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LAND-BASED SEAMAN:  
RECOVERY FOR OFF-THE-JOB INJURIES

It was recognized at an early date that the English rule confining admiralty jurisdiction to the "ebb and flow of the tide"<sup>1</sup> would have to be expanded to meet the demands of the developing transportation and commerce on our nation's inland waterways.<sup>2</sup> Since that time, the scope of the remedies<sup>3</sup> afforded to "seaman"<sup>4</sup> for personal injuries has

<sup>1</sup>See *De Lovio v. Boit*, 7 F. Cas. 418 (No. 3776) (C.C.D. Mass. 1815). See also 1 M. NORRIS, *THE LAW OF SEAMEN* § 1 (3d ed. 1970) [hereinafter cited as NORRIS].

<sup>2</sup>See *The Propeller Genesee Chief v. Fitzhugh*, 53 U.S. (12 How.) 443 (1851). At first the Supreme Court followed the English rule limiting admiralty jurisdiction to tidal waters. *The Thomas Jefferson*, 23 U.S. (10 Wheat.) 428 (1825); *The Steamboat Orleans v. Phoebus*, 36 U.S. (11 Pet.) 175 (1837). But in *Genesee Chief* the earlier "tidal" cases were overruled and it was asserted that admiralty jurisdiction extended to the navigable lakes and rivers of the United States, without regard to the ebb and flow of ocean tides. 53 U.S. (12 How.) at 443. The extension of the jurisdiction to all significant interior waters was reaffirmed in later cases. See *The Eagle*, 75 U.S. (8 Wall.) 15 (1868); *The Hine v. Trevor*, 71 U.S. (4 Wall.) 555 (1866); *Jackson v. Steamboat Magnolia*, 61 U.S. (20 How.) 296 (1858). For a thumbnail sketch of the history of the gradual extension of admiralty jurisdiction to include navigable rivers see G. GILMORE & C. BLACK, *THE LAW OF ADMIRALTY* 28 n.99 (1957) [hereinafter cited as GILMORE & BLACK].

<sup>3</sup>See generally GILMORE & BLACK 248-53. For an excellent guide to maritime employees' remedies see Koliou and Vickery, *Maritime Employees' Remedies Against Employers*, 23 ARK. L. REV. 192 (1969). Maritime workers who can qualify as seamen traditionally have been allowed more exclusive remedies than those available under state workmen's compensation benefits. Seamen may usually recover under the Jones Act, the Doctrine of Unseaworthiness, and the general maritime rights to transportation, wages, and maintenance and cure. *Id.* at 197-8. For a discussion of the Jones Act see text accompanying notes 32-48 *infra*.

<sup>4</sup>See generally 1 NORRIS § 11. Although it was once said that a "seaman" was a person who could "hand, reef and steer," the term has been gradually enlarged to encompass all individuals who contribute to the operation and welfare of a ship. *The Buena Ventura*, 243 F. 797, 799 (S.D.N.Y. 1916). The significance of whether or not a maritime worker may be a "seaman" is clearly revealed by the greater variety of remedies available to a seaman. Note 3 *supra*. The traditional tests as to when a maritime worker may be a seaman have been: (1) the vessel with which an individual is connected must be in navigation; (2) the worker must have more or less permanent connection with the vessel; and (3) the worker must be aboard the vessel primarily to aid in its navigation. 1 NORRIS § 11, at 31. Yet recent decisions have challenged these established guidelines. *E.g.*, *Grimes v. Raymond Concrete Pile Co.*, 356 U.S. 252 (1958) (*per curiam*); *Senko v. La Crosse Dredging Corp.*, 352 U.S. 370 (1957); *Gianfala v. Texas Co.*, 350 U.S. 879, *rev'd per curiam*, 222 F.2d 382 (5th Cir. 1955). In all three cases the worker did not have a permanent connection with his vessel and was not aboard primarily in aid of navigation. Yet the Supreme Court held that the question of seaman status was a jury issue and permitted the jury in each instance to find that the worker was a seaman. Eventually new standards were formulated which required only that a person (1) perform a substantial part of his duties aboard a vessel, and

been extended by a more liberal interpretation of those activities considered to be "in the course of employment."<sup>5</sup> Specifically, recent deci-

(2) that such duties contribute to the function of the vessel. *Offshore Co. v. Robison*, 266 F.2d 769 (5th Cir. 1959). For a listing of those watercraft considered "vessels in navigation" see 1 NORRIS § 17.

The flexible interpretation given the word "seaman" generally has been dependent upon the context of the particular remedy under which the term is sought to be applied. *Warner v. Goltra*, 293 U.S. 155 (1934). A strict interpretation has been applied in the context of the remedy of maintenance and cure. Generally it has been held that those employees of a vessel in navigation who are primarily on board to aid in the navigation, and who have a more or less permanent connection with the ship, are seamen. *Carumbo v. Cape Cod S.S. Co.*, 123 F.2d 991 (1st Cir. 1941); *The Buena Ventura*, 243 F. 797 (S.D.N.Y. 1916). Yet a seaman's right to maintenance and cure has not been governed by the duration of the voyage, or whether he sleeps aboard ship or ashore. *Weiss v. Central R.R.*, 235 F.2d 309 (2d Cir. 1956). Whether one injured aboard a vessel is a seaman entitled to recovery under the Jones Act has been held to be a question of fact. *Desper v. Starved Rock Ferry Co.*, 342 U.S. 187 (1952). Under the Jones Act the word seaman has been given quite a liberal interpretation. See *Senko v. La Crosse Dredging Corp.*, 352 U.S. 370 (1957); *Offshore Co. v. Robison*, 266 F.2d 769 (5th Cir. 1959); *Weiss v. Central R.R.*, 235 F.2d 309 (2d Cir. 1956). Generally the one standard emphasized in the determination of seaman status as to the Jones Act is that the worker be aboard primarily to aid in navigation. See generally 2 M. NORRIS THE LAW OF SEAMAN § 659 (2d ed. 1962).

<sup>5</sup>Workmen's compensation statutes generally provide that employee death or disability is compensable only if "arising out of and in the course of employment." See 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 6.10, at 41-42 (1968) [hereinafter cited as LARSON]. See Oregon Workmen's Compensation Act, ORE. REV. STAT. § 656.126(1) (Repl. 1967). However, the benefits of the Oregon Workmen's Compensation Act are not available to seamen or any workmen for whom a rule of liability for injury or death arising out of and in the course of employment is provided by the laws of the United States. ORE. REV. STAT. § 656.027(4) (1953). There has evolved a wide divergence in the interpretation of the limits of coverage, as to the work connection between injury and employment. One restrictive view of the work connection formula requires that the risk be peculiar to the employment and not common to the public. A more liberal and generally accepted view suggests that there should be coverage when the risks are connected to employment, even though they are common risks. See 1 LARSON § 6.

This principle has been incorporated into the requirements established for a seaman's recovery under the different remedies available to him. Note 3 *supra*. It has always been stressed that a seaman is entitled to maintenance and cure when injured "in the service of the ship." *Farrell v. United States*, 336 U.S. 511 (1949); *The Osceola*, 189 U.S. 158 (1903). Formerly when a seaman's injury occurred during a period of relaxation afloat or ashore, he was barred from recovery. See *Meyer v. Dollar S.S. Line*, 49 F.2d 1002 (9th Cir. 1931); *Wahlgreen v. Standard Oil Co.*, 42 F. Supp. 992 (S.D.N.Y. 1941); *Smith v. American South African Line, Inc.*, 37 F. Supp. 262 (S.D.N.Y. 1941); *Collins v. Dollar S.S. Lines*, 23 F. Supp. 395 (S.D.N.Y. 1938). That rule has been repudiated by the Supreme Court. *Aquilar v. Standard Oil Co.*, 318 U.S. 724 (1943). Since *Aquilar*, a number of cases have awarded maintenance and cure to seamen ill or injured ashore while in the pursuit of their own relaxation and pleasure. *Lawler v. Matson Navigation Co.*, 108 F. Supp. 946 (S.D. Cal.), *aff'd per curiam*, 217 F.2d 645 (9th Cir. 1954), *cert. denied*, 349 U.S. 912 (1955). *Keefe v. American Pac. S.S. Co.*, 110 F.

sions have awarded recovery to seamen who were not only off-the-job at the time, but also were on land when the injuries occurred.<sup>6</sup>

In the recent decision by the United States District Court for the District of Oregon in *Williamson v. Western-Pacific Dredging Corp.*,<sup>7</sup> the liability of shipowners for off-the-job injuries occurring on shore has been extended to unprecedented lengths to include *land-based* day-workers. A land-based employee was mate on a dredge, assisting in its operation and maintenance, as well as in its navigation when it was in movement between various worksites.<sup>8</sup> While riding to work as a passenger in a car driven by a fellow-employee, he was fatally injured in an automobile accident caused by the negligence of his co-employee.<sup>9</sup> The administratrix of his estate brought an action for both maintenance and cure, and damages for wrongful death<sup>10</sup> under the Jones Act.

The district court held that because the dredge owner had required his employees to sleep ashore and had provided travel allowances for necessary commuting expenses, the decedent was "in the service of the ship" at the time of the accident so as to permit an award for maintenance and cure to the administratrix of his estate.<sup>11</sup> In addition, the court held that the trip to and from work was within the course of his employment, thus entitling the plaintiff to recover damages for wrongful death.<sup>12</sup>

Supp. 853 (S.D. Cal. 1953); *Clifford v. The Iliamna*, 106 F. Supp. 36 (S.D. Cal. 1952). For a seaman to recover under the Jones Act there must be a showing that a personal injury occurred "in the course of employment." 46 U.S.C. § 688 (1964). Cf. *McCall v. Overseas Tankship Corp.*, 222 F.2d 441 (2d Cir. 1955). A similar interpretive liberalization of the scope of activities which should be compensable has taken place in regard to the Jones Act, since the term "in the course of employment" has come to mean "in the service of the ship." *Braen v. Pfeifer Oil Transp. Co.*, 361 U.S. 129 (1959).

<sup>6</sup>See *Warren v. United States*, 340 U.S. 523 (1951); *Farrell v. United States*, 336 U.S. 511 (1949); *Aquilar v. Standard Oil Co.*, 318 U.S. 724 (1943); *Marceau v. Great Lakes Transit Corp.*, 146 F.2d 416 (2d Cir.), *cert. denied*, 324 U.S. 872 (1945).

<sup>7</sup>304 F. Supp. 509 (D. Ore. 1969).

<sup>8</sup>*Id.* at 512. A dredge may be considered to be a "vessel" insofar as admiralty jurisdiction is concerned. See *Lawrence v. Norfolk Dredging Co.*, 319 F.2d 805 (4th Cir. 1963); *Chesser v. General Dredging Co.*, 150 F. Supp. 592 (S.D. Fla. 1957); *Early v. American Dredging Co.*, 101 F. Supp. 393 (E.D. Pa. 1951).

<sup>9</sup>304 F. Supp. at 513

<sup>10</sup>*Id.* at 511. An injured seaman has both the right to sue for maintenance and cure and for compensatory damages. They are distinct and separate claims, and neither is an alternative remedy to the other. *Pacific S.S. Co. v. Peterson*, 278 U.S. 130 (1928). See generally 1 NORRIS § 555 (2d ed. 1962).

<sup>11</sup>304 F. Supp. at 515.

<sup>12</sup>*Id.* at 517-18.

## MAINTENANCE AND CURE

Traditionally, the remedy of maintenance and cure has allowed a seaman who has become ill, or has been injured in the service of his ship without willful misbehavior on his part, to receive wages for the duration of the voyage as well as compensation for sustenance, lodging and care.<sup>13</sup> This remedy was first justified on the basis of the peculiar characteristics of the life of the seafaring man.<sup>14</sup> More recently, the Supreme Court has reiterated this justification by emphasizing the uniqueness of the hazards involved, the restrictions on a seaman's liberty, and the deprivation of the ordinary comforts of life.<sup>15</sup> Thus it appears that the employer's liability is in the nature of an implied contractual obligation<sup>16</sup> imposed by the general maritime law<sup>17</sup> as an incident to an employee's status as a seaman in the employment of his ship.<sup>18</sup>

Generally the right to maintenance and cure has been liberally construed in order to effect certain humanitarian goals.<sup>19</sup> Thus, a seaman's injury or illness need not be in any way causally related to his shipboard duties.<sup>20</sup> This proposition has evolved from several recent decisions involving off-the-job injuries incurred by seamen while on

<sup>13</sup>See generally 1 NORRIS § 537 (2d ed. 1962). The first real statement of the law came in *The Osceola* where the court held "[t]hat the vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued." 189 U.S. 158, 175 (1903). See *Farrell v. United States*, 336 U.S. 511 (1949). See also GILMORE & BLACK 253-57.

<sup>14</sup>*Harden v. Gordon*, 11 F. Cas. 480 (No. 6047) (C.C.D. Me. 1823). Justice Story advanced as reasons for imposing maintenance and cure the peculiar perils of life at sea, the helplessness of a seaman stricken by illness, and the need for compelling the owners of ships to safeguard the health of the seaman entrusted to their care. *Id.* at 483. This classic opinion together with Justice Story's opinion in *Reed v. Canfield*, 20 F. Cas. 426 (No. 11,641) (C.C.D. Mass. 1832), have been said to have established the basic tenets of American rules relating to maintenance and cure. 1 NORRIS § 544, 595 n.19 (2d ed. 1962).

<sup>15</sup>*Aguilar v. Standard Oil Co.*, 318 U.S. 724 (1943). See also *The City of Avalon*, 156 F.2d 500 (9th Cir. 1946).

<sup>16</sup>*Aguilar v. Standard Oil Co.*, 318 U.S. 724 (1943); *Jones v. Waterman S.S. Corp.*, 155 F.2d 992 (3d Cir. 1946); *Skolar v. Lehigh Valley R.R.*, 60 F.2d 893 (2d Cir. 1932); *McDonald v. Cape Cod Trawling Corp.*, 71 F. Supp. 888 (D. Mass. 1947).

<sup>17</sup>*De Zon v. American President Lines, Ltd.*, 318 U.S. 660, 667 (1943).

<sup>18</sup>*O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U.S. 36, 42 (1943).

<sup>19</sup>*Cf. Aguilar v. Standard Oil Co.*, 318 U.S. 724, 729 (1943); *Calmar S.S. Corp. v. Taylor*, 303 U.S. 525, 528 (1938). See also *Rodgers v. United States Lines Co.*, 189 F.2d 226, 230 (4th Cir. 1951). Basically the humanitarian aspect of the problem involves the caring for sick and injured seamen who have no haven other than their ship. *The Quaker City*, 1 F. Supp. 840 (E.D. Pa. 1931).

<sup>20</sup>See *Calmar S.S. Corp. v. Taylor*, 303 U.S. 525 (1938).

shore. In *Aguilar v. Standard Oil Co.*,<sup>21</sup> a seaman was awarded maintenance and cure for an injury sustained while returning from a shore leave. The Court held that seamen on leave are not necessarily on exclusively personal business. Rather, they may be in the service of the ship, as shore leave may be viewed as a necessary part of a seaman's employment activities.<sup>22</sup> The primary justification for the extension of maintenance and cure was the peculiar relation of a seaman to his ship in that the vessel served not only as his place of employment, but also as the "framework of his existence."<sup>23</sup>

Men cannot live for long cooped up aboard ship, without substantial impairment of their efficiency, if not also serious danger to discipline. Relaxation beyond the confines of the ship is necessary if the work is to go on, more so that it may move smoothly.<sup>24</sup>

In subsequent cases the Court has proceeded even further in its expansive interpretation of the meaning of the phrase "in the service of the ship."<sup>25</sup> Seamen presently may be granted maintenance and cure if they have been generally answerable to the call of duty at the time of the illness or injury, regardless of the personal nature of their activity.<sup>26</sup> Moreover, any specific limitations as to the proximity of a seaman to his vessel at the time of injury, or as to the manner in which the injury occurred, have not been forthcoming.<sup>27</sup> Thus, these shore-leave decisions seem to suggest that the remedy of maintenance and cure has become practically absolute for those maritime workers lead-

<sup>21</sup>318 U.S. 724 (1943).

<sup>22</sup>*Id.* at 733.

<sup>23</sup>*Id.* at 732.

<sup>24</sup>*Id.* at 733-4.

<sup>25</sup>*Warren v. United States*, 340 U.S. 523 (1951); *Farrell v. United States*, 336 U.S. 511 (1949); *Central Gulf S.S. Corp. v. Sambula*, 405 F.2d 291 (5th Cir. 1968).

<sup>26</sup>*Farrell v. United States*, 336 U.S. 511 (1949); *Sundberg v. Washington Fish & Oyster Co.*, 138 F.2d 801 (9th Cir. 1943); *Clifford v. The Iliamna*, 106 F. Supp. 36 (S.D. Cal. 1952). See also *Kyriakos v. Goulandris*, 151 F.2d 132 (2d Cir. 1945). A number of maintenance and cure awards have been granted to seamen ill or injured while ashore in the pursuit of their own relaxation or pleasure. See, e.g., *Keefe v. American Pac. S.S. Co.*, 110 F. Supp. 853 (S.D. Cal. 1953) (automobile accident ashore); *Nowery v. Smith*, 69 F. Supp. 755 (E.D. Pa. 1946), *aff'd per curiam*, 161 F.2d 732 (3d Cir. 1947) (seaman injured in barroom fight).

<sup>27</sup>*Lawler v. Matson Navigation Co.*, 108 F. Supp. 946 (S.D. Cal.) *aff'd per curiam*, 217 F.2d 645 (9th Cir. 1954), *cert. denied*, 349 U.S. 912 (1955). In *Lawler*, a seaman who was in port on shore leave was injured in an automobile accident while driving from his home to his ship. He was held to be entitled to maintenance and cure in that he was generally answerable to the call of duty at the time of his injury. 108 F. Supp. at 947.

ing the traditional seaman's life who undergo perils recognized as unique to their occupation.<sup>28</sup>

The scope of this recovery, however, has not yet been expanded to include land-based employees of a ship who are injured or become ill while on shore. Nevertheless, closely analogous decisions have allowed recovery under an action for maintenance and cure for injuries arising directly out of shipboard duties.<sup>29</sup> In *Weiss v. Central Railroad*,<sup>30</sup> a seaman who lived at home suffered a disability produced by the physical exertion of his duties aboard the vessel on which he worked. It was held that such a day-worker should not be denied the "traditional privileges of his status" merely because he lived at home, if his disability was job-related; thus, he was entitled to recover maintenance and cure.<sup>31</sup> Accordingly, it appears that maintenance and cure may be awarded to a land-based seaman who does not qualify as a mariner in the traditional sense only if there exists a direct casual link between his injury or illness and his shipboard duties.

#### THE JONES ACT

Under the general maritime law there was no liability by the shipowner for compensatory damages owing to his seamen-employees for injuries suffered as a result of the negligence of the owner or of someone for whom he was responsible.<sup>32</sup> However, Section 33, commonly called the Jones Act,<sup>33</sup> was included in the Merchant Marine Act of 1920<sup>34</sup> to permit a seaman to maintain an action for damages at law against his employer for any personal injury suffered in the course of his employment<sup>35</sup> and due in any part to the negligence of his employer.<sup>36</sup>

<sup>28</sup>See GILMORE & BLACK 261. An exception arises in cases of willful misbehavior on the part of the seaman himself. See *Watson v. Joshua Hindy Corp.*, 142 F. Supp. 335 (S.D.N.Y. 1956), *aff'd*, 245 F.2d 463 (2d Cir. 1957). Other cases have noted traditional examples of willful misbehavior. *E.g.*, *Aguilar v. Standard Oil Co.*, 318 U.S. 724, 731 (1943).

<sup>29</sup>*Weiss v. Central R.R.*, 235 F.2d 309 (2d Cir. 1956); *Hudspeth v. Atlantic & Gulf Stevedores, Inc.*, 266 F. Supp. 937 (E.D. La. 1967).

<sup>30</sup>235 F.2d 309 (2d Cir. 1956).

<sup>31</sup>*Id.* at 313.

<sup>32</sup>See *The Osceola*, 189 U.S. 158 (1903). It was held that "the seaman is not allowed to recover an indemnity for the negligence of the master, or any member of the crew, but is entitled to maintenance and cure, whether the injuries were received by negligence or accident." *Id.* at 175.

<sup>33</sup>46 U.S.C. § 688 (1964).

<sup>34</sup>Ch. 250, § 33, 41 Stat. 1007 (1920).

<sup>35</sup>46 U.S.C. § 688 (1964). Note 5 *supra*.

<sup>36</sup>Negligence is the gravamen of a suit under the Jones Act. 2 NORRIS § 686, at 852 (2d ed. 1962). The Jones Act incorporates the standards of the Federal

Generally, the scope of a seaman's employment has not been measured by the standards applied to land-based employment relationships,<sup>37</sup> and the phrase "in the course of employment" has been regarded as taking on a broader meaning than in the usual workmen's compensation context.<sup>38</sup> Furthermore, that term has been interpreted as equivalent to the phrase "in the service of the ship" used in maintenance and cure cases,<sup>39</sup> and has not been restricted to injuries occurring in any particular location.<sup>40</sup>

Initially, the Jones Act was believed to apply only to maritime torts and thus was not applied to injuries occurring on shore even though they may have occurred in the course of employment.<sup>41</sup> This interpretation has been rejected, however, and it is now recognized that the right to recovery under the Act should depend not only upon the nature of the seaman's activity at the time of the injury, but also upon the relationship of that activity to the operation of the vessel.<sup>42</sup> It has been clearly recognized, for example, that a seaman may be acting in the course of his employment when going to or returning from work.<sup>43</sup> Thus, any injury arising out of such travel may be compensable under the Jones Act if it can be demonstrated that the injury was caused by the negligence of the officers, agents, or employees of the shipowner.<sup>44</sup>

Yet in these situations, recovery under the Jones Act was originally limited to seamen who were injured in close proximity to the ship.<sup>45</sup> The scope of the Act was then extended to those seamen who were on

Employers Liability Act which renders an employer liable for the injuries negligently inflicted on its employees by its officers, agents, or employees. 45 U.S.C. §§ 51-60 (1964). The practical effect of incorporating this section into the maritime law was to abolish the defense of the fellow-servant rule. See 2 NORRIS § 656, at 789 (2d ed. 1962).

<sup>37</sup>See generally 1 LARSON § 6.10 Note 5 *supra*.

<sup>38</sup>Note 5 *supra*.

<sup>39</sup>*Braen v. Pfeifer Oil Transp. Co.*, 361 U.S. 129 (1959). See generally GILMORE & BLACK 284.

<sup>40</sup>*O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U.S. 36 (1943). It was recognized that a seaman could recover under the Jones Act for a personal injury suffered on shore. *Id.* at 39.

<sup>41</sup>*E.g.*, *O'Brien v. Calmar S.S. Corp.*, 104 F.2d 148 (3d Cir.), *cert. denied*, 308 U.S. 555 (1939).

<sup>42</sup>*Magnolia Towing Co. v. Pace*, 378 F.2d 12, 13 (5th Cir. 1967) (per curiam). See also *Hopson v. Texaco, Inc.*, 383 U.S. 262 (1966).

<sup>43</sup>*Marceau v. Great Lakes Transit Corp.*, 146 F.2d 416 (2d Cir.), *cert. denied*, 324 U.S. 872 (1945).

<sup>44</sup>Note 36 *supra*.

<sup>45</sup>See *Marceau v. Great Lakes Transit Corp.*, 146 F.2d 416 (2d Cir.) *cert. denied*, 324 U.S. 872 (1945).



shore leave at the time of the accident.<sup>46</sup> Subsequently, land-based employees were given status as seamen in those instances where an injury was incurred in close proximity to the ship and arose directly from their shipboard duties.<sup>47</sup>

Jones Act coverage of land-based seamen-employees was recently extended in *Magnolia Towing Co. v. Pace*,<sup>48</sup> where a pilot was injured while traveling from his home to a tugboat pursuant to instructions from his employer. The court stated that the pilot's relationship to the operation of the vessel, rather than the place where the injury occurred, was controlling. Implicit in the court's holding is the notion that an employer is liable for injuries received by a land-based seaman while traveling to and from work.

#### THE WILLIAMSON RATIONALE

The district court of *Williamson* stated that in order for the administratrix to recover maintenance and cure, there must have been a showing that the decedent was both a seaman and that he was acting in the service of his ship at the time of his injury. Heavy reliance was placed on recent shore leave decisions holding that a seaman may be awarded maintenance and cure for an injury incurred while on shore and on his own business where he was generally answerable to the call of duty at the time of his injury.<sup>49</sup> In this context, the court was apparently justified in finding that the trip from the decedent's home to his ship was in the service of the ship. Indeed, the court in *Williamson* pointed out that the decedent was as much answerable to the call of duty at the time of his injury as were those seamen in the recent shore leave decisions.<sup>50</sup> Furthermore, it was noted that the decedent, in returning to his ship by automobile, was better serving his ship than were the seamen on shore leave who were merely in the pursuit of their own relaxation and pleasure.<sup>51</sup>

However, the court in *Williamson* apparently failed to give sufficient recognition to the original basis of maintenance and cure.<sup>52</sup> The decedent faced few of the unique hazards encountered by the tradi-

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<sup>46</sup>*Id.*; see *Kyriakos v. Goulandris*, 151 F.2d 132 (2d Cir. 1945). See also *Paul v. United States*, 101 F. Supp. 89 (E.D. Pa. 1951).

<sup>47</sup>*Gianfala v. Texas Co.*, 350 U.S. 879, *rev'g per curiam*, 222 F.2d 382 (5th Cir. 1955); *Weiss v. Central R.R.*, 235 F.2d 309 (2d Cir. 1956).

<sup>48</sup>378 F.2d 12 (5th Cir. 1967).

<sup>49</sup>Note 26 *supra*.

<sup>50</sup>304 F. Supp. at 515.

<sup>51</sup>*Id.*

<sup>52</sup>Text accompanying notes 14 & 15 *supra*.

tional seamen who were "cooped up aboard ship . . ." <sup>53</sup> The pursuit of relaxation and pleasure on land would hardly seem to have been a necessary part of his employment activities. <sup>54</sup> A land-based seaman certainly leads a different mode of life and is not subject to the same pressures and hazards. Consequently, maintenance and cure generally has been awarded to land-based seamen only where they were injured or became ill during their actual shipboard duties, when they were unquestionably in the service of their ship. <sup>55</sup> Thus, in spite of the clear guidelines established by prior decisions, the court in *Williamson* allowed recovery for maintenance and cure where a land-based seaman was injured in activity beyond his designated shipboard duties.

At the same time, it might be argued that the court in discussing maintenance and cure displayed a degree of foresight in holding that a land-based seaman's travel to and from work was in the service of his ship. Indeed, the dredgowner required the decedent and his fellow employees to live ashore and commute daily. <sup>56</sup> The employer likewise paid their travel expenses in recognition of this additional requirement of their employment. <sup>57</sup> Thus it appears that the decedent's trip to and from work may fairly be viewed as a necessary and unique hazard of his occupation.

Unfortunately, the court in *Williamson* did not extend its recognition of the special pertinence of the seaman's travel to and from work to its discussion of the Jones Act claim. The facts in *Williamson* clearly indicated that the two main prerequisites for recovery under the Act were present, in that the decedent's trip to and from his ship was vital to the course of his employment, and moreover, his injuries were brought about by the negligence of a co-employee. <sup>58</sup> The *Magnolia* case held that a land-based seaman was acting in the course of his

<sup>53</sup>*Aguilar v. Standard Oil Co.*, 318 U.S. 724, 733 (1943).

<sup>54</sup>The court's inference that decedent was in effect granted a daily "shore leave" was never convincingly substantiated. 304 F. Supp. at 515.

<sup>55</sup>Note 29 *supra*.

<sup>56</sup>304 F. Supp. at 512.

<sup>57</sup>*Id.* The court in *Williamson* concluded that the trip to and from work was in the boundary of employment because the identification of the travel pay with the trip was specific and certain. *Id.* at 518, *see Foster v. Massey*, 407 F.2d 343 (D.C. Cir. 1968). See 1 LARSON § 15, for a thorough examination of whether a trip to and from work is held to be in the course of employment in a regular workmen's compensation context. For a recent view of the effect of imputed approval of an employer through his reimbursement of employees for travel expenses see Davis, *The Effect of Employer Approval on Workmen's Compensation Decisions—Letting Affected Parties Communicate Standards*, 54 CORNELL L. REV. 97, 104-06 (1969).

<sup>58</sup>304 F. Supp. at 512-13.

shipboard employment while traveling to and from work.<sup>59</sup> Yet the court in *Williamson* chose to belabor the distinction between the direct control exercised by the employer over the transportation in *Magnolia*, and the lesser degree of control utilized by the defendant in *Williamson* which was manifested in the form of travel pay.<sup>60</sup> Indeed the court never clearly established that the decedent and his fellow seamen were fully reimbursed for their actual travel expenses. In light of the present feeling that greater attention should be accorded the "course of the employment" concept,<sup>61</sup> it appears that the court's reliance on an analysis of control was ill-founded.

#### CONCLUSION

Ostensibly, *Williamson* has obscured the significance of the traditional foundation of the remedy of maintenance and cure<sup>62</sup> by permitting recovery where a land-based seaman was injured while driving to work. Prior maintenance and cure decisions in which recovery was limited to land-based seamen whose injuries arose solely out of actual shipboard duties,<sup>63</sup> provide little justification for *Williamson's* holding. On the other hand, the court's award of damages for a wrongful death action under the Jones Act would appear to be a logical and appropriate extension of the liberal construction that has characterized it from the beginning and is consistent with its purposes.<sup>64</sup>

Consequently, the court in *Williamson* properly awarded both maintenance and cure and damages under the Jones Act within the context of an expanding interpretation of the phrase "in the service of the ship."<sup>65</sup> Indeed, the court recognized that for land-based seamen, the trip to and from the ship was a unique hazard. It thus responded in a manner consistent with the liberal coverage which has generally been accorded to seamen.

PHILIP C. THOMPSON

<sup>59</sup>378 F.2d 12 (5th Cir. 1967).

<sup>60</sup>304 F. Supp. at 517-18.

<sup>61</sup>See *Magnolia Towing Co. v. Pace*, 378 F.2d 12 (5th Cir. 1967); *McCall v. Overseas Tankship Corp.*, 222 F.2d 441 (2d Cir. 1955). *Marceau v. Great Lakes Transit Corp.*, 146 F.2d 416 (2d Cir.), cert. denied, 324 U.S. 872 (1945).

<sup>62</sup>Text accompanying notes 14 & 15 *supra*.

<sup>63</sup>Note 29 *supra*.

<sup>64</sup>The *Arizona v. Anelich*, 298 U.S. 110, 123 (1936). The Supreme Court has repeatedly held that the Jones Act should be liberally construed in order to accomplish its remedial and humanitarian purposes. *Cosmopolitan Shipping Co. v. McAllister*, 337 U.S. 783, 790 (1949); *Cortes v. Baltimore Insular Line, Inc.*, 287 U.S. 367, 375 (1923).

<sup>65</sup>Note 5 *supra*. Cf. *McCall v. Overseas Tankship Corp.*, 222 F.2d 441 (2d Cir. 1955).