

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ARCTIC STORM, INC.,

Plaintiff,

v.

RICARDO MADRID AND SHERMAINE  
MADRID,

Defendants.

Case No. C14-1717RSL

ORDER CONCERNING MOTIONS  
FOR PARTIAL SUMMARY  
JUDGMENT, FOR LEAVE TO  
AMEND, AND TO COMPEL

This matter comes before the Court on plaintiff’s motion for partial summary judgment, Dkt. # 15; defendants’ motion for leave to amend their answer and counterclaims, Dkt. # 20; and defendants’ motion to compel reinstatement of maintenance and cure, Dkt. # 27. Having reviewed the memoranda and exhibits submitted by the parties, the Court finds as follows.

**I. BACKGROUND**

Defendants are a married couple who were employed by plaintiff as processors aboard the C/P ARCTIC STORM (“the vessel”) at various times from May 2009 to May 2013. Dkt. # 1 (Compl.) ¶¶ 5-6. On May 20, 2013, a fire broke out in the engine room of the vessel while defendants were onboard, and defendants and others were evacuated. *Id.* ¶¶ 7-12. On May 21, 2013, defendants signed a form denying that they had been injured or had fallen ill in the service of the vessel. Dkt. # 17 (Ness Decl. Exh. B) (Separation Notices). On June 20, one month

1 following the incident, defendants informed plaintiff that they were seeking treatment for  
2 psychological injuries they had suffered as a result of the fire, and that they were scheduled to  
3 begin treatment with Dr. Bridget Cantrell, Ph.D. on June 27, 2013. Dkt. # 30 (Ness Decl.) ¶ 5.

4 Defendants argue that plaintiff has consistently and unreasonably delayed paying  
5 maintenance and cure (or “maritime benefits”) since being notified that defendants were seeking  
6 treatment, with intervals between payment dates lasting months at a time. Dkt. # 23 (Defs. Opp.  
7 MSJ) at 1. Defendants emphasize that plaintiff still has not paid maintenance for the 38 days  
8 from the date of the incident through their first appointment with Dr. Cantrell, and that it was  
9 only months after they began seeing Cantrell that plaintiff began paying either benefit. *Id.* at 2.  
10 Plaintiff argues that it only provided maritime benefits covering dates for which it knew  
11 defendants were still receiving treatment, and that it reasonably waited until it received medical  
12 records confirming dates of defendants’ counseling sessions with Dr. Cantrell before providing  
13 benefits covering the time leading up to and including these dates. Dkt. # 28 at 2; Dkt. # 37 (Pl.  
14 Opp. Compel) at 6-7. Plaintiff further argues that, with few exceptions, it provided maintenance  
15 within two weeks of receiving new chart notes documenting defendants’ treatment, and cure  
16 within one or two months of receiving Cantrell’s invoices. Dkt. # 28 at 4, 7-8. Plaintiff blames  
17 delays in benefits payments on the tardiness of Cantrell and defense counsel in providing  
18 plaintiff with medical records and invoices and on the frequent mistakes and inconsistencies in  
19 the invoices it has received. Dkt. # 37 at 6-7. Plaintiff emphasizes that it is entitled to verify  
20 that a seaman requesting maintenance and cure is pursuing treatment, and that a shipowner  
21 should not be obliged to pay maintenance indefinitely without proof of ongoing treatment. *Id.* at  
22 7. Plaintiff further stresses that it has made all maintenance payments covering the time between  
23 defendants’ first appointment with Cantrell and their most recent appointment, and all  
24 outstanding cure. Dkt. # 31 (Pl. Opp. Amend) at 4.

25 In November 2014, plaintiff brought this action seeking declaratory judgment that (a) it  
26 was never entitled to provide maritime benefits to defendants; and (b) assuming defendants were

1 once entitled to benefits, plaintiff is no longer obliged to pay them. Dkt. # 1 (Compl.).  
2 Defendants have counterclaimed for punitive damages (for plaintiff's delayed payments). Dkt.  
3 # 11.

4 Plaintiff seeks summary judgment on defendants' punitive damages counterclaim, Dkt.  
5 # 15, which defendants seek to amend, Dkt. # 20. Defendants move to compel "reinstatement"  
6 of their maritime benefits covering the 38 days following the vessel fire (for which plaintiff  
7 refuses to pay maintenance) and the most recent period of nonpayment (February 11, 2015  
8 through March 13, 2015). Dkt. # 27; Dkt. # 39 (Defs. Reply Compel). Defendants also seek an  
9 order scheduling plaintiff's future maintenance and cure payments. *Id.*

## 10 II. LEGAL STANDARDS

### 11 A. Maintenance and Cure

12 "Under principles of general maritime law, seamen are entitled to maintenance and cure  
13 from their employer for injuries incurred in the service of the ship[.]" Aguilera v. Alaska Juris  
14 F/V, O.N. 569276, 535 F.3d 1007, 1009 (9th Cir. 2008) (alteration in original) (citation and  
15 internal quotation marks omitted). This form of compensation does not depend in any way on  
16 the fault or negligence of the shipowner, but rather is designed as a contractual agreement  
17 between employer and employee to provide a seaman with support and medical expenses as a  
18 result of his injury or illness aboard the vessel. See Aguilar v. Standard Oil Co. of N.J., 318 U.S.  
19 724, 730-31 (1943). "Maintenance . . . is designed to provide a seaman with food and lodging  
20 when he becomes sick or injured in the ship's service; and it extends during the period when he  
21 is incapacitated to do a seaman's work and continues until he reaches maximum medical  
22 recovery." Vaughan v. Atkinson, 369 U.S. 527, 531 (1962). Cure is generally understood to  
23 require the provision of medical treatment and similarly extends until maximum medical  
24 recovery has been reached as a result of "continued and necessary medical treatment." Luksich  
25 v. Missetich, 140 F.2d 812, 814 (9th Cir. 1944); see Crooks v. United States, 459 F.2d 631,  
26 632-33 (9th Cir. 1972). A seaman may recover punitive damages if his employer willfully and  
27

1 wantonly disregards its maintenance and cure obligations. Atlantic Sounding Co., Inc. v.  
2 Townsend, 557 U.S. 404, 424, (2009). In Townsend, the Supreme Court’s latest statement on  
3 the issue, the Court indicated that delaying maintenance and cure payments could suffice to  
4 support a claim for punitive damages. See id. at 418.<sup>1</sup> This Court finds no persuasive authority  
5 holding that repeated delays of maritime benefits cannot support a punitive damages finding  
6 under this standard even where the amounts owed are eventually paid.

7 **B. Leave To Amend**

8 Federal Rule of Civil Procedure 15(a) governs the amendment of pleadings; under Rule  
9 15(a)(2), a party that has already amended its pleadings once may do so again with the Court’s  
10 leave, which the Court should “freely give . . . when justice so requires.” Fed. R. Civ. P.  
11 15(a)(2). The Ninth Circuit has held that leave to amend should be granted with “extreme  
12 liberality.” DCD Programs, LTD. v. Leighton, 833 F.2d 183, 186 (9th Cir. 1987). The Court  
13 must consider whether the proposed amendment (1) would be futile, (2) is the product of undue  
14 delay, (3) would prejudice the non-moving party, and (4) was brought in bad faith. Id. (stating  
15 all four factors). The opposing party bears the burden of showing prejudice, id. at 187, which is  
16 the most important factor in whether to grant a motion for leave to amend, Eminence Capital,  
17 LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (presumption in favor of granting  
18 leave exists absent prejudice or a strong showing of any of the remaining factors). Amending  
19 one’s pleadings when summary judgment motions are pending is highly disfavored. Schlacter-  
20 Jones v. Gen. Tel. of Cal., 936 F.2d 435, 443 (9th Cir. 1991), abrogated on other grounds by  
21

22 <sup>1</sup> The Court stated, in relevant part:

23 Nothing in the text of the Jones Act or this Court’s decisions issued in the wake of its  
24 enactment undermines the continued existence of the common-law cause of action  
25 providing recovery for the delayed or improper provision of maintenance and cure.  
26 Petitioners do not deny the availability of punitive damages in general maritime law, or  
27 identify any cases establishing that such damages were historically unavailable for  
28 breach of the duty of maintenance and cure.

Atl. Sounding Co. v. Townsend, 557 U.S. 404, 418 (2009).

1 Cramer v. Consol. Freightways, Inc., 255 F.3d 683 (9th Cir. 2001).

2 **C. Summary Judgment**

3 Summary judgment is appropriate if, viewing the evidence and all reasonable inferences  
4 drawn therefrom in the light most favorable to the nonmoving party, the moving party shows  
5 that “there are no genuine issues of material fact and the moving party is entitled to judgment as  
6 a matter of law.” Fed. R. Civ. P. 56(a); Torres v. City of Madera, 648 F.3d 1119, 1123 (9th Cir.  
7 2011). The moving party “bears the initial responsibility of informing the district court of the  
8 basis for its motion.” Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Where the nonmoving  
9 party will bear the burden of proof at trial, the moving party may meet its burden by “pointing  
10 out . . . that there is an absence of evidence to support the nonmoving party’s case.” Id. at 325.

11 Once the moving party has satisfied its burden, the nonmoving party must then set out  
12 “specific facts showing that there is a genuine issue for trial” in order to defeat the motion. Id. at  
13 324. “The mere existence of a scintilla of evidence in support of the non-moving party’s  
14 position” is not sufficient; this party must present probative evidence in support of its claim or  
15 defense. Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 919 (9th Cir. 2001); Intel  
16 Corp. v. Hartford Accident & Indem. Co., 952 F.2d 1551, 1558 (9th Cir. 1991).

17 **III. DISCUSSION**

18 **A. Motion For Leave To Amend**

19 Defendants move to amend their answer to further support their counterclaim for punitive  
20 damages; specifically, defendants seek to make corrections to their factual allegations, make  
21 additional allegations concerning plaintiff’s failure to pay maintenance and cure since the filing  
22 of the original answer, and add clarifying language. Dkt. # 20. Plaintiff’s sole argument in  
23 opposition is that amendment would be futile. Dkt. # 31. Because the Court finds that  
24 defendants’ punitive damages counterclaim survives summary judgment, the Court finds that  
25 amendment would not be not futile. Finding the other requirements for Rule 15(a) also satisfied,  
26 the Court grants defendants leave to amend.

1           **B. Motion For Partial Summary Judgment On Punitive Damages**

2           Plaintiff argues that it was reasonable to withhold maintenance and cure until it received  
3 updated medical records confirming that defendants were continuing treatment.<sup>2</sup> Dkt. # 23 at 1;  
4 Dkt. # 28 at 2. This position lacks direct legal support. A shipowner may investigate a claim for  
5 maintenance and cure and may refuse to commence paying benefits where the seaman fails to  
6 provide documentation supporting this claim. As the Fifth Circuit has held:

7           Upon receiving a claim for maintenance and cure, the shipowner need not  
8 immediately commence payments; he is entitled to investigate and require  
9 corroboration of the claim. A failure to pay maintenance and cure due an injured  
10 seaman is reasonable if a diligent investigation indicates that the seaman's claim is  
11 not legitimate or if the seaman does not submit medical reports to document his  
12 claim.

13 Morales v. Garijak, Inc., 829 F.2d 1355, 1358, 1360 (5th Cir. 1987) (citing McWilliams v.  
14 Texaco, 781 F.2d 514, 518-20 (5th Cir. 1986)); abrogated on other grounds by Guevara v.  
15 Maritime Overseas Corp., 59 F.3d 1496 (5th Cir. 1995). However, Morales only discusses the  
16 commencement of benefits; the case does not reach whether a seaman who has already  
17 established his entitlement to maritime benefits may be forced to supply updated records before  
18 receiving each new installment of maintenance, a benefit that is meant to cover a seaman's day-  
19 to-day living expenses. The general rule appears to be that a shipowner may only discontinue  
20 benefits after acquiring "unequivocal" medical evidence that a seaman has reached his maximum  
21 cure. See, e.g., Dean v. Fishing Co. of Alaska, 177 Wn.2d 399, 409 (2013) ("After a seaman has  
22 proved his initial entitlement to maintenance and cure, the burden shifts to the shipowner to  
23 prove that maximum cure has been reached."), 410 (requiring "unequivocal" evidence of  
24 maximum cure); see also Hedges v. Foss Mar. Co., 2015 WL 402809, at \*2 (W.D. Wash. Jan.  
25 29, 2015). Courts have also recognized that a shipowner may terminate benefits where a seaman  
26 abandons a course of treatment, see Coulter v. Ingram Pipeline, Inc., 511 F.2d 735, 739 (5th Cir.

25           <sup>2</sup> Plaintiff informed defendants when it made its first maintenance payment that "Additional  
26 maintenance payments will require documentation of ongoing treatment." Dkt. # 16-1 (Bratz Decl. Exh.  
27 G.) (Letter).

1 1975); nevertheless, the burden appears to fall on the shipowner to justify discontinuing benefits  
2 once they have commenced, see Dean, 177 Wn.2d at 409. A seaman's consistent failure to  
3 provide updated records could arguably raise an inference that treatment had stopped; however,  
4 if plaintiff withheld maintenance for weeks immediately following doctors' appointments for  
5 which it had received records, it might indicate it was suspending benefits before it was proper  
6 to draw this inference.

7 Morales and other cases support plaintiff's position, as does the fact that a shipowner  
8 must be able to monitor a seaman's treatment to determine when maximal care has been  
9 achieved. Out-of-Circuit precedent suggests that a denial of maintenance premised on a  
10 colorable legal theory does not reflect a wanton or willful disregard of a seaman's rights. See  
11 Delaware River & Bay Auth. v. Kopacz, 584 F.3d 622, 635 (3rd Cir. 2009). Nevertheless, even  
12 assuming some of plaintiff's delays were justifiable, at the summary judgment stage there  
13 remains sufficient evidence for defendants' punitive damages claim to go forward. Two  
14 examples follow.

15 First, after plaintiff's April 16, 2014 maintenance payment, plaintiff did not pay  
16 maintenance again until July 3, 2014, despite receiving a report from Dr. Cantrell in May  
17 indicating that defendants were continuing treatment, Dkt. # 24-2 (Olsson Decl. Exh. 20). While  
18 plaintiff argues that it did not receive actual evidence that defendants were still seeing Cantrell  
19 until months later, see Dkt. # 15 at 8, Cantrell's report indicates that defendants were actively in  
20 treatment. Id. A shipowner cannot withhold maintenance where the records in its possession  
21 indicate that the seaman's treatment is ongoing and curative, see Boyden v. Am. Seafoods Co.,  
22 2000 WL 33179294, at \*2 (W.D. Wash. Mar. 21, 2000). A reasonable trier of fact could find  
23 that this extended delay of maintenance reflected a willful disregard of defendants' rights.

24 Similarly, plaintiff's nearly four-month delay in paying cure related to Cantrell's  
25 December 2013 bill could justify punitive damages. Dkt. # 24 (Olsson Decl. Exh. 1). While  
26 defendants argue that such delays owed to problems with interpreting and correcting Cantrell's  
27

1 bills, the merits of this explanation should be decided later by the trier of fact and not on  
2 summary judgment. Dkt. # 28 at 8.

3 The Court does not find it necessary to analyze in this order every disputed delay in  
4 plaintiff's maintenance and cure payments. The Court finds at least some delays in maritime  
5 benefits payments that a trier of fact could conclude represented willful and wanton disregard for  
6 defendants' rights, and thus defendants' punitive damages claim should go forward.

7 **C. Motion To Compel Reinstatement of Maintenance and Cure**

8 Defendants seek to compel the payment of maintenance from the date that they  
9 disembarked until their first date of treatment (which plaintiff still has not paid), as well as  
10 maintenance still not paid from February 11, 2015 through March 13, 2015. Dkt. # 27; Dkt.  
11 # 39. They also request an order from the Court demanding that plaintiff pay maintenance every  
12 two weeks and cure within two weeks of receiving an invoice related to Cantrell's counseling.

13 **Id.**

14 Defendants are entitled to maintenance for the period between the date of the fire and  
15 when they first began seeing Dr. Cantrell. Plaintiff emphasizes that defendants signed a form on  
16 the night of the incident indicating that they were uninjured, and that they only notified plaintiff  
17 that they sought treatment weeks later, suggesting that their injury manifested itself sometime  
18 after the incident. See Dkt. # 37 at 8; Dkt. # 17 (Ness Decl. Exh. B) (Separation Notices).  
19 However, even assuming that maintenance is technically only due when an injury manifests  
20 itself, ambiguities and doubts as to a shipowner's liability for maintenance and cure are resolved  
21 in favor of the seaman. Vaughn v. Atkinson, 369 U.S. 527, 532 (1962). Consistent with this  
22 rule, based on the existing record and Dr. Cantrell's reports, the Court finds that the date of the  
23 incident is the triggering date for defendants' benefits. The Court does not find defendants'  
24 written statement that they were uninjured to reasonably indicate that they had not been  
25 traumatized.

26 This leaves the issue of whether maintenance is currently owed that plaintiff is still  
27



1 withholding pending receipt of new medical records. Dr. Cantrell has recently reaffirmed that  
2 defendants will need continued treatment and that their condition is ongoing. Dkt. # 21 (Cantrell  
3 Decl.) (dated Feb. 19, 2015).<sup>3</sup> The Court finds this sufficient to notify plaintiff of its ongoing  
4 maintenance obligation under Boyden. Plaintiff has provided no authority holding that a  
5 shipowner may withhold benefits while it verifies that such a prognosis remains up-to-date.  
6 Consequently, the Court rejects this notion. Plaintiff has not argued in its motions that  
7 defendants have reached maximum cure; nor have they proffered sufficient evidence that  
8 defendants have abandoned their treatment. Bearing in mind the rule that all doubts as to a  
9 seaman's entitlement to maintenance must be decided in his favor, Vaughn, 369 U.S. at 532;  
10 Hedges, 2015 WL 402809, at \*2 (citations omitted), the Court finds that defendants are entitled  
11 to maintenance through March 13, 2015 (the date of defendants' reply on this motion). The  
12 Court further finds that, in light of plaintiff's conduct up to this point, and the fact that plaintiff  
13 has shown itself capable of paying defendants' bills within two weeks days of receipt,  
14 defendants are entitled to an order setting a regular payment schedule.


15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 <sup>3</sup> Although defendants failed to include a page of Cantrell's declaration, the declaration as submitted  
states her relevant conclusions.

**IV. CONCLUSION**

For all of the foregoing reasons, plaintiff’s motion for partial summary judgment is DENIED, Dkt. # 15; defendants’ motion for leave to amend is GRANTED, Dkt. # 20; and defendants’ motion to reinstate maintenance and cure is GRANTED, Dkt. # 27.

It is further ordered that plaintiff must pay defendants maintenance and cure owed through the date of this order within fourteen days of the date of this order, including the \$2,380 owed to each defendant as of March 13, 2015. All future maintenance payments must be made on the first and fourteenth day of every month, for all unpaid days up to and including the date of payment; and all future bills for treatment from Dr. Cantrell must be paid within 30 days of receipt.

DATED this 22nd day of May, 2015.

  
Robert S. Lasnik  
United States District Judge