No. 24-

IN THE

Supreme Court of the United States

BOAT SANTA RITA II, INC.,

Petitioner,

v.

MAGNUS AADLAND,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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June 2025

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QUESTIONS PRESENTED

Under the general maritime law of maintenance and cure, what standard governs the award of punitive damages where a vessel owner provides maintenance and cure that is later determined to have been insufficient? And, did the Court of Appeals below err in applying that standard?

Did the Court of Appeals for the First Circuit err in overturning the factual findings of the District Court and holding that Petitioner Boat Santa Rita II, Inc. breached its duty to provide cure and acted in a manner warranting punitive damages under the general maritime law?

PARTIES TO THE PROCEEDINGS

The names of all parties to these proceedings are contained in the caption of the case.

RULE 29.6 STATEMENT

Petitioner, Boat Santa Rita II, Inc., a nongovernmental corporation, states that it has no parent corporation, and that no publicly held corporation owns 10% or more of its stock.

LIST OF ALL PROCEEDINGS

Proceedings related to this case are:

1. *Aadland v. Boat Santa Rita II, Inc.*, Nos. 24-1003, 24-1039, United States Court of Appeals for the First Circuit. Judgment entered on March 17, 2025.

2. *Aadland v. Boat Santa Rita II, Inc.*, No. 1:2017-cv-11248, United States District Court for the District of Massachusetts. Amended Judgment entered on December 18, 2023.

3. *Aadland v. Boat Santa Rita II, Inc.*, No. 20-2073, United States Court of Appeals for the First Circuit. Judgment entered on July 28, 2022.

4. *Aadland v. Boat Santa Rita II, Inc., et al.*, 1:17-cv-11248, United States District Court for the District of Massachusetts. Judgment entered October 16, 2020.

5. *Aadland v. Boat Santa Rita II, Inc., et al.*, 1:17-cv-11248, United States District Court for the District of Massachusetts. Motion for Summary Judgment granted in part, denied in part, entered November 25, 2019.

TABLE OF CONTENTS

Table of Contents

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

Cases

Page

Page

Constitutional Provisions

Statutes

PETITION FOR WRIT OF CERTIORARI

Petitioner Boat Santa Rita II, Inc. respectfully petitions this Honorable Court to review the judgment of the United States Court of Appeals for the First Circuit dated March 17, 2025.

OPINIONS BELOW

The decision for review is the judgment of the United States Court of Appeals for the First Circuit, reported at *Aadland v. Boat Santa Rita II, Inc.*, 132 F.4th 33 (1st Cir. Mar. 17, 2025) (App. 1a), in which it reversed the amended judgment of the United States District Court for the District of Massachusetts in *Aadland v. Boat Santa Rita II, Inc.*, 1:2017-cv-11248, 2023 AMC 662, 2023 U.S. Dist. Lexis 22472, 2023 WL 8720128 (D. Mass. Dec. 18, 2023) (App. 59a). The District Court's amended judgment entered following remand by the First Circuit in *Aadland v. Boat Santa Rita II, Inc.*, 42 F.4th 34 (1st Cir. July 28, 2022) (App. 92a), in which it reversed the District Court's judgment in favor of Petitioner Boat Santa Rita II, Inc. in *Aadland v. Boat Santa Rita II, Inc., et al.*, 1:17-cv-11248, 2020 AMC 336, 2020 U.S. Dist. Lexis 191573, 2020 WL 6119926 (D. Mass. Oct. 16, 2020) (App. 135a). The District Court granted summary judgment in favor of all defendants except for Counts III and IV against Petitioner Boat Santa Rita II, Inc. on November 25, 2019, as set forth in *Aadland v. Boat Santa Rita II, Inc., et al.*, 1:17-cv-11248, 2019 U.S. Dist. Lexis 203826, 2019 WL 6307223 (D. Mass. Nov. 25, 2019) (App. 147a).

JURISDICTION

Judgment of the United States Court of Appeals for the First Circuit from which this petition is taken entered on March 17, 2025. *Aadland v. Boat Santa Rita II, Inc.*, Nos. 24-1003, 24-1039 (1st Cir. March 17, 2025) (App. 1a).

This Honorable Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

The questions presented in this case fall within the Court's jurisdiction to decide matters of maritime law under Article III, Section 2, Clause 1 of the United States Constitution which provides, in relevant part, that "The judicial Power shall extend… to all Cases of admiralty and maritime Jurisdiction…" *See Exxon Shipping Co. v. Baker*, 554 U.S. 471, 489-90 (2008).

INTRODUCTION

Punitive damages may be awarded against a vessel owner that fails to provide maintenance and cure to an injured seaman. *Atl. Sounding Co. v. Townsend*, 557 U.S. 404 (2009). In *Townsend*, the Court held that nothing in the Jones Act undermined the general maritime rule allowing for punitive damages where a vessel owner failed to satisfy its obligation to provide maintenance and cure. However, the *Townsend* Court never directly considered what level of misconduct would support an award of punitive damages. The *Townsend* Court described such conduct as "wanton, willful, or outrageous," and "of a particularly egregious nature," constituting a "callous

and willful and persistent refusal to pay maintenance and cure," and "… the willful and wanton disregard of the maintenance and cure obligation…" *Id.* at 409, 411, 424. The Court used similar verbiage in *Vaughan v. Atkinson*, 369 U.S. 527, 530-31 (1962), where it described the vessel owner refusal to even acknowledge an injured seaman's claim as "callous in their attitude," "recalcitrance," and "willful and persistent."

Under the broader maritime law, the Court has observed that, "The prevailing rule in American courts also limits punitive damages to cases of what the Court… spoke of as 'enormity,' where a defendant's conduct is 'outrageous,' owing to 'gross negligence,' 'willful, wanton, and reckless indifference for the rights of others,' or behavior even more deplorable." *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 493 (2008) (internal citations omitted).

Other courts have used a variety of pejorative descriptors to characterize the level of misconduct that would support an award of punitive damages for failing to satisfy the duty to provide maintenance or cure. Before this case, the First Circuit had allowed punitive damages where the vessel owner was, "callous, willful, or recalcitrant in withholding [maintenance and cure] payments." *Robinson v. Pocahontas, Inc.*, 477 F.2d 1048, 1051 (1st Cir. 1973). The Fifth Circuit has described misconduct sufficient to support the imposition of punitive damages as "callous and recalcitrant, arbitrary and capricious, willful, callous and persistent." *McWilliams v. Texaco, Inc.*, 781 F.2d at 514, 519 (5th Cir. 1986).

Some courts have held that the level of misconduct warranting punitive damages involves an element of bad

faith. *See Harper v. Zapata Off-Shore Co.*, 741 F.2d 87, 90 (5th Cir. 1984); *Roberts v. S.S. Argentina*, 359 F.2d 430, 431 (2nd Cir. 1966); *Hines v. J.A. La Porte, Inc.*, 820 F.2d 1187, 1189 (11th Cir. 1987).

While the distinctions between the various iterations of what failing of a vessel owner may give rise to punitive damages may seem immaterial, the application can be significant. Uniformity in the maritime law demands a coherent measure by which vessel owners can gauge whether their handling of maintenance and cure could subject them to punitive damages.

STATEMENT OF THE CASE

A.

On July 9, 2014, the F/V LINDA, a commercial fishing vessel owned by Petitioner Boat Santa Rita II, Inc. ("BSR II"), departed port in New Bedford, Massachusetts, with a crew of five including its captain, Respondent Magnus Aadland ("Aadland"). App. 63a. Several days into the trip, Aadland fell ill while in the service of the vessel. *Id.* By July 16, 2014, Aadland was unable to get out of his bunk so, the first mate took control of the vessel and returned to port. *Id.*

An ambulance met the vessel upon its return to New Bedford and transported Aadland to St. Luke's Hospital where he tested positive for group G Streptococcus bacteria. *Id.* The cause of Aadland's illness was not initially clear but it eventually required extensive hospitalization. *Id.* at 137a.

Aadland was hospitalized at multiple medical facilities for an extended period, from July 18, 2014, to December 29, 2014, and then again from July 9, 2015, to September 10, 2015. *Id.* at 63. During his hospitalizations, Aadland required multiple surgeries including cardiac surgeries on December 5, 2015, and in July of 2015. *Id.*

Aadland received physical and occupational therapy intermittently in 2015 and 2016. *Id.* On April 25, 2019, Aadland began another course of physical therapy from which he was discharged on June 26, 2019. *Id.* at 63a-64a. He began another course of occupational therapy on May 29, 2019, from which he was discharged on July 2, 2019. *Id.* at 64a.

At trial, Aadland introduced medical bills totaling $1,203,963.60.

Throughout his treatment, Aadland received health insurance coverage under various plans administered by Tufts Health Plan ("Tufts"). *Id.* at 65a-67a. Premiums for the Tufts COBRA Plan were paid out of the Aadlands' joint finances. *Id.* at 66a.

Beginning on April 1, 2017, and continuing to the time of trial, Aadland received health insurance coverage through Medicare as well as a Tufts supplemental health insurance plan. *Id.* at 67a.

At the onset of his illness, Aadland was covered under a Tufts family health insurance plan partially sponsored by the employer of his wife, Cynthia Aadland ("Mrs. Aadland"). *Id.* at 65a. During that period, the Aadlands' share of the premiums was deducted from Mrs. Aadland's

paycheck. Id. at 65a-66a. Mrs. Aadland stopped working for her employer at the end of September 2014. *Id.* at 66a.

From October 1, 2014, through March 31, 2017, Aadland received health insurance coverage under a Consolidated Omnibus Budget Reconciliation Act plan administered by Tufts. *Id.* at 66a-67a.

Tufts paid Aadland's medical providers a total of $605,338.07 in satisfaction of their bills. *Id.* at 67a. Although the Aadlands sometimes disagreed with Tufts about Aadland's level of care, there was no evidence that Aadland required any medical treatment that he did not receive. *Id.* at 64a.

Francis A. Patania ("Patania"), BSR II's manager and co-owner, was in regular contact with the Aadlands throughout Aadland's treatment. *Id.* at 62a, 64a. Patania began communicating with Mrs. Aadland by text message on the morning of July 18, 2014, to inquire about Aadland's condition. *Id.* at 64a. Patania visited Aadland several times during his hospitalization. *Id.* Although Patania was aware that Tufts was paying for Aadland's medical treatment, and that there were numerous setbacks in his health, there was no indication to Patania or BSR II that Aadland was not receiving reasonable and adequate medical care. *Id.* at 65a.

On February 5, 2015, retroactive to December 30, 2014, BSR II began paying Aadland maintenance at the rate of $84.00 per day and continued to do so until judgment entered in its favor on October 16, 2020. *Id.* at 68a. During the same period, BSR II paid Aadland "advances" in the amount of $114.00 per day for a total

of $238,374.00 in advances by the time of trial. *Id.* The Aadlands used the maintenance and advance payments to pay household bills including but not limited to their health insurance premiums. *Id.* BSR II also reimbursed Aadland $5,388.24 for out-of-pocket medical expenses. *Id.* at 69a. There was no expense or bill related to Aadland's medical care that was presented to BSR II that was refused. *Id.*

On September 11, 2020, BSR II reached an agreement with Tufts under which Tufts agreed to release and waive any liability or obligation by Aadland to repay the $605,338.07 it had paid to satisfy his medical expenses in exchange for $400,000.00 from BSR II. *Id.*

B.

On July 7, 2017, Aadland brought suit in the United States District Court for the District of Massachusetts against BSR II, Patania, the F/V LINDA, and two others seeking recovery for defendants' negligence under the Jones Act, the unseaworthiness of the F/V LINDA, maintenance and cure, and compensatory and punitive damages for failure to provide maintenance and cure. *Id.* at 59a.

Aadland voluntarily dismissed the F/V LINDA on September 8, 2017.

BSR II and the remaining defendants moved for summary judgment on April 15, 2019, on all counts except Count III which sought maintenance and cure from BSR II. *Id.* at 59a-60a. The district court granted summary judgment in the defendants' favor on Aadland's Jones Act and unseaworthiness claims. *Id.* However, the district

court denied the motion as to Count IV, which sought compensatory and punitive damages from BSR II for its alleged failure to provide maintenance and cure. *Id.* at 60a.

A three-day bench trial commenced on September 14, 2020. *Id.* at 135a. Judgment entered in favor of BSR II on October 16, 2020. *Id.*

Observing that Aadland had made no claim or request for cure from BSR II; had incurred no medical expenses that BSR II refused to pay; had not incurred any medical expenses he was personally obligated to pay (including health insurance premiums); and was relieved of any obligation to Tufts, the district court found that BSR II had satisfied its cure obligation. *Id.* at 143a.

Relying on the Fifth Circuit's decision in *Gauthier v. Crosby Marine Serv., Inc.,* 752 F.2d 1085, 1090 (5th Cir. 1985), Aadland argued at trial that BSR II was responsible for the "sticker price" of his care. The district court distinguished *Gauthier*, where the court analogized the vessel owner's conduct to that of the vessel owner in *Vaughan v. Atkinson*, 369 U.S. 527, 233 (1962, which disregarded an injured seaman's claim for maintenance and cure and subsequently sought to set off money he earned during his recovery. The district court reasoned that Aadland's case was closer to the seaman in *Johnson v. United States*, 333 U.S. 46, 50 (1948), who had received care "without cost to himself" and, consequently, had "incurred no actual expense." *Id.* at 143a-144a. The district court rejected Aadland's contention that BSR II's payments were unreasonably delayed and held that he failed to show that BSR II was callous, willful, or recalcitrant. *Id.* at 145a.

Aadland appealed. *Id.* at 92a.

The court of appeals agreed with Aadland that his failure to request cure provided no basis for distinguishing *Gauthier*. The panel questioned whether the advances constituted loans to Aadland which, it reasoned, would not satisfy BSR II's cure obligation. *Id.* at 114a. However, the court of appeals did hold that, even if *Gauthier* applied, BSR II's cure obligation would not be the amount billed by Aadland's providers but, what they accepted in satisfaction of their bills. *Id.* at 119a-120a. Vacating the district court's ruling that BSR II had satisfied its cure obligation caused the court of appeals to also vacate the district court's ruling against Aadland on his claim for punitive damages. *Id.* at 121a.

On remand, the district court found that Aadland alone obtained coverage through Tufts as the premiums were an expense he shared with Mrs. Aadland. However, the district court also found that, "The Aadlands used the maintenance and advance payments to pay household bills including but not limited to health insurance premiums." A. 750.

The district court observed that, "Each advance was accompanied by a receipt identifying the payment as "an ADVANCE toward any settlement, judgment or award resulting from my claim for personal injuries or illness occurring on or about 7/20/2014, while aboard the F/V LINDA." *Id.* at 68a. The advance receipts further stated, "I understand that the amount of any settlement, judgment or award will be reduced by the amount of this advance." *Id.* The district court found that the advances were a "… contract between Aadland and BSR II, which

provides that any future judgments against BSR II be reduced by the amount of the advances paid." *Id.* at 83a.

Without finding, one way or the other, whether BSR II had breached its duty to provide cure, the district court found that BSR II's cure obligation was $605,338.07. *Id.* at 84a. The district court then credited the $400,000.00 Tufts had agreed to accept to release and waive Aadland's obligation to it against the $605,338.07 for a remaining cure obligation of $205,338.07. *Id.* Next, the district court reduced that amount by the $238,374.00 BSR II had paid in advances, leaving BSR II with a credit of $33,035.93 toward any future liability to Aadland. *Id.*

Finally, the district court rejected Aadland's claim for $1,500,000.00 in compensatory damages and held that he had failed to satisfy his burden of showing that BSR II had been "callous, willful, or recalcitrant." *Id.* at 85a.

Both parties appealed. *Id.* at 1a.

The court of appeals vacated the district court's finding regarding and proceeded to find that BSR II had breached its duty to provide cure. *Id.* at 21a-29a.

On Aadland's claim for compensatory damages, the court of appeals affirmed the district court's finding that Aadland had not suffered any damages caused by any delay in payment by BSR II. *Id.* at 31a-33a. The court of appeals noted that Aadland's disputes with Tufts concerned the level of care he received and that he received all of the medical care he required. *Id.* The court of appeals reasoned that Aadland failed to show that, had BSR II acted as Tufts did, Aadland would have been entitled to compensatory damages. *Id.*

Finally, the court of appeals reversed the district court's finding that Aadland had failed to demonstrate that BSR II was callous, willful, or recalcitrant. *Id.* at 35a-52a. Although the court of appeals appropriately referenced the "clearly erroneous" standard, it proceeded to set aside the district court's factual findings and substitute them with its own. *Id.* at 44a-45a. Focusing on the timing of BSR II's settlement with Tufts, the court of appeals found that Aadland had met his burden of demonstrating that BSR II had been callous, willful, recalcitrant, or wanton its failure to satisfy Aadland's medical bills rather than Tufts. *Id.* at 49a-51a.

REASONS FOR GRANTING THIS PETITION

Absent a uniform and predictable standard against which to measure their conduct, vessel owners presented with ill or injured seamen face high-stakes decisions with uncertainty. This petition should be granted so that the Court can avail itself of the opportunity to clearly establish the nature of the misconduct that will open vessel owners to punitive damages.

Regardless of how misconduct meriting punitive damages is characterized, the court of appeals misapplied that standard in this case.

As an initial matter, the decisions below fail to take modern insurance lien law and practices into consideration. This is not an isolated issue. While the historical decisions of this Court and the lower courts remain sound, proliferation of health insurance coverage and developments in how insurers recoup payments under their policies in recent years.

In focusing on the timing of BSR II's satisfaction of Tufts' right of recovery in isolation, the court of appeals vastly expands any prevailing standard applicable to vessel owners. If not reversed, the decision below will lead to the assessment of punitive damages against otherwise well-intentioned vessel owners who, in hindsight, owed additional maintenance or cure. The Court should, therefore, grant this petition to ensure that the First Circuit remains in line with the other circuits in its application of punitive damages under the general maritime law.

A. Uniformity In The General Maritime Law Warrants The Court's Immediate Review.

Maintenance and cure refers to a vessel owner's duty to provide support and medical care to seamen who are injured or become ill while in the service of the vessel. *See Calmar S.S. Corp. v. Taylor*, 303 U.S. 525, 527 (1938). Maintenance refers to the vessel owner's duty to furnish the injured seaman with food and lodging comparable to that which the seaman enjoyed on the vessel. *Id.* at 528. Cure is medical care, including nursing and medical attention. *Id.*; *see also Morales v. Garijak, Inc.*, 829 F.2d 1355, 1358 (5th Cir. 1987) (duty of cure requires "… reimbursing medical expenses ***actually incurred***, and taking reasonable steps to ensure that the seaman receives proper care and treatment") (emphasis supplied); *Johnson*, 333 U.S. at 50 (seaman who resided with parents during convalescence incurred no expense or obligation to repay and, therefore, was not entitled to maintenance). Once the duty attaches, it continues until the seaman is "so far cured as possible." *Farrell v. United States*, 336 U.S. 511, 518 (1949).

However, punitive damages are not available in every instance a vessel owner fails to provide cure. Punitive damages only become available where the refusal to provide maintenance or cure is not only unreasonable but substantially more egregious. *See Vaughan*, 369 U.S. at 530-31 (failure to respond to request for maintenance forcing seaman to obtain work as a taxi driver to survive sufficiently callous, recalcitrant, and willful and persistent to support award of attorney's fees); *see also Robinson*, 477 F.2d at 1052 (initial pretextual reason for denial of maintenance and cure, refusal to pay past due maintenance when seaman was in danger of losing home, and termination of benefits when seaman refused to settle sufficiently callous, willful, or recalcitrant); *cf. Exxon Shipping Co. v. Baker*, 554 U.S. 471, 493 (2008) ("The prevailing rule in American courts also limits punitive damages to cases of… 'enormity,' where a defendant's conduct is 'outrageous,' owing to 'gross negligence,' 'willful, wanton, and reckless indifference for the rights of others,' or behavior even more deplorable") (internal citations omitted).

The level of callous, willful and wanton, or recalcitrant conduct necessary for an award of punitive damages requires an element of bad faith. *Roberts v. S.S. Argentina*, 359 F.2d 430, 431 (2nd Cir. 1966) (nothing in the record indicated that the vessel owner was not acting in good faith); *Deisler v. McCormack Aggregates, Co.*, 54 F.3d 1074, 1087 (3rd Cir. 1995) (injured seaman must establish bad faith or recalcitrance); *Harper v. Zapata Off-Shore Co.*, 741 F.2d 87, 90 (5th Cir. 1984) ("… the willful, wanton and callous conduct required to ground an award of punitive damages requires an element of bad faith"); *Hines v. J.A. La Porte, Inc.*, 820 F.2d 1187, 1189 (11th Cir. 1987).

The Fifth Circuit has developed a sensible framework for evaluating claims that a vessel owner has failed to satisfy its obligation to provide maintenance and cure. *See Morales v. Garijak, Inc.*, 829 F.2d 1355, 1358-59 (5th Cir. 1987). In *Morales*, the Fifth Circuit explained,

> Upon receiving a claim for maintenance and cure, the shipowner need not immediately commence payments; he is entitled to investigate and require corroboration of the claim. If, after investigating, the shipowner unreasonably rejects the claim, when in fact the seaman is due maintenance and cure, the owner becomes liable not only for the maintenance and cure payments, but also for compensatory damages. These are the damages that have resulted from the failure to pay, such as the aggravation of the seaman's condition, determined by the usual principles applied in tort cases to measure compensatory damages.
>
> If the shipowner, in failing to pay maintenance and cure, has not only been unreasonable but has been more egregiously at fault, he will be liable for punitive damages and attorney's fees. We have described this higher degree of fault in such terms as callous and recalcitrant, arbitrary and capricious, or willful, callous and persistent. Thus, there is an escalating scale of liability: a shipowner who is in fact liable for maintenance and cure, but who has been reasonable in denying liability, may be held liable only for the amount of maintenance and cure. If the shipowner has refused to pay

> without a reasonable defense, he becomes liable in addition for compensatory damages. If the owner not only lacks a reasonable defense but has exhibited callousness and indifference to the seaman's plight, he becomes liable for punitive damages and attorney's fees as well.

Morales, 829 F.2d at 1358-59; *see also Cortes v. Baltimore Insular Line, Inc.*, 287 U.S. 367, 373-74 (1932). In *Cortes*, the Court explained,

> The failure to provide maintenance or cure may be a personal injury or something else according to the consequences. If the seaman has been able to procure his maintenance and cure out of his own or his friends' money, his remedy is for the outlay, but personal injury there is none.

Cortes, 287 U.S. at 373-74.

Although much of the language employed by courts considering allegations of wrongful withholding of maintenance or cure is similar, slight variations in conjunctive and disjunctive wording of those decisions can have drastically different consequences. *Compare Townsend*, 557 U.S. at 424 (punitive damages available for the "willful and wanton" failure to provide maintenance and cure); *Hines v. J.A. La Porte, Inc.*, 820 F.2d 1187, 1190 (11th Cir. 1987) (affirming punitive damages for "arbitrary and willful" handling of claim); *Hicks v. Tug Patriot*, 783 F.3d 939, 941 (2nd Cir. 2015) (affirming punitive damages for "unreasonable and willful" failure to pay maintenance); *Robinson v. Pocahontas, Inc.*, 477 F.2d 1048, 1051 (1st Cir.

1973) (affirming punitive damages where vessel owner's termination of maintenance and cure was "callous, willful, or recalcitrant"); *Harper v. Zapata Off-Shore Co.*, 741 F.2d 87, 90 (5th Cir. 1984) ("willful, wanton, and callous" conduct required for award of punitive damages). These slight variations, over time, have muddy the waters of punitive damages for maintenance and cure. A concrete statement of the appropriate standard by this Court would provide much needed clarity for the maritime industry. Article III's grant of admiralty jurisdiction to this Court carries with it a responsibility to ensure a coextensive system or law, operating in uniformity, precisely so that vessel owners and seaman can act in accordance with those laws. *See Norfolk S. Ry. v. James N. Kirby, Pty Ltd.*, 543 U.S. 14, 28 (2004).

Accordingly, this petition should be granted so that the Court may take the opportunity to harmonize the standards applicable to claims for punitive damages related to maintenance and cure.

B. The Decision Below Is Erroneous.

1. The decisions below misapplied the general maritime law on maintenance and cure.

The decisions below erroneously measured BSR II's cure obligation by the total amount Tufts paid to satisfy Aadland's medical expenses.

A vessel owner owes cure only for expenses ***actually incurred*** by an injured seaman or which the seaman is obligated to repay. *See Johnson*, 333 U.S. at 50 (no obligation to provide maintenance where seaman "had

incurred no expense or liability for his care and support" while living with his parents) (emphasis supplied); *see also Ballard v. Alcoa S. S. Co.*, 122 F. Supp. 10, 11-12 (S.D. Al. 1954) ("… absent any proof that the libelant here ***actually paid*** anything for maintenance ***or obligated himself to such payment***, he is not entitled to recover") (emphasis supplied).

Both courts below erred in finding that BSR II's cure obligation was the full $605,338.07 Tufts paid to Aadland's medical treatment providers to satisfy their charges. The courts below applied the Fifth Circuit's holdings in *Gauthier v. Crosby Marine Serv., Inc.*, 752 F.2d 1085 (5th Cir. 1985), and *Manderson v. Chet Morrison Contrs., Inc.*, 666 F.3d 373 (5th Cir. 2012), in determining that BSR II was responsible for the full $605,338.07 Tufts had paid. Unlike the vessel owners in *Gauthier* and *Manderson*, BSR II paid Aadland's insurer, Tufts, $400,000.00 to secure the waiver and release of any and all claims Tufts had against Aadland. Consequently, Aadland incurred no expense or obligation for his case.

In *Gauthier*, the vessel owner attempted to offset its cure obligation by payments made under a private health insurance plan paid for by the injured seaman. 752 F.2d at 1089. The Fifth Circuit observed that, "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." *Id.* However, it analogized the case before it to the situation in *Vaughan*, 369 U.S. at 533, where the vessel owner refused to acknowledge an injured seaman's claim for maintenance and cure and then sought to offset from its cure obligation money he had been forced to earn to support himself during his recovery. *Gauthier*, 752 F.2d

at 1090. Under those circumstances, the Fifth Circuit refused to allow the vessel owner to reap the benefits of the seaman's insurance policy. *Id.*

The court of appeals below correctly explained that, "… it was not until *Manderson* v. *Chet Morrison Contractors, Inc.*, 666 F.3d 373 (5th Cir. 2012), that the Fifth Circuit reached the question of what the cure obligation would be in a situation in which *Gauthier* applied." App. at 118a.

In *Manderson*, the trial court awarded the injured seaman the amount charged by his medical treatment providers despite the fact that they had accepted a lesser amount in satisfaction of their charges from a private insurer under a health insurance plan paid for by the seaman. *Id.* at 381. The Fifth Circuit Court of Appeals agreed with the vessel owner that its cure obligation was the lesser amount accepted by the seaman's treatment providers. *Id.* The *Manderson* court observed that it had, "repeatedly held an injured seaman may recover maintenance and cure only for those expenses '***actually incurred***.'" *Id.* at 382 (emphasis supplied).

An underlying rational for *Gauthier* and *Manderson* is that, even if the seaman did not pay out-of-pocket for the care, the seaman remains liable to reimburse the insurer whether because of a lien or under a right of subrogation. Accordingly, as long as the seaman remains liable to his own health insurer, the seaman has, in a sense, incurred an expense. That is not the case here, though, as BSR II's settlement with Tufts fully released any obligation by Aadland to repay the remaining $205,338.07.

Here, Tufts had a statutory lien against any recovery by Aadland. Chapter 111, § 70A, of the Massachusetts General Law provide that an insurer "…which has provided benefits for covered services furnished to a person… shall, subject to the provisions of section seventy B, have a lien for such benefits, upon the net amount payable to such injured person… out of the total amount of any recovery or sum had or collected or to be collected, whether by judgment or by settlement or compromise, from another person as damages on account of such injuries." Pursuant to § 70B, Tufts notified BSR II of its lien on April 19, 2019. At that point, BSR II could not pay Aadland the $605,338.07 without resolving Tufts' lien. *See* M.G.L. c. 111, § 70C. Tufts also held a contractual right of subrogation under Aadland's policy. So, even if BSR II had paid Aadland directly, he could not have retained those payments.

In holding below that BSR II's cure obligation was the full $605,338.07 Aadland's providers had accepted in satisfaction of their charges, the district court and the court of appeals overlooked the reasoning of the *Manderson* court. By settling with Tufts, BSR II reduced the amount actually incurred by Aadland to the $400,000.00 it paid to satisfy Tufts' lien and right of recovery against the Aadlands. Awarding Aadland the $205,338.07 released and waived by Tufts represented a windfall to Aadland, and an undue burden on BSR II. By all rights, that money belonged to Tufts. The present outcome is at odds with long standing precedent that a seaman may only recover the maintenance and cure actually incurred or which they are obligated to repay. *See Johnson*, 333 U.S. at 50; *see also Manderson*, 666 F.3d at 382.

2. The court of appeals misapplied the clearly erroneous standard.

In reversing the district court's findings on whether Aadland met his burden of proof on his claim for punitive damages, whether BSR II breached its duty to provide cure to Aadland, and whether the advances satisfied BSR II's cure obligation in any way, the court of appeals erred in its application of the clearly erroneous standard.

Following a bench trial, "Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility." Fed. R. Civ. P. 52(a)(6). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court ***on the entire evidence*** is left with the definite and firm conviction that a mistake has been committed. *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948) (emphasis supplied). As this Court has observed, "If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Anderson v. Bessemer City*, 470 U.S. 564, 573-74 (1985). Confronting a similar question of whether a trial court's denial of an injured seaman's claims for punitive damages based on the vessel owner's alleged failure to provide maintenance and cure, the First Circuit has followed this Court's instruction. *See Trupiano v. Captain Gus & Bros.*, 1994 U.S. App. Lexis 35501*, 1994

WL 702324, *2-3 (1st Cir. 1994) (citing, *Anderson*, *supra*) ("After all, when there are two plausible sets of inferences that can be drawn from the facts, the trier's choice between them cannot be clearly erroneous"). Whether a vessel owner was callous or arbitrary and capricious is a factual determination reviewed for clear error. *Id.*; *see also Breese v. Awi, Inc.*, 823 F.2d 100, 102-03 (5th Cir. 1987); *cf. Anderson*, 470 U.S. at 573 (a finding of intentional discrimination is a finding of fact).

The amended judgment of the district court reflects that it properly considered the oral and other evidence admitted at trial in finding, as a matter of fact, that Aadland had failed to satisfy his burden of proving an entitlement to punitive damages. On remand, the district court found,

> As previously noted, BSR II paid regular advances to Aadland to cover his mortgage payments, insurance payments, and living expenses, it paid his out-of-pocket medical expenses, there were not any medical expenses presented to BSR II that it declined to pay, and ultimately, it paid Tufts in satisfaction of any lien or claim Tufts might bring against Aadland. Patania was in close contact with Aadland throughout his treatment. Also, on the record here, Aadland timely received all care deemed medically necessary.
>
> Indeed, as the First Circuit's opinion and this Court's analysis above reveals, it was not clear given the unusual facts of this case whether BSR II was liable for Aadland's

> medical treatment where it was covered by private insurance paid for with deductions from his wife's paycheck or made from their joint account including when Aadland was receiving advances from BSR II. D. 128 at 23-28; *see Manderson*, 666 F.3d at 383 (reversing district court's award of attorneys' fees where defendant presented evidence in support of contention that seaman was not owed maintenance and cure due to undisclosed pre-existing condition, which district court rejected); *Harper v. Zapata Off-Shore Co.*, 741 F.2d 87, 91 (5th Cir. 1984) (declining to impute bad faith to "decision to pay what [shipowner] considered to be the legal minimum" and reversing award of punitive damages and attorneys' fees).

App. 90a. The district court explained, "Having considered the entirety of the record, the Court concludes that, even if BSR II had failed to cure in a timely manner, Aadland has not shown that BSR II was callous, willful, or recalcitrant in such failure. Therefore, his claim under Count IV fails." *Id.* at 91a.

Reversing the district court, the court of appeals explained,

> … we do not understand the District Court merely to have made a discretionary determination that no punitive damages or attorney's fees should be awarded for BSR II's callous, willful, recalcitrant, or wanton failure to satisfy its duty of cure as of September 2020. We instead read the District Court to have ruled

> that, as a matter of law, no punitive damages or attorney's fees could be awarded on this record because of its finding that BSR II had not engaged in a callous, willful, recalcitrant or wanton failure to satisfy its duty of cure as of September 2020.

App. at 41a.

A fair reading of the district court's amended judgment reflects that it found, as a matter of fact, that Aadland had failed to satisfy his burden of proving that BSR II was callous, willful, or recalcitrant, a finding supported by the mitigating factors the district court specifically listed and reference to its consideration of the entirety of the record. The district court's findings are amply supported by the record. It found that there was no evidence that Aadland required any medical treatment that he did not receive. App. at 64a. BSR II paid Aadland $84.00 per day in maintenance and "advances" in the amount of $114.00 per day which the Aadlands used to pay household expenses including but not limited to their health insurance premiums. *Id.* BSR II never refused to pay an expense related to Aadland's medical care that was presented to it and reimbursed Aadland $5,388.24 for the out-of-pocket medical expenses he did present. *Id.* at 69a. Beginning on July 18, 2014, Patania was in regular contact with the Aadlands concerning Aadland's treatment and condition. *Id.* at 62a, 64a. Patania visited Aadland several times during his hospitalization. *Id.* Although Patania was aware that Tufts was paying for Aadland's care, there was no indication that Aadland was not receiving reasonable and adequate medical care. *Id.* at 65a. And, in September of 2020, BSR II paid Tufts $400,000.00 to release any lien

or obligation Aadland had incurred. *Id* Nothing in the district court's decision indicates that it felt compelled to conclude, as a matter of law, that it could not award attorney's fees or punitive damages.

Even if the district court had concluded that it could not award punitive damages as a matter of law where Aadland had failed to prove that BSR II was callous, willful, or recalcitrant, such a conclusion would have been an accurate statement of the law. *See Robinson v. Pocahontas, Inc.*, 477 F.2d 1048, 1051 (1st Cir. 1973); *see also Morales v. Garijak, Inc.*, 829 F.2d 1355, 1358 (5th Cir. 1987) ("If the shipowner, in failing to pay maintenance and cure, has not only been unreasonable but has been more egregiously at fault, he will be liable for punitive damages and attorney's fees. We have described this higher degree of fault in such terms as callous and recalcitrant, arbitrary and capricious, or willful, callous and persistent").

Focusing on the timing of BSR II's satisfaction of Tufts' lien, as the court of appeals did, overlooked BSR II's conduct, as a whole. The court of appeals reviewed BSR II's conduct piecemeal. It reasoned,

> We do not see—and BSR II does not explain—how the payment of *maintenance* to Aadland bears on whether it breached its separate duty of *cure*… We also agree with Aadland that BSR II's reimbursement of his out-of-pocket expenses fails to show that there was no breach of the duty of cure, given that this reimbursement represented, as Aadland emphasizes, less than one percent of the amount of BSR II's undisputed cure obligation.

> That leaves only BSR II's contentions about the import of both its payment of advances to Aadland and its payment of $400,000 to Tufts. We conclude that those contentions fail as well.

App. 22a (emphasis original, internal citations omitted). The court of appeals failed to acknowledge the vast majority of the facts on which the district court based its finding that Aadland had failed to satisfy his burden of demonstrating that BSR II was callous, willful, or recalcitrant. The court of appeals also overlooked the district courts earlier finding that, "Aadland made no request for cure from BSR II." App. at 143a. Undeniably, the fact that Aadland never asked BSR II, rather than Tufts, to pay his treatment providers is no basis for distinguishing *Gauthier*. However, Aadland's failure to request cure does weigh on whether BSR II was callous, willful, or recalcitrant in not displacing Tufts of its own initiative. This is particularly true where, as the district court found here, it was unclear at the time that *Gauthier* even applied and, despite its knowledge that Tufts was paying Aadland's medical bills, there was no indication that he was not receiving the care he required or that he was incurring any expense in receiving it.

Cases in which punitive damages have been proper all share common elements of egregious behavior by the vessel owner, an unjust impact on the seaman (frequently, prolonging of suffering, worsening of the condition, or financial loss), or some combination thereof. None of that is the case here. The district court's factual findings – which were affirmed by the court of appeals – reveal nothing but concern for Aadland's wellbeing by BSR II. Likewise, both courts below found that Aadland timely received all medical care he reasonably required.

Unlike in *Vaughan*, BSR II never ignored Aadland's claim or refused any expense presented to it. BSR II's conduct differed from the vessel owner in *Robinson* which initially asserted a pretextual reason for denying maintenance and cure and then made irregular payments causing the seaman to lose his home. 477 F.2d at 1050; *see also Hicks*, 783 F.3d at 941 (seaman's home lost in foreclosure despite being forced to prematurely return to work because of insufficient maintenance payments). As the court of appeals acknowledged below, Aadland failed to demonstrate the payment of his medical bills by Tufts, rather than BSR II, caused him any damages. *Compare, Hines*, 820 F.2d at 1190 (prolonged suffering and aggravation of seaman's condition caused by premature termination of benefits).

Similarly, the court of appeals erred in reversing the district court and finding, as a matter of fact, that the advances paid by BSR II were loans. App. at 24a-26a.

Following *Sabow v. Am. Seafoods Co.*, 737 F. App'x 322, 324 (9th Cir. 2018) and *Debbie Flo, Inc. v. Shuman*, No. 13-2650 (RBK/JS), 2014 WL 461179, at *3-4 (D.N.J. Feb. 5, 2014) the district court determined that the advances were a "contract between Aadland and BSR II" which provided that any future judgment against BSR II would be reduced by the amount of the advances paid was also not clearly erroneous. That determination was not clearly erroneous.

While the district court did not state, one way or the other, whether the advances were loans, it did make a determination that they were a contract between the parties concerning BSR II's prepayment of any

settlement, judgment, or award against it. Based on the advance receipts and the testimony at trial, it was not clearly erroneous for the district court to follow the cases it cited in determining that the advances were a prepayment agreement between the parties, enforceable on its terms.

Finally, the court of appeals erred in finding, as a factual matter, that BSR II breached its duty to provide cure. As the court of appeals noted,

> Aadland then goes on to contend that he is entitled to judgment that this breach occurred… This contention matters to Aadland's appeal even though he is not contesting the District Court's ruling on remand that, based on the setoffs, BSR II owed him no compensatory damages for any unpaid cure as of September 2020. After all, Aadland *is* challenging the portions of the District Court's judgment that denied his requests for compensatory damages for emotional distress and punitive damages as well as attorney's fees, and a premise of each of those requests is that BSR II breached its duty of cure as of September 2020… Although BSR II agrees with Aadland that the District Court did not pass on the breach issue one way or the other, we see no reason to remand for the District Court to resolve the breach issue in the first instance.

App. at 20a (emphasis original).

Despite finding that BSR II owed additional cure to Aadland, the district court was not required to find, one

way or the other, whether BSR II breached its duty to provide cure. As the Fifth Circuit observed in *Morales*, "… a shipowner who is in fact liable for maintenance and cure, but who has been reasonable in denying liability, may be held liable only for the amount of maintenance and cure. 829 F.2d at 1358; cf. *Cortes*, 287 U.S. at 373-74 ("If the seaman has been able to procure his maintenance and cure out of his own or his friends' money, his remedy is for the outlay, but personal injury there is none"). Here, the district court could have reasonably concluded that additional cure was owed without finding a breach by BSR II.

Under these circumstances, the court of appeals should have remanded to the district court to make the appropriate findings of fact. *See Pullman-Standard v. Swint*, 456 U.S. 273, 291 (1982) ("When an appellate court discerns that a district court has failed to make a finding because of an erroneous view of the law, the usual rule is that there should be a remand for further proceedings to permit the trial court to make the missing findings").

CONCLUSION

Fore the foregoing reasons, this Honorable Court should grant this Petition for Writ of Certiorari.

Respectfully submitted,

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June 2025

APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT, FILED MARCH 17, 2025

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Nos. 24-1003, 24-1039

MAGNUS AADLAND,

Plaintiff, Appellant/Cross-Appellee,

v.

BOAT SANTA RITA II, INC.,

Defendant, Appellee/Cross-Appellant,

BOAT SANTA RITA III, INC.;
F/V LINDA; FRANCIS A. PATANIA;
SALVATORE PATANIA, JR.,

Defendants.

Filed March 17, 2025

OPINION

Appeals from the United States District Court
for the District of Massachusetts
[Hon. Denise J. Casper, *U.S. District Judge*]

Before
Barron, *Chief Judge*,
Howard and Gelpí, *Circuit Judges*.

Appendix A

BARRON, *Chief Judge*. This is the second appeal that we have heard in this federal admiralty case. It arises out of a 2017 suit that a seaman, Magnus Aadland ("Aadland"), brought in the United States District Court for the District of Massachusetts against a fishing vessel's owner, Boat Santa Rita II, Inc. ("BSR II"), and related parties.

In the operative complaint, Aadland alleges that in 2014 he fell ill while working offshore on the owner's fishing vessel and that he thereafter was owed a duty of maintenance and cure that was not satisfied. The duty is owed by a vessel owner to a seaman who falls ill or is injured while onboard a vessel at sea. *See Atl. Sounding Co.* v. *Townsend*, 557 U.S. 404, 413, 129 S.Ct. 2561, 174 L.Ed.2d 382 (2009) (quoting *The Osceola*, 189 U.S. 158, 175, 23 S.Ct. 483, 47 L.Ed. 760 (1903)). For relief, Aadland sought, among other things, compensatory damages for unpaid maintenance and cure, compensatory damages for emotional distress, and punitive damages as well as attorney's fees.

In the first appeal, we considered Aadland's challenges to the judgment that the District Court entered against him following a bench trial on his claims. By the time of the trial, those claims were only against BSR II and Aadland's challenges related solely to BSR II's alleged breach of its duty of cure, not its duty of maintenance. We either vacated or reversed each of the challenged portions of the District Court's judgment and remanded for further proceedings not inconsistent with our decision.

Appendix A

On remand, the District Court entered judgment in favor of Aadland in some respects and in favor of BSR II in others. Aadland now appeals from that judgment, while BSR II cross-appeals.

In issuing the judgment on remand, the District Court first ruled that Aadland was entitled to cure on an ongoing basis up to the point in time at which BSR II shows that Aadland has achieved what is known as maximum medical recovery ("MMR"). That is when the seaman who has suffered an on-ship illness or injury "is 'so far cured as possible'" that the vessel owner at that point no longer has an ongoing, continuous duty of maintenance and cure. *Whitman* v. *Miles*, 387 F.3d 68, 72 (1st Cir. 2004) (quoting *Farrell* v. *United States*, 336 U.S. 511, 518, 69 S.Ct. 707, 93 L.Ed. 850 (1949)).

The District Court next ruled that Aadland was not entitled to compensatory damages for unpaid cure for the period between the onset of his onboard illness in 2014 and the start of the trial in September 2020. That was so, according to the District Court, because BSR II's payment during that time of both advances to Aadland and $400,000 to Aadland's private health insurer had to be offset against any unpaid cure obligation that BSR II may have had.

In addition, the District Court ruled that Aadland was not entitled to compensatory damages for emotional distress resulting from any breach of the duty of cure by BSR II. And, finally, the District Court ruled that Aadland was not entitled to punitive damages or attorney's fees for any such breach.

Aadland does not challenge on appeal the District Court's ruling that, due to BSR II's payments to him and his private health insurer, he is owed no compensatory damages for unpaid cure. However, insofar as the District Court's judgment is unclear as to whether BSR II breached its duty of cure as of September 2020, he contends, and we agree, that he is entitled to judgment that such a breach occurred. He also challenges the District Court's judgment denying both his request for compensatory damages based on emotional distress and his request for punitive damages as well as attorney's fees. We affirm the portion of the judgment that denies the former request but vacate the portion that denies the latter one.

As to the cross-appeal, we first consider BSR II's challenge to the District Court's ruling that Aadland is entitled to cure on a going-forward basis from September 2020 up to the point in time at which BSR II can show that he has achieved MMR. We then address BSR II's challenge to the District Court's ruling that its $400,000 payment to Aadland's private insurer entitles it to a setoff against its cure obligation of only that amount rather than $605,338.07, which it contends is the proper setoff amount. We affirm the judgment issued by the District Court with respect to both rulings.

I.

A.

Aadland filed his complaint in the District of Massachusetts in 2017 against BSR II and four related parties: Boat Santa Rita III, Inc., F/V Linda, Salvatore

Patania, Jr., and Francis A. Patania ("Patania"). A three-day bench trial began in September of 2020.

By that time, only one defendant, BSR II, and two counts from the original complaint—Counts III and IV—remained in play. In Count III, Aadland sought compensatory damages for any unpaid obligations that BSR II owed under the duty of maintenance and cure. In Count IV, he sought both compensatory damages for emotional distress caused by BSR II's failure to fulfill the maintenance and cure duty that it owed prior to the start of the trial and punitive damages as well as attorney's fees for that same failure.

Although the duty of maintenance and cure is often referred to as a single duty, it has two distinct aspects—"maintenance" and "cure." The duty of maintenance makes the vessel owner responsible for "the provision of, or payment for, food and lodging" for the ailing seaman. *LeBlanc* v. *B.G.T. Corp.*, 992 F.2d 394, 397 (1st Cir. 1993). The duty of cure obliges the vessel owner to pay "necessary health-care expenses . . . incurred during the period of [the seaman's] recovery from an injury or malady." *Id.*

B.

The District Court made the following findings of fact, which neither party contests on appeal. Aadland served as the captain of the F/V Linda, owned by BSR II, during a commercial scalloping trip that left New Bedford, Massachusetts on July 9, 2014. Several days into the trip,

while at sea, Aadland fell ill. His condition worsened, and the F/V Linda reversed course and traveled back to port.

An ambulance met Aadland upon arrival in New Bedford, Massachusetts on July 18, 2014. He was transported to a hospital and diagnosed with a group G Streptococcus infection. Aadland spent much of the next six months, from July 18, 2014, to December 29, 2014, receiving medical care at various inpatient facilities. He was then discharged and received outpatient treatment until July 9, 2015, when he was again admitted to the hospital due to health complications that stemmed from the infection.

Aadland was released from this second period of hospitalization on September 10, 2015. He thereafter received outpatient treatment for symptoms attributed to the infection.

From the onset of the illness in July 2014 through September 2014, Aadland received Tufts health insurance ("Tufts") through GAF Engineering, the then-employer of his wife, Cynthia Aadland. During that time, Tufts paid for the majority of Aadland's care and BSR II reimbursed him for the out-of-pocket medical expenses, $5,388.24 in total, that he submitted to BSR II.

Cynthia Aadland stopped working at GAF Engineering in September 2014. From October 2014 through April 2017, Aadland was covered by a Tufts Consolidated Omnibus Budget Reconciliation Act ("COBRA") continuation of health insurance plan, for which he paid monthly premiums. Tufts continued to pay for the medical care that

he received as a result of his illness during that period. In April 2017, he also obtained healthcare coverage through Medicare.

From December 30, 2014, to October 16, 2020, Aadland was paid maintenance of $84 per day by BSR II.[1] By the time of the trial, this maintenance amounted to $175,644. During this same period, BSR II paid him "advances" of $114 per day. These advances totaled $238,374. Additionally, Tufts accepted $400,000 from BSR II in full satisfaction of any lien or claim that it might have had against Aadland or Cynthia Aadland for coverage of Aadland's medical expenses. BSR II indicates that it made this payment on the "eve of trial."

C.

The District Court entered its judgment in favor of BSR II on October 16, 2020. It first determined that Aadland had reached MMR by the time of the bench trial in September 2020. Based on this ruling, the District Court determined that Aadland was not entitled to maintenance or cure on a going-forward basis. The ruling did not affect, however, any obligation that BSR II had under either of those duties prior to the time of the trial.

With respect to BSR II's duty of maintenance up to September 2020, the District Court ruled that BSR II had satisfied that duty. The District Court did so on

1. Aadland received the first payment from BSR II on February 5, 2015, backdated to and containing the amount owed by BSR II from December 30, 2014.

the ground that "[s]ince February 5, 2015, [BSR II] has provided Aadland maintenance at the same daily rate of $84.00." As to BSR II's duty of cure up to September 2020, the District Court noted that "Aadland made no request for cure from BSR II" prior to filing suit and that "[t]here were no out-of-pocket medical expenses for Aadland that BSR II declined to pay." The District Court then proceeded to address Aadland's contention that, despite these findings, BSR II failed to satisfy its cure obligation as of September 2020.

Aadland emphasized to the District Court the evidence in the record that showed that Tufts—and not BSR II—paid for the onboard-illness-related medical care that he had received prior to September 2020. He also emphasized the evidence in the record that he argued showed that he secured insurance from Tufts both through his wife's employment and, during the period in which he had insurance through Tufts COBRA health insurance plan, his own payment of premiums. Aadland argued to the District Court that, under the Fifth Circuit's decision in *Gauthier* v. *Crosby Marine Service, Inc.*, 752 F.2d 1085 (5th Cir. 1985), these features of the record showed that the duty of cure obliged BSR II to pay for the costs of his healthcare related to his onboard illness up to the start of the trial. That was so, he contended, notwithstanding that Tufts had paid for the care. In pressing this contention, Aadland described *Gauthier* to the District Court as holding that "when medical care payments are made on behalf of the injured seaman by a medical insurance policy provider which the injured seaman has purchased separate and apart from the vessel owner, the payments

are not to be considered as being furnished at no expense to the injured seaman."

The District Court ruled that *Gauthier* did not apply because it was distinguishable on its facts. The District Court explained that "[u]nlike the circumstances there which the [Fifth Circuit] analogized to an instance where a shipowner disregarded an injured seaman's maintenance and cure claim and then wanted to set off any money earned by the seaman during the pendency of the claim, there was no such refusal here." The District Court also determined that Aadland, unlike the seaman in *Gauthier*, had not "incurred any medical expenses" for the cost of his care. That was so, according to the District Court, because of both the advance payments that BSR II had made to Aadland and the fact that "[t]here are no outstanding medical expenses or reimbursements for Aadland's medical care that Aadland is obligated to pay."

In that regard, the District Court pointed to its finding that "Tufts has accepted $400,000.00 from BSR II in full satisfaction of any lien or claim it might have against Aadland or Mrs. Aadland for coverage of Aadland's medical expenses." It found that, as a result of that payment, "Tufts has no claim or lien against Aadland (or his wife) for medical expenses or reimbursements" with respect to medical services provided prior to September 2020 that related to Aadland's onboard illness.

The District Court went on to reject Aadland's request for punitive damages and attorney's fees on the ground that "BSR II has not withheld maintenance and cure

payments." The District Court added that "[t]o the extent that Aadland claims that the timing of BSR II's payments to him were unreasonably delayed," it "d[id] not agree on this record." It further explained that it "d[id] not conclude that, even if there had been a showing of a failure to pay maintenance and cure, Aadland has shown that BSR II was callous, willful, or recalcitrant in such alleged failure."

Finally, the District Court rejected Aadland's request for compensatory damages for emotional distress arising from BSR II's asserted failure to satisfy its duty of cure within the period up to September 2020. The District Court concluded that it "d[id] not need to reach [Aadland's claim for emotional distress damages] because of Aadland's failure to show that BSR II was callous, willful or recalcitrant" in any breach of the duty of maintenance and cure.

D.

Aadland appealed. He contended that the District Court erred in: (1) ruling that BSR II had satisfied its duty of cure up to September 2020; (2) denying his request for punitive damages and attorney's fees; (3) denying his request for compensatory damages for his alleged emotional distress arising from BSR II's asserted failure to satisfy its duty of cure in a timely manner during the period up to September 2020; and (4) ruling that he had achieved MMR as of September 2020, such that BSR II had no going-forward duty of cure from that date.

We reversed the District Court's ruling that Aadland had achieved MMR as of September 2020. *Aadland* v. *Boat*

Santa Rita II, Inc. (*Aadland I*), 42 F.4th 34, 37-38 (1st Cir. 2022). We vacated the District Court's ruling that, as of September 2020, BSR II had satisfied its duty of cure up until that time. *Id.* at 37.

In explaining our reasons for vacating the latter ruling, we noted that the District Court "did not purport to take issue with" either *Gauthier* or Aadland's account of it. *Id.* at 44. We also noted that we understood the District Court to have based its ruling on the determination that *Gauthier* was factually distinguishable. *Id.* We then further explained that we understood the District Court to have distinguished *Gauthier*, at least in part, based on its finding that "Aadland failed to request cure as the seaman in [*Gauthier*] had." *Id.* at 44.

We determined that this aspect of the District Court's reasoning was problematic. *Id.* We did so on the ground that Aadland's failure to have made such a request could not provide a valid ground for distinguishing *Gauthier* on its facts, given that BSR II did not dispute that Aadland had no obligation to request cure. *Id.*

We then addressed BSR II's argument that we could nonetheless affirm the District Court's determination that *Gauthier* was distinguishable on its facts. *Id.* at 45. Specifically, BSR II contended that, unlike the seaman in *Gauthier*, Aadland did not "alone purchase[] [his] medical insurance," thereby precluding him from benefitting from *Gauthier*'s holding. *Id.* (alterations in original) (quoting *Gauthier,* 752 F.2d at 1090).

BSR II based this contention in part on the fact that Aadland's wife helped him purchase the health insurance in question. *Id.* We explained that "we [were] not persuaded by [BSR II's] implicit assertion that the use of one spouse's paycheck to fund the insurance of the other is necessarily a 'gift' from the one to the other in the same way that perhaps a parent paying the premiums of an adult child might be viewed." *Id.* at 45-46.

We recognized that, ordinarily, a seaman who receives financial support from a parent or a wealthy relative to pay for medical care does not "incur" for the purposes of cure the expenses that were covered by that financial support. *Id.* at 45 (first citing *Johnson* v. *United States*, 333 U.S. 46, 50, 68 S.Ct. 391, 92 L.Ed. 468 (1948); and then citing *In re RJF Int'l Corp.*, 334 F. Supp. 2d 109, 113 (D.R.I. 2004)). But we concluded "that the nature of the relationship between the seaman and the person providing financial assistance to him matters." *Id.* at 45. We then explained that, "given that it is not unusual for a married couple to share finances," the use of a spouse's resources differs materially from the use of funds provided by a parent or wealthy relative. *Id.* at 45-46. Accordingly, we held that neither Aadland's receipt of coverage from his wife's employer nor his paying for the coverage with financial resources that he shared with his wife showed that Aadland did not "alone purchase" his health insurance. *Id.* at 46.

We also addressed an additional ground that BSR II advanced for concluding that Aadland did not "alone" pay for the health insurance and thus for our affirming the District Court's determination that *Gauthier* was

factually distinguishable. In pressing this ground, BSR II relied on the fact that, as recognized by the District Court, it provided Aadland with "advances" that he used, at least in part, to pay the relevant insurance premiums to the insurer, Tufts. *Id.* at 46-47.

In rejecting this basis for distinguishing *Gauthier* on its facts, we explained that *Gauthier* held that "where a seaman has alone purchased medical insurance, the shipowner is not entitled to a set-off from the maintenance and cure obligation moneys the seaman receives from his insurer." *Id.* at 44 (quoting *Gauthier*, 752 F.2d at 1090). In other words, we explained that *Gauthier* stands for the proposition that if a seaman independently purchases medical insurance and uses that insurance to pay for medical care that is covered by the duty of cure, then the seaman may be said to have "incurred" the cost of his care as billed to the insurer for the purposes of cure, such that the seaman may recover that amount, less any setoffs, from the vessel owner. *Id.* at 44-48; *see Gauthier*, 752 F.2d at 1090. We then further explained that, based on that understanding of *Gauthier*, "Aadland would have been in all relevant respects 'abandon[ed] . . . to his fate'" insofar as BSR II had extended the advances to Aadland only as loans. *Aadland I*, 42 F.4th at 46-47 (alterations in original) (quoting *Dutra Grp.* v. *Batterton*, 588 U.S. 358, 375, 139 S.Ct. 2275, 204 L.Ed.2d 692 (2019)). We also "emphasize[d], if [Aadland] did alone purchase th[e] insurance"—as would be the case if the advances *were* loans—"then [BSR II] would not be entitled to set off from their cure obligation the roughly $600,000 . . . that Aadland's medical providers received from [Tufts] as

payment for their treatment of his on-ship illness." *Id.* at 47-48.

We ultimately concluded that it was not clear from the record whether the advances that BSR II paid to Aadland did constitute loans. *Id.* We also noted that the District Court did not make a finding as to whether the advances were loans or not. *Id.* at 46. Thus, we vacated the District Court's judgment to BSR II on Aadland's breach-of-the-duty-of-cure claim and remanded for further proceedings not inconsistent with our decision. *Id.* at 47.

Before concluding our analysis of whether BSR II had breached its duty of cure as of September 2020, though, we chose to address "the question as to what the proper measure of cure is" for the period up until that time. *Id.* at 48. We explained that it was important to do so because this question could be relevant on remand. *Id.*

We acknowledged Aadland's contention that the proper measure of cure is "the 'sticker price' of the healthcare that he received, which is $1.2 million." *Id.* Nonetheless, we agreed with BSR II that "*Gauthier* never resolved how much cure the shipowner there owed the seaman," *id.*, and that *Manderson* v. *Chet Morrison Contractors, Inc.*, 666 F.3d 373 (5th Cir. 2012), a later-decided case from the Fifth Circuit, did. *Manderson* held, as we characterized it, that:

> [W]hen a seaman alone purchases his medical insurance, such that *Gauthier*'s no-set-off rule applies, "the relevant amount" owed as cure is

> not the "sticker price" the healthcare providers assign to the care that they provided to the seaman to treat his on-ship illness or injury. Rather, "the relevant amount is that needed to satisfy the seaman's medical charges," which there was the "lower amount paid by [the seaman's] insurer."

Aadland I, 42 F.4th at 48-49 (second alteration in original) (quoting *Manderson*, 666 F.3d at 382).

Accordingly, we concluded that, "insofar as *Gauthier* does apply. . . . [and] insofar as Aadland did alone purchase the insurance in question, . . . the cure owed here is the roughly $600,000 that his healthcare providers accepted as payment for his care from his insurer." *Id.* at 50. We therefore rejected Aadland's contention that the measure of cure under *Gauthier* was double that amount. *Id.*

In addition, we identified various issues for the District Court to address on remand with respect to the duty of cure. Specifically, we left to the District Court the assessment of whether *Gauthier*'s reasoning should be adopted; whether Aadland had paid for his insurance "alone" with respect to his medical care for his onboard illness, and thus whether, if *Gauthier* were adopted, it would apply on these facts; whether the advances that Aadland received from BSR II up to September 2020 were loans; what cure was paid by BSR II up until that time; and whether BSR II had satisfied its cure obligation as of September 2020. *Id.* at 50-51.

Finally, we turned to Aadland's challenge to the District Court's rulings in BSR II's favor as to his request for compensatory damages for emotional distress and his request for punitive damages as well as attorney's fees. *Id.* at 52. We observed that "the District Court's judgment in this regard relied on its determination that Aadland was not deprived of any cure owed to him by [BSR II] because *Gauthier* did not apply." *Id.* Because we ruled that this determination rested on an erroneous legal basis, we vacated those portions of the District Court's grant of judgment to BSR II. *Id.*

E.

On remand, the District Court "solicited the parties' proposal for a new schedule, considered supplemental briefing from the parties on the outstanding issues, heard oral argument and took the matter under advisement." The District Court issued its decision in December 2023.

As to whether Aadland had reached MMR by September 2020, the District Court considered evidence from BSR II that had not been at issue in Aadland's appeal from the District Court's prior judgment. Despite considering this evidence, the District Court ruled that BSR II had not met its burden to prove that Aadland had reached MMR as of September 2020.

The District Court then turned to Aadland's breach-of-the-duty-of-cure claim. It framed the issue on remand as requiring that it determine "the measure of BSR II's cure obligation as of September 2020 and whether that obligation is offset by any payments already made."

The District Court first determined that the "cure obligation is $605,338.07, the amount that Tufts paid to Aadland's medical providers." It thus rejected Aadland's contention that the cure obligation was the roughly $1.2 million that the medical providers originally billed Tufts.

As to "whether that obligation is offset by any payments already made," the District Court concluded that *Gauthier* would "guide [its] analysis," such that "Aadland should be entitled to recover his medical expenses, even though they were paid for by Tufts, so long as the insurance was not gifted to him by a third party, but rather a reasonable expense paid out of his shared finances with his wife." Based on this understanding of *Gauthier*, the District Court went on to rule that "BSR II may not offset its cure obligation with the [funds] Tufts paid to satisfy Aadland's medical bills."

In so concluding, the District Court rejected BSR II's contention that its payment of advances to Aadland meant that "Aadland did not pur[chase] his insurance alone such that the *Gauthier* analysis would not apply." The District Court noted that "BSR II itself did not purchase or provide health insurance on Aadland's behalf" and "did not require Aadland to spend the advances on health insurance as opposed to other necessities or incidentals." It continued, finding that "though BSR II's insurance broker included the health insurance premiums in his calculation of the appropriate maintenance and advances due to Aadland, BSR II did not communicate to Aadland any intent that the advances be used for health insurance." The District Court thus found that Aadland paid for

his health insurance alone, although it did so without determining whether the advances were loans.

The District Court went on to explain, however, that Aadland did not dispute that BSR II's $400,000 payment to Tufts "should be credited towards its cure obligation." It then determined that, as a result, that payment applied as a setoff in favor of BSR II against its roughly $600,000 cure obligation as of September 2020.

The District Court next addressed the import of the advances that BSR II had paid to Aadland, and it explained that "[a]lthough . . . BSR II's advances did not reduce its cure obligation in the first instance, the advances remain relevant to what amount BSR II now owes Aadland." The District Court noted that each advance had a receipt, signed by Aadland, and that each receipt stated the payment was an "ADVANCE toward any settlement, judgment or award resulting from my claim for personal injuries or illness occurring on or about 7/20/2014 while aboard the F/V LINDA." It then concluded that it "must enforce the terms of this contract between Aadland and BSR II, which provides that any future judgment against BSR II be reduced by the amount of the advances paid."

Thus, the District Court credited not only the "$400,000 payment to Tufts" that BSR II had made but also the "$238,374.00 in advances paid" by BSR II to Aadland against the $605,338.07 that it determined was owed as cure. In consequence, the District Court found that BSR II had a "$33,035.93 . . . credit against any continuing cure obligation . . . after September 2020," as BSR II had paid Aadland more than he was owed as cure.

Finally, the District Court ruled that Aadland was not entitled either to damages for emotional distress or to punitive damages as well as attorney's fees based on BSR II's asserted breach of its duty of cure as of September 2020. It based these rulings on grounds independent of whether BSR II had breached the duty of cure.

This timely appeal by Aadland and cross-appeal by BSR II followed.

II.

"When a district court conducts a bench trial, its legal determinations engender de novo review," as do its "determinations about the sufficiency of the evidence." *United States* v. *15 Bosworth St.*, 236 F.3d 50, 53 (1st Cir. 2001). A district court's factual findings are reviewed for clear error. *See id.*; *see also* Fed. R. Civ. P. 52(a)(6).

A district court's resolution of mixed questions of law and fact is typically treated with deference. *Vinick* v. *United States*, 205 F.3d 1, 6 (1st Cir. 2000). But, if the district court "'premise[s] its ultimate finding . . . on an erroneous interpretation of the standard to be applied,'. . . . we treat the trial court's conclusion as a question of law," entitled to no deference. *Id.* at 7 (first alteration in original) (quoting *United States* v. *Parke, Davis & Co.*, 362 U.S. 29, 44, 80 S.Ct. 503, 4 L.Ed.2d 505 (1960)).

III.

On appeal, Aadland does not dispute the District Court's rulings that credit BSR II's payment of both

the advances to him and the $400,000 to Tufts as setoffs against any liability that BSR II owed for any breach of its duty of cure prior to September 2020. Aadland nonetheless contends that, notwithstanding those rulings, the District Court did not rule one way or the other as to whether BSR II had in fact committed such a breach. Aadland then goes on to contend that he is entitled to judgment that this breach occurred.

This contention matters to Aadland's appeal even though he is not contesting the District Court's ruling on remand that, based on the setoffs, BSR II owed him no compensatory damages for any unpaid cure as of September 2020. After all, Aadland *is* challenging the portions of the District Court's judgment that denied his requests for compensatory damages for emotional distress and punitive damages as well as attorney's fees, and a premise of each of those requests is that BSR II breached its duty of cure as of September 2020.

Although BSR II agrees with Aadland that the District Court did not pass on the breach issue one way or the other, we see no reason to remand for the District Court to resolve the breach issue in the first instance. This is the second appeal in this case, Aadland has fully briefed the issue in this appeal, BSR II has directly responded to that briefing, and Aadland is contending that this record compels the finding that the breach occurred. We thus begin our analysis of Aadland's appeal by addressing the breach issue.

Moreover, because, as we will explain, we conclude that the breach issue must be resolved in Aadland's favor,

we also proceed to address his challenges to the portions of the District Court's judgment denying his request for compensatory damages for emotional distress and his request for punitive damages as well as attorney's fees. For the reasons set forth below, we affirm the District Court's judgment insofar as it denies the former request but vacate the judgment insofar as it denies the latter.

A.

As to the breach issue, Aadland argues that BSR II breached its duty of cure as of September 2020 because it "untimely and partially paid its cure obligation." In advancing this argument, Aadland points to unchallenged findings below that establish that Tufts—his private medical insurer—paid for the care that related to his onboard illness. Aadland also points to both the District Court's finding that he paid for his insurance coverage from Tufts "alone" and the District Court's determination that, in consequence, BSR II owed cure under *Gauthier* as of September 2020 in the amount of the roughly $600,000 that the private insurer paid for his care. Aadland then contends that he is entitled to judgment that BSR II breached its duty of cure because the record clearly shows both that BSR II failed to pay adequate cure as of September 2020 and that, insofar as the record shows that BSR II ultimately did pay the total amount of cure that it owed as of then, it paid such cure in an untimely manner.[2]

2. Because we agree with Aadland that he is entitled to judgment that BSR II breached its duty of cure to him on the ground that the advances were not cure and did not suffice to satisfy BSR II's undisputed cure obligation, we need not reach his other arguments for why he is entitled to such a judgment.

In responding to Aadland's contention on appeal, BSR II does not dispute the District Court's determination that BSR II owed cure to Aadland due to his onboard illness. It also does not dispute that the proper measure of its cure obligation as of September 2020 is the $605,338.07 that Tufts had paid healthcare providers for Aadland's care. Finally, it does not take issue with the District Court's decision to rely on *Gauthier* to arrive at this now-undisputed measure of BSR II's cure obligation as of September 2020, even though our prior decision in this case did not hold that *Gauthier* necessarily did apply here. Nonetheless, BSR II contends that Aadland is not entitled to judgment that it breached its duty of cure because it "paid maintenance, reimbursed Aadland's out-of-pocket medical expenses, provided generous advances, and settled with Tufts." We are not persuaded.

We do not see—and BSR II does not explain—how the payment of *maintenance* to Aadland bears on whether it breached its separate duty of *cure*. *See LeBlanc*, 992 F.2d at 397 (discussing how the duty of maintenance and the duty of cure impose distinct obligations). We also agree with Aadland that BSR II's reimbursement of his out-of-pocket expenses fails to show that there was no breach of the duty of cure, given that this reimbursement represented, as Aadland emphasizes, less than one percent of the amount of BSR II's undisputed cure obligation.

That leaves only BSR II's contentions about the import of both its payment of advances to Aadland and its payment of $400,000 to Tufts. We conclude that those contentions fail as well.

The advances constituted cure, according to BSR II, because (1) BSR II calculated their value in part based on the cost of Aadland's health insurance premiums, and (2) evidence in the record shows that, through a third party, BSR II had advised Aadland and his wife that the advances were intended to cover their health insurance premiums. BSR II further argues that any contrary District Court findings were clearly erroneous.

In disagreeing with BSR II, Aadland argues that the advances did not constitute cure because the record compels the conclusion that the advances functioned as loans. He directs our attention to the District Court's finding, based on signed receipts that accompanied each advance payment, that each "advance[] [was] characterized as an 'ADVANCE toward any settlement, judgment or award resulting from my claim for personal injuries or illness occurring on or about 7/20/2014, while aboard the F/V LINDA.'" Aadland also emphasizes that the District Court applied the advances as a setoff not because they constituted cure but because the District Court concluded that it "must enforce the terms of this contract between Aadland and BSR II, which provides that *any* future judgment against BSR II be reduced by the amount of the advances paid." (Emphasis added). He then reasons that it follows that the advances must be considered loans "to be repaid by Aadland to BSR II when a judgment or award is issued" or when a settlement is reached. Furthermore, Aadland reminds us that we held in *Aadland I* that, if the advances were loans, then they would not be cure, as "in that event, Aadland would have been in all relevant respects 'abandon[ed] . . . to his fate.'"

Aadland I, 42 F.4th at 46 (alteration in original) (quoting *Dutra Grp.*, 139 S. Ct. at 2286).

We find it significant, in assessing whether the advances were loans, that they clearly could be recovered as setoffs against a judgment even if that judgment were not duplicative of Aadland's entitlements under the duty of cure. Our holding in *Block Island Fishing, Inc.* v. *Rogers*, 844 F.3d 358 (1st Cir. 2016), shows why this feature of the record is significant.

We held in *Block Island Fishing*—as BSR II itself points out in its briefing—that "once a shipowner pays maintenance and cure to the injured seaman, the payments can be recovered only by offset against the seaman's damages award—not by an independent suit seeking affirmative recovery." *Id.* at 366 (quoting *Boudreaux* v. *Transocean Deepwater, Inc.*, 721 F.3d 723, 728 (5th Cir. 2013)). Moreover, in so holding, we "adopted the ruling of the Fifth Circuit in *Boudreaux* v. *Transocean Deepwater, Inc.*," *id.* at 359, which establishes that a vessel owner may offset "damages recovered by the seaman *to the extent they duplicate maintenance and cure previously paid*," *Boudreaux*, 721 F.3d at 727 (emphasis added).

In other words, in *Block Island Fishing*, we determined that, if a seaman recovers damages from a vessel owner that are tied to the same expenses that have already been covered by maintenance and cure payments made by that vessel owner, then the vessel owner may deduct those prior payments from the judgment to prevent double recovery. *Id.* In so holding, however, we also held that a vessel owner

generally may not apply cure payments as a setoff against a non-duplicative judgment. *Id.*

Against that legal backdrop, the findings below compel the conclusion that the advances at issue here operated—for all relevant purposes—as loans. They were to be credited, by their plain terms, against even a judgment that was not duplicative of a judgment for cure itself. Accordingly, we do not see how these advances could constitute cure. Indeed, in the prior appeal in this case, we held that, insofar as the advances were loans, they could not constitute cure. *See Vaughan* v. *Atkinson*, 369 U.S. 527, 532-33, 82 S.Ct. 997, 8 L.Ed.2d 88 (1962) ("Maintenance and cure differs from rights normally classified as contractual. . . . '[N]o agreement is competent to abrogate the incident.'" (quoting *Cortes* v. *Balt. Insular Line*, 287 U.S. 367, 371, 53 S.Ct. 173, 77 L.Ed. 368 (1932))).

Notably, BSR II does not dispute that the advances would have to be repaid against a judgment or award for Aadland even if that judgment in his favor were not duplicative of what he was owed as cure. Indeed, BSR II acknowledges that the record "inarguably establish[es] that the advances were not a loan Aadland would be required to repay *other than as a credit against any settlement, judgment, or award resulting from his claims*." (Emphasis added).

BSR II nonetheless maintains that "Aadland's argument that paying advances amounts to abandonment is without merit." BSR II does so in part because it argues that "advances serve as mechanism by which

a vessel owner can provide for the needs of an injured seaman without waiving its right to contest a disputed item of the seaman's claim." But we are not persuaded by this response insofar as it challenges either Aadland's contention that the advances functioned as loans or his contention that, because they did, they cannot constitute cure.

BSR II argues that the advances constituted cure because the use of advances is "commonplace" in the context of "seaman's personal injury claims." BSR II explains that "[b]ecause a vessel owner presented with a claim for maintenance and cure has limited time to investigate and begin paying, advances have become a common tool for vessel owners to begin making immediate payments to injured seam[e]n without relinquishing the right to subsequently contest the duty."

We may assume that advances can play a role in permitting a vessel owner to "mak[e] immediate payments" while the owner investigates a seaman's claim. Here, however, BSR II concedes that "after promptly investigating the claim[,] the vessel owner must decide whether to pay or deny the claim." And yet, for the six years after Aadland suffered his illness that manifested while at sea, BSR II provided him with these advances, which could be credited against a judgment that was non-duplicative of the cure owed. At no point does BSR II explain how its claimed right to "promptly investigat[e]" Aadland's claim for cure provides a basis for it having provided him with only advances of this kind for that

long.[3] We thus conclude that BSR II's asserted need to investigate Aadland's claim fails to provide any basis for concluding that BSR II did not breach its cure obligation. *See Sullivan* v. *Tropical Tuna, Inc.*, 963 F. Supp. 42, 45 (D. Mass. 1997) (concluding that vessel owner breached the duty of cure "by delaying one month before approving [the seaman's] surgery, and that this breach was both unreasonable and willful"); *Bickford* v. *Marriner*, No. 2:12-CV-00017, 2012 WL 3260323, at *4 (D. Me. Aug. 8, 2012) ("Although the shipowner has the right to investigate whether the seaman is entitled to maintenance and cure payments, the vessel owner must not unduly delay its decision."); *see also Hines* v. *J.A. LaPorte, Inc.*, 820 F.2d 1187, 1190 (11th Cir. 1987) (noting "laxness in investigating a claim" for maintenance and cure as an "example[] of willfulness meriting punitive damages and counsel fees" (quoting *Tullos* v. *Res. Drilling, Inc.*, 750 F.2d 380, 388 (5th Cir. 1985))).

BSR II separately argues that the advances must be deemed cure to "resolve the 'unfair conundrum' raised in *Bickford*." *See Bickford*, 2012 WL 3260323, at *5. The

3. At oral argument in the first appeal, BSR II indicated that "there was some confusion initially" about the cause of Aadland's illness and some evidence that "[Aadland] had suffered potentially a bug bite and that might be the source of the infection, a week prior to the trip, when he was in Maine." BSR II acknowledged that it "eventually determined that it was a case in which we were obligated to pay maintenance and cure. . . . It quickly became apparent that it wasn't necessarily the bug bite." BSR II also suggested that the delay in paying cure was in part because the owner was not as familiar with the cure obligation owed to a seaman who falls ill rather than suffers an injury.

claimed conundrum is that, even though a vessel owner cannot recover any overpayment in cure, the owner faces punitive damages if the owner willfully withholds cure.

As Aadland points out, however, *Bickford* described the vessel owner's position as a "*supposedly* unfair conundrum," *id.* (emphasis added), and the phrase "unfair conundrum" appeared in the opinion in that case only as a quotation from the defendant vessel owner's briefing, *id.* at *2. In addition, the district court there rejected the vessel owner's proposed alternative mechanism for paying cure that would have allowed the owner potentially to recover payments made during the period of its investigation. *Id.* at *5.

In any event, there would be a problem for BSR II even if we were to assume that the advances that BSR II paid Aadland did constitute cure: the advances would not show that BSR II satisfied its cure obligation as of September 2020 in a timely manner. The undisputed record shows that the advances were first made to Aadland in February 2015, backdated to December 2014. And while it is undisputed that by the start of the trial in September 2020 BSR II had paid Aadland $238,274 in advances, it is also undisputed that by December 2014 he already had incurred over $300,000 in healthcare expenses related to his onboard illness. *See Farrell*, 336 U.S. at 519, 69 S.Ct. 707 (observing that cure is to be paid "in kind and concurrently with its need"); *Vaughan*, 369 U.S. at 531, 82 S.Ct. 997 (finding breach where seaman "was forced to hire a lawyer and go to court to get" what was owed under the duty of maintenance and cure).

BSR II's remaining argument as to the breach issue rests on its $400,000 payment to Tufts to indemnify Aadland and his wife. BSR II concedes, however, that the payment to Tufts was made on the "eve of trial," which means that it was made six years *after* the onset of the onboard illness that triggered the duty. This payment therefore also fails to show that BSR II did not breach its duty—given that the duty requires the timely payment of cure—between the onset of Aadland's onboard illness in 2014 and the start of litigation. *See Farrell*, 336 U.S. at 519, 69 S.Ct. 707; *Sullivan*, 963 F. Supp. at 45-46 (concluding that vessel owner breached the duty of cure "by delaying one month before approving [the seaman's] surgery, and that this breach was both unreasonable and willful" even though the vessel owner had paid all medical bills prior to trial); *see also Vaughan*, 369 U.S. at 531, 82 S.Ct. 997.

Accordingly, although the District Court did not rule directly on the issue of whether BSR II had breached its duty of cure to Aadland as of September 2020, we conclude that he is entitled to judgment that this breach occurred. We thus turn to Aadland's remaining challenges on appeal, which do not take issue with the District Court's rulings that the advances to him and the payment to Tufts may be credited as setoffs against the cure owed to him by BSR II. Instead, these remaining challenges take aim only at the District Court's rulings that denied his request for compensatory damages for his alleged emotional distress and his request for punitive damages as well as attorney's fees.

B.

The parties agree that a seaman may be entitled to compensatory damages for emotional distress if the vessel owner acts unreasonably in breaching the duty of maintenance and cure and that breach caused the seaman emotional distress. *See Morales* v. *Garijak, Inc.*, 829 F.2d 1355, 1357 (5th Cir. 1987). In challenging the District Court's denial of his request for damages for emotional distress, Aadland alleges that "if BSR II had fulfilled its duty [of cure], Tufts never should have been involved." As a result, Aadland contends that he then would not have experienced the "mental anguish of fighting with Tufts to receive coverage for the care" and would not have had to "live with the knowledge that Tufts could refuse to cover future care at any time." Aadland therefore argues that "but for BSR II's failure to fulfill its duty, [he] would not have been in coverage disputes with Tufts and would not have suffered from the mental anguish that the disputes caused him." He thus contends that the District Court erred in ruling for BSR II with respect to his claim for emotional distress damages.

This challenge rests, in part, on the contention that "[t]he District Court applied an erroneous causation standard" by applying a "direct causation standard rather than the standard tort causation standard." Aadland argues that, under that latter standard, he was entitled to judgment in his favor as to this aspect of his claim. We conclude, however, that, even accepting Aadland's preferred causation standard, there is no merit to his challenge. Aadland fails to show that the emotional distress he experienced resulted from BSR II's breach.

Aadland contends that he is entitled to damages for emotional distress because he had to "fight[] with Tufts to receive coverage for the care" and those "coverage disputes" caused "mental anguish." The fact that Aadland experienced emotional distress during his interactions with Tufts does not necessarily show, though, that BSR II's breach caused that emotional distress. Aadland fails to make this showing.

The District Court found, and Aadland does not dispute, that the coverage disputes concerned whether Aadland was entitled to "admission to a skilled nursing facility (as opposed to an acute rehabilitation facility) and the frequency of his physical and occupational therapy." In order to show that this distress was caused by BSR II's breach, then, he must show that the breach caused these disputes. Aadland, however does not on appeal point to findings or evidence in the record supportably showing that, had BSR II timely satisfied its duty of cure, it would have paid for the higher level of care that he sought from Tufts.[4] *See LeBlanc*, 992 F.2d at 397 (recognizing that under the duty of cure a seaman is entitled to "necessary"

4. At oral argument, Aadland acknowledged that he had the burden to demonstrate that BSR II acted unreasonably and that the unreasonable conduct caused his emotional distress. He argued, however, that as a matter of equity, we should require BSR II to prove that Aadland would have faced the same emotional distress if BSR II—rather than Tufts—had paid for the care. This argument was not developed in his brief on appeal or before the District Court and is therefore waived. *See United States* v. *Zannino*, 895 F.2d 1, 17 (1st Cir. 1990) ("[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.").

healthcare expenses). Accordingly, Aadland fails to show that the coverage disputes that caused his emotional distress were caused by BSR II's breach because he does not point to findings or evidence supportably showing that BSR II would have acted differently than Tufts with respect to paying for the care in question in such a way that would have reduced the likelihood of those disputes. In other words, Aadland has not provided any evidence that the disputes resulted from BSR II's breach rather than from the nature of the care requests that he was making.

We also are not persuaded insofar as Aadland is arguing that he is entitled to damages for emotional distress because he had to "live with the knowledge that Tufts could refuse to cover future care at any time." He does not point to any factual finding or evidence in the record that establishes that he experienced such fear. In fact, he does not identify any factual finding or evidence that indicates that he was even aware of the fact that Tufts might not cover care resulting from his onboard illness. Aadland fails to do so, moreover, even though the District Court found that:

> Nothing in the trial record shows that Tufts threatened to stop covering Aadland's medical bills because a work-related injury was outside his insurance policy. Nor did the evidence at trial show when, prior to Tufts' receipt of the $400,000 payment, Aadland became aware that Tufts['] policy on work-related injuries might be invoked to exclude his treatment from coverage.

(Citation omitted). Indeed, Aadland does not directly argue that any of these factual findings were erroneous.

Nor does he point us to any evidence in the record that contradicts them.

Moreover, as noted above, the District Court found that Aadland received all necessary medical care and Aadland does not directly dispute that finding. Nor do we see any reason to conclude that this finding was clearly erroneous, insofar as Aadland does mean to take issue with it on appeal. Aadland also does not point to any evidence supportably showing that the care covered by Tufts was at risk of falling below the level of care that he was entitled to receive under the duty of cure. And Aadland also neither points to any finding that indicates that BSR II would have paid for a higher level of care than his insurer did nor argues that the District Court clearly erred in failing to make such a finding. He also does not point to any evidence that Tufts acted in such a way that if BSR II acted in that same manner, it would have violated its duty of cure to him.

In sum, then, Aadland has failed to show—regardless of the standard of causation—how BSR II would have acted differently than Tufts during the relevant period. Thus, we have no evidentiary basis from which to conclude that Aadland would have been spared any emotional distress that he suffered if BSR II, rather than Tufts, had paid for his care and satisfied its duty of cure in the first instance.

We must reject, too, the argument that "the lower court also erred in finding that Aadland had to present evidence beyond his and his wife's testimony to prove causation." The District Court clearly noted that "expert

testimony is not required to prove emotional damages" and nothing in the record suggests that the District Court nevertheless imposed such a requirement on Aadland.

C.

There remains Aadland's challenge in his appeal to the District Court's denial of his request for punitive damages as well as attorney's fees. In *Atlantic Sounding Co.* v. *Townsend*, 557 U.S. at 424, 129 S.Ct. 2561, the Supreme Court held that "[b]ecause punitive damages have long been an accepted remedy under general maritime law, . . . such damages for the willful and wanton disregard of the maintenance and cure obligation should remain available in the appropriate case as a matter of general maritime law." *See also Dutra Grp.*, 588 U.S. at 375, 139 S.Ct. 2275 (recognizing that "a claim of maintenance and cure . . . addresses a situation where the vessel owner and master have 'just about every economic incentive to dump an injured seaman in a port and abandon him to his fate'" (quoting *McBride* v. *Estis Well Service, LLC*, 768 F.3d 382, 394 n.12 (5th Cir. 2014) (Clement, J., concurring))). And, for more than half a century, this Circuit has held that a district court has discretion to award punitive damages for the callous, willful, recalcitrant, or wanton failure to pay maintenance and cure. *See Robinson* v. *Pocahontas, Inc.*, 477 F.2d 1048, 1051-52 (1st Cir. 1973); *see also Pino* v. *Prot. Mar. Ins. Co.*, 490 F. Supp. 277, 281 (D. Mass. 1980) ("It is settled in this Circuit that an admiralty court has discretion to award a seaman punitive damages when a shipowner's refusal to pay maintenance and cure was the result of a 'wanton and intentional' disregard of the

seaman's legal rights." (quoting *Robinson*, 477 F.2d at 1051)).

Here, the parties do not dispute that a vessel owner is subject to punitive damages or obliged to pay the seaman's attorney's fees when the owner is callous, willful, recalcitrant, or wanton in failing to satisfy its obligations under the duty of cure. *See Robinson*, 477 F.2d at 1051. The parties also seem to agree that a vessel owner may defeat a claim for punitive damages as well as attorney's fees when it can show that it relied on a "reasonable defense" in not satisfying its claimed duty of cure. *See Morales*, 829 F.2d at 1358. The parties disagree, however, about whether, given those standards, BSR II's conduct permits the imposition of those remedies. And the parties do so even though they appear to share the view that the District Court held that those remedies were not legally permitted here because BSR II's conduct in committing any breach of its duty of cure was not callous, willful, recalcitrant, or wanton.

We treat a district court's finding as to whether a vessel owner was callous, willful, recalcitrant, or wanton in failing to pay maintenance or cure as a factual finding that is reviewed only for clear error. *See Trupiano* v. *Captain Gus & Bros.*, No. 94-1690, 1994 WL 702324, at *1 (1st Cir. Dec. 15, 1994); *Breese* v. *AWI, Inc.*, 823 F.2d 100, 102-03 (5th Cir. 1987). As we will explain, we agree with Aadland that, contrary to the District Court's finding, it is clear from this record that BSR II's conduct in not fulfilling its duty of cure as of September 2020 was callous, willful, recalcitrant, or wanton. We reach this conclusion in part

because, as we will explain, we agree with Aadland that it is clear that BSR II lacked a reasonable defense in failing to fulfill its cure obligation. We thus conclude that punitive damages and the award of attorney's fees may very well be appropriately granted as an exercise of discretion by the District Court. Accordingly, we vacate the District Court's denial of Aadland's request for punitive damages as well as attorney's fees and remand for further proceedings.

1.

We begin by addressing BSR II's arguments that we must affirm the denial of Aadland's request for punitive damages and attorney's fees on grounds independent of those on which the District Court relied. BSR II argues that, even setting aside the District Court's reasons for finding that it was not callous, willful, recalcitrant, or wanton in failing to fulfill its duty of cure as of September 2020 (insofar as it so failed), punitive damages and attorney's fees still are not permitted on this record. That is so, according to BSR II, because (i) the dispute between Aadland and itself over cure focused only on the adequacy of the cure that BSR II provided; (ii) delay in paying cure cannot, alone, justify punitive damages for breaching the duty of cure; and (iii) Aadland was not harmed by any breach of the duty of cure. We are not persuaded.

a.

To support the contention that "where, as here, the dispute was solely whether [it] provided adequate maintenance and cure, punitive damages would never

have been appropriate," BSR II cites two cases: *Harper* v. *Zapata Off-Shore Co.*, 741 F.2d 87 (5th Cir. 1984), and *Richoux* v. *Jefferson Marine Towing, Inc.*, No. 13-375, 2014 WL 47335 (E.D. La. Jan. 6, 2014). We do not see how *Harper*, a Fifth Circuit case from 1984, assists BSR II's cause.

The Fifth Circuit acknowledged in that case that, for the purposes of awarding punitive damages, "grossly inadequate" payments were distinguishable from a shipowner's "good faith" payments that later turned out to be inadequate. *Harper*, 741 F.2d at 90. As we explain more fully below, the willfulness of BSR II's unreasonable delay in paying cure and the clear evidence of its breach makes this case more like the former, rather than the latter, situation. Furthermore, *Harper* appears to be but one link in the Fifth Circuit's chain of cases limiting the awards of punitive damages. In fact, the Fifth Circuit subsequently barred punitive damages altogether in maintenance and cure cases. Yet the Supreme Court has now held that punitive damages are available in such cases. *See Guevara* v. *Mar. Overseas Corp.*, 59 F.3d 1496, 1513 (5th Cir. 1995) (barring punitive damages), *abrogated by Atl. Sounding Co.*, 557 U.S. at 404, 129 S.Ct. 2561.

The second case cited by BSR II on this point is an unpublished, out-of-circuit decision that followed the relevant holding from *Harper* as binding precedent. *Richoux*, 2014 WL 47335, at *5 (citing *Harper*, 741 F.2d at 88). That decision thus fails to help BSR II for the same reasons that *Harper* fails to do so.

In addition, given the purposes of punitive damages, we see no reason to deem the award of such damages categorically impermissible in cases that involve a failure by the vessel owner to pay some but not all cure owed. *See Vaughan*, 369 U.S. at 533, 82 S.Ct. 997 ("It would be a sorry day for seamen if shipowners, knowing of the claim for maintenance and cure, could disregard it . . . and then evade part or all of their legal obligation by having it reduced. . . . This would be a dreadful weapon in the hands of unconscionable employers. . . ."); *BMW of North America, Inc.* v. *Gore*, 517 U.S. 559, 568, 116 S.Ct. 1589, 134 L.Ed.2d 809 ("Punitive damages may properly be imposed to further a State's legitimate interests in punishing unlawful conduct and deterring its repetition."). In fact, other cases have imposed punitive damages and attorney's fees where the vessel owner did pay some cure and thus where the question presented concerned only the *adequacy* of that cure. *E.g.*, *Hicks* v. *Tug PATRIOT*, 783 F.3d 939, 940-41 (2d Cir. 2015); *Hines*, 820 F.2d at 1190.

b.

We next address BSR II's argument that "delay alone is not grounds for punitive damages as a vessel owner presented with a claim for maintenance and cure is entitled to investigate and require corroboration before paying maintenance and cure." For this proposition, BSR II relies on *Sullivan* v. *Tropical Tuna, Inc.*

That case did note that "the shipowner need not immediately commence payments; he is entitled to investigate and require corroboration of the claim."

Sullivan, 963 F. Supp. at 45 (quoting *Morales*, 829 F.2d at 1358). But *Sullivan* did not suggest that a delay in paying cure could never support a request for punitive damages. In fact, it did not address punitive damages for a breach of the duty of cure at all. *See id.* at 45-47 (discussing seaman's entitlement to compensatory damages and attorneys' fees but not discussing punitive damages).

In addition, as discussed above, BSR II has not shown how the need to investigate and corroborate Aadland's entitlement to cure could justify its six-year delay in paying cure (given that, as we have explained, the advances were not cure), from the onset of the illness to the Tufts settlement payment. BSR II's failure in that regard is even more conspicuous once we account for *Sullivan* having found that the shipowner in that case "breached [the duty of maintenance and cure] by delaying one month before approving [the seaman's] surgery, and that this breach was both unreasonable and willful." *Id.* at 45.

In sum, BSR II's categorical contention that delay is "not grounds for punitive damages" reflects neither our precedent nor even the case that BSR II cites for the proposition. It thus provides no support for BSR II's position.

c.

BSR II's remaining independent ground for affirming the judgment as to punitive damages is that "[p]unitive damages only become appropriate where the injured seaman has incurred some loss or endured unduly

prolonged suffering." Once again, BSR II purports to derive this rule of law from *Sullivan*. As we have explained, however, that decision lacked any discussion of the appropriate circumstances in which to award punitive damages.

In any event, BSR II mischaracterizes the purpose of punitive damages in pressing this line of argument. *See State Farm Mut. Auto. Ins. Co.* v. *Campbell*, 538 U.S. 408, 416, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003) ("[I]n our judicial system compensatory and punitive damages, although usually awarded at the same time by the same decisionmaker, serve different purposes. . . . [P]unitive damages . . . are aimed at deterrence and retribution."). Nor do we see a reason to add a requirement that the withholding of cure must have caused incremental injury, given the Supreme Court's clear holding in *Atlantic Sounding* that punitive damages are available for willful withholding of cure. *See Atl. Sounding*, 557 U.S. at 424, 129 S.Ct. 2561. We thus reject BSR II's argument that punitive damages are not "appropriate," as a categorical matter, unless the seaman has "incurred some loss or endured unduly prolonged suffering."

2.

We turn, then, to the District Court's reasons for denying Aadland's request for punitive damages and attorney's fees. The District Court explained that:

> BSR II paid regular advances to Aadland to cover his mortgage payments, insurance

> payments, and living expenses, it paid his out-of-pocket medical expenses, there were not any medical expenses presented to BSR II that it declined to pay, and ultimately, it paid Tufts in satisfaction of any lien or claim Tufts might bring against Aadland. Patania was in close contact with Aadland throughout his treatment. Also, on the record here, Aadland timely received all care deemed medically necessary. . . . Indeed, as the First Circuit's opinion and [the District Court]'s analysis reveal[], it was not clear given the unusual facts of this case whether BSR II was liable for Aadland's medical treatment where it was covered by private insurance paid for with deductions from his wife's paycheck or made from their joint account including when Aadland was receiving advances from BSR II.

The District Court then ruled that, "having considered the entirety of the record, . . . even if BSR II had failed to cure in a timely manner, Aadland has not shown that BSR II was callous, willful, or recalcitrant in such failure."

As noted above, we do not understand the District Court merely to have made a discretionary determination that no punitive damages or attorney's fees should be awarded for BSR II's callous, willful, recalcitrant, or wanton failure to satisfy its duty of cure as of September 2020. We instead read the District Court to have ruled that, as a matter of law, no punitive damages or attorney's fees could be awarded on this record because of its finding that BSR II had not engaged in a callous, willful,

recalcitrant, or wanton failure to satisfy its duty of cure as of September 2020 (insofar as such a failure occurred). However, for the reasons we will explain, we cannot agree with the District Court's finding in this regard. Rather, we conclude that it is clear on this record that BSR II did breach the duty of cure and that the breach was callous, willful, recalcitrant, or wanton. Thus, we are compelled to conclude that the District Court's contrary finding does not survive clear error review. *See Trupiano*, 1994 WL 702324, at *1; *Breese*, 823 F.2d at 102-03.

To set the stage, we emphasize that Aadland bears the burden of establishing that BSR II was callous, willful, recalcitrant, or wanton in breaching its duty of cure. *See Atl. Sounding Co.*, 557 U.S. at 407, 129 S.Ct. 2561; *Robinson*, 477 F.2d at 1051. That a breach occurred is clear, for the reasons we have explained. Accordingly, the critical issue with respect to the request for punitive damages as well as attorney's fees concerns whether after reviewing the record we are "left with the definite and firm conviction that" Aadland has also met his burden to establish that BSR II willfully committed that breach, notwithstanding the District Court's contrary finding. *Jose Santiago, Inc.* v. *Smithfield Packaged Meats Corp.*, 66 F.4th 329, 340 (1st Cir. 2023) (quoting *García Pèrez* v. *Santaella*, 364 F.3d 348, 350 (1st Cir. 2004)).

For all the reasons that we have explained, Aadland has shown what he must to establish that, unless there is some basis for supportably finding that BSR II reasonably understood that it had somehow satisfied that duty even though it had not, BSR II was willful in breaching its duty

of cure and that it was clear error to conclude otherwise. But we see no basis in the record for concluding that BSR II has made such a showing, even accounting for the District Court's findings.

In explaining its punitive damages ruling, the District Court pointed to its finding that "Aadland timely received all care deemed medically necessary." But the mere fact that *Aadland* paid for and received sufficient medical care fails to suffice to show that *BSR II* was not callous, willful, recalcitrant, or wanton in breaching its duty of cure, precisely because it is clear on this record that BSR II did not itself pay either for the care or for Aadland's insurance. Thus, this finding—supported though it is—provides no basis for finding that BSR II was not callous, willful, recalcitrant or wanton in committing the breach of its duty of cure that we conclude the record clearly shows that it committed.

Second, we fail to see why the fact that "Patania was in close contact with Aadland throughout his treatment" shows that BSR II was not callous, willful, recalcitrant, or wanton in not fulfilling it duty of cure.[5] As we have explained, there was a breach of the duty of cure, and nothing about the fact that Patania was in "close contact" suggests that BSR II was unaware of its duty to provide cure or that it had a reasonable basis for concluding that it had satisfied that duty. If anything, that fact indicates that BSR II was aware of Aadland's need for medical care due to his onboard illness and yet still breached.

5. As a reminder, Patania is one of the owners of BSR II.

Third, the fact that BSR II paid Aadland's out-of-pocket medical expenses fails to provide any basis for concluding that BSR II's clear breach was not callous, willful, recalcitrant, or wanton. As Aadland points out, those expenses constituted less than one percent of the cure obligation. *See Hicks*, 783 F.3d at 941, 945 (awarding punitive damages and attorney's fees in case where vessel owner had paid some maintenance and cure); *Hines*, 820 F.2d at 1189-1190 (same); *Sullivan*, 963 F. Supp. at 45 (finding vessel owner's "breach was both unreasonable and willful" even though the vessel owner "ha[d] now paid all of [the seaman's] medical bills"). Indeed, the payment of these expenses provides at least some evidence that BSR II understood that it owed cure.

The District Court did also base its denial of punitive damages and attorney's fees on its finding that:

> [A]s the First Circuit's opinion and [the District Court]'s analysis reveal[], it was not clear given the unusual facts of this case whether BSR II was liable for Aadland's medical treatment where it was covered by private insurance paid for with deductions from his wife's paycheck or made from their joint account including when Aadland was receiving advances from BSR II.[6]

6. We understand the District Court to have found that "the unusual facts" that Aadland's wife contributed to his insurance and that BSR II paid advances to Aadland made BSR II's liability unclear. To the extent that the District Court can be read to have concluded that either our prior opinion, by remanding for a determination as to how *Gauthier* applied to the advances, or the complex procedural

We thus need to consider this ground for the District Court's finding that BSR II was not callous, willful, recalcitrant, or wanton in breaching its duty of cure.

We set aside for the moment the potential import to this issue of the fact that BSR II was paying advances to Aadland. That way we first can focus on the potential import of the fact that Aadland was paying the costs of his care through insurance that was paid for both from an account that he held jointly with his wife and through deductions from her paychecks. We do not see how this fact, however, provides a basis for finding that the breach of the duty of cure was not callous, willful, recalcitrant, or wanton.

As we have explained, the parties agree that BSR II is not obliged to pay punitive damages for that breach if, at the time, it had a reasonable defense against satisfying the now-undisputed cure obligation. But, in ruling on the punitive damages issue on remand, the District Court did not suggest that BSR II had a reasonable basis to have understood *Gauthier* to be inapplicable apart from the

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history of this case demonstrates ambiguity over whether BSR II had a duty of cure that it had failed to satisfy, we disagree. In our prior ruling, we vacated the District Court's prior denial of punitive damages and remanded for further proceedings. *Aadland I*, 42 F.4th at 52. But we did not address whether BSR II had reason to doubt that it had failed to satisfy its duty of cure insofar as the advances were loans and *Gauthier* applied. We thus in no way suggested that BSR II had reason to understand that it had fulfilled its duty of cure if (1) it accepted that *Gauthier* was applicable insofar as it was not distinguishable on its facts and (2) the record clearly established that the advances functioned as loans.

possible basis arising from the "unusual facts" that the private insurance in this case was paid for through funds tied to Aadland's wife while BSR II was paying advances.[7] And, we fail to see what reasonable basis BSR II would have had for concluding that *Gauthier* would not apply in this specific case simply because Aadland's insurance was being paid with funds that came from his wife.

In that regard, and as we noted above, we held in the prior appeal in this case that there was no merit in BSR II's attempt to distinguish the present circumstances from those present in *Gauthier* based on the involvement of Aadland's wife in securing the health insurance from Tufts. *Aadland I*, 42 F.4th at 46-48. Moreover, insofar as the fact that Aadland relied on his wife's resources might have been thought to raise any question about *Gauthier*'s

7. We note that the District Court's finding that BSR II did not act willfully insofar as it breached its duty of cure was not premised on a finding that it was reasonably unclear that *Gauthier* had any application to Aadland's circumstances because this Circuit as of September 2020 had not adopted the reasoning of that case. Further, at no point in the litigation has BSR II developed an argument that it reasonably did not know if a court in the First Circuit would adopt the logic of *Gauthier* in circumstances analogous to those of the Fifth Circuit case. Indeed, BSR II favorably cited *Gauthier* in the first appeal. Insofar as BSR II has argued that it reasonably did not know that *Gauthier* would apply to this case, it did so only on the basis that *Gauthier* was factually distinguishable because of the involvement of Aadland's wife and given the advances it paid to Aadland. *Aadland I*, 42 F.4th at 51. Accordingly, we do not address whether BSR II's conduct could have been reasonable—and therefore not willful—given the potential uncertainty over whether a court in this Circuit would adopt the logic of *Gauthier* in circumstances analogous to those of that case.

applicability, we do not see how it raised a question that reasonably supported a conclusion that Aadland did not pay for his care "alone" within the meaning of *Gauthier*. It has been clear for nearly three quarters of a century that "the shipowner's liability for maintenance and cure [is] among 'the most pervasive' of all and that it [is] not to be defeated by restrictive distinctions nor 'narrowly confined.'" *Vaughan*, 369 U.S. at 532, 82 S.Ct. 997 (quoting *Aguilar* v. *Standard Oil Co.*, 318 U.S. 724, 730, 63 S.Ct. 930, 87 L.Ed. 1107 (1943)). As a result, it has also been the law for that long that "*[w]hen there are ambiguities or doubts, they are resolved in favor of the seaman*." *Id.* (emphasis added).

We note, too, that there was no finding below that either Aadland or BSR II subjectively understood at any time prior to September 2020 that Aadland's wife's involvement would affect BSR II's obligation to pay cure. Nor does BSR II identify any evidence to support such a finding. Thus, the assertedly "unusual fact[]" that Aadland drew on his wife's resources to cover his health insurance provides no basis for concluding that BSR II had a reasonable belief that it either had no duty of cure or that it had satisfied that duty.

That leaves, then, only the question of whether the "unusual fact[]" that BSR II was paying advances to Aadland in and of itself provides a basis for finding that BSR II's failure to satisfy its full obligation under the duty of cure was not callous, willful, recalcitrant, or wanton. We understand the District Court to have concluded that, because of the advances, "it was not clear" whether

Aadland "alone" paid for his health insurance. We thus understand the District Court to have concluded on that basis that it also was not clear whether, under *Gauthier*, "BSR II was liable for Aadland's medical treatment." But we cannot agree.

Gauthier holds that when a seaman alone pays for health insurance, the seaman incurs, for the purposes of cure, the full cost of his care even if the insurer directly bears the cost of the care. *Gauthier*, 752 F.2d at 1090. And, in our prior decision in this case, we held that, under *Gauthier*, Aadland would have paid "alone" if the advances functioned as loans. *Aadland I*, 42 F.4th at 46. Thus, if it were clear that the advances functioned as loans, then the advances could not have provided a reasonable basis for BSR II to conclude that, insofar as *Gauthier* did apply, the reasoning there would not apply here. And, as discussed above, we see no basis for concluding on this record that these advances functioned as anything other than loans. *See Block Island Fishing*, 844 F.3d at 366 (citing *Boudreaux*, 721 F.3d at 728).[8]

In any event, even if it were reasonably unclear that *Gauthier* applied here due to the advances, BSR II would still have been responsible for at least some portion of

8. We do note that the District Court supportably found that BSR II did not communicate to Aadland that the advances were to be used to pay for his premiums and that we see no error in the District Court's finding that BSR II did not, in paying the advances, dedicate the payments to Aadland's healthcare expenses. Moreover, we also note that BSR II makes no argument that a seaman's mere receipt of funds from the vessel owner shows that the seaman did not alone pay for his insurance.

Aadland's premium payments. Yet, this record makes clear that BSR II would not have timely satisfied *that* obligation.

As BSR II concedes, it has been clear since around November 2014 that Aadland is entitled to cure to cover reasonably necessary medical treatment resulting from his July 2014 onboard illness. And the obligation to pay the premiums would have been part of that obligation, even if *Gauthier* were inapplicable. At least until 2020, however, BSR II did not pay cure—given that the advances clearly were loans—to Aadland, apart from its reimbursement of Aadland's out-of-pocket expenses that collectively represent less than one percent of BSR II's cure obligation. The advances, then, do not alter our understanding that BSR II clearly was willful in failing to pay timely cure for a period of at least five years.

As a final note, the District Court concluded that BSR II was not callous, willful, or recalcitrant after "[h]aving considered the entirety of the record." The District Court did not state that there were any other features of the record—beyond those that we have not already addressed—that would support such a conclusion. But, if it did have some such features in mind, we emphasize that our own review of the entirety of the record, if anything, only tends to reinforce our reasons for concluding that the record clearly shows that BSR II was willful in not fulfilling its duty of cure as of September 2020.

In that regard, we note that the record supportably shows the following: on November 10, 2014—almost four

months after Aadland's injury and three months before the first advance payment was made—BSR II's insurance broker informed Patania of concerns from BSR II's insurance claims adjuster regarding BSR II's failure to provide maintenance and cure. The concerns were "that by failing to act at this time [BSR II and Patania] may be exposing [themselves] to [punitive] damages" and to avoid this issue they should "promptly advise Mr. Aadlund [sic] of his probable right to maintenance and cure." Yet, at the end of November 2014, BSR II's marine casualty investigator informed Aadland that it was a "big if" whether BSR II would be able to provide any financial support and that nothing could be done until he left the hospital. When Cynthia Aadland reported to Patania that Aadland's benefits would not be clear until Aadland left the hospital, Patania responded "Ok." BSR II offers no explanation to us as to why Aadland would have to leave the hospital for BSR II to begin cure payments or to assess his entitlement to maintenance and cure.

Further documentation between BSR II's insurance claims adjuster and casualty investigator also suggests that BSR II was aware by January 22, 2015 that Tufts was paying for Aadland's medical care and that the total bills "[were] in the amount of $600,000," but "[d]ue to the fact that this illness was not initially presented and that medical bills are being paid for by a health insurance carrier, [BSR II's casualty investigator] [has] refrained from requesting medical records from healthcare providers." BSR II's casualty investigator continued to monitor Aadland's condition and provide status updates to BSR II's insurance company, in which, in September 2015,

he described that BSR II would "not be requesting medical reports due to that fact that care is being provided through a third party." By March 2016, BSR II indicated its belief that Aadland's healthcare benefits had run out and that he was seeking healthcare through other means, yet there is no indication that BSR II at that time attempted to provide cure to ensure that Aadland received necessary care. And, just a few months later, BSR II's casualty investigator also acknowledged that "Tuft's [sic] Medical has not filed any liens and to the best of my knowledge have not been notified that this could possibly be a work-related illness and therefore unless something else develops in the near future I do not see that as a potential exposure for the *cure issue* at this time." (Emphasis added).

We need not dig any deeper. At a minimum, these features of the record suggest that BSR II was aware by November 2014 of its potential exposure to punitive damages in delaying paying cure, that it continued to wait to provide payments until February 2015, that it chose to avoid requesting medical records and addressing the "cure issue" as Aadland was covered by third-party insurance, and that it did not offer to pay the premiums for that insurance. These features of the record fail to provide support for a finding that BSR II had a reasonable basis for understanding either that it had no duty of cure or that it had timely satisfied that duty as of September 2020.

In sum, the evidence clearly shows that Aadland was owed a duty of cure following the onset of his illness; that (under *Gauthier*) he nonetheless "alone" paid for the costs of the bulk of his related healthcare; that BSR II did not

meet its cure obligation; and that, in any event, even what BSR II contends constituted cure was not paid in full in a timely manner. Moreover, we conclude that none of the District Court's reasons for finding that BSR II did not act willfully in acting in this manner hold up, and we see no other basis in the record for finding that BSR II's conduct in breaching its duty of cure was anything other than willful.

Thus, given the fact that BSR II's independent arguments for affirmance are not persuasive, the clear evidence of breach, the length of the delay in paying cure, and the lack of a reasonable defense as to the nonpayment of cure, we conclude that, on this record, it is clear that Aadland has met his burden to show that BSR II's breach of its cure duty was callous, willful, recalcitrant, or wanton. *See Atl. Sounding Co.*, 557 U.S. at 407, 129 S.Ct. 2561; *Robinson*, 477 F.2d at 1051. As a result, we vacate the District Court's denial of Aadland's request for punitive damages and attorney's fees.

That said, a finding of callous, willful, recalcitrant, or wanton breach is only a precondition to an award of punitive damages and attorney's fees. *See Atl. Sounding Co.*, 557 U.S. at 409, 129 S.Ct. 2561. The determination of the proper award for such a breach is one that must be made as an exercise of sound discretion, based on what the record shows regarding that breach. We leave to the District Court on remand the assessment of whether, in its discretion, punitive damages and attorney's fees should be awarded and, in the event that punitive damages are awarded, what amount of punitive damages would be appropriate.

D.

Having determined that we must vacate the District Court's ruling as to punitive damages as well as attorney's fees, we still must address Aadland's contention, separate from the merits, that, upon remand, we should assign the case to a different District Court judge. We see little reason to require a new judge to become familiar with this extensive record. This is a complicated case that has been handled well and with care. Thus, we see no reason to exercise our discretion in the manner that Aadland requests.

IV.

We now turn our attention to the arguments that BSR II presents in its cross-appeal: first, that the District Court's finding that Aadland had not reached MMR was clearly erroneous; and second, that BSR II should receive a $605,338.07 setoff for the $400,000 payment it made to Tufts because that $400,000 payment extinguished a potential lien against Aadland of $605,338.07 and so the value to Aadland was, according to BSR II, actually $605,338.07.

A.

In challenging the District Court's finding that Aadland had not reached MMR as of September 2020, BSR II maintains that it was clear error to reach that conclusion given the evidence in the record. We cannot agree.

BSR II does not dispute that it has the burden to show that Aadland had reached MMR as of September 2020. On appeal, BSR II points to two pieces of evidence that it contends show that the District Court erred and that Aadland's health issues are no longer improving. First, BSR II points to a note from Dr. Wener, one of Aadland's treating physicians. In December 2015, Dr. Wener commented, with regard to Aadland's health: "He is doing amazingly well at this point. He will stay on lifelong prophylactic penicillin. . . . He will continue lymphedema management. . . . I will see Mr. Aadland back in . . . 4 months, if not needed sooner." Second, BSR II notes that "Aadland's cardiologist, Dr. Mascari, had placed him on Coumadin for life." On appeal, BSR II does not highlight any other evidence in the record that it contends shows Aadland has reached MMR.

Aadland, in response, argues that we should "decline to take up BSR II's argument" on this point because we previously ruled, in our 2022 decision, that BSR II failed to meet its burden to prove MMR at trial and that ruling is final. In the alternative, Aadland argues that even if we do reach the issue, we should affirm the District Court's finding that BSR II failed to meet its burden because "[n]one of the medical records support a finding that a medical determination has been made by those treating Aadland that he has unequivocally met a medical end."

We proceed to the merits. The District Court ruled on this issue, BSR II timely appealed that ruling, and our ruling in the prior case did not foreclose continued consideration of this issue in the current litigation. We

nonetheless affirm the District Court's finding that BSR II failed to meet its burden to show that Aadland is no longer improving.

The two pieces of evidence BSR II points to on appeal—a comment from a treating physician and a lifetime prescription from that physician and another doctor—do not show that the District Court clearly erred in finding that BSR II had failed to show by a preponderance of the evidence that further treatment is merely palliative rather than curative. *See* 1 Robert Force & Martin J. Norris, *The Law of Seamen* § 26:37 (5th ed. 2024) ("The mere fact that a seaman suffered a permanent injury does not foreclose the possibility of improvement."). Thus, we conclude that the District Court did not clearly err in ruling that Aadland had not reached MMR as of September 2020.

We do acknowledge, however, that the District Court's judgment in this respect was limited only to holding that BSR II had an ongoing duty to provide cure after that time. On remand, the District Court should determine the amount of maintenance still owed. *See Whitman*, 387 F.3d at 71-72 (explaining that an injured seaman is entitled to maintenance and cure until MMR is reached).

BSR II does contend that "[e]ven if BSR II has not shown by a preponderance of evidence that Aadland is no longer receiving curative treatment, it does not necessarily follow that Aadland is correct that BSR II should be ordered to resume payment of maintenance and cure." BSR II contends that this is so because "Aadland

has failed to provide any documentation" after BSR II "requested Aadland's current maintenance expenses as well as his current treatment records and corresponding expenses."

This dispute about post-trial interactions between the parties was not developed below, however, and we decline to address it. On remand, though, the District Court may consider any relevant arguments about BSR II's duty to pay maintenance and cure—including arguments that Aadland has reached MMR since September 2020 or has failed to comply with his requirements resulting from his receipt of maintenance and cure.

B.

Finally, BSR II contends that "[t]he District Court erred in only crediting the dollar amount of BSR II's settlement with Tufts against BSR II's cure obligation." BSR II argues that because its $400,000 payment to Tufts extinguished Tufts' potential claim against Aadland, BSR II should receive "the full value of that settlement to Aadland," or $605,338.07, as an offset for its payment. BSR II maintains that "[w]hether BSR II repaid Tufts in full or negotiated the settlement it did, the net result was the same; the Aadlands were relieved of any liability to Tufts." Based on this premise, BSR II maintains that "[i]n failing to credit BSR II the full value of the bargained for settlement, the District Court has awarded Aadland a double recovery." We are not persuaded.

The District Court credited the $400,000 payment to Tufts as a setoff because Aadland had "acknowledge[d]

this amount 'should be credited towards [BSR II's] cure obligation.'" (Emphasis added). Thus, the only reason offered by the District Court for applying BSR II's payment to Tufts as a setoff against the judgment is Aadland's concession on that point. But that concession only supports offsetting the judgment by $400,000.

The District Court found Aadland "acknowledge[d] *this amount*"—and thus not some greater amount—"should be credited towards [BSR II's] cure obligation." Given the District Court's reasoning below cannot provide a basis for concluding a greater amount should apply as a setoff, BSR II's argument that it is entitled to a setoff of greater value can succeed only if there is some other ground for concluding that the payment to Tufts should apply as a setoff at all. But we do not understand BSR II to have developed an argument that we should find another basis for applying the payment as a setoff.

We note also that the District Court did not find—and the record does not conclusively show—that Tufts did have a lien in the amount of $605,338.07. And BSR II does not argue on appeal that the District Court clearly erred by not finding that Tufts had a lien of $605,338.07 against Aadland for his care. In the absence of such a finding, the record does not make clear whether Tufts could have attempted to exercise its potential lien, or whether Aadland may have successfully demonstrated that his treatment *was* covered by the Tufts policy and so no lien could be filed against him.

Thus, given the absence of any findings as to whether Tufts in fact had a lien against Aadland or findings as

to the value of such a lien, we have no basis on which to conclude that BSR II is entitled to $605,338.07 as a setoff for its payment to Tufts. And that is so even assuming that there was another basis on which to find that the settlement to Tufts should result in some amount to be offset against the judgment. Accordingly, we decline to adjust the setoff that the District Court provided to BSR II for its payment to Tufts.

V.

For the foregoing reasons, we ***affirm*** the judgment for BSR II on Aadland's claim for compensatory damages for emotional distress. We ***vacate*** the District Court's judgment on Aadland's claims for punitive damages and attorney's fees and remand so that the District Court may determine in its discretion whether and in what amount those damages should be awarded. We ***affirm*** the District Court's conclusion that Aadland had not reached MMR as of September 2020 and ***affirm*** the conclusion that BSR II should receive a $400,000 setoff for the payment to Tufts. We also ***decline to order*** that a new district court judge take the case upon remand. The parties shall bear their own costs.

APPENDIX B — MEMORANDUM OF DECISION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, FILED DECEMBER 18, 2023

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 17-cv-11248-DJC

MAGNUS AADLAND,

Plaintiff,

v.

BOAT SANTA RITA II, INC., *et al.*,

Defendants.

Filed December 18, 2023

MEMORANDUM OF DECISION

CASPER, J.

I. INTRODUCTION

Plaintiff Magnus Aadland ("Aadland") brought claims against Defendants, including Boat Santa Rita II, Inc. ("BSR II") for claims arising out of his illness incurred while he was a seaman on F/V Linda. After entering summary judgment on the remaining claims

for Defendants, D. 63, only Count III (maintenance and cure claim against BSR II) and Count IV (failure to pay maintenance and cure claim against BSR II) remained for trial. *Id.* at 11. After a bench trial, the Court issued its findings of facts and conclusions of law on the claims and entered judgment for BSR II, including on Counts III and IV. D. 115; D. 118. On appeal, the First Circuit reversed in part and vacated in part this Court's judgment and remanded the case. D. 128; D. 129. The First Circuit's decision did not concern whether BSR II fulfilled its duty of maintenance to Aadland, D. 128 at 6, but vacated the determination that BSR II had satisfied its cure obligations to Aadland, reversed the determination that Aadland had reached maximum medical recovery and vacated whether Aadland was entitled to compensatory damages for emotional distress, punitive damages and attorneys' fees. *Id.* at 29, 39, 48. For the reasons stated below, the Court enters judgment in favor of BSR II on Count III, as to its satisfaction of its cure obligations from July 18, 2014 to September 2020, and on Count IV, as to compensatory damages, punitive damages and attorneys' fees. The Court enters judgment for Aadland on Count III as to BSR II's ongoing duty after September 2020 to provide cure.

II. PROCEDURAL HISTORY

Aadland instituted this action against Defendants BSR II, Boat Santa Rita III, Inc., F/V Linda, Francis A. Patania and Salvatore Patania, Jr. (collectively, "Defendants"), asserting various claims. D. 1. Aadland voluntarily dismissed F/V Linda, the subject of Counts

IX and X. D. 10. After the completion of discovery, the remaining Defendants moved for summary judgment on all remaining counts except for Count III. D. 53. In his opposition to same, Aadland did not oppose Defendants' motion for judgment as to Counts II, V, VI, VII, VIII, XI, XII. D. 56 at 1-2. The Court's Memorandum and Order resolved those claims in Defendants' favor and granted summary judgment for BSR II on the contested Count I (Jones Act negligence claim against BSR II). D. 63. That ruling, however, denied summary judgment to BSR II as to the other contested claim against BSR II, Count IV (claim for emotional distress damages, punitive damages and attorneys' fees for failure to pay maintenance and cure). *Id.* at 10. Accordingly, the only defendant that remained for trial was BSR II on Count III, the maintenance and cure claim, and Count IV, the claim for emotional distress damages, punitive damages and attorney's fees for failure to pay maintenance and cure. *Id.* at 11.

After a three-day bench trial beginning on September 14, 2020, D. 110, D. 111, D. 113, the Court ruled that (1) Aadland had reached maximum medical recovery, (2) that BSR II had satisfied its duties of maintenance and cure, and (3) that Aadland was not entitled to compensatory damages for emotional distress, punitive damages or attorneys' fees, D. 115 at 7, 9-10, and entered judgment in favor of BSR II, D. 118. Aadland appealed the Court's ruling. D. 119.

On appeal, the First Circuit reversed the Court's ruling as to maximum medical recovery ("MMR"), vacated the Court's ruling as to BSR II's satisfaction of

its obligation to pay cure, vacated the Court's ruling as to Aadland's entitlement to compensatory damages for emotional distress, punitive damages and attorneys' fees and remanded the case for further proceedings. D. 128 at 29, 39, 48. After remand from the First Circuit, the Court solicited the parties' proposal for a new schedule, considered supplemental briefing from the parties on the outstanding issues, heard oral argument and took the matter under advisement. D. 135; D. 139; D. 140; D. 141; D. 144; D. 147.

III. FINDINGS OF FACT

A. Aadland's Background and Illness

1. Aadland was, at all relevant times, the captain of the commercial fishing vessel, the F/V Linda. D. 115 at 2.[1]

2. BSR II was, at all relevant times, the sole owner of the F/V Linda. *Id.*

3. Francis A. Patania ("Patania") is the manager and co-owner of BSR II. *Id.*

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1. As the First Circuit noted, the underlying facts are "not contested" and the Court primarily draws these facts from its original findings of facts after trial, D. 115, which were not disturbed on appeal, D. 128 at 4. The Court omits facts related solely to BSR II's fulfillment of its maintenance obligations which are not at issue on remand. To the extent that this Court is required to make additional findings of fact on remand regarding the issue of cure, it cites to the parties' proposed findings of fact, D. 140, 141, and the trial record, including testimony and admitted exhibits.

4. On July 9, 2014, the F/V Linda left New Bedford with a five-person crew captained by Aadland. *Id.*

5. On or about July 12 or 13, 2014, a few days into the trip, Aadland fell ill while in the service of the F/V Linda. *Id.*

6. By July 16, 2014, Aadland was unable to get out of his bunk on the F/V Linda. *Id.*

7. Upon the F/V Linda's return to New Bedford on July 18, 2014, an ambulance and Mrs. Aadland met the vessel at the dock and Aadland was taken to St. Luke's Hospital. *Id.* at 2-3.

8. Aadland's blood cultures taken at the hospital tested positive for group G Streptococcus bacteria. *Id.* at 3.

9. Aadland was hospitalized at multiple medical facilities for an extended period, from July 18, 2014 to December 29, 2014 and then again from July 9, 2015 to September 10, 2015. *Id.*

10. During his hospitalizations, Aadland had multiple surgeries including a cardiac surgery on December 5, 2015 and a second cardiac surgery in July 2015. *Id.*

11. Aadland received physical and occupational therapy intermittently throughout his treatment in 2015 and 2016. Tr. Ex. 91 at 693, 981, 1022, 1050.

12. On April 25, 2019, Aadland began another course of physical therapy. *Id.* at 1155-57. Aadland was

discharged from physical therapy on June 26, 2019. *Id.* at 1101. In his physical therapy discharge note, his physical therapist noted that he had "plateaued with treatment" and indicated that he would continue with a home exercise program. *Id.*

13. On May 29, 2019, Aadland began a course of occupational therapy from which he was discharged on July 24, 2019 with a home exercise program. *Id.* at 1077, 1138.

14. Although the Aadlands sometimes disagreed with Tufts, his health insurer, about the treatment facilities during his hospitalizations in 2014 and 2015, there was no evidence that Aadland required any medical treatment that he did not receive. D. 115 at 3.

15. There was also no evidence that Tufts ever refused to cover Aadland's medical expenses because they arose from a work related injury. *See* D. 141 at 53 (stating that "Tufts potentially had a lien against Plaintiff's recovery").

16. Throughout Aadland's 2014 hospitalization, Mrs. Aadland was in regular communication with Patania about Aadland's condition. *Id.* at 5. They began communicating by text when Patania texted her on the morning of July 18, 2014 to inquire about Aadland's condition.

17. Patania visited Aadland several times during his hospitalization. *Id.*

18. Patania was aware that Tufts was paying for Aadland's medical treatment. *Id.*

19. Although there were numerous setbacks in Aadland's health, there were no indications to Patania or BSR II that he was not receiving reasonable and adequate medical care. *Id.*

20. In fact, Aadland expected to return to work as early as spring of 2015. *Id.*

21. Although as a vessel owner, Patania had encountered claims from seamen before, Aadland was the first seaman whose medical bills were paid by a private insurer. *Id.*

B. Coverage by Aadland's Health Insurance

1. July 18, 2018 Through September 30, 2014

22. Aadland received a Tufts family health insurance plan ("Tufts Employer Plan") through the employer, GAF Engineering, of his wife, Mrs. Aadland, from July 18, 2014 through September 30, 2014. *Id.* at 3; D. 141 at 30.

23. Aadland and Mrs. Aadland shared finances, combined their earnings into joint accounts to pay their bills and filed joint tax returns. D. 122 at 73-74, 183-84; D. 141 at 29.

24. From July 18, 2014 through September 30, 2014, the Tufts Employer Plan premiums were deducted from

Mrs. Aadland's paychecks. D. 122 at 71-72; D. 123 at 27-28; D. 141 at 30.

25. Mrs. Aadland stopped working at GAF Engineering at the end of September 2014. D. 115 at 3; D. 141 at 31.

26. From July 18, 2014 through September 30, 2014, Aadland's medical providers accepted a total of $109,642.51 from Tufts in satisfaction of his medical bills. D. 140 at 12; D. 141 at 49.

2. October 1, 2014 Through December 29, 2014

27. From October 1, 2014 through December 29, 2014, Aadland was covered by a Tufts COBRA health insurance plan ("Tufts COBRA Plan"). D. 122 at 72; D. 141 at 31.

28. From October 1, 2014 through December 29, 2014, the premiums for the Tufts COBRA Plan were paid from Aadland and his wife's joint checking account and by loans Aadland took out on his life insurance policy. D. 122 at 72-74; D. 123 at 26-28; D. 141 at 31.

29. From October 1, 2014 through December 29, 2014, Aadland's medical providers accepted $212,354.17 from Tufts in satisfaction of his medical bills. Tr. Ex. 93; D. 141 at 49-50.

3. December 30, 2014 Through September 2020

30. From December 30, 2014 through March 31, 2017, Aadland continued to pay for coverage under the Tufts COBRA plan. D. 123 at 52-53; Tr. Ex. 93; D. 141 at 31.

31. On April 1, 2017, Aadland obtained health care coverage through Medicare as well as a Tufts supplemental health insurance plan ("Tufts Supplemental Plan"). D. 122 at 100; D. 123 at 21-24, 52-53, 74; D. 141 at 33.

32. Premiums for Medicare were deducted from Aadland's social security check. D. 141 at 45 (citing D. 122 at 100; D. 123 at 21-24, 74).

33. Aadland paid for the Tufts Supplemental Plan from his joint checking account with his wife. D. 141 at 45 (citing Tr. Exs. 58-63).

34. From December 30, 2014 through September 2020, Aadland's medical providers accepted $283,341.39 from Tufts in satisfaction of his bills. Tr. Ex. 93; D. 141 at 50.

35. In total, Tufts paid Aadland's medical providers $605,338.07 for treatment from July 18, 2014 to September 2020. Tr. Ex. 93; D. 141 at 54.

C. BSR II's Payments

36. Since February 5, 2015 (and retroactive to December 30, 2014), BSR II has paid advances to Aadland at a daily rate of $114.00. D. 115 at 4; D. 141 at 41.

37. Each advance was accompanied by a receipt identifying the payment as "an ADVANCE toward any settlement, judgment or award resulting from my claim for personal injuries or illness occurring on or about 7/20/2014, while aboard the F/V LINDA." Tr. Ex. 41; Tr. Ex. 48; *see* D. 122 at 89. The advance receipts further stated, "I understand that the amount of any settlement, judgment or award will be reduced by the amount of this advance." Tr. Ex. 41; D. 41 at 44.

38. As of the September 2020 trial, BSR II had paid Aadland a total of $238,374.00 in advances. D. 115 at 4; D. 140 at 8; D. 141 at 42.

39. Aadland has not repaid any of those advances. *Id.*

40. Aadland's ten-year history of earnings averaged $186,000 per year or approximately $509.58 per day. *Id.*

41. Retroactive to December 30, 2014, between maintenance of $84/day and advances of $114/day, Aadland has received $198/day from BSR II. *Id.*

42. The Aadlands used the maintenance and advance payments to pay household bills including but not limited to health insurance premiums. *Id.*

43. BSR has also paid Aadland $5,388.24 in reimbursement for out-of-pocket medical expenses. *Id.* at 5.

44. Aadland never submitted any other claims for out-of-pocket expenses to BSR II. *Id.*

45. Aadland has not presented any evidence of any unreimbursed out-of-pocket medical expenses. *Id.*

46. There was no expense or bill related to Aadland's medical care that was presented to BSR II that was refused. *Id.*

47. In September 2020, Tufts accepted $400,000.00 from BSR II in full satisfaction of any lien or claim it might have against Aadland or Mrs. Aadland for coverage of Aadland's medical expenses. *Id.*; Tr. Ex. 95.

IV. CONCLUSIONS OF LAW

1. Upon consideration of the opinion and judgment of the First Circuit, D. 128, D. 129, and the parties' supplemental briefs, D. 140, D. 141, D. 144, the Court must address three outstanding issues to resolve this case.

2. As to the remaining portion of Count III, Aadland's claim for cure, the Court must determine (1) whether Aadland has reached MMR, such that BSR III has no ongoing duty to cure and (2) the measure of BSR II's cure obligation as of September 2020 and whether that obligation is offset by any payments already made. D. 128 at 36-38, 47-48.

3. As to Count IV, Aadland's claim for compensatory damages for emotional distress, punitive damages, and attorneys' fees, (3) the Court must determine whether Aadland is entitled to such relief based on BSR II's failure or delay in meeting its cure obligation. *Id.* at 38-39.

A. Maximum Medical Recovery

4. When a seaman becomes injured or ill aboard a vessel, the vessel's owner must pay maintenance and cure as compensation. *Richards v. Relentless, Inc.*, 341 F.3d 35, 40 n.1 (1st Cir. 2003) (citing *Calmar S.S. Corp. v. Taylor*, 303 U.S. 525, 527-28 (1938)). Maintenance "refers to the provision of, or payment for, food and lodging" whereas cure refers to "any necessary health-care expenses . . . incurred during the period of recovery from an injury or malady." *Ferrara v. A. & V. Fishing, Inc.*, 99 F.3d 449, 454 (1st Cir. 1996) (citation omitted).

5. The shipowner's duty to provide maintenance and cure ends when the seaman reaches MMR. *Whitman v. Miles*, 387 F.3d 68, 72 (1st Cir. 2004).

6. "Even when a seaman's 'progress ended short of a full recovery, the seaman . . . is no longer entitled to maintenance and cure' once the shipowner has proven by a preponderance of the evidence that the seaman has reached the point of maximum medical recovery." D. 128 at 40 (quoting *Whitman*, 387 F.3d at 72).

7. When it appears that "future treatment will merely relieve pain and suffering but not otherwise improve the seaman's physical condition, it is proper to declare that the point of maximum cure has been achieved." *Saco v. Tug Tucana Corp.*, 483 F. Supp. 2d 88, 99 (D. Mass. 2007) (internal quotations and citation omitted). That is, "[w]hen further treatment is merely palliative, rather than curative, a shipowner's obligation to pay maintenance and cure ends." *Silva v. F.V Silver Fox LLC*, 988 F. Supp. 2d 94, 99 (D. Mass. 2013); *see Whitman*, 387 F.3d at 72.

8. MMR must be based on a "medical" rather than "judicial[] determination of permanency." D. 128 at 42 (quoting *Hubbard v. Faros Fisheries, Inc.*, 626 F.2d 196, 202 (1st Cir. 1980)).

9. "The burden is on the shipowner to provide evidence that supports, by a preponderance of evidence, its assertions regarding 'the earliest time when it is reasonably and in good faith determined by those charged with the seaman's care and treatment that the maximum cure reasonably possible has been effected.'" *Id.* (quoting *Hubbard*, 626 F.2d at 202 (internal citation omitted).

10. On appeal, the First Circuit reversed this Court's conclusion that Aadland had reached MMR and that BSR's duty to provide cure had terminated as of July 2019. D. 128 at 48.

11. In particular, the First Circuit concluded that (1) a note discharging Aadland from occupational therapy to a

home exercise program in 2019, (2) Aadland's October 12, 2018 deposition testimony that "he only saw his cardiologist, infectious disease doctor and primary care physician every six months for checkups" and (3) Aadland's 2016 ski trip to Maine were, individually and combined, insufficient to establish that Aadland had attained MMR. *Id.* at 44-48.

12. On remand, BSR II asserts that the First Circuit did not assess the full trial record, including statements made by Aadland's physicians as to his improved medical condition. D. 141 at 25-26 (quoting Tr. Ex. 90 at 772, 786, 820).

13. In the statements identified by BSR II on remand, *id.*, Aadland's physicians expressed positivity towards Aadland's progress, prescribed him certain medications "for life" and indicated that "there are no further surgical options available should he develop another bioprosthetic valve infection." Tr. Ex. 90 at 772, 786, 820. These statements were made between November 2015 and September 2016. *Id.*

14. While the statements identified by BSR II reflect progress in Aadland's medical condition as of fall 2016, they do not account for Aadland's continued improvement as a result of physical and occupational therapy thereafter. *See In re RJF Int'l Corp. for Exoneration from or Limitation of Liab.*, 354 F.3d 104, 107 (1st Cir. 2004) (rejecting proposition that MMR is reached "whenever a permanent condition exists, regardless of whether its severity can be

reduced" since "maximum medical recovery" is the "dividing line").

15. For one example, on November 14, 2018, Aadland's expert medical witness, Dr. Alexander McMeeking, opined that Aadland could "realize an improvement in his balance and gait" if "provided with appropriate rehabilitation physical therapy and occupational therapy." Tr. Ex. 64 at 4.

16. Aadland's 2019 occupational and physical therapy notes indicate improvement in his mobility and function, not just palliative care or maintenance of his then-present condition. *See*, *e.g.*, Tr. Ex. 91 at 1104 (reporting that Aadland had "improved functional finger flexion for grasping"); *id.* at 1124 (reporting that treatment provided was to "allow for improved manual work and increase motion"); *id.* at 1142 (reporting that Aadland had made "good progress" towards his short-term goals and noting other improvements).

17. Although Aadland's physical therapist indicated that Aadland's progress had "plateaued with treatment" in his physical therapy discharge note in 2019, *id.* at 1101, the First Circuit has already ruled that a similar, occupational therapy discharge note from the same time period does not provide a basis for concluding that Aadland reached MMR. D. 128 at 45-46.

18. For all of these reasons, the Court concludes that BSR II has not satisfied its burden to prove that Aadland

reached MMR as of September 2020, particularly when it had a full and fair opportunity to do so at trial. D. 140 at 24.

B. BSR II's Duty to Provide Cure

1. Measure of Cure Obligation

19. As the First Circuit explained, the appropriate measure of BSR II's duty to provide cure is the amount that "his healthcare providers accepted as payment for his care from his insurer" rather than the "sticker price" originally billed by the healthcare providers. D. 128 at 33-34; *Manderson v. Chet Morrison Contractors, Inc.*, 666 F.3d 373, 382 (5th Cir. 2012).

20. Thus, BSR II's cure obligation is $605,338.07, the amount Tufts paid to Aadland's medical providers. D. 141 at 49; D. 128 at 33.

21. BSR II argues that the Court should set off various payments made by BSR II or by Tufts against the total cure obligation. D. 141 at 10-18. The Court turns to each of these matters.

2. Tufts's Payments to Medical Providers

22. Between October 1, 2014 through December 29, 2014, Tufts paid medical providers $212,354.17 to satisfy Aadland's medical bills. D. 141 at 49-50.

23. In a seaman's suit for maintenance and cure, unlike in a tort case, the seaman's recovery may be reduced by the amount of assistance he received from an alternate source. *Smith v. United States*, 943 F. Supp. 159, 172 n.11 (D.R.I. 1996) (explaining that "collateral source rule is not strictly applied"); *see Manderson*, 666 F.3d at 381 (stating that "collateral-source rule appears incompatible with maintenance and cure"); *Bickford v. Marriner*, No. 2:12-CV-00017-JAW, 2012 WL 6727531, at *9 (D. Me. Dec. 28, 2012) (explaining that evidence of insurer's payment of medical bills could have been admissible if plaintiff were pursuing recovery for medical bills under maintenance and cure theory).

24. This limitation on the seaman's recovery is tied to "the well-established rule that seamen may recover only those expenses actually incurred." *Smith*, 943 F. Supp. at 172 n.11; *see Manderson*, 666 F.3d at 382.

25. The Fifth Circuit has recognized an exception to the typical rule in maintenance and cure cases. In *Gauthier*, the Fifth Circuit held that "where a seaman has alone purchased medical insurance" that covers his medical expenses, a shipowner cannot set off its maintenance and cure obligations with the insurer's payments. *Gauthier v. Crosby Marine Serv., Inc.*, 752 F.2d 1085, 1090 (5th Cir. 1985).

26. In its previous post-trial ruling, this Court concluded that *Gauthier* was factually distinguishable from the present case, noting that:

> Unlike the circumstances there which the court analogized to an instance where a shipowner disregarded an injured seaman's maintenance and cure claim and then wanted to set off any money earned by the seaman during the pendency of the claim, *id.* (citing *Vaughn*, 369 U.S. 527, 533 (1962)), there was no such refusal here. This case is closer to the circumstances distinguished in *Gauthier* where an injured seaman received care "without cost to himself" such that he not "incurred any actual expense." *Id.* (citing *Johnson v. United States*, 333 U.S. 46, 50 (1948). The circumstances here are closer to *Johnson* where Aadland has not incurred any medical expenses himself and even his health insurance premiums, which were part of the basis of the calculation of the advances he has received from BSR II, have been covered. D. 115 at 8-9.

27. The First Circuit concluded that this Court's basis for distinguishing *Gauthier* was erroneous because it "rested, at least in part, on the ground that Aadland failed to request cure as the seaman in that case had." D. 128 at 20.

28. This Court made no such conclusion of law or distinguishing of *Gauthier* in its prior ruling on this basis, *see generally* D. 115, and does not do so now.

29. Nonetheless, the First Circuit has remanded on this issue for this Court to reconsider if and how

Gauthier's "no-set-off rule" applies to the present case. D. 128 at 21-22, 34-37. This Court now returns to *Gauthier*.

30. *Gauthier* purports to limit recovery to a seaman's "incurred expenses" but treats expenses paid by a medical insurer as incurred by the seaman so long as "he alone paid the medical insurance premiums." *Gauthier*, 752 F.2d at 1090; *see Block Island Fishing, Inc. v. Rogers*, 844 F.3d 358, 365-66 (1st Cir. 2016) (recognizing that the "norm" is that a seaman may recover only his "actual living expenses," citing *Johnson*, 333 U.S. at 50, but holding that a seaman "may recover reasonable expenses beyond the amount he actually incurred, even if it is the exceptional case where the seaman's reasonable expenses will exceed his actual expenses").

31. Although *Gauthier* is not binding on this Court, it guides this Court's analysis of whether this is a case in which Aadland alone incurred expenses or if BSR II is "relieved of the obligation to pay that part of [Aadland's] cure furnished by others at no expense to [Aadland]." *See Gauthier*, 752 F.2d at 1090 (distinguishing cases where seamen "alone paid the medical insurance premiums" or "was forced to work to survive" from cases where seamen "lived off the charity of others").

a) July 18, 2014 to September 2014

32. As to the period between July 18, 2014 and September 2014, when Aadland's medical bills were covered by the

Tufts Employer Plan and the insurance premiums for same were deducted from Mrs. Aadland's paycheck.

33. In the language of *Gauthier*, Aadland actually incurred the expense of obtaining such coverage if he "alone" purchased the coverage. *Id.* at 1090 (distinguishing *Johnson*, 333 U.S. 46).

34. Aadland should be entitled to recover his medical expenses, even though they were paid for by Tufts, so long as the insurance was not gifted to him by a third party, but rather a reasonable expense paid out of his shared finances with his wife. *Block Island*, 844 F.3d at 366; *see* D. 128 at 23 (expressing skepticism that "the use of one spouse's paycheck to fund the insurance of the other is necessarily a 'gift' from the one to the other in the same way that perhaps a parent paying the premiums of an adult child might be viewed" and explaining that a spouse's payment of mortgage while a seaman is injured would not constitute a "gift").

35. The parties agree that Aadland and his wife combined their earnings into joint accounts and otherwise shared their finances. D. 141 at 29-30.

36. The payment of insurance premiums from Mrs. Aadland's paycheck was not a gift, but rather a payment from the couple's shared finances. *See* D. 128 at 23.

37. Deduction of insurance premiums from Mrs. Aadland's paychecks deprived Aadland himself of the

ability to spend that money on other necessities or incidentals. *Compare Vaughan*, 369 U.S. at 533 (ruling that maintenance and cure could not be reduced by wages earned by recovering seaman who was forced to work as a taxi driver), *with Johnson*, 333 U.S. at 50 (holding that shipowner was need not provide maintenance and cure for period that he rested at parents' ranch).

38. Accordingly, BSR II may not offset its cure obligation with the $109,642.51 Tufts paid to satisfy Aadland's medical bills from July 18, 2014 through September 2014. D. 141 at 49.

b) October 1, 2014 to December 29, 2014

39. As to the period between October 1, 2014 and December 29, 2014, Aadland paid for his Tufts COBRA plan out of his joint checking account with his wife and using loans he took out against his life insurance policy. D. 141 at 31.

40. Given his shared finances with his wife and the fact that Aadland himself took out loans to pay for this coverage, the Court concludes that Aadland also purchased this insurance "alone." *See Gauthier*, 752 F.2d at 1090.

41. Accordingly, BSR II also may not offset its cure obligation with the $212,354.17 Tufts paid to satisfy Aadland's medical bills from October 1, 2014 through December 29, 2014. D. 141 at 49-50.

c) December 29, 2014 to September 2020

42. As to the period of December 29, 2014 through September 2020, Tufts COBRA and/or Tufts Medicare Supplemental Plans paid $283,341.39 to Aadland's medical providers. D. 141 at 50.

43. Aadland continued to pay for the Tufts COBRA and Supplemental Plans from his joint checking account with his wife. D. 141 at 45 (citing Tr. Exs. 58-63).

44. Aadland was also covered by Medicare and those premiums were deducted from Aadland's social security check. D. 141 at 45 (citing D. 122 at 100; D. 123 at 21-24, 74).

45. Accordingly, BSR II may not set off its cure obligation with the $283,341.39 paid under Aadland's Tufts COBRA Plan and Tufts Supplemental Plan between December 29, 2014 through September 2020. D. 141 at 50.

46. BSR II argues that the Court cannot conclude that Aadland paid for his Tufts plans "alone" because its $114 per day advances accounted for the cost of health insurance. D. 141 at 49-50; *see Shaw v. Ohio River Co.*, 526 F.2d 193, 200-01 (3d Cir. 1975) (concluding that shipowner could set off the medical expenses paid for by a health insurance plan it provided to its seamen at no expense to themselves).

47. Unlike the shipowner in *Shaw*, however, BSR II itself did not purchase or provide health insurance on

Aadland's behalf. *Cf. Shaw*, 526 F.2d at 201 (explaining that medical coverage was paid for at employer's expense, rather than the seaman's, as required by collective bargaining agreement).

48. Instead, BSR II issued advances to Aadland, which did not require Aadland to spend the advance payments on health insurance as opposed to other necessities or incidentals.

49. Although BSR II's insurance broker included the health insurance premiums in his calculation of the appropriate maintenance and advance payments due to Aadland, BSR II did not communicate to Aadland any intent that the advances be used for health insurance. D. 122 at 85-86.

50. Accordingly, the Court concludes that BSR II's advances to Aadland do not mean that Aadland did not pursue his insurance alone such that the *Gauthier* analysis would not apply and these advances do not reduce its cure obligation.

51. In sum, from July 18, 2014 through September 2020, Aadland paid for insurance coverage for medical treatment at his own expense and thus is entitled to cure without a reduction for payments made by Tufts.

52. Thus, BSR II's cure obligation is $605,338.07, the amount that Tufts paid to Aadland's health care providers. D. 140 at 11; D. 141 at 49; 144 at 12.

3. BSR II's $400,000 Payment to Tufts

53. BSR II paid $400,000 to Tufts to satisfy Aadland's obligation to repay Tufts for any medical bills paid for his work-related illness.

54. Although Aadland denies that BSR II's $400,000 payment to Tufts was "satisfaction of its cure obligation, under the law," D. 140 at 13, he acknowledges this amount "should be credited towards its cure obligation." *Id.*

55. Accordingly, the Court applies this amount against BSR II's cure obligation of $650,338.07 so that the remaining cure obligation is $205,338.07. D. 140 at 14.

4. BSR II's Advance Payments to Aadland

56. Although, as explained above, BSR II's advances did not reduce its cure obligation in the first instance, the advances remain relevant to what amount BSR II now owes Aadland.

57. The advances were characterized as an "ADVANCE toward any settlement, judgment or award resulting from my claim for personal injuries or illness occurring on or about 7/20/2014, while aboard the F/V LINDA." Tr. Ex. 48; D. 141 at 43. The advance receipt expressly provides that "any settlement, judgment or award will be reduced by the amount of this advance." Tr. Ex. 48.

58. The Court must enforce the terms of this contract between Aadland and BSR II, which provides that any future judgment against BSR II be reduced by the amount of the advances paid. *Sabow v. Am. Seafoods Co.*, 737 F. App'x 322, 324 (9th Cir. 2018) (reversing district court's denial of defendant's request to reduce its maintenance obligation to plaintiff by amount advanced); *Debbie Flo, Inc. v. Shuman*, No. 13-2650 (RBK/JS), 2014 WL 461179, at *3-4 (D.N.J. Feb. 5, 2014) (crediting advances to defendant's maintenance obligation).

59. Aadland objects that BSR II cannot use its advance payments to satisfy "past due maintenance and cure obligations" rather than "to payments that would become due in the future." D. 144 at 10. This distinction is not supported by the case law.

60. For instance, in *Sabow*, the Ninth Circuit ruled that a shipowner's obligation to pay additional maintenance arising from an injury that occurred on April 2015 must be reduced by an advance payment that the shipowner made in July 2015. *Sabow*, 737 F. App'x at 324 (reversing district court's denial of credit for advance payment).

61. *Sabow* did not suggest that the credit applies only to obligations that arose after the issuance of the advance. *See Sabow*, 737 F. App'x at 324.

62. Nor does the advance receipt itself limit the reduction of "any settlement, judgment or award" to those

arising from maintenance and cure liabilities post-dating the issuance of the advance. Tr. Ex. 48.

63. Indeed, it would have been illogical for BSR II to have issued its first advance retroactively dating to December 30, 2014, D. 141 at 41, if the limitation proposed by Aadland were imposed.

64. Accordingly, BSR II's cure obligation must be reduced by the monies it has paid Aadland in advances.

5. BSR II's Satisfaction of Its Cure Obligation

65. As noted above, BSR II's cure obligation in this case was $605,338.07, the amount Tufts paid to Aadland's medical providers between July 18, 2014 and September 2020. D. 141 at 49; *see* D. 128 at 33.

66. $605,338.07 less the $400,000 credit for BSR II's payment to Tufts is $205,338.07. BSR II's remaining cure obligation is thus $205,338.07.

67. Given the $238,374.00 in advances paid, which must be deducted from the judgment in Aadland's favor of $205,338.07, BSR II's liability to Aadland for cure is satisfied through September 2020 and the difference of $33,035.93 is a credit against any continuing cure obligation on BSR II after September 2020. D. 140 at 14; D. 141 at 8.

C. Entitlement to Compensatory Damages for Emotional Distress, Punitive Damages and Attorneys' Fees

68. The First Circuit also vacated this Court's judgment as to Aadland's entitlement to damages for emotional distress, punitive damages and attorney's fees. D. 128 at 39.

69. Aadland seeks $1,500,000 in compensatory damages for emotional distress that he suffered as a result of "BSR II's unreasonable withholding of maintenance and cure benefits and failure to fulfill its maintenance and cure duties and obligations." D. 140 at 22.

70. For the reasons stated above, the Court has found and concluded anew on remand, for the reasons explained herein, that Aadland is not entitled to damages he seeks.

71. The First Circuit, however, specifically noted that this Court had not "address[ed] the fact that, from the time Aadland fell ill at sea to the time of this suit, Aadland faced the risk of a lawsuit by his insurer to recover the cost of the healthcare his insurance had paid for." D. 128 at 39. The Court turns to this issue now.

1. Compensatory Damages for Emotional Distress

72. As to emotional distress, Aadland now asserts that he and his wife testified at trial that he "suffered from

stress related to the constant coverage disputes with Tufts." D. 140 at 20.

73. Aadland's testimony at trial, however, specifically concerned his stress over reduced income (as a result of his injury and hospitalizations) and disputes with Tufts about where he would receive his medical treatment and the course of physical therapy that it was covering. D. 122 at 105-08; *see* D. 123 at 10, 55-56, 63.

74. The parties agree that, under the Tufts health insurance policy, if used for work-related injuries, then Aadland would be liable to Tufts for the $605,338.07 it paid to his medical providers. D. 141 at 71.

75. The parties also agree that BSR II's $400,000 payment to Tufts in September 2020 satisfied any lien Tufts might have against Aadland for the $605,338.07 it paid to his medical providers. *Id.* at 71; Tr. Ex. 95.

76. Nothing in the trial record shows that Tufts threatened to stop covering Aadland's medical bills because a work-related injury was outside his insurance policy. *See* Tr. Exs. 30, 95. Nor did the evidence at trial show when, prior to Tufts' receipt of the $400,000 payment, Aadland became aware that Tufts policy on work-related injuries might be invoked to exclude his treatment from coverage.

77. The trial testimony instead indicates that Aadland's stress was caused by disputes over his admission

to a skilled nursing facility (as opposed to an acute rehabilitation facility) and the frequency of his physical and occupational therapy, rather than whether his Tufts' health plan covered his work-related illness. D. 122 at 105-108 (testifying that Tufts was "paying medical bills, but they prevented me from going to PT and OT as often as I wanted to down at Spaulding Cape Cod as an outpatient"); D. 123 at 10 (testifying that during two-week period Aadland "wasn't really happy with his condition" and witnessed his wife "having a daily conversation with Tufts trying to – basically fighting about where he goes"); *id.* at 56 (testifying that watching wife dispute treatment with Tufts "really does weigh" on Aadland).

78. The record contains no evidence that Tufts denied any medically necessary care.

79. A shipowner's duty to provide cure does not require the provision of all medical services desired by the seaman until the seaman is completely restored to health, but rather "care in the sense of necessary medical and nursing attention for a reasonable time." *Muise v. Abbott*, 160 F.2d 590, 590 n.1 (1st Cir. 1947); *see Saco*, 483 F. Supp. 2d at 104-05 (holding that services rendered by nurse's aide, except for transportation to medical appointments, were not medically necessary and thus would not fall within the shipowner's coverage for cure).

80. Thus, the evidence does not show that had BSR II timely fulfilled its cure obligation, either by direct

payment or through its insurer, it would have paid for any treatment that Aadland did not otherwise receive or that was not covered by Tufts.

81. The Court concludes that the trial record contains no evidence of emotional distress that was caused by BSR II's failure to cure or delay in doing so.

82. Moreover, Aadland submits no evidence of emotional distress beyond his own and his wife's testimony that he was stressed and unhappy about Tufts' decision not to provide him care at facilities of his choice and refusal to allow additional physical and occupational therapy. *Bullard v. Cent. Vermont Ry., Inc.*, 565 F.2d 193, 197 (1st Cir. 1977) (concluding that accident survivor's own testimony as to feelings of sadness would not support damages for emotional distress which require "evidence from which a jury can make an informed judgment as to the existence, nature, duration and seriousness of the condition").

83. While expert testimony is not required to prove emotional damages, its absence is relevant to the determination of the size of any award, *Sanchez v. Puerto Rico Oil Co.*, 37 F.3d 712, 724 (1st Cir. 1994), based upon the evidence presented. *See* D. 122 at 119 (testifying that he never sought treatment for stress or anxiety).

84. Moreover, a factfinder is not required to accept the plaintiff's uncorroborated testimony of emotional distress. *See Acevedo-Luis v. Pagan*, 478 F.3d 35, 40

(1st Cir. 2007); *Davet v. Maccarone*, 775 F. Supp. 492, 494 (D.R.I. 1991), *aff'd*, 973 F.2d 22 (1st Cir. 1992).

85. Accordingly, the Court concludes that Aadland has not proved by a preponderance of the evidence that he experienced distress as a result of any failure or delay on BSR's part to meet its cure obligation and, accordingly, compensatory damages for emotional distress are not warranted here.

2. Punitive Damages and Attorneys' Fees

86. Aadland "bears the burden of proving defendant was 'callous, willful, or recalcitrant' in withholding maintenance and cure payments" such that punitive damages or fee-shifting is justified. *Mulligan v. Maritrans Operating Co.*, No. CIV.A. 06-10492-LTS, 2010 WL 1930282, at *5 (D. Mass. May 12, 2010) (quoting *Robinson v. Pocahontas, Inc.*, 477 F.2d 1048, 1051 (1st Cir.1973)).

87. Even for any delay in cure, BSR II's actions were not "callous, willful, or recalcitrant." *Trupiano v. Captain Gus & Bros.*, 42 F.3d 1384, 1994 WL 702324, at *1 (1st Cir. 1994) (per curiam) (unpublished) (affirming denial of fee-shifting and punitive damages even where defendant failed to timely pay maintenance and cure); *cf. Robinson*, 477 F.2d at 1052 (ruling that instruction on punitive damages was warranted where defendant falsely asserted that seaman was fired for cause, refused to pay unearned wages when notified that plaintiff was in danger of losing his home and

terminated all payments when plaintiff declined settlement offer).

88. As previously noted, BSR II paid regular advances to Aadland to cover his mortgage payments, insurance payments, and living expenses, it paid his out-of-pocket medical expenses, there were not any medical expenses presented to BSR II that it declined to pay, and ultimately, it paid Tufts in satisfaction of any lien or claim Tufts might bring against Aadland. Patania was in close contact with Aadland throughout his treatment. Also, on the record here, Aadland timely received all care deemed medically necessary.

89. Indeed, as the First Circuit's opinion and this Court's analysis above reveals, it was not clear given the unusual facts of this case whether BSR II was liable for Aadland's medical treatment where it was covered by private insurance paid for with deductions from his wife's paycheck or made from their joint account including when Aadland was receiving advances from BSR II. D. 128 at 23-28; *see Manderson*, 666 F.3d at 383 (reversing district court's award of attorneys' fees where defendant presented evidence in support of contention that seaman was not owed maintenance and cure due to undisclosed pre-existing condition, which district court rejected); *Harper v. Zapata Off-Shore Co.*, 741 F.2d 87, 91 (5th Cir. 1984) (declining to impute bad faith to "decision to pay what [shipowner] considered to be the legal minimum" and reversing award of punitive damages and attorneys' fees).

90. Having considered the entirety of the record, the Court concludes that, even if BSR II had failed to cure in a timely manner, Aadland has not shown that BSR II was callous, willful, or recalcitrant in such failure. Therefore, his claim under Count IV fails.

V. CONCLUSION

In light of these findings of fact and conclusions of law, the Court enters judgment for BSR II on Count III, as to its satisfaction of its maintenance and cure obligations until September 2020, and on Count IV as to compensatory damages for emotional distress, punitive damages and attorneys' fees. The Court enters judgment for Aadland on Count III as to BSR II's ongoing duty after September 2020 to provide cure where MMR has not been shown.

So Ordered.

/s/
Denise J. Casper
United States District Judge

APPENDIX C — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT, FILED JULY 28, 2022

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 20-2073

MAGNUS AADLAND,

Plaintiff, Appellant,

v.

BOAT SANTA RITA II, INC.;
BOAT SANTA RITA III, INC.; FRANCIS A.
PATANIA; SALVATORE PATANIA, JR.,

Defendants, Appellees,

F/V LINDA,

Defendant.

Filed July 28, 2022

OPINION

Appeal from the United States District Court
for the District of Massachusetts
[Hon. Denise J. Casper, *U.S. District Judge*]

Before
Barron, *Chief Judge*,
Thompson and Hawkins*, *Circuit Judges.*

* Of the Ninth Circuit, sitting by designation.

Appendix C

BARRON, *Chief Judge*. This appeal concerns a suit that Magnus Aadland brought in the United States District Court for the District of Massachusetts against the owners of a fishing vessel on which he was a seaman. He alleges that the owners breached a federal common law obligation under admiralty law that is known as the duty of cure. He contends that they did so by failing to pay him adequately for the costs of the medical care that he received after he fell ill from an infection that he acquired while working aboard their vessel. He further alleges that, even if the defendants did satisfy their duty of cure through various payments that they made to him and his private health insurer, they so delayed in doing so that he is entitled to compensatory damages for emotional distress, punitive damages, and attorney's fees. The District Court granted judgment to the defendants after a bench trial.

We vacate the grant of judgment with respect to Aadland's claim that the defendants' breached their duty of cure and remand for further proceedings consistent with this decision. Our ruling on that score also leads us to vacate the District Court's grant of judgment to the defendants with respect to Aadland's claims for compensatory damages for emotional distress, punitive damages, and attorney's fees for the defendants' alleged delay in fulfilling the duty of cure. Finally, we reverse the District Court's ruling that Aadland had reached what is known as the "point of maximum medical recovery," which is a bar to any claim for cure based on the costs of recovery past that point in time.

Appendix C

I.

The following facts are not contested on appeal. On July 9, 2014, the F/V Linda, owned by Boat Santa Rita II ("BSR II"), Boat Santa Rita III, Frank Patania, and Salvatore Patania, left New Bedford, Massachusetts on a commercial scalloping trip. Aadland was the vessel's captain.

A few days into the trip, while at sea, Aadland fell ill. His condition continued to worsen, and the F/V Linda reversed course and traveled back to Massachusetts. Upon arrival in New Bedford on July 18, 2014, Aadland was transported to a hospital. He was diagnosed with a group G Streptococcus infection.

Aadland spent the next six months at various inpatient facilities, receiving medical treatment at them from July 18, 2014, to December 29, 2014. He was then discharged and received outpatient treatment until July 9, 2015, when he was again admitted to the hospital due to health complications that stemmed from the infection. Aadland was released from this second period of hospitalization on September 10, 2015. He thereafter received outpatient treatment for symptoms attributable to the infection.

It is a general principle of admiralty law that if "a seaman falls sick[] or is wounded[] in the service of the ship," "the vessel and her owners are liable . . . to the extent of [the seaman's] maintenance and cure." *Atl. Sounding Co.* v. *Townsend*, 557 U.S. 404, 413, 129 S.Ct. 2561, 174 L.Ed.2d 382 (2009) (quoting *The Osceola*, 189

U.S. 158, 175, 23 S.Ct. 483, 47 L.Ed. 760 (1903)). The duty of maintenance and cure is often referred to as a single duty, but there are two distinct aspects of it—"maintenance" and "cure."

"Maintenance" refers to "the provision of, or payment for, food and lodging." *LeBlanc* v. *B.G.T. Corp.*, 992 F.2d 394, 397 (1st Cir. 1993). "Cure," by contrast, refers to "necessary health-care expenses . . . incurred during the period of [the seaman's] recovery from an injury or malady." *Id.*

The duty of maintenance and cure can be traced back centuries to legal codes of several seafaring nations. *See Vaughan* v. *Atkinson*, 369 U.S. 527, 532 n.4, 82 S.Ct. 997, 8 L.Ed.2d 88 (1962); *see also* 1B Erastus Cornelius Benedict, *Benedict on Admiralty* § 42 (2022) (explaining that a shipowner's duty to provide maintenance and cure can be found in the Laws of Oleron, which date to approximately the year 1200); 2 Robert Force & Martin J. Norris, *The Law of Seamen* § 26:6 (5th ed. 2021) (same). The Supreme Court of the United States first formally recognized the duty of maintenance and cure, however, in *The Osceola*, 189 U.S. 158, 172, 23 S.Ct. 483, 47 L.Ed. 760 (1903).

In doing so, the Court echoed Justice Story's oft-quoted passage in *Harden* v. *Gordon*, 11 F. Cas. 480 (C.C.D. Me. 1823). There, he explained that

> [s]eamen are by the peculiarity of their lives liable to sudden sickness from change of climate, exposure to perils, and exhausting labour.

> They are generally poor and friendless. . . . If some provision be not made for them in sickness at the expense of the ship, they must often in foreign ports suffer the accumulated evils of disease, and poverty, and sometimes perish from the want of suitable nourishment. Their common earnings in many instances are wholly inadequate to provide for the expenses of sickness.

Id. at 483. Justice Story reasoned there that if the "expenses of his [on-ship] sickness [or injury] are a charge upon the ship, the interest of the owner will be immediately connected with that of the seamen" and "[t]he master will watch over their health with vigilance and fidelity[,] . . . tak[ing] the best methods . . . to prevent diseases, [and] to ensure a speedy recovery from them." *Id.*

The parties agree that from December 30, 2014 to October 16, 2020, Aadland was paid maintenance of $84 per day by BSR II,[1] which amounted to $175,664 in total. There is no dispute before us regarding whether the defendants satisfied their duty of "maintenance."

The picture is more complicated with respect to whether the defendants satisfied their duty of "cure." That is in part because, for a portion of the period that followed Aadland's on-ship infection, he used private health insurance that he had through his wife's employer

1. Aadland received the first payment from BSR II on February 5, 2015, containing the amount owed by BSR II to Aadland from December 30, 2014 until February 5, 2015.

to pay for the costs of the healthcare that he received related to that infection. It was not entirely clear at the time that the Tufts health insurance plan furnished by his wife's employer covered the costs of treating his on-ship illness, because it was a work-related illness.[2]

In addition, after Aadland's wife lost her job, Aadland personally enrolled in the Tufts COBRA plan, at a cost of approximately $2,000 per month.[3] For most of the period in which Aadland was enrolled in the Tufts COBRA plan, BSR II paid Aadland an "advance" of $114 per day. Aadland began receiving advance payments six months after he fell ill on the ship.[4]

BSR II referred to the payments when made as "advance" payments. BSR II also made these payments with the disclaimer that "the amount of any settlement, judgment or award" "resulting from [a] claim for personal injuries or illness occurring [in July 2014] while aboard the F/V Linda" "will be reduced by the amount of the advance."

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2. Aadland's health insurance policy contained a disclaimer that his insurer "will not provide coverage for any injury or illness for which it determines that benefits are available under any workers' compensation coverage or equivalent employer liability."

3. Since April 2017, Medicare has been Aadland's primary insurer, but Aadland has also purchased a supplemental healthcare plan. Aadland testified that he enrolled in the Tufts COBRA plan in October 2014.

4. As already discussed, Aadland received the first payment from BSR II in February 2015, which included payments for December 2014-February 2015.

Aadland received a total of $238,374 in advance payments. He used a portion of those payments to pay the premiums for his Tufts COBRA plan, which he in turn relied on to pay for the costs of the treatment that he received for his on-ship illness during this period. There is no indication in the record that Aadland has reimbursed the defendants for any of the funds that he received as "advance payments."

In addition, BSR II reimbursed Aadland for his out-of-pocket medical expenses owing to his on-ship illness. These included expenses such as those he incurred from the co-payments he was required to make under his insurance plan.

Finally, after the commencement of this suit, BSR II paid Aadland's health insurer, Tufts, $400,000 "in full satisfaction of any lien or claim [the insurer, Tufts,] might have against [the] Aadland[s] . . . for coverage of Aadland's medical expenses." BSR II made this payment on the eve of trial.

Aadland filed his lawsuit against the F/V Linda, BSR II, BSR III, and their owners on July 7, 2017. Aadland's operative complaint alleges that the defendants breached their duty of cure, which he contends his on-ship illness triggered. His complaint claims that he is entitled to damages in the amount of the total cost of the healthcare that he received to treat his July 2014 infection, as well as compensation for pain and suffering that resulted from the defendants' delay in providing him with the payments for cure that he contends that he is owed. *See*

Hines v. *J.A. LAPorte, Inc.*, 820 F.2d 1187, 1190 (11th Cir. 1987) (affirming an award of compensatory damages for "prolonged . . . pain and suffering" that resulted from the defendant's failure in that case to timely provide maintenance and cure); *Stevens* v. *Seacoast Co.*, 414 F.2d 1032, 1040 (5th Cir. 1969) (noting that if the delay in providing adequate maintenance and cure "contributed in any degree to additional pain or disability or prolonged the recovery period," "resulting damages [from that delay] are due"). Aadland's complaint further alleges that the defendants' failure to provide him with adequate cure payments was willful and thus that he is entitled to punitive damages, attorney's fees, and costs. *See Atl. Sounding Co.*, 557 U.S. at 407-08, 129 S.Ct. 2561 (holding that punitive damages can be awarded if a shipowner's failure to timely pay maintenance and cure was "willful"); *Vaughan* v. *Atkinson*, 369 U.S. 527, 530-31, 82 S.Ct. 997, 8 L.Ed.2d 88 (1962) (holding that attorney's fees can be awarded if a seaman proves that a shipowner failed to timely provide maintenance and cure); *Robinson* v. *Pocahontas, Inc.*, 477 F.2d 1048, 1051 (1st Cir. 1973) (explaining that where a shipowner was "callous, willful, or recalcitrant in withholding [maintenance or cure] payments," the seaman may recover punitive damages as well as attorney's fees).

The defendants filed their answer to Aadland's complaint on September 11, 2017. They moved thereafter for summary judgment on the issue of whether they "willfully" failed to provide adequate maintenance and cure. They did not, at that time, move for summary judgment on the underlying issue of whether they had

fulfilled whatever duty of maintenance and cure they had to Aadland in consequence of his on-ship illness.

The District Court denied the defendants' summary judgment motion on November 25, 2019. The case then proceeded to a three-day bench trial.

At the bench trial, the District Court heard testimony from Aadland, his wife, and Frank Patania, one of the owners of the vessel on which Aadland worked when he fell ill. Evidence admitted into the record included Aadland's medical bills, payments from BSR II to Aadland, communications between Aadland's wife and Frank Patania, and communications between Frank Patania and BSR II's insurance broker regarding Aadland's illness.

The District Court entered judgment on October 16, 2020, in favor of the defendants under Federal Rule of Civil Procedure 58. After finding the facts described above, *see Aadland* v. *Boat Santa Rita II, Inc.*, No. 17-cv-11248, 2020 WL 6119926, at *1-3 (D. Mass. Oct. 16, 2020), the District Court issued its legal conclusions.

The District Court first addressed whether the defendants had any ongoing duty of cure or whether they did not because Aadland had reached what is known as the point of maximum medical recovery. That is the point at which the seaman who has suffered an on-ship illness or injury "is 'so far cured as possible,'" *Whitman* v. *Miles*, 387 F.3d 68, 72 (1st Cir. 2004) (quoting *Farrell* v. *United States*, 336 U.S. 511, 518, 69 S.Ct. 707, 93 L.Ed. 850 (1949)), such that the shipowner no longer has a duty of cure to satisfy. The District Court found that "[t]here [was]

no evidence that Aadland ha[d] not reached maximum medical recovery," given that Aadland had testified that "he only saw his cardiologist, infectious disease doctor and primary care physician every six months for checkups and . . . was discharged from occupational therapy to begin a home exercise program." *Aadland*, 2020 WL 6119926, at *3. The District Court concluded on that basis that the defendants could "terminate maintenance and cure" to Aadland on a going-forward basis (assuming, that is, that it had satisfied its duty up until that point). *Id.* (quoting *Saco* v. *Tug Tucana Corp.*, 483 F. Supp. 2d 88, 99 (D. Mass. 2007)).

The District Court next addressed whether the defendants had satisfied their duty of cure up until the point at which Aadland had reached maximum medical recovery. It ruled that the defendants had. *Id.* at *3-4.

Finally, the District Court concluded that Aadland's claim seeking damages for emotional distress, punitive damages, and attorney's fees could not succeed because Aadland could not establish that the defendants willfully withheld maintenance and cure payments that he was due. *Id.* Thus, the District Court granted judgment to the defendants on these claims as well.

Aadland thereafter timely appealed.

II.

"When a district court conducts a bench trial, its legal determinations engender de novo review," as do its

"determinations about the sufficiency of the evidence." *United States* v. *15 Bosworth Street*, 236 F.3d 50, 53 (1st Cir. 2001). Its factual findings are reviewed for clear error. *See id.*; *see also* Fed. R. Civ. P. 52(a)(6).

A district court's resolution of mixed questions of law and fact is typically treated with deference. But, if the district court "'premise[s] its ultimate finding . . . on an erroneous interpretation of the standard to be applied,' . . . we treat the trial court's conclusion as a question of law," entitled to no deference. *Vinick* v. *United States*, 205 F.3d 1, 7 (1st Cir. 2000) (alteration in original) (quoting *United States* v. *Parke, Davis & Co.*, 362 U.S. 29, 44, 80 S.Ct. 503, 4 L.Ed.2d 505 (1960)).

III.

We start with Aadland's challenge to the District Court's grant of judgment to the defendants on his claim that they breached their duty of cure to him. A premise of this challenge is that he is entitled to a cure award that is equal to the cost of the reasonably necessary medical care that he received to treat his on-ship illness, even if he did not personally pay that full cost in receiving that care because he relied on private insurance to pay it. An additional premise of this challenge is that the cost of this care in his case is properly measured by the "sticker price" of $1.2 million that his healthcare providers charged for that care and not some lesser amount, such as the amount that his healthcare providers accepted as payment from his insurer for the care that they provided to him in treating his on-ship illness.

Based on these twin premises, Aadland contends that the District Court erred in granting judgment to the defendants on the breach-of-the-duty-of-cure claim because the defendants did not, and still have not, paid him that $1.2 million amount that he contends that they owe him as cure. And that is so, he contends, notwithstanding that he acknowledges in pressing this challenge that the defendants have made some payments directly to him and one payment (of $400,000) directly to his insurer in return for its release of his liability to the insurer.

Of course, as Aadland acknowledges, he did not actually pay $1.2 million for the care that he received to treat his on-ship illness. He instead paid for that care, as we have seen, chiefly through a private insurer, though he did also incur some out-of-pocket expenses in the form of co-pays and the like. He thus does not dispute that he was out-of-pocket for the care only for the amount of the premiums that he had to pay for the insurance and for the costs of the co-payments and the like, and that this amount is far less than the amount of cure that he seeks.

Nor does Aadland dispute that his healthcare providers did not themselves receive $1.2 million for the care that they provided to him. Instead, he concedes that they received as payment for that care only roughly $600,000, which was paid to them by Tufts pursuant to both the Tufts plan that his wife had through her employer and through the Tufts COBRA plan.

Nonetheless, Aadland contends that, based on the logic of a Fifth Circuit ruling whose reasoning he asks

us to adopt, *Gauthier* v. *Crosby Marine Service, Inc.*, 752 F.2d 1085 (5th Cir. 1985), the defendants are still obliged to pay him the $1.2 million pursuant to their duty of cure. For, he contends, that case rightly holds that when "a seaman alone purchase[s] medical insurance," *id.* at 1090, and relies on it to pay the costs of the care that he receives to treat an on-ship illness or injury, then the proper measure of the shipowner's cure obligation is the cost of that care and not either the out-of-pocket cost to the seaman of receiving it or the amount that the healthcare providers accepted for such care from the insurer.

Moreover, Aadland contends that *Gauthier* also was right in holding one more thing—that, in a circumstance in which the seaman relied on health insurance that he alone purchased to cover the costs of the care that he received for his on-ship illness or injury, the shipowner is not entitled to set off the amount that the healthcare providers received from the seaman's health insurer as payment for that care from the shipowner's obligation to pay cure in the amount of the costs of that care. *Id.* Thus, he contends, based on *Gauthier*, the defendants here may not set off from what he contends is their $1.2 million cure obligation the roughly $600,000 that Aadland's healthcare providers received from the insurer to pay for the treatment of Aadland's on-ship illness.

For these reasons, Aadland contends that the District Court's grant of judgment to the defendants cannot stand because the District Court declined to apply *Gauthier* to his case, based on reasons for doing so that he contends are not sound. For, by failing to apply *Gauthier* here, he contends, the District Court erroneously concluded

both that the defendants are entitled to set off from their cure obligation the roughly $600,000 that his healthcare providers received from the insurer and that, given the set-off and the payments made to Aadland by the defendants, Aadland had incurred no expense for the care that he received for his on-ship illness, he was not entitled to any additional payment as cure. He further contends that there is no alternative ground manifest in the record on which we can affirm the District Court's ruling granting judgment to the defendants on his claim that they are in breach of their duty of cure. And that is so, he contends, even if we were to agree with him that the District Court's reasoning in so granting judgment on that claim was flawed.

We approach this case, as the parties do and as the District Court did, on the assumption that *Gauthier* guides our analysis—but without barring attention to that issue in the future. As we will explain, we conclude that there is merit to Aadland's challenge to the District Court's ruling granting judgment to the defendants on his breach-of-the-duty-of-cure claim. Moreover, as we will also explain, we agree with Aadland that we cannot affirm the District Court's grant of judgment to the defendants on that claim on an alternative ground, at least given the arguments that the defendants have made to us. Finally, because of these conclusions, we will also address the question of what the proper measure of cure is in this case insofar as there is no basis for applying *Gauthier* here, so that the District Court on remand may determine based on that amount the extent to which all, or any, of the defendants' cure obligation has been satisfied.

Appendix C

A.

We start with the issue that the District Court found to be dispositive, which concerns the applicability of *Gauthier* to this case. Given that the District Court declined to apply *Gauthier* here because it determined that *Gauthier* was factually distinguishable rather than wrongly decided, a brief review of the facts of that case is in order.

The shipowners in *Gauthier* had initially paid maintenance and cure to the seaman after the seaman had suffered injuries while aboard their vessels. *See Gauthier* v. *Crosby Marine Serv., Inc.*, 499 F. Supp. 295, 298 (E.D. La. 1980), *on reconsideration*, 536 F. Supp. 269 (E.D. La. 1982). The shipowners had then stopped doing so after the seaman's condition had worsened. *Id.* They stopped doing so, moreover, despite the seaman's affirmative request for continued cure. *Id.*

The seaman in that case, after having had his request for cure rebuffed, turned to his private insurer to pay for the costs of his medical care pursuant to a policy that he had alone purchased with no help from either shipowner. After having used that insurance to pay for his treatment of his on-ship-injuries, he then sued the shipowners who had denied him further cure payment. *Id.*

The shipowners defended against the suit in part by arguing that they were entitled to set off from their cure obligation the payments that the seaman's insurer had made for the seaman's healthcare attributable to his on-ship injuries. *See Gauthier*, 752 F.2d at 1090. Moreover, the

shipowners argued on that basis that they did not owe the seaman the cure that he sought because the costs of the seaman's medical care for his injuries that had been paid for by the insurer was not an "expense" that the seaman had incurred. *Id.*

Gauthier rejected the shipowners' contention. It held instead that the seaman "had incurred expenses" because he alone had paid the premiums that secured the private health insurance that he had used to pay for the healthcare that he had received to treat his on-ship injuries. It further held that "where a seaman has alone purchased medical insurance, the shipowner is not entitled to a set-off from the maintenance and cure obligation moneys the seaman receives from his insurer." *Id.* The court reasoned that "the policy of protecting injured or ill seamen" at the root of maintenance and cure "would be hampered if a shipowner, in hopes of reducing his liability, delayed maintenance and cure payments to force seamen to look first to their private insurer." *Id.*

In granting judgment to the defendants on Aadland's breach-of-the-duty-of-cure claim, the District Court did not purport to take issue with *Gauthier*'s holding that the shipowners in that case were not entitled to the set-off. Instead, it ruled that *Gauthier* was distinguishable as a factual matter from Aadland's case and that, in consequence, its no-set-off rule did not apply here. *Aadland*, 2020 WL 6119926, at *4.

The District Court first noted that Aadland, unlike the seamen in the cases on which *Gauthier* relied, had

not requested cure from the defendants. It also noted, relatedly, that, as a result, the defendants were "not aware of Aadland suffering any dire financial straits" due to his medical expenses and had not refused any request from Aadland for cure. *Id.* The District Court then explained that while the seaman in *Gauthier* had incurred expenses personally in the form of the payments that he made to cover the costs of the premiums for the insurance he relied on to pay for his care, "Aadland ha[d] not incurred any medical expenses himself and even his health insurance premiums, which were part of the basis of the calculation of the advances he has received from BSR II, have been covered." *Id.* Nor, the District Court noted, are there "outstanding medical expenses or reimbursements for Aadland's medical care that Aadland is obligated to pay." *Id.*

The District Court explained that "*under these circumstances*," *Aadland*, 2020 WL 6119926, at *4 (emphasis added), *Gauthier*'s rule that where a "seaman alone purchase[s] medical insurance," the shipowner cannot reduce its cure obligation by the amount of money the seaman receives from his insurer, *Gauthier*, 752 F.2d at 1090, does not apply. And, after accounting for the set-off of the roughly $600,000 that Aadland's medical providers accepted as payment for their treatment of his on-ship illness, the District Court then granted summary judgment to the defendants on Aadland's breach-of-the-duty-of-cure claim on the ground that Aadland had incurred no expenses for his treatment, at least given the payments that had been made directly to him by the defendants.

As this recitation of the decision below shows, the District Court's ruling that *Gauthier* could be distinguished from Aadland's case rested, at least in part, on the ground that Aadland failed to request cure as the seaman in that case had. But, the District Court did not hold that a seaman must request cure to be entitled to it. Moreover, the defendants concede on appeal that a shipowner's duty to provide maintenance and cure to a seaman who falls ill or is injured at sea includes the duty to inform the seaman that the shipowner has that duty, and they do not dispute Aadland's contention that they did not inform him of their obligation in that regard.

Thus, we do not see how the fact that Aadland failed to request cure from the defendants provides a basis for concluding that *Gauthier*'s no-set-off rule is inapplicable here, insofar as that no-set-off rule is otherwise applicable. For, if Aadland had no duty to request cure and was not informed by the defendants of their duty to provide cure to him, then his failure to have requested cure could not relieve the defendants of whatever cure obligation to him that they otherwise would have had. The question thus would remain under *Gauthier*—absent some other reasons for deeming it to be inapplicable—as to whether the defendants were entitled to reduce their cure obligation by setting off the payment that the insurer made to Aadland's healthcare providers to treat his on-ship illness.

But, as we have noted, the District Court did not suggest that *Gauthier* erred in holding that defendants are not entitled to set off such payments when the seaman

alone purchased the health insurance on which he relied to cover the costs of his care. Nor did the District Court find that Aadland did not alone purchase the health insurance on which he relied to obtain his care for his on-ship illness. Nor, finally, did the District Court hold that any of the other unique features of Aadland's case on their own, and without the added feature of his not having requested cure, suffice to render *Gauthier* inapplicable. Thus, the District Court appears to have held that the defendants were entitled to the set-off without finding that Aadland did not alone purchase the insurance that he used to pay for his medical care, and the District Court did so based, at least in part, on a reason that (insofar as *Gauthier*'s rule itself goes unchallenged) does not justify that conclusion—namely, that Aadland did not request cure at any point.

Accordingly, because the District Court did not hold that the defendants would be entitled to judgment on Aadland's breach-of-the-duty-of-cure claim even if they were not entitled to the set-off, we cannot affirm that ruling. Instead, we must vacate it, because it rests on an impermissible ground for distinguishing *Gauthier* and does not otherwise explain why *Gauthier* does not apply.

B.

The defendants contend, however, that even if the District Court's reasons for distinguishing *Gauthier* do not hold up, there is an alternative ground for affirming the District Court's ruling granting judgment to them on Aadland's breach-of-the-duty-of-cure claim. And that is so, they contend, because the record incontrovertibly shows

that Aadland, unlike the seaman in *Gauthier* itself, did not "alone purchase[] [his] medical insurance," *Gauthier*, 752 F.2d at 1090, and so incurred no "expense" for his care (at least given what the record shows regarding the other payments that the defendants made either directly to him or to his insurer). Thus, they argue, even under *Gauthier* itself, Aadland is wrong to contend that the District Court erred in ruling that the defendants were entitled to the set-off and that he has incurred no expenses for the care that he received, at least given the payments that have been made directly to him by the defendants. But, although we may affirm the District Court on any ground manifest in the record, *see Ungar* v. *Arafat*, 634 F.3d 46, 51 n.4 (1st Cir. 2011), we cannot do so here for the reasons that we will next explain.

To be sure, the record does show—without dispute—that, just as the District Court found, the premiums for the insurance that Aadland relied on during the first three months following his on-ship illness to pay for the costs of his care attributable to his on-ship illness were deducted directly from his wife's paycheck rather than his own. But, while there is precedent to support the notion that a seaman who receives financial assistance from his parent in the wake of his on-ship illness or injury does not thereby incur an expense that is a "charge" on the shipowner, *see, e.g.*, *Johnson* v. *United States*, 333 U.S. 46, 50, 68 S.Ct. 391, 92 L.Ed. 468 (1948); *In re RJF Int'l Corp.*, 334 F. Supp. 2d 109, 113 (D.R.I. 2004), we agree with Aadland that the nature of the relationship between the seaman and the person providing financial assistance to him matters. And, given that it is not unusual for a married couple to share

finances, we are not persuaded by the defendants' implicit assertion that the use of one spouse's paycheck to fund the insurance of the other is necessarily a "gift" from the one to the other in the same way that perhaps a parent paying the premiums of an adult child might be viewed.

Indeed, in the maintenance context, an injured seaman might stay at home to recover, and his spouse might pay the rent or mortgage for that home at that time. But, we do not agree that means that the spouse is "gifting" the seaman shelter, such that the seaman cannot get maintenance to help pay the rent or mortgage. *Cf. Saco*, 483 F. Supp. 2d at 101-02.

Thus, the record does not compel the conclusion that Aadland did not alone purchase his insurance—and so did not incur any expense in consequence of his reliance on it to pay for his care—during this period. Instead, it provides a supportable basis for finding that he did. Accordingly, at least as to this period, we conclude that the District Court's grant of judgment to the defendants on Aadland's breach-of-the-duty-of-cure claim must be vacated, absent a finding about the nature of the financial relationship between Aadland and his spouse that would support a finding that he did not incur an expense from the costs of paying the premiums during this period.

Nor can we agree with the defendants that the record conclusively shows that Aadland did not alone purchase his insurance—and so, for that reason, incurred no expense—during the ensuing period in which he relied on his Tufts COBRA health insurance to pay his healthcare providers for the costs of the care he received to treat his

on-ship illness. The defendants point out that the record indisputably shows that, during this period, Aadland received "advance" payments from the defendants that he then used to pay the premiums for the Tufts COBRA insurance. They go on to contend that, as a result, they, rather than Aadland, purchased that insurance. *See, e.g.*, *Shaw* v. *Ohio River Co.*, 526 F.2d 193, 200-01 (3d Cir. 1975) (finding that a shipowner was entitled to a set-off for the medical expenses paid for by a health insurance plan it provided to its seamen at no expense to themselves).

But, the District Court did not find, and the record does not incontrovertibly show, that the advance payments were made to Aadland in a form other than as a loan. For, while the District Court found that Aadland had not paid the defendants back for the advance payments as of the time the District Court issued its judgment, *Aadland*, 2020 WL 6119926, at *2, the relevant question is whether the advance payments were made to Aadland pursuant to an agreement between Aadland and the defendants that Aadland did not need to pay the defendants back for those payments.[5]

5. The defendants argue that because the advance payments are best understood as maintenance and cure payments, there is no expectation that Aadland pay the advance payments back. *See Block Island Fishing, Inc.* v. *Rogers*, 844 F.3d 358, 366 (1st Cir. 2016). But, the defendants do not contend that they represented that the payments were maintenance or cure payments at the time that they were made to Aadland. Instead, they contend that they should be understood as much at present because of the way they were calculated. We thus leave the resolution of this factual dispute about the nature of the payments at the time that they were made to the parties and the District Court on remand.

After all, if those payments were not made pursuant to such an agreement, then Aadland was merely loaned money by the defendants that he owed to them. And, in that event, Aadland would have been in all relevant respects "abandon[ed] . . . to his fate" and own devices to cover the costs of caring for his on-ship illness during the period in which he was enrolled in the Tufts COBRA insurance. *The Dutra Grp.* v. *Batterton*, — U.S. —, 139 S. Ct. 2275, 2286, 204 L.Ed.2d 692 (2019) (quoting *McBride* v. *Estis Well Serv., L.L.C.*, 768 F.3d 382, 394 n.12 (5th Cir. 2014) (Clement, J., concurring)). For, we see no basis for concluding that a shipowner may evade *Gauthier*'s no-set-off rule by making the seaman a loan to cover the costs of the insurance that the seaman then alone purchases and relies on to pay for the healthcare that he needs to treat an on-ship illness.

Indeed, the proposition that a shipowner may not evade *Gauthier*'s no-set-off rule by making a loan to the seaman to cover the costs of his private health insurance is not itself disputed by the defendants. Nor was that proposition rejected by the District Court.

In addition, the proposition accords with—even if it is not compelled by—*Gauthier*'s own rationale for not allowing a set-off of the payments made by an insurer pursuant to insurance that the seaman alone purchased. *Gauthier* cautioned that if a shipowner were able to reduce its cure obligation in such a fashion, then the shipowner would be incentivized to "delay[] maintenance and cure payments to force seamen to look first to their private insurer"—an outcome the court there concluded was

at odds with the duty's aim of "protecting injured or ill seamen." 752 F.2d at 1090.

This proposition draws additional support from the Supreme Court's decision in *Vaughan* v. *Atkinson*, 369 U.S. 527, 82 S.Ct. 997, 8 L.Ed.2d 88 (1962). There, the Court held that a shipowner cannot "force the disabled seaman to work, and then evade part or all of their [maintenance] obligation by having it reduced by the amount of the sick man's earnings," because otherwise "unconscionable employers . . . [would] use the withholding of maintenance and cure as a means of forcing sick seamen to go to work when they should be resting, and to make the seamen themselves pay in whole or in part the amounts owing as maintenance and cure." *Id.* at 533, 82 S.Ct. 997. And, we note, this proposition accords as well with the rule that a shipowner may reduce the cost of its cure obligation via the seaman's admission to a public marine hospital that provides medical care only if the shipowner first presents the injured or ill seaman with "a master's certificate carrying admittance to a public hospital." *Kossick* v. *United Fruit Co.*, 365 U.S. 731, 737, 81 S.Ct. 886, 6 L.Ed.2d 56 (1961); *see also Calmar S. S. Corp.* v. *Taylor*, 303 U.S. 525, 531, 58 S.Ct. 651, 82 L.Ed. 993 (1938).

Thus, insofar as the record may be deemed to show that the "advance payments" were made to Aadland as a loan, there would be no basis for finding that he did not alone purchase the Tufts Cobra Plan insurance and so no basis for affirming the District Court's ruling that the defendants are entitled to the set-off they seek. There then also would be no basis for concluding, given *Gauthier*,

that the defendants are entitled to a grant of judgment on Aadland's breach-of-the-duty-of-cure claim.

Accordingly, because of the uncertain nature of the record as to whether Aadland did or did not alone purchase the insurance in question, the defendants' proposed alternative ground for affirming the District Court's grant of judgment to the defendants on Aadland's breach-of-the-duty-of-cure claim fails. We thus vacate and remand the District Court's judgment for the defendants on Aadland's breach-of-the-duty-of-cure claim, so that the District Court may make the findings that have not yet been made but that bear on whether Aadland did alone purchase his insurance during the periods in question. For, we emphasize, if he did alone purchase that insurance, then the defendants would not be entitled to set off from their cure obligation the roughly $600,000 payment that Aadland's medical providers received from the insurer as payment for their treatment of his on-ship illness. And thus, the determination of whether Aadland was entitled to recover on his breach-of-the-duty-of-cure claim would have to be assessed on the understanding that no such set-off could be claimed by the defendants, which is an assessment that the District Court has not yet made.[6]

6. There is a third period concerning Aadland's coverage that is worth noting. Since April 2017, Aadland's healthcare has been paid for through Medicare and a private supplemental health insurance plan he pays for. No party advances a separate reason for distinguishing *Gauthier* based on the source of Aadland's health insurance during this third period. Nor do we purport to comment on whether these facts would provide a basis for distinguishing *Gauthier*. *Compare Moran Towing & Transp., Co.* v. *Lombas*, 58 F.3d 24 (2d Cir. 1995), *with Gypsum Carrier, Inc.* v. *Handelsman*, 307 F.2d 525 (9th Cir. 1962).

C.

Having determined this much thus far, the question as to what the proper measure of cure is in this case necessarily also presents itself. That question is plainly relevant to the issue that may arise on remand concerning how much of the defendants' cure obligation (if any) has been satisfied (set-off not included) through payments that they have made, either directly to Aadland or to the insurer, Tufts.

As we have noted, with respect to the issue of the amount of cure that is owed, Aadland contends that, if *Gauthier* applies, then he is owed as cure the "sticker price" of the healthcare that he received, which is $1.2 million. That amount, Aadland contends, represents the reasonable costs of his care, given that it is the amount that his healthcare providers charged for it.[7]

The defendants contend in response, however, that, insofar as *Gauthier* does apply here, the proper valuation of the cure obligation is still at most the amount that Aadland's healthcare providers accepted as full payment from the insurer for his care. And, they assert, that amount comes to approximately $600,000, which is considerably less than the $1.2 million amount that Aadland favors.

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7. Aadland does not develop an argument to us that the proper measure of cure in his case is the cost of his care – be it the "sticker price" or the roughly $600,000 his healthcare providers accepted as payment – plus the cost of his premiums and out-of-pocket expenses. We thus deem such an argument waived. *See United States* v. *Zannino*, 895 F.2d 1, 17 (1st Cir. 1990).

In pressing for this lesser amount to measure the cure obligation even under *Gauthier*, the defendants first emphasize, correctly, that *Gauthier* never resolved how much cure the shipowner there owed the seaman; *Gauthier* only determined that the shipowner was not entitled to set off the payments that the insurer made to cover the cost of the seaman's care against its cure obligation. The defendants then further note that it was not until *Manderson* v. *Chet Morrison Contractors, Inc.*, 666 F.3d 373 (5th Cir. 2012), that the Fifth Circuit reached the question of what the cure obligation would be in a situation in which *Gauthier* applied. They then contend that *Manderson* undermines Aadland's position that the proper measure of cure is $1.2 million in his case. We agree.

The defendants point out that *Manderson* held that when a seaman alone purchases his medical insurance, such that *Gauthier*'s no-set-off rule applies, "the relevant amount" owed as cure is not the "sticker price" the healthcare providers assign to the care that they provided to the seaman to treat his on-ship illness or injury. Rather, "the relevant amount is that needed to satisfy the seaman's medical charges," which there was the "lower amount paid by [the seaman's] insurer." *Manderson*, 666 F.3d at 382. Thus, the defendants contend, because "the amount paid by" Aadland's insurer was only approximately $600,000, Aadland cannot, given *Manderson*, be entitled to a cure award that is pegged to the $1.2 million "sticker price" that his healthcare providers assigned to the care that they provided to him to treat his on-ship infection.

Aadland contends otherwise by arguing that, under *Manderson*, the lower measure of cure that the Fifth Circuit there embraced only applies if the shipowner has taken a proactive step toward ensuring that the seaman has a way to pay for the care needed to treat his on-ship injury or illness. And, he contends, the record shows that, unlike in *Manderson*, the defendants in this case "played no part in the proactive procurement or payment of" the health insurance that was used to pay for the care in question. Thus, he contends, he is entitled to a cure award pegged to the $1.2 million sticker price, notwithstanding that his health care providers in fact accepted a much lower amount.

But, we are not persuaded by Aadland's contention. *Manderson* does not purport to limit its holding regarding the proper measure of cure in a case in which a seaman relies on insurance that he alone purchased to pay for the healthcare that he received for an on-ship illness or injury to the circumstance in which the defendants took steps to ensure that the seaman had a way to pay for his insurance (without, of course, going so far as to pay for that insurance). Moreover, Aadland himself acknowledges that the defendants here knew at the time that they made the advance payments that Aadland had health insurance that he was relying on to pay for his care. And, while the record does show that there are questions about whether the insurance would cover those costs, we see no basis for concluding that the mere possibility that coverage could be denied in and of itself suffices to make *Manderson*'s approach to defining the measure of cure inapplicable in a case like this. That is at least the case given that there is

no dispute that the defendants in this case did take some measures to ensure that the seaman to whom the duty of cure would be owed could procure insurance, such as by, at the very least, loaning him money to procure it through the advance payments that they made to him. Nor, we add, did Aadland have his requests for coverage denied by Tufts during the period in which he was relying on that insurance to pay for his care.[8]

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8. We note that, insofar as the defendants mean also to assert that Aadland is actually entitled only to a much lower amount of cure, as defined chiefly by the costs of the premiums for his health insurance plus any expenses attending to his reliance on that insurance (rather than the cost of the healthcare itself), the District Court did not so hold. (The District Court only determined that *Gauthier* was distinguishable; it did not then reach the issue of what the defendants' cure obligation would be if *Gauthier* was not distinguishable.) Moreover, *Manderson*, applying *Gauthier*, does not hold that the cost of the premiums is the right measure of cure when a seaman alone purchases insurance, *see* 666 F.3d at 382, and the defendants do not develop any argument for why *Manderson*'s reasoning should not apply here. Thus, any such argument is waived. *See Zannino*, 895 F.2d at 17 ("[A] litigant has an obligation 'to spell out its arguments squarely and distinctly,' or else forever hold its peace." (quoting *Rivera-Gomez* v. *de Castro*, 843 F.2d 631, 635 (1st Cir. 1988))).

We note, too, that insofar as the defendants mean to contend that, if the amount accepted as payment by the healthcare providers is the measure of cure, that amount here is only $400,0000 because that is the amount that they paid directly to the insurer in return for its release of Aadland of any liability owing to the payments that it made to the healthcare providers for that care, we also cannot agree. And that is so, because the defendants do not purport to take issue with *Manderson*, which stated that the correct value of the cure obligation in that case was "the lesser amount those *providers* accepted as full payment from *Manderson*'s insurer," 666 F.3d at 381-82 (emphasis added).

Thus, we conclude that, insofar as *Gauthier* does apply, we cannot agree with Aadland that the duty of cure is defined in his case by the sticker price for the healthcare that he received but that neither he nor his insurer was charged. Instead, insofar as Aadland did alone purchase the insurance in question, such that *Gauthier* applies, the cure owed here is the roughly $600,000 that his healthcare providers accepted as payment for his care from his insurer.

Of course, there still does remain the question of whether, given that the cure owed would be roughly half of the $1.2 million amount that Aadland is suing to obtain, the defendants have satisfied their duty of cure. The defendants contend that they have done so by virtue of the payments that they made to Aadland and his insurer since Aadland fell ill in July 2014 and the fact that his wife paid for a portion of his health insurance premiums.

But, the District Court has not addressed this question. That is so, because it was of the view—which we have rejected—that the defendants could set off the roughly $600,000 paid for Aadland's care by the insurer because, in part, Aadland failed to request cure.

Thus, we leave to the District Court on remand the assessment of what cure was paid—insofar as, that is, the District Court finds on remand that Aadland did alone purchase the insurance on which he relied to pay for his care for some period of the time in question. Nonetheless, we do make the following observations with respect to that assessment.

Appendix C

First, and by way of recalling our analysis above concerning how *Gauthier* applies here, if the District Court were to find on remand that the advance payments were made with the understanding that Aadland would not by accepting them incur a debt to the defendants, then, at least as to the period of time for which Aadland used the payments to pay for the premiums for the insurance that he used to pay for the healthcare that he received for is on-ship illness, *Gauthier* would be distinguishable. And, in that event, the defendants, for such period, would appear to have fulfilled their cure obligation, given the set-off to which they would be entitled.

But, if the District Court were to find on remand that Aadland incurred a debt from his receipt of the advance payments, then a distinct set of questions would arise concerning how to calculate what amount of cure was owed and what amount had been satisfied. And, as to that set of questions, we offer the following guidance.

To the extent that the District Court were to find on remand that the debt had been incurred by Aadland from his receipt of the advance payments but that some or all of the debt then had been extinguished, it may be that a portion of the amount of the extinguished debt would satisfy some of the defendants' cure obligation. We say no more on this score, however, because the parties do not develop on appeal an argument as to whether the amount of any extinguished debt incurred from receipt of the advance payments should be credited against the defendants' cure obligation, and if so, in what amount.

Indeed, neither party advances an argument even as to whether any such amount of extinguished debt should be credited against the defendants' cure obligation of roughly $600,000 (as measured by the amount of payment accepted by Aadland's health care providers from the insurer) or viewed as covering the costs of an additional part of the defendants' cure obligation. On the latter view, we note, the amount of the defendants' cure obligation would not be just the roughly $600,000 that the healthcare providers accepted as payment from the insurer. It instead would be that amount *plus* the cost of (at least a portion of) the premiums for the insurance that the insurer provided as well as Aadland's out-of-pocket expenses for the healthcare that he received for his on-ship illness in the form of co-payments and the like.

We thus leave this nuanced set of questions to the District Court to address on remand. That way the District Court may address those questions after having heard whatever arguments the parties may make to it, including any arguments that the parties may choose to make to it as to whether any arguments pertaining to this set of questions have been waived over the course of this litigation by either party.

There is also the question of whether the defendants' payment of $400,000 to the insurer, or any portion of that payment, may count toward the satisfaction of the defendants' cure obligation and how that payment may bear on the amount of that obligation. But, here, too we leave these questions to the District Court, given the limited arguments touching on them that have been

made to us by the parties on appeal. This approach will enable the District Court to resolve these questions in the first instance with the aid of having heard whatever arguments the parties may choose to make, given that the parties have not developed arguments pertaining to those questions to us on appeal.

Finally, we note that if the District Court were to conclude on remand that Aadland did not alone purchase his health insurance either only during the period in which he received his health insurance through his wife's employer-sponsored plan or, alternatively, only during the period in which he was covered by the Tufts COBRA plan following her termination from her job, then there would remain the question of how much cure Aadland must still be paid by the defendants as cure for that specific period. For, in that event, Aadland would not be entitled to recovery for nonpayment of cure based on *Gauthier* for the other period, precisely because he would not have been found to have alone purchased his insurance for that period.

Aadland has not developed, however, a distinct argument to us as to what amount the defendants would owe him as cure in the event that he were to be found to have alone purchased his insurance for only one of the periods identified above rather than for the whole of the time spanning both periods. Nor, we should add, have the defendants weighed in on this issue to us.

We do note, though, that, given the episodic way that maintenance and cure payments are customarily

calculated, it seems plausible that Aadland would be entitled to cure for the cost of the care that he received for such a limited period, notwithstanding that he did not alone purchase the insurance that he relied on to pay for the healthcare that he received during the whole of the time that he was relying on such healthcare to treat his on-ship illness. But, in all events, we leave this question as well to the District Court to resolve on remand, so that, again, it may do so with the benefit of whatever arguments the parties properly advance below.

IV.

Having vacated the District Court's grant of judgment to the defendants on Aadland's breach-of-the-duty-of-cure claim, we now come to his additional claim that the defendants' failure to timely pay him adequate cure, to the extent the defendants so failed, was done in "bad faith." Here, Aadland argues that the record shows that the defendants knew of their cure obligation to him and recognized that his health insurance may not cover the costs of his care, yet never communicated its cure obligation to him and waited until "the eve of trial" before reaching an agreement with his insurer to release him from any liability resulting from his use of his insurance to pay for the care he received to treat his on-ship illness. As a result, Aadland contends that he is entitled to compensatory damages for mental distress for the "mental anguish" that he suffered due to both his need to rely on his insurance to pay for his healthcare despite the ambiguity as to whether the insurance covered those costs, as well as his need to file this suit to receive adequate

cure from the defendants. And, Aadland further contends that he is entitled to punitive damages and attorney's fees for the defendants' allegedly willful delay in fulfilling their cure obligation.

As we noted at the outset, the District Court was not persuaded and granted judgment for the defendants on this claim. But, the District Court's judgment in this regard relied on its determination that Aadland was not deprived of any cure owed to him by the defendants because *Gauthier* did not apply, in part because Aadland did not request cure. Nor, in granting judgment to the defendants with respect to these delay-based claims, did it address the fact that, from the time Aadland fell ill at sea to the time of this suit, Aadland faced the risk of a lawsuit by his insurer to recover the cost of the healthcare his insurance had paid for.

We therefore vacate the District Court's grant of judgment on his claim seeking compensatory damages for emotional distress, punitive damages, and attorney's fees. That way, the District Court may consider those claims in light of our other conclusions regarding Aadland's claim for cure.

V.

We have one final ruling by the District Court to address. It concerns whether the defendants have met their burden of proving that Aadland has reached the point of maximum medical recovery.

"Maximum medical recovery" occurs "[w]hen a seaman's 'condition has stabilized,'" *Whitman*, 387 F.3d at 72 (quoting *In re RJF Int'l Corp.*, 354 F.3d 104, 106 (1st Cir. 2004)), and the seaman is "so far cured as possible," *Ferrara* v. *A. & V. Fishing, Inc.*, 99 F.3d 449, 454 (1st Cir. 1996) (quoting *LeBlanc*, 992 F.2d at 397). Even when a seaman's "progress ended short of a full recovery, the seaman . . . is no longer entitled to maintenance and cure" once the shipowner has proven by a preponderance of the evidence that the seaman has reached the point of maximum medical recovery. *Whitman*, 387 F.3d at 72 (quoting *In re RJF Int'l Corp.*, 354 F.3d at 106); *see also Johnson* v. *Marlin Drilling Co.*, 893 F.2d 77, 79 (5th Cir. 1990) (describing the burden of proof by which a shipowner must establish that the injured seaman has reached the point of maximum medical recovery as when it is "probable that further treatment will result in no betterment of the seaman's condition" (quoting *Gaspard* v. *Taylor Diving & Salvage Co.*, 649 F.2d 372, 374 n.3 (5th Cir. 1981))); 1 *Admiralty & Mar. Law* § 6:33 (6th ed. 2021) (same).

As part of the defendants' effort to minimize the amount owed to Aadland as cure, if any amount is, the defendants argued to the District Court, as a defense, that Aadland had reached the point of "maximum medical recovery" by July 2019. For that reason, they contend, he is not entitled to cure payments for any healthcare he received for his on-ship illness after that point in time. The District Court agreed, and Aadland now appeals that ruling.

We note at the outset that we are dubious that the issue of maximum medical recovery is properly presented in this

case. The defendants, in raising this defense, contend that Aadland reached the point of maximum medical recovery only in July 2019—just three months before trial and well after he first became ill. But, it is not clear to us from either the record or the arguments of the parties whether Aadland sought cure from the defendants to cover the cost of treatment he received in that three-month period as Aadland has been paying for his healthcare, at least in part, through Medicare since April 2017.[9] Nor did the defendants themselves seek a declaratory judgment of any sort on this issue. Nonetheless, the District Court ruled on this issue, and there is ambiguity as to whether Aadland may seek cure for treatment he received after July 2019. We thus address it, and, as we will explain, we conclude that Aadland is right that the District Court's maximum-medical-recovery ruling was wrong.

A.

When determining whether a seaman has reached the point of maximum medical recovery, a court must consider whether "further rehabilitation would be more than simply palliative, and would [instead] improve [the seaman's] medical condition." *In re RJF Intern. Corp.*, 354 F.3d at

9. The record evidence Aadland points to in support of his statement that he incurred approximately $1.2 million in healthcare expenses lists the last expense paid by Aadland's health insurance as being incurred in March 2017. But, the figure Aadland asserts represents the "sticker price" of his healthcare exceeds the amount billed to his insurance as of March 2017, and other evidence in the record supports the finding that Aadland has been visiting his doctors after that date and paying for that care with some form of insurance.

107 (citations omitted). The burden is on the shipowner to provide evidence that supports, by a preponderance of evidence, its assertions regarding "the earliest time when it is reasonably and in good faith determined by those charged with the seaman's care and treatment that the maximum cure reasonably possible has been effected." *Hubbard* v. *Faros Fisheries, Inc.*, 626 F.2d 196, 202 (1st Cir. 1980) (quoting *Vella* v. *Ford Motor Co.*, 421 U.S. 1, 6 n.5, 95 S.Ct. 1381, 43 L.Ed.2d 682 (1975)). It is thus "the medical, not the judicial, determination of permanency that terminates the right to maintenance and cure" via maximum medical recovery. *Id.*

Here, the District Court determined that, because "[t]here is no evidence that Aadland has not reached maximum medical recovery," the defendants had fulfilled their obligation to provide Aadland with cure. *Aadland*, 2020 WL 6119926, at *3. But, by framing the conclusion in that way, the District Court, as Aadland emphasizes in his arguments to us, "shifted the burden to prove [maximum medical recovery] away from [the defendants] and placed the burden to disprove [maximum medical recovery] onto Aadland," such that the District Court committed "an error of law." *See also Weeks Marine, Inc.* v. *Watson*, 190 F. Supp. 3d 588, 597 (E.D. La. 2016) ("After a seaman has proved his initial entitlement to maintenance and cure, the burden shifts to the ship owner to prove that maximum cure has been reached."); *Saco*, 483 F. Supp. 2d at 99 (same); *Smith* v. *Delaware Bay Launch Serv., Inc.*, 972 F. Supp. 836, 848 (D. Del. 1997) (same); *McMillan* v. *Tug Jane A. Bouchard*, 885 F. Supp. 452, 459 (E.D.N.Y. 1995) (same); 1 *Admiralty & Mar. Law* § 6:33 (same).

If, when reviewing a district court's judgment following a bench trial, the district court "'premise[s] its ultimate finding . . . on an erroneous interpretation of the standard to be applied,' . . . we treat the trial court's conclusion as a question of law," entitled to no deference. *Vinick*, 205 F.3d at 6 (quoting *Parke, Davis & Co.*, 362 U.S. at 44, 80 S.Ct. 503). We thus must proceed by reviewing de novo the District Court's determination that the evidence in the record sufficed to show that Aadland had reached a point of maximum medical recovery. *Id.*; *see also Aldridge* v. *A.T. Cross Corp.*, 284 F.3d 72, 84 (1st Cir. 2002) (explaining that this court can "affirm a district court's judgment on any grounds supported by the record" (quoting *Greenless* v. *Almond*, 277 F.3d 601, 605 (1st Cir. 2002))).

B.

The defendants support their contention that they can meet their burden to show that Aadland has reached a point of maximum medical recovery, such that we may affirm the District Court's ruling as to maximum medical recovery, with reference to three pieces of evidence in the record. First, they point to a note "discharg[ing] [Aadland] from occupational therapy to begin a home exercise program." Second, they point to Aadland's testimony in his October 12, 2018 deposition that "he only saw his cardiologist, infectious disease doctor and primary care physician every six months for checkups." Finally, they point to Aadland's testimony that he went skiing in Maine in 2016.[10] Aadland contends that none of these pieces of

10. The defendants, in their briefing to us, also present a series of statements made by Aadland's doctors that could indicate that

evidence suffices to permit the defendants to meet their burden of proof as to this affirmative defense, because none of them suffices to show that his treating "physicians [have] made an unequivocal diagnosis of . . . permanency." *See Hubbard*, 626 F.2d at 202. We agree.

To be sure, the "discharge note" that the defendants point to was from a treating physician. But, the District Court interpreted this document as "discharg[ing]" Aadland from occupational therapy after fourteen sessions so that he could "begin a home exercise program," even though the record shows, as Aadland emphasizes in his briefing to us, at trial, that Aadland testified that, from September 2015 until March 2020 (when COVID made receiving treatment difficult), he "did each year the amount" of physical and occupational therapy he "was allowed to from the insurance company." Aadland further testified that in 2019, the year the "discharge note" was produced, the maximum number of occupational therapy sessions was fourteen—the same number of sessions he received before the note "discharged" him to proceed with home exercise—and that he had arranged with his occupational therapist to continue treatment with the sessions he had "saved" for later in the year, and "then [in]

Aadland has reached a point of maximum medical recovery, but none of those statements were admitted into the record before the District Court. As a result, we cannot affirm the District Court by referring to any of those documents. *Cf.* Fed. R. App. P. 10(e); *United States* v. *Rivera-Rosario*, 300 F.3d 1, 9 (1st Cir. 2002) ("[A] 10(e) motion is designed to only supplement the record on appeal so that it accurately reflects what occurred before the district court." (quoting *Belber* v. *Lipson*, 905 F.2d 549, 551 n.1 (1st Cir.1990))).

January of 2020[,] [he] would start with new ones." Thus, it is not at all clear that the "discharge note"—once it is considered in combination with Aadland's testimony about his occupational therapy—shows by a preponderance of the evidence that Aadland was receiving "palliative" rather than "rehabilitative" care. *See In re RJF Intern. Corp.*, 354 F.3d at 107.

Nor does Aadland's October 12, 2018 deposition help the defendants to meet their burden of establishing as much. The defendants contend that Aadland's statements that "he only saw his cardiologist, infectious disease doctor and primary care physician every six months for checkups" support a finding that Aadland had reached a point of maximum medical recovery. But, given that Aadland was not asked why he did not see his doctors more frequently at that deposition, it is hard to know whether that frequency of visits speaks to the "palliative" nature of his care or whether that too can be attributed to the limits of his health insurance policy.

It is true that in the same deposition, Aadland did not disagree that his doctors were "not doing anything for [him] at the moment designed for [him] to get . . . better." But, it is not at all clear whether Aadland, in making that statement, was communicating his own opinion of the efficacy of his doctors' care or relaying his doctors' opinions as to his prognosis. And, that distinction matters as Aadland is not a medical doctor and thus cannot himself make the "medical determination" necessary to determine that he has reached maximum medical recovery—a reality that the defendants' themselves do not dispute.

See Hubbard, 626 F.2d at 202 (quoting *Vella*, 421 U.S. at 6 n.5, 95 S.Ct. 1381).

Finally, the defendants contend that Aadland's testimony at trial that he went skiing in 2016 suffices to show that he has reached a point of maximum medical recovery. But, Aadland testified that he went skiing in 2016 with Maine Adaptive, which he explained is a skiing program for people with disabilities. That fact in and of itself provides no indication of Aadland's prognosis, nor does it suggest whether the treatment he continued to receive in the years that followed was merely "palliative" or was "rehabilitative" in nature. Nor, we add, is the evidence that he went skiing a determination by Aadland's medical doctor that he had recovered to the maximum extent reasonably possible.

C.

We are thus not persuaded that the evidence to which the defendants point—even when viewed together—suffices to meet their burden of demonstrating that Aadland's treating physicians had determined that Aadland had reached maximum medical recovery. Neither the "discharge note" nor Aadland's deposition testimony nor Aadland's time skiing in 2016 suggest that it is more likely than not that, at the time of trial, Aadland's care was "palliative" rather than "rehabilitative." We thus conclude that the District Court erred in determining that the defendants' duty to provide cure had terminated, and so we reverse that aspect of the District Court's judgment.

VI.

For the foregoing reasons, the judgment of the District Court is reversed in part, vacated in part, and remanded for further proceedings. The parties shall bear their own costs.

APPENDIX D — MEMORANDUM OF DECISION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, FILED OCTOBER 15, 2020

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS.

Civil Action No. 17-cv-11248-DJC

MAGNUS AADLAND,

Plaintiff,

v.

BOAT SANTA RITA II, INC., *et al.*,

Defendants.

Filed October 15, 2020

MEMORANDUM OF DECISION

CASPER, J.

I. INTRODUCTION

Plaintiff Magnus Aadland ("Aadland") alleges that Defendant Boat Santa Rita II, Inc. ("BSR II") breached its duty to provide maintenance and is liable for punitive damages for failing to do so (Counts III and IV, respectively). After a three-day bench trial, the Court now issues its findings of facts and conclusions of law on

the claims against BSR II and enters judgment for BSR II on the remaining claims.

II. PROCEDURAL HISTORY

Aadland instituted this action against Defendants BSR II, Boat Santa Rita III, Inc., F/V Linda, Francis A. Patania and Salvatore Patania, Jr. (collectively, "Defendants"), asserting various claims. D. 1. Aadland voluntarily dismissed F/V Linda. D. 10. The remaining Defendants moved for summary judgment on all remaining counts except for Count III. D. 53. The Court allowed Defendants' motion for summary judgment as to all claims except the punitive damages claim (Count IV). D. 63. Accordingly, the only defendant that remained for the bench trial was BSR II on Count III, the maintenance and cure claim, and Count IV, the punitive damages claim for failure to pay maintenance and cure. D. 63.

At the bench trial that began on September 14, 2020, D. 110-11, 113, the Court heard from three witnesses, Aadland, Cynthia Aadland ("Mrs. Aadland"), Plaintiff's wife, and Francis Patania ("Patania"), the owner of BSR II.

III. FINDINGS OF FACT

1. Aadland was, at all relevant times, the captain of the commercial fishing vessel, the F/V Linda.

2. BSR II was, at all relevant times, the sole owner of the F/V Linda.

3. Patania is the manager and co-owner of BSR II.

4. On July 9, 2014, the F/V Linda left New Bedford with a five-person crew captained by Aadland.

5. On or about July 12 or 13, 2014, a few days into the trip, Aadland fell ill while in the service of the F/V Linda.

6. By July 16, 2014, Aadland was unable to get out of his bunk on the F/V Linda.

7. At Aadland's direction, Tommy Olival, the first mate on the F/V Linda, took control of the vessel and returned to New Bedford.

8. Patania was contacted about Aadland's illness before the vessel returned to New Bedford.

9. Upon the F/V Linda's return to New Bedford on July 18, 2014, an ambulance and Mrs. Aadland met the vessel at the dock and Aadland was taken to St. Luke's Hospital.

10. Aadland's blood cultures taken at the hospital tested positive for group G Streptococcus bacteria.

11. The extent and cause of Aadland's illness was not initially clear, but it required extensive hospitalization and treatment.

12. Aadland was hospitalized at multiple medical facilities for an extended period, from July 18, 2014 to

December 29, 2014 and then again from July 9, 2015 to September 10, 2015.

13. During these hospitalizations, Aadland had to have multiple surgeries including a cardiac surgery on December 5, 2015 and a second cardiac surgery in July 2015.

14. Aadland received Tufts health insurance ("Tufts") through the employer, GAF Engineering, of his wife, Mrs. Aadland, from July 18, 2014 through September 2014.

15. Mrs. Aadland stopped working at GAF Engineering in September 2014.

16. From October 2014 through April 2017, Aadland was covered by a Tufts COBRA health insurance plan.

17. Although the Aadlands sometimes disagreed with Tufts about some of the treatment facilities during his hospitalizations in 2014 and 2015, there was no evidence that Aadland required any medical treatment that he did not receive.

18. In April 2017, Aadland obtained health care coverage through Medicare.

19. While Aadland was hospitalized between July 18, 2014 and December 29, 2014, Defendant did not provide any maintenance, which at $84.00 per day, would have totaled $13,860.

20. Based upon expense information, including mortgage, utilities, food, health insurance premiums and auto insurance expenses, gathered from Aadlands in November 2014 and January 2015 by BSR II's insurance broker, David DuBois of Maritime Claims Associates, LLC, BSR II decided to pay Aadland $84 per day in maintenance and $114 per day in advances.

21. Since February 5, 2015 (and retroactive to December 30, 2014), BSR II has provided Aadland maintenance at the daily rate of $84.00, including when he was hospitalized from July 6, 2015 to September 10, 2015.

22. BSR II has paid Aadland a total of $175,644.00 in maintenance.

23. Since February 5, 2015, Defendant has paid advances to Aadland at a daily rate of $114.00. These advance payments total $238,374.00.

24. Aadland has not repaid any of those advances.

25. Aadland's ten-year history of earnings averaged $186,000 per year or approximately $509.58 per day.

26. Retroactive to December 30, 2014, between maintenance of $84/day and advances of $114/day, Aadland has received $198/day from BSR II.

27. The first of the maintenance and advance checks were delivered to Aadland by DuBois on behalf of BSR II on February 5, 2015.

28. The Aadlands used the maintenance and advance payments to pay household bills including but not limited to health insurance premiums.

29. BSR has also paid Aadland $5,388.24 in reimbursement for out-of-pocket medical expenses.

30. Aadland never submitted any other claims for out-of-pocket expenses to BSR II.

31. Throughout his hospitalization, Mrs. Aadland was in regular communication with Patania about Aadland's condition. They began communicating by text when Patania texted her on the morning of July 18, 2014 to inquire about Aadland's condition.

32. Patania visited Aadland several times during his hospitalization.

33. Patania was aware that Tufts was paying for Aadland's medical treatment.

34. Although there were numerous setbacks in Aadland's health, there were no indications to Patania or BSR II that he was not receiving reasonable and adequate medical care.

35. In fact, Aadland expected to return to work as early as spring of 2015.

36. There was no expense or bill related to Aadland's medical care that was presented to BSR II that was refused.

37. Although as a vessel owner, Patania had encountered claims from seamen before, this instance was the first time that he had a seaman whose medical bills were paid by a private insurer.

38. Tufts has accepted $400,000.00 from BSR II in full satisfaction of any lien or claim it might have against Aadland or Mrs. Aadland for coverage of Aadland's medical expenses.

39. No other insurer or treatment provider has presented any claim for reimbursement or payment of Aadland's medical expenses.

40. Aadland has not presented any evidence of any unreimbursed out-of-pocket medical expenses.

IV. CONCLUSIONS OF LAW

1. "Maintenance is intended to cover the reasonable costs the seaman incurs in acquiring food and lodging ashore during the period of his illness or disability." *see Harper v. Zapata Off-Shore Co.*, 741 F.2d 87, 91 (5th Cir. 1984) (internal quotation marks and citation omitted).

2. A shipowner is not required to pay maintenance unless "the seaman is outside the hospital and has not reached the point of 'maximum cure.' " *See Nichols v. Barwick*, 792 F.2d 1520, 1523 (11th Cir. 1986) (citing *Pelotto v. L & N Towing Co.*, 604 F.2d 396, 400 (5th Cir. 1979)).

3. "'Maximum medical recovery' constitutes the dividing line which, when reached, allows the shipowner to terminate maintenance and cure." *Saco v. Tug Tucana Corp.*, 483 F. Supp. 2d 88, 99 (D. Mass. 2007). Where it appears that "future treatment will merely relieve pain and suffering but not otherwise improve the seaman's physical condition, it is proper to declare that the point of maximum cure has been achieved." *Id.* (internal quotations and citation omitted). That is, "[w]hen further treatment is merely palliative, rather than curative, a shipowner's obligation to pay maintenance and cure ends." *Silva v. F.V Silver Fox LLC*, 988 F. Supp. 2d 94, 99 (D. Mass. 2013).

4. There is no evidence that Aadland has not reached maximum medical recovery, particularly where, as of his October 12, 2018 deposition, he attested that he only saw his cardiologist, infectious disease doctor and primary care physician every six months for checkups and, as of July 24, 2019, he was discharged from occupational therapy to begin a home exercise program.

5. BSR did not pay maintenance during Aadland's first hospital stay in 2014, but did so during his 2015 hospital stay.

6. Although BSR II paid Aadland maintenance during his 2015 hospitalization, it was not legally obligated to do so then or during his earlier 2014 hospitalization. *See Hunt v. The Trawler Brighton, Inc.*, 102 F. Supp. 300, 302 (D. Mass. 1952) (ruling that seaman was entitled to maintenance excluding when he was an

in-patient at the hospital); *see also Nichols*, 792 F.2d at 1524.

7. Even, assuming *arguendo* that a shipowner was legally obligated to pay maintenance to a seaman during a hospitalization being covered by a third party (here, Tufts), there has been no showing here that Aadland incurred living expenses during this period of hospitalization that were not otherwise paid, or offset by the advance payments made to him by BSR II.

8. Since February 5, 2015, Defendant has provided Aadland maintenance at the same daily rate of $84.00.

9. As to Count III, BSR II has paid adequate maintenance to Aadland.

10. "Cure is payment of medical expenses incurred in treating the seaman's injury or illness." *Barnes v. Andover Co., LP*, 900 F.2d 630, 633 (3rd Cir. 1990).

11. Aadland made no request for cure from BSR II.

12. There were no out-of-pocket medical expenses for Aadland that BSR II declined to pay.

13. Patania was aware that Tufts, a private insurer, was paying Aadland's medical expenses.

14. Contrary to Aadland's contention, the circumstances here are different from *Gauthier v. Crosby Marine Serv., Inc.*, 752 F.2d 1085, 1090 (5th Cir. 1985). Unlike

the circumstances there which the court analogized to an instance where a shipowner disregarded an injured seaman's maintenance and cure claim and then wanted to set off any money earned by the seaman during the pendency of the claim, *id.* (citing *Vaughn*, 369 U.S. 527, 233 (1962)), there was no such refusal here. This case is closer to the circumstances distinguished in *Gauthier* where an injured seaman received care "without cost to himself" such that he had not "incurred any actual expense." *Id.* (citing *Johnson v. United States*, 333 U.S. 46, 50 (1948)). The circumstances here are closer to *Johnson* where Aadland has not incurred any medical expenses himself and even his health insurance premiums, which were part of the basis of the calculation of the advances he has received from BSR II, have been covered.

15. Patania was not aware of Aadland suffering any dire financial straits even as he was aware that Aadland was unable to work and Mrs. Aadland had lost her job.

16. There are no outstanding medical expenses or reimbursements for Aadland's medical care that Aadland is obligated to pay.

17. Tufts has no claim or lien against Aadland (or his wife) for medical expenses or reimbursements.

18. As to Count III, under these circumstances, the Court does not conclude that BSR has failed to provide adequate cure.

19. To prevail on Count IV for punitive damages and/or attorneys' fees arising from a failure to pay adequate maintenance and cure, Aadland "bears the burden of proving that defendant was 'callous, willful, or recalcitrant' in withholding maintenance and cure payments." *Mulligan v. Maritrans Operating Co.*, Civ. No. 06-10492-LTS, 2010 WL 1930282, at *5 (D. Mass. May 12, 2010) (citing *Robinson v. Pocahontas, Inc.*, 477 F.2d 1048, 1051 (1st Cir. 1973)), on reconsideration, Civ. No. 06-10492-LTS, 2010 WL 3038091 (D. Mass. July 30, 2010).

20. As addressed above, BSR II has not withheld maintenance and cure payments.

21. To the extent that Aadland claims that the timing of BSR II's payments to him were unreasonably delayed, the Court does not agree on this record.

22. Accordingly, having considered the entirety of the record, the Court does not conclude that, even if there had been a showing of a failure to pay maintenance and cure, Aadland has shown that BSR II was callous, willful, or recalcitrant in such alleged failure and, therefore, his claim under Count IV fails.

23. Even assuming that emotional distress damages were recoverable on such claim, Count IV, the Court does not need to reach this issue because of Aadland's failure to show that BSR II was callous, willful or recalcitrant in any such alleged failure to pay maintenance and cure.

V. CONCLUSION

In light of these findings of fact and conclusions of law, the Court shall enter judgment for BSR II on the remaining claims, Counts III and IV.

So Ordered.

/s/
Denise J. Casper
United States District Judge

APPENDIX E — MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, FILED NOVEMBER 25, 2019

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Case No: 17-cv-11248-DJC

MAGNUS AADLAND,

Plaintiff,

v.

BOAT SANTA RITA II, INC., *et al.*,

Defendants.

Filed November 25, 2019

MEMORANDUM AND ORDER

CASPER, J.

I. Introduction

Plaintiff Magnus Aadland ("Aadland") has filed this lawsuit against Defendants Boat Santa Rita II, Inc. ("BSR II"), Boat Santa Rita III, Inc. ("BSR III"), F/V Linda,[1] Francis A. Patania and Salvatore Patania, Jr.

1. Aadland voluntarily dismissed F/V Linda, the subject of Counts IX and X, on September 8, 2017. D. 10.

(collectively, "Defendants"). Aadland alleges negligence based on the Jones Act against BSR II and BSR III (Counts I and V, respectively), a breach of the duty to provide a seaworthy vessel against BSR II and BSR III (Counts II and VI, respectively), a breach of the duty to provide maintenance and cure against BSR II and BSR III (Counts III and VII, respectively) and failure to pay maintenance and cure by BSR II and BSR III (Counts IV and VIII, respectively). Aadland makes two further allegations for breach of the duty to provide a seaworthy vessel against the Patanias individually (Counts XI and XII). The remaining Defendants have moved for summary judgment on all remaining counts except for Count III, D. 53. For the reasons stated below, the Court ALLOWS IN PART and DENIES IN PART Defendants' motion, D. 53.

II. Standard of Review

The Court grants summary judgment where there is no genuine dispute as to any material fact and the undisputed facts demonstrate that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). "A fact is material if it carries with it the potential to affect the outcome of the suit under the applicable law." *Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46, 52 (1st Cir. 2000) (quoting *Sánchez v. Alvarado*, 101 F.3d 223, 227 (1st Cir. 1996)). The movant "bears the burden of demonstrating the absence of a genuine issue of material fact." *Carmona v. Toledo*, 215 F.3d 124, 132 (1st Cir. 2000); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). If the movant meets its burden, the non-moving party may not rest on

the allegations or denials in her pleadings, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986), but "must, with respect to each issue on which she would bear the burden of proof at trial, demonstrate that a trier of fact could reasonably resolve that issue in her favor," *Borges ex rel. S.M.B.W. v. Serrano-Isern*, 605 F.3d 1, 5 (1st Cir. 2010). "As a general rule, that requires the production of evidence that is 'significant[ly] probative.'" *Id.* (alteration in original) (quoting *Anderson*, 477 U.S. at 249). The Court "view[s] the record in the light most favorable to the nonmovant, drawing reasonable inferences in his favor." *Noonan v. Staples, Inc.*, 556 F.3d 20, 25 (1st Cir. 2009).

III. Factual Background

The following facts are undisputed unless indicated otherwise. The case concerns an infection Aadland, a commercial fisherman, suffered while employed on the F/V Linda and his resulting care.

A. The Parties

Aadland was the captain of the commercial fishing vessel, the F/V Linda. D. 55 ¶¶ 4-5; D. 57 ¶¶ 4-5. BSR II is a Massachusetts corporation with its principal place of business in Peabody, Massachusetts. D. 55 ¶ 12; D. 57 ¶ 12. BSR II was, at all relevant times, the sole owner of the F/V Linda. D. 55 ¶ 13; D. 57 ¶ 13. BSR III is also a Massachusetts corporation with its principal place of business in Peabody, Massachusetts. D. 55 ¶ 21; D. 57 ¶ 21. BSR III does not own the F/V Linda and did not employ

Aadland. D. 54 at 3. Francis Patania is BSR II's treasurer, secretary and director. D. 55 ¶ 19; D. 57 ¶ 19. Salvatore Patania is an officer and partner of BSR II. D. 57 ¶ 7.

B. July 9, 2014 F/V Linda Trip

On July 9, 2014, the F/V Linda left New Bedford with a crew of five, including Aadland. D. 55 ¶ 22; D. 57 ¶ 22. On the morning of July 12, 2014, Aadland fell ill and thought he had the flu. D. 55 ¶ 23; D. 57 ¶ 23. By July 16, 2014, Aadland felt too sick to leave the wheelhouse to work on the deck of the F/V Linda. D. 55 ¶ 28; D. 57 ¶ 28. Later that same day, Aadland was unable to get out of his bunk to work. D. 55 ¶ 29; D. 57 ¶ 29. As a result of Aadland's illness, another seaman assumed captaincy of the F/V Linda on July 16 and returned to New Bedford so Aadland could get medical treatment. D. 55 ¶ 30; D. 57 ¶ 30.

C. Medical Treatment

Upon the F/V Linda's return to New Bedford on July 18, Aadland was taken to St. Luke's Hospital. D. 55 ¶ 34; D. 57 ¶ 34. Aadland's blood cultures taken at the hospital tested positive for streptococcus bacteria. D. 55 ¶ 35; D. 57 ¶ 35. Aadland was in in-patient treatment at multiple medical facilities for an extended period, from July 18 to December 29, 2014. D. 55 ¶ 36; D. 57 ¶ 36.

D. Medical Insurance and Payment for Treatment

Aadland received health insurance coverage through his wife's employer, GAF Engineering, from July 18, 2014

to October 2014. D. 55 ¶ 43-45; D. 57 ¶ 43-45. Aadland alleges that he and his wife paid approximately $800 per month out-of-pocket for health insurance benefits while Mrs. Aadland worked at GAF Engineering. D. 57 ¶ 57. Mrs. Aadland stopped working at GAF Engineering in September 2014. D. 55 ¶ 44; D. 57 ¶ 44. From October 2014 through April 2017, the Aadlands were covered by a Tufts COBRA health insurance plan. D. 55 ¶ 45; D. 57 ¶ 45. The Tufts COBRA plan cost the Aadlands approximately $2,000 per month. D. 55 ¶ 47; D. 57 ¶ 47. In April 2017, Aadland obtained health care coverage through Medicare. D. 55 ¶ 48; D. 57 ¶ 48. Additionally, Aadland pays $212.00 per month for supplemental medical insurance coverage. D. 55 ¶ 49; D. 57 ¶ 49.

E. Payments to Aadland from Defendants

The parties do not dispute that Defendants have made multiple payments to Aadland, but they dispute whether such monies constitute adequate maintenance and cure. When Aaland was hospitalized between July 18, 2014 and December 29, 2014, Defendants did not provide any maintenance. In February 2015, Defendants paid Aadland $5,124.00 for maintenance retroactive to December 30, 2014 ($84.00 per day). D. 55 ¶ 52; D. 57 ¶ 52. Since February 5, 2015, Defendants have provided Aadland maintenance at the same daily rate of $84.00, D. 55 ¶ 53; D. 57 ¶ 53, including when he was hospitalized in July and August 2015. D. 56 at 14. Also in February 2015, Defendants paid Aadland $6,954.00 in "advances," the purpose of which is disputed by the parties, retroactive to December 30, 2014 ($114.00 per day). D. 57 ¶ 54. Since February 5, 2015,

Defendants have paid Aadland at a daily rate of $114.00. D. 55 ¶ 58. Aadland disputes the characterization of these payments as adequate maintenance and/or any cure, but does not dispute the amount he has received. D. 57 ¶ 59. Defendants also paid Aadland $5,388.24 in reimbursement for out-of-pocket medical expenses. D. 55 ¶ 56; D. 57 ¶ 56. Aadland does not dispute this payment but claims that this amount does not represent all outstanding out-of-pocket medical expenses, only some of such expenses. D. 57 ¶ 56.

IV. Procedural History

Aadland instituted this action on July 7, 2017. D. 1. On September 8, 2017, Aadland voluntarily dismissed the F/V Linda from the action. D. 10. The remaining Defendants have moved for summary judgment on Counts I-II and IV-XII as to BSR II and summary judgment on all claims as to BSR III and the Patanias. D. 53. The Court heard the parties on the pending motion and took the matter under advisement. D. 63.

V. Discussion

Aadland does not oppose summary judgment in favor of Defendants on Counts II, V, VI, VII, VIII, XI or XII. D. 56 at 1. Given the two Counts that also have been voluntarily dismissed against the F/V Linda, Counts IX and X, the only claims at issue on summary judgment are Count I (negligence based on the Jones Act) and Count IV (failure to pay maintenance and cure), both against BSR

II.[2] Accordingly, the Court ALLOWS Defendants' motion for summary judgment as to Counts II, V, VI, VII, VIII, XI and XII.

A. Jones Act Negligence (Count I)

As his counsel clarified at the motion hearing, the negligence claim that Aadland presses here is that Defendants have failed to provide prompt and adequate care for him when they failed to pay his treatment at acute rehabilitation facility when his insurer refused to do so and instead funded his stay in a skilled nursing facility. BSR II, in moving for summary judgment on Count I, argues that Aadland has failed to produce evidence that BSR II acted negligently or that any such alleged negligence caused Aadland's injury in this alleged regard. D. 54 at 7-8.

Under the Jones Act, a seaman may "maintain an action where an employer's failure to exercise reasonable care causes a subsequent injury." *Ferrara v. A. & V. Fishing, Inc.*, 99 F.3d 449, 453 (1st Cir. 1996). Although a seaman still "must establish all the elements of a common-law negligence claim, the burden to prove causation under the Jones Act is 'featherweight.'" *Napier v. F/V Deesie, Inc.*, 454 F.3d 61, 67 (1st Cir. 2006); *Ferrara*, 99 F.3d at 453. Liability, therefore, 'exists if the employer's negligence contributed even in the slightest to the plaintiff's injury.'"

2. Defendants do not seek summary judgment on Count III in which Aadland alleges he has received insufficient maintenance and cure from BSR II. D. 58 at 2.

Ferrara, 99 F.3d at 453 (citing *Toucet v. Maritime Overseas Corp.*, 991 F.2d 5, 10 (1st Cir. 1993)).

A shipowner's failure to provide prompt and adequate medical care can give rise to a Jones Act negligence claim. "A shipowner has a duty to provide prompt and adequate medical care to its seamen." *De Centeno v. Gulf Fleet Crews, Inc.*, 798 F.2d 138, 140 (5th Cir. 1986). Liability for the failure to do so can arise in two ways. First, "[a] shipowner is vicariously responsible for the negligence of a physician it chooses to treat its seaman." *Id.*; *DeZon v. American President Lines, Ltd.*, 318 U.S. 660, 667-68, 63 S. Ct. 814, 87 L. Ed. 1065 (1943). There is no allegation that BSR II chose any of Aadland's healthcare providers so this basis of liability is unavailing for Aadland. *See, e.g., Dise v. Express Marine, Inc.*, 476 F. App'x 514, 521 (4th Cir. 2011) (noting that "[l]iability does not attach, however, when a seaman selects his own physician"). Second, a shipowner can be directly liable for negligence where it fails to provide prompt and adequate medical care where it reasonably was able to do so. *Randle v. Crosby Tugs, LLC*, 911 F.3d 280, 283 (5th Cir. 2018).

As to any failure to pay for Aadland's treatment in an acute rehabilitation facility, where his insurer would not, this negligence claim against Defendants fails as a matter of law. There is no evidence that Aadland's treatment at the skilled nursing facility, not an acute rehabilitation facility, was inadequate. On July 25, 2014, Aadland's insurer, Tufts Health, denied coverage of Aadland's transfer to an acute rehabilitation facility, writing that "Dr. Claire Levesque has determined that the services requested do

not meet the InterQual criteria because the services can be provided at a less intensive setting such as a Skilled Nursing Facility (SNF). Therefore, Tufts Health Plan will not cover Acute Rehabilitation level of care services." D. 57-9 at 2. Even if BSR II could have stepped in to pay for the acute rehabilitation level of care, there is no evidence in the record that the care Aadland received at the skilled nursing facility was inadequate. D. 58 at 5-6. Even the expert report of Dr. Alexander A. McMeeking, D. 57-5, does not support Aadland's contention that his treatment there was medically inadequate. Dr. McMeeking's report opines that Aadland's illness arose from the strep infection and resulting sepsis that developed while he was aboard the F/V Linda. *Id.* at 2. Although he notes that while at Bear Hill, the skilled nursing facility, among other things, Aadland experienced a higher than normal white blood count and blood tests indicated that he had a "recurrent bacterial infection" and that these conditions and symptoms "are related to, arise from and are consistent with him suffering from his illness as first experienced on the F/V Linda," *id.* at 3, nowhere does he opine on the quality of care that Aadland received at this skilled nursing facility or that it was medically inadequate. Without such evidence, Aadland has failed to show how BSR II failed to take reasonable care or how such alleged failure caused injury to Aadland as he must do to sustain a Jones Act negligence claim on this ground. For all these reasons, the Court ALLOWS summary judgment to BSR II on Count I, the Jones Act negligence claim.

B. Punitive Damages for Failure to Pay Maintenance and Cure (Count IV)

In Count IV, Aadland alleges that BSR II has "negligently, willfully, arbitrarily and/or unreasonably failed to fulfill" its maintenance and cure "obligation to the Plaintiff and has failed to provide the Plaintiff with maintenance and cure in a timely and adequate manner as required by law and as a result is thereby liable for compensatory damages, punitive damages and attorney's fees." D. 1 at 19. The allegation, therefore, is not one just of failure to provide maintenance and cure, which is alleged in Count III and to which Defendants have not moved for summary judgment, but of callous, willful, or recalcitrant conduct warranting the award of punitive damages and attorneys' fees from BSR II.

The parties do not dispute that BSR II, as the shipowner, has a duty to provide maintenance and cure to Aadland, one of its seamen. "Maintenance . . . is designed to provide a seaman with food and lodging when he becomes sick or injured in the ship's service; and it extends during the period when he is incapacitated to a seaman's work and continues until he reaches maximum medical recovery." *Vaughan*, 369 U.S. at 531. "Cure is payment of medical expenses incurred in treating the seaman's injury or illness." *Barnes v. Andover Co., LP*, 900 F.2d 630, 633 (3rd Cir. 1990). To prevail on Count IV for punitive damages and/or attorneys' fees, Aadland "bears the burden of proving that defendant was 'callous, willful, or recalcitrant' in withholding maintenance and cure payments." *Mulligan v. Maritrans Operating*

Co., No. CIV.A. 06-10492-LTS, 2010 U.S. Dist. LEXIS 54986, 2010 WL 1930282, at *5 (D. Mass. May 12, 2010), on reconsideration, No. CIV.A 06-10492-LTS, 2010 U.S. Dist. LEXIS 77252, 2010 WL 3038091 (D. Mass. July 30, 2010) (citing *Robinson v. Pocahontas, Inc.*, 477 F.2d 1048, 1051 (1st Cir. 1973)); *Robinson*, 477 F.2d at 1052 (concluding that the jury instruction on punitive damages was appropriate in light of "defendant's initial use of the venereal disease charge to justify withholding these payments, its refusal to pay past due unearned wages when notified that plaintiff was in danger of losing his home, and its termination of all payments after plaintiff refused to accept its settlement offer").

Although it is far from clear that Aadland will prevail in showing at trial that BSR II was callous, willful, or recalcitrant in withholding any maintenance and cure, there is at least a disputed issue of fact as to whether he can do so. The parties do not dispute that Defendants have made some payments to Aadland: i) since February 5, 2015, Defendants have provided Aadland maintenance at the same daily rate of $84.00 (totaling $132,132.00), D. 55 ¶ 53; D. 57 ¶ 53; ii) in February 2015, Defendants paid Aadland $6,954.00 in "advances" retroactive to December 30, 2014 ($114.00 per day); iii) since February 5, 2015, Defendants have paid Aadland at a daily rate of $114.00 (totaling $179,322), D. 55 ¶ 58; and iv) Defendants have paid Aadland $5,388.24 for out-of-pocket medical expenses. D. 55 ¶ 56; D. 57 ¶ 56.

Aadland raises viable claims as to these matters for which there remain disputed issues of material fact. First,

Aadland cites Defendants' failure to pay maintenance while he was hospitalized in July 2014 through December 2014 (even though they paid him maintenance during a later hospitalization in July through August 2015). Even as Defendants point out that a shipowner is not required to pay maintenance unless "the seaman is outside the hospital and has not reached the point of 'maximum cure,'" *see Nichols v. Barwick*, 792 F.2d 1520, 1523 (11th Cir. 1986) (citing *Pelotto v. L & N Towing Co.*, 604 F.2d 396, 400 (5th Cir. 1979)), it is not clear that this applies where there has been no showing of 'maximum cure" and the shipowner itself is not paying any cure to the seaman (as his insurer was doing so) and the shipowner is aware of the seaman's dire financial straits, *see Robinson*, 477 F.2d at 1052, as the evidence suggests BSR II was at the time. D. 59 at ¶¶ 12-14, 16. Second, Aadland points to Defendant's failure to provide adequate cure. Although the characterization of these monies as cure is disputed, the amount is not: where they paid him only $5388.24 for medical expenses, but his medical bills exceeded hundreds of thousands of dollars covered by his insurer and Medicare and Defendants are not entitled to setoff, *see Gauthier v. Crosby Marine Serv., Inc.*, 752 F.2d 1085, 1090 (5th Cir. 1985) (holding that where a seaman incurs out-of-pocket costs or is forced to take on other hardships or life changes as a result of medical expenses, a shipowner is not entitled to set off funds that the seaman receives from his medical insurer). Third, Aadland alleges that some of the payments that were made to him were unreasonably delayed, D. 59 at ¶¶ 20-22, which may give rise to punitive damages. *See Sullivan v. Tropical Tuna, Inc.*, 963 F. Supp. 42, 46 (D.

Mass. 1997) (noting that a delay in providing cure, even where it did not aggravate plaintiff's medical condition, could still cause unnecessary pain and suffering to justify finding of willful failure to provide cure).

Although, as BSR II suggests, "partial" maintenance and cure might cut against any suggestion that any of the payments (or lack of greater payments) has been callous, willful or recalcitrant in paying the full sum of same, *see Delaware River & Bay Auth. V. Kopacz*, 574 F. Supp. 2d 438, 446 (D. Del. 2008) (concluding that shipowner that had provided seaman with "the funds necessary to meet his living expenses through payment or accrued annual leave and sick leave, partial maintenance payments, and LTD benefits did not amount to callous or recalcitrant treatment), such conclusion is not warranted as a matter of law. *See* D. 56 at 8-9.

For all these reasons, the Court DENIES Defendants' motion for summary judgment as to Count IV.

VI. Conclusion

For the foregoing reasons, the Court ALLOWS Defendants' partial motion for summary judgment as to Counts I, II, V, VI, VII, VIII, XI and XII and DENIES the motion as to Count IV.

Accordingly, the only defendant that remains for trial is BSR II and the only claims that remain for trial are Count III, maintenance and cure claim against BSR II,

and Count IV, the punitive damages claims for failure to pay maintenance and cure against BSR II.

So Ordered.

/s/ Denise J. Casper
United States District Judge