-36 (discussing problems inherent in splitting admiralty causes of action).

10. See footnote 9, supra.

11. In G. Gilmore & C. Black, supra at 300-01, the authors survey the case law and conclude: It follows that seamen may bring successive suits and that a prior recovery will not bar a subsequent action.

* * * * *

had Pelotto claimed maintenance and cure in his initial suit, there would still be no bar to recovery of maintenance and cure in this, the "subsequent" action.¹² Since an actual claim would not bar this action, neither can Pelotto's previous failure to make a claim bar this action.

[13, 14] Similarly, collateral estoppel is no bar to Pelotto's suit. Not only may the obligation to furnish maintenance and cure continue after a Jones Act or unseaworthiness verdict, but the issues involved, despite some overlap, are always somewhat different.¹³ The difference in the nature of the issues involved has long been recognized as permitting the maintenance and cure actions to be separately filed. *Pacific S.S. Co. v. Peterson*, 1928, 278 U.S. 130, 49 S.Ct. 75, 73 L.Ed. 220, 1928 A.M.C. 1982; *Jewell v. The Ohio River Co.*, *supra*; 1 M. Norris, *supra*, §§543 & 555. To paraphrase Robinson, it is altogether clear that Pelotto cannot, at least as a matter of law, be denied this bite at "his cherry."¹⁴

The Pit Of The Matter.

The District Judge was more nearly correct in his second, alternative ground for dismissing this lawsuit. The dismissal of the claim for cure, though not maintenance, could be proper under settled principles of summary judgment, if it is established that Pelotto rejected curative treatment offered in fact by the United States Public Health Service Hospital.

[15, 16] An employer or shipowner's duty to provide maintenance and cure may ordinarily be discharged by tender and

[T]he underlying idea that the plaintiff is entitled to successive recoveries seems never to have been doubted.

See also *Sobosle v. United States Steel Corp.*, 3 Cir., 1966, 359 F.2d 7, 1966 A.M.C. 886; *Jewell v. The Ohio River Co.*, W.D.Pa., 1967, 1967 A.M.C. 1724.

12. The matter would be different if an identifiable finding had been made fixing the time of maximum recovery.

13. We have recognized this fact in the damages area;

In other words, while some of the elements of damages may overlap, a payment under the

treatment at a United States Public Health Service Hospital, and "a seaman who refuses such . . . free treatment

without just cause, cannot further hold the shipowner to his duty to provide maintenance and cure."

Kossick v. United Fruit Co., 1961, 365 U.S. 731, 737; 81 S.Ct. 886; 891, 6 L.Ed.2d 56, 61, 1961 A.M.C. 883, 888.

See also *Hokanson v. Maritime Overseas Corp.*, E.D.La., 1974, 1974 A.M.C. 948, 955.

That "rule of forfeiture," see *Oswalt v. Williamson Towing Co.*, 5 Cir., 1974, 488 F.2d 51, 53, 1974 A.M.C. 1811, 1813, has

important qualifications, however. One qualification, which Pelotto invokes on appeal, is that demonstrated inadequacy in

the treatment tendered by a public hospital will permit recovery of the cost of private

treatment. This qualification was set out by the Supreme Court in *Kossick v. United Fruit Co.*, *supra*, 365 U.S. at 737, 81 S.Ct. at

891 (emphasis supplied):

[W]e nevertheless are clear that the duty to afford maintenance and cure is not simply and as a matter of law an obligation to provide for entrance to a public hospital. . . . Presumably if a seaman refuses to enter a public hospital or

having entered, if he leaves to undergo treatment elsewhere, he may recover the cost of such other treatment upon proof that "proper and adequate" cure was not available at such hospital.

[17] This quoted passage clearly indicates that once the services of a public hospital have been properly tendered, the seaman bears the burden of proving that

obligations to provide maintenance and cure, for example, will not necessarily satisfy all the elements of damages allowable under the right to recover for unseaworthiness of the vessel.

Cates v. United States, *supra*, at 417 n.20.

14. See note 1, *supra*. We do not quarrel with the notion that a seaman is permitted to file all of his claims in one action. The cases make clear, however, that this is a "permissive joinder" and that a seaman is not required to join all claims at once. See note 9, and accompanying text, *supra*.

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those services are inadequate.¹⁵ As discussed, the parties stipulated (see note 3, *supra*) that further cure at the United States Public Health Service Hospital was "tendered to" and rejected by Pelotto. So far as it goes this would permit summary judgment, as it is well established that "[s]tipulations are a proper evidentiary basis for a summary judgment." *Munoz v. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators*, 5 Cir., 1977, 563 F.2d 205, 213. See also *Menard v. Penrod Drilling Co.*, 5 Cir., 1976, 538 F.2d 1084. Here, defendants' tender, if proper, and Pelotto's rejection were established in accordance with F.R. Civ.P. 56.

[18] But what is not adequately established for this purpose is who or what agency "tendered" further treatment by the Public Health Hospital. If the Public Health Hospital offered in reasonably unmistakable terms that it would furnish such "cure" as found by it to be reasonably appropriate, then Pelotto is confined to the defense that such treatment would be inadequate. If, on the other hand, the "tender" was that only of the employers (or their counsel), that would be insufficient to trigger outright this "rule of forfeiture." In the latter instance, the most that tender would do is "forfeit" that part of the "cure" which in fact would have been afforded by the Public Health Hospital. Tender would not go to that which the Public Health Hospital would not have provided.

[19, 20] If, on remand, by proof or stipulation, it is established that the "tender" was by the United States Public Health Service Hospital, and not the employers, then tender was clearly proper, and based upon accepted principles of summary judgment, it was appropriate to grant summary judgment as to the cure claim. Partial

15. The locus of the burden of proof is reinforced by a further statement in *Kossick v. United Fruit Co.*, *supra*, 365 U.S. at 737, 81 S.Ct. at 891:

No matter how skeptical one may be that such a burden of proof could be sustained, or that an indigent seaman would be likely to

summary judgment was appropriate because instead of responding by affidavits "made on personal knowledge," F.R.Civ.P. 56(e), Pelotto merely asserted that the inadequacies of the Public Health Hospital would be shown upon trial. Pelotto's response was clearly a procedural defect under Rule 56(e), which requires the submission of controverting affidavits. Since Pelotto had the burden of proving inadequacy, his failure to submit controverting affidavits or other factual proof entitled the District Judge to enter summary judgment against him. Allegations that one "might could" show certain facts at trial are simply insufficient under Rule 56(e). *Gossett v. Du-Ra-Kel Corp.*, 5 Cir., 1978, 569 F.2d 869, 872; *Oglesby v. Terminal Transport Co.*, 5 Cir., 1976, 543 F.2d 1111, 1112; *Bruce Construction Corp. v. United States*, 5 Cir., 1957, 242 F.2d 873, 875. In summary, we agree in part with the District Judge's expression of legal principles concerning forfeiture of cure, but reverse and remand for determination of, among other things, whether cure was properly tendered.

[21] An expansive reading of the "rule of forfeiture" might indicate that a finding of forfeiture ought to apply to both the maintenance and the cure claims of this lawsuit. Under the facts of this case, however, we do not feel that the rule should automatically apply to Pelotto's maintenance claim. In *Kossick v. United Fruit Co.*, *supra*, 365 U.S. at 737, 81 S.Ct. at 891, the Supreme Court made it clear that it only intended to protect the employer from "the increased expense which [the seaman's] whim or taste [in refusing public hospital services] has created." Thus, it is only the additional maintenance and cure expense which is caused by a seaman's unjustified rejection of public hospital treatment that is not recoverable by the seaman.¹⁶ Additionally, there likely could be

risk losing his rights to free treatment on the chance of sustaining that burden, . . . we should not exclude that possibility as a matter of law . . .

16. The lower court cases, though broadly worded, can be read in this fashion. See, e. g., *Coulter v. Ingram Pipeline, Inc.*, 5 Cir., 1975,

"maintenance" costs during the "cure" being afforded by the Public Health Hospital during, for example, outpatient status. Thus, under the facts of this case, even a forfeiture of cure would not automatically forfeit the right to all maintenance.

[22] Of course Pelotto bears the burden of establishing his right to maintenance. He must show that maximum cure has not been attained and, in this case, the extent to which it has not been delayed as a result of his rejection of public hospital care. These are clearly fact questions. *Murphy v. Light*, 5 Cir., 1958, 257 F.2d 323, 327, 1959 A.M.C. 625, 630-31. Cf. *Coulter v. Ingram Pipeline, Inc.*, *supra*; *Koslusky v. United States*, 2 Cir., 1953, 208 F.2d 957, 1953 A.M.C. 698. Resolving all doubts against the defendants, see F.R.Civ.P. 56(c), *Southern Distributing Co. v. Southdown, Inc.*, 5 Cir., 1978, 574 F.2d 824, 826, the maintenance claim presents several genuine issues of material fact. The grant of summary judgment as to Pelotto's maintenance claim was therefore in error. See *United Fruit Co. v. Sumrall*, 5 Cir., 1960, 273 F.2d 785, 737 (Brown, J., concurring). Thus we reverse and remand as to the maintenance claim.¹⁷

A Word Of Caution

[23] Although *res judicata* and collateral estoppel do not cut off, as a matter of law, the claims for maintenance and cure subsequent to the earlier trial, the District Court on remand is entitled to consider as a fact¹⁸ the extent to which the prior jury award probably included amounts which are the substantial equivalent of maintenance and, if appropriate, cure, in order to eliminate the likelihood of double recovery. See

511 F.2d 735, 738-39, 1975 A.M.C. 826, 829-32; *Oswalt v. Williamson Towing Co.*, *supra*, at 53-54; *Sanford Bros. Boats, Inc. v. Vidrine*, 5 Cir., 1969, 412 F.2d 958, 973-74, 1969 A.M.C. 1706, 1726-28; *George v. Chesapeake & Ohio Railway Co.*, E.D.Va., 1969, 348 F.Supp. 283, 287-89.

17. On remand, the trial judge may wish to consider Pelotto's claims that maintenance was "arbitrarily and capriciously" withheld in light of the provision in the letter agreement, see

Gaudet v. Sea-Land Services, Inc., 5 Cir., 1972, 463 F.2d 1331, 1333, 1972 A.M.C. 2573, 1275-76, *aff'd*, 1974, 414 U.S. 573, 94 S.Ct. 806, 39 L.Ed.2d 9, 1973 A.M.C. 2572. See also G. Gilmore & C. Black, *supra* at 293 (which emphasizes the pitfalls when counsel, deliberately, accidentally or unknowingly, either causes or permits the maintenance and cure claims to be split off from the Jones Act/maritime law claims).

REVERSED and REMANDED.

note 3, *supra*, requiring that defendants be "furnished with appropriate medical reports."

18. The Judge is entitled to consider the record of the earlier trial including the charge to the jury and the verdict.

* Rule 18, 5 Cir.; see *Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York et al.*, 5 Cir., 1970, 431 F.2d 409, Part I.

COULTER v. INGRAM PIPELINE, INC.

Cite as 511 F.2d 135 (1975)

James R. COULTER,
Plaintiff-Appellant,

v.

INGRAM PIPELINE, INC., et al.,
Defendants-Appellees,

No. 73-2721.

United States Court of Appeals,
Fifth Circuit.

April 21, 1975.

Before **GEWIN, AINSWORTH** and
GEE, Circuit Judges.

GEWIN, Circuit Judge:

[1, 2] Plaintiff-appellant, **James R. Coulter**, brought this admiralty suit against **Ingram Pipeline, Inc.** and its insurer, **Insurance Company of North America**, for injuries sustained while employed as a stabber (pipe layer) aboard defendant's barges. The issues of negligence, unseaworthiness, and damages were tried by a jury resulting in a net award to appellant of \$20,000. Appellant's maintenance and cure claim, reserved to the court, was dismissed, the court holding that he had forfeited his right to maintenance and cure by abandoning the rehabilitative program prescribed by his physician. This appeal is solely from that portion of the judgment dismissing the demand for maintenance and cure.¹ The appellant contends that

1. "No greater scope of review is exercised by the appellate tribunals in admiralty cases than they exercise under Rule 52(a) of the Federal Rules of Civil Procedure." *McAllister v. United States*, 348 U.S. 19, 20, 75 S.Ct. 6, 8, 99 L.Ed. 20, 24 (1954). That is to say the Court of Appeals may not set aside the judgment of the district court unless it is clearly erroneous. A finding is "clearly erroneous" when although there is evidence to support it, the reviewing court on the entire evidence is

left with the definite and firm conviction that a mistake has been committed. *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 542, 92 L.Ed. 746, 766 (1948).

The findings of the district court are general and conclusory. We quote the pertinent portions of the district court's judgment or order:

1) Plaintiff was injured on May 21, 1970.

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he was never cured or pronounced incurable, and argues that he never willfully abandoned medical treatment proffered by appellees. We reverse and remand.

The appellant was injured on May 21, 1970, when a twelve-ton pipe on an Ingram Lay Barge inadvertently swung toward him and struck him in the chest. He received "a crushing type of injury to his chest" including several fractured ribs, some of which did not heal "by bony union." The pipeline company provided medical treatment but due to the extreme obesity of appellant (350-375 pounds) recovery was slow and he was ultimately referred to Dr. Robert J. Schramel a thoracic and cardiovascular surgeon retained by the appellee-insurance company for additional consultation. The surgeon recommended a strict diet and a regimen of physiotherapy and on January 4, 1971, admitted appellant to the New Orleans Mediacenter. The appellant was placed on a daily diet of 1500 calories and an exercise program, the combined result of which was a weight loss of approximately 38 pounds. On January 22, 1971, at his own request, and after assuring his physician that he would maintain the diet and exercise at home, appellant was discharged from the Mediacenter. Sometime thereafter the appellant admittedly discontinued his rehabilitative program. In early February, 1971, the apparently prescient appellees terminated maintenance and cure payments. Subsequent to the termination, Dr. Schramel on March 3, 1971, wrote a letter to appellees in which he indicated, in a very optimistic manner, that appellant's rehabilitation was progressing well and that it should ultimately result in appellant's return to his former employment. It was not until July 28, 1971, when Dr. Schramel examined appellant

2) Thereafter plaintiff was examined by various doctors and received medical and hospital treatment at the expense of defendant and was paid maintenance and cure by defendant at the rate of \$10.00 per day until early in February, 1971.

3) At approximately the time payments for maintenance and cure were discontinued plaintiff voluntarily left the Mediacenter in New Orleans, where he had been treated for 20 or 21 days in order to reduce his

again that he knew his patient had failed to follow the prescribed diet and exercises and weighed more than ever. Dr. Schramel reported to appellees on October 13, 1971 that appellant's condition was essentially unchanged, opining that proper conditioning might still result in appellant's eventual return to his former employment.

In April 1972, the appellant was examined by an orthopedist who was unable to suggest any means of alleviating appellant's continuing discomfort. The orthopedic surgeon thought at that time there was no physical impediment to appellant's returning to work. Finally, on March 14, 1973, shortly before the trial the thoracic surgeon re-examined appellant and stated that his original findings were essentially unchanged and that with conditioning the appellant could gradually return to work.

The evidence shows and the appellant admits that he failed to follow his physician's instructions. The appellees justified the cessation of maintenance and cure payments by characterizing appellant's failure to follow the physician's advice as a knowing and willful abandonment of his prescribed cure and the district court agreed.

[3, 4] The general rule is well settled that a seaman's right to maintenance and cure is forfeited by a willful rejection of the recommended medical aid. *Leocadio v. Lykes Bros. Steamship Co.*, 282 F.Supp. 573 (E.D.La.1968); *Murphy v. American Barge Line Co.*, 169 F.2d 61 (3d Cir. 1948), cert. denied, 335 U.S. 859, 69 S.Ct. 133, 93 L.Ed. 406. However, this rule is not inexorably applied and exceptions exist when reasonable grounds for refusing care or failing to follow instructions are shown. *Murphy*

weight and had been instructed in the performance of certain exercises designed to strengthen his muscles.

4) After leaving the Mediacenter, plaintiff failed to follow the recommendations of Dr. Schramel that he continue on a diet in order to lose substantially more weight and to continue his regimen of exercises.

5) Plaintiff is not entitled to further payments of maintenance and cure by defendant.

v. American Barge Line Co., *supra*; Luth v. Palmer Shipping Corp., 210 F.2d 224 (3d Cir. 1954); Oswalt v. Williamson Towing Co., 488 F.2d 51 (5th Cir. 1974); Macris v. Sociedad Maritima San Nicholas S. A., 245 F.2d 708 (2d Cir. 1957).² The question then is whether there existed any extenuating circumstances which made the appellant's failure to follow the prescribed regimen either reasonable or something less than a willful rejection. We think that such circumstances did exist.

In the first place the evidence indicates that the appellant has always been an extremely obese man, weighing approximately 350 pounds prior to his injury. Common sense and personal experience tell us how emotionally and physically difficult it would be for a person of this size to maintain an exercise program and a daily diet of 1500 calories without supervision and medical advice. It is a matter of record that it was never the intention of Dr. Schramel or the barge owners to keep the appellant in the Medcenter for the duration of his rehabilitation program, but some provision for regular re-examination at intervals of less than six months was called for³ to

provide the kind of support, guidance, and instruction one might reasonably expect the appellant to need in order to successfully attain his maximum cure. The appellant's difficulty in maintaining his rehabilitative program was further exacerbated by the fact that subsequent to his injury financial responsibilities demanded that both appellant and his wife become employed at appellant's father's store, leaving little time for adequate care of their three children, to say nothing of time necessary to prepare special meals for appellant.

[5, 6] In addition, we note that in the instant case it was never shown that the appellant realized the maximum possible cure and that at the time maintenance and cure payments were terminated no physician had ever certified him as fit to return to work.⁴ Yet, the appellees terminated maintenance and cure payments in February of 1971, shortly after appellant left the New Orleans Medcenter where he had been admitted in order to become familiar with dietary and exercise programs he was to continue at home. Perhaps the appellees originally improperly construed appellant's discharge as signifying maximum cure.⁵

2. In *Murphy v. American Barge Line Company*, *supra*, for example, the court stressed the affirmative nature of the master's duty to care for the seaman, in holding that a mere offer to provide hospitalization for the injured seaman was insufficient under the circumstances to relieve the shipowner from liability for maintenance and cure. "A hospital ticket without more under these circumstances does not discharge the obligation since we think the instant case represents a situation where the offer to provide hospitalization must include the means by which the injured seaman can get to the hospitalization suggested." *Id.*, 169 F.2d at 64. The court also noted that the libellant was in his fifties, that he had a family of five children, and that he was in considerable physical distress. The appellant in the instant case is similarly situated.

3. We do not presume to say that Dr. Schramel's medical procedures were unsound. The record indicates that the infrequency with which the appellant was examined was a result of the failure of the appellees to schedule regular check-ups for the appellant. In any case, the appellees who were ultimately responsible for providing medical treatment for the appellant, may also be responsible for the

negligent selection of a physician and/or the negligence of the physician. *Fitzgerald v. A. L. Burbank & Co.*, 451 F.2d 670 (2d Cir. 1971); *Central Gulf Steamship Corp. v. Sumbula*, 405 F.2d 291 (5th Cir. 1968).

4. A seaman's right to maintenance and cure continues until the maximum possible cure has been effected. *M. Norris, The Law of Seaman* § 560 (2d ed. 1962); *G. Gilmore and C. Black, The Law of Admiralty* 262-268 (1957); *Leocadio v. Lykes Bros. Steamship Co.*, 282 F.Supp. 573 (E.D.La.1968).

Where no further improvement can be expected from further treatment and care of a continuing disability resulting from injuries sustained by a seaman, the seaman has reached maximum cure and no further obligation exists for the shipowner to pay maintenance and cure. *Leocadio v. Lykes Bros. Steamship Co.*, 282 F.Supp. 573, 575 (E.D.La.1968).

5. A seaman's right to further maintenance and cure is not automatically barred by his request for and subsequent voluntary discharge from a hospital. *See, e. g., Moyle v. National Petroleum Transport Corp.*, 150 F.2d 840 (2d Cir. 1945); *Rey v. Colonial Nav. Co.*, 116 F.2d 580 (2d Cir. 1941).

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The inaccuracy of such an assessment of the situation should have been readily evident to appellees on reading Dr. Schramel's March 3, 1971 letter evincing a promising outlook for appellant's further rehabilitation. Curiously, no additional investigation of the situation occurred and no further maintenance and cure payments were forthcoming. We feel that the appellees' failure to question the termination of maintenance and cure, an action obviously incompatible with Dr. Schramel's March 3, 1971 letter, amounted to a breach of the longstanding affirmative duty of the shipowner to provide proper medical treatment for seamen injured in the service of their ship, and to an unjustifiable erosion of the special status afforded seamen as "wards of the admiralty." M. Norris, *The Law of Seamen* § 574 (2d ed. 1962); *Fitzgerald v. A. L. Burbank & Co.*, 451 F.2d 670 (2d Cir. 1971). Under the facts and circumstances disclosed by the record we cannot condone the suspension of maintenance and cure payments on the basis of information gleaned some time well after the fact. By prematurely terminating maintenance and cure payments the appellees may have significantly contributed to the financial and other difficulties which caused appellant's failure to strictly adhere to the prescribed but unsupervised rehabilitative program.⁶ This being the case the appellant's original failure to follow his physician's instructions is not the kind of rejection of proffered medical treatment which can be seized upon in order to justify the termination of maintenance and cure. We seriously doubt that it was reasonable to expect a satisfactory cure or recovery by the prescription of diet and exercise without medical supervision and guidance.

[7] On the other hand there is evidence in the record that at some time appellant may have wilfully rejected proffered medical care. For example,

6. See *Sobosle v. United States Steel Corp.*, 359 F.2d 7, 12 (3d Cir. 1966):

We therefore must be mindful in the present case of the extent to which the seaman's conduct was influenced by her

the appellees did arrange a July 1971 appointment for appellant with Dr. Schramel, and the doctor's testimony with respect to that meeting intimates that appellant demonstrated a lack of resolve to continue the prescribed exercise and diet. The acute physical discomfort and inconvenience inherent in a regimen such as the one prescribed for appellant standing alone may not be legally sufficient excuses for failing to follow the recommended rehabilitation program. *Murphy v. American Barge Line Co.*, 169 F.2d 61 (3d Cir. 1948), cert. denied, 335 U.S. 859, 69 S.Ct. 133, 93 L.Ed. 406.

A proper application of the legal principles herein discussed should be made by the district court after a factual determination has been made by that court with regard to the conduct of the appellees in terminating maintenance and cure and the conduct of the appellant in failing to adhere strictly to the prescribed treatment without medical aid and supervision. After making such appropriate findings of fact that court should carefully consider whether under the peculiar situation in this case, the interests and principles protected by the rule of forfeiture would be served properly by its application to the appellant resulting in a denial of maintenance and cure in view of the liberal and well established concepts applicable to an injured seaman.

Accordingly, the judgment of the district court is reversed and the case is remanded for findings not inconsistent with this opinion with respect to whether appellant knowingly and without justification rejected the prescribed regimen of exercise and diet at some time later than February 1971.

Reversed and remanded with directions.

GEE, Circuit Judge (dissenting):

The foundations of the law maritime will not likely be shaken by the amiable

mental or physical incapacity in determining whether her failure to accept medical aid should result in the absolute termination of this shipowner's duty to continue providing maintenance and cure.

result which the majority reaches. Under it the district court is to reconsider whether a fat seaman, unwilling to stay on his diet but able to con the treating physician provided by the shipowner into releasing him from supervision, should or should not be rewarded for his eloquence, and if so, by how much. No one seriously disputes that had Coulter kept on his diet he would have attained maximum recovery. No one argues that he did not abandon it about the time maintenance was stopped, like one who drops a glass bottle of nasty but curative medicine. Yet somehow it has been determined that his abandonment of it may not have been an unreasonable refusal of treatment. This conclusion seems to rest on the shipowner's failure to pursue Coulter with sufficient ardor, nagging and beseeching him (presumably, since it could not force him) to stick to tea and celery and leave the beer and beans alone.

Language in *Oswalt v. Williamson Towing Co., Inc.*, 488 F.2d 51 (5th Cir. 1974) is exactly in point here:

A forfeiture for unreasonable refusal is called into play in one of two ways. First, the seaman may simply reject all timely medical attention or quit participation in a course of therapy already begun. In such a case, the right to maintenance and cure is forfeited because the purpose of the award can no longer be achieved. These conjunctive remedies do not operate as substitutes for damages; they are not general compensation, but rather are directed toward the specific objective of providing for the subsistence and medical expenses of a seaman until he has reached the point of maximum possible cure. *Farrell v. United States*, 1949, 336 U.S. 511, 69 S.Ct. 707, 93 L.Ed. 850; *Price v. Mosler*, 5 Cir. 1973, 483 F.2d 275. When, therefore, that point is either reached or the erstwhile patient voluntarily stops short of its attainment by refusing medical attention, the justification for the pay-

ments likewise ceases. *Brown v. Aggie & Millie, Inc.*, [5 Cir. 1973, 485 F.2d 1298] *supra*.

Oswalt at 53-54.

The fact that Coulter would have received maintenance for at least six months had he not discontinued his treatment seems to me immaterial. Maintenance is an award designed to provide succor for the seaman, not until he becomes well, but while he is undergoing treatment designed to bring him to maximum cure. Indeed, it may be seen as an inducement to do so. Maximum cure is one terminal point of the shipowner's obligation to pay maintenance. Abandonment of treatment is another.

It well may be that Coulter would be entitled to maintenance at our hands if he could show that his condition had originally been pronounced hopeless and that a new type of treatment had later been discovered. But here there is nothing which leads anywhere but to the conclusion that had Coulter followed the doctor's orders he would have lost weight and that had he lost weight his ribs would have knit. It seems unreasonable to expect a shipowner to maintain a seaman on an on-again-off-again basis whenever the seaman decides to give a known treatment another chance.

Further, as noted above, however benevolent to Coulter the majority's result may be, casting the shipowner for failing to make a seaman do a thing it had no power to require seems to me unjust—let alone rewarding the seaman for his own delinquency. Even afloat, responsibility for a result should not be pressed much beyond power to effect it. Charitably doing so here, we inch toward new heights of anachronism the image of that noble but feckless Ward of the Admiralty, the sea-chest-bearing sailor with heart of oak, good company on a voyage to Treasure Island but scarce among the ranks of today's seagoing technicians.

I would affirm.

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ATLANTIC SOUNDING CO., INC., ET AL., PETITIONERS v. EDGAR L. TOWNSEND

No. 08-214

SUPREME COURT OF THE UNITED STATES

129 S. Ct. 2561; 174 L. Ed. 2d 382; 2009 U.S. LEXIS 4732; 21 Fla. L. Weekly Fed. S. 1004

March 2, 2009, Argued

June 25, 2009, Decided

PRIOR HISTORY: [***1]

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT.

Atl. Sounding Co. v. Townsend, 496 F.3d 1282, 2007 U.S. App. LEXIS 20078 (11th Cir. Fla., 2007)

DISPOSITION: Affirmed and remanded.

SYLLABUS

[*2562] Atlantic Sounding Co. allegedly refused to pay maintenance and cure to respondent Townsend for injuries he suffered while working on its tugboat, and then filed this declaratory relief action regarding its obligations. Townsend filed suit under the Jones Act and general maritime law, alleging, *inter alia*, arbitrary and willful failure to provide maintenance and cure. He filed similar counterclaims in the declaratory judgment action, seeking punitive damages for the maintenance and cure claim. The District Court denied petitioners' motion to dismiss the punitive damages claim, but certified the question for interlocutory appeal. Following its precedent, the Eleventh Circuit held that punitive damages may be awarded for the willful withholding of maintenance and cure.

[*2563] *Held*: Because punitive damages have long been an accepted remedy under general maritime law, and because neither *Miles v. Apex Marine Corp.*, 498 U.S. 19, 111 S. Ct. 317, 112 L. Ed. 2d 275, nor the Jones Act altered this understanding, punitive damages for the willful and wanton disregard of the maintenance and cure obligation remain available [***2] as a matter of general maritime law. Pp. 2-19.

(a) Settled legal principles establish three points central to this case. Pp. 2-9.

(i) Punitive damages have long been an available remedy at common law for wanton, willful, or outrageous conduct. English law during the colonial era accorded juries the authority to award such damages when warranted. And American courts have likewise permitted such damages since at least 1784. This Court has also found punitive damages authorized as a matter of common-law doctrine. See, e.g., *Day v. Woodward*, 54 U.S. 363, 13 How. 363, 14 L. Ed. 181. Pp. 3-5.

(ii) The common-law punitive damages tradition extends to claims arising under federal maritime law. See *Lake Shore & Michigan Southern R. Co. v. Prentice*, 147 U.S. 101, 108, 13 S. Ct. 261, 37 L. Ed. 97. One of this Court's first cases so indicating involved an action for marine trespass. See *The Amiable Nancy*, 16 U.S. 546, 3 Wheat. 546, 4 L. Ed. 456. And lower federal courts have found punitive damages available in maritime actions for particularly egregious tortious acts. Pp. 5-6.

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(iii) Nothing in maritime law undermines this general rule's applicability in the maintenance and cure context. The maintenance and cure obligation dates back centuries as an aspect of general maritime law, [***3] and the failure of a seaman's employers to provide adequate medical care was the basis for awarding punitive damages in cases decided in the 1800's. This Court has since registered its agreement with such decisions and has subsequently found that in addition to wages, "maintenance" includes food and lodging at the ship's expense, and "cure" refers to medical treatment, *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 441, 121 S. Ct. 993, 148 L. Ed. 2d 931. Moreover, an owner's failure to provide proper medical care for seamen has provided lower courts the impetus to award damages that appear to contain at least some punitive element. Pp. 7-8.

(iv) Under these settled legal principles, respondent is entitled to pursue punitive damages unless Congress has enacted legislation that departs from the common-law understanding. P. 9.

(b) The plain language of the Jones Act does not provide a basis for overturning the common-law rule. Congress enacted the Jones Act to overrule *The Osceola*, 189 U.S. 158, 23 S. Ct. 483, 47 L. Ed. 760, where the Court prohibited a seaman or his family from recovering for injuries or death suffered due to his employers' negligence. To that end, the Act created a statutory negligence cause of action, but it did not eliminate [***4] pre-existing remedies available to seamen for the separate common-law cause of action based on maintenance and cure. The Act bestows the right to "elect" to bring a Jones Act claim, thereby indicating a choice of actions for seamen -- not an exclusive remedy. Because the then-accepted remedies arose from general maritime law, it necessarily follows that Congress envisioned their continued availability. See *Chandris, Inc. v. Latsis*, 515 U.S. 347, 354, 115 S. Ct. 2172, 132 L. Ed. 2d 314. Had the Jones Act been the only remaining remedy available, there would have been no election to make. And, the only statutory restrictions on general maritime maintenance and cure [*2564] claims were enacted long after the Jones Act's passage and limit availability for only two discrete classes: foreign workers on offshore oil and mineral production facilities and sailing school students and instructors. This indicates that "Congress knows how to" restrict the traditional maintenance and cure remedy "when it wants to." *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97,

106, 108 S. Ct. 404, 98 L. Ed. 2d 415. This Court has consistently observed that the Jones Act preserves common-law causes of action such as maintenance and cure, see, e.g., *The Arizona v. Anelich*, 298 U.S. 110, 56 S. Ct. 707, 80 L. Ed. 1075, [***5] and its case law supports the view that punitive damages awards, in particular, continue to remain available in maintenance and cure actions, see *Vaughan v. Atkinson*, 369 U.S. 527, 82 S. Ct. 997, 8 L. Ed. 2d 88. Pp. 9-13.

(i) Contrary to petitioners' argument, *Miles* does not limit recovery to the remedies available under the Jones Act. *Miles* does not address either maintenance and cure actions in general or the availability of punitive damages for such actions. Instead, it grappled with the entirely different question whether general maritime law should provide a cause of action for wrongful death based on unseaworthiness. The Court found that the Jones Act and the Death on the High Seas Act (DOHSA), along with state statutes, supported recognition of a general maritime rule for wrongful death of a seaman. However, since Congress had chosen to limit the damages available in the Jones Act and DOHSA, excluding damages for loss of society or lost future earnings, 498 U.S., at 21, 31-32, 111 S. Ct. 317, 112 L. Ed. 2d 275, its judgment must control the availability of remedies for wrongful death actions brought under general maritime law, *id.*, at 32-36, 111 S. Ct. 317, 112 L. Ed. 2d 275. *Miles'* reasoning does not apply here. Unlike *Miles'* situation, both the general maritime cause of action [***6] here (maintenance and cure) and the remedy (punitive damages) were well established before the Jones Act's passage. And unlike *Miles'* facts, the Jones Act does not address the general maritime cause of action here or its remedy. It is thus possible to adhere to the traditional understanding of maritime actions and remedies without abridging or violating the Jones Act; unlike wrongful-death actions, this traditional understanding is not a matter to which "Congress has spoken directly." See *id.*, at 31, 111 S. Ct. 317, 112 L. Ed. 2d 275. Moreover, petitioners' contrary view was directly rejected in *Norfolk Shipbuilding & Drydock Corp. v. Garriss*, 532 U.S. 811, 820, 121 S. Ct. 1927, 150 L. Ed. 2d 34. If *Miles* presented no barrier to the *Garriss* Court's endorsement of a previously unrecognized maritime cause of action for negligent wrongful death, there is no legitimate basis for a contrary conclusion here. Like negligence, the duty of maintenance and cure and the general availability of punitive damages have been recognized "for more than a century," 532 U.S., at 820, 121 S. Ct. 1927, 150 L. Ed. 2d

34. And because respondent does not ask this Court to alter statutory text or "expand" the maritime tort law's general principles, *Miles* does not require eliminating the general maritime remedy of [***7] punitive damages for the willful or wanton failure to comply with the duty to pay maintenance and cure. The fact that seamen commonly seek to recover under the Jones Act for maintenance and cure claims, does not mean that the Jones Act provides the only remedy. See *Cortes v. Baltimore Insular Line, Inc.*, 287 U.S. 367, 374-375, 53 S. Ct. 173, 77 L. Ed. 368. The laudable quest for uniformity in admiralty does not require narrowing available damages to the lowest common denominator approved by Congress for distinct causes of action. Pp. 13-19.

496 F.3d 1282, affirmed and remanded.

COUNSEL: David W. McCreadie argued the for petitioners:

G. J. Red Sullivan, Jr. argued the cause for respondent

JUDGES: THOMAS, J., delivered the opinion of the Court, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined. ALITO, J., filed a dissenting opinion, in which ROBERTS, C. J., and SCALIA and KENNEDY, JJ., joined.

OPINION BY: THOMAS

OPINION

[*2565] [***389] JUSTICE THOMAS delivered the opinion of the Court.

The question presented by this case is whether an injured seaman may recover punitive damages for his employer's willful failure to pay maintenance and cure. Petitioners argue that under *Miles v. Apex Marine Corp.*, 498 U.S. 19, 111 S. Ct. 317, 112 L. Ed. 2d 275 (1990), seamen may recover only those damages available under the Jones Act, 46 U.S.C. § 30104. We disagree. Historically, punitive damages have been available [***8] and awarded in general maritime actions, including some in maintenance [***390] and cure. We find that nothing in *Miles* or the Jones Act eliminates that availability.

I

Respondent Edgar L. Townsend was a crew member of the Motor Tug Thomas. After falling on the steel deck of the tugboat and injuring his arm and shoulder, respondent claimed that petitioner Atlantic Sounding, the owner of the tugboat, advised him that it would not provide maintenance and cure. See 496 F.3d 1282, 1283 (CA11 2007). "A claim for maintenance and cure concerns the vessel owner's obligation to provide food, lodging, and medical services to a seaman injured while serving the ship." *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 441, 121 S. Ct. 993, 148 L. Ed. 2d 931 (2001).

1 Atlantic Sounding Co., Inc., is a wholly owned subsidiary of Weeks Marine, Inc., the other petitioner in this case.

Petitioners thereafter filed an action for declaratory relief regarding their obligations with respect to maintenance and cure. Respondent filed his own suit under the Jones Act and general maritime law, alleging negligence, unseaworthiness, arbitrary and willful failure to pay maintenance and cure, and wrongful termination. In addition, respondent filed similar counterclaims [***9] in the declaratory judgment action, seeking punitive damages for the denial of maintenance and cure. The District Court consolidated the cases. See 496 F.3d at 1283-1284.

Petitioners moved to dismiss respondent's punitive damages claim. The District Court denied the motion, holding that it was bound by the determination in *Hines v. J. A. LaPorte, Inc.*, 820 F.2d 1187, 1189 (CA11 1987) (*per curiam*), that punitive damages were available in an action for maintenance and cure. The court, however, agreed to certify the question for interlocutory appeal. See 496 F.3d at 1284. The United States Court of Appeals for the Eleventh Circuit agreed with the District Court that *Hines* controlled and [*2566] held that respondent could pursue his punitive damages claim for the willful withholding of maintenance and cure. 496 F.3d at 1285-1286. The decision conflicted with those of other Courts of Appeals, see, e.g., *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496 (CA5 1995) (en banc); *Glynn v. Roy Al Boat Management Corp.*, 57 F.3d 1495 (CA9 1995), and we granted certiorari, 555 U.S. ___, 129 S. Ct. 490, 172 L. Ed. 2d 355 (2008).

II.

Respondent claims that he is entitled to seek punitive.

damages as a result of petitioners' alleged breach of their [***10] "maintenance and cure" duty under general maritime law. We find no legal obstacle to his doing so.

A

Punitive damages have long been an available remedy at common law for wanton, willful, or outrageous conduct. Under English law during the colonial era, juries were accorded broad discretion to award damages as they saw fit. See, e.g., *Lord Townsend v. Hughes*, 2 Mod. 150, 86 Eng. Rep. 994 (C. P. 1676) ("[I]n civil actions the plaintiff is to recover by way of compensation for the damages he hath sustained, and the jury are the proper judges thereof" (emphasis in original)); 1 T. Sedgwick, *Measure of Damages* § 349, p. 688 (9th ed. 1912) (hereinafter Sedgwick) ("Until [***391] comparatively recent times juries were as arbitrary judges of the amount of damages as of the facts"). The common-law view "was that 'in cases where the amount of damages was uncertain[,] their assessment was a matter so peculiarly within the province of the jury that the Court should not alter it.'" *Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340, 353, 118 S. Ct. 1279, 140 L. Ed. 2d 438 (1998) (quoting *Dimick v. Schiedt*, 293 U.S. 474, 480, 55 S. Ct. 296, 79 L. Ed. 603 (1935); alteration in original).

The jury's broad discretion to set damages included the authority to award punitive [***11] damages when the circumstances of the case warranted. Just before the ratification of the Constitution, Lord Chief Justice Pratt explained that "a jury ha[s] it in [its] power to give damages for more than the injury received. Damages are designed not only as a satisfaction to the injured person, but likewise as a punishment to the guilty, to deter from any such proceeding for the future, and as a proof of the detestation of the jury to the action itself." *Wilkes v. Wood*, Lofft 1, 18-19, 98 Eng. Rep. 489, 498-499 (C. P. 1763); see also *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 25, 111 S. Ct. 1032, 113 L. Ed. 2d 1 (1991) (SCALIA, J., concurring in judgment) ("[P]unitive or 'exemplary' damages have long been a part of Anglo-American law"); *Huckle v. Money*, 2 Wils. 205, 207, 95 Eng. Rep. 768, 769 (C. P. 1763) (declining to grant a new trial because the jury "ha[s] done right in giving exemplary damages").

American courts have likewise permitted punitive damages awards in appropriate cases since at least 1784. See, e.g., *Genay v. Norris*, 1 S. C. L. 6, 7 (C. P. and Gen. Sess. 1784) (approving award of "very exemplary

damages" because spiking wine represented a "very wanton outrage"); *Coryell v. Colbaugh*, 1 N. J. L. 77 (1791) [***12] (concluding that a breach of promise of marriage was "of the most atrocious and dishonourable nature" and supported "damages for example's sake, to prevent such offences in future" (emphasis in original)). Although some States elected not to allow juries to make such awards, the vast majority permitted them. See 1 Sedgwick §§ 352, 354, at 694, 700. By the middle of the 19th century, "punitive damages were undoubtedly an [***2567] established part of the American common law of torts [and] no particular procedures were deemed necessary to circumscribe a jury's discretion regarding the award of such damages, or their amount." *Haslip*, *supra*, at 26-27, 111 S. Ct. 1032, 113 L. Ed. 2d 1 (SCALIA, J., concurring in judgment).

This Court has also found the award of punitive damages to be authorized as a matter of common-law doctrine. In *Day v. Woodworth*, 54 U.S. 363, 13 How. 363, 14 L. Ed. 181 (1852), for example, the Court recognized the "well-established principle of the common law, that in actions of trespass and all actions on the case for torts, a jury may inflict what are called exemplary, punitive, or vindictive damages upon a defendant." *Id.*, at 371, 13 How. 363, 14 L. Ed. 181; see also *Philadelphia, W., & B. R. Co. v. Quigley*, 62 U.S. 202, 21 How. 202, 214, 16 L. Ed. 73 (1859) ("Whenever the injury complained [***13] of has been inflicted maliciously or wantonly, and with circumstances of contumely or indignity, the jury are not limited to the ascertainment of a simple compensation for the wrong committed against the aggrieved person"); *Barry v. Edmunds*, 116 U.S. 550, 562, 6 S. Ct. 501, 29 L. Ed. 729 [***392] (1886) ("[A]ccording to the settled law of this court, [a plaintiff] might show himself, by proof of the circumstances, to be entitled to exemplary damages calculated to vindicate his right and protect it against future similar invasions").

B

The general rule that punitive damages were available at common law extended to claims arising under federal maritime law. See *Lake Shore & Michigan Southern R. Co. v. Prentice*, 147 U.S. 101, 108, 13 S. Ct. 261, 37 L. Ed. 97 (1893) ("[C]ourts of admiralty . . . proceed, in cases of tort, upon the same principles as courts of common law, in allowing exemplary damages . . ."). One of this Court's first cases indicating that punitive

damages were available involved an action for marine trespass. See *The Amiable Nancy*, 16 U.S. 546, 3 Wheat. 546, 4 L. Ed. 456 (1818). In the course of deciding whether to uphold the jury's award, Justice Story, writing for the Court, recognized that punitive damages are an available maritime remedy under the proper circumstances. [***14] Although the Court found that the particular facts of the case did not warrant such an award against the named defendants, it explained that "if this were a suit against the original wrong-doers, it might be proper to . . . visit upon them in the shape of exemplary damages, the proper punishment which belongs to such lawless misconduct." *Id.*, at 558, 3 Wheat. 546, 4 L. Ed. 456; see also *Barry*, *supra*, at 563, 6 S. Ct. 501, 29 L. Ed. 729 ("In *The Amiable Nancy*, which was the case of a marine tort, Mr. Justice Story spoke of exemplary damages as 'the proper punishment which belongs to . . . lawless misconduct'" (citation omitted)).

The lower federal courts followed suit, finding that punitive damages were available in maritime actions for tortious acts of a particularly egregious nature. See, e.g., *McGuire v. The Golden Gate*, 16 F. Cas. 141, 143, F. Cas. No. 8815 (No. 8,815) (CC ND Cal. 1856) ("In an action against the perpetrator of the wrong, the aggrieved party would be entitled to recover not only actual damages but exemplary, -- such as would vindicate his wrongs, and teach the tortfeasor the necessity of reform"); *Ralston v. The State Rights*, 20 F. Cas. 201, 210, F. Cas. No. 11540 (No. 11,540) (DC ED Pa. 1836) ("[I]t is not legally correct . . . to say that a court cannot [***15] give exemplary damages, in a case like the present, against the owners of a vessel"); *Boston Mfg. Co. v. Fiske*, 3 F. Cas. 957, F. Cas. No. 1681 (No. 1,681) (CC Mass. 1820) (Story, J.) ("In cases of marine torts, or illegal captures, it is far from being uncommon in the admiralty to allow costs and expenses, and to mulct the offending parties, even in exemplary damages, where the nature of [***2568] the case requires it"). In short, prior to enactment of the Jones Act in 1920, "maritime jurisprudence was replete with judicial statements approving punitive damages, especially on behalf of passengers and seamen." *Robertson, Punitive Damages in American Maritime Law*, 28 J. Mar. L. & Comm. 73, 115 (1997) (hereinafter *Robertson*); see also 2 Sedgwick § 599b, at 1156 ("Exemplary damages are awarded in Admiralty, as in other jurisdictions"); 2 J. Sutherland, *Law of Damages* § 392, p. 1272 (4th ed. 1916) ("As a rule a court of equity will not award [punitive] damages, but [***393] courts of admiralty will . . ." (footnote

omitted)).²

2 Although punitive damages awards were rarely upheld on judicial review, but see *Roza v. Smith*, 65 F. 592, 596-597 (DC ND Cal. 1895); *Gallagher v. The Yankee*, 9 F. Cas. 1091, 1093, F. Cas. No. 5196 (No. 5,196) (DC ND Cal. 1859) [***16], that fact does not draw into question the basic understanding that punitive damages were considered an available maritime remedy. Indeed, in several cases in which a judgment awarding punitive damage awards was overturned on appeal, the reversal was based on unrelated grounds. See, e.g., *The Margherita*, 140 F. 820, 824 (CA5 1905); *Pacific Packing & Nav. Co. v. Fielding*, 136 F. 577, 580 (CA9 1905); *Latchmacker v. Jacksonville Towing & Wrecking Co.*, 181 F. 276, 278 (CC SD Fla. 1910).

C

Nothing in maritime law undermines the applicability of this general rule in the maintenance and cure context. See G. Gilmore & C. Black, *Law of Admiralty* § 6-13, p. 312 (2d ed. 1975) (hereinafter *Gilmore & Black*) (explaining that a seaman denied maintenance and cure "has a free option to claim damages (including punitive damages), under a general maritime law count"); *Robertson*, 163 (concluding that breach of maintenance and cure is one of the particular torts for which general maritime law would most likely permit the awarding of punitive damages "assuming . . . the requisite level of blameworthiness"). Indeed, the legal obligation to provide maintenance and cure dates back centuries as [***17] an aspect of general maritime law, and the failure of a seaman's employers to provide him with adequate medical care was the basis for awarding punitive damages in cases decided as early as the 1800's.

The right to receive maintenance and cure was first recognized in this country in two lower court decisions authored by Justice Story. See *Harden v. Gordon*, 11 F. Cas. 480, F. Cas. No. 6047 (No. 6,047) (CC Me. 1823); *Reed v. Canfield*, 20 F. Cas. 426, F. Cas. No. 11641 (No. 11,641) (CC Mass. 1832). According to Justice Story, this common-law obligation to seamen was justified on humanitarian and economic grounds: "If some provision be not made for [seamen] 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 [T]he merchant himself derives an ultimate benefit [because it] encourages seamen to engage in perilous voyages with more promptitude, and at lower wages." *Harden, supra*, at 483; see also *Reed, supra*, at 429 ("The seaman is to be cured at the expense of the ship, of the sickness or injury sustained in the ship's service").

This Court has since registered its agreement with these decisions. [***18] "Upon a full review . . . of English and American authorities," the Court concluded 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." *The Osceola*, 189 U.S. 158, 175, 23 S. Ct. 483, 47 L. Ed. 760 (1903). Decisions following *The Osceola* have explained that in [*2569] addition to wages, "maintenance" includes food and lodging at the expense of their ship, and "cure" refers to medical treatment. *Lewis*, 531 U.S., at 441, 121 S. Ct. 993, 148 L. Ed. 2d 931; see also *Gilmore & Black* § 6-12, at 267-268 (describing "maintenance and cure" as including medical expenses, a living allowance, and unearned wages).

In addition, the failure of a vessel owner to provide proper medical care [***394] for seamen has provided the impetus for damages awards that appear to contain at least some punitive element. For example, in *The City of Carlisle*, 39 F. 807 (DC Ore. 1889), the court added \$1,000 to its damages award to compensate an apprentice seaman for "gross neglect and cruel maltreatment of the [seaman] since his injury." *Id.*, at 809, 817. The court reviewed the indignities to which the apprentice had been subjected [***19] as he recovered without any serious medical attention, see *id.*, at 810-812, and explained that "if owners do not wish to be mulct in damages for such misconduct, they should be careful to select men worthy to command their vessels and fit to be trusted with the safety and welfare of their crews, and particularly apprentice boys." *Id.*, at 817; see also *The Troop*, 118 F. 769, 770-771, 773 (DC Wash. 1902) (explaining that \$4,000 was a reasonable award because the captain's "failure to observe the dictates of humanity" and obtain prompt medical care for an injured seaman constituted a "monstrous wrong").³

3 Although these cases do not refer to "punitive" or "exemplary" damages, scholars have characterized the awards authorized by these

decisions as such. See Robertson 103-105; Edelman, *Guevara v. Maritime Overseas Corp.*: Opposing the Decision, 20 Tulane Mar. L. J. 349, 351, and n. 22 (1996).

D

The settled legal principles discussed above establish three points central to resolving this case. First, punitive damages have long been available at common law. Second, the common-law tradition of punitive damages extends to maritime claims.⁴ And third, there is no evidence that claims for maintenance [***20] and cure were excluded from this general admiralty rule. Instead, the pre-Jones Act evidence indicates that punitive damages remain available for such claims under the appropriate factual circumstances. As a result, respondent is entitled to pursue punitive damages unless Congress has enacted legislation departing from this common-law understanding. As explained below, it has not.

4 The dissent correctly notes that the handful of early cases involving maintenance and cure, by themselves, do not definitively resolve the question of punitive damages availability in such cases. See *post*, at 6-8 (opinion of ALITO, J.). However, it neglects to acknowledge that the general common-law rule made punitive damages available in maritime actions. See *supra*, at 5-6. Nor does the dissent explain why maintenance and cure actions should be excepted from this general rule. It is because of this rule, and the fact that these early cases support -- rather than refute -- its application to maintenance and cure actions, see *supra*, at 7-8, that the pre-Jones Act evidence supports the conclusion that punitive damages were available at common law where the denial of maintenance and cure involved wanton, willful, [***21] or outrageous conduct.

III

A

The only statute that could serve as a basis for overturning the common-law rule in this case is the Jones Act. Congress enacted the Jones Act primarily to overrule *The Osceola, supra*, in which this Court prohibited a seaman or his family from recovering for injuries or death suffered due to his employers' negligence. [*2570] To this end, the statute provides in relevant part:

"A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the [**395] United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section." 46 U.S.C. § 30104(a) (incorporating the Federal Employers' Liability Act, 45 U.S.C. §§ 51-60).

The Jones Act thus created a statutory cause of action for negligence, but it did not eliminate pre-existing remedies available to seamen for the separate common-law cause of action based on a seaman's right to maintenance and cure. Section 30104 bestows upon the injured seaman the right to "elect" to bring a Jones Act claim, thereby indicating [***22] a choice of actions for seamen -- not an exclusive remedy. See Funk & Wagnall's New Standard Dictionary of the English Language 798 (1913) (defining "elect" as "[t]o make choice of"); 1 Bouvier's Law Dictionary 979 (8th ed. 1914) (defining "election" as "[t]he choice; selection"). Because the then-accepted remedies for injured seamen arose from general maritime law, see *The Osceola*, supra, at 175, 23 S. Ct. 483, 47 L. Ed. 760, it necessarily follows that Congress was envisioning the continued availability of those common-law causes of action. See *Chandris, Inc. v. Latsis*, 515 U.S. 347, 354, 115 S. Ct. 2172, 132 L. Ed. 2d 314 (1995) ("Congress enacted the Jones Act in 1920 to remove the bar to suit for negligence articulated in *The Osceola*, thereby completing the trilogy of heightened legal protections [including maintenance and cure] that seamen receive because of their exposure to the perils of the sea" (internal quotation marks omitted)); *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 487, 125 S. Ct. 1118, 160 L. Ed. 2d 932 (2005) (describing the Jones Act as "remov[ing] this bar to negligence suits by seamen"). If the Jones Act had been the only remaining remedy available to injured seamen, there would have been no election to make.

In addition, the only statutory restrictions expressly [***23] addressing general maritime claims for maintenance and cure were enacted long after the passage of the Jones Act. They limit its availability for two

discrete classes of people: foreign workers on offshore oil and mineral production facilities, see § 503(a)(2), 96 Stat. 1955, codified at 46 U.S.C. § 30105(b), and sailing school students and instructors, § 204, 96 Stat. 1589, codified at 46 U.S.C. § 50504(b). These provisions indicate that "Congress knows how to" restrict the traditional remedy of maintenance and cure "when it wants to." *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 106, 108 S. Ct. 404, 98 L. Ed. 2d 415 (1987). Thus, nothing in the statutory scheme for maritime recovery restricts the availability of punitive damages for maintenance and cure for those, like respondent, who are not precluded from asserting the general maritime claim.

Further supporting this interpretation of the Jones Act, this Court has consistently recognized that the Act "was remedial, for the benefit and protection of seamen who are peculiarly the wards of admiralty. Its purpose was to enlarge that protection, not to narrow it." *The Arizona v. Anelich*, 298 U.S. 110, 123, 56 S. Ct. 707, 80 L. Ed. 1075 (1936); see also *American Export Lines, Inc. v. Alvez*, 446 U.S. 274, 282, 100 S. Ct. 1673, 64 L. Ed. 2d 284 (1980) [***24] (plurality opinion) (declining to "read the Jones Act as sweeping aside general maritime law remedies"); *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U.S. 36, 43, 63 S. Ct. 488, 87 L. Ed. 596 (1943) ("It follows [***2571] that the Jones Act, in extending a right of recovery to the [***396] seaman injured while in the service of his vessel by negligence, has done no more than supplement the remedy of maintenance and cure . . ."); *Pacific S. S. Co. v. Peterson*, 278 U.S. 130, 134, 138-139, 49 S. Ct. 75, 73 L. Ed. 220 (1928) (holding that the Jones Act "was not intended to restrict in any way the long-established right of a seaman to maintenance, cure and wages").

Not only have our decisions repeatedly observed that the Jones Act preserves common-law causes of action such as maintenance and cure, but our case law also supports the view that punitive damages awards, in particular, remain available in maintenance and cure actions after the Act's passage. In *Vaughan v. Atkinson*, 369 U.S. 527, 82 S. Ct. 997, 8 L. Ed. 2d 88 (1962), for example, the Court permitted the recovery of attorney's fees for the "callous" and "willful and persistent" refusal to pay maintenance and cure. *Id.*, at 529-531, 82 S. Ct. 997, 8 L. Ed. 2d 88. In fact, even the *Vaughan* dissenters, who believed that such fees were generally unavailable, agreed [***25] that a seaman "would be entitled to

exemplary damages in accord with traditional concepts of the law of damages" where a "shipowner's refusal to pay maintenance stemmed from a wanton and intentional disregard of the legal rights of the seaman." *Id.*, at 540; 82 S. Ct. 997, 8 L. Ed. 2d 88 (opinion of Stewart, J.); see also *Fiske*, 3 F. Cas., at 957 (Story, J.) (arguing that counsel fees are awardable in "[c]ourts of admiralty . . . not technically as costs, but upon the same principles, as they are often allowed damages in cases of torts, by courts of common law, as a recompense for injuries sustained, as exemplary damages, or as a remuneration for expenses incurred, or losses sustained, by the misconduct of the other party").⁵

5 In the wake of *Vaughan*, a number of lower courts expressly held that punitive damages can be recovered for the denial of maintenance and cure. See, e.g., *Hines v. J. A. Laporte, Inc.*, 820 F.2d 1187, 1189 (CA11 1987) (*per curiam*) (upholding punitive damages award of \$ 5,000 for an "arbitrary and bad faith breach of the duty to furnish maintenance and cure"); *Robinson v. Roehontas, Inc.*, 477 F.2d 1048, 1049-1052 (CA1 1973) (affirming punitive damages award of \$ 10,000 which was based, in part, [***26] on the defendant's initial withholding of maintenance and cure on the pretext that the seaman had been fired for cause).

Nothing in the text of the Jones Act or this Court's decisions issued in the wake of its enactment undermines the continued existence of the common-law cause of action providing recovery for the delayed or improper provision of maintenance and cure. Petitioners do not deny the availability of punitive damages in general maritime law, or identify any cases establishing that such damages were historically unavailable for breach of the duty of maintenance and cure. The plain language of the Jones Act, then, does not provide the punitive damages bar that petitioners seek.

B.

Petitioners nonetheless argue that the availability of punitive damages in this case is controlled by the Jones Act because of this Court's decision in *Miles*, 498 U.S. 19, 111 S. Ct. 317, 112 L. Ed. 2d 275; see also *post*, at 5-6 (opinion of ALITO, J.). In *Miles*, petitioners argue, the Court limited recovery in maritime cases involving death or personal injury to the remedies available under the Jones Act and the Death on the High Seas Act

(DOHSA), 46 U.S.C. §§ 30301-30306. [***397] 6 [***2572] Petitioners' reading of *Miles* is far too broad.

6 DOHSA applies [***27] only to individuals killed (not merely injured) by conduct on the high seas. See 46 U.S.C. § 30302. Because this case involves injuries to a seaman, and not death on the high seas, DOHSA is not relevant.

Miles does not address either maintenance and cure actions in general or the availability of punitive damages for such actions. The decision instead grapples with the entirely different question whether general maritime law should provide a cause of action for wrongful death based on unseaworthiness. By providing a remedy for wrongful death suffered on the high seas or in territorial waters, the Jones Act and DOHSA displaced a general maritime rule that denied any recovery for wrongful death. See *Miles*, 498 U.S. at 23-34, 111 S. Ct. 317, 112 L. Ed. 2d 275. This Court, therefore, was called upon in *Miles* to decide whether these new statutes supported an expansion of the relief available under pre-existing general maritime law to harmonize it with a cause of action created by statute.

The Court in *Miles* first concluded that the "unanimous legislative judgment behind the Jones Act, DOHSA, and the many state statutes" authorizing maritime wrongful-death actions, supported the recognition of a general maritime action for [***28] wrongful death of a seaman. *Id.*, at 24, 111 S. Ct. 317, 112 L. Ed. 2d 275 (discussing *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 90 S. Ct. 1772, 26 L. Ed. 2d 339 (1970), which overruled *The Harrisburg*, 119 U.S. 199, 7 S. Ct. 140, 30 L. Ed. 358 (1886)). Congress had chosen to limit, however, the damages available for wrongful-death actions under the Jones Act and DOHSA, such that damages were not statutorily available for loss of society or lost future earnings. See *Miles*, 498 U.S. at 21, 31-32, 111 S. Ct. 317, 112 L. Ed. 2d 275. The Court thus concluded that Congress' judgment must control the availability of remedies for wrongful-death actions brought under general maritime law, *id.*, at 32-36, 111 S. Ct. 317, 112 L. Ed. 2d 275.

The reasoning of *Miles* remains sound. As the Court in that case explained, "[w]e no longer live in an era when seamen and their loved ones must look primarily to the courts as a source of substantive legal protection from injury and death; Congress and the States have legislated extensively in these areas." *Id.*, at 27, 111 S. Ct. 317, 112 L. Ed. 2d 275. Furthermore, it was only because of

congressional action that a general federal cause of action for wrongful death on the high seas and in territorial waters even existed; until then, there was no general common-law doctrine providing for such an action. As a result, to determine the remedies available [***29] under the common-law wrongful-death action, "an admiralty court should look primarily to these legislative enactments for policy guidance." *Ibid.* It would have been illegitimate to create common-law remedies that exceeded those remedies statutorily available under the Jones Act and DOHSA. See *id.*, at 36, 111 S. Ct. 317, 112 L. Ed. 2d 275 ("We will not create, under our admiralty powers, a remedy . . . that goes well beyond the limits of Congress' ordered system of recovery for seamen's injury and death").

But application of that principle here does not lead to the outcome suggested by petitioners or the dissent. See *post*, at 2-3. Unlike the situation presented in *Miles*, both the general maritime cause of action [***398] (maintenance and cure) and the remedy (punitive damages) were well established before the passage of the Jones Act. See *supra*, at 3-8. Also unlike the facts presented by *Miles*, the Jones Act does not address maintenance and cure or its remedy.⁷ It is therefore [***2573] possible to adhere to the traditional understanding of maritime actions and remedies without abridging or violating the Jones Act; unlike wrongful-death actions, this traditional understanding is not a matter to which "Congress has spoken directly." See [***30] *Miles*, *supra*, at 31 (citing *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 625, 98 S. Ct. 2010, 56 L. Ed. 2d 581 (1978)). Indeed, the *Miles* Court itself acknowledged that "[t]he Jones Act evinces no general hostility to recovery under maritime law," 498 U.S., at 29, 111 S. Ct. 317, 112 L. Ed. 2d 275, and noted that statutory remedy limitations "would not necessarily deter us; if recovery . . . were more consistent with the general principles of maritime tort law." *Id.*, at 35, 111 S. Ct. 317, 112 L. Ed. 2d 275. The availability of punitive damages for maintenance and cure actions is entirely faithful to these "general principles of maritime tort law," and no statute casts doubt on their availability under general maritime law.

7 Respondent's claim is not affected by the statutory amendments to the Jones Act that limit maintenance and cure recovery in cases involving foreign workers on offshore oil and mineral production facilities, see 46 U.S.C. § 30105, or

sailing-school students and instructors, § 50504. See *supra*, at 11.

Moreover, petitioners' contention that *Miles* precludes any action or remedy for personal injury beyond that made available under the Jones Act was directly rejected by this Court in *Norfolk Shipbuilding & Drydock Corp. v. Garriss*, 532 U.S. 811, 818, 121 S. Ct. 1927, 150 L. Ed. 2d 34 (2001). That case involved [***31] the death of a harbor worker. *Ibid.* There, the Court recognized a maritime cause of action for wrongful death attributable to negligence although neither the Jones Act (which applies only to seamen) nor DOHSA (which does not cover territorial waters) provided such a remedy. *Id.*, at 817-818, 121 S. Ct. 1927, 150 L. Ed. 2d 34. The Court acknowledged that "it will be the better course, in many cases that assert new claims beyond what these statutes have seen fit to allow, to leave further development to Congress." *Id.*, at 820, 121 S. Ct. 1927, 150 L. Ed. 2d 34. But the Court concluded that the cause of action at issue there was "new only in the most technical sense" because "[t]he general maritime law has recognized the tort of negligence for more than a century, and it has been clear since *Moragne* that breaches of a maritime duty are actionable when they cause death, as when they cause injury." *Ibid.* The Court thus found that "Congress's occupation of this field is not yet so extensive as to preclude us from recognizing what is already logically compelled by our precedents." *Ibid.*

Because *Miles* presented no barrier to this endorsement of a previously unrecognized maritime cause of action for negligent wrongful death, we see no legitimate basis for a contrary [***32] conclusion in the present case. Like negligence, "[t]he general maritime law has recognized . . . for more than a century" the duty of maintenance and cure and the general availability of punitive damages. See *Garriss*, *supra*, at 820, 121 S. Ct. 1927, 150 L. Ed. [***399] 2d 34; see also *supra*, at 3-8. And because respondent does not ask this Court to alter statutory text or "expand" the general principles of maritime tort law, *Miles* does not require us to eliminate the general maritime remedy of punitive damages for the willful or wanton failure to comply with the duty to pay maintenance and cure. "We assume that Congress is aware of existing law when it passes legislation," *Miles*, *supra*, at 32, 111 S. Ct. 317, 112 L. Ed. 2d 275, and the available history suggests that punitive damages were an established part of the maritime law in 1920, see *supra*, at 5-8.⁸

8 In light of the Court's decision in *Norfolk Shipbuilding & Drydock Corp. v. Garis*, 532 U.S. 811, 818, 121 S. Ct. 1927, 150 L. Ed. 2d 34 (2001), our reading of *Miles* cannot, as the dissent contends, represent an "abrupt[]" change of course. See *post*, at 1.

It remains true, of course, that "[a]dmiralty is not created in a vacuum; legislation has always served as an important [*2574] source of both common law and admiralty principles." *Miles*, *supra*, at 24, 111 S. Ct. 317, 112 L. Ed. 2d 275. [***33] And it also is true that the negligent denial of maintenance and cure may also be the subject of a Jones Act claim. See *Cortes v. Baltimore Insular Line, Inc.*, 287 U.S. 367, 53 S. Ct. 173, 77 L. Ed. 368 (1932).⁹ But the fact that seamen commonly seek to recover under the Jones Act for the wrongful withholding of maintenance and cure does not mean that the Jones Act provides the only remedy for maintenance and cure claims. Indeed, contrary to petitioners' view that the Jones Act replaced in their entirety the remedies available at common law for maintenance and cure, the *Cortes* decision explicitly acknowledged a seaman's right to choose among overlapping statutory and common-law remedies for injuries sustained by the denial of maintenance and cure. See 287 U.S., at 374-375; 53 S. Ct. 173; 77 L. Ed. 2d 366 (A seaman's "cause of action for personal injury created by the statute may have overlapped his cause of action for breach of the maritime duty of maintenance and cure . . . In such circumstances it was his privilege, in so far as the causes of action covered the same ground, to sue indifferently on any one of them").¹⁰

9 For those maintenance and cure claims that do not involve personal injury (and thus cannot be asserted under the Jones Act), [***34] the dissent argues that punitive damages should be barred because such claims are based in contract, not tort. See *post*, at 8. But the right of maintenance and cure "was firmly established in the maritime law long before recognition of the distinction between tort and contract." *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U.S. 36, 42, 63 S. Ct. 488, 87 L. Ed. 596 (1943). Although the right has been described as "incident to contract, it cannot be modified or waived. See *Cortes v. Baltimore Insular Line, Inc.*, 287 U.S. 367, 372, 53 S. Ct. 173, 77 L. Ed. 368 (1932).

¹⁰ The fact that, in some cases, a violation of the

duty of maintenance and cure may also give rise to a Jones Act claim, see *post*, at 3 (opinion of ALITO, J.); is significant only in that it requires admiralty courts to ensure against double recovery. See *Fitzgerald v. United States Lines Co.*, 374 U.S. 16, 18-19, 83 S. Ct. 1646, 10 L. Ed. 2d 720 (1963) (authorizing a jury trial when a maintenance and cure claim is joined with a Jones Act claim because, "[r]equiring a seaman to split up his lawsuit, submitting part of it to a jury and part to a judge . . . can easily result in too much or too little recovery"). Thus, a court may take steps to ensure that any award of damages for lost wages in a Jones Act negligence [***35] claim is offset by the amount of lost wages awarded as part of a recovery of maintenance and cure. See, e.g., *Petition of Oskar Tiedemann & Co.*, 367 F.2d 498, 505, n. 6 (CA3 1966); *Crooks v. United States*, 459 F.2d 631, 633 (CA9 1972).

[**400] As this Court has repeatedly explained, "remedies for negligence, unseaworthiness, and maintenance and cure have different origins and may on occasion call for application of slightly different principles and procedures." *Fitzgerald v. United States Lines Co.*, 374 U.S. 16, 18, 83 S. Ct. 1646, 10 L. Ed. 2d 720 (1963); see also *Peterson*, 278 U.S., at 138, 139, 49 S. Ct. 75, 73 L. Ed. 220 (emphasizing that a seaman's action for maintenance and cure is "independent" and "cumulative" from other claims such as negligence and that the maintenance and cure right is "in no sense inconsistent with, or an alternative of, the right to recover compensatory damages [under the Jones Act]"). See also *Gilmore & Black* § 6-23, at 342 ("It is unquestioned law that both the Jones Act and the unseaworthiness remedies are additional to maintenance and cure: the seaman may have maintenance and cure and also one of the other two"). The laudable quest for uniformity in admiralty does not require the narrowing of available damages to the lowest [***36] common denominator approved by Congress for distinct causes of action. ¹¹ [*2575] Although "Congress . . . is free to say this much and no more," *Miles*, 498 U.S., at 24, 111 S. Ct. 317, 112 L. Ed. 2d 275 (internal quotation marks omitted), we will not attribute words to Congress that it has not written.

¹¹ Although this Court has recognized that it may change maritime law in its operation as an admiralty court, see *Edmonds v. Compagnie Générale Transatlantique*, 443 U.S. 256, 271, 99

S. Ct. 2753; 61 L. Ed. 2d 521 (1979); petitioners have not asked the Court to do so in this case or pointed to any serious anomalies, with respect to the Jones Act or otherwise, that our holding may create. Nor have petitioners argued that the size of punitive damages awards in maintenance and cure cases necessitates a recovery cap, which the Court has elsewhere imposed. See *Exxon Shipping Co. v. Baker*, 554 U.S. ___, 128 S. Ct. 2605, 171 L. Ed. 2d 570, [slip op] at 42 (2008) (imposing a punitive-to-compensatory ratio of 1:1). We do not decide these issues.

IV

Because punitive damages have long been an accepted remedy under general maritime law, and because nothing in the Jones Act altered this understanding, such damages for the willful and wanton disregard of the maintenance and cure obligation should remain [***37] available in the appropriate case as a matter of general maritime law.¹² Limiting recovery for maintenance and cure to whatever is permitted by the Jones Act would give greater pre-emptive effect to the Act than is required by its text, *Miles*, or any of this Court's other decisions interpreting the statute. For these reasons, we affirm the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

12 Because we hold that *Miles* does not render the Jones Act's damages provision determinative of respondent's remedies, we do not address the dissent's argument that the Jones Act, by incorporating the provisions of the Federal Employers' Liability Act, see 46 U.S.C. § 30104(a), prohibits the recovery of punitive damages in actions under that statute. See post, at 3-5.

It is so ordered.

DISSENT BY: ALITO

DISSENT

JUSTICE ALITO, with whom THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE KENNEDY join, dissenting.

In *Miles v. Apex Marine Corp.*, 498 U.S. 19, 111 S.

Ct. 317, 112 L. Ed. 2d 275 (1990), this Court provided a workable framework for analyzing the relief available on claims under [***401] general maritime law. Today, the Court abruptly changes course. I would apply the analytical framework adopted in *Miles*, [***38] and I therefore respectfully dissent.

I

In order to understand our decision in *Miles*, it is necessary to appreciate the nature of the authority that the *Miles* Court was exercising. The Constitution, by extending the judicial power of the United States to admiralty and maritime cases, impliedly empowered this Court to continue the development of maritime law "in the manner of a common law court." *Exxon Shipping Co. v. Baker*, 554 U.S. ___, 128 S. Ct. 2605, 2619; 171 L. Ed. 2d 570, 584 (2008); see also *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 360-361, 79 S. Ct. 468, 3 L. Ed. 2d 368 (1959). In *Miles*, this Court explained how that authority should be exercised in an era in which statutory law has become dominant.

Miles presented two questions regarding the scope of relief permitted under general maritime law, the first of which was whether damages for loss of society may be recovered on a general maritime law wrongful-death claim. In order to answer this question, the Court looked to the Death on the High Seas Act, 46 U.S.C. § 30301 et seq., and the Jones Act 46 U.S.C. § 30101 et seq., both of which created new statutory wrongful-death claims. Because the relief available on these statutory claims does not include damages for [***39] [***2576] loss of society, the Court concluded that it should not permit such damages on a wrongful-death claim brought under general maritime law. The Court explained:

"We no longer live in an era when seamen and their loved ones must look primarily to the courts as a source of substantive legal protection from injury and death; Congress and the States have legislated extensively in these areas. In this era, an admiralty court should look primarily to these legislative enactments for policy guidance." 498 U.S. at 27, 111 S. Ct. 317, 112 L. Ed. 2d 275 (emphasis added).

The Court took a similar approach in answering the second question in *Miles* — whether damages for loss of future income should be available in a general maritime law survival action. The Court noted that "[t]here are indeed strong policy arguments for allowing such recovery" and that "admiralty courts have always shown a special solicitude for the welfare of seamen and their families." *Id.*, at 35-36, 111 S. Ct. 317, 112 L. Ed. 2d 275. But because the Jones Act survival provision "limits recovery to losses suffered during the decedent's lifetime," the Court held that a similar limitation should apply under general maritime law. *Id.*, at 36, 111 S. Ct. 317, 112 L. Ed. 2d 275.

Miles thus instructs that, in exercising our authority to [*40] develop general maritime law, we should be guided primarily by the policy choices reflected in statutes creating closely related claims. Endorsing what has been termed a principle of uniformity, *Miles* teaches that if a form of relief is not available on a statutory claim, we should be reluctant to permit such relief on a similar claim brought under general maritime law.

II

The type of maintenance and cure claim that is most likely to include a request for punitive damages is a [*402] claim that a seaman suffered personal injury as a result of the willful refusal to provide maintenance and cure. Such a claim may be brought under general maritime law. See *Cortez v. Baltimore Insular Line, Inc.*, 287 U.S. 367, 374, 53 S. Ct. 173, 77 L. Ed. 368 (1932), (recognizing that a seaman may sue under general maritime law to recover for personal injury resulting from the denial of maintenance and cure). And a similar claim may also be maintained under the Jones Act. See, e.g., *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496, 1499-1500 (CA5 1993) (en banc); G. Gilmore & C. Black, *Law of Admiralty* § 6-13, p. 311 (2d ed. 1975). To be sure, a seaman asserting a Jones Act claim must show that his employer was negligent, *ibid.*, while a seaman [*441] proceeding under general maritime law may recover compensatory damages without establishing fault, *id.*, at 310. But because the prevailing rule in American courts does not permit punitive damages without a showing of fault, see *Exxon Shipping, supra*, at 128 S. Ct. 2605, 2614; 171 L. Ed. 2d 570, 578, n. 2, it appears that any personal injury maintenance and cure claim in which punitive damages might be awarded could

be brought equally under either general maritime law or the Jones Act. The *Miles* uniformity therefore weighs strongly in favor of a rule that applies uniformly under general maritime law and the Jones Act. I therefore turn to the question whether punitive damages may be awarded under the Jones Act.

B

Enacted in 1920, the Jones Act, 46 U.S.C. §§ 30104, 30105(b), makes applicable to seamen the substantive recovery provisions of the Federal Employers Liability Act (FELA), 45 U.S.C. § 51 et seq., which became law in 1908. FELA, in [*2577] turn, "recites only that employers shall be liable in 'damages' for the injury or death of one protected under the Act." *Miles, supra*, at 32, 111 S. Ct. 317, 112 L. Ed. 2d 275 (citing 45 U.S.C. § 51).

Prior to the enactment of the Jones Act, however, this Court had decided several cases that explored the damages allowed under FELA. [*42] In *Michigan Central R. Co. v. Vreeland*, 227 U.S. 59, 33 S. Ct. 192, 57 L. Ed. 417 (1913), the Court dealt primarily with the damages that may be recovered under FELA's wrongful-death provision, but the Court also discussed the damages available in the case of injury. The Court noted that if the worker in that case had not died from his injuries, "he might have recovered such damages as would have compensated him for his expense, loss of time, suffering and diminished earning power." *Id.*, at 63, 33 S. Ct. 192, 57 L. Ed. 417. Two years later, in *St. Louis, I. M. & S. R. Co. v. Craft*, 237 U.S. 648, 35 S. Ct. 704, 59 L. Ed. 1160 (1915), the Court reiterated that an injured worker may recover only compensatory damages. Addressing the damages available to a party bringing a survival claim, the Court explained that the party may recover only those damages that had accrued to the worker at the time of his death and was thus limited to "such damages as will be reasonably compensatory for the loss and suffering of the injured person while he lived." *Id.*, at 658, 35 S. Ct. 704, 59 L. Ed. 1160. See also *ibid.* (damages "confined to the [the worker's] personal loss and suffering before he died"); *Miller v. American President Lines, Ltd.*, 989 F.2d 1450, 1457 (CA6, cert. denied, 510 U.S. 915, 114 S. Ct. 304, 126 L. Ed. 2d 252 (1993)) ("It has been the [*443] unanimous [*403] judgment of the courts since before the enactment of the Jones Act that punitive damages are not recoverable under [FELA]").

When Congress incorporated FELA unaltered into the Jones Act, Congress must have intended to incorporate FELA's limitation on damages as well. *Miles*, 498 U.S., at 32, 111 S. Ct. 317, 112 L. Ed. 2d 275. "We assume that Congress is aware of existing law when it passes legislation." *Ibid.* (citing *Cannon v. University of Chicago*, 441 U.S. 677, 696-697, 99 S. Ct. 1946, 60 L. Ed. 2d 560 (1979)). It is therefore reasonable to assume that only compensatory damages may be recovered under the Jones Act. See *Pacific S. S. Co. v. Peterson*, 278 U.S. 130, 136-139, 49 S. Ct. 73, 73 L. Ed. 220 (1928) (under the Jones Act, a seaman may "recover compensatory damages for injuries caused by the negligence"). And under *Miles*' reasoning — at least in the absence of some exceptionally strong countervailing considerations — the rule should be the same when a seaman sues under general maritime law for personal injury resulting from the denial of maintenance and cure.

III

In reaching the opposite conclusion, the Court reasons that: punitive damages were available on maintenance and cure claims prior to the enactment of the Jones Act and that the Jones Act was not intended [***44] to "trim the relief available on such general maritime law claims. This reasoning is flawed.

A

First, the Court proceeds as if the question here were whether the Jones Act was meant to preclude general maritime law claims and remedies. See *ante*, at 9-10 (Jones Act does not "overtur[e]" or "eliminate pre-existing remedies available to seamen"); *ante*, at 11 (Jones Act "preserves common-law causes of action"); *ante*, at 15 (*Miles* does not "preclud[e]" all claims and remedies beyond that made available under the Jones Act). *Miles* explicitly rejected that argument. See 498 [***2578] U.S., at 29, 111 S. Ct. 317, 112 L. Ed. 2d 275. But just because the Jones Act was not meant to preclude general maritime claims or remedies, it does not follow that the Jones Act was meant to stop the development of general maritime law by the courts. The Jones Act is significant because it created a statutory claim that is indistinguishable for present purposes from a general maritime law maintenance and cure claim based on personal injury and because this statutory claim does not permit the recovery of punitive damages. "Congress, in the exercise of its legislative powers, is free to say 'this much and no more,'" and "an admiralty court should look

primarily [***45] to these legislative enactments for policy guidance." *Miles*, *supra*, at 24, 27, 111 S. Ct. 317, 112 L. Ed. 2d 275. This policy embodied in the Jones Act thus constitutes a powerful argument in favor of the development of a similar rule under general maritime law.

B

That brings me to the Court's claim that the availability of punitive damages was established before the Jones Act was passed. If punitive damages were a widely recognized and regularly employed feature of maintenance and cure claims during the pre-Jones Act era, I would not rule out the possibility that this history might be [***404] sufficient to outweigh the *Miles* uniformity principle. But a search for cases in which punitive damages were awarded for the willful denial of maintenance of cure — in an era when seamen were often treated with shocking callousness — yields very little. Although American courts have entertained maintenance and cure suits since the early 19th century, the Court points to only two reported cases — *The City of Carlisle*, 39 F. 807 (DC Ore. 1889), and *The Troop*, 118 F. 769 (DC Wash. 1902) — that, as the Court carefully puts it, "appear to contain at least some punitive element." *Ante*, at 8.

The Court's choice of words is well advised, for [***46] it is not even clear that punitive damages were recovered in these two obscure cases. In *The City of Carlisle*, a 16-year-old apprentice suffered a fractured skull. The captain refused to put ashore. Given little care, the apprentice spent the next six or seven weeks in his bunk, wracked with pain, and was then compelled to work 12 hours a day for the remaining three months of the voyage. Upon landing, the captain made no arrangements for care and did not pay for the apprentice's brain surgery. The apprentice received an award of \$ 1,000; that may include some "punitive element," but it seems likely that much if not all of that sum represented compensation for the apprentice's months of agony and the lingering effects of his injury.

The Court's second case, *The Troop*, *supra*, involved similarly brutal treatment. The seaman fell from a mast and fractured an arm and a leg while his ship was six miles from its port of departure. Refusing to return to port, the captain subjected the seaman to maltreatment for the remainder of the 36-day voyage. As a result, he was required to undergo painful surgery, and his injuries

permanently prevented him from returning to work as a mariner. He received [***47] an undifferentiated award of \$ 4,000, and while the court was sharply critical of the captain's conduct, it is far from clear that the award did not consist entirely of compensatory damages for medical expenses, lost future income, and pain and suffering.

In addition to the two cases cited by the Court, respondent and an *amicus* claim that punitive damages were awarded in a few additional cases. See Brief for Respondent 13; Brief for *Amicus Curiae* American Ass'n. of Justice as *Amicus Curiae* 10-11. Of these cases, *The Margarita*, [***2579] 140 F. 820 (CA5 1905), is perhaps the most supportive. There, the court explained that its award of \$ 1,500 would not only "compensate the seaman for his unnecessary and unmerited suffering" but would "emphasize the importance of humane and correct judgment under the circumstances on the part of the master." *Id.*, at 827. While the court's reference to the message that the award embodied suggests that the award was in part punitive, it is also possible that the reference simply represented a restatement of one of the traditional rationales for maintenance and cure, i.e., that it served the economic interests of shipowners and the general interests of the country [***48] by making service as a seaman more attractive. See *Harden v. Gordon*, 11 F. Cas. 480, 485, F. Cas. No. 8047 (No. 6,047) (CC Me. 1823).

The remaining cases contain harsh criticism of the seamen's treatment but do not identify any portion of the award as punitive. See *The Rolph*, 293 F. 269 (ND Cal. 1923), *aff'd*, 299 F. 52 (CA9 1924) (undifferentiated [***405] award of \$ 10,000 for a seaman rendered blind in both eyes); *Tomlinson v. Hewett*, 24 F. Cas. 29, 32, F. Cas. No. 14087 (No. 14,087) (DC Cal. 1872).

In sum, the search for maintenance and cure cases in which punitive damages were awarded yields strikingly slim results. The cases found are insufficient in number, clarity, and prominence to justify departure from the *Miles* uniformity principle.

IV

There is one remaining question in this case, namely, whether punitive damages are permitted when a seaman asserts a general maritime law maintenance and cure claim that is not based on personal injury. In *Cortes*, 287 U.S., at 371, 53 S. Ct. 173, 77 L. Ed. 368, the Court explained that the duty to furnish maintenance and cure "is one annexed to the employment. . . . Contractual it is in the sense that it has its source in a relation which is contractual in origin, but, given the relation, no agreement is competent to [***49] abrogate the incident." The duty is thus essentially quasicontractual, and therefore, in those instances in which the seaman does not suffer personal injury, recovery should be governed by the law of quasi-contract. See *Restatement (Second) of Contracts* §§ 46, 127 (1979); *Restatement of Restitution* §§ 113-114 (1936); 1 D. Dobbs, *Law of Remedies* § 4.2(3), pp 580 (2d ed. 1993). Thus, an award of punitive damages is not appropriate. See also *Guevara*, 59 F.3d at 1513.

For these reasons, I would hold that punitive damages are not available in a case such as this, and I would therefore reverse the decision of the Court of Appeals.

[458 US 564]

DANNY L. GRIFFIN, Petitioner

v

OCEANIC CONTRACTORS, INC.

458 US 564, 73 L Ed 2d 973, 102 S Ct 3245

[No. 81-614]

Argued April 26, 1982. Decided June 30, 1982.

OPINION OF THE COURT

Justice Rehnquist delivered the opinion of the Court.

[1a] This case concerns the application of 46 USC § 596 [46 USCS § 596], which requires certain masters and vessel owners to pay seamen promptly after their discharge and authorizes seamen to

[458 US 566]

recover double wages for each day that payment is delayed without sufficient cause. The question is whether the district courts, in the exercise of discretion, may limit the period during which this wage penalty is assessed, or whether imposition of the penalty is mandatory for each day that payment is withheld in violation of the statute.

I

On February 18, 1976, petitioner signed an employment contract with respondent in New Orleans, agreeing to work as a senior pipeline welder on board vessels operated by respondent in the North Sea. The contract specified that petitioner's employment would extend "until December 15, 1976 or until Oceanic's 1976 pipeline committal in the North Sea is fulfilled, whichever shall occur first." App 41. The contract also provided that respondent would pay for transportation to and from the worksite, but that if peti-

tioner quit the job prior to its termination date, or if his services were terminated for cause, he would be charged with the cost of transportation back to the United States. Respondent reserved the right to withhold \$137.50 from each of petitioner's first four paychecks "as a cash deposit for the payment of your return transportation in the event you should become obligated for its payment." *Id.*, at 47. On March 6, 1976, petitioner flew from the United States to Antwerp, Belgium, where he reported to work at respondent's vessel, the "Lay Barge 27," berthed in the Antwerp harbor for repairs.

On April 1, 1976, petitioner suffered an injury while working on the deck of the vessel readying it for sea. Two days later he underwent emergency surgery in Antwerp. On April 5, petitioner was discharged from the hospital and went to respondent's Antwerp office, where he spoke with Jesse Williams, the welding superintendent, and provided a physician's statement that he was not fit for duty. Williams refused to acknowledge that petitioner's injury was work-

[458 US 567]

related and denied that respondent was liable for medical and hospital expenses, maintenance, or unearned wages. Williams also refused to furnish transportation back to the United States, and continued to retain \$412.50 in earned wages that had been deducted from petitioner's first three paychecks for that purpose. Petitioner returned to his home in Houston, Tex. the next day at his own expense. He was examined there by a physician who determined that he would be able to resume work on May 3, 1976. On May 5, petitioner began working as a welder for another company operating in the North Sea.

In 1978 he brought suit against

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respondent under the Jones Act, § 20, 38 Stat 1185, as amended, 46 USC § 688 [46 USCS § 688], and under general maritime law, seeking damages for respondent's failure to pay maintenance, cure, unearned wages, repatriation expenses, and the value of certain personal effects lost on board respondent's vessel. Petitioner also sought penalty wages under Rev Stat § 4529, as amended, 46 USC § 596 [46 USCS § 596], for respondent's failure to pay over the \$412.50 in earned wages allegedly due upon discharge. The District Court found for petitioner and awarded damages totalling \$23,670.40.

Several findings made by that court are particularly relevant to this appeal. First, the court found that petitioner's injury was proximately caused by an unseaworthy condition of respondent's vessel. App 17, ¶ 10; 23, ¶ 6. Second, the court found that petitioner was discharged from respondent's employ on the day of the injury, and that the termination of his employment was caused solely by that injury. *Id.*, at 18, ¶ 16; 23, ¶ 7.¹ Third, it found that respondent's failure to pay petitioner the \$412.50 in earned wages was "without sufficient

[458 US 568]

cause." *Id.*, at 20, ¶ 20; 25, ¶ 11.² Finally, the court found that petitioner had exercised due diligence in attempting to collect those wages. *Id.*, at 20, ¶ 21.

1. According to respondent, petitioner was not formally discharged until June 1, 1976, but his termination was made retroactive to April 1. Brief for Respondent 5.

2. The court also found: "Defendant did not begin a thorough investigation of plaintiff's claim until September 30, 1976. The investigation was not made with reasonable diligence. Defendant's failure to pay maintenance and cure, repatriation expenses, the cost of his personal effects, and

In assessing penalty wages under 46 USC § 596 [46 USCS § 596], the court held that "[t]he period during which the penalty runs is to be determined by the sound discretion of the district court and depends on the equities of the case." App 25, ¶ 11. It determined that the appropriate period for imposition of the penalty was from the date of discharge, April 1, 1976, through the date of petitioner's reemployment, May 5, 1976, a period of 34 days. Applying the statute, it computed a penalty of \$6,881.60.³ Petitioner appealed the award of damages as inadequate.

The Court of Appeals for the Fifth Circuit affirmed. 664 F2d 36 (1981). That court concluded, *inter alia*, that the District Court had not erred in limiting assessment of the penalty provided by 46 USC § 596 [46 USCS § 596] to the period beginning April 1 and ending May 5. The court recognized that the statute required payment of a penalty for each day during which wages were withheld until the date they were actually paid, which in this case did not occur until September 17, 1980, when respondent satisfied the judgment of the District Court. *Id.*, at 40; see App 30. Nevertheless, the court believed itself bound by prior decisions within the Circuit, which left calculation of the penalty period to the sound discretion of the district courts. 664 F2d, at 40. It concluded

earned and unearned wages to plaintiff constituted arbitrary, unreasonable, callous, and willful disregard of plaintiff's rights." App 20, ¶ 21.

3. The court found that the daily wage rate to be used in calculating the penalty was \$101.20. In accordance with the statute, the court assessed a penalty of twice this rate (\$202.40) for each of the 34 days of the penalty period.

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[458 US 569]

that the District Court in this case had not abused its discretion by assessing a penalty only for the period during which petitioner was unemployed.

We granted certiorari to resolve a conflict among the Circuits regarding the proper application of the wage penalty statute.⁴ 454 US 1052, 70 L Ed 2d 587, 102 S Ct 595 (1981). We reverse the judgment of the Court of Appeals as to that issue.⁵

II

A

[1b] The language of the statute first obligates the master or owner of any vessel making coasting or foreign voyages to pay every seaman the balance of his unpaid wages within specified periods after his discharge.⁶ It then provides:

4. The Courts of Appeals for the Third and Ninth Circuits have interpreted the statute to mandate imposition of the penalty for each day until the wages are paid and to leave no room for the district court's exercise of discretion. *Swain v Isthmian Lines, Inc.* 360 F2d 81 (CA3 1966); *Larkins v Hudson Waterways Corp.* 640 F2d 997 (CA9 1981); *Thomas v SS Santa Mercedes*, 572 F2d 1331 (CA9 1978). The Courts of Appeals for the First, Second, and Fourth Circuits have adopted the interpretation followed by the Fifth Circuit. *Mavromatis v United Greek Shipowners Corp.*, 179 F2d 310 (CA1 1950); *Forster v Oro Navigation Co.* 228 F2d 319 (CA2 1955), aff'g 128 F Supp. 113 (SDNY 1954); *Southern Cross S. S. Co. v Fritels*, 285 F2d 651 (CA4 1960), cert. denied, 365 US 869, 5 L Ed 2d 853, 81 S Ct 903 (1961). We noted this conflict in *American Foreign S. S. Co. v Matise*, 423 US 150, 152 n 1, 46 L Ed 2d 354, 96 S Ct 410 (1975).

5. Petitioner has not questioned the other holdings of the Court of Appeals in his case. Respondent did not appeal from the judgment of the District Court and has not cross-petitioned for certiorari here.

6. The statute reads in full:

[458 US 570]

"Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods . . ."

[2] The statute in straightforward terms provides for the payment of double wages, depending upon the satisfaction of two conditions. First, the master or owner must have refused or failed to pay the seaman his wages within the periods specified. Second, this failure or refusal must be "without sufficient cause." Once these conditions are satisfied, however, the unadorned language of the statute dictates that the master or owner "shall pay to the seaman" the sums specified "for each and every

"The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; but this section shall not apply to masters or owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage. This section shall not apply to fishing or whaling vessels or yachts."

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day during which payment is delayed." The words chosen by Congress, given their plain meaning, leave no room for the exercise of discretion either in deciding whether to exact payment or in choosing the period of days by which the payment is to be calculated. As this Court described the statute many years ago, it "affords a definite and reasonable procedure by which the seaman may establish his right to recover double pay where his wages are unreasonably withheld." *McCrea v. United States*, 294 US 23, 32, 79 L Ed 735, 55 S Ct 291 (1935). Our task is to give effect to the will of Congress, and where its will has been expressed in reasonably plain terms, "that language must ordinarily be regarded as conclusive." *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.* 447 US 102, 108, 64 L Ed 2d 766, 100 S Ct 2051 (1980).

[458 US 571]

The District Court found that respondent had refused to pay petitioner the balance of his earned wages promptly after discharge, and that its refusal was "without sufficient cause." Respondent challenges neither of these findings. Although the two statutory conditions were satisfied, however, the District Court obviously did not assess double wages "for each and every day" during which payment was delayed, but instead limited the assessment to the period of petitioner's unemployment. Nothing in the language of the statute vests the courts with the discretion to set such a limitation.

B

Nevertheless, respondent urges that the legislative purpose of the statute is best served by construing it to permit some choice in determining the length of the penalty period. In respondent's view, the purpose of the statute is essentially remedial

and compensatory, and thus it should not be interpreted literally to produce a monetary award that is so far in excess of any equitable remedy as to be punitive.

[3] Respondent, however, is unable to support this view of legislative purpose by reference to the terms of the statute. "There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes." *United States v. American Trucking Assns., Inc.* 310 US 534, 543, 84 L Ed 1345, 60 S Ct 1059 (1940). See *Caminetti v. United States*, 242 US 470, 490, 61 L Ed 442, 37 S Ct 192 (1917). Nevertheless, in rare cases the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters, and those intentions must be controlling. We have reserved "some scope for adopting a restricted rather than a literal or usual meaning of its words where acceptance of that meaning . . . would thwart the obvious purpose of the statute." *Commissioner v. Brown*, 380 US 563, 571, 14 L Ed 2d 75, 85 S Ct 1162, (1965) (quoting *Helvering v. Hammel*, 311 US 504, 510-511, 85 L Ed 303, 61 S Ct 368, 131 ALR 1481 (1941)). This, however, is not the exceptional case.

[458 US 572]

As the Court recognized in *Collie v. Fergusson*, 281 US 52, 74 L Ed 696, 50 S Ct 189 (1930), the "evident purpose" of the statute is "to secure prompt payment of seamen's wages . . . and thus to protect them from the harsh consequences of arbitrary and unscrupulous action of their employers, to which, as a class, they are peculiarly exposed." *Id.*, at 55, 74 L Ed 696, 50 S Ct 189. This was to be accomplished "by the imposition of a liability which is not exclusively compensatory, but designed to pre-

vent, by its coercive effect, arbitrary refusals to pay wages, and to induce prompt payment when payment is possible." *Id.*, at 55-56, 74 L Ed 696, 50 S Ct 189. Thus, although the sure purpose of the statute is remedial, Congress has chosen to secure that purpose through the use of potentially punitive sanctions designed to deter negligent or arbitrary delays in payment.

The legislative history of the statute leaves little if any doubt that this understanding is correct. The law owes its origins to the Act of July 20, 1790, ch 29, § 6, 1 Stat 133, passed by the First Congress. Although the statute as originally enacted gave every seaman the right to collect the wages due under his contract "as soon as the voyage is ended," it did not provide for the recovery of additional sums to encourage compliance. Such a provision was added by the Shipping Commissioners Act of 1872, ch 322, § 35, 17 Stat 269, which provided for the payment of "a sum not exceeding the amount of two days' pay for each of the days, not exceeding ten days, during which payment is delayed." The Act of 1872 obviously established a ceiling of 10 days on the period during which the penalty could be assessed and, by use of the words "not exceeding," left the courts with discretion to choose an appropriate penalty within that period.⁷

7. The Act of 1790 and the Act of 1872 provided the basis for § 4529 of the Revised Statutes, codified in 1878. Section 4529 read as follows:

"The master or owner of every vessel making voyages from a port on the Atlantic to a port on the Pacific, or vice versa, shall pay to every seaman his wages, within two days after the termination of the agreement, or at the time such seaman is discharged, whichever first happens; and, in the case of vessels making foreign voyages, within three days after the cargo has been delivered, or within five days after the seaman's discharge, whichever first happens; and in all cases the seaman shall, at the time of his discharge, be

[458 US 573]

Congress amended the law again in 1898. As amended, it read in relevant part:

"Every master or owner who refuses or neglects to make payment in manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to one day's pay for each and every day during which payment is delayed beyond the respective periods." Act of Dec. 21, 1898, ch 28, § 4, 30 Stat 756.

The amending legislation thus effected two changes: first, it removed the discretion theretofore existing by which courts might award less than an amount calculated on the basis of each day during which payment was delayed, and second, it removed the 10-day ceiling which theretofore limited the number of days upon which an award might be calculated. The accompanying Committee Reports identify the purpose of the legislation as "the amelioration of the condition of the American seamen," and characterize the amended wage penalty in particular as "designed to secure the promptest possible payment of wages." HR Rep No. 1657, 55th Cong, 2d Sess, 2, 3 (1898). See

entitled to be paid, on account, a sum equal to one-fourth part of the balance due him. Every master or owner who neglects or refuses to make payment in manner hereinbefore mentioned without sufficient cause, shall pay to the seaman a sum not exceeding the amount of two days' pay for each of the days, not exceeding ten days, during which payment is delayed beyond the respective periods; which sum shall be recoverable as wages in any claim made before the court. But this section shall not apply to the masters or owners of any vessel the seamen on which are entitled to share in the profits of the cruise or voyage."

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also S. Rep. No. 832, 54th Cong., 1st Sess., 2 (1896).⁸ Nothing in the legislative history of the
[459 US 574].

1898 Act suggests that Congress intended to do anything other than what the Act's enacted language plainly demonstrates: to strengthen the deterrent effect of the statute by removing the courts' latitude in assessing the wage penalty.

The statute was amended for the last time in 1915 to increase further the severity of the penalty by doubling the wages due for each day during which payment of earned wages was delayed. Seamen's Act of 1915, ch 153, § 3, 38 Stat 1164. There is no suggestion in the Committee Reports or in the floor debates that in so doing, Congress intended to reinvest the courts with the discretion it had removed in the Act of 1898. Resort to the legislative history, therefore, merely confirms that Congress intended the statute to mean exactly what its plain language says.

III

[1c] Respondent argues, however, that a literal construction of the statute in this case would produce an absurd and unjust result which

8. The 1898 Act was substantially identical to legislation that had passed the House in the previous Congress, and had been favorably reported in the Senate, but had failed to come to a vote before the end of the session. Thus, the House Report of the legislation enacted in 1898 contained little more than a reproduction of the House Report of the previous Congress, and the relevant Senate Report also dates from that Congress.

9. [4b] Respondent assumes that the penalty would run until September 17, 1980, since that was the date on which it finally paid petitioner the \$412.50. Brief for Respondent 17. Petitioner, on the other hand, apparently assumes that the penalty period expired on May 8, 1980, the date of the District Court's judgment. Brief for Petitioner 19. Under our construction of the statute, the District Court's entry of judgment will not toll

Congress could not have intended. The District Court found that the daily wage to be used in computing the penalty was \$101.20. If the statute is applied literally, petitioner would receive twice this amount for each day after his discharge until September 17, 1980, when respondent satisfied the District Court's judgment.⁹ Petitioner would receive
[458 US 575]

over \$300,000 simply because respondent improperly withheld \$412.50 in wages. In respondent's view, Congress could not have intended seamen to receive windfalls of this nature without regard to the equities of the case.

[4a] It is true that interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available. See *United States v American Trucking Assns., Inc.* 310 US, at 542-543, 84 L Ed 1845, 60 S Ct 1059; *Haggard Co. v Helvering*, 308 US 389, 394, 84 L Ed 340, 60 S Ct 337 (1940). In refusing to nullify statutes, however hard or unexpected the particular effect, this Court has said:

"Laws enacted with good intention, when put to the test, frequently, and to the surprise of the law maker himself, turn out to be mischievous, absurd or otherwise

the running of the penalty period unless delays beyond that date are explained by sufficient cause. See *Pacific Mail S. S. Co. v Schmidt*, 241 US 245, 250-251, 60 L Ed 982, 36 S Ct 581 (1916) (holding that when an appeal is taken on reasonable grounds, the penalty should not apply to delays in payment beyond the date on which the district court's decree is entered, since those delays are supported by sufficient cause). The Court of Appeals for the Fourth Circuit, in *Southern Cross S.S. Co. v Piripis*, 285 F2d, at 660, and the Court of Appeals for the Third Circuit in *Swain v Isthmian Lines, Inc.* 360 F2d, at 88, n 26, have interpreted this Court's decision in *Pacific Mail* to permit the employer to toll the running of the penalty period by placing in the hands of the court the allegedly unlawfully withheld wages.

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458 US 564, 73 L Ed 2d 973, 102 S Ct 3245

objectionable. But in such case the remedy lies with the law making authority, and not with the courts." *Crooks v Harrelson*, 282 US 55, 60, 75 L Ed 156, 51 S Ct 49 (1930).

It is highly probable that respondent is correct in its contention that a recovery in excess of \$300,000 in this case greatly exceeds any actual injury suffered by petitioner as a result of respondent's delay in paying his wages. But this Court has previously recognized that awards made under this statute were not intended to be merely compensatory.

"We think the use of this language indicates a purpose to protect seamen from delayed payments of wages by the imposition of a liability which is not exclusively compensatory, but designed to prevent, by its coercive effect, arbitrary refusals to pay wages, and to induce prompt payment when payment is possible." *Collie v Fergusson*, 281 US, at 55-56, 74 L Ed 696, 50 S Ct 189.

[458 US 576]

[5] It is in the nature of punitive remedies to authorize awards that may be out of proportion to actual injury; such remedies typically are established to deter particular conduct, and the legislature not infrequently finds that harsh consequences must be visited upon those whose conduct it would deter. It is probably true that Congress did not precisely envision the grossness of the difference in this case between the actual wages withheld and the amount of the award required by the statute. But it might equally well be said that Congress did not precisely envision the trebled amount of some

damages awards in private antitrust actions, see *Reiter v Sonotone Corp.* 442 US 330, 344-345, 60 L Ed 2d 931, 99 S Ct 2326 (1979), or that, because it enacted the Endangered Species Act, "the survival of a relatively small number of three-inch fish . . . would require the permanent halting of a virtually completed dam for which Congress ha[d] expended more than \$1 million," *TVA v Hill*, 437 US 153, 172, 57 L Ed 2d 117, 98 S Ct 2279 (1978). It is enough that Congress intended that the language it enacted would be applied as we have applied it. The remedy for any dissatisfaction with the results in particular cases lies with Congress and not with this Court. Congress may amend the statute; we may not. See *Consumer Product Safety Comm'n v GTE Sylvania, Inc.* 447 US, at 123-124, 64 L Ed 2d 766, 100 S Ct 2051; *Reiter v Sonotone*, supra, at 344-345, 60 L Ed 2d 931, 99 S Ct 2326.

Finally, we note that our holding is consistent with *Pacific Mail S.S. Co. v Schmidt*, 241 US 245, 60 L Ed 982, 36 S Ct 581 (1916). The employer in that case challenged a decision by the Court of Appeals to apply the wage penalty to the delay after the District Court's judgment occasioned by the employer's appeal. The Court held that on the facts of that case, application of the penalty beyond the date of the District Court's judgment was error. Contrary to respondent's assertion, however, the holding does not reflect the discretionary tailoring of the penalty to the equities of the case. Instead, the Court held that the delay pending appeal was not "without sufficient cause," as required by the statute before the penalty can attach.

[458 US 577]

Id., at 250, 60 L Ed 982, 36 S Ct 581.¹⁰ As we explained earlier, a condition to the imposition of the wage penalty is a finding that the delay in payment is "without sufficient cause." To the extent that the equities of the situation are to be considered, see *Collie v Fergusson*, supra, they bear on that finding, and not on the calculation of the penalty period once that finding has been made.

IV

The District Court found that respondent's refusal to pay petitioner earned wages following his discharge was without sufficient cause. It applied the wage penalty only for the period of nonpayment during which petitioner was unable to work. It made no finding, however, that respondent's continuing delay in payment beyond that period was for sufficient cause. Under the plain language of the statute, therefore, its decision to limit the penalty period was error. The judgment of the Court of Appeals affirming that decision accordingly is reversed, and the case is remanded for proceedings consistent with this opinion.

It is so ordered.

STOP

10. The Court found that the employer "had strong and reasonable ground for believing that the statute ought not to be held to apply," 241 US, at 250, 60 L Ed 982, 36 S Ct

581, because the work for which the seaman claimed unpaid wages did not occur during a voyage and was the result of an oral contract.

