# FREQUENTLY OVERLOOKED ASPECTS OF MAINTENANCE AND CURE

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***(revised JUNE 2012)***

## I. MAINTENANCE

### A. Per Diem Rates of Maintenance

1. Fishermen and Other Non-Union Seaman

Most fishing companies put a rate of maintenance, paid to seamen in case of injury, in the employment contract--typically $20-$30 per day. Courts will not necessarily enforce these contractual rates of maintenance, as a matter of law, if the injured seaman can prove basic living expenses in excess of the contractual per diem rate. Rowell v. Tyson, 1999 A.M.C. 2277 (W.D. Wash. 1999) (Judge Coughenour); American Seafoods v. Nowak, 2002 A.M.C. 1655 (W.D. Wash. 2002) (Judge Pechman); Smith v. Marauder, 2003 A.M.C. 1308 (W.D. Wash. 2003) (Judge Lasnik); Connors v. Iqueque (sic), 2005 A.M.C. 2154 (W.D. Wash. 2005) (Judge Robart). Contra, Walter v. Tyson Seafood, No. C97-714R (W.D. Wash. 1998) (unpublished decision by Judge Rothstein).

2. Union Seamen

Most collective bargaining agreements for seamen contain generous rates of maintenance. For example, some contracts with the Inland Boatmen's Union have a maintenance rate pegged at $55 per day. Some of the deep sea unions, however, still have ridiculously low rates of maintenance, set at about the time of the Korean War--as low as $8 per day. The Ninth Circuit, along with the majority of the federal courts, enforces low rates of maintenance when contained in collective bargaining agreements. Gardiner v. Sea-Land Service, 786 F.2d 943 (9th Cir.), cert. denied, 479 U.S. 924 (1986). Contra, Barnes v. Andover Co., 900 F.2d 630 (3rd Cir. 1990). The Washington state Supreme Court refused to follow the Ninth Circuit on this issue, and followed the Third Circuit in Barnes, instead. Lundborg v. Keystone Shipping Co., 138 Wn.2d 658, 1999 A.M.C. 2635 (Wash. 1999). In situations of ongoing maintenance and cure for a blue water union seaman, it may thus be better to file the case in state court.

### B. Duration of Maintenance

1. 'Father Time' May Be Curative

It is not necessary that a seaman be actively receiving medical treatment to be entitled to maintenance. Simple rest or disuse of a body part may be curative. Force and Norris, The Law of Seamen, § 26:26, cases collected at n. 3 and accompanying text (5th ed. 2003).

2. Maintenance May Be Payable Beyond Maximum Cure
Provided that the seaman makes reasonable efforts to obtain renewed employment after achieving the point of maximum cure, maintenance may still be payable during that period of job searching. Kalinoski v. Alaska S. S. Co., 44 Wn.2d 475, 480 (1954); Lamont v. United States, 613 F.Supp. 588 (S.D.N.Y. 1985).

3. Maintenance is Due Until the Seaman's Condition is Diagnosed as Permanent or as Having Reached Maximum Cure, Even if the Damage Sustained is Immediate.
Vella v. Ford Motor Co. , 421 U.S. 1 (1975); Farrell v. United States, 336 U.S. 511 (1949).

4. The Obligation to Provide Maintenance May be Terminated and Then Spring Anew
There often arises the situation where an ill or injured seaman stops treating, for whatever reason. The maintenance obligation is then suspended, but not terminated, and may spring anew when the seaman is back in compliance with doctor's orders or seeks a new form of treatment. Schoenbaum, Admiralty and Maritime Law, § 6-33, text accompanying n. 13 (5th ed. 2011). See also, paragraph II. B. infra.

5. 'Bookend Dates' for Payment of Maintenance
Insurance adjusters typically start payments of maintenance the day after the seaman leaves the vessel. Similarly, maintenance is often cut off the day before the seaman is declared to be at maximum cure. This is wrong. Even though the author is aware of no cases exactly on point, it is common sense that the injured seaman incurs some expense for eating at least one meal and sleeping ashore on the day of departure from the vessel. Cf., Kezik v. Alaska Sea, 2004 A.M.C. 2376, 2379 (W.D. Wash. 2004) (dictum from Judge Pechman suggesting a contrary result). It is no defense that the seaman received wages for the day of departure from the vessel. Maintenance is a substitute for free room and board the seaman would have received on the vessel, but for the injury. It is not a substitute for wages. On the last day, by the same token, the injured seaman had to sleep somewhere ashore, early that morning, and presumably eat breakfast before the doctor declared maximum cure sometime during the day.

C. Conditions on the Entitlement to Maintenance

1. Staying with Parents
The general rule is that injured seamen staying with parents cannot recover maintenance and cure. There is an exception if the injured seaman staying with parents, or with anybody else for that matter, is obligated to repay rent once the injured seaman gets money. It makes no difference that rent is not contemporaneously collected. An injured seaman need not become "an object of charity". Force and Norris, The Law of Seamen, §26:27 at p. 26-61 (5th ed. 2003).

2. Failure to Report Injury
46 U.S.C. §10603 requires that seamen report injuries within seven days. Failure to so report does not constitute a defense to the payment of maintenance and cure. Hankin v. Traveler, 2003 A.M.C. 2099 (W.D. Wash. 2003).

3. Submitting to a Defense Medical Exam is Not a Condition of Receiving Maintenance
Sullivan v. Tropical Tuna, 963 F.Supp. 42, 1997 A.M.C. 2017 (D.Mass 1997); Mai v. American Seafoods, 160 Wn.App 528, 248 P.3d 1030 (2011)

D. Penalties for Failure to Pay Maintenance and Cure

1. Consequential Damages
Cortes v. Baltimore Insular Line, 287 U.S. 367 (1932). Note that the unreasonable failure to pay maintenance and cure constitutes a separate tort, regardless of the underlying circumstances causing the injury or illness in the first place.

2. Attorney Fees
Vaughan v. Atkinson, 369 U.S. 527 (1962). Attorney fees for the arbitrary and capricious failure to pay maintenance and cure.

3. Prejudgment Interest
Ceja v. Mike Hooks, Inc., 690 F.2d 1191 (5th Cir. 1982).

4. Punitive Damages
Punitive damages may be awarded "for the willful and wanton disregard of the maintenance and cure obligation." Atlantic Sounding v. Townsend, 557 U.S. _____, 129 S.Ct. 2561, 2009 A.M.C. 1521 (2009). See, Clausen v. Icicle Seafoods, 2010 A.M.C. 793 (Wash. Superior Court 2010) (King County Jury awards $1.3 million dollars in punitive damages for "egregious" denial of maintenance and cure), affirmed, 174 Wn.2d 70, 2012 A.M.C. 660, petition for cert., ___ U.S. ___ (2012).

E. Successive Injuries on Different Vessels

Maintenance is due from the most recent employer when successive jobs (and injuries) are involved. Gauthier v. Crosby Marine Service, Inc., 499 F.Supp. 295 (E.D. La. 1980). The owner of the first vessel remains secondarily liable.

F. Set-offs and Deductions from Maintenance

1. No Deduction for Unemployment Benefits
Gypsum Carrier v. Handlesman, 307 F.2d 525 (9th Cir. 1962); The Law of Seamen, supra, § 26:26 at n. 1.

2. No Deduction for Vacation or Sick Leave Wages
Shaw v. Ohio River Company, 526 F.2d 193 (3rd Cir. 1975).

3. Social Security
Social security disability payments may not offset the shipowner's obligation to pay maintenance. Delaware River and Bay Authority v. Kopacz, 584 F.3d 622 (3d Cir. 2009). Contra, Covert v. United States, 2003 A.M.C. 2723 (E.D. Tex. 2003). See generally, The Law of Seamen at §26:42 (2011-12 Supp.).

4. Payments of Maintenance Made by Mistake of Law
If shipowners pay maintenance under the mistaken impression that workers are seamen, rather than longshoremen or land-based workers entitled to workers' compensation, shipowners are not entitled to be refunded the maintenance paid in error. Kirk v. Allegheny Towing, Inc., 620 F.Supp. 458 (W.D. Pa. 1985).

5. Child Support Deductions from Maintenance
Whether or not child support may be deducted from maintenance is determined by the law of the state issuing the child support order. Aguilera v. Alaska Juris, 535 F.3d 1007, 2008 A.M.C. 1845 (9th Cir. 2008). In that case, maintenance was determined to constitute "resources" under the state law of Texas. It remains to be decided whether maintenance constitutes, e.g., "income" under the state law of Washinton. See R.C.W. 26.19.071(3).

G. Burden of Proof on Living Expenses

An injured seaman makes out a prima facie case of maintenance expenses by his or her own testimony. The burden of proof then shifts to the defendant to show that those expenses are unreasonable. Incandela v. American Dredging Co., 659 F.2d 11 (2nd Cir. 1981); Ray v. Jantran, 2002 A.M.C. 1081 (E.D. Ark. 2001). Some judges will allow an earlier, separate trial on the issue of reasonable living expenses, or an evidentiary hearing before the regular trial.

H. Statute of Limitations

Although there is some conflicting authority, the better view is that maintenance and cure actions are not controlled by the three-year limitation period of 46 U.S.C. § 763a. Rather, maintenance actions are still controlled by the doctrine of laches. The Law of Seamen, supra at § 26:58; Lightfoot v. Arctic Storm, 1994 A.M.C. 2460 (W.D.

Wash. 1994) (Judge Dwyer); Cunningham v. Interlake Steamship, 567 F.3d 758, 2009 A.M.C. 1991 (6th Cir. 2009).

I. Standard of Proof for Deciding Maintenance and Cure Motions

1. Western District of Washington
Federal courts in the Western District of Washington are split over the standard of proof to be used in deciding maintenance and cure motions. Compare Guerra v. Arctic Storm, 2004 A.M.C. 2319 (W.D. Wash. 2004), with Connors v. Iqueque (sic), 2005 A.M.C. 2154 (W.D. Wash. 2005). See also, Boyden v. American Seafoods, 2000 A.M.C. 1512 (W.D. Wash. 2000). The conflict is whether or not to use a summary judgment standard, FRCP 56(c), for maintenance and cure motions. In other words, what benefit of the doubt does the injured seaman receive from conflicting facts or opinions? The better-reasoned approach is to use a summary judgment standard for issues surrounding the seaman's initial entitlement to maintenance and cure, and then give the seaman the benefit of 'all doubts and ambiguities' when deciding whether or not maintenance should be terminated. Gouma v. Trident Seafoods, 2008 A.M.C. 863 (W.D. Wash. 2009).

2. State Courts of Washington
Division I of the state Court of Appeals in Dean v. The Fishing Company of Alaska, 166 Wn.App. 893, 2012 A.M.C. 682, petition for review, ___ Wn.2d ___ (5/17/12) adopted a different approach. The seaman brought a motion to reinstate maintenance and cure after the vessel owner got its doctor to pronounce "maximum cure". The trial judge applied a strict summary judgment standard and denied the motion, finding disputed issues of fact based upon conflicting medical opinions. The Court of Appeals treated the issue as one of a seaman's initial entitlement to maintenance and cure, and affirmed. That means the seaman has to wait until trial to receive maintenance and cure whenever the shipowner produces a medical opinion that conflicts with the treating physician about the seaman's need for treatment. The only near-term solution offered by Division I was for the seaman to request an expedited hearing pursuant to CR 42(b), on the maintenance and cure entitlement. 2012 A.M.C. at 689. Dean has petitioned for review by the state Supreme Court.

The Dean case is in seeming conflict with another decision from Division I, at least for motions to reinstate maintenance and cure. See, Mai v. American Seafoods, 160 Wn.App. 528 (2011). Mai held that "the employer has the burden of proving that maximum cure has occurred," once the seaman proves by a preponderance of the evidence an entitlement to maintenance and cure in the first instance. While Mai involved the burdens of proof to be applied at trial, there is no reason why those same burdens should not be applicable to motion practice, when the seaman's need is immediate, contrary to the holding in Dean, supra.

3. Other Jurisdictions
Other jurisdictions are all over the map on the proper standard to be employed for maintenance and cure motions. Miller v. Canal Barge Co., 2001 A.M.C. 528 (E.D. La. 2000) (summary judgment); Thornsberry v. Nugent Sand Co., 2003 A.M.C. 2447 (W.D. Ky. 2003) (preliminary injunction granted to raise the maintenance rate); Sefzik v. Ocean Pride Alaska, Inc., 844 F.Supp 1372 (D. Alaska 1993) (less than a summary judgment standard of proof required of plaintiff seeking maintenance and cure); McNeil v. Jantran, 2003 A.M.C. 689 (W.D. Ark. 2003) ("treated as something similar to a motion for summary judgment"); Huss v. King, 2003 A.M.C. 2167 (6th Cir. 2003) (summary judgment approved in dictum); Collick v. Weeks Marine, 2010 A.M.C. 69 (D.N.J. 2009) (preliminary injunction), vacated on other grounds, 2011 A.M.C. 603 (3d Cir. 2010).

4. Whence the Ninth Circuit?
The Ninth Circuit has hinted in dictum that it will not apply a strict summary judgment standard when it comes to maintenance and cure motions. Miles v. American Seafoods, 197 F.3d 1032 (9th Cir. 1999). However, it is inconceivable that it will rule that the injured seaman wins motions whenever he or she makes a prima facie case of injury in the service of the ship, without allowing defendants to put on their proof about intentional concealment, maximum cure, etc. It is the author's opinion that, when the issue finally is decided by the Ninth Circuit, the appellate court will utilize a modified summary judgment standard for maintenance and cure motions. A shifting burden of proof, such as is already recognized in Gouma v. Trident, supra, is appropriate. That is, the injured seaman has the burden to show that he or she is entitled to maintenance in the first instance, but then the burden shifts to the defendant to show that the seaman is not entitled to maintenance, for any of the defenses available to shipowners. For example, once a seaman establishes an entitlement to maintenance and cure, it is not enough for the shipowner to hire a doctor to opine that the seaman is at maximum cure or otherwise ineligible, when such an opinion is in conflict with the seaman's treating physician. Contra, Dean v. FCA, supra, 163 Wn.App. 893.

## II. CURE

A. Duration of Cure

"Cure" in the doctrine of maintenance and cure is used in the sense of 'care during improvement' as opposed to a positive cure. The word is derived from the Latin "cura", meaning care. Norris, The Law of Maritime Personal Injuries, §1:9 (4th ed. 1990). An argument could be made that the right to cure--as opposed to maintenance, which ends at maximum cure--can last for the life of the injured seaman if he or she is never cured. The "maximum cure" cut-off for maintenance and cure was first articulated by Farrell v. United States, 336 U.S. 511 (1949). But see, dissent by Justice William O. Douglas, 336 U.S. at

524. At the time Farrell was decided in 1949, merchant seamen and fishermen had free medical care for life at the former U.S. Public Health Service Hospitals, such as the one in Seattle that once housed Amazon on Beacon Hill. At the time of Farrell, any language about termination of medical treatment was dictum because shipowners didn't pay it anyway. The Ninth Circuit left this issue open. Jones v. Reagan, 748 F.2d 1331 (1984) cert. denied, 472 U.S. 1029 (1985). Cf., Whitman v. Miles, 387 F.3d 68, 2005 A.M.C. 120 (1st Cir. 2004).

B. The Obligation to Furnish Maintenance and Cure Can Spring Anew After Being Initially Terminated

When an injured seaman fails to follow up on medical treatment, the obligation to provide maintenance is suspended, not terminated. Lipari v. Maritime Overseas Corp., 493 F.2d 207 (3rd Cir. 1974). By the same token, a seaman who has achieved maximum cure may again become entitled to maintenance and cure if his or her medical condition changes or new medical procedures become available. Gilmore & Black, The Law of Admiralty, § 6-10 (2d ed. 1975). See, Smith v. Marauder, 2003 A.M.C. 1308 (W.D. Wash. 2003) (plaintiff entitled to renewed maintenance and cure following a second heart attack, when the stent to repair the first heart attack failed). See also, paragraph I. B. 4, supra.

C. Shipowner Obligated to Guarantee Payment in Advance of Treatment

Shipowners often refuse to authorize treatment until they can determine whether or not the treatment benefits the injured seaman. Doctors and hospitals, on the other hand, often refuse to provide treatment unless the procedure is authorized in advance and payment is guaranteed. This creates a Catch-22 situation for the injured seaman. Shipowners can be compelled to guarantee payment of medical procedures in advance if to do so will further the seaman's cure. Kezik v. Alaska Sea, 2004 A.M.C. 2376 (W.D. Wash. 2004); Sullivan v. Tropical Tuna, 963 F.Supp. 42, 1997 A.M.C. 2017 (D. Mass. 1997).

This rule is now in doubt, at least in Washington state courts, following the recent decision of Dean v. Fishing Company of Alaska, 166 Wn.App. 893, 2012 A.M.C. 682, petition for review filed 5/7/12, ___ Wn.2d ___.

D. Elements of Cure

Cure includes transportation expenses to get to the place of treatment. Travis v. Motor Vessel Rapids Cities, 315 F.2d 805 (8th Cir. 1963).

E. Substitutes for Cure

Medicare is not a substitute for shipowner's obligation to provide cure. Petition of RJF Intern. Corp., 332 F.Supp.2d 458, 2005 A.M.C. 354 (D.R.I. 2004). Contra, Moran Towing and Transportation Co. v. Lombas, 58 F.3d 24 (2d Cir. 1995). For Medicaid there is a line of cases holding that shipowners do not have to pay cure to injured seamen who receive free medical attention from Medicaid or other public benefit systems. The author claims these decisions violate public policy. As the Washington state Supreme Court has said, Medicaid is a source of payment of last resort and is not available to an eligible recipient until all other available resources have first been exhausted. Wilson v. State, 142 Wn.2d 40 (2000). See generally, The Law of Seamen, supra at § 26:25 and 2011-12 Supp. thereto.

F. Obligation to Provide Cure Starts When the Need for Treatment "Manifests"

Conditions such as heart ailments and carpal tunnel syndrome can be latent or non-surgical, and pre-exist the seaman's service to a vessel. The obligation of a shipowner to provide maintenance and cure arises when the need for treatment of a pre-existing condition manifests itself, if the seaman is in the service of the ship, even if the condition itself manifested earlier. Brassea v. Person, 2000 A.M.C. 214 (Alaska 1999). See also, Smith v. Marauder, supra, 2003 A.M.C. 1308. For a preexisting condition manifesting itself while the seaman is in the service of the vessel, see generally, Force and Norris, The Law of Seamen, § 26:20 (5th ed. 2003).

At the outer limits of "manifest" is a state court case, Duarte v. Royal Caribbean Cruises, 2000 A.M.C. 1516 (Fla. App. 2000). There the Florida Court of Appeals held that a seaman was entitled to maintenance for the consequences of additional injuries she suffered from an unrelated automobile accident during the period that she was receiving maintenance and cure for a shipboard injury. In the author's opinion, it is doubtful that this case will be followed. See Judge Zilly's Minute Order of 11/1/04 in Bah v. Trident, No. C04-1672Z.

G. 'Therapeutic' Treatment

What happens when a seaman with an incurable condition needs continued cure to prevent death or a severe deterioration of health? There is no good answer to that question and the cases are all over the place. For a compilation of cases addressing the issue see, The Law of Seamen at §§ 26:45 and 26:46.

## III. UNEARNED WAGES

A. General Considerations

Unearned wages are part of the maintenance and cure remedy. The obligation is sometimes referred to as "maintenance-wages-cure".

Vickers v. Tumey, 290 F.2d 426,434 (5th Cir. 1961). Unearned wages are payable in addition to maintenance, no matter how high the daily rate of maintenance may be. Shaw v. Ohio River Co., 526 F.2d 193 (3rd Cir. 1975). Unearned wages include all forms of compensation the injured seaman would have earned but for the injury. Lipscomb v. Foss Maritime, 1996 A.M.C. 1598, 1603 (9th Cir. 1996). A custom of not paying unearned wages is no defense. Young v. The Alcoa Corsair, 186 F.Supp. 476 (S.D. Ala. 1960).

B. Elements of Unearned Wages

1. Vacation Pay
Lipscomb v. Foss, supra, 1996 A.M.C. 1598; Gajewski v. United States, 540 F.Supp. 381 (S.D. N.Y. 1982).

2. Normal and Routine Overtime
Clifford v. The Iliamna, 106 F.Supp. 36 (S.D. Cal. 1952); Lamont v. United States, 613 F.Supp. 588 (S.D. N.Y. 1985); Schoenbaum, Admiralty and Maritime Law, § 6-29 (5th ed. 2011).

3. Tip Income
For workers on passenger vessels, unearned wages should include average tip income. Flores v. Carnival Cruise Lines, 1995 A.M.C. 1360, 47 F.3d 1120 (11th Cir 1995).

C. Duration of Unearned Wages

1. Foreign Voyages
For blue water seamen, the obligation to pay unearned wages lasts to the end of the foreign voyage. The Osceola, 189 U.S. 158 (1903). If the seaman achieves maximum cure prior to the end of the voyage, he or she may be entitled to continued unearned wages for an additional period during a job search for another berth, so long as the voyage still continues. Kalinoski v. Alaska S.S. Co., 44 Wn.2d 475,480 (1954). The obligation to pay unearned wages may last even longer, if the contractual period of employment extends beyond completion of the foreign voyage(s). Archer v. Trans-American Services, Ltd., 834 F.2d 1570 (11th Cir. 1988).

2. Coastwise Voyages
For coastwise voyages, blue water seamen are entitled to unearned wages for the duration for the contemplated period of employment. How that period is defined is subject to dispute. Coastwise voyages, from one port to the next, are usually very short. The Washington Supreme Court wrongly held that unearned wages terminate at the next port during coastwise voyages. Lundborg v. Keystone Shipping Co., 1999 A.M.C. 2635, 138 Wn.2d 658 (1999). A better yardstick is the length of the period of employment contemplated by the parties. Alier v. SeaLand, 465 F.Supp. 1106 (D.P.R. 1979). Where wages are paid once per month, for example, to the end of the month is the period of entitlement. Fish v. Richfield Oil Corp., 178 F.Supp. 750 (S.D.

Cal. 1959). The author contends that a better measure of the entitlement to unearned wages on coastwise voyages is the period of time for which the seaman contracts for employment. See, Force and Norris, The Law of Seamen, § 26:34 at text accompanying n. 6 (5th ed. 2003). Although open-ended articles are not sufficient to establish a definite period of employment, a union dispatch card, for example, might be. See, Berg v. Fourth Shipmor Assoc., 1996 A.M.C. 1591, 82 F.3d 307 (9th Cir. 1996).

3. Ferry Workers and Inland Boatmen
   Unless established otherwise by a collective bargaining agreement, the period of obligation to pay unearned wages lasts to the end of the current pay period. Rofer v. Head & Head, Inc., 226 F.2d 927 (5th Cir. 1955) (yacht; monthly pay periods).

4. Fishermen
   Fishing is traditionally conducted by the season. Robinson v. Pocahontas, 477 F.2d 1048 (1st Cir. 1973). Some fishing companies have contracts providing that the employment period is for only one trip at a time, each trip typically of short duration, or a fixed period such as 30 days. The Ninth Circuit has upheld trip-to-trip contracts. Day v. American Seafoods, 557 F.3d 1056, 2009 A.M.C. 1098 (2009).

5. Contemplated Period of Employment Set by a Collective Bargaining Agreement
   As touched upon above, when the period of employment is set by a collective bargaining agreement for a union seaman, the courts will likely enforce that period for the purposes of unearned wages. Plesha v. Inspiration, 2006 A.M.C. 1658 (D.P.R. 2006).

D. Penalties For Failure to Pay Unearned Wages

1. No Federal Statutory Penalties
   The double wage penalties of 46 U.S.C. §10313 by definition apply only to foreign voyages. The federal statutory double wage penalties are likewise inapplicable to any form of unearned wages. Ladzinski v. Sperling S.S. and Trading Corp., 300 F.Supp. 947 (S.D.N.Y. 1969).

2. Attorney Fees, Consequential Damages, Prejudgment Interest and Punitive Damages
   Same as for maintenance. See paragraph I. D.

3. State Law Wage Penalties
   In the past, some judges have doubled the unearned wages due by using the state law wage penalties of RCW 49.52.050 and .070. Giron v. S.S. Philadelphia, No. C84-108C (W.D. Wash.) (unpublished Order by Judge Coughenour dated 7/12/84); Garst v. TransPacific Seafoods, No. C86-617S (W.D. Wash.) (unpublished Order by Magistrate

Judge Sweigert dated 3/20/87). Those rulings are now questionable as precedent. Because unearned wages are part of maintenance and cure, punitive damages might be a more appropriate remedy. See the following section.

4. Punitive Damages
Unearned wages are part of the maintenance and cure remedy. As such, punitive damages are also available for "willful and wanton" failure to pay unearned wages. Atlantic Sounding v. Townsend, supra. See, Lanphere v. Adam Evich, King Co. Superior Court No. 09-2-13576-2 SEA, Findings of Fact, Conclusions of Law, and Order dated 1/5/11: In a bench trial, Judge Suzanne Barnett awarded Steve Fury's client $100,000 in punitive damages for the "intentional and willful refusal to pay ($2,000 ) unearned wages."

E. Standard of Proof in Motion Practice

Unlike a relaxed standard of proof that arguably applies to motions to reinstate maintenance and cure, the regular summary judgment standard applies to Motions to Compel Payment of Unearned Wages. Padilla v. Maersk Line, 603 F.Supp.2d 616, 2009 A.M.C. 1102 (S.D.N.Y. 2009).

F. Statute of Limitations

As with maintenance and cure, laches provides the limit for when actions can be brought. Look to state law for analogous limitation periods to determine when the burden of proof shifts on whether or not prejudice has been shown for the delay in bringing lawsuits. See, Reed v. American S.S. Co., 682 F.Supp. 333 (E.D. Mich. 1988). For written contracts of employment, that could arguably be six years in Washington. R.C.W. Chap. 4.16.