

IN THE SUPREME COURT OF THE UNITED STATES

JULIAN VELLA,

Petitioner,

v.

No. 73-1994

FORD MOTOR COMPANY,

Respondent.

Washington, D. C.,

Wednesday, February 19, 1975.

The above-entitled matter was resumed for argument
at 10:17 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

[Same as heretofore noted.]

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: Mr. Mundell, I think we can resume now in your case, Vella against Ford Motor Company.

We show you as having 23 minutes remaining.

ORAL ARGUMENT OF JOHN A. MUNDELL, JR., ESQ.,

ON BEHALF OF THE RESPONDENT -- Resumed

MR. MUNDELL: Thank you, Your Honor.

Mr. Chief Justice, and may it please the Court:

At the conclusion of yesterday afternoon's session, I was reciting the facts of this case. I will not go over those again, for there are set forth in the counter-statement of facts in our brief.

I will continue that by saying in February of 1970 the petitioner filed a suit in the district court for the Eastern District of Michigan, Southern Division, with a Count for Negligence under the Jones Act, and a Count alleging unseaworthiness of the vessel under the General Maritime Law and a Count for maintenance and cure.

The jury decided adversely to the petitioner on the issue of liability, finding the accident was due to his sole negligence. They also found that petitioner was entitled to a maintenance and cure award for the period from June 29, 1968, the day he left the vessel, until June 29, 1970.

Respondent moved for judgment, notwithstanding the

verdict, and Petitioner moved for attorney's fees and interests and costs; both motions were denied by the district court.

Petitioner then appealed to the Sixth Circuit as to the first cause of action pertaining to the negligence under the Jones Act and to unseaworthiness under the General Maritime Law, of the jury verdict of no cause for action.

Respondent followed with an appeal as to the propriety of the maintenance and cure award.

The Sixth Circuit Court of Appeals affirmed the jury verdict of no cause for action as to the liability question, and reversed as to the maintenance and cure question.

On appeal, Respondent argued at the trial level that Petitioner went to great lengths to show that he suffered the vestibular disorder or condition when he left the vessel on June 28, or June 29, 1968, and that such was due to the accident which he alleged occurred in early April of '68.

Quoting from the opinion of the Sixth Circuit, which states Respondent's position with succinctness, we read, quote:

"The defendant contends that the plaintiff's injury was permanent from the date of the accident and was never susceptible of curative treatment. Dr. Heil testified that although he could not determine from his examination what had caused the vestibular disorder, a severe blow to the head could have caused this problem. Presumably, the jury concluded

that it was plaintiff's fall that caused the disorder and the disabling dizziness and headaches. However, the evidence clearly shows that a vestibular disorder is not a condition that can be cured or improved by treatment. When asked whether plaintiff might be cured by treatment, Dr. Heil testified:

"No, not really. Treatment is primarily symptomatic for this condition. That is, people with a vestibular disorder are apt to have intermittent episodes of dizziness which, on occasion, are somewhat more severe. Treatment is limited to those times when the patient is particularly dizzy. They can obtain some symptomatic relief with medication. Other than that, there is no specific cure or treatment."

"No evidence was introduced in conflict with this conclusion of Dr. Heil.

"The record in this case does not permit an inference other than that plaintiff's condition was permanent immediately after the accident. It is not even alleged that plaintiff has ever received treatment for the condition itself, although he has received medicine for the symptoms of dizziness and headaches. That one may require or be helped by treatment for the symptoms of a disorder does not qualify him for maintenance and cure. Farrell v. United States, at 519."

QUESTION: Mr. Mundell, --

MR. MUNDELL: Yes?

QUESTION: -- take the case that your brother opened with yesterday, let's assume that a seaman has both of his legs cut off, --

MR. MUNDELL: Yes, sir.

QUESTION: -- amputated in an accident in the service of the ship. Now, clearly, there's no cure for that, if his legs are gone, they're gone.

MR. MUNDELL: Yes, sir.

QUESTION: But equally clearly, there are measures that can be taken, in the way of artificial limbs and his training to use them, to at least be palliative of the consequences of the double amputation. But would it be your claim that since the double amputation is incurable, at the moment it occurs, that there's no right whatsoever on the part of the seaman to maintenance and cure?

MR. MUNDELL: No, I would not say that, Your Honor.

QUESTION: Well, why not? That's what your argument is, I think.

MR. MUNDELL: No. There is no treatment for vestibular disorder, apparently.

QUESTION: And there's no treatment for a double amputation. You can't put back those legs.

MR. MUNDELL: No, but I think --

QUESTION: All you can do is deal with the symptoms of it.

MR. MUNDELL: A reasonable conclusion, I would think, Your Honor, would be that the treatment would consist of the fitting of the artificial limbs.

QUESTION: Well, then, wouldn't likewise the treatment here consist of mitigating the impact of the symptoms, even though it's not curable?

MR. MUNDELL: No, I --

QUESTION: What's the difference?

MR. MUNDELL: Well, I think in the case of the double amputation, once the legs are fitted, maybe its cure would end.

In this case, maintenance and cure, where he's just being treated for his headaches and dizziness could go on ad infinitum, the cases are quite clear that maintenance and cure is not a pension for life, and that's what it would amount to.

QUESTION: Let me give you another example to follow through on Justice Stewart's question.

Suppose in the middle of a long voyage a patient has a diabetic flare-up. I think this can't be cured; but is it your position that the shipowner is not obligated to afford him such palliative treatment as is available by insulin?

MR. MUNDELL: I think, if the Court please, Calmar vs. Taylor says that the seaman is entitled to

maintenance and cure for a reasonable period of time after the voyage, during which time care and nursing might bring him to a point of maximum cure for his condition.

QUESTION: How do you distinguish between medical treatment that is curative and palliative? Isn't there a gray zone often as to whether one has run or the other?

MR. MUNDELL: I think, if the Court please, that the interpretation of the word "palliative" in the cases has been stated to mean to ease without curing.

If that answers your question, Your Honor.

QUESTION: I suspect that oftentimes a physician isn't able to draw that line of distinction with great accuracy.

MR. MUNDELL: I believe that's correct, Your Honor.

QUESTION: Do most ships plying the Great Lakes have doctors aboard them, or is it always a question of waiting to get in the Public Health Service Hospital at the end of the voyage?

MR. MUNDELL: The voyages on the Great Lakes, Your Honor, are very short. None of the ships, to my knowledge, have doctors aboard. On occasion, in an extreme case, the Coast Guard will come out by helicopter and take a man off the ship. But otherwise, because of the shortness of the voyage, which may be anywhere from, say, four hours from Toledo to Detroit, to two and a half days to Duluth, they rely on either

putting the man ashore at the port when they arrive, or at various ports between the port of departure and port of destination.

For example, leaving Detroit, going to Duluth, a man might be put off at Sault Ste. Marine, to the Public Health doctor there.

QUESTION: So that in this case, the injury having occurred in early April and the plaintiff having been discharged from the service the end of June, there presumably would have been a series of voyages?

MR. MUNDELL: Yes, Your Honor. At that particular time the ROBERT S. MacNAMARA was engaged solely in trips between Detroit and Toledo.

QUESTION: Just back and forth?

MR. MUNDELL: Back and forth, from Detroit to Toledo, which is, in good weather --

QUESTION: That's about forty miles, isn't it?

MR. MUNDELL: Yes, sir, Your Honor -- sixty miles, I believe.

QUESTION: Sixty.

MR. MUNDELL: -- and he could receive treatment at either end.

QUESTION: Mr. Mundell.

MR. MUNDELL: Yes, Justice Powell?

QUESTION: Following up the questions that were asked

you by Mr. Justice Stewart and Mr. Justice Blackmun, I understood you to say that maintenance and cure did not last for life under any circumstances, the test being for a reasonable period of time. I have not read the cases that might shed any light as to what benchmarks are examined to determine what is a reasonable time.

Do cases shed light on that? Take the case Mr. Justice Stewart put to you of a young man who lost both legs, or of a man who had emphysema, for example, would be with him for life, --

MR. MUNDELL: I believe that --

QUESTION: -- how does the Court determine what is a reasonable time?

MR. MUNDELL: It depends on the facts of the case, of course, but I believe that the courts have looked at the nature of the treatment, such as Mr. Justice Stewart mentioned, a man with the legs off, they very likely wouldn't permit the maintenance and cure until the man was fitted for artificial limbs. In the case of a man with, say, chronic bronchitis, for example, the Court says there's nothing more that can be done for him, he's reached maximum cure, and may stop it.

QUESTION: Generally the cutoff point is, as I think you've stated, the point where the maximum cure has been achieved.

MR. MUNDELL: That's the rule, yes, Your Honor.

QUESTION: Unh-hunh, and of course --

MR. MUNDELL: At a point where no further treatment can improve the condition. That's the statement from the cases.

QUESTION: Unh-hunh.

QUESTION: But palliative treatment could make the patient more comfortable and perhaps prolong life, but that would not be included?

MR. MUNDELL: No, sir. Farrell says no.

Along the same lines of the questions put to me a moment ago, in its opinion the Court set forth the criteria for the payment of maintenance and cure, which is in accordance with the overwhelming weight of judicial authority.

In discussing the applicable law, the Court stated, quote:

"Under the maritime law of the United States, a shipowner is liable to a seaman for maintenance and cure, regardless of the negligence of either party, if the seaman is injured while in the service of the ship." Citing Aquilar vs. Standard Oil, 318 U.S. 724 (1943).

"The duty of the shipowner to maintain and care for the seaman exists only until the seaman is cured to the maximum extent medically possible. Farrell vs. United States, 336 U.S. 511, 518 (1949). In brief, once the seaman reaches 'maximum medical recovery', the shipowner's obligation to

provide maintenance and cure ceases. Vaughn v. Atkinson,
369 U.S. 527, 531 (1962)."

QUESTION: May I ask, Mr. Mundell, --

MR. MUNDELL: Yes, Your Honor.

QUESTION: -- when was it that -- on what exact
date was it that Dr. Heil diagnosed, or announced his
diagnosis?

MR. MUNDELL: March --

QUESTION: That this was incurable.

MR. MUNDELL: I believe it was March 27, 1972.

QUESTION: Well now, isn't that the date up to which
the jury awarded maintenance and cure?

MR. MUNDELL: No, Your Honor, they awarded mainten-
ance up to June 29 of 1970.

The reason I recited the facts of the case is there
seems to be no basis or justification for the period selected
by the jury for the payment of maintenance.

QUESTION: Well, did anyone other than Dr. Heil
ever address the question of whether or not the disease was
incurable?

MR. MUNDELL: No, sir.

QUESTION: And the first date that he did was March
27, 1972?

MR. MUNDELL: Yes, sir.

QUESTION: Well, why doesn't that fix the point up to

which he's entitled to maintenance and cure?

MR. MUNDELL: Because I believe, even if the man had been examined the day he left the ship, and the vestibular disorder --

QUESTION: That was June 29, '68, wasn't it?

MR. MUNDELL: Yes, sir.

And the vestibular disorder found, there was no cure then, there was no cure when Dr. Heil diagnosed it as incurable.

QUESTION: But the fact is no one knew that in your record, isn't that so?

MR. MUNDELL: That it was incurable?

QUESTION: Yes.

MR. MUNDELL: No, Your Honor, because the respondent's doctor and the Public Health on three occasions declared the man fit for duty.

And nothing was heard from the man again until February of 1970 when suit was instituted.

QUESTION: Well, if the diagnosis of Dr. Heil is correct, then the U. S. Public Health Service pronouncements that he was fit for duty were incorrect?

MR. MUNDELL: I would say so. I would qualify that with this remark, if the Court please.

On the last visit, on September 30 of 1968, the Public Health doctor said: if the symptoms persist, the

patient should return, and a complete workup would be performed.

The man never returned.

It's difficult to say at this point, if the man had returned, if they would not have conducted this test that would have found the condition.

QUESTION: It seems to me that's a jury argument, the jury decided against you on this.

MR. MUNDELL: Yes.

QUESTION: And I take it your position is that if the disease cannot be cured, then, though it takes ten years to determine that, he still is not entitled to maintenance and cure?

MR. MUNDELL: I would say so, Your Honor.

QUESTION: Well now, if you're wrong about that, Mr. Mundell, in any event, I take it, even if the Petitioner were entitled up to March 27 of '72, the jury awarded only up to some time in 1970, was it?

MR. MUNDELL: That is correct, Your Honor.

QUESTION: And he never appealed from the jury limitations in 1970, did he?

MR. MUNDELL: That's right, there was no appeal on the jury award.

QUESTION: So I take it, your position would be, in any event, he's entitled to nothing more than the jury gave

him?

MR. MUNDELL: Absolutely.

Our position is he's entitled to nothing.

QUESTION: I know.

QUESTION: Mr. Mundell, supposing that at the conclusion of a voyage a man has a back complaint, which he claims was incurred while in the ship's service, and goes into a hospital and they keep him there for about three weeks ---

MR. MUNDELL: Yes, sir.

QUESTION: -- and finally say, well, there's nothing we can do for you, it's a partially slipped disc or something like that, but there's nothing more we can do for you here.

Shouldn't he be entitled to maintenance and cure at least during the time it takes that he's submitting to that diagnostic procedure?

MR. MUNDELL: No, Your Honor, because maintenance and cure is not payable when the seaman is an in-patient in a hospital. Because he is, in effect, receiving his maintenance and cure. He's being cared for there.

QUESTION: Yes, well, it is payable in that form, is what you really mean.

MR. MUNDELL: Yes, sir.

In other words, the shipowner is not paying it. It's being provided him by the Public Health Service.

QUESTION: But he has no claim to money for that

period of time, over and above the hospital facilities?

MR. MUNDELL: No, sir.

QUESTION: On the other hand, they wouldn't -- it's not your claim that he would have to pay for that three-week period?

MR. MUNDELL: No, sir. Public Health hospitals are available to merchant seamen free of charge, because, initially, the Public Health Hospitals were established with moneys provided by the merchant seamen at the initial inception of the Public Health Hospitals, and they are commonly referred to as the Marine Hospitals.

So from that time on they've been entitled to free care at Public Health.

QUESTION: Right.

QUESTION: Which is a taxpayer's, not shipowners', expense.

MR. MUNDELL: Yes, sir.

QUESTION: Suppose the thing were so -- such an emergency that he were taken to a private hospital, there wasn't -- he wasn't near a Public Health institution; would he have to disgorge then, or he himself have to pay if it turns out that his situation is incurable?

MR. MUNDELL: Not necessarily, Your Honor.

If the man is taken off the ship to a hospital other than the Public Health, Public Health has told the

shipowner to advise them immediately, and they will authorize the attention. But if for some reason the Public Health is not notified, the shipowner will pick it up.

I would say, for my own principal, they have on many occasions paid for private hospital care, where the Public Health, for one reason or another, would not pick up the tab.

QUESTION: That's part of -- that would be part of maintenance and cure?

MR. MUNDELL: No, it's -- it would be in addition to the maintenance, Your Honor.

The shipowner would just assume that. That cost.

QUESTION: For the good of the order.

MR. MUNDELL: Yes, sir.

QUESTION: What if the seaman is treated at home by a doctor? He's incapacitated at home, like a lot of people are.

MR. MUNDELL: I have seen cases such as that, Your Honor. The shipowner --

QUESTION: Say it's with the back, and finally the doctor says: Well, I just can't do anything about it.

MR. MUNDELL: Well, if the doctor says he's reached the point of maximum cure or maximum hospital benefits, then the cases say the maintenance and cure ceases.

QUESTION: But meanwhile, you say, he gets his maintenance and cure?

MR. MUNDELL: Yes, sir, if the doctor sends a letter to the shipowner saying: This man is under my care, he's not fit for duty, can't return to work.

The shipowner will pay the maintenance --

QUESTION: No, but it turns out -- it turns out that a doctor says, well, this is all -- since he's left the ship he's been in this condition. Hopefully, I thought maybe I could do something but I can't.

So why wouldn't you argue that retroactively he is disentitled to any maintenance and cure?

MR. MUNDELL: Because up to that time the doctor thought he could do something.

And he was treating him.

But the point when the doctor says --

QUESTION: Yes, but he finally says it's incurable.

MR. MUNDELL: Then the maintenance ends.

QUESTION: And he says: I now know that it was incurable from the beginning.

MR. MUNDELL: Then, in effect, the man's been paid money to which he was not entitled.

But I've never seen a case where they try to recover that money.

QUESTION: It just wouldn't be.

MR. MUNDELL: No.

QUESTION: Well, how is that different from this case?

Dr. Heil, as I understood what you said earlier, Mr. Mundell, is the only one to have addressed the question of whether it was curable or not.

MR. MUNDELL: Yes, he --

QUESTION: And he didn't, until March 27, 1972.

MR. MUNDELL: Right.

QUESTION: Was that during the trial?

MR. MUNDELL: Yes, sir.

QUESTION: It was at the trial, wasn't it?

MR. MUNDELL: Approximately.

QUESTION: Actually at the trial, wasn't it?

QUESTION: Testimony at the trial, apparently.

MR. MUNDELL: At the trial and prior to the trial.

QUESTION: Oh, prior to and at the trial.

QUESTION: Pretrial proceedings.

QUESTION: Well now, even if in fact it was incurable from the day he left the ship, why, then, isn't he entitled, from what you've just said, up to that date, short of his failure to appeal to the jury verdict which gave him less, to maintenance and cure?

MR. MUNDELL: Well, I think, as Mr. Justice Stewart pointed out, if we had in fact paid the man the maintenance, it would just be money down the drain.

QUESTION: But here you hadn't paid it.

MR. MUNDELL: We had not paid it because the man had

been declared fit for duty. On four occasions.

And nothing was heard from him until the date of trial.

Pardon me, until the date suit was filed.

QUESTION: Unh-huh.

MR. MUNDELL: But, if the man was in fact not fit for duty when he left the ship, his condition was in fact not curable when he left the ship, then the man is not entitled to maintenance and cure under the cases.

QUESTION: Didn't a man named Dr. Berke examine him sometime in 1970?

MR. MUNDELL: Yes, that was the Petitioner's doctor, he was a neurologist, he examined him, he found a positive Romberg Test.

As I mentioned yesterday, that is the test where the man stands with his eyes closed and there's a swaying, which indicates a balance problem.

And he said that he thought there was vestibular damage, he didn't know whether it was permanent or not, he would refer it to an ear specialist, which Dr. Heil was.

I might also add that in January of 1970, petitioner was examined by Dr. Jamie Benitez, who conducted this sophisticated electronystagmography test, which is a test that determines the vestibular disorder. At that time, in January of 1970 -- and this is the petitioner's doctor -- he

found a disorder, in January of 1970.

When we had him examined by Dr. Heil in 1972, in preparation for trial, he referred him back to Dr. Benitez, because he's an expert in the tryout on this particular test.

And again Dr. Benitez found a vestibular disorder. Dr. Benitez was never called by the petitioner at trial, and had he been, he would have had to say that the condition was incurable in 1970. If we are to believe Dr. Heil's testimony, which is unrefuted, on the record.

QUESTION: Well, did you call him?

MR. MUNDELL: No, we did not, Your Honor.

QUESTION: Why?

MR. MUNDELL: Because we had Dr. Heil. And we had Dr. Benitez's records.

I might just conclude, if the Court please, by saying that the facts of the case at bar are such as call for a denial of the payment of maintenance and cure in any amount, for the simple and cogent reason that petitioner's condition was incurable at the point of inception.

As the attorney's fees, I request that in the petition which is an issue not pre-empted by this Court, I would simply refer the Court to the decision of the district judge who denied the attorney's fees on the grounds that the shipowner --

QUESTION: Well, that's not here, anyway.

MR. MUNDELL: No, Your Honor.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Mundell.

Do you have anything further, Mr. Jaques? You have about nine minutes left, I think.

REBUTTAL ARGUMENT OF LEONARD C. JAQUES, ESQ.,

ON BEHALF OF THE PETITIONER

MR. JAQUES: Mr. Chief Justice, and may it please the Court:

In response to matters posed to my brother, in further response:

Under a situation where a seaman is afflicted with illness and is put ashore, and under a circumstance such as this where a vestibular labyrinthine disorder is of a permanent nature, incurable, and he is put ashore and incurs medical expenses, I think Mr. Mundell has indicated, well, the shipowner, through its benevolence, even though it had no obligation, would make those payments.

I submit that I would not place much stock on the benevolence of the shipowner who had no duty to make payments for medical expenses.

And I think that that really is the proof in part of the issue of this case.

When liability of a shipowner to a seaman for maintenance and cure commences and when it ends.

The Sixth Circuit has taken the bold position, the

position which lacks, I submit, humanism, that if the incident renders the seaman unfit for duty at the occurrence and if it is found to be permanent, then the shipowner has no liability at all.

The maximum cure occurred, in the words of the Sixth Circuit, the moment that the trauma was inflicted.

The shipowner has stated here that, in response to a question with regard to this Court having stated in Farrell vs. United States that there is no payment for maintenance and cure when the cure is palliative treatment.

Now, I say this, my brother has indicated in his brief, on page 14, a quotation stating that the rule in effect, as stated by this Court, and then he cites -- and then he recites in quotations.

Now, I'm sure that this is inadvertence on Mr. Mundell's part, but this Court did not make, ever, that statement.

As a matter of fact, that statement came from a Texas court, a Texas State court, in the case of Ray Lewis vs. Isthmian Lines, and that was in the State of Texas, it came out in 1968 AMC 1688.

And so I submit that this Court has not made such a pronouncement relative to palliative treatment not being within the purview of the duration of liability of the ship-owners to pay maintenance and cure.

Just further, the United States Public Health Service has a statutory duty to provide care for ill and injured seamen who are afflicted during the service of the vessel.

There is, however, a policy of the United States Public Health Service that if they find the seaman fit for duty, and then sixty days expires or ninety days, or whatever period that they have established, expires where the seaman has not been active, then he is no longer eligible, and that was the situation with Vella.

And Vella thus became ineligible after that period of days, and at that time it could have been sixty or ninety, but whatever, it was a period of days, and he was no longer eligible for Public Health --

QUESTION: Well, he just left his job as a seaman, did he get another job somewhere ashore?

MR. JAKES: None ever since.

QUESTION: How old a man is he?

MR. JAKES: He is about 44, or 45, in that age vicinity.

QUESTION: Unh-hunh.

QUESTION: Mr. Jaques, the jury, as I understand it, gave him maintenance and cure exactly for two years, June 29, 1968 to the date of discharge, the same date in 1970. Did they just pick this out of the air as kind of a compromise verdict,

do you think, or what is this significance with the 1970 date?

MR. JAKUES: Well, that certainly is an interesting question, and I have thought about this. The only thing that I can say, Your Honor, in response to that is that there was a period approximating that period of time, when the seaman was examined by a Dr. Benitez, who was comparable to Dr. Heil in his specialty, although it was a period of time earlier; actually it was a trifle earlier than that two-year period.

Now, in response further to Mr. Justice Brennan with regard to the seaman's right to a kind of perfect period of time, and other matters that are sought as relief in this, in the brief of the petitioner, I submit, first of all, that this Court has declared, way back, following Justice Storey's declaration of this Court being -- well, a seaman is a ward of the Admiralty Court, and as such, I submit, that it's not unprecedented for an award to be made outside of the area of issues raised below in regard to the matter of the appropriate order to issue relative to judgment, to be consistent with the law that is established pertaining to the duration or maintenance and cure, not only is it not unprecedented that the Court even on its own motion should make such a determination --

QUESTION: You say it's not unprecedented. Are there precedents in this Court for, where you have not appealed from

the district court to the Court of Appeals, we grant limited certiorari for us to do what you want us to?

MR. JAKES: I submit, Your Honor, that it is my impression, and I don't have --

QUESTION: Well, what was --

MR. JAKES: -- It is my impression that such is not unprecedented.

QUESTION: Well, you say it's not unprecedented, are you relying on a particular case?

MR. JAKES: Well, I do not at this time have the case, I have not briefed it. If the Court would direct, I would submit a separate brief on that issue.

But I submit that under the circumstances where a seaman is indeed a ward of the Admiralty Court, that this circumstance could be effectuated. But no matter.

The pecuniary moment, the amount of pecuniary award to Vella may not be of great moment, but the significance of the Sixth Circuit decision, if left to stand, and the consequences of it would be of, I would submit, grave consequences.

QUESTION: The instructions of the trial judge are not in the -- don't seem to be in the Appendix, with respect to maintenance and cure. I was wondering did you -- did he give instructions that would have rationally permitted the jury to return the verdict it did for two years of maintenance and

cure?

MR. JAKUES: He did not, Your Honor.

He gave instructions, the trial judge gave instructions consistent with the holdings of the Third Circuit and the holdings of the Fifth Circuit, which I had previously enunciated and brought -- and briefed in the petitioner's brief.

QUESTION: So the instructions were given, according to your theory of what the law is? Right?

MR. JAKUES: Of -- I didn't --

QUESTION: The instructions were -- reflected your theory of what the law is, is that right?

MR. JAKUES: That's correct. That's correct, Your Honor.

QUESTION: Despite that, the jury returned this verdict of arbitrary two years of maintenance and cure.

MR. JAKUES: That's correct.

And the judge has indicated that he was also puzzled at that particular period.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Jaques.

Thank you, Mr. Mundell.

The case is submitted.

[Whereupon, at 10:50 o'clock, a.m., the case in the above-entitled matter was submitted.]