**Maintenance and Cure Update — MLA Fall Meeting 2015**

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**Nature of the ongoing maintenance and cure obligation - *Arctic Storm, Inc. v. Madrid*, 2015 U.S. Dist. LEXIS 102323 (W.D. Wash. May 22, 2015)**

In *Arctic Storm, Inc. v. Madrid*, a fire broke out in the engine room of a vessel while its crewmembers were onboard, prompting them to evacuate.[[1]](#footnote-1) The following day, the crewmember-claimants signed a form denying that they had been injured or had fallen ill in the service of the vessel. One month following the incident, the crewmember-claimants informed the vessel owner that they were seeking and were scheduled to receive treatment for psychological injuries they had suffered as a result of the fire.[[2]](#footnote-2)

The vessel owner did not pay maintenance for the 38 days from the date of the incident through the claimants’ first appointment with their treating psychologist and did not initiate maintenance and cure benefits for several months following the incident.[[3]](#footnote-3) The vessel owner took the position that it was obligated to pay maintenance and cure *only* covering dates for which “it knew the claimants were still receiving treatment,” and that it reasonably waited until it received medical records confirming dates of the counseling sessions before providing benefits covering the time leading up to and including these dates.[[4]](#footnote-4)

The court rejected the vessel owner’s arguments, holding that a seaman is not obligated to supply updated records before receiving each new installment of maintenance. “A shipowner cannot withhold maintenance where the records in its possession indicate that the seaman's treatment is ongoing and curative.”[[5]](#footnote-5) The court ordered the vessel owner to pay back maintenance, holding that the fire was the “triggering” event for commencement of the maintenance and cure obligation.[[6]](#footnote-6) The court further ordered the vessel owner to pay maintenance on a regular, two-week schedule going forward.[[7]](#footnote-7) The court also held that the crewmembers’ claims for punitive damages could proceed to the trier of fact.[[8]](#footnote-8)

**The Collateral Source Rule - *Blanchard v. United States*, 2014 U.S. Dist. LEXIS 131958, 2014 AMC 2888 (W.D. La. Sept. 19, 2014)**

In *Blanchard v. United States*, the plaintiff was injured while working as a deckhand on a pushboat located on the Atchafalaya River, when the wake from a passing U.S. Army Corps of Engineers’ vessel rocked the pushboat, causing plaintiff to fall and injure himself.[[9]](#footnote-9) The plaintiff’s employer filed a cross-claim against the United States seeking indemnity for any maintenance and cure benefits paid or to be paid to the plaintiff.[[10]](#footnote-10) After trial on the merits, the court assigned the United States 100% fault for the incident.[[11]](#footnote-11) Damages were awarded in the amount of $585,784.06, plus post-judgment interest. Of that total, the parties stipulated that $42,794.44 was for past medical expenses.[[12]](#footnote-12) The plaintiff’s employer sought recovery from the United States for maintenance and cure payments made to the plaintiff in the stipulated amount of $104,550.36, plus post-judgment interest.[[13]](#footnote-13)

The United States contended that it was being required to pay the plaintiff's medical expenses twice­—once to the plaintiff and once to the employer.[[14]](#footnote-14) The court held that the collateral source rule applied, reasoning that by strict application of the collateral source rule, the United States as the tortfeasor, would not be able to reduce the damages it owed to the plaintiff by the amount of those medical payments. “The outcome would be no different if the plaintiff had received worker's compensation benefits or private health insurance benefits instead of cure.”[[15]](#footnote-15) The United States did not contest that proposition, or the proposition that an employer could recover maintenance and curepayments “from a third-party whose negligence partially or wholly caused the seaman's injury.”[[16]](#footnote-16) Rather the United States argued that it was paying for the same damages twice, and in doing so, the result would run afoul of the policy to avoid “overdeterrence and overcompensation.”[[17]](#footnote-17)

The Court rejected the United States’ argument. Because the plaintiff and its employer had “separate and independent losses,” the United States, as the sole-fault tortfeasor, was not “paying twice for the same injury.”[[18]](#footnote-18) Rather, the United States would “pay once, for two separate injuries . . . which happen to be in the same amount.”[[19]](#footnote-19) Although the court acknowledged that the result “may be troubling,” “the collateral source rule is clear, as is the maintenance and cure recovery provision, and given the priority afforded to the policy that the tortfeasor should bear the responsibility for its conduct the Court finds no basis for deviation from either rule.”[[20]](#footnote-20)

**Procedure for compelling payment of maintenance and cure - *Helix Energy Solutions Group, Inc. v. Howard*, 452 S.W.3d 40 (Tex. App. Houston-14th Dist. 2014)**

The issue in *Helix Energy Solutions Group, Inc. v. Howard*, was whether a seaman could compel his employer to institute maintenance and cure benefits by filing a “motion to compel,” rather than filing a Motion for Summary Judgment or seeking a determination on the merits of his maintenance and cure claim.[[21]](#footnote-21) The Texas state trial court had granted the seaman’s “motion to compel” and ordered the employer to institute maintenance and cure payments going forward. The employer appealed, arguing that the trial court had issued a temporary injunction in violation of the requirements of Texas Rule of Civil Procedure 683. The Texas Court of Appeals agreed and vacated the trial court’s order.[[22]](#footnote-22)

The court held that state law, rather than federal law, applied to the procedural question of whether a claim for maintenance and cure could be decided by the court on a “motion to compel.”[[23]](#footnote-23) Because the trial court’s order required the employer to perform certain actions—specifically, to make continuing payments to the plaintiff—it is was a “classic example of a mandatory injunction.”[[24]](#footnote-24)

Texas Rule of Civil Procedure 683 requires that an injunction set forth the reasons for its issuance, be specific in terms, describe in reasonable detail the acts to be restrained, and “include an order setting the cause for trial on the merits with respect to the ultimate relief sought.”[[25]](#footnote-25) Although the trial court’s order failed to comply with any of these requirements, the plaintiff argued that the trial court “arrived at the correct result” under federal maritime law.[[26]](#footnote-26) The appellate court found the trial court’s order void for failure to comply with Texas Rule of Civil Procedure 683.[[27]](#footnote-27) Therefore the appellate court could not address the plaintiff’s arguments that he was entitled to maintenance and cure under federal maritime law.[[28]](#footnote-28) It appears that the proper procedural vehicle to seek institution of maintenance and cure, at least under Texas state law, is to file a Motion for Summary Judgment or seek a determination on the merits at a bench trial.

**The automatic bankruptcy stay and maintenance and cure claims - *Bratkowski v. Cal Dive Int'l, Inc.*, 2015 U.S. Dist. LEXIS 51643 (E.D. La. Apr. 20, 2015)**

In *Bratkowski v. Cal Dive Int'l, Inc.*, the plaintiff sued his employer in the U.S. District Court for the Eastern District of Louisiana for Jones Act negligence, as well as under the general maritime law for unseaworthiness and for maintenance and cure.[[29]](#footnote-29) One month after the plaintiff filed suit, the defendant-employer filed a Voluntary Petition for Chapter 11 Bankruptcy in the U.S. District of Delaware, thereby invoking the protections of the automatic bankruptcy stay under 11 U.S.C. § 362(a).[[30]](#footnote-30) In the bankruptcy court, the plaintiff filed a Motion to Lift the Automatic Stay of the proceedings, including with respect to his maintenance and cure claims.[[31]](#footnote-31) The employer then filed a Motion to Stay the Proceedings in the district court in light of the bankruptcy proceeding pending in Delaware.[[32]](#footnote-32)

According to the plaintiff’s pleadings in the district court, he was receiving curative treatment for his lower back and had not yet reached maximum medical improvement. However, his maintenance and cure benefits were “prematurely terminated” shortly following the employer’s filing of bankruptcy.[[33]](#footnote-33)

The district court declined to delay its ruling on the employer’s Motion to Stay until Motion to Lift the Stay (pending in bankruptcy court) had been resolved.[[34]](#footnote-34) The district court also declined to hold that the automatic staydid not apply to an injured seaman's claims for maintenance and cure, holding that the “automatic stay that is already in effect by operation of 11 U.S.C. § 362 has suspended this Court's authority to continue the judicial proceedings pending against the debtor.”[[35]](#footnote-35) The court ruled that the plaintiff could seek relief from the district court if the bankruptcy court lifted the stay.[[36]](#footnote-36) The district court’s decision appears limited to whether it (as opposed to the bankruptcy court) had the “authority” to lift or disregard the stay as it concerned the plaintiff’s maintenance and cure claims. The district court noted, however, that the duty “to pay maintenance and cure continues even after a shipowner declares bankruptcy.”[[37]](#footnote-37)

**Direct actions against insurers for maintenance and cure — *Bratkowski v. Aspen Ins. UK, Ltd.*, 2015 U.S. Dist. LEXIS 78536, 2015 AMC 1567 (E.D. La. 2015)**

In *Bratkowski v. Cal Dive Int'l, Inc.*, following the employer-defendant’s filing of Chapter 11 bankruptcy, the plaintiff brought suit against the defendant’s liability insurer, Aspen Insurance UK Limited, pursuant to the Louisiana Direct Action statute.[[38]](#footnote-38) The insurer filed a Motion for Summary Judgment seeking the dismissal of all claims against it, including plaintiff’s claims for maintenance and cure.[[39]](#footnote-39) Specifically, it argued that the policies of insurance were issued and delivered in Houston, Texas, not Louisiana, and that the accident sued upon occurred on the high seas on a vessel located on the Outer Continental Shelf, not within the territorial waters of the State of Louisiana.[[40]](#footnote-40)

The Louisiana Direct Action Statute permits an action against an insurer of a tortfeasor if the plaintiff can establish that (1) the accident or injury occurred in Louisiana, (2) the policy was written in Louisiana, or (3) the policy was delivered in Louisiana.[[41]](#footnote-41) It was undisputed that the accident giving rise to the Jones Act and unseaworthiness claims occurred on the OCS, not in Louisiana. Thus, the court granted the insurer summary judgment with respect to those claims.[[42]](#footnote-42) However, the court denied the insurer’s request for summary judgment as to the maintenance and cure claims, holding that genuine issues of material fact remained as to whether the failure to pay maintenance and cure resulted in an injury that “occurred in Louisiana.”[[43]](#footnote-43)

**Borrowed Servant Doctrine and the maintenance and cure obligation - *In re Weeks Marine, Inc.*, 2015 U.S. Dist. LEXIS 8489 2015 AMC 507 (M.D. La. 2015)**

Who is the seaman’s employer for the purposes of the maintenance and cure obligation—a staffing agency or the vessel owner? In *In re Weeks Marine*, a staffing agency, Aerotek, Inc. brought a Motion for Summary Judgment, seeking a determination that the plaintiff-seaman was a “borrowed servant” of Weeks Marine, and, therefore, that Aerotek was entitled to terminate maintenance and cure benefits.[[44]](#footnote-44)

Weeks had entered into a contract with Aerotek, a staffing service agency, in which Aerotek would provide supplemental staffing of workers for Weeks.[[45]](#footnote-45) The plaintiff signed an Employment Agreement with Aerotek in which he agreed to be assigned to work as a crane operator for Weeks.[[46]](#footnote-46) He was subsequently injured onboard Weeks’ vessel and Aerotek initially paid him benefits.[[47]](#footnote-47)

The district court applied the nine factor “borrowed servant” test set forth by the U.S. Fifth Circuit Court of Appeals in *In Ruiz v. Shell Oil Co.*, 413 F.2d 310 (5th Cir. 1969), finding that the plaintiff was a borrowed servant of Weeks.[[48]](#footnote-48) Accordingly, Aerotek’s maintenance and cure obligation was terminated, and Weeks was ordered to pay maintenance and cure going forward.[[49]](#footnote-49)

**When is Maximum Medical Improvement reached? — *Hedges v. Foss Mar. Co.*, 2015 U.S. Dist. LEXIS 10510 (W.D. Wash. Jan. 29, 2015)**

In *Hedges v. Foss Mar. Co.*, the plaintiff had undergone five surgeries for his lower back since his accident and continued to suffer from ongoing lower back pain and disability.[[50]](#footnote-50) His treating physician recommended that he undergo a surgical implant of a trial, spinal cord stimulator.[[51]](#footnote-51) The plaintiff then sought an order compelling the employer to pay for the surgery under the cure obligation.[[52]](#footnote-52)

The court described a spinal cord stimulator as “an implanted, programmable neurotransmitter that interrupts pain signals to the brain by delivering small electrical impulses to the spinal column through stimulation leads.”[[53]](#footnote-53) Plaintiff’s treating physician initially stated that the implant was “non-curative,” but later rescinded his use of the term, claiming that he was unaware of its legal meaning.[[54]](#footnote-54) The employer’s medical expert stated that the stimulator was a palliative technique that did not address the cause of the patient's pain.[[55]](#footnote-55)

The court held that “[e]ven if the distinction between curative and palliative treatment is relevant before maximum cure has been reached, cure includes all treatment that improves function. A treatment is curative even if the increased function is accomplished primarily through pain relief.”[[56]](#footnote-56) The employer was therefore ordered to pay for the stimulator implant under the cure obligation.[[57]](#footnote-57)

**Application of the *McCorpen* defense**

In *McCorpen v. Central Gulf Steamship Corp.*, the U.S. Fifth Circuit Court of Appeals held that a seaman who “knowingly fails to disclose a pre-existing physical disability during his or her pre-employment physical examination" may not recover maintenance and cure.”[[58]](#footnote-58) In order to establish a *McCorpen* defense, an employer must show that (1) the claimant intentionally misrepresented or concealed medical facts; (2) the non-disclosed facts were material to the employer's decision to hire the claimant; and (3) a connection exists between the withheld information and the injury complained of in the lawsuit.[[59]](#footnote-59)

***Meche v. Doucet*, 777 F.3d 237 (5th Cir. 2015)**

In *Meche v. Doucet*, the U.S. Fifth Circuit Court of Appeals reversed the district court’s denial of the *McCorpen* defense and vacated the award of punitive damages for failure to pay maintenance and cure.[[60]](#footnote-60) The plaintiff had aggravated a pre-existing condition in his lumbar spine while in the service of the vessel, but had concealed the condition during the pre-employment process.[[61]](#footnote-61) Although the plaintiff’s current employer (Key) did not subject him to a pre-employment examination or interview, Key’s predecessor did, and Key was thereafter entitled to rely on the plaintiff’s representations.[[62]](#footnote-62) Therefore, the objective, “intentional concealment standard” applied to the *McCorpen* analysis.[[63]](#footnote-63)

The U.S. Fifth Circuit rejected the plaintiff’s argument that he did not conceal his medical history because he did not personally complete the medical questionnaire.[[64]](#footnote-64) The plaintiff claimed that his niece had completed the questionnaire and he had simply signed it without first reading it. He also claimed that he had verbally notified his employer of his past injuries after completing the questionnaire. The court held that “if a seaman intentionally provides false information on a pre-employment medical questionnaire and certifies that the information therein is true and correct, that seaman may not later argue that his concealment was not intentional based on his statement, which the employer disputes, that he verbally disclosed medical information that contradicted the written questionnaire.”[[65]](#footnote-65)

***Bosarge v. Cheramie Marine LLC*, 2015 U.S. Dist. LEXIS 101768 (E.D. La. Aug. 4, 2015)**

This district court decision seemingly came to the opposite conclusion of the U.S. Fifth Circuit in *Meche*. Here, the defendant sought to invoke the *McCorpen* defense where the plaintiff suffered a back injury prior to the incident at issue and he did not disclose that injury on the medical questionnaire he was provided prior to his employment with the defendant.[[66]](#footnote-66) Prior to his employment, the plaintiff visited an orthopaedic clinic complaining of lower back pain. [[67]](#footnote-67) He was diagnosed with lumbar degenerative disk disease and given a physical therapy home exercise program and pain medicine, which prescription he thereafter filled twice.[[68]](#footnote-68)

The district court denied the employer’s Motion for Summary Judgment on the *McCorpen* defense. It held that genuine issues of facts existed as to whether the concealed information would have affected the employer’s decision to hire the plaintiff, as his prior injury was “extremely minor” and that the “plaintiff had subsequently been cleared for full work duty by a *prior* employer.”[[69]](#footnote-69) Specifically, the court relied on MRI results from a prior employer in 2013 that were returned normal, clearing plaintiff to work full duty.[[70]](#footnote-70)

***Foret v. St. June, LLC*, 2014 U.S. Dist. LEXIS 127317 (E.D. La. Sept. 11, 2014)**

In *Foret v. St. June*, the district court applied the *McCorpen* defense, notwithstanding that the fact that the plaintiff was not required to complete a pre-employment medical questionnaire or undergo a pre-employment physical.[[71]](#footnote-71) The plaintiff, who injured his back, argued that he did not conceal information regarding his pre-existing injuries because he voluntarily informed the employer that he had previously had neck and shoulder surgery. [[72]](#footnote-72) However, the plaintiff remained silent regarding his pre-existing back injuries.[[73]](#footnote-73) “More importantly,” the plaintiff told his employer that he was “healed” at the time of the interview, which was “entirely inconsistent” with his medical history.[[74]](#footnote-74) Because the employer showed that plaintiff knew that the disclosure of his pre-existing back and neck injuries was “plainly desired” by the employer and the plaintiff had “intentionally concealed and misrepresented the existence and extent of these injuries,” the first prong of the *McCorpen* defense was satisfied.[[75]](#footnote-75)

**Punitive Damages**

***Campbell v. Offshore Liftboats, LLC,* 2015 U.S. Dist. LEXIS 34981, 2015 AMC 1075   
(E.D. La. March 20, 2015)**

In *Campbell v. Offshore Liftboats*, *LLC*, the plaintiff made a claim for punitive damages, alleging that the defendant had delayed its maintenance and cure investigation and failed to pay him a proper rate of maintenance.[[76]](#footnote-76) The court disagreed and granted the defendant’s Motion for Summary Judgment, dismissing the punitive damages claim.[[77]](#footnote-77) Upon receipt of the plaintiff’s maintenance and cure demand, the defendant began an investigation into his work history and the applicable law to determine, first, whether the plaintiff was a seaman under the Jones Act entitled to such payments, and second, the appropriate rate of compensation without proof of the plaintiff’s incurred food, lodging or medical expenses.[[78]](#footnote-78) The defendant instituted maintenance and cure payments within ten business days, which the court found to be a reasonable amount of time to conduct a “diligent” investigation.[[79]](#footnote-79) Furthermore, absent any supporting documentation provided by the plaintiff as to his daily expenses, $35 per day was a reasonable maintenance rate within the U.S. Fifth Circuit.[[80]](#footnote-80) Citing lack of any proof, the court also rejected plaintiff’s contention that his punitive damages claim should have been maintained on the basis that the defendant might one day, in bad faith, terminate the maintenance and cure payments before he reached maximum medical improvement.[[81]](#footnote-81)

***Hicks v. Tug Patriot*, 783 F.3d 939 (2d Cir. 2015)**

In *Hicks v. Tug Patriot*, the U.S. Second Circuit Court of Appeals affirmed a decision that a shipowner was liable for punitive damages when it prematurely terminated maintenance and cure benefits.[[82]](#footnote-82) The plaintiff injured his shoulder in the service of the vessel and subsequently underwent surgery.[[83]](#footnote-83) The shipowner hired a private investigator, who videotaped the plaintiff planting a small tree and playing with his grandson.[[84]](#footnote-84) When the plaintiff’s doctor requested authorization for an additional MRI scan, he was shown this footage and a document detailing the purported physical requirements of the plaintiff’s job.[[85]](#footnote-85) Based on this video and the apparently false suggestion by the shipowner that the plaintiff’s job required only light lifting, the doctor determined that the plaintiff was fit for duty. The shipowner then terminated his maintenance and cure benefits. Appellant accordingly informed Hicks that it would terminate maintenance and cure payments effective May 9, 2010.[[86]](#footnote-86)

Several months later, the plaintiff sought continuing care from a second doctor, who diagnosed a recurrent rotator cuff tear. [[87]](#footnote-87) Ultimately, the doctor recommended another surgery plus six months of rehabilitation to repair the additional damage.[[88]](#footnote-88) Under financial pressure caused by the “meager maintenance” of $15.00 a day paid to the plaintiff, which was terminated, the plaintiff returned to work while still injured. [[89]](#footnote-89) Severe financial difficulties caused him to miss some of his physical therapy appointments. [[90]](#footnote-90) His house was put into foreclosure and he was unable to pay for health insurance. [[91]](#footnote-91)

The jury found that appellant's failure to pay maintenance and cure was unreasonable and willful and awarded $123,000 in punitive damages. [[92]](#footnote-92) Based on the finding of willfulness, the district court, upon a motion under Fed. R. Civ. P. 54(d), granted the plaintiff an additional $112,083.77 in attorney's fees.[[93]](#footnote-93) The U.S. Second Circuit affirmed the decision, diverging from prior precedent and holding that the amount of recoverable punitive damages is *not* limited to the amount of reasonable attorney’s fees, which are available when the refusal to pay maintenance is “willful.”[[94]](#footnote-94)

***Jefferson v. Baywater Drilling, LLC,* 2015 U.S. Dist. LEXIS 9314, 2015 AMC 571   
(E.D. La. Jan. 27, 2015)**

Following a bench trial, the court in *Jefferson v. Baywater Drilling*, awarded punitive damages where the defendant had performed an unreasonable and inadequate maintenance and cure investigation, prior to denying benefits.[[95]](#footnote-95) The plaintiff had developed a disabling skin condition while working as a seaman aboard the defendant’s vessel.[[96]](#footnote-96) The shipowner’s human resources manager conducted the maintenance and cure investigation, which consisted of speaking with plaintiff’s coworkers and reviewing incident reports.[[97]](#footnote-97) The shipowner ultimately concluded that the plaintiff’s injuries were caused by a pre-existing condition related to herpes or a reaction to the medicine he allegedly brought aboard the vessel.[[98]](#footnote-98) There was no further investigation of Plaintiff's claims, the shipowner did not review the plaintiff's medical records, and the shipowner did not request that the plaintiff be tested for herpes or that any tests be done to establish a connection between the plaintiff’s skin condition and the medication he allegedly brought to work.[[99]](#footnote-99)

The court found the maintenance and cure investigation was “impermissibly lax.”[[100]](#footnote-100) The denial of maintenance and cure was “arbitrary and capricious” and the plaintiff was entitled to compensatory damages, punitive damages, and attorneys' fees.[[101]](#footnote-101) The court awarded $10,000 in punitive damages.[[102]](#footnote-102)

1. *Arctic Storm, Inc. v. Madrid*, 2015 U.S. Dist. LEXIS 102323, at \*2 (W.D. Wash. May 22, 2015). [↑](#footnote-ref-1)
2. *Id*. [↑](#footnote-ref-2)
3. *Id.*  [↑](#footnote-ref-3)
4. *Id*. at \*2-3. [↑](#footnote-ref-4)
5. *Id*. at \*11 (citing *Boyden v. Am. Seafoods Co.*, 2000 AMC 1512 (W.D. Wash. Mar. 21, 2000)). [↑](#footnote-ref-5)
6. *Id*. at \*13. [↑](#footnote-ref-6)
7. *Id*. at \*14. [↑](#footnote-ref-7)
8. *Id*. at \*12. [↑](#footnote-ref-8)
9. *Blanchard v. United States*, 2014 U.S. Dist. LEXIS 131958, at \*2, 2014 AMC 2888 (W.D. La. Sept. 19, 2014). [↑](#footnote-ref-9)
10. *Blanchard*,2014 U.S. Dist. LEXIS 131958, at \*2. [↑](#footnote-ref-10)
11. *Id*. at \*2-3. [↑](#footnote-ref-11)
12. *Id*. at \*3. [↑](#footnote-ref-12)
13. *Id*. [↑](#footnote-ref-13)
14. *Id*. at \*4. [↑](#footnote-ref-14)
15. *Id*. at \*7. [↑](#footnote-ref-15)
16. *Id*. at \*8 (citing *Bertram v. Freeport McMoran, Inc.*, 35 F.3d 1008, 1013 (5th Cir.1994)*; Savoie v. LaFourche Boat Rentals*, 627 F.2d 722, 723 (5th Cir.1980); *Adams v. Texaco, Inc.,* 640 F.2d 618, 620(5th Cir. 1981)). [↑](#footnote-ref-16)
17. *Id*. at (*Davis v. Odeco, Inc.,* 18 F.3d 1237, 1244 n. 21. (5th Cir. 1994)). [↑](#footnote-ref-17)
18. *Id*. at \*14. [↑](#footnote-ref-18)
19. *Id*. (citing *Jones v. Waterman S.S. Corp.*, 155 F.2d 992 (3rd Cir. 1946); *Bertram v. Freeport McMoran, Inc.*, 35 F.3d 1008 (5th Cir.1994)). [↑](#footnote-ref-19)
20. *Id*. at \*14-15. [↑](#footnote-ref-20)
21. *Helix Energy Solutions Group, Inc. v. Howard,*452 S.W.3d 40 (Tex. App. Houston-14th Dist. 2014). The plaintiff did not seek relief in the form of filing a Motion for Summary Judgment or seeking a trial on the merits of his maintenance and cure claim. [↑](#footnote-ref-21)
22. *Id*. at 42. [↑](#footnote-ref-22)
23. *Id*. at 43-44. [↑](#footnote-ref-23)
24. *Id*. at 44. [↑](#footnote-ref-24)
25. *Id*. (citing Tex. R. Civ. Pro. 683). [↑](#footnote-ref-25)
26. *Id*. at 44-45. [↑](#footnote-ref-26)
27. *Id.* at 45. [↑](#footnote-ref-27)
28. *Id*. [↑](#footnote-ref-28)
29. *Bratkowski v. Cal Dive Int'l, Inc.*, 2015 U.S. Dist. LEXIS 51643, at \*1-2 (E.D. La. Apr. 20, 2015). [↑](#footnote-ref-29)
30. *Id*. at \*2. [↑](#footnote-ref-30)
31. *Id.* [↑](#footnote-ref-31)
32. *Bratkowski*, 2015 U.S. Dist. LEXIS 51643, at \*2-3. [↑](#footnote-ref-32)
33. See *Bratkowski v. Cal Dive Int'l, Inc.*, civ. no. 2:15-00294, U.S District Court for the Eastern District of Louisiana, Rec. Doc. 18. [↑](#footnote-ref-33)
34. *Bratkowski*, 2015 U.S. Dist. LEXIS 51643, at \*3. [↑](#footnote-ref-34)
35. *Id.* at \*3-4. [↑](#footnote-ref-35)
36. *Id.* at \*4. Approximately one month after the district court’s decision, the parties entered into a stipulation in the bankruptcy court regarding lifting the stay. *In re Cal Dive International, Inc. et al*, case no. 15-10458, U.S. Bankruptcy Court for the District of Delaware, Rec. Doc. 395-1. [↑](#footnote-ref-36)
37. *Bratkowski*, 2015 U.S. Dist. LEXIS 51643, at \*4 fn. 3 (citing *Matter of Sea Ray Marine Services, Inc.*, 105 B.R. 12, 13 (Bankr. E.D. La. 1989). [↑](#footnote-ref-37)
38. *Bratkowski v. Aspen Ins. UK, Ltd.*, 2015 U.S. Dist. LEXIS 78536, at \*1, 2015 AMC 1567 (E.D. La. Jun. 17, 2015). See also Louisiana’s Direct Action statute. La. R.S. § 22:1269. [↑](#footnote-ref-38)
39. *Bratkowski*,2015 U.S. Dist. LEXIS 78536, at \*3. [↑](#footnote-ref-39)
40. *Id*. at \*5-6. [↑](#footnote-ref-40)
41. *Bratkowski*,2015 U.S. Dist. LEXIS 78536, at \*6 (citing *Grubbs v. Gulf International Marine Inc.*, 13 F.3d 168, 170 (5th Cir. 1994)). [↑](#footnote-ref-41)
42. *Id*. [↑](#footnote-ref-42)
43. *Id*. at \*6-7. [↑](#footnote-ref-43)
44. *In re Weeks Marine, Inc.*, 2015 U.S. Dist. LEXIS 8489, \*3, 2015 AMC 507 (M.D. La. 2015). [↑](#footnote-ref-44)
45. *Id*.. [↑](#footnote-ref-45)
46. *Id*. [↑](#footnote-ref-46)
47. *Id*. [↑](#footnote-ref-47)
48. *Id*. at \*16. [↑](#footnote-ref-48)
49. *Id*. at \*5, 18 (citing *Hall v. Diamond M. Co*., 732 F.2d 1246, 1249 (5th Cir. 1984); *Baker v. Raymond International*, 656 F.2d 173, 178 (5th Cir. 1981)). [↑](#footnote-ref-49)
50. *Hedges v. Foss Mar. Co.*, 2015 U.S. Dist. LEXIS 10510, \*1-2 (W.D. Wash. Jan. 29, 2015). [↑](#footnote-ref-50)
51. *Hedges*, 2015 U.S. Dist. LEXIS 10510, at \*1-2. [↑](#footnote-ref-51)
52. *Id.* [↑](#footnote-ref-52)
53. *Id*. at \*2. [↑](#footnote-ref-53)
54. *Id*. at \*3. [↑](#footnote-ref-54)
55. *Id*. at \*3-4. [↑](#footnote-ref-55)
56. *Id*. at \*7. [↑](#footnote-ref-56)
57. *Id*. at \*7-8. [↑](#footnote-ref-57)
58. *Meche v. Doucet*, 777 F.3d 237, 244 (5th Cir. 2015) (citing *McCorpen v. Central Gulf S.S. Corp.*, 396 F.2d 547, 548 (5th Cir. 1968)). [↑](#footnote-ref-58)
59. *Id*. at 244-45 (citing *Brown v. Parker Drilling Offshore Corp.*, 410 F.3d 166, 171 (5th Cir. 2005)). [↑](#footnote-ref-59)
60. *Id*. at 249 [↑](#footnote-ref-60)
61. *Id*. at 241. [↑](#footnote-ref-61)
62. *Meche*, 777 F.3d at 246. [↑](#footnote-ref-62)
63. *Id*. [↑](#footnote-ref-63)
64. *Id*. at 247-48. [↑](#footnote-ref-64)
65. *Id*. at 248. [↑](#footnote-ref-65)
66. *Bosarge v. Cheramie Marine LLC*, 2015 U.S. Dist. LEXIS 101768, at \*7 (E.D. La. Aug. 4, 2015). [↑](#footnote-ref-66)
67. *Id.* at \*7. [↑](#footnote-ref-67)
68. *Id*. [↑](#footnote-ref-68)
69. *Id.* at \*9 (emphasis added). [↑](#footnote-ref-69)
70. *Id.* at \*9-10. [↑](#footnote-ref-70)
71. *Foret v. St. June, LLC*, 2014 U.S. Dist. LEXIS 127317, at \*8-9 (E.D. La. Sept. 11, 2014). [↑](#footnote-ref-71)
72. *Id.* at \*10. [↑](#footnote-ref-72)
73. *Foret*, 2014 U.S. Dist. LEXIS 127317, at \*10. [↑](#footnote-ref-73)
74. *Id.* at \*10-11. [↑](#footnote-ref-74)
75. *Id.* at \*11. The second and third prongs of the *McCorpen* defense were also satisfied. [↑](#footnote-ref-75)
76. *Campbell v. Offshore Liftboats, LLC*, 2015 U.S. Dist. LEXIS 34981, 2015 AMC 1075 (E.D. La. Mar. 20, 2015). [↑](#footnote-ref-76)
77. *Id.* at \*10. [↑](#footnote-ref-77)
78. *Id*. at \*8-10. [↑](#footnote-ref-78)
79. *Id*. at \*10. [↑](#footnote-ref-79)
80. *Id*. at \*9. [↑](#footnote-ref-80)
81. *Id*. at \*10. [↑](#footnote-ref-81)
82. *Hicks v. Tug Patriot*, 783 F.3d 939, 941 (2d Cir. 2015). [↑](#footnote-ref-82)
83. *Id*. at 941. [↑](#footnote-ref-83)
84. *Id*. [↑](#footnote-ref-84)
85. *Hicks*, 783 F.3d at 941. [↑](#footnote-ref-85)
86. *Id*. [↑](#footnote-ref-86)
87. *Id*. [↑](#footnote-ref-87)
88. *Id*. [↑](#footnote-ref-88)
89. *Id*. [↑](#footnote-ref-89)
90. *Id*. [↑](#footnote-ref-90)
91. *Id*. [↑](#footnote-ref-91)
92. *Id*. [↑](#footnote-ref-92)
93. *Id*. [↑](#footnote-ref-93)
94. *Id*. at 943 (overruling *McMillan v. Tug Jane A. Bouchard*, 885 F. Supp. 452, 466 (E.D.N.Y. 1995); *Kraljic v. Berman Enter., Inc.*, 575 F.2d 412, 415-16 (2d Cir. 1978)). [↑](#footnote-ref-94)
95. *Jefferson v. Baywater Drilling, LLC*, 2015 U.S. Dist. LEXIS 9314, at \*20 2015 AMC 571 (E.D. La. Jan. 27, 2015). [↑](#footnote-ref-95)
96. *Id.* at \*1. [↑](#footnote-ref-96)
97. *Id*. at \*9. [↑](#footnote-ref-97)
98. *Jefferson*, 2015 U.S. Dist. LEXIS 9314, at \*9. [↑](#footnote-ref-98)
99. *Id*. [↑](#footnote-ref-99)
100. *Id.* at \*16. [↑](#footnote-ref-100)
101. *Id.* at \*17-18. [↑](#footnote-ref-101)
102. *Id.* at \*18. [↑](#footnote-ref-102)