

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 AMERICAN SEAFOODS COMPANY  
10 LLC,

CASE NO. C13-1235-JCC

11 Plaintiff,

ORDER

12 v.

13 AHOKAYA NAUFAHU,

14 Defendant.

15 This matter comes before the Court on Plaintiff American Seafoods Company's motion  
16 for summary judgment. (Dkt. No. 33.) Having thoroughly considered the parties' briefing and  
17 the relevant record, the Court finds oral argument unnecessary and hereby GRANTS the motion  
18 for the reasons explained herein.

19 **I. BACKGROUND**

20 Defendant Ahokaya Naufahu worked as a factory foreman for American Seafoods aboard  
21 the F/T Northern Hawk and F/T American Dynasty between 1997 and 2010. (Dkt. No. 25 at ¶¶  
22 21, 22.) On May 10, 2009, Mr. Naufahu visited the emergency room after a coughing fit caused  
23 him to lose consciousness and fracture his ankle in a fall. (Dkt. No. 26, Ex. 3 at 1.) Mr. Naufahu  
24 told hospital staff he had a persistent cough that had lasted for nearly a month and an occasional  
25 shortness of breath. (*Id.*) The ER staff recommended that Mr. Naufahu see a pulmonary  
26 specialist for his complaints. (*Id.* at 4.) Mr. Naufahu met with pulmonary specialist Dr. Stephen

ORDER  
PAGE - 1

1 Ryan on May 20, 2009, and disclosed his that his respiratory issues began approximately one  
2 year prior to the visit, and included blood-streaked sputum. (Dkt. No. 26, Ex. 1 at 1.) He also  
3 disclosed that he had smoked approximately one-and-a-half packs of cigarettes per day for the  
4 past twenty-five years. (Dkt. No. 26, Ex. 1 at 3.) Dr. Ryan diagnosed Mr. Naufahu with  
5 pulmonary fibrosis<sup>1</sup> and emphysema and instructed him to follow up for a monitoring  
6 appointment in six months.<sup>2</sup> (*Id.* at 3–4.)

7 Mr. Naufahu did not return to work for American Seafoods until January, 2010, due to  
8 complications with the May 10, 2009, ankle fracture. (Dkt. No. 25 at ¶ 16.) Upon returning to  
9 work, Mr. Naufahu was required to fill out a “Health and History Assessment” form as a  
10 condition of his employment. (*Id.* at ¶ 4.) Mr. Naufahu disclosed the single coughing episode that  
11 sent him to the ER, but checked “no” to the following items: fainting spells, emphysema, cough  
12 lasting more than two weeks, bloody sputum, breathing problems, smoking, and shortness of  
13 breath. (Dkt. No. 25, Ex. 1 at 2, 5.) Mr. Naufahu also failed to disclose his respiratory symptoms  
14 or diagnoses in a required “Heath Information Update Form” filled out on September, 1, 2010.  
15 (Dkt. No. 25, Ex. 3.) Mr. Naufahu did not complain of any respiratory issues while working on  
16 American Seafoods’ vessels in 2010, and did not consider his respiratory issues to limit his  
17 ability to work. (Dkt. No. 26, Ex. 4 at 57.) American Seafoods sold the F/T Northern Hawk to  
18 Costal Villages in 2010, and Mr. Naufahu chose to follow the vessel and end his employment  
19 with American Seafoods. (Dkt. No. 25 at ¶ 22.)

20 American Seafoods filed this action seeking a declaratory judgment that it has no duty to  
21 provide maintenance and cure to Mr. Naufahu for his pulmonary conditions. (Dkt. No. 1.)  
22 American Seafoods now moves for summary judgment on the grounds that Mr. Naufahu is not  
23 entitled to maintenance and cure, and that even if he is so entitled, his failure to seek medical  
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25 <sup>1</sup> Pulmonary fibrosis is an untreatable, progressive condition. (Dkt. No. 26, Ex. 6 at ¶ 12.)

26 <sup>2</sup> Mr. Naufahu did not seek further treatment for his respiratory conditions until after leaving employment  
with American Seafoods. (Dkt. No. 26, Ex. 4 at 58–59.)

1 treatment and willful concealment of his pulmonary conditions forfeits that right. (Dkt. No. 33.)

## 2 **II. DISCUSSION**

3 Pursuant to Rule 56 of the Federal Rules of Civil Procedure, “[t]he court shall grant  
4 summary judgment if the movant shows that there is no genuine dispute as to any material fact  
5 and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). In making such  
6 a determination, the Court must view the facts and inferences to be drawn therefrom in the light  
7 most favorable to the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–50  
8 (1986). Once a motion for summary judgment is properly made and supported, the opposing  
9 party “must come forward with specific facts showing that there is a genuine issue for trial.”  
10 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Material facts are  
11 those that may affect the outcome of the case, and a dispute about a material fact is genuine if  
12 there is sufficient evidence for a reasonable jury to return a verdict for the non-moving party.  
13 *Anderson*, 477 U.S. at 248–49. Ultimately, summary judgment is appropriate against a party who  
14 “fails to make a showing sufficient to establish the existence of an element essential to that  
15 party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v.*  
16 *Catrett*, 477 U.S. 317, 324 (1986).

### 17 **A. Entitlement to Maintenance and Cure**

18 American Seafoods first moves for summary judgment on the ground that Mr. Naufahu is  
19 not entitled to maintenance and cure for his pulmonary conditions. A shipowner’s obligation to  
20 provide maintenance and cure has its roots in ancient maritime law. *Vaughan v. Atkinson*, 369  
21 U.S. 527, 532 n.4 (1962). When a seaman is injured in service of his vessel, the ship owner has  
22 an obligation both to bring the seaman to a port for treatment and to pay maintenance  
23 (compensation for room and board equivalent to what the seaman would have received aboard  
24 the vessel) and cure (payments for medical treatment necessary to restore the seaman to health).  
25 *Id.*; see MARTIN J. NORRIS, THE LAW OF SEAMEN §§ 26:5-26:6 (3d ed. 1985) (defining  
26 maintenance and cure). A seaman’s entitlement to maintenance and cure continues until he

1 reaches “maximum cure”—*i.e.*, a recovery as complete as the injury allows. *Permanente S.S.*  
2 *Corp. v. Martinez*, 369 F.2d 297, 298–99 (9th Cir. 1966). When considering a seaman’s  
3 entitlement to maintenance and cure, the court resolves doubts in favor of the seaman. *Vaughan*,  
4 369 U.S. at 532.

5 For Mr. Naufahu to be entitled for maintenance and cure, he must have been “in service  
6 of the ship” at the time the illness or injury “occurred, was aggravated, or manifested.” *In re*  
7 *Marine Asbestos Cases*, 265 F.3d 861, 868 (9th Cir. 2001) (quoting *Stevens v. McGinnis, Inc.*, 82  
8 F.3d 1353, 1357–58 (6th Cir. 1996)). “In the service of the ship” means that the sailor was  
9 “answerable to [the ship’s] call to duty” when he or she fell ill or was injured. *Farrell v. United*  
10 *States*, 336 U.S. 511, 516 (1949). American Seafoods argues that Mr. Naufahu was not “in  
11 service” of the ship at the time of the onset of his respiratory conditions because he was first  
12 diagnosed while on vacation, and that even if Mr. Naufahu was in service of the ship at the time,  
13 he has reached maximum medical improvement for his conditions. (Dkt. No. 33 at 20.)

14 The Court agrees with Mr. Naufahu that summary judgment on this ground is  
15 inappropriate. First, there is a genuine issue of material fact as to when Mr. Naufahu’s  
16 pulmonary condition “occurred, was aggravated, or manifested.” Although Mr. Naufahu was not  
17 diagnosed until May 20, 2009, while he was on vacation, both Dr. Ryan and Mr. Naufahu  
18 testified that the pulmonary condition was in existence prior to that date. (Dkt. No. 34, Ex. 1 at  
19 20; Dkt. No. 26, Ex. 4 at 8.) Second, there is a genuine issue of material fact as to whether Mr.  
20 Naufahu has reached maximum medical improvement for his pulmonary condition. Sufficient  
21 facts exist at this stage that the Court could reasonably find that Mr. Naufahu has reached  
22 maximum medical improvement for his pulmonary symptoms because his condition is an  
23 incurable, progressive disease. (Dkt. No. 26, Ex. 6 at 9, ¶ 12.) Conversely, one could reasonably  
24 conclude that a lung transplant is necessary to bring Mr. Naufahu to maximum medical  
25 improvement for his pulmonary conditions. (Dkt. No. 31, Ex. 1 at 50.) Accordingly, summary  
26 judgment is not warranted on this ground.

1           **B.      Willful Concealment**

2           American Seafood also argues that it is entitled to summary judgment because Mr.  
3 Naufahu willfully concealed his pulmonary conditions after becoming aware of them when he  
4 returned to work in 2011.<sup>3</sup> (Dkt. No. 33 at 13–16.) As previously explained, a seaman is not  
5 entitled to maintenance and cure if: (1) he intentionally withholds from his employer information  
6 about a preexisting medical condition; (2) there is a causal relationship between the undisclosed  
7 condition and the impairment for which he seeks compensation; and (3) the undisclosed  
8 condition was material to the employer’s decision to hire him. *Vitcovich v. Ocean Rover O.N.*,  
9 106 F.3d 411 (9th Cir. 1997) (unpublished); *Quiming v. Int’l. Pac. Enter., Ltd.*, 773 F.Supp. 230,  
10 236 (D. Haw. 1990); *see, e.g., Tawada v. United States*, 162 F.2d 615, 617 (9th Cir. 1947)  
11 (barring maintenance and cure for seaman who claimed to be fit when hired but concealed that  
12 he had tuberculosis); *Figuerias v. F/V Pacific Fury*, No. C95-0468, 1996 WL 875553, at \*3  
13 (W.D. Wash. Feb. 5, 1996) (barring maintenance and cure for seaman who failed to disclose pre-  
14 existing injuries on pre-hiring questionnaire).

15           American Seafoods is entitled to summary judgment on this ground. First, although Mr.  
16 Naufahu attempts to argue that he could not “conceal something he didn’t have yet,” he later  
17 concedes the first element in his reply by admitting that he concealed his lung problems once he  
18 became aware of them and returned to work for American Seafoods. (Dkt. No. 34 at 3.) Even if  
19 Mr. Naufahu had not conceded this point, the record is clear that he failed to disclose any of the  
20 respiratory symptoms or diagnoses once they became known to him 2009 on either of the pre-

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22           <sup>3</sup> American Seafoods also argues that it is entitled to summary judgment because Mr. Naufahu’s failure to  
23 seek medical attention waived his right for maintenance and cure for his pulmonary conditions. American Seafoods  
24 is not entitled to summary judgment this ground because the cases it cites are factually distinguishable. In *Pyles v.*  
25 *Am. Trading & Prod. Corp.*, the Fifth Circuit denied maintenance and cure to a seaman for the period during which  
26 he had been declared fit for duty and was working on a vessel. 372 F.2d 611, 619 (5th Cir. 1967) Here, Mr. Naufahu  
is seeking maintenance and cure for the times during which he has been unemployed. (Dkt. No. 18 at 4.) The other  
cases cited are similarly unavailing because they involve questions of causation not present in this case. *See*  
*Repsholdt v. United States*, 205 F.2d 852, 856 (7th Cir. 1953); *Bowers v. Seas Shipping Co.*, 185 F.2d 352, 354 (4th  
Cir. 1950). However, because the Court is granting American Seafoods’ motion on willful concealment grounds, the  
Court declines to analyze this argument in depth.

1 employment questionnaire or health update forms he filled out for American Seafoods in 2010.  
2 (Dkt. No. 25, Ex. 1 at 2, 5; Ex. 3.) Second, neither party disputes that the pulmonary conditions  
3 for which Mr. Naufahu is now seeking treatment are the same conditions he concealed from  
4 American Seafoods. (*Compare* Dkt. No. 26, Ex. 1 *with* Dkt. No. 18, Ex. 2.) Finally, Mr. Naufahu  
5 does not appear to contest the third element, materiality. Even so, the record is clear that Mr.  
6 Naufahu’s concealment was material for several reasons. The medical questionnaire was six  
7 pages long and asked a series of questions about specific medical conditions and symptoms  
8 including fainting spells, emphysema, cough lasting longer than two weeks, and shortness of  
9 breath. (Dkt. No. 25, Ex. 1 at 5.) The form also had a catch-all question: “have you had any  
10 illness(es) or injuries other than those already listed[,]” which was designed to elicit information  
11 about any condition not specifically listed on the form. (*Id.* at 6.) A pre-employment  
12 questionnaire that asks specific medical questions is necessarily material. *See Quiming v. In’l*  
13 *Pac. Enterprises Ltd.*, 773 F. Supp. 230, 236 (D. Haw. 1990); *Coastal Villages Pollock, LLC v.*  
14 *Naufahu*, No. C13-1234-JCC, 2014 WL 1053126 (W.D. Wash. Mar. 19, 2014). Accordingly, the  
15 Court grants American Seafoods’ motion for summary judgment on the ground that Mr. Naufahu  
16 willfully concealed his pulmonary conditions.

17 **III. CONCLUSION**

18 For the foregoing reasons, Plaintiff’s motion for summary judgment (Dkt. No. 33) is  
19 GRANTED.

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1 DATED this 22nd day of April.

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5 A handwritten signature in black ink, reading "John C. Coughenour". The signature is written in a cursive style with a horizontal line underneath it.

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8 John C. Coughenour  
9 UNITED STATES DISTRICT JUDGE

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