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Asserting our right "...to petition the Government for redress of grievances."

Amendment 1, U.S. Constitution, Dec. 15, 1791

MARINER RIGHTS – MAINTENANCE AND CURE

[Source: Newsletter #4, Dec. 2000, Item #4-6. By Mark L. Ross, Esq., 600 Jefferson Street, Suite 512, Tel: (337) 266-2345. FAX (337) 266-2346.]

The National Association wants to keep its membership informed of basic rights under maritime law. From time to time, we will discuss certain legal rights which, although often hundreds of years old, are just as often forgotten by boat companies.

Maintenance. As a matter of law, a seaman is entitled to maintenance and cure from his employer if he becomes injured or ill while working aboard his vessel. In some circumstances, a seaman may be entitled to maintenance and cure if hurt while working in the course of his employment even if off his vessel.

Maintenance is a form of seaman's workers' compensation. Maintenance is a daily stipend, generally in the \$15 to \$20 range. However, if you can show your living costs are more than \$15 to \$20 per day, as is usually the case, you can prove what your actual living expenses are to a court and get an award for the amount. Generally, maintenance includes expenses like room and board that you would not have to pay if you still worked aboard your vessel. Shoreside costs like clothes cleaning bills would not be included under maintenance.

A boat company must pay an ill or injured seaman maintenance from the day he became ill or injured until he recovers. Alternatively, a boat company must pay its ill or injured seaman maintenance until a doctor says the seaman has reached maximum medical cure. Maximum medical cure is the point where although a seaman may still be ill, a doctor says he cannot do anything more to improve the seaman's condition.

If the question of whether a seaman has reached maximum medical cure is disputed by the boat company and the seaman, a court can decide the issue. Generally, a court will favor the opinion of the doctor who has actually treated the seaman, as opposed to a company "independent medical examiner" physician who may have only seen the seaman once or twice.

Cure. Cure is a maritime term meaning that a boat company has to pay a seaman's medical bills arising out of the illness or injury the seaman suffered while on duty aboard his vessel. A boat company must pay 100% of the seaman's medical bills even if the seaman has health insurance. The boat company has to pay 100% of the injured or ill seaman's medical bills until the seaman reaches maximum medical cure.

Defense to payment of maintenance and cure ó concealment and misconduct. A boat company can avoid paying maintenance and cure for only two reasons. First, a boat company does not have to pay maintenance and cure if they can show the seaman lied on his employment application about his health. A common example is if a seaman says he hurt his back while working. If the boat company finds that the seaman hurt his back before working for that company, but denied any prior back injury on his employment application, the boat company could refuse to pay maintenance and cure for the second back injury. The prior injury must be directly related to the injury or illness at issue, however, and the boat company's employment application must clearly ask the seaman about the prior illness or injury.

Second, a boat company can avoid paying maintenance and cure if a seaman's injury or illness results from "misconduct." Most "misconduct" cases involve someone getting sick or hurt due to misuse of drugs or alcohol. Courts have similarly ruled that a seaman cannot get maintenance and cure from illnesses caused by sexually transmitted diseases or from active AIDS since those are likewise deemed to result from "misconduct."

This article is not intended to be a complete discussion of this often complicated area of seaman's rights. NMA wants to inform its members that these rights and remedies exist so that, if necessary, they can ask their employers or an attorney about their rights to maintenance and cure.