**8.2 Jones Act – Unseaworthiness – Maintenance and Cure**

[Name of plaintiff] claims that, as a seaman, [he/she] is entitled to recover what the law calls “maintenance and cure.” This claim is completely separate from [name of plaintiff]’s Jones Act and unseaworthiness claims, and you must decide it entirely apart from your decision on those claims.

[The three claims’ only common element is [name of plaintiff]’s seaman status. The test for seaman status is the same for all claims. So if [name of plaintiff] has proved [his/her] employment as a seaman on the accident’s date for purposes of the other claims, then you must find that [he/she] is a seaman for purposes of maintenance and cure. But if you find that [name of plaintiff] was not a seaman for the other claims, you must also find that [name of plaintiff] isn’t entitled to maintenance and cure.]

“Maintenance and cure” is provided to a seaman who is disabled by injury or illness while in the ship’s service. It includes medical care and treatment and the means of maintaining one’s self during the convalescence period.

A seaman is entitled to maintenance and cure even if the seaman is unable to establish that an injury was a result of any negligence by the employer or an unseaworthy condition on the vessel. Generally, to recover maintenance and cure, [name of plaintiff] must show only that an injury or illness occurred while [he/she] was in the service of the vessel on which [he/she] was employed as a seaman and that the injury or illness occurred without [his/her] willful misbehavior. The injury or illness doesn’t have to be work-related. It need only occur while [name of plaintiff] is in the ship’s service. Neither maintenance nor cure can be reduced because of any negligence on the part of the seaman. That [name of plaintiff] may have assumed a risk by serving on the ship is not a defense to a claim for maintenance and cure.

“Maintenance” means the cost of food, lodging, and transportation to and from a medical facility. But a seaman isn’t entitled to maintenance for any time the seaman is admitted as an inpatient in any hospital because the cure provided by the employer through hospitalization includes the seaman’s food and lodging.

“Cure” includes the cost of medical attention, including hospitalization, medicines, medical apparatuses, and the services of physicians, nurses, and other medical professionals. But the employer doesn’t have a duty to provide cure payments for any time during which a seaman is hospitalized in a United States Marine Hospital, or in any other hospital at the employer’s expense.

A seaman is entitled to receive maintenance and cure from the date of departure from the vessel until the seaman reaches the point of “maximum possible cure” under the circumstances – that is, the point at which no further improvement in the seaman’s medical condition is reasonably expected. The obligation usually ends when a qualified medical opinion states that the maximum possible cure has been achieved.

The owner doesn’t ensure that a cure will be achieved. The date when a seaman resumes employment is one factor you can consider to decide when a seaman’s entitlement to maintenance and cure ends. If the evidence supports a finding that the seaman was forced by economic necessity to return to work before reaching maximum possible cure, you can consider that fact when determining the date on which maintenance and cure should terminate.

It is important to note that if you find that [name of plaintiff] is entitled to an award of damages under either the Jones Act or the unseaworthiness claims, and if you include either loss of wages or medical expenses in the damage award, then you can’t award maintenance and cure at all. Put another way, [name of plaintiff] isn’t entitled to a double recovery. [Name of plaintiff] may recover for any willful or arbitrary failure on the employer’s part to pay maintenance and cure when due.

When a defendant willfully and arbitrarily fails to pay maintenance or provide cure to a seaman up to the time that the seaman receives maximum cure, and the failure results in an aggravation of the seaman’s injury, the seaman may recover damages for prolonging or aggravating [his/her] injury, pain and suffering, additional medical expenses incurred because of the failure to pay, punitive damages, and reasonable attorney’s fees and costs.

To prove a ship owner’s willful failure to provide maintenance and cure, which entitles [name of plaintiff] to an award of additional damages, [name of plaintiff] must prove each of the following facts by a preponderance of the evidence.

First, you must find that [name of plaintiff] was entitled to maintenance and cure.

Second, you must find that [name of defendant] didn’t provide maintenance and cure.

Third, you must find that [name of defendant] willfully and arbitrarily failed to provide cure up to the time that [name of plaintiff] reached maximum cure.

And fourth, you must find that the failure resulted in injury to [name of plaintiff].

An employer has a duty to investigate a seaman’s claim in good faith and with reasonable diligence. But an employer isn’t obligated to pay maintenance and cure to a seaman simply because the seaman claims an injury. And the employer has a right to contest the claim in good faith. An employer acts “willfully and arbitrarily” only when the employer acts without reason, or with callous disregard for the seaman’s claim.

You can award damages for any failure of the employer to pay maintenance and cure to [name of plaintiff] only if, on the basis of all the facts and opportunities known and available to [name of defendant] during the time in question, the refusal to pay maintenance and cure was arbitrary and willful, or in callous disregard of [name of plaintiff]’s claim.

[Finally, it’s important to remember that [name of plaintiff] can’t recover attorney’s fees for the prosecution of either the Jones Act or the unseaworthiness claims. [Name of plaintiff] can recover attorney’s fees only for the prosecution of the maintenance-and-cure claim.]

**Special Interrogatories to the Jury**

**Do you find from a preponderance of the evidence:**

 That [name of plaintiff] was a seaman at the time of his [illness] [injury]?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

 That [name of defendant] willfully and arbitrarily failed to provide maintenance and cure up to the time that [name of plaintiff] reached maximum care?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

 That [name of plaintiff] should be awarded damages, if any, in the following amounts?

 Maintenance and Cure: $\_\_\_\_\_\_\_\_\_\_\_\_\_

 Willful failure to pay

Maintenance and Cure: $\_\_\_\_\_\_\_\_\_\_\_\_\_

So Say We All.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Foreperson’s Signature

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_