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THE FIFTH CIRCUIT HOLDS THAT CURE AWARDS SHOULD ONLY INCLUDE THE COSTS OF ACTUAL PAYMENT TO MEDICAL PROVIDERS

"Cure" is a shipowner's obligations under general maritime law to pay necessary medical services for seamen injured while in a vessel's service. In an issue of first impression for the Fifth Circuit, the court was tasked with determining whether an award for cure should include the difference between the amount the seaman's medical providers charged and the lesser amount they actually accepted from his insurer as full payment.

The collateral source rule is a substantive rule of law that bars a tortfeasor from reducing the quantum of damages owed to a plaintiff by the amount of recovery the plaintiff receives from other sources of compensation that are independent of (or collateral to) the tortfeasor. A majority of state courts addressing the issue have held that the rule prohibits in tort actions a reduction of compensatory damages by the difference between the amount billed for medical services and the amount actually paid. However, because maintenance and cure is not based on an employer's negligence, it is unrelated to any duty of care under tort law. Accordingly, because of the unique nature of maintenance and cure, normal rules of damages, such as the collateral source rule in tort, are not strictly applied.

The Fifth Circuit has identified an exception to this general prohibition of the collateral source rule in maintenance and cure lawsuits: where a seaman has alone purchased medical insurance, the shipowner is not entitled to deduct from its maintenance and cure obligation moneys the seaman receives from his insurer. However, an injured seaman is still only permitted to recover maintenance and cure for those expenses actually incurred.

In *Manderson v. Chet Morrison Contractors, Inc.*, 666 F.3d 373 (2012), the injured seaman paid his own insurance premiums. The district court, having found Manderson purchased his own medical insurance, made no deduction from the cure award for payments by Manderson's insurer. In doing so, however, the district court determined that the amount of cure owed was actually the greater amount originally charged by Manderson's health-care providers. On appeal, Manderson's employer contended that the appropriate amount for cure was the lesser amount the medical providers actually accepted as full payment from Manderson's insurer. The Fifth Circuit agreed.

Specifically, the court held that the amount needed to satisfy an employer's cure obligation is the amount needed to satisfy a seaman's medical charges. Thus, for Manderson, regardless of what his medical providers charged, those charges were satisfied by the much lower amount actually paid by his insurers (i.e., the amount actually incurred). Consequently, the district court exceeded the scope of cure by awarding the higher charged amount.

The Fifth Circuit's holding should comfort employers who employ seamen. After *Manderson*, these employers are assured that they will only owe an amount of cure equal to the amount actually paid to medical providers. This holding should effectively eliminate the possibility that employers will be stuck with cure obligations that are out of proportion with amounts actually paid. As always, Jones Walker will continue to monitor all legal issues that may affect our clients. Should any developments arise, we will relay them in future editions of E*Lerts.

—[Matthew S. Lejeune](#)



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Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

Glenn S. Goodier
Jones Walker LLP
201 St. Charles Avenue
New Orleans, LA 70170-5100
504.582.8174 *tel*
504.589.8174 *fax*
ggoodier@joneswalker.com

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