

**MANUAL OF
MODEL CIVIL
JURY INSTRUCTIONS**

**FOR THE
DISTRICT COURTS OF THE
NINTH CIRCUIT**

PREPARED BY THE
NINTH CIRCUIT
JURY INSTRUCTIONS COMMITTEE

2025 Edition

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INTRODUCTION TO 2025 PRINT EDITION

This Manual of Model Civil Jury Instructions (“Manual”) has been prepared to help judges communicate more effectively with juries.

The instructions in this Manual are models. They are not mandatory, and they must be reviewed carefully before use in a particular case. They are not a substitute for the individual research and drafting that may be required in a particular case; nor are they intended to discourage judges from using their own forms and techniques for instructing juries.

In addition to its ongoing consideration of legislative developments and appellate court decisions that may affect these model instructions, the Jury Instructions Committee (the “Committee”) welcomes suggestions from judges, court staff, and practitioners about possible revisions, additions, and deletions. After careful assessment and research, the Committee updates and revises instructions from time to time as necessary. Revisions are available online at the following website: <https://www.ce9.uscourts.gov/jury-instructions/model-civil>. The revised instructions are later compiled and published in the printed version of the Manual. The Committee strongly recommends that the online version of any instruction be consulted to ensure that the most up-to-date instruction is being considered. The Committee encourages users of this book to make suggestions for further revisions and updates. Suggestions may be submitted to juryinstructions@ce9.uscourts.gov.

This edition incorporates new and modified instructions. However, the print publication of the Manual necessarily presents only a snap-shot of an ongoing research and drafting process. Accordingly, even the most recent print edition does not necessarily represent the most up to date instructions. The entire publication and any later changes can be found online. This edition is current as to instructions approved as of September 2025.

The Committee thanks all of those members of the federal bench, bar, and legal academy, who have reviewed and commented on various parts of the book. The Committee also thanks District Judge Michael Simon for his long-term dynamic leadership of the Committee from 2012 to 2023, as well as Aejung Yoon, the Committee’s staff attorney, for her invaluable diligence and dedication to the Committee.

CAVEAT

These model jury instructions are written and organized by judges who are appointed to the Ninth Circuit Jury Instructions Committee by the Chief Circuit Judge.

The Ninth Circuit Court of Appeals does not adopt these instructions as definitive. Indeed, occasionally the correctness or incorrectness of a given instruction may be the subject of a Ninth Circuit opinion.

Ninth Circuit Jury Instructions Committee
October 2025

Note

Brackets appear throughout this manual to allow users of this book to select or insert terms most appropriate for their cases. Words that are in brackets indicate that users may select one of the bracketed options. Words that are italicized, underlined, and in brackets are not the actual words a judge would say. Rather, these bracketed words indicate that users should insert terms most appropriate for their case. If there are two consecutive brackets, users will select one of the bracketed terms within each double bracket (e.g., “the defendant [[took] [obtained by extortion]] [[property] [money] [something of value]] belonging to or in the care, custody, control, management, or possession of [*specify financial institution*]” could become: “the defendant took money belonging to or in the care, custody, control, management, or possession of ABC Bank”).

7. JONES ACT AND OTHER ADMIRALTY CLAIMS

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Introductory Comment

These instructions are for use in an action for negligence under the Jones Act, 46 U.S.C. § 30104, and under the general maritime law for unseaworthiness and for maintenance and cure. A plaintiff must be a “seaman” to recover under any of these theories, and therefore Instruction 7.1 is a threshold instruction on seaman status. Instructions 7.2-7.4 pertain to Jones Act negligence claims, Instructions 7.5-7.7 pertain to claims under the doctrine of unseaworthiness, Instructions 7.8-7.10 pertain to damages under both Jones Act negligence and unseaworthiness, and Instructions 7.11 and 7.12 pertain to claims and damages under the doctrine of maintenance and cure. While a right to trial by jury does not attach to claims for unseaworthiness or maintenance and cure standing alone, as those claims sound in admiralty, a jury may determine those claims when brought in conjunction with a Jones Act negligence claim at law to which a right to trial by jury is permitted. 1 Thomas J. Schoenbaum, *ADMIRALTY AND MARITIME LAW* § 6-25 (5th Ed. 2012).

Definitions of “crew member,” “vessel,” “in the course of employment,” and “in the service of the vessel” are not included because of the infinite variety of situations that arise. For assistance in dealing with these terms, it is preferable to refer to cases with fact patterns similar to the case under consideration. *See, e.g., Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 489-97 (2005) (discussing “vessel” under Longshore and Harbor Workers’ Compensation Act); *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995) (discussing “crew member,” and “vessel”); *Martinez v. Signature Seafoods Inc.*, 303 F.3d 1132, 1135-37 (9th Cir. 2002) (discussing “vessel in navigation”).

7.1 Seaman Status

The plaintiff [*name*] seeks recovery against the defendant [*name*] under the Jones Act for negligence. [[He] [She] [*other pronoun*] also seeks recovery under [general maritime law for unseaworthiness] [and] [maintenance and cure].] Only a “seaman” can bring these claims. The parties dispute whether or not the plaintiff [*name*] was employed as a seaman.

The plaintiff [*name*] must prove that [he] [she] [*other pronoun*] was a “seaman” to recover. To prove seaman status, the plaintiff [*name*] must prove the following elements by a preponderance of the evidence:

First, the plaintiff [*name*] contributed to the mission or operation of [a vessel] [an identifiable group of vessels] in navigation, whether underway or at anchor; and

Second, the plaintiff [*name*] had an employment-related connection to [the vessel] [an identifiable group of vessels] that was substantial in terms of both duration and nature.

The phrase “vessel in navigation” is not limited to traditional ships or boats but includes every type of watercraft or artificial contrivance used, or practically capable of being used, as a means of transportation on water.

The phrase “substantial in duration” means that the plaintiff [*name*]’s connection to [the vessel] [an identifiable group of vessels] must be more than merely sporadic, temporary, or incidental.

The phrase “substantial in nature” means that it must regularly expose [him] [her] [*other pronoun*] to the special hazards and disadvantages that are characteristic of a seaman’s work.

Comment

To recover for negligence under the Jones Act, under the doctrine of unseaworthiness, or under a claim for maintenance and cure, the plaintiff must be a “seaman” and must satisfy a two-element test. *See Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548, 554 (1997); *Chandris, Inc. v. Latsis*, 515 U.S. 347, 355 (1995); *Gizoni v. Sw. Marine Inc.*, 56 F.3d 1138, 1141 (9th Cir. 1995). The seaman inquiry is a mixed question of law and fact, and when necessary, should be submitted to the jury. *Delange v. Dutra Constr. Co.*, 183 F.3d 916, 919 (9th Cir. 1999). The Jones Act does not define the term “seaman,” and the issue of who is or is not covered by the statute has been repeatedly considered by the Supreme Court since 1991. *See Sw. Marine Inc. v. Gizoni*, 502 U.S. 81 (1991); *McDermott Int’l v. Wilander*, 498 U.S. 337 (1991). *See also Stewart v. Dutra Constr. Co.*, 543 U.S. 481 (2005); *Papai*, 520 U.S. 548; *Chandris*, 515 U.S. 347. In defining the prerequisites for Jones Act coverage, the Supreme Court has found it preferable to focus upon the essence of what it means to be a seaman and to reject detailed tests that tend to become ends in and of themselves. “The Jones Act remedy is reserved for sea-based maritime employees whose work regularly exposes them to the special hazards and disadvantages to

which they who go down to sea in ships are subjected.” *Chandris*, 515 U.S. at 369-70. In *Chandris*, the Court said the essential test for seaman status “comprises two basic elements: The worker’s duties must contribute to the function of the vessel or to the accomplishment of its mission, and the worker must have a connection to a vessel in navigation (or an identifiable group of vessels) that is substantial in terms of both its duration and its nature.” *Id.* at 376.

The Supreme Court has cautioned against using a “snapshot” test and admonishes that a plaintiff’s seaman status must be determined in the context of his or her “overall employment” with the defendant employer. *Id.* at 366-67. In the Court’s view, the total circumstances of an individual’s employment must be weighed to determine whether he or she had a sufficient relation to the navigation of vessels and the perils attendant thereon. The duration of a worker’s connection to a vessel and the nature of the worker’s activities, taken together, determine whether a maritime employee is a seaman because the ultimate inquiry is whether the worker in question is a member of the vessel’s crew or simply a land-based employee who happens to be working on the vessel at a given time. *Id.* at 369-70. The Court has also identified an appropriate rule of thumb for applying the temporal or durational requirement in the ordinary case: “A worker who spends less than about 30 percent of his time in the service of a vessel in navigation should not qualify as a seaman under the Jones Act.” *Id.* at 371.

A plaintiff may be entitled to an instruction on the fleet seaman doctrine if it has some foundation in the evidence. *Gizoni*, 56 F.3d at 1141 (“Under the fleet doctrine, one can acquire ‘seaman status’ through permanent assignment to a group of vessels under common ownership or control.”).

The Longshore and Harbor Workers’ Compensation Act (LHWCA) excludes from its coverage “a master or member of a crew of any vessel.” 33 U.S.C. § 902(3)(G). Masters and crew members are entitled to sue under the Jones Act and the doctrine of unseaworthiness. A person who is not a seaman is limited to the remedies of the LHWCA.

Revised March 2025

7.2 Jones Act Negligence Claim—Elements and Burden of Proof (46 U.S.C. § 30104)

On the plaintiff [*name*]’s Jones Act negligence claim, the plaintiff [*name*] has the burden of proving the following elements by a preponderance of the evidence:

First, the plaintiff [*name*] was a seaman;

Second, the defendant [*name*] was negligent; and

Third, the defendant [*name*]’s negligence was a cause of the injury or damage to the plaintiff [*name*].

If you find the plaintiff [*name*] has proved the elements on which [he] [she] [*other pronoun*] has the burden of proof, your verdict should be for the plaintiff [*name*]. If, on the other hand, the plaintiff [*name*] has failed to prove any of these elements, your verdict should be for the defendant [*name*].

Comment

For a discussion of the elements of a Jones Act negligence claim, see *In re Hechinger*, 890 F.2d 202, 208 (9th Cir. 1989) (“To recover under a Jones Act claim, a plaintiff has the burden of establishing by a preponderance of the evidence, negligence on the part of his employer . . . [and] that the act of negligence was a cause, however slight, of his injuries.” (quotations and citation omitted)). See also *Mohn v. Marla Marie, Inc.*, 625 F.2d 900, 901-02 (9th Cir. 1980) (distinguishing between Jones Act negligence claim and unseaworthiness claim). The Jones Act extends to a seaman the statutory rights accorded railway employees under the Federal Employers’ Liability Act (FELA), 45 U.S.C. § 51, *et seq.*, and courts may look to cases decided under FELA in construing the Jones Act. *Lies v. Farrell Lines, Inc.*, 641 F.2d 765, 770 (9th Cir. 1981). For FELA instructions, see Chapter 6 (“Federal Employers’ Liability Act”).

Revised March 2025

7.3 Jones Act Negligence Claim—Negligence Defined

Negligence under the Jones Act is the failure to use reasonable care. Reasonable care is the degree of care that reasonably prudent persons would use under like circumstances to avoid injury to themselves or others. Negligence is the doing of something that a reasonably prudent person would not do, or the failure to do something that a reasonably prudent person would do, under the circumstances.

7.4 Jones Act Negligence Claim—Causation Defined

Negligence under the Jones Act is a cause of an injury if it played any part, no matter how slight, in bringing about the injury or damage, even if the negligence operated in combination with the acts of another, or in combination with some other cause.

Comment

Even the “slightest negligence” is sufficient for a finding of liability. *See Ribitzki v. Canmar Reading & Bates, Ltd. P’ship*, 111 F.3d 658, 662 (9th Cir. 1997) (citing *Havens v. F/T Polar Mist*, 996 F.2d 215, 218 (9th Cir. 1993)). This test is often described as a “featherweight causation standard” and allows a seaman to survive summary judgment by presenting even the slightest proof of causation. *Ribitzki*, 111 F.3d at 664.

The causal requirements for Jones Act negligence and under the doctrine of unseaworthiness are different. *See Lies v. Farrell Lines*, 641 F.2d 765, 769 n.7 (9th Cir. 1981). Separate causation instructions, therefore, will be necessary when both claims for relief are asserted.

Revised March 2025

7.5 Unseaworthiness Claim—Elements and Burden of Proof

On the plaintiff [*name*]'s unseaworthiness claim, the plaintiff [*name*] has the burden of proving the following elements by a preponderance of the evidence:

First, the plaintiff [*name*] was a seaman;

Second, the [*name of vessel*] was unseaworthy; and

Third, the unseaworthy condition was a cause of an injury or damage to the plaintiff [*name*].

If you find the plaintiff [*name*] has proved all the elements on which [he] [she] [*other pronoun*] has the burden of proof, your verdict should be for the plaintiff [*name*]. If, on the other hand, the plaintiff [*name*] has failed to prove any of these elements, your verdict should be for the defendant [*name*].

Comment

“A shipowner has an absolute duty to furnish a seaworthy ship.” *Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539, 549 (1960). A seaworthy ship is one reasonably fit for its intended use. *Ribitzki v. Canmar Reading & Bates, Ltd. P’ship*, 111 F.3d 658, 664 (9th Cir. 1997); *Id.* at 550.

See also Comment to Instruction 7.6 (Unseaworthiness Defined).

Revised March 2025

7.6 Unseaworthiness—Defined

A vessel owner has a duty to provide and maintain a seaworthy vessel. [That duty cannot be delegated to anyone else.]

A vessel is seaworthy if the vessel and all of its parts and equipment are reasonably fit for their intended purpose [and it is operated by a crew reasonably adequate and competent for the work assigned].

A vessel is unseaworthy if the vessel, or any of its parts or equipment, is not reasonably fit for its intended purpose [or if its crew is not reasonably adequate or competent to perform the work assigned].

A vessel owner has a duty to provide adequate safety equipment for the vessel. However, the owner of the vessel is not required to furnish an accident-free ship. A vessel owner is not called on to have the best parts and equipment, or the finest of crews, but is required to have what is reasonably proper and suitable for its intended use, and a crew that is reasonably competent and adequate.

Comment

For a definition of a seaworthy vessel, see *Ribitzki v. Canmar Reading & Bates, Ltd. Partnership*, 111 F.3d 658, 664 (9th Cir. 1997), and *Havens v. F/T Polar Mist*, 996 F.2d 215, 217-18 (9th Cir. 1993).

A shipowner has the duty to a seaman employed on the ship to furnish a vessel and appurtenances that are reasonably fit for their use. This includes maintaining a ship's equipment in proper operating condition. The failure of a piece of equipment under proper and expected use is sufficient to establish unseaworthiness. *Lee v. Pac. Far E. Line*, 566 F.2d 65, 67 (9th Cir. 1977); *see also Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539, 550 (1960) (noting that a vessel owner has no obligation to furnish accident-free ship but rather “a duty to furnish a vessel and appurtenances reasonably fit for their intended use”).

A vessel may be unseaworthy because of “defective” crew members. *Pashby v. Universal Dredging Corp.*, 608 F.2d 1312, 1313-14 (9th Cir. 1979) (noting that violent or assaultive crew members may make vessel unseaworthy).

Revised March 2025

7.7 Unseaworthiness—Causation Defined

The definition of causation for the plaintiff's unseaworthiness claim is different from that for the Jones Act negligence claim.

Unseaworthiness is a cause of injury or damage if it was a substantial factor in bringing about injury or damage.

Comment

A different test for causation applies to an unseaworthiness claim as compared to a Jones Act negligence claim. *See Ribitzki v. Canmar Reading & Bates, Ltd. P'ship*, 111 F.3d 658, 665 (9th Cir. 1997) (causation is established for an unseaworthiness claim by showing the condition was a "substantial factor" in causing injury). When both Jones Act negligence and unseaworthiness claims exist, the court should instruct on the causal requirements for each. *See Lies v. Farrell Lines*, 641 F.2d 765, 769 n.7 (9th Cir. 1981).

7.8 Jones Act Negligence or Unseaworthiness—Damages—Proof

Comment

See Instruction 5.1 (Damages—Proof).

The collateral source rule applies in cases brought under the Jones Act. See *Folkestad v. Burlington N., Inc.*, 813 F.2d 1377, 1380 n.3 (9th Cir. 1987) (citing *Gypsum Carrier, Inc. v. Handelsman*, 307 F.2d 525 (9th Cir. 1962)).

“Maintenance and cure” is a separate general maritime law doctrine, not arising from the Jones Act or doctrine of unseaworthiness. It is not tied to the period that the plaintiff would have worked aboard ship but extends to the point of maximum cure. See Instruction 7.11 (Maintenance and Cure—Elements and Burden of Proof).

Punitive damages are not an available remedy on an unseaworthiness claim. *Dutra Grp. v. Batterton*, 588 U.S. 358, 376 (2019), *rev’g Batterton v. Dutra Grp.*, 880 F.3d 1089 (9th Cir. 2018). Nor are punitive damages available for Jones Act claims. *Evich v. Morris*, 819 F.2d 256, 258 (9th Cir. 1987), *abrogated by Dutra Grp.*, 588 U.S. 358 (citing *Kopczynski v. The Jacqueline*, 753 F.2d 555, 560-61 (9th Cir. 1984)).

Revised March 2025

7.9 Jones Act Negligence or Unseaworthiness—Plaintiff’s Negligence—Reduction of Damages

If you decide that the plaintiff [*name*] has established by a preponderance of the evidence that the plaintiff [*name*] is entitled to recover under [the Jones Act negligence claim] [[and] [or]] [the unseaworthiness claim], then you must determine whether the plaintiff [*name*]’s own negligence was a cause of the plaintiff [*name*]’s injury or damage. The defendant [*name*] has the burden of proving by a preponderance of the evidence that the plaintiff [*name*] was negligent, and that the plaintiff [*name*]’s negligence was also a cause of the plaintiff [*name*]’s injury or damage.

The plaintiff [*name*] has a duty to use the care that a reasonably prudent person would use under similar circumstances. The defendant [*name*] must prove by a preponderance of the evidence that the plaintiff [*name*]’s failure to use such care contributed in some way to bringing about the plaintiff [*name*]’s injury.

If you decide that the plaintiff [*name*] was negligent and that the plaintiff [*name*]’s negligence was a cause of the plaintiff [*name*]’s injury, you must then decide to what extent the injury was caused by the plaintiff [*name*]’s negligence. This should be fixed as a percentage—for example, 10%, 50%, 90%. The percentage of the plaintiff [*name*]’s negligence, if any, is for you to decide. You must then write that percentage on the appropriate place on the verdict form. Do not make any reduction in the amount of damages that you award to the plaintiff [*name*]. I will reduce the damages that you award by the percentage of negligence that you assign to the plaintiff [*name*].

Comment

See 46 U.S.C. § 30104 (extending common-law rights or remedies in cases of personal injury to railway employees to seaman injured in course of employment); 45 U.S.C. § 53 (stating that contributory negligence will not bar railroad employee from suing employer for tort damages).

Section 53 of the Federal Employers’ Liability Act, 45 U.S.C. § 53, which provides for a reduction in the plaintiff’s damages as a result of the plaintiff’s comparative negligence, is applicable to actions under both the Jones Act and general maritime law. See *Fuszek v. Royal King Fisheries*, 98 F.3d 514, 516-17 (9th Cir. 1996); *Kopczynski v. The Jacqueline*, 742 F.2d 555, 557-58 (9th Cir. 1984). See also *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 409 (1953) (“Exercising its traditional discretion, admiralty has developed and now follows its own fairer and more flexible rule which allows such consideration of contributory negligence in mitigation of damages as justice requires.”).

There is no controlling legal authority on the level of plaintiff’s causation required to trigger a reduction of damages for plaintiff’s negligence. See Instructions 7.4 (Jones Act Negligence Claim—Causation Defined) and 7.7 (Unseaworthiness—Causation Defined). In the only reported judicial decision the Committee could find that addressed the question directly, *R.*

Bunting v. Sun Co., 434 Pa. Super. 404, 643 A.2d 1085 (1994), a Pennsylvania state appellate court held that a reduction of damages for a plaintiff's negligence under the Jones Act is permitted when the plaintiff is shown to have played any part, no matter how slight, in bringing about the injury or damage (featherweight causation). *See also Norfolk S. Ry. Co. v. Sorrell*, 549 U.S. 158, 171 (2007) (holding that, under FELA, the same standard of causation applies to plaintiff's comparative negligence as to defendant's negligence).

Comparative negligence is not applicable if a seaman is injured as a result of a defendant's violation of Coast Guard regulations. *See MacDonald v. Kahikolu Ltd.*, 442 F.3d 1199, 1202 (9th Cir. 2006); *Fuszek.*, 98 F.3d at 517.

A seaman who follows a supervisor's urgent call to the crew for help cannot be found contributorily negligent. *Simenoff v. Hiner*, 249 F.3d 883, 890-91 (9th Cir. 2001).

Revised March 2025

7.10 Jones Act Negligence or Unseaworthiness—Plaintiff’s Compliance with Defendant’s Request or Directions

A plaintiff may not be found negligent simply because the plaintiff, upon the request or direction of the defendant, worked at a dangerous job, or in a dangerous place, or under dangerous conditions.

Comment

Use this instruction only when the plaintiff’s compliance with an employer’s request or direction is an issue. Under the “primary duty” doctrine, “a seaman-employee may not recover from his employer for injuries caused by his own failure to perform a duty imposed on him by his employment.” *Cal. Home Brands, Inc. v. Ferreira*, 871 F.2d 830, 836 (9th Cir. 1989); see also *N. Queen Inc. v. Kinnear*, 298 F.3d 1090, 1095 (9th Cir. 2002).

The primary duty rule is not applicable “where a seaman is injured by a dangerous condition that he did not create and, in the proper exercise of his employment duties, could not have controlled or eliminated.” See *Bernard v. Maersk Lines, Ltd.*, 22 F.3d 903, 907 (9th Cir. 1994).

A seaman who follows a supervisor’s urgent call to the crew for help cannot be found contributorily negligent. *Simenoff v. Hiner*, 249 F.3d 883, 890-91 (9th Cir. 2001).

7.11 Maintenance and Cure—Elements and Burden of Proof

On the plaintiff [name]'s maintenance and cure claim, the plaintiff [name] has the burden of proving each of the following elements by a preponderance of the evidence:

First, the plaintiff [name] was a seaman;

Second, the plaintiff [name] was injured or became ill while in the service of the vessel; and

Third, the amount of maintenance and cure to which the plaintiff [name] was entitled.

If you find the plaintiff [name] has proved each of the elements on which [he] [she] [*other pronoun*] has the burden of proof, your verdict should be for the plaintiff [name]. If, on the other hand, the plaintiff [name] has failed to prove any of these elements, your verdict should be for the defendant [name].

Maintenance is the reasonable cost of food, lodging and transportation to and from a medical facility. The plaintiff [name] is not entitled to maintenance while hospitalized because hospitalization includes food and lodging.

The rate of maintenance includes the cost of obtaining room and board on land. In determining this amount, you may consider the actual costs incurred by the plaintiff [name] but shall not award an amount in excess of that of a seaman living alone in the plaintiff [name]'s locality.

Cure is the cost of medical attention, including the services of physicians and nurses, as well as the cost of hospitalization, medicines, and medical apparatus.

[When the defendant [name]'s failure to provide [maintenance] [[and] [or]] [cure] worsens the plaintiff [name]'s injury, the plaintiff [name] may recover resulting damages and expenses, including pain and suffering, and additional medical expenses.]

The injury or illness need not be work-related so long as it occurs while the plaintiff [name] is in the service of the vessel. Neither maintenance nor cure may be reduced because of any negligence on the part of the plaintiff [name]. [A plaintiff [name] may not recover for maintenance [and] [or] cure when the illness or injury results from the plaintiff [name]'s own willful misbehavior.]

The plaintiff [name] is entitled to receive maintenance and cure even though he was not injured as a result of any negligence on the part of his employer or any unseaworthy condition of the vessel. The plaintiff [name] is entitled to recover maintenance and cure from the date of departure from the ship to the time of maximum cure under the circumstances. Maximum cure is the point at which no further improvement in the plaintiff [name]'s medical condition may be reasonably expected.

There can be no double recovery for the plaintiff [*name*]. If you find that the plaintiff [*name*] is entitled to an award of damages under [the Jones Act negligence claim] [the unseaworthiness claim], and if you include medical expenses in the damage award relating to either of these claims, then cure cannot be awarded for the same expenses.

Comment

See Day v. Am. Seafoods Co., 557 F.3d 1056, 1057-58 (9th Cir. 2009); *Lipscomb v. Foss Maritime Co.*, 83 F.3d 1106, 1108 (9th Cir. 1996); *Gardiner v. Sea-Land Serv.*, 786 F.2d 943, 945-46 (9th Cir. 1986); *Kopczynski v. The Jacqueline*, 742 F.2d 555, 557-58 (9th Cir. 1984).

The shipowner's duty to provide maintenance and cure arises irrespective of whether the illness or injury is suffered in the course of the seaman's employment, and negligence on the seaman's part will not relieve the shipowner of responsibility. *Vella v. Ford Motor Co.*, 421 U.S. 1, 4-5 (1975). A plaintiff may not recover for maintenance and cure when the injury or illness results from the plaintiff's own willful misbehavior. *See Omar v. Sea-Land Serv.*, 813 F.2d 986, 989-90 (9th Cir. 1987).

Only "medical expenses" would be duplicative of "cure." As the Ninth Circuit has explained, "the maintenance obligation is independent of that to compensate for lost wages and exists without regard to the fact that lost wages may be computed on the basis of employment ashore." *Crooks v. United States*, 459 F.2d 631, 635 (9th Cir. 1972); *see also Colburn v. Bunge Towing, Inc.*, 883 F.2d 372, 378 (5th Cir. 1989) ("Maintenance is neither a substitute for wages nor is it to be considered in lieu of seaman's wages, in whole or in part". . . "[A]n award of maintenance by the trial court in addition to a general damage award that includes past and future wages is proper.").

Failure to pay maintenance and/or cure when due renders the defendant liable for not only the quantum of maintenance and/or cure that was not paid but also for any resulting harm. *See Cortes v. Baltimore Insular Line, Inc.* 287 U.S. 367, 371 (1932) ("If the failure to give maintenance or cure has caused or aggravated an illness, the seaman has his right of action for the injury thus done to him; the recovery in such circumstances including not only necessary expenses, but also compensation for the hurt."). The bracketed paragraph on this point should be included only when the plaintiff is making a claim for such compensation.

A plaintiff can seek punitive damages for an employer's alleged willful and wanton disregard of its maintenance and cure obligation. *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404, 424 (2009).

Revised March 2025

7.12 Maintenance and Cure—Willful and Arbitrary Failure to Pay

The plaintiff [*name*] also contends the defendant [*name*] willfully and arbitrarily failed to pay [maintenance] [and] [cure] when it was due. On this issue, the plaintiff [*name*] must prove each of the following elements by a preponderance of the evidence:

First, the plaintiff [*name*] was entitled to [maintenance] [and] [cure];

Second, the defendant [*name*] willfully and arbitrarily failed to provide [maintenance] [and] [cure]; and

Third, the defendant [*name*]’s failure to provide [maintenance] [and] [cure] resulted in injury to the plaintiff [*name*].

If you find the plaintiff [*name*] has proved each of the elements on which [he] [she] [*other pronoun*] has the burden of proof, you should answer “yes” on the verdict form where indicated; otherwise answer “no.”

Comment

If the jury finds that the defendant willfully and arbitrarily failed to pay maintenance or cure, the plaintiff will be entitled to reasonable attorneys’ fees as determined by the court. A special interrogatory will be required. *See Kopczynski v. The Jacqueline*, 742 F.2d 555, 559 (9th Cir. 1984) (leaving undisturbed jury’s finding on special interrogatory that defendant’s conduct was not “willful and arbitrary,” and holding that plaintiff therefore was not entitled to recover attorneys’ fees).

Revised March 2025

7.13 Integrated Product Manufacturer's Duty to Warn

On the plaintiff [*name*]'s duty to warn claim, the plaintiff [*name*] has the burden of proving the following elements by a preponderance of the evidence:

First, the defendant [*name*] manufactured a product that required the incorporation of a part for the integrated product to function as intended;

Second, the defendant [*name*] knew or had reason to know that the integrated product was likely to be dangerous for its intended use[s];

Third, the defendant [*name*] had no reason to believe that the product's users would realize that danger; and

Fourth, the product's dangerous condition caused foreseeable injury to the plaintiff [*name*].

If you find the plaintiff [*name*] has proven the elements on which [he] [she] [*other pronoun*] has the burden of proof, your verdict should be for the plaintiff [*name*]. If, on the other hand, the plaintiff [*name*] has failed to prove any of these elements, your verdict should be for the defendant [*name*].

Comment

See Air & Liquid Sys. Corp. v. DeVries, 586 U.S. 446, 457 (2019).

Revised March 2025