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IT IS WELL SETTLED THAT an injured or disabled seaman is entitled to "maintenance and cure" at the expense of the owners of his vessel *at least* until the end of the voyage,[1] provided that the need therefor exists that long.[2] The minimum limits of this liability are fixed and certain, and have been so for over fifty years.[3] The more important problem concerns the maximum limit of liability. Stating the problem in the form of a query: At what point does liability for maintenance and cure cease? On this point there is wide divergence of opinion.[4] One of the earlier views was that the duty continues *only so long as the seaman is entitled to wages;* [5] which has been construed on occasion to mean for the duration of the voyage,[6] or other period of employment[7] under a contract and his return to the port of discharge.[8]

The more general view, supported by both old and modern decisions, would appear to be that the discharge of the seaman does not terminate his right to maintenance and cure,[9] but that the seaman's right and the employer's corresponding duty extend for a reasonable time after the end of the voyage or other period of employment.[10] But what is "a reasonable time"?

Obviously that there is no specific quantum of time which in every case could be characterized as "the reasonable time." If

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1 The Osceola, 189 U. S. 158, 23 S. Ct. 483, 47 L. Ed. 760 (1903).

2 Calmar S. S. Corp. v. Taylor, 303 U. S. 525, 58 S. Ct. 651, 82 L. Ed. 993 (1938).

3 The extent of the duty of the vessel and its owner was defined by Justice Story over 70 years before The Osceola in the milestone case of Reed v. Canfield, 20 Fed. Cas. 426 at 429, No. 11,641 (1832).

4 48 Am. Jur. Shipping Sec. 174 (1943).

5 The City of Alexandria, 17 Fed. 390 (D. C. N. Y. 1883).

6 DeZon v. American President Lines, Limited, 318 U. S. 660, 63 S. Ct. 814, 87 L. Ed. 1065 (1943).

7 Libellant signed on as third mate for six months and served almost four of them when stricken with dysentery. Enochasson v. Freeport Sulphur Co., et al., 7 F. 2d 674 (D. C. Tex. 1925).

8 Lambos v. The Tammerlane, 47 Fed. 822 (D. C. Cal. 1891).

9 Murphy v. American Barge Line, 169 F. 2d 61 (3d Cir. 1948).

10 79 C. J. S. Seamen Sec. 174 (1952), note 6, page 640 for innumerable citations.

there were a specific "reasonable time" the courts would not hesitate to state it as such. It therefore follows that there is no set measure of reasonable time, except such time as in the sound discretion of the court is reasonable under the circumstances of each case.[11]

In *The Bouker No. 2*[12] the libellant contracted pneumonia while serving on a New York Harbor tug. In holding that the libelant's right to maintenance and cure extended a "reasonable time" beyond his term of service, the court said:

> It thus appears that the limits of cure or care, both as to kind of treatment and time of continuance, must always depend on the facts of each particular case.

In another case, the reasonable time was interpreted to mean a reasonable time after the seaman sustained an injury to his back.[13] Here the court placed emphasis on the *injury* and not the voyage. This was probably because the injury occurred while the libelant was assisting in the securing of the ship on the dock, presumably at the end of the voyage. The "end of voyage" rule, here, would leave the injured seaman with no right at all to maintenance and care if the court chose to follow the historic view.

Other courts have limited the "reasonable time after the voyage" rule-of-thumb. They say that the right to maintenance and care shall continue as set out in the old rule, *or* until the seaman is well and able to find suitable employment,[14] whichever is the shorter period.[15]

The more modern view has been slowly developing. It reasons, in essence, that the duty to provide maintenance and cure continues until the point of maximum cure[16] is attained.[17] Yet it must be remembered, that the shipowner is not an insurer of the health of his seamen,[18] and is not required to provide main-

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[11] Sickner v. Great Lakes Transit Corp., 17 F. Supp. 330 (D. C. N. Y. 1936); The James E. Ferris, 1 Fed. Supp. 1018 (D. C. N. Y. 1932) (seaman entitled to maintenance and cure for reasonable time after the injury).

[12] 241 Fed. 831 (2d Cir. 1917).

[13] The James E. Ferris, supra, note 11.

[14] Silva v. Luckenbach S. S. Co., 14 F. Supp. 719 (D. C. Mass. 1936); Warren v. U. S., 75 F. Supp. 836 (D. C. Mass. 1948).

[15] Warren v. U. S., supra, note 14.

[16] Cure here is used in the medical sense and not "care" as is generally understood in a discussion of this type.

[17] Luksich v. Misetich, 140 F. 2d 812 (9th Cir. 1944); Muruaga v. U. S., 172 F. 2d 318 (2nd Cir. 1949).

[18] Muruga v. U. S., supra note 17.

tenance and cure for an indefinite length of time,[19] nor to effect a positive cure of the injury.[20] It would be absurd to impose an obligation upon a shipowner to *positively cure a permanent disability* such as a lost limb or the loss of sight. Absent ability in medical science to accomplish such a cure, if the shipowner was held liable until the seaman was cured, there would be imposed upon him the duty to maintain the injured seaman for the duration of his life.[21] The law has not, at least to date, imposed such a liability upon the shipowner. A brief discussion of the ancient Hanseatic Law, which *did* provide life-time maintenance to a seaman permanently disabled in defending his ship from pirates, is set forth in the *Farrell* case,[22] together with the basic considerations involved.

The prevailing modern rule (*i.e.*, the "maximum cure" rule) was first considered in *Calmar Steamship Corp. v. Taylor*.[23] In this case a seaman, after stubbing his toe, was found to be afflicted with Buerger's disease, an incurable malady of the veins and arteries. This disease was discovered while the seaman was in the service of the ship, but it was not caused by his employment. Mr. Justice Stone, speaking for the majority, said:

> We can find no basis for saying that, if the disease proves to be incurable, the duty extends beyond fair time after the voyage in which to effect such improvement in the seaman's condition as reasonably may be expected to result from nursing care, and medical treatment.

While specifically reserving opinion as to the result if the malady were actually caused by the seaman's service, the court held that the seaman was not entitled to a lump sum payment for maintenance and cure for life based on mortality tables, or for that matter for any indefinite period. It went on to say:

> The seaman's recovery must therefore be measured in each case by the reasonable cost of that maintenance and cure to which he is entitled at the time of trial, including, in the discretion of the court, such amounts as may be needful in the immediate future for the maintenance and cure of a kind and for a period which can be definitely ascertained.

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19 Raymond v. The Ella S. Thayer, 40 F. 902 (D. C. Cal. 1887).

20 Muise v. Abbott, 160 F. 2d 590 (1st Cir. 1947).

21 See Farrell v. U. S., 69 S. Ct. 707, 336 U. S. 511, 93 L. Ed. 850 (1949); Lipscomb v. Groves, 187 F. 2d 40 (3rd Cir. 1951).

22 69 S. Ct. 707, 336 U. S. 511, 93 L. Ed. 850 (1949).

23 303 U. S. 525, 58 S. Ct. 651, 82 L. Ed. 993 (1938).

The court reversed and remanded the case, "without prejudice to any later suit by respondent to recover maintenance and cure to which he may then be entitled."

It appears from this last sentence that the courts of admiralty retain a continuing jurisdiction over maintenance and cure cases, and that a recovery in a prior action is no bar to a recovery in a later suit. It follows therefore, that an injured seaman can bring as many actions for maintenance and cure as his personal health or physical condition require, which, in a proper case, could result in the shipowner being liable for the duration of the seaman's life.

It has been held that after cure has been effected *as nearly as possible* in a particular case,[24] or when the *maximum degree of improvement* to his health is reached,[25] a seaman is not entitled to maintenance and cure thereafter, even though periodic examinations and treatment may be needed for the rest of his life to prevent relapses.[26]

Conclusions

It is uniformly and almost universally held that a seaman is entitled to maintenance and cure for injuries and/or illness which occurs while he is in the service of his ship; but the right may be defeated if the injury or illness arose out of the seaman's willful misconduct or gross negligence. Fault does not enter into any consideration of liability for maintenance and cure. The liability of the vessel and its owners, provided the need is present, continues for a reasonable time until the maximum medical cure has been accomplished, regardless of how the injury was sustained, the type of injury, or its expected duration.

The trend of the decisions is consistently liberal in favor of the injured seaman. Applicable rules are construed to meet changing conditions, in order to effectuate the basic purpose and policy which underlie the right to care and maintenance for an injured or ailing seaman. A seaman is, in the final analysis, "a ward of admiralty."

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[24] Hern v. Moran Towing & Transportation Co., 138 F. 2d 900 (2d. Cir. 1943).

[25] Luksich v. Misetich, 140 F. 2d 812 (9th Cir. 1944).

[26] Lindgren v. Shepard S. S. Co., 108 F. 2d 806 (2d Cir. 1940).