FOURTH JUDICIAL CIRCUIT OF VIRGINIA
CIRCUIT COURT OF THE CITY OF NORFOLK

DAVID W. LANNETTI
JUDGE

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Re: Thomas K. Harlan v. Hampton Roads Leasing, Inc. t/a W3 Marine
Civil Docket No.: CL18-5309

Dear Counsel:

Today the Court rules on the oral motion made at trial by Defendant Hampton Roads Leasing, Inc. t/a W3 Marine ("W3 Marine") to provide a credit or offset the damages awarded to Plaintiff Thomas K. Harlan by the $36,140 in maintenance payments Harlan received after he was injured while working as a Jones Act seaman for W3 Marine in the service of the TUG CAPT WOODY. W3 Marine asserts that Harlan's receipt of both maintenance and past lost earnings would produce an impermissible windfall, as Harlan did not receive food and lodging prior to his injury as part of his employment relationship with W3 Marine. Harlan, by contrast, argues that injured seamen are entitled to maintenance as a matter of right under maritime law.

The Court finds that under certain circumstances—such as those present here—maintenance payments may result in a windfall to a seaman. Although this is contrary to traditional compensatory damages principles, an injured seaman is normally entitled to maintenance payments when injured while in the service of his ship, regardless of whether the shipowner provided food and lodging as part of the seaman's employment. As such, the Court DENIES W3 Marine's motion for a credit or offset for maintenance payments.

Background

At all relevant times, Harlan was employed by W3 Marine as a seaman and crewmember of the TUG CAPT WOODY. On July 11, 2016, while working aboard his ship, Harlan assisted in relocating a W3 Marine barge and with the subsequent assembly of a crane on the barge. The parties stipulated that, in that capacity, Harlan was a Jones Act "seaman," Harlan was acting within the scope of his employment and in the service of his ship, and maritime law applies to his claims.

While standing on the crane pedestal affixed to the barge as the crane cab was being lowered—to assist in passing electrical and hydraulic lines through an opening in the pedestal—Harlan stepped backwards, fell through an opening in the pedestal, and landed approximately five feet below on the deck of the barge. As a result, Harlan claims to have injured his back severely.

W3 Marine paid all of Harlan's medical expenses. It also paid Harlan $65.00 per day as maintenance payments during his 556-day recuperation, *i.e.*, between his date of injury and date of maximum medical improvement, for a total of $36,140.

Harlan brought a negligence claim against W3 Marine under the "Jones Act," 42 U.S.C. § 10304.[1] He did not seek medical expenses or maintenance in his suit. Immediately prior to the start of the related jury trial, W3 Marine asserted that if the jury awarded Harlan damages for "past lost earnings," it would be entitled to a credit for or offset of the $36,140 in maintenance it paid to Harlan. W3 Marine provided the Court a bench brief outlining its position; Harlan declined the Court's offer to brief his position, although counsel for Harlan provided the Court copies of several cases. The parties agreed that entitlement to the requested credit or offset of damages is a question of law appropriate for the Court to resolve, so no evidence regarding the maintenance payments or medical expenses—or a seaman's right to maintenance and cure—was presented to the jury.

At the conclusion of the trial, the jury returned a special verdict in which it found W3 Marine sixty-percent liable and Harlan forty-percent liable for Harlan's injuries. The jury further found that Harlan suffered the following damages: $62,120 for "[p]ast lost earnings"; $171,640 for "[p]ast pain and suffering": $266,240 for "[f]uture lost earnings"; and $0 for "[f]uture pain and suffering."

Positions of the Parties

W3 Marine's Position

W3 Marine argues that it "is entitled to a credit or offset for any portion of [the maintenance] payments to Harlan that are duplicative of his claim for past lost wages; *i.e.*, all of them." (Def.'s Bench Br. 1.) Specifically, W3 Marine argues that because Harlan was not

[1] Harlan also brought a vessel unseaworthiness claim under the general maritime law, although that claim was dismissed by consent of the parties prior to trial.

receiving food or lodging as part of his employment arrangement with W3 Marine prior to his injury, the maintenance payments it paid to Harlan could not have been "a replacement for a benefit the seaman never received." (*Id.* at 4.) According to W3 Marine, the maintenance payments therefore would constitute an improper windfall to Harlan if the jury award is not offset by them.

Harlan's Position

Harlan asserts that W3 Marine is not entitled to a credit or offset for the maintenance payments because, as a seaman, he is entitled to maintenance independent of any jury award of past lost earnings. According to Harlan, maintenance is guaranteed as a term of his employment, regardless of whether his employer normally provided food and lodging.

Analysis

Legal Standard

One who employs a seaman is liable to the seaman if he "falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages." *Alt. Sounding Co. v. Townsend*, 557 U.S. 404, 413 (2009) (quoting *The Osceola*, 189 U.S. 158, 175 (1903)).

"[T]he right to maintenance, cure and wages, implied in law as a contractual obligation arising out of the nature of the employment, is independent of the right to indemnity or compensatory damages for an injury caused by negligence; and these two rights are consistent and cumulative." *Pac. S.S. Co. v. Peterson*, 278 U.S. 130, 138 (1928). In light of the possible overlap of the damages associated with these rights, "the rule prevails in admiralty as elsewhere in the law that no one may recover compensatory damages more than once." *Musie v. Abbot*, 160 F.2d 590, 592 (1st Cir. 1947).

The duty to provide maintenance and cure has been liberally interpreted by the U.S. Supreme Court. *Aguilar v. Standard Oil Co.* 318 U.S. 724, 735 (1943). The related liability is one of the "most pervasive" of a shipowner's duties. *Id.* at 730. A seaman's right to maintenance and cure should not be "narrowly confined," and its "broad and beneficial purpose" should not be defeated by "artificial distinctions." *Id.* at 735. Any ambiguities or doubts concerning a shipowner's duty to provide maintenance and cure therefore should be resolved in favor of the seaman. *Id.*

Discussion

The Court has considered the pleadings, argument from counsel, and applicable authorities. The Court now rules on the maintenance issue.

For centuries, seamen have been entitled to maintenance and cure when injured or falling

ill in the service of their vessels.[2] *Hudspeth v. Atl. & Gulf Stevedores, Inc.*, 266 F. Supp. 937, 939 (E.D. La. 1967). This obligation, which is imposed on shipowners, was first recognized in the United States in 1823.[3] *Id.* (citing *Harden v. Gordon*, Fed. Cas. No. 6047 (CC Me. 1823)). "Maintenance" traditionally refers to the food and lodging normally provided to seamen by their ships, while "cure" refers to the injured or sick seaman's medical treatment.[4] *Alt. Sounding Co. v. Townsend*, 557 U.S. 404, 413 (2009). Stemming from the traditional obligation of shipowners to provide room and board to seamen during a voyage at sea, "[t]he maritime doctrine of maintenance entitles a seaman injured in the service of his ship to 'food and lodging of the kind and quality he would have received . . . aboard [the] ship.'" *Hall v. Noble Drilling (U.S.) Inc.*, 242 F.3d 582, 586 (5th Cir. 2001) (quoting *Tate v. Am. Tugs, Inc.*, 634 F.2d 869, 871 (5th Cir. Unit A 1981)).

Here, there is no dispute that W3 Marine was obligated to pay maintenance to Harlan or that W3 Marine in fact made such payments. Instead, the issue before the Court is whether any of Harlan's jury-awarded damages are duplicative of the maintenance payments he received. Using a special verdict form submitted to the Court by counsel for the parties, the jury awarded, *inter alia*, $62,120 in "[p]ast lost earnings." W3 Marine argues that because it never provided food and lodging to Harlan as part of their employment relationship, Harlan must have paid for his pre-injury food and lodging with his earnings; as such, W3 Marine contends that Harlan's recovery of both past lost earnings and maintenance is duplicative.

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[2] The basis for the entitlement can be found in the oft-quoted language of Justice Story from 1823:

> Seamen are by the peculiarity of their lives liable to sudden sickness from change of climate, exposure to perils, and exhausting labour. They are generally poor and friendless, and acquire habits of gross indulgence, carelessness, and improvidence. If some provision be not made for them in sickness at the expense of the ship, they must often in foreign ports suffer the accumulated evils of disease, and poverty, and sometimes perish from the want of suitable nourishment. . . . If these expenses are a charge upon the ship, the interest of the owner will be immediately connected with that of the seamen. The master will watch over their health with vigilance and fidelity. . . . It encourages seamen to engage in perilous voyages with more promptitude, and at lower wages. It diminishes the temptation to plunderage upon the approach of sickness; and urges the seamen to encounter hazards in the ship's service, from which they might otherwise be disposed to withdraw.

Harden, 11 F. Cas. at 483.

[3] Of course, maritime service has evolved over the past two centuries, and courts have acknowledged that entitlement to maintenance and cure was originally based on "reasons that were profoundly humanitarian, buttressed by an argument of dubious economic and psychological logic, and a generalization about seamen's character that would be at least questionable today." *Hudspeth*, 266 F. Supp. at 939. Nevertheless, a seaman's right to maintenance and cure survived and continues today. *Id.* at 941 ("The 'ancient solicitude of courts of admiralty for those who labor at sea' continues unchanged despite the progress from canvas sails to diesel engines." (quoting *Weiss v. Cent. R.R. Co. of N.J.*, 235 F.2d 309, 311 (2d Cir. 1956))).

[4] As W3 Marine notes, "maintenance and cure" can also refer to maintenance, cure, and lost wages during the seaman's recuperative period. (Def.'s Bench Br. 3 n.3 (referring to *Vickers v. Tumey*, 290 F.2d 426, 435 (5th Cir.1961); *Caron v. Otonka, Inc.*, 344 F. Supp. 2d 765, 766 (D. Me. 2004).)

As an initial matter, the Court recognizes that under the circumstances present here—where a shipowner who was not required to provide food and lodging to a seaman pre-injury pays the seaman maintenance post-injury—Harlan will enjoy a windfall, from a compensatory damages perspective, if he retains his maintenance payments and is awarded his past lost wages. This is because the maintenance payments put him in a better position than he would have been had he not been injured.[5] Such a result is antithetical to the intent of compensatory damages, which is to fully compensate the victim, but no more. *Muise v. Abbot*, 160 F.2d 590, 592 (1st Cir. 1947) ("[T]he rule prevails in admiralty as elsewhere in the law that no one may recover compensatory damages more than once."). Despite W3 Marine's assertion otherwise, however, here Harlan's past lost earnings and his maintenance payments are not, strictly speaking, duplicative.

W3 Marine relies on multiple cases for the general proposition that duplicative damages are improper and the specific proposition that past lost earnings and maintenance payments can be duplicative when a shipowner does not provide the seaman's food and lodging. The Court holds that the former proposition is unremarkable and that the cases supporting the latter proposition are distinguishable.

A. Duplicative Damages Are Improper.

The prohibition against duplicative damages is not a controversial principle.[6] The Court readily accepts that if a jury awards a seaman damages that include maintenance, the shipowner is entitled either to recover any maintenance payments previously paid or to be provided a credit or offset for awarded maintenance damages in a related claim. The Court finds the cases to which W3 Marine cites to be either inapposite or easily distinguishable from the case at bar.

The issue in *Yost v. American Overseas Marine Corp.* was whether an employer was entitled to a credit for payments he made—despite not being required to do so—to a Jones Act seaman purportedly pursuant to the Florida Workers' Compensation Act. 798 F. Supp. 313, 317 (E.D. Va. 1992). Yost, the seaman, argued that the payments fell under the collateral source rule and therefore should not be credited.[7] *Id.* at 318. The court ultimately held that the payments

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[5] This is true because, had he not been injured, the seaman would not have received the maintenance payments and would have continued paying for his food and lodging, presumably with his earnings. Of course, this assumes that the seaman otherwise is fully compensated for his injuries, including, *inter alia*, lost wages, medical expenses, and pain and suffering.

[6] That said, the collateral source rule has a well-established place in American tort law.

[7] As the court noted, "under the collateral source rule a payment from a source independent of, or unrelated to, the tortfeasor does not reduce his liability to the injured party even if the result is to afford the injured party double compensation . . . because, as a policy matter, the law allows the injured party, rather than the tortfeasor, the windfall created by a collateral source payment." *Yost*, 798 F. Supp. at 319. This judicially endorsed double-recovery rule—designed to ensure that tortfeasors do not benefit from expenditures made by the injured party or take advantage of contracts or other relations that may exist between the injured party and third persons—has long existed. *See, e.g.*, *The Propeller Monticello v. Mollison*, 58 U.S. 152 (1854); *see also Restatement (Second) of Torts* § 920A (1979) ("Payments made to

were not collateral source payments because the employer was not required to pay them; hence, the employer was entitled to a credit for the voluntary pretrial payments to prevent a double recovery. *Id.* at 319. By contrast, there are no collateral source payments at issue here.

All but one of the remaining cases on which W3 Marine relies involve situations in which courts analyzed whether a seaman's claimed damages were duplicative of either compensation he had already received or elements of compensation he was claiming separately.

Boudreaux v. Transocean Deepwater, Inc. involved an effort by a shipowner to recover maintenance and cure already paid after successfully establishing a "McCorpen defense," *i.e.*, that the seaman procured his employment by making fraudulent misrepresentations regarding a pre-existing medical condition that is causally linked to the injury for which the seaman seeks maintenance and cure.[8] 721 F.3d 723, 725 (5th Cir. 2013) (referencing *McCorpen v. Cent. Gulf S.S. Corp.*, 396 F.2d 547 (5th Cir. 1968)). In declining to extend Jones Act principles to include such restitution, the court noted that "[a]lready, even without fraud, an employer may offset any Jones Act damages recovered by the seaman to the extent they duplicate maintenance and cure previously paid." *Id.* at 727. In the context of the case before the Court, this stands for the noncontroversial proposition that if maintenance were included as part of the seaman's Jones Act damages, the shipowner would be entitled to an offset for any maintenance already paid in order to prevent paying the same element of damages twice.

Fitzgerald v. U.S. Lines Co., which holds that a seaman who brings a single action for both a Jones Act claim and a maintenance and cure claim is entitled to a jury trial on both claims,[9] includes the unexceptional proposition—cited by W3 Marine—that "remedies for negligence, unseaworthiness, and maintenance . . . involve some identical elements of recovery." 374 U.S. 16, 18 (1963). W3 Marine cites to *Caron v. Otonka, Inc.*—a case in which the seaman already had recovered lost wages in a statutory Jones Act claim and subsequently claimed the same lost wages in a maritime maintenance and cure claim—for the assertion, taken out of context by W3 Marine, that "[l]ost wages is a component of [the plaintiff's] Jones Act damages" and, "[a]ccordingly, he cannot recover *the same damages* [for] maintenance." 344 F. Supp. 2d 765, 766 (D. Me. 2004) (emphasis added).[10] *Muise v. Abbott*, 160 F.2d 590 (1st Cir. 1947), and

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or benefits conferred on the injured party from other sources are not credited against the tortfeasor's liability, although they cover all or a part of the harm for which the tortfeasor is liable.").

[8] As the court pointed out, "it has always been the rule that a seaman can lose the right to maintenance and cure through gross misconduct," which *McCorpen* extended, but the issue in *Boudreaux* was whether restitution *of amounts already paid* was appropriate. *Boudreaux*, 721 F.3d at 726.

[9] As the U.S. Supreme Court noted, although the Jones Act explicitly provides a seaman the right to a jury trial, "the actions for unseaworthiness and for maintenance and cure are traditional admiralty remedies which in the absence of a statute do not ordinarily require trial by jury." *Fitzgerald*, 374 U.S. at 18.

[10] W3 Marine appears to concede that two cases stand for the proposition—contrary to their position—that offsets are only appropriate when the *same element of damages* is at issue. (*See* Def.'s Bench Br. 3 (citing *Reardon v. Cal. Tanker Co.*, 260 F.2d 369, 373 (2d Cir. 1958); *Stanislawski v. Upper River Servs., Inc.*, 6 F.3d 537, 540 (8th Cir. 1993)).)

Gomes v. Eastern Gas & Fuel Assocs., 127 F. Supp. 435 (D. Mass. 1954), stand for the proposition that a seaman's damages in an action for maintenance and cure can be offset by the amount of the maintenance and cure, if any, included in a negligence settlement with a third party for the same personal injuries; as the *Muise* court pointed out, the seaman "could recover *only to the extent that he had not already been compensated.*" 160 F.2d at 591 (emphasis added).

W3 Marine's reliance on certain secondary sources similarly does nothing to advance its position. It is undoubtedly true, as stated in the Gilmore and Black admiralty treatise, that "a plaintiff who has recovered medical expenses, a living allowance and unearned wages under the name of maintenance and cure has no right to recover them *a second time* in a damage action." Grant Gilmore & Charles Black, *The Law of Admiralty* § 6-9 (2d ed. 1975) (emphasis added). Similarly, the U.S. Court of Appeals for the Fifth Circuit pattern jury instruction points out that "[t]he existence and extent of a double-recovery problem will vary from case to case" and provides in a note the example that "if the value of the food or lodging supplied to the seaman by the vessel owner is included in the wage base from which loss of earnings is calculated, then those items must not again be awarded as maintenance." Pattern Jury Instruction (Civil Cases) No. 4:10, at 57, n.2 (*available at* http://www.lb5.uscourts.gov/juryinstructions/fifth/2014civil. pdf). Both of these sources—like the cases discussed above—stand for the simple proposition that double recovery is not allowed for *the same items of damage* that are included in a Jones Act recovery.

In the instant case, the jury was provided no evidence that maintenance was included as a component of the wage base from which lost earnings were calculated; in fact, the jury was provided no evidence of maintenance at all. Hence, this is not a case where the amount of maintenance to which Harlan is entitled can be offset by a specific *designated* maintenance component of lost earnings.

B. Harlan's Past Lost Earnings and Maintenance Payments Are Not Duplicative.

W3 Marine argues that because it was not providing food and lodging to Harlan as part of their employment relationship prior to Harlan's injury, Harlan must have been using a portion of his earnings to pay for those items. Hence, according to W3 Marine, by using Harlan's pre-injury earnings as the basis for calculating his claimed past lost earnings, the jury-awarded past lost earnings included the equivalent of maintenance; crediting or providing an offset for the maintenance payments W3 Marine provided to Harlan therefore would prevent an improper duplicative payment. The Court holds that this position is not supported by the overwhelming majority of relevant maritime cases, however.

W3 Marine relies on *Blanchard v. Cheramie*, which, on its face, appears to support W3 Marine's position. There, Blanchard sued his former employer under general maritime law and the Jones Act, asserting damages for a back injury he sustained while working as a captain aboard a shrimp trawler. 485 F.2d 328, 329 (5th Cir. 1973). The jury found Blanchard fifty-percent contributorily negligent for his injuries and awarded him $15,500 in damages and $2,568 in maintenance. *Id.*

On appeal, Blanchard challenged the following jury instruction:

> In this case, if you reach the question of whether the plaintiff is entitled to recover damages, and if you find that he is entitled to such recovery, and that those damages consist, in part, of lost wages, and if you also find that the plaintiff is entitled to maintenance, you shall not include such maintenance, as you may find he is entitled to, for the period you awarded lost wages. The law does not allow an injured seaman to recover damages twice for the same loss. *If you give him a period of lost wages, you don't give him maintenance and cure for that time.*
>
> *You shall not include such maintenance, as you may find he is entitled to, for the period you award him for lost wages*, that is the main thing.

Id. at 329 (emphasis added). Blanchard argued that the jury instruction improperly required the jury to offset his lost wages by the maintenance amount, thereby denying him his right to recovery as a seaman, *i.e.*, his lost wages *in addition to* maintenance. *Id.* at 330.

Although the U.S. Court of Appeals for the Fifth Circuit ultimately affirmed the trial court's decision to allow the jury instruction, the appellate court's ruling was narrow and was clearly designed to prevent truly duplicative damages awards. The court pointed out that maintenance payments are duplicative of lost wages only insofar as they encompass the "wage element of maintenance and cure." *Id.* Noting that the trial court judge "extensively and exhaustively charged the jury" with instructions that spanned "fourteen typewritten pages [and] included the loss of both past and future warnings and earning capacity," the Fifth Circuit opined that "[e]valuating the record as a whole, we are left with no doubt that the jury correctly interpreted 'lost wages' to mean *only the wage element of maintenance and cure*." *Id.* (emphasis added); *see also Cunningham v. Noble Drilling Corp.*, No. Civ. A. 01-2766, 2002 WL 31528444, at *2 (E.D. La. Nov. 12, 2002) (distinguishing *Blanchard* because—unlike in *Cunningham* and in the instant case, where the issue is "whether once maintenance is paid, prior to litigation, the defendant is entitled to an offset from the jury award of past income"—*Blanchard* "dealt with whether a jury award for past income constitutes double recovery if the jury also awards maintenance"). In other words, the appellate court found that the jury was instructed not to award the *same* lost wages under *both* Blanchard's Jones Act claim *and* his maritime maintenance and cure claim. The Court therefore finds *Blanchard* distinguishable.

1. Injured Seamen Are Entitled to Maintenance Despite Not Being at Sea.

A seaman's entitlement to maintenance and cure is premised upon a seaman's removal from the paternalistic environment of a ship when injured or falling ill while serving the ship. *See, e.g.*, *Rodriguez Alvarez v. Bahama Cruise Line, Inc.*, 898 F.2d 312, 316 (2d Cir. 1990) ("The rationale for the rule that lost wages do not substitute for maintenance is that maintenance compensates the injured seaman for food and lodging, which the seaman otherwise receives free while on the ship."). Under W3 Marine's argument—that the right to maintenance is predicated on the ship actually providing the seaman room and board—the seaman would not be entitled to maintenance whenever he was not at sea or otherwise was not provided room and board by the shipowner. After all, seamen do not spend their entire lives at sea, and there are times that they voluntarily take responsibility for their own food and lodging. Despite the appeal to logic, however, apportioning maintenance in such a way is inconsistent with the relevant case law.

Courts have held that a seaman is entitled to maintenance under a variety of situations in which the shipowner was not providing food and lodging: when injured while on shore leave, *Aguilar v. Standard Oil Co.*, 318 U.S. 724 (1943); when recuperating during a paid vacation, *Morel v. Sabine Towing & Transp. Co., Inc.*, 669 F.2d 345 (5th Cir. 1982); when his normal work schedule consisted of thirty days onboard the ship and thirty days ashore (and he provided his own food and lodging when ashore), *Rowald v. Cargo Carriers, Inc.*, 243 F. Supp. 629 (E.D. Mo. 1965); when he normally slept at home and only ate lunch on the ship, *Weiss v. Cent. R.R. Co. of N.J.*, 235 F.2d 309 (2d Cir. 1956); when he lived ashore and came aboard the ship only to work his watch, *Creppel v. J.W. Banta Towing Inc.*, 202 F. Supp. 508 (E.D. La. 1962); when his recuperation period included periods in which he would have been ashore providing his own meals and lodging had he not been injured, *Ledet v. Oil of La., Inc.*, 237 F. Supp. 183 (E.D. La. 1964); when the ship provided lodging but he paid for his food, *The City of Avalon*, 156 F.2d 500 (9th Cir. 1946); and when he provided his own lodging, *Duplantis v. Williams-McWilliams Indus., Inc.*, 298 F. Supp. 13, 15 (E.D. La. 1969).[11]

The premise for this entitlement to maintenance was summarized in *Duplantis*, a case in which the shipowner never provided lodging: "That the seaman previously provided his own lodging is immaterial. Furthermore, to adopt [an alternative] position would be inconsistent with those cases determining that a seaman, even though he normally pays for all or part of his sustenance while serving aboard a vessel, is still entitled to receive full maintenance when injured." 298 F. Supp. at 15 (citing *Weiss*, 235 F.2d at 311; *Avalon*, 156 F.2d 500; *Hudspeth v. Atl. & Gulf Stevedores, Inc.*, 266 F. Supp. 937, 939 (E.D. La. 1967)); *see also Hall v. Noble Drilling (U.S.) Inc.*, 242 F.3d 582, 586–87 (5th Cir. 2001) (noting that "in more recent years courts have awarded maintenance and cure to seamen who have no room or board on their vessels" (citing *Barnes v. Andover Co.*, 900 F.2d 630, 640–44 (3d Cir. 1990); *Hudspeth*, 266 F. Supp. at 943)). The U.S. Court of Appeals for the Ninth Circuit summarized the current rule succinctly:

> Thus we find the obligation of maintenance enforced even where maritime compensation did not include board and lodging–where the seaman was expected to pay for his meals out of his wages. No matter what the terms of his maritime employment were, during the period of his disability he was entitled to be provided with maintenance as well as cure. He was not to be abandoned in destitution.

Crooks v. United States, 459 F.2d 631, 633 (9th Cir. 1972).

This broad interpretation of the right to maintenance is consistent with the traditional philosophy of erring on the side of protecting seamen:

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[11] Most of these cases are discussed in *Hudspeth v. Atlantic & Gulf Stevedores, Inc.*, 266 F. Supp. 937 (E.D. La. 1967). The *Hudspeth* court also noted that there is a contrary case, *Alexandervich v. Gallagher Bros.*, 298 F.2d 918 (2d Cir. 1961) (apportioning maintenance based on when the ship provided food and lodging), although this Court—like the *Hudspeth* court—finds it to be an outlier.

> "It has been the merit of the seaman's right to maintenance and cure that it is so inclusive as to be relatively simple, and can be understood and administered without technical considerations." *Farrell v. United States*, 336 U.S. 511, 516 (1949); *Courts v. Erickson*, 241 F.2d 499 (5th Cir. 1957). Admiralty courts have been liberal in interpreting the duty to pay maintenance "for the benefit and protection of the seamen who are its wards." *Calmar S.S. Corp. v. Taylor*, 303 U.S. 525 (1938); *see also Vaughn v. Atkinson*, 369 U.S. 527 (1962) and cases cited therein. "Certainly the nature and foundations of the liability require that it be not narrowly confined or whittled down by restrictive and artificial distinctions defeating its broad and beneficial purposes." *Aguilar*, 318 U.S. 724; *see also Warren v. United States*, 340 U.S. 523 (1951). For the shipowner's liability for maintenance and cure is among "the most pervasive" of all. When there are ambiguities or doubts, they are resolved in favor of the seaman. *Aguilar*, 318 U.S. 724.

Hudspeth, 266 F. Supp. at 940–41. The *Hudspeth* court opined that, from a practical perspective, "[t]o deny one who is clearly a seaman the right to maintenance merely because he does not receive lodging and meals aboard ship raises problems that would distort the simple lines of the maintenance remedy." *Id.* 943 (noting that "[i]f a seaman were at sea five days a week, but was normally ashore and provided his own lodging and food two days a week, the same reasoning would indicate that he should be paid maintenance only for 5/7 of the period during which he is disabled").

Hudspeth appears to be directly on point with the instant case. Hudspeth, a seaman, was employed as a deckhand aboard a tug. *Id.* at 938. In this role, he received no meals aboard the ship, and he usually spent each night at home with his family. *Id.* On the date of his injury, he brought lunch to the tug for himself and the captain. *Id.* Upon invitation by the captain, he sat on a pallet board that was leaning against a wall. *Id.* at 939. The pallet board slipped, struck him, and injured his back. *Id.* The employer denied liability for the seaman's injuries but paid him maintenance at the rate of $6.00 per day. *Id.* A dispute arose when the seaman sought increased maintenance payments, whereupon the employer took the position that the seaman was never entitled to maintenance—and discontinued payments—because he did not normally receive lodging or meals aboard the vessel. *Id.* Summarizing the holding of *Weiss*, the *Hudspeth* court noted that "[o]nce it was established that the plaintiff was a seaman, he was entitled to the same rights as every other seaman, regardless of the fact that his working conditions were different from those of the typical seafarer." *Id.* at 941. It then concluded as follows:

> It is true that Hudspeth's working conditions were more like those of a landlubber than those of the blue water sailor with respect to his hours of work, manner of lodging and method of compensation. . . . But he was undoubtedly a member of the crew of his vessel, and he was subject to many of the hazards of the sea. . . . [H]e is entitled to all of the rights of a seaman.

Id. at 942; *cf. Hall*, 242 F.3d at 586 ("While centuries ago the typical seaman was a single man—perhaps without a home—who spent most of his life at sea, today the typical seaman may be

someone very much like the plaintiffs in this case: a worker on a floating rig who has a home and family and spends significant stretches of time onshore.").

The rationale in *Hudspeth* squarely applies to the case at bar. The parties stipulated that Harlan is a seaman, and he therefore is entitled to all of the associated rights, including the right to maintenance. The Court therefore holds that Harlan is entitled to maintenance, in its entirety, even though he did not rely on his employer for meals or lodging prior to his injury.

2. An Injured Seamen's Right to Maintenance Is Independent of His Entitlement to Jones Act Damages.

Because W3 Marine was not providing or paying for Harlan's food and lodging prior to his injury, an award of maintenance undoubtedly will result in a windfall to Harlan. The question before the Court is whether such a windfall is supported by maritime law. The Court holds that it is.

Historically, a seaman's right to maintenance and cure has been viewed as a basic term of his employment. *See, e.g.*, *Hudspeth v. Atl. & Gulf Stevedores, Inc.*, 266 F. Supp. 937, 940 (E.D. La. 1967) (noting that "the seaman's right to maintenance and cure is a basic term of his employment contract"). As the U.S. Supreme Court opined, a shipowner's duty to provide maintenance and cure "is imposed by the law itself as one annexed to the employment." *Cortes v. Baltimore Insular Line*, 287 U.S. 367, 371 (1932); *see also Aguilar v. Standard Oil Co.* 318 U.S. 724, 730 (1943) (pointing out that, under general maritime law, "this obligation has been recognized consistently as an implied provision in contracts of marine employment").

The Supreme Court has recognized that a seaman's ability to recover under the Jones Act for the negligence of his employer is intended to "supplement the remedy of maintenance and cure." *Braen v. Pfeifer Oil Transp. Co.*, 361 U.S. 129, 130–31 (1959); *see also Cortes*, 287 U.S. at 372 ("For breach of a [contractual] duty thus imposed, the remedy upon the contract does not exclude an alternative remedy built upon [a] tort."). A claim for maintenance and cure therefore is independent of any claim under the Jones Act. *Martin v. Harris*, 560 F.3d 210, 221 (4th Cir. 2009). "And although there must be no duplication in the final award, maintenance is broader than, and thus not a substitute for, lost wages." *Id.* (citations omitted).

When a seaman is injured in the service of his vessel, he therefore is entitled to bring two separate actions: one for unseaworthiness or negligence under the Jones Act and another under general maritime law for maintenance, cure, and lost wages during the seaman's recuperation. One court noted the distinction as follows:

> Damages for lost earnings awarded under the Jones Act or the doctrine of unseaworthiness are distinguishable from maintenance payments. Damages for negligence or for unseaworthiness are premised upon some wrong on the part of the employer or shipowner, and recovery is grounded on tort-related concepts of making the injured victim whole. Maintenance payments, on the other hand, arise out of the contractual relationship between the employer and the shipowner, and

> the entitlement to maintenance is not dependent upon any wrongdoing by the shipowner. *See Vickers v. Tumey*, 290 F.2d 426, [433] (5th Cir. 1961); *Smith v. Lykes Brothers—Ripley S.S. Co.*, 105 F.2d 604, 606 (5th Cir. 1939). The obligation to provide maintenance serves the goals of encouraging marine commerce and assuring the well-being of the seaman. *Aguilar*, 318 U.S. at 727. Thus, while the maintenance and lost earnings may overlap in terms of the loss compensated, they are conceptually and legally distinct as theories of recovery.

Ward v. Am. Haw. Cruises, Inc., 719 F. Supp. 915, 924 (5th Cir. 1961).

Because the right to maintenance stems from the contractual nature of a seaman's employment, it exists separate and apart from an award for negligence. Although there may be certain duplicative elements under the two causes of action—for which the seaman can only recover once—other elements are unique. Evaluation of the tort claim is consistent with traditional compensatory damages principles, which are designed to make the seaman whole without providing him a windfall. To the extent there are elements of the contractual maintenance and cure claim that are not duplicative of the negligence claim, *e.g.*, maintenance payments when the seaman was not receiving all of his food and lodging from his employer pre-injury, the seaman will by definition receive a windfall. Although this is contrary to the well-established remedial framework of traditional damages, the calculus is analogous to application of the collateral source rule[12]— the tort analysis ignores the non-duplicative benefits the plaintiff receives as a result of a separate contract. *See Crooks v. United States*, 459 F.2d 631, 633 (9th Cir. 1972) (recognizing the possibility of a windfall but noting that "the better rule . . . is that the maintenance obligation is independent of that to compensate for lost wages").

The Court holds that Harlan's right as a seaman to maintenance is independent of his right to recover compensatory damages for W3 Marine's negligence. Because there is no overlap between the maintenance sought by Harlan—which already has been paid to him—and the past lost earnings awarded by the jury, Harlan is entitled to the maintenance payments *in addition to* his tort damages despite the fact that W3 Marine had not been providing food and lodging prior to his injury and despite the fact that such payments constitute a windfall to Harlan.

Conclusion

Damages for Jones Act negligence, like other compensatory damages, are designed to make a seaman whole but not to provide him a windfall. A seaman's right to maintenance while injured in the service of his ship exists independent of his right to seek tort damages, even if the shipowner was not providing him room and lodging prior to his injury. Hence, although the maintenance payments Harlan received arguably provide him a windfall, they emanate from his implied employment contract as a seaman. The Court therefore DENIES W3 Marine's motion for a credit or offset for the maintenance payments Harlan received.

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[12] Admittedly, unlike collateral sources targeted by the collateral source rule, maintenance payments ordinarily do not come from a third party, and there is no right of subrogation associated with the "contractual" obligation to make maintenance payments.

Counsel for Harlan is directed to draft and circulate an Order consistent with this opinion letter and submit it to the Court for entry within fourteen days.

Sincerely,

David W. Lannetti
Circuit Court Judge

DWL/wmp