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Hall and Boats: The Ninth Circuit Adopts the *Hall v. Noble Drilling* Framework for Pretrial Maintenance and Cure Claims

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I. OVERVIEW

After being injured onboard the vessel *M/V Tehani*, Chad Barnes became homeless, was unable to work, and was deprived of the maritime remedy of maintenance and cure.¹ Barnes was employed by Sea Hawaii Rafting, L.L.C. (SHR), for six years as a captain and crewmember of the *Tehani*, which took passengers on snorkeling and sightseeing tours along the Kona coast in Hawaii.² One night, while Barnes was helping to launch the vessel before an expedition, the outboard motor exploded, striking Barnes and ejecting him from the vessel. Barnes sustained serious injuries as a result of the accident and was unable to work, swim, or drive a vehicle.³ Due to his inability to work, Barnes now survives on \$300 a month in disability income from the State of Hawaii. Following the accident, a Coast Guard investigation determined that the explosion was caused by a missing screw, which allowed fuel to leak into the bilge where the vapors from the fuel ignited.⁴

Given the investigation’s results, Barnes filed a verified complaint against SHR, the vessel owner, and the *Tehani* alleging unseaworthiness, maintenance and cure, Jones Act negligence, damages, and attorney’s fees.⁵ Barnes moved for summary judgment on the maintenance and cure

1. Barnes v. Sea Haw. Rafting, L.L.C., 889 F.3d 517, 536, 2018 AMC 939, 961 (9th Cir. 2018).

2. *Id.* at 524-25, 2018 AMC at 943.

3. *Id.* at 525, 2018 AMC at 943.

4. *Id.*

5. *Id.*

issue, and the district court granted the motion in part.⁶ The court held that Barnes had in fact been injured on the vessel; however, it could not award maintenance and cure based on actual costs because Barnes had only shown his actual food and lodging cost, not the reasonable costs for his locality.⁷ Barnes subsequently filed an unverified amended complaint, adding a claim for negligence per se.⁸ While these actions proceeded in the district court, SHR and the vessel owner filed for bankruptcy reorganization. In accordance with the automatic bankruptcy stay, the district court halted all proceedings against SHR, the vessel owner, and the *Tehani*. The bankruptcy trustee argued that the unverified amended complaint's failure to invoke jurisdiction had divested the district court of *in rem* jurisdiction over the *Tehani*.⁹ Consequently, the district court dismissed the *Tehani* from the suit. Barnes appealed the district court's order, and while the appeal was pending, the bankruptcy trustee executed the sale of the *Tehani* and her trailer to Henry's new company for \$35,000.¹⁰ The United States Court of Appeals for the Ninth Circuit held that the summary judgment standard was appropriate for a pretrial maintenance and cure claim and adopted a burden-shifting framework for plaintiffs. *Barnes v. Sea Hawaii Rafting, L.L.C.*, 889 F.3d 517, 538-39, 2018 AMC 939, 965 (9th Cir. 2018).

II. BACKGROUND

The general maritime law remedy of maintenance and cure is often a crucial means of support for injured seamen.¹¹ Due to its necessity, seamen will frequently file a motion to compel a maintenance and cure award prior to trial.¹² Courts have utilized a variety of standards for ruling on pretrial motions for maintenance and cure.¹³ Furthermore, federal courts do not have a universal evidentiary framework for determining the appropriate maintenance and cure rates.¹⁴ To develop an appropriate

6. *Id.*, 2018 AMC at 944.

7. *Id.*

8. *Id.* at 526, 2018 AMC at 945.

9. *Id.*, 2018 AMC at 946.

10. *Id.* at 527, 2018 AMC at 947.

11. *See Block Island Fishing, Inc. v. Rogers*, 844 F.3d 358, 360, 2017 AMC 110, 113 (1st Cir. 2016).

12. *See Manderson v. Chet Morrison Contractors, Inc.*, 666 F.3d 373, 376, 2012 AMC 573, 575 (5th Cir. 2012).

13. *Best v. Pasha Haw. Transp. Lines, L.L.C.*, No. 06-00634 DAE-KSC, 2008 WL 1968334, at *1, 2008 U.S. Dist. LEXIS 37149, at *3-7 (D. Haw. May 6, 2008).

14. *Compare Gardiner v. Sea-Land Serv., Inc.*, 786 F.2d 943, 946, 1986 AMC 1521, 1524 (9th Cir. 1986) (discussing the rate of maintenance and cure as that which a seaman would receive

approach to pretrial claims, courts have looked to the policy underlying the remedy of maintenance and cure.¹⁵

A. The History of Maintenance and Cure

Maintenance and cure is a remedy available to seamen who are injured or become ill “while in the service of [a] ship.”¹⁶ Not only is a seaman’s employer liable, but the vessel itself is also liable *in rem* to a seaman for maintenance and cure.¹⁷ “Maintenance” is the amount of money that a seaman is entitled to for living expenses during recovery, while “cure” is the medical expenses that the seaman incurred.¹⁸ The right to the remedy is based on neither fault nor negligence, but whether the seaman was injured while in service of the vessel.¹⁹

The policy basis behind maintenance and cure rests on the principle that seamen have historically been considered “wards of the admiralty.”²⁰ Meaning that through their occupation, seamen are exposed to perils and illnesses, which warrants protection by the court.²¹ In requiring that a vessel indemnify seamen for injury or illness, the court fostered both the prevention of injury and illness and a “speedy recovery” for seamen.²² Further, this protection encouraged seamen to continue to engage in dangerous voyages.²³

Admiralty procedure is designed to resolve a claim for maintenance and cure quickly, ensuring that seamen have access to the money necessary for their medical and living expenses.²⁴ Seamen are in a “preferred position” in settling claims and are afforded rights that a non-seamen claimant would not have.²⁵ The remedy is fashioned to be simple and easily administered, with “few exceptions or conditions to stir contentions, cause delays, and invite litigations.”²⁶

onboard a ship), with *Hall v. Noble Drilling, Inc.*, 242 F.3d 582, 588-91, 2001 AMC 1099, 1105-08 (5th Cir. 2001) (holding that seamen are entitled to actual expense and reasonable cost of living).

15. See *Hall*, 242 F.3d at 586, 2001 AMC at 1101-02.

16. ROBERT FORCE, ADMIRALTY AND MARITIME LAW 91 (Kris Markarian ed., 2d ed. 2013).

17. *Id.*

18. *Id.*

19. *Id.* at 91-92.

20. *Harden v. Gordon*, 11 F. Cas. 480, 485, 2000 AMC 893, 903 (C.C.D. Me. 1823) (No. 6047).

21. *Id.*

22. See *id.* at 483, 2000 AMC at 899.

23. *Id.*

24. See *Cont’l Grain Co. v. The Fbl*-585, 364 U.S. 19, 25, 1961 AMC 1, 5 (1960); *Farrell v. United States*, 336 U.S. 511, 516, 1949 AMC 613, 617 (1949).

25. 29 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE § 707.01[12] (3d ed. 2017).

26. *Farrell*, 336 U.S. at 516, 1949 AMC at 617.

B. Maintenance and Cure at the Pretrial Stage

The district courts in the Ninth Circuit have historically been unable to agree on the appropriate standard to apply to pretrial maintenance and cure claims.²⁷ The question facing the courts has been whether to apply the summary judgment standard or a less stringent standard, more akin to admiralty procedure.²⁸ Some district courts have been reluctant to apply the summary judgment standard for fear that it would frustrate the simplicity of a seaman's maintenance and cure claim.²⁹ Other district courts have determined that a motion for maintenance and cure can be adequately adjudicated by the summary judgment standard.³⁰ The application of each of these standards produces a disparate range of outcomes for a plaintiff's pretrial motion.³¹ The application of the summary judgment standard has led courts to deny a pretrial motion to compel maintenance and cure due to disputed facts.³² Alternatively, the use of admiralty procedure has resulted in courts granting a pretrial motion for maintenance and cure where it would have been denied under the summary judgment standard.³³

Motions for summary judgment are evaluated by "rigid standards."³⁴ Rule 56 of the Federal Rules of Civil Procedure allows a party to bring a motion for summary judgment on a claim prior to trial.³⁵ To prevail on a motion for summary judgment there can be "no genuine dispute as to any material fact."³⁶ At this stage, the nonmovant's evidence is believed, and inferences are "drawn in his favor."³⁷ The summary judgment standard is a "heavy burden" for a plaintiff.³⁸ This standard requires courts to proceed with "caution in granting summary judgment."³⁹

27. See *Best v. Pasha Haw. Transp. Lines, L.L.C.*, No. 06-00634 DAE-KSC, 2008 WL 1968334, at *1, 2008 U.S. Dist. LEXIS 37149, at *3-7 (D. Haw. May 6, 2008).

28. *Id.*

29. See *Connors v. Iqueque U.S. L.L.C.*, 2005 AMC 2154, 2155 (W.D. Wash. 2005); *Boyden v. Am. Seafood Co.*, 2000 AMC 1512, 1514 (W.D. Wash. 2000).

30. See *Blake v. Cairns*, 2005 AMC 80, 81 (N.D. Cal. 2004); *Guerra v. Arctic Storm, Inc.*, 2004 AMC 2319, 2320-22 (W.D. Wash. 2004).

31. Compare *Connors*, 2005 AMC at 2157-58 (affirming summary judgment on maintenance and cure claim), with *Guerra*, 2004 AMC at 2322 (denying summary judgment on maintenance and cure claim).

32. See *Guerra*, 2004 AMC at 2322.

33. See *Connors*, 2005 AMC at 2157-58.

34. *Id.* at 2156.

35. FED. R. CIV. P. 56(a).

36. *Id.*

37. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

38. *Ambat v. City & Cty. of S.F.*, 757 F.3d 1017, 1031 (9th Cir. 2014).

39. *Anderson*, 477 U.S. at 255.

The summary judgment standard is vastly different from the general maritime law approach to administering maintenance and cure.⁴⁰ Instead of the rigorous standard applied in summary judgment, courts sitting in admiralty look “to do justice with slight regard to formal matters.”⁴¹ Under this approach, inferences are drawn in favor of the seaman, which allows for the fast and efficient resolution of a seaman’s claims.⁴² Understandably, these contrasting standards have caused courts to proceed with caution when resolving a pretrial claim for maintenance and cure.⁴³

Without guidance from either the United States Supreme Court or the Ninth Circuit, district courts in the Ninth Circuit have been required to determine the availability of pretrial maintenance and cure as they see fit.⁴⁴ This has led to a range of different outcomes for plaintiffs seeking maintenance and cure in the Ninth Circuit.⁴⁵ The Ninth Circuit has suggested (albeit in dicta) that it would apply a more liberal approach than the strict summary judgment standard.⁴⁶ Further, while the Ninth Circuit has upheld the denial of a summary judgment motion for maintenance and cure, it did not address the propriety of the procedure.⁴⁷

Outside of the Ninth Circuit, several circuits have held that summary judgment motions are a valid pretrial procedure for seeking maintenance and cure.⁴⁸ Other jurisdictions have employed a wide range of standards for evaluating maintenance and cure motions.⁴⁹ Further, courts have more affirmatively held that “other than a motion for summary judgment, we

40. See *Vella v. Ford Motor Co.*, 421 U.S. 1, 4 (1975) (holding that the administration of maintenance and cure should be “easy and ready”).

41. *Point Landing, Inc. v. Ala. Dry Dock & Shipbuilding Co.*, 261 F.2d 861, 866, 1959 AMC 148, 155 (5th Cir. 1958).

42. See *Vaughn v. Atkinson*, 369 U.S. 527, 532, 1962 AMC 1131, 1135 (1962).

43. See *Connors v. Iqueque U.S. L.L.C.*, 2005 AMC 2154, 2155 (W.D. Wash. 2005).

44. See *id.* But see *Robb v. Jantran, Inc.*, 2016 AMC 1643 (N.D. Miss. 2016) (distinguishing from *Connors*).

45. Compare *Connors*, 2005 AMC at 2157-58 (holding that plaintiff was entitled to maintenance and cure without meeting summary judgment standard), with *Blake v. Cairns*, 2005 AMC 80, 81 (N.D. Cal. 2004) (denying plaintiff’s motion for maintenance and cure because issue of fact remained).

46. See *Miles v. Am. Seafood Co.*, 197 F.3d 1032, 1034, 2000 AMC 757, 759 (9th Cir. 1999).

47. See *Glynn v. Roy Al Boat Mgmt. Corp.*, 57 F.3d 1495, 1505-06, 1995 AMC 2022, 2037 (9th Cir. 1995).

48. See *Messier v. Bouchard Transp.*, 688 F.3d 78, 88-89, 2012 AMC 2370, 2385 (2d Cir. 2012); *Pelotto v. L&N Towing Co.*, 604 F.2d 396, 402, 1981 AMC 1047, 1054 (5th Cir. 1979).

49. See, e.g., *McNeil v. Jantran, Inc.*, 258 F. Supp. 2d 926, 930, 2003 AMC 689, 691-92 (W.D. Ark. 2003) (holding that the standard is less strict than summary judgment).

are aware of no procedure for obtaining pre-trial judgment on the merits of a [maintenance and cure] claim.”⁵⁰

C. *Burden-Shifting Framework for Determining Maintenance and Cure Amount*

While the right of maintenance and cure for a seaman is well established, the framework for determining the proper amount of a maintenance and cure award is still evolving.⁵¹ For example, in *Incandela v. American Dredging Co.*, the United States Court of Appeals for the Second Circuit established a burden-shifting framework for determining the amount of a maintenance and cure award.⁵² The court held that the seaman establishes a prima facie case of his maintenance and cure rate when he proves his actual expenditures.⁵³ Once this prima facie case is established, the burden then shifts to the defendant to prove that the expenses are unreasonable.⁵⁴ In *Incandela*, the defendant failed to provide rebuttal evidence that the maintenance and cure rate was unreasonable, and the court thus determined that the plaintiff was entitled to the amount of their actual expenses.⁵⁵ This was a departure from the lower court’s holding that a seaman’s actual expenses were insufficient evidence to prove the rate of maintenance and cure.⁵⁶

The United States Court of Appeals for the Fifth Circuit further elaborated on the Second Circuit’s framework for determining the rate of maintenance and cure in *Hall v. Noble Drilling, Inc.*⁵⁷ The court held that a plaintiff must put forth evidence that is sufficient to serve as a “basis for the court to estimate his actual costs.”⁵⁸ Once a seaman has provided some evidence, the court then begins the process of determining the maintenance and cure award.⁵⁹ In *Hall*, the Fifth Circuit outlined three steps involved in determining the maintenance and cure rate.⁶⁰ First, a court has to estimate both the seaman’s actual cost of food and lodging and the reasonable cost of food and lodging in the area where the seaman

50. *Id.*

51. *See, e.g., Hall v. Noble Drilling, Inc.*, 242 F.3d 582, 586-87, 2001 AMC 1099, 1102-05 (5th Cir. 2001).

52. 659 F.2d 11, 14, 1981 AMC 2401, 2405 (2d Cir. 1981).

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. 242 F.3d 582, 588-91, 2001 AMC 1099, 1105-08 (5th Cir. 2001).

58. *Id.* at 590, 2001 AMC at 1107-08.

59. *See id.*, 2001 AMC at 1108.

60. *See id.*

is located.⁶¹ If the seaman does not present evidence of what the reasonable cost is for the locality, a court can make a judicial determination of the amount.⁶² Second, a court should compare the seaman's actual cost of living to the reasonable cost of living.⁶³ Generally, seamen are entitled to their actual expenses up to the reasonable rate of expenses for the locality.⁶⁴ Third, if the court determines that a seaman's actual expenses were insufficient, the seaman is entitled to an increase in expenses up to the amount of reasonable expenses for the locality.⁶⁵ This framework accounted for the simple nature of a maintenance and cure claim and adopted a "feather light" evidentiary burden for proving expenses.⁶⁶

III. COURT'S DECISION

In the noted case, the Ninth Circuit ruled on two issues of first impressions for the court.⁶⁷ The court held that a pretrial maintenance and cure claim should be evaluated by the summary judgment standard, and it further adopted a burden-shifting framework for determining the amount of a maintenance and cure award.⁶⁸ Additionally, the court decided several other issues. First, the court held that it did not have jurisdiction to consider the proper amount of maintenance and cure for Barnes.⁶⁹ Second, the court held that the district court did have *in rem* jurisdiction over the *Tehani*.⁷⁰ Third, the court held that Barnes's failure to verify the amended complaint did not divest the district court of *in rem* jurisdiction.⁷¹ Fourth, the court concluded that the bankruptcy court did not have jurisdiction to dispose of the maritime liens.⁷² Finally, the court held that mandamus relief was warranted to award Barnes maintenance and cure.⁷³

First, the court determined that it did not have jurisdiction to review the denial of Barnes's summary judgment motion as to the maintenance

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.* at 588, 2001 AMC at 1105.

67. *Barnes v. Sea Haw. Rafting, L.L.C.*, 889 F.3d 517, 537, 2018 AMC 939, 963 (9th Cir. 2018).

68. *Id.* at 539-41, 2018 AMC at 965-69.

69. *Id.* at 528, 2018 AMC at 949.

70. *Id.* at 530, 2018 AMC at 952.

71. *Id.* at 532, 2018 AMC at 955.

72. *Id.*

73. *Id.* at 543, 2018 AMC at 972.

and cure amount.⁷⁴ A denial of summary judgment is not a final judgment and thus only appealable in select circumstances.⁷⁵ However, the court held that when there is no appellate jurisdiction, it could treat the appeal “as a petition for a writ of mandamus” and concluded that mandamus relief was warranted in this case.⁷⁶

Second, the court held that the district court possessed *in rem* jurisdiction over the *Tehani*.⁷⁷ To establish *in rem* jurisdiction, a plaintiff must file a verified complaint that details the vessel “with reasonable particularity” and declares that the vessel is (or will be) within the geographic jurisdiction of the court when the action commences.⁷⁸ When a plaintiff has met these conditions, the district court then issues a warrant for the arrest of the vessel.⁷⁹ Once the warrant is successfully served, “jurisdiction [i]s complete.”⁸⁰ Barnes’s complaint met all prerequisites for *in rem* jurisdiction, but he did not seek to have the vessel arrested.⁸¹ The court explained that *in rem* jurisdiction can still vest even without seizure of the vessel because a vessel waives any objection to *in rem* jurisdiction by appearing in an action and failing to raise a jurisdictional defense.⁸² Here, after the defendants were served, they actively participated in the litigation without raising an objection to jurisdiction.⁸³ The court determined that even without the seizure of the vessel, the defendants allowed *in rem* jurisdiction over the *Tehani* to vest by “appearing in the action” and failing to raise a jurisdictional defense.⁸⁴ Thus, the district court possessed *in rem* jurisdiction over the *Tehani*.⁸⁵

Third, the court found that Barnes’s failure to verify the complaint after it was amended did not deprive the district court of *in rem* jurisdiction.⁸⁶ Generally, an amended complaint only supersedes the

74. *Id.*

75. *See id.* at 528-29, 2018 AMC at 949 (citing *Thomas v. Dillard*, 818 F.3d 864, 874 (9th Cir. 2016)).

76. *Id.* at 529, 2018 AMC at 949 (quoting *Miller v. Gammie*, 335 F.3d 889, 895 (9th Cir. 2003)).

77. *Id.* at 530, 2018 AMC at 952.

78. *Id.* at 529, 2018 AMC at 950.

79. *Id.*

80. *Id.* (quoting *Ventura Packers, Inc. v. F/V Jeanine Kathleen*, 424 F.3d 852, 858, 2005 AMC 2113, 2119 (9th Cir. 2005)).

81. *Id.* at 530, 2018 AMC at 951.

82. *Id.* at 529-30, 2018 AMC at 950-52.

83. *Id.* at 530, 2018 AMC at 951-52.

84. *Id.*, 2018 AMC at 951 (quoting *United States v. Republic Marine, Inc.*, 829 F.2d 1399, 1402, 1988 AMC 2507, 2510-11 (7th Cir. 1987)).

85. *Id.* at 530, 2018 AMC at 952.

86. *Id.* at 531, 2018 AMC at 952.

original complaint in regard to its substance, not its procedural effect.⁸⁷ The court analogized this to the relation back doctrine, where a timely-filed complaint is not rendered untimely when amended after the statute of limitations has passed. Furthermore, the court noted that the purpose of verifying a complaint is to give the vessel owner notice of the vessel's arrest.⁸⁸ Once the owner has been notified, there is no further purpose for verification. Thus, the court held that the failure to verify the amended complaint when the original complaint was previously verified did not affect the district court's *in rem* jurisdiction.⁸⁹

Fourth, the court found that the bankruptcy court did not have jurisdiction to “dispose of Barnes’s maritime lien.”⁹⁰ Following its own precedent set in *United States v. ZP Chandon*, the court held that Congress would not have silently overruled the “sacred liens” of admiralty, and therefore the automatic bankruptcy stay did not apply to the admiralty liens.⁹¹ The court noted that Congress did not reference maritime law in the Bankruptcy Act.⁹² Furthermore, the court held that the bankruptcy court lacked jurisdiction over the *Tehani* because the district court already possessed jurisdiction over the vessel.⁹³ The unique aspects of maritime liens require that they only be extinguished through the application of admiralty law. The court reasoned that when a maritime lien attaches to property, it can then only be foreclosed by an admiralty court with *in rem* jurisdiction.⁹⁴ Thus, the bankruptcy court lacked the proper jurisdiction to foreclose Barnes’s maritime liens.⁹⁵

Finally, the court held that mandamus relief was warranted and directed the district court to award Barnes maintenance and cure.⁹⁶ The court applied a five-factor test that it developed in *Bauman v. United States District Court* to determine that mandamus relief was warranted.⁹⁷ First, the court determined that Barnes had no other adequate means of relief

87. *Id.*, 2018 AMC at 953.

88. *Id.* at 531-32, 2018 AMC at 954.

89. *Id.* at 532, 2018 AMC at 954.

90. *Id.*

91. *Id.* at 533, 2018 AMC at 956 (citing *United States v. ZP Chandon*, 889 F.2d 233, 1990 AMC 316 (9th Cir. 1989)).

92. *Id.*

93. *Id.* (“[T]he court which first obtains jurisdiction is entitled to retain it.” (quoting *Moran v. Sturges*, 154 U.S. 256, 283-84 (1894))).

94. *Id.*

95. *Id.*

96. *Id.* at 542, 2018 AMC at 970-71.

97. *Id.* at 535, 2018 AMC at 960 (citing *Bauman v. U.S. Dist. Court*, 557 F.2d 650, 654-55 (9th Cir. 1977)).

aside from a writ of mandamus.⁹⁸ Second, the court found that the swift resolution that is intended for a maritime lien combined with Barnes's precarious situation would result in damage to the petitioner if mandamus were not granted.⁹⁹ The court's findings for both of these factors supported granting Barnes mandamus relief.

Within the third prong, the court settled the two issues of first impression.¹⁰⁰ Here, the court held that the district court clearly erred in denying Barnes maintenance and cure in his pretrial motion.¹⁰¹ The court analyzed both the summary judgment and admiralty approach to adjudicating pretrial maintenance and cure claims. The strict summary judgment standard requires that there be "no genuine dispute as to any material fact."¹⁰² Conversely, the ease of the admiralty approach does "justice with slight regard to formal matters."¹⁰³ The court held that these two approaches were not irreconcilable.¹⁰⁴ The "liberal admiralty policies" combined with the simple elements of a maintenance and cure claim should allow a seaman to be able to easily prove entitlement to maintenance and cure under the summary judgment standard.¹⁰⁵ Furthermore, the court held that the summary judgment standard is applicable not only to evaluating the entitlement to maintenance and cure but also the amount of a maintenance and cure award.¹⁰⁶ Although this presents the risk that a seaman's maintenance and cure award could be delayed due to a denial of summary judgment, this can be palliated in two ways. First, for a seaman who has proven entitlement to maintenance and cure, a court may grant an order stating that a material fact, including damages, is not genuinely in dispute and treat the fact as established.¹⁰⁷ Second, a court could sever the issue and hold an expedited trial on that issue.¹⁰⁸ Bearing these safeguards in mind, the court held that the summary judgment standard is appropriate for a pretrial motion for a maintenance and cure award.¹⁰⁹

98. *Id.* at 535-36, 2018 AMC at 960-61.

99. *Id.* at 536, 2018 AMC at 961-62.

100. *Id.* at 538, 2018 AMC at 963.

101. *Id.* at 542, 2018 AMC at 971.

102. FED. R. CIV. P. 56(a).

103. *Barnes*, 889 F.3d at 538, 2018 AMC at 964 (quoting *Cont'l Grain Co. v. The Fbl-585*, 364 U.S. 19, 25, 1961 AMC 1, 5 (1960)).

104. *Id.* at 539, 2018 AMC at 965.

105. *Id.*

106. *Id.*, 2018 AMC at 966.

107. *Id.*

108. *Id.*

109. *Id.*

Next, the court examined the district court's application of the *Hall* standard to Barnes's summary judgment motion for maintenance and cure. In the lower court proceedings, Barnes established his entitlement to maintenance and cure and put forth evidence that his actual expenses were \$68 per day.¹¹⁰ The defendants did not submit evidence to rebut this figure, and unless the court found the rate unreasonable, it should have been awarded to Barnes under the *Hall* standard.¹¹¹ However, the district court denied the motion because Barnes did not submit evidence of the "reasonable costs in the area."¹¹² The Ninth Circuit held that this was an incorrect application of the burden-shifting standard and thus clear error on the part of the district court.¹¹³ The court also found clear error in the denial of Barnes's second motion for summary judgment.¹¹⁴ On this motion, defendants produced evidence that the reasonable cost of living for the locality was between \$24 and \$34 per day. Barnes contested this and produced evidence that the reasonable rate was between \$43 and \$61 per day. The district court denied the motion, stating that the dispute regarding the reasonable rate was a genuine dispute that prevented the court from granting summary judgment.¹¹⁵ The Ninth Circuit held that this was again an incorrect application of *Hall*.¹¹⁶ Barnes was entitled to his actual expenses up to the reasonable rate, which defendants contended was between \$24 and \$34 per day.¹¹⁷ Thus, the court held, Barnes was actually entitled to a maintenance and cure award of \$34 per day.¹¹⁸

Lastly, the court held that as the adoption of *Hall* and the burden-shifting standard were issues of first impression for the court, this satisfied "the new and important problems or issues of first impression" factor.¹¹⁹ Thus, the court concluded that the five factors of the *Bauman* test supported granting mandamus relief to Barnes and directed the district court to award Barnes a maintenance and cure rate of \$34 per day.¹²⁰

110. *Id.* at 541, 2018 AMC at 969.

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*, 2018 AMC at 969-70.

115. *Id.*, 2018 AMC at 969.

116. *Id.* at 541-42, 2018 AMC at 970 ("[S]eamen are entitled to maintenance in the amount of their actual expenses on food and lodging up to the reasonable amount for their locality." (quoting *Hall v. Noble Drilling, Inc.*, 242 F.3d 582, 589, 2001 AMC 1099, 1107-08 (5th Cir. 2001))).

117. *Id.*

118. *Id.*

119. *Id.* at 542, 2018 AMC at 971 (quoting *United States v. U.S. Dist. Court*, 694 F.3d 1051, 1057 (9th Cir. 2012)).

120. *Id.* at 542-43, 2018 AMC at 971-72.

IV. ANALYSIS

The Ninth Circuit correctly adopted the summary judgment standard for maintenance and cure claims and the burden-shifting framework for determining the maintenance and cure rate. The burden-shifting framework provides a simple means for a seaman to establish a maintenance and cure rate. The court's endorsement of the summary judgment standard for adjudicating pretrial maintenance and cure claims ensures a uniform approach across the district. However, when evaluating a claim under the summary judgment standard, future courts should be cautious to heed the policy basis behind maintenance and cure.

In deciding that the summary judgment standard was appropriate for maintenance and cure claims, the court held that the simple and basic elements of a maintenance and cure claim would not present a significant burden for a seaman.¹²¹ However, the summary judgment standard is a "heavy burden" for an ordinary plaintiff to meet,¹²² and previous courts have found that seamen moving for summary judgment on a maintenance and cure claim could not meet this burden.¹²³ For a seaman who has proven entitlement to maintenance and cure, courts may be tempted to deny summary judgment due to a disputed maintenance and cure rate. This would be antithetical to the holding in *Barnes*. When evaluating a maintenance and cure claim by the summary judgment standard, courts should be mindful of the inherent simplicity of the claim and the ease with which seamen can meet their burden. Courts should not deny summary judgment to a seaman who has proven their entitlement to maintenance and cure.¹²⁴ This approach will protect a seaman's "ancient right of maintenance" while also providing a clear standard for adjudication.¹²⁵

Additionally, the court was correct in adopting the burden-shifting standard for proving the amount of a maintenance and cure claim. Simplicity and expediency are the underlying policy objectives of the remedy,¹²⁶ and the burden-shifting framework is a simple method for a seaman to present evidence to establish a maintenance and cure rate.¹²⁷ Generally, seamen are only able to present proof of their actual expense

121. *Id.* at 538-39, 2018 AMC at 965.

122. *Id.* at 538, 2018 AMC at 964 (quoting *Ambat v. City & Cty. of S.F.*, 757 F.3d 1017, 1031 (9th Cir. 2014)).

123. *See Guerra v. Arctic Storm, Inc.*, 2004 AMC 2319, 2320-22 (W.D. Wash. 2004).

124. *Barnes*, 889 F.3d at 540-41, 2018 AMC at 968.

125. *Rutherford v. Sea-Land Serv., Inc.*, 575 F. Supp. 1365, 1373, 1984 AMC 1496, 1506 (N.D. Cal. 1983).

126. *See Farrell v. United States*, 336 U.S. 511, 516, 1949 AMC 613, 617 (1949).

127. *See Yelverton v. Mobile Labs., Inc.*, 782 F.2d 555, 558 (5th Cir. 1986).

and lack the resources to offer detailed evidence.¹²⁸ This framework allows seamen to recover their actual expenses so long as they are reasonable for the locality, and if the seaman's actual expenses were inadequate, the court can award reasonable expenses.¹²⁹ Furthermore, it provides a defendant with the opportunity to rebut this evidence by showing that these expenses are unreasonable. This framework has a "feather light" evidentiary burden for the plaintiff and is compatible with both the pretrial summary judgment standard and the policy underlying the remedy of maintenance and cure.¹³⁰

V. CONCLUSION

Seamen are employed in a dangerous occupation that exposes them to the perils of the sea.¹³¹ In the unfortunate event that they are injured or become ill, seamen are entitled to recover for their maintenance and cure. In its decision, the Ninth Circuit brought clarity to the standard used to evaluate a seaman's pretrial maintenance and cure claim. Further, it endorsed a simple evidentiary burden that allows a seaman several options for establishing the maintenance and cure rate. Thus, the court correctly decided these issues of first impression.

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128. See *Hall v. Noble Drilling, Inc.*, 242 F.3d 582, 587, 2001 AMC 1099, 1103 (5th Cir. 2001).

129. *Id.* at 589-90, 2001 AMC at 1107-08.

130. See *Barnes v. Sea Haw. Rafting, L.L.C.*, 889 F.3d 517, 588, 2018 AMC 939, 1105 (9th Cir. 2018) (quoting *Yelverton*, 782 F.2d at 558).

131. See *Harden v. Gordon*, 11 F. Cas. 480, 485, 2000 AMC 893, 903 (C.C.D. Me. 1823) (No. 6047).

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