

# TRIAL NEWS

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## Don't concede the first and last days of the maintenance obligation

by John Merriam

Some insurance adjusters don't start paying maintenance to injured seamen until the day after the seaman gets off the vessel, claiming that the seaman was paid wages for that day, as well as free room and board. Similarly, maintenance sometimes is not paid for the day the injured seaman goes back to work, with the same rationale -- the seaman gets wages, room and board for that day and thus is not entitled to maintenance. This is wrong. Seamen should be paid maintenance for the 'bookend dates', the first and last days of the seaman's disability. Oddly, there seem to be no cases exactly on point.

Starting with the first day the seaman leaves the vessel, he or she incurs liability for the expense of sleeping somewhere that night, and likely will eat at least one meal ashore at his or her own expense.

He (the seaman) becomes entitled to . . . maintenance and cure from the time that he first made expenditures or incurred liability for medicines, nursing, medical care, etc.

Force and Norris, *The Law of Seamen*, sec. 26:44 (2012 replacement part to 5th ed.). Cf., *Kezic v. Alaska Sea*, 2004 A.M.C. 2376, 2379 (W.D. Wash. 2004) (dictum suggesting a contrary

result). It does not matter that the seaman received wages the day he or she got off the vessel. Maintenance is not a substitute for wages. It substitutes for the free room and board the seaman would have received on the vessel if not getting off for injury or illness. *The Law of Seamen*, *supra* at sec. 26:26.

On the last day of the entitlement, by the same token, the seaman had to have incurred liability for sleeping somewhere ashore the night before going back aboard the vessel. He or she presumably also ate breakfast on shore before joining the vessel that day.

One or two days of maintenance is not a lot of money. But, in the words of Professor Norris: "The small amount of money involved may bulk largely in the economy of a sick and ailing seaman." *Id.* at sec. 26:31. Demand payment of maintenance for the first and last days.

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