Captains Don't Cry: The Southern District of Texas Takes on Maintenance and Cure

I. INTRODUCTION

Charles Moran, a thirty-year captain employed by Signet Maritime Corporation, reported for his twenty-eight-day hitch and was informed that it was delayed due to weather.[1] With the permission of the port captain, he left the vessel to get a haircut and procure groceries for the ship's crew.[2] While walking through the parking lot of the hair salon, which was adjacent to the grocery store, Moran tripped and broke his ankle.[3]

Immediately after his fall, Moran—who was unable to work his hitch—sought medical attention for his foot and ankle injuries.[4] However, he neither complained of nor received treatment for any other injuries until February of 2022, nearly four months after his fall.[5] In February, he reported injuries to his back, neck, and shoulder.[6] From the time he initially reported his injuries to the date of the court's ruling, Moran

1. Moran v. Signet Mar. Corp., No. H-21-4214, 2023 WL 2971768, at *1, 2023 A.M.C. 200 (S.D. Tex. Apr. 17, 2023).
2. Moran v. Signet Mar. Corp., No. CIV.A.4:21-cv-04214, 2022 WL 3140500, at *1, 2022 A.M.C. 243 (S.D. Tex. Aug. 5, 2022).
3. *Id.*
4. *Id.*
5. *Signet*, 2023 WL 2971768 at *2.
6. *Id.* at *4.

received short and long-term disability benefits from a broad MetLife policy, which was paid for by Signet.[7]

Weeks after Moran's injury, Signet terminated his employment, claiming that an internal investigation of an earlier collision determined that he had violated company rules and cost Signet over $100,000.[8] Subsequently, Moran's counsel sent two letters to Signet demanding maintenance, cure, and lost wages for the missed hitch.[9] When Signet, which alleged that Moran's injury occurred during a personal errand, refused to pay, Moran filed suit in Texas state court seeking maintenance and cure, lost wages, and punitive damages for failure to timely pay maintenance and cure.[10]

Signet removed to the Southern District of Texas, where it filed a Motion for Summary Judgment on the punitive damages claim.[11] The parties' briefs conflicted significantly about the timeline of the injury—while Signet claimed that Moran called the Port Captain to state that he wanted "to stop while in route [sic] from his home to the Signet docks to get a haircut," Moran's brief reads differently.[12] Critically, Moran's brief alleges that—after traveling 450 miles from his Louisiana home—he called *from the Signet docks* and obtained specific permission to go into town for a haircut and to procure groceries for the crew while delayed by rain.[13]

The court declined to address this factual dispute but granted the motion, holding that there was "no evidence supporting an inference that [Signet] believed Moran would file a claim for maintenance and cure until he filed a claim for it on December 17, 2021."[14] The court pointed out that Moran had not filled out an incident report and had testified that he never sent correspondence asking for maintenance and cure.[15] The court rejected the idea that Signet should have known that Moran would seek payment for medical care merely because he told the captain of his injury

7. *Id.* at *2.
8. *Id.* at *1.
9. *Id.*
10. *Id.* at *1-2.
11. *Id.* at *2.
12. Defs.' Mot. for Partial Summ. J., 2022 WL 8254739 (S.D. Tex. 2022).
13. Pl.'s Resp. and Mem. in Opp'n to Defs.' Mot. for Summ. J., 2022 WL 8254748 (S.D. Tex. 2022).
14. *Moran*, 2022 WL 3140500 at *1.
15. *Id.*

and was unable to work.[16] Accordingly, the court held that Signet's decision to withhold payment pending investigation was reasonable.[17]

On the morning of the jury trial, Moran declared that he had seen additional doctors who would present new evidence—including a heretofore undisclosed MRI—about his foot and ankle injury.[18] In light of this new information, the court proposed (and the parties accepted) that the issues of liability be severed from damages.[19] After a three-day trial, the jury concluded that Moran was in the service of a Signet vessel, and the Southern District of Texas began its bench trial on the subject of damages.[20]

The Southern District of Texas *held* that Captain Moran was entitled to maintenance and cure for his foot and ankle injuries only; he was not entitled to compensatory or punitive damages, and Signet was not entitled to offset. *Moran v. Signet Mar. Corp.*, No. H-21-4214, 2023 WL 2971768, at *1, 2023 A.M.C. 200 (S.D. Tex. Apr. 17, 2023).

II. Historical Background

To those unfamiliar with the peculiarities of maritime law, the very notion that an employer would be required to support an employee who is injured—through no fault of the employer—while performing what is arguably a personal errand off-site would seem preposterous. However, maritime law provides seamen with significantly more robust remedies than those available to the average laborer.[21] This ancient remedy, which is allegedly traceable to the time of the Second and Third Crusades, imparts upon an owner the "absolute, non-delegable duty" to provide a per-diem allowance for food and lodging, as well as payment for medical and hospital expenses.[22]

A. A Seaman's Right—Maintenance and Cure's Broad Coverage

Relevant precedents hold that a seaman is entitled to maintenance and cure so long as (1) the injury was incurred in the service of the vessel; (2) the injury was not due to a willful act, default, or misbehavior of the injured seaman; and (3) that the seaman did not intentionally conceal a

16. *Id.*
17. Moran v. Signet Mar. Corp., No. H-21-4214, 2023 WL 2971768, at *7, 2023 A.M.C. 200 (S.D. Tex. Apr. 17, 2023).
18. *Id.* at *2.
19. *Id.*
20. *Id.* at *2-3.
21. *See* ROBERT FORCE & MARTIN J. NORRIS, THE LAW OF SEAMEN § 26:2 (5th ed.)
22. Bertram v. Freeport McMoran, Inc., 35 F.3d 1008, 1013, 1995 A.M.C. 707 (5th Cir. 1994).

relevant infirmity when entering engagement with their employer.[23] Courts have held that "service of the vessel," is not so strict a requirement that it excludes injuries incurred while ashore.[24] This broad interpretation of "service to the vessel" is inherently fact-specific, but has been held to include commuter-seamen (those who live at home and commute to work in "hitches").[25] Fifth Circuit courts consider the factors of (1) whether the seaman "was on authorized shore leave" and (2) whether the seaman was "answerable to the call of duty."[26]

B. A Shipowner's Duty—Calculating Payments for Maintenance, Cure, and Wages

Unlike terrestrial workers' compensation regimes and traditional recovery theories in tort, a seaman is still entitled to maintenance, cure, and wages when the injury itself does not arise from the seaman's employment.[27] Further still, courts have ruled that all manner of injury and illness create employer liability.[28] Only ailments arising from deliberately concealed conditions and injury or illness incurred through willful misconduct (typically intoxication or sexually transmitted diseases) are exempt.[29]

However broad maintenance and cure's coverage may seem, an employer is not required to support a seaman from the moment of injury until the day of their death.[30] In *Farrell v. United States*, the Supreme Court held that maintenance and cure payments would cease upon a seaman's recovery or when the disability is "declared permanent."[31] The Court went on to explain that maintenance and cure was neither a pension nor a "lump-sum payment to offset disability"—incurable ailments are, as the very word suggests, insusceptible to cure.[32] The Court would later remove much of the ambiguity as to whose declaration of an injury's permanence was sufficient.[33] In *Vella v. Ford Motor Co.*, the Supreme Court held that a shipowner's obligation to pay maintenance and cure

23. *See* Gauthier v. Crosby Marine Serv., Inc., 499 F. Supp. 295, 299, 1981 A.M.C. 1170 (E.D. La. 1980); Meche v. Doucet, 777 F.3d 237, 244, 2015 A.M.C. 305 (5th Cir. 2015).

24. John J. Walsh, *The Changing Contours of Maintenance and Cure*, 38 TUL. MAR. L.J. 59, 61 (2013).

25. Delaware River & Bay Auth. v. Kopacz, 584 F.3d 622 (3d Cir. 2009).

26. Sellers v. Dixilyn Corp., 433 F.2d 446, 447 (5th Cir. 1970).

27. FORCE & NORRIS, *supra* note 21.

28. *See Meche*, 777 F.3d at 244.

29. *See id.*

30. *See* FORCE & NORRIS, *supra* note 21, § 26:37.

31. 336 U.S. 511, 518, 1949 A.M.C. 613 (1949).

32. *Id.* at 519.

33. Vella v. Ford Motor Co., 421 U.S. 1, 2, 1975 AMC 563 (1975)

ceases upon a *medical diagnosis* of permanence (or incurability) rather than factual permanence.[34]

In *Vella*, the plaintiff, a seaman, struck his head while aboard the *S.S. Robert S. McNamara* and developed a vestibular condition.[35] He filed a complaint, which included a count for, among others, maintenance and cure.[36] While the defendant's medical witness conceded that a blow to the head could have caused the condition, he also testified that the condition was incurable.[37] The Court decided that allowing a shipowner to deny maintenance and cure before a diagnosis of permanence—even when ultimately vindicated—would frustrate maritime commerce and threaten the wellbeing of seamen.[38] If the shipowner withheld maintenance and cure on the genuine but misguided belief that the injury was incurable, then the seaman would be deprived of their rightful and necessary remedy.[39] Conversely, if a cautious shipowner paid maintenance and cure for an ailment that was later determined to have been incurable from the start, a seaman might be forced to repay the shipowner.[40] To avoid uncertainty and unnecessary complexity, the Court held that an ailment should be considered "permanent" when so declared by a medical professional.[41]

While the *Vella* decision articulated the duration of a shipowner's obligation, it did not define the size of that obligation.[42] Until the 1980s, the "standard figure" for maintenance payments was $8 per day.[43] In *Harper v. Zapata Off-Shore Co.*, the Fifth Circuit declared that this rate was "unquestionably a low maintenance payment" that had been "substantially eroded" by a string of contemporary decisions.[44] While the Court did not declare $8 per day improper as a matter of law, it explained that a "seaman's own testimony as to his expenses is competent, probative evidence" of the maintenance owed.[45] Though the plaintiff provided no testimony as to his actual food expenses, he did testify that the shipowner paid a $20 per day food allowance while ashore. In lieu of evidence

34. 421 U.S. 1, 2, 1975 A.M.C. 563 (1975).
35. *Id.*
36. *Id.*
37. *Id.* at 2-3.
38. *Id.* at 4.
39. *Id.*
40. *Id.*
41. *Id.*
42. *See id.*
43. 741 F.2d 87, 91, 1985 A.M.C. 979 (5th Cir. 1984).
44. *Id.*
45. *Id.*

proving his actual expenses, the court decided that $20 per day was the correct maintenance rate.[46]

C. A Decision at Hazard—Compensatory and Punitive Damages for Withholding Maintenance and Cure

An employer who withholds maintenance and cure payments does so at their own peril, possibly risking compensatory and punitive damages.[47] In *Morales v. Garijak, Inc.*, the Fifth Circuit attempted to articulate the standard for compensatory and punitive damages by stating that an employer who "unreasonably rejects" a maintenance and cure claim is liable for compensatory damages, but an employer who has been unreasonable *and* "egregiously at fault" becomes "liable for punitive damages and attorney's fees."[48] The *Morales* court described liability as an "escalating scale," and divided shipowners into three categories: (1) those who reasonably, but incorrectly, withhold maintenance and cure, (2) those who withhold maintenance and cure without a reasonable defense, and (3) those who withhold maintenance and cure without a reasonable defense *and* display a callousness and indifference to the seaman's plight.[49] While the first category of shipowner is liable only for maintenance and cure, the second is also liable for compensatory damages.[50] Finally, the third category of shipowner is liable for maintenance and cure, compensatory damages, punitive damages, and attorney's fees.[51]

In *Atlantic Sounding Co. v. Townsend,* the Court held that punitive damages were available when an employer's disregard of their maintenance and cure obligation is "willful and wanton".[52] Townsend, a crewman aboard a tugboat, had fallen on the deck of the vessel and injured his arm and shoulder.[53] Atlantic Sounding, the tug's owner, advised Townsend that it would not provide maintenance and cure.[54] When Atlantic Sounding filed for declaratory relief, Townsend brought a

46. *Id.* at 91, 93.
47. *See, e.g.* Morales v. Garijak, Inc., 829 F.2d 1355, 1358, 1988 AMC 1075 (5th Cir. 1987).
48. 829 F.2d 1355, 1358, 1988 A.M.C. 1075 (5th Cir. 1987).
49. *Id.*
50. *Id.*
51. *Id.*
52. 557 U.S. 404, 424 (2009).
53. *Id.* at 407.
54. *Id.*

counterclaim that sought punitive damages for maintenance and cure.[55] Eventually, the question reached the Supreme Court.[56]

The Court ruled that nothing prevented a plaintiff from seeking punitive damages for failure to pay maintenance and cure.[57] The Court noted that punitive damages have historically been available for maritime claims—including those for maintenance and cure—and Congress had not enacted any legislation to the contrary.[58] However, while the Court held that "willful and wanton disregard" of the duty to pay maintenance and cure created an action for punitive damages, it offered no example of what sort of behavior was "willful and wanton."[59]

III. COURT'S DECISION

In the noted case, the Court found that Signet owed Moran (1) unearned wages for the entire twenty-eight-day hitch, (2) maintenance and cure for his foot and ankle injuries, and (3) mileage payments for his travel to medical providers.[60] Conversely, the Court found that Signet was not responsible for Moran's cure claims arising from his back and shoulder pain because those injuries were not attributed to his fall.[61] The Court also declined to assign compensatory or punitive damages for Signet's initial refusal to pay maintenance and cure.[62]

The Court began by addressing Moran's claim for unpaid wages.[63] Given that Moran's daily wage was $575, and he was entitled to an additional $200 for travel, the Court decided that Signet owed him $16,300.[64] While Moran *would have* been entitled to additional pay for transporting certain liquid cargo, the Court noted that the *M/V Signet Puritan* did not actually push any such cargo, so Moran was not entitled to the higher rate.[65]

Next, the Court addressed Moran's maintenance claim.[66] Moran testified that he spent $150 per week on food for himself and his brother; the Court decided that $75 per week was a reasonable maintenance

55. *Id.* at 408.
56. *Id.* at 408
57. *Id.* at 412.
58. *Id.* at 415.
59. *Id.* at 424.
60. Moran v. Signet Mar. Corp., No. H-21-4214, 2023 WL 2971768 at *5-11, 2023 AMC 200 (S.D. Tex. Apr. 17, 2023).
61. Id. at *5.
62. *Id.* at *7.
63. *Id.* at *3.
64. *Id.*
65. *Id.*
66. *Id.* at *6.

amount for just Moran's groceries.[67] The Court declined Signet's invitation to halve Moran's lodging expenses to reflect his relocation to his brother's home after a hurricane damaged his home and similarly rejected Moran's requested maintenance for internet and cell-phone service.[68]

The Court next addressed Moran's cure claim.[69] As a preliminary matter, the Court decided which injuries were subject to cure benefits.[70] The parties agreed that, given the jury's decision, Moran was entitled to cure for his foot and ankle injuries.[71] But the parties disputed whether Moran's back and shoulder injuries—which went unreported for several months after the accident—rated as cure benefits.[72] Relying upon the testimony of Moran's medical providers and Moran's own tardiness in reporting the alleged injuries, the Court determined Moran was not entitled to cure for these injuries because they were not attributable to the fall.[73]

The Court next determined when Moran reached Maximum Medical Improvement (MMI).[74] The Court first discussed Moran's own testimony where he confessed to having walked extensively during a two-week vacation to New Orleans, a days-long trip to Universal Studios, and a two-day strawberry festival.[75] These trips took place around March of 2022.[76] Next, the Court addressed the testimony of Dr. Bloome, an orthopedic surgeon, on the matter.[77] Dr. Bloome testified that Moran's ankle had "healed" before his July 15 examination.[78] Recognizing that any ambiguity in the date of MMI must be resolved in favor of the seaman, the Court decided that Moran's ability to walk for long periods was simply not enough to prove MMI, so Moran was entitled to cure through July 15.[79]

The Court then addressed Moran's claim for compensatory and punitive damages. At summary judgment, the Court had held that Signet's decision to withhold maintenance and cure pending the jury's decision

67. *Id.* at *3.
68. *Id.* at *3-4.
69. *Id.* at *7.
70. *Id.* at *4-5.
71. *See id*. at *4.
72. *Id.*
73. *Id.*
74. *Id.* at *9.
75. *Id.* at *5.
76. *Id.*
77. *Id.*
78. *Id.* at *5-6.
79. *Id.*

was reasonable "given the disputes over whether the injury was in the service of the vessel."[80] "[S]ubsequent events [did] not undermine confidence in that decision."[81] The Court briefly addressed the reasonability of Signet's decision not to inspect the scene of the accident or review doctors' statements about injuries.[82] The Court decided that neither the condition of the parking lot nor the severity of Moran's injuries were germane to the subject of liability; accordingly, the reasonability of Signet's refusal to pay was unaffected by its refusal to investigate either subject.[83]

Finally, the Court decided that Signet was not entitled to use the MetLife long-term disability benefits to offset its maintenance and cure obligations.[84] Given that the MetLife disability plan covered non-work injuries, which would not create liability for Signet, the Court held that the plan was not primarily intended to indemnify Signet from liability.[85] Accordingly, the Court held that payments from the plan could not be used to offset maintenance and cure payments.[86]

III. ANALYSIS

The Court's decision in *Signet* illustrates the inherent difficulties in deciding actions for maintenance and cure. Even without being forced to decide whether Moran was "in the service of a Signet vessel," the Court had to make several difficult determinations.[87] While the Court deftly maneuvered through the issues of offset, MMI, prejudgment interest, and the rote calculations for maintenance, the Court seemed to fall short on its analysis of whether to award compensatory or punitive damages.

Quizzically, the Court held fast its early decision regarding compensatory and punitive damages but maneuvered to an entirely separate line of reasoning.[88] The Court's ruling on the Motion for Summary Judgment essentially held that Signet's failure to pay was not willful because Signet lacked notice that Moran sought maintenance and cure until December 17, only four days before the lawsuit.[89] However, in

80. *Id.* at *7.
81. *Id.*
82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.*
86. *Id.*
87. *See id.* at *5.
88. *Id.* at *11-13.
89. Moran v. Signet Mar. Corp., No. CIV.A.4:21-cv-04214, 2022 WL 3140500, at *3-4, 2022 A.M.C. 243 (S.D. Tex. Aug. 5, 2022).

its final decision, the Court admits that Moran sent Signet a November 5 demand letter for maintenance and cure.[90] Without acknowledging that the factual underpinnings of their earlier decision regarding summary judgment had drastically changed, the Court bluntly stated that "subsequent events [did] not undermine confidence in that decision."[91]

It appears that the Court, looking unkindly at Moran's "lagniappe" injuries, decided that the captain had a general credibility issue. The context here is particularly unflattering; Captain Moran's initial injury was a broken ankle, and he reported no other injuries until litigation was being pursued in earnest.[92] Moran's decision to wait several months to mention his back and shoulder injuries is suspicious, and his walking vacations in New Orleans and Florida seem to have done him no favors in the eyes of the Court.

However, Moran's lack of credibility does not bolster Signet's own. The Court's decision on the Motion for Summary Judgment—that Signet's failure to pay was not "willful" because they did not know Moran sought maintenance and cure—is critically undermined by the existence of the November 5 demand letter. By the Court's record, on November 5, 2021, Signet was aware that (1) Captain Moran had been injured after reporting for his twenty-eight-day hitch, (2) this injury resulted in a loss of work and required medical attention, and (3) Moran sought maintenance and cure.[93] At the moment of the letter's receipt, Signet's failure to pay became a willful decision to deny Moran's claim.

Whether this decision to withhold payments was reasonable was a critical issue that appears to have been given short shrift. While deciding the Motion for Summary Judgment, the Court acknowledged that Moran had produced evidence that he was "on the clock" when he fell, that he was obligated to return if needed, and that he was also intending to buy groceries for the crew.[94] Since the Court ultimately did not decide the issue of whether Moran was in service of the vessel, it never fully settled the underlying factual disputes about the circumstances of Moran's fall.[95] Determining whether an employer has unreasonably rejected maintenance and cure for an employee's injury is inextricable from relevant factual context of that injury. Without adequately addressing these facts, the Court's decision on whether to award compensatory and punitive damages rings hollow.

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90. *Signet*, 2023 WL 2971768 at *3.
91. *Id.* at *12.
92. *Id.* at *2-5.
93. *Id.* at *1.
94. *Signet*, 2022 WL 3140500, at *4.
95. *See Signet*, 2023 WL 2971768, at *12.

IV. CONCLUSION

Ultimately, the Court's decision in *Signet* is something of a spotted apple. The Court's cryptic decision on whether to award Moran compensatory and punitive damages is a black eye on an otherwise well-explained decision. Both the Court's decision and the Court's ruling on Signet's Motion for Summary Judgment—which foreclosed the possibility of compensatory and punitive damages—have been appealed to the United States Court of Appeals for the Fifth Circuit, and time will tell if they withstand review.

Mitchell Kent MacEachern*

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