



# ***DEL ROSARIO PANDIPHIL Inc.***

## **Philippine Shipping Update – Manning Industry**

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., January 20, 2012 (Issue 2012/02)

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### **Supreme Court rules seafarer must prove work relation to be entitled to benefits; reiterates mandatory 3-day post-employment medical examination**

Seafarer was engaged as Lead Operator in a FPSO vessel. He was deployed on 24 March 2003 and eventually repatriated after his contract expired on 18 July 2003. Two (2) months after repatriation, seafarer consulted his personal doctor who diagnosed him to be suffering from hypertensive cardiovascular disease, atrial fibrillation, diabetes mellitus II. The doctor also opined that seafarer's illness was aggravated by work and that he was no longer fit for work. The seafarer requested for financial assistance which was denied by the company resulting to the filing of a claim for disability benefits, sickwages, reimbursement of medical expenses, damages and attorney's fees.

The Labor Arbiter ruled in favor of the seafarer and awarded US\$60,000.00 representing total permanent disability compensation benefits plus sickness allowance and attorney's fees. The NLRC reversed the decision of the Labor Arbiter and denied the claim for disability benefits. The Court of Appeals set aside the ruling of the NLRC and reinstated the award of the Labor Arbiter.

When the matter reached the Supreme Court, it was held that the seafarer is not entitled to disability benefits based on the following:

***The seafarer failed to show with substantial evidence that his illness was work-related***

“In this case, the Court is of the considered view that respondent failed to prove that his ailment was work-related and was acquired

during his 4-month sea deployment. Respondent claims that sometime in July 2003, he showed manifestations of a heart disease when he suddenly felt chest pains, shortness of breath and fatigability. He, however, never substantiated such claim. He never showed any written note, request or record about any medical check-up, consultation or treatment. Similarly, he failed to substantiate his allegation that after his arrival in Manila on July 18, 2003, he reported to petitioners' office on July 31, 2003 to seek medical consultation for the discomfort he was experiencing but petitioners ignored him.

He also alleged that on August 4, 2003, more or less sixteen (16) days after arriving in Manila, he underwent a physical and laboratory examination at the Maritime Clinic for International Service, Inc. conducted by petitioners where he was declared to be unfit for sea duty. Again, there is no record of this except his self-serving claim. What is on record is that on September 24, 2003, respondent surfaced demanding payment of disability benefits.”

***The seafarer did not comply with the mandatory 3 day rule in the POEA Contract***

“More importantly, respondent failed to comply with the mandatory 3-day medical examination deadline provided in Section 20(B), paragraph (3) of the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels. As earlier stated, it was only on September 24, 2003, or more than two (2) months after his arrival in Manila, that he sought a medical opinion from Dr. Vicaldo who declared him unfit to work as a seaman due to “hypertensive cardiovascular disease, atrial fibrillation and diabetes mellitus II.

While the rule is not absolute, there is no credible explanation from respondent why he failed to comply with the mandatory rule considering his claim that in July, 2003, he was suffering from chest pain, shortness of breath and fatigue. An award of disability benefit to a seaman in this case, despite non-compliance with strict mandatory requirements of the law, cannot be sustained. The rationale behind the rule can easily be divined. Within three days from repatriation, it would be fairly easier for a physician to determine if the illness was work-related or not. After that period, there would be difficulty in ascertaining the real cause of the illness.

To ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employers would have no protection against unrelated disability claims.”

*Jebsens Maritime Inc., represented by Ms. Arlene Asuncion and/or Alliance Marine Services, Ltd., vs. Enrique Undag ; G.R. No. 191491 ; December 14, 2011 ; Third Division ; Associate Justice Jose Catral Mendoza, Ponente (Attys. Krizia Talon and Herbert Tria of Del Rosario & Del Rosario acted for vessel interests)*

## **New POEA Administrator's 7-point Agenda**

Hans Leo J. Cacdac, newly POEA Administrator, has released his 7-point agenda:

1. Streamline OFW documentation and processing systems to provide smoother and more efficient delivery of services to OFWs. We shall regain public confidence in our systems, starting with restoration of the POEA's ISO certification.

2. Strengthen enforcement of anti-illegal recruitment laws and licensed recruitment regulations. We shall implement RA 10022, which heightened the POEA's role in the fight against illegal recruiters. Also, we shall significantly improve the POEA adjudication record in case disposition.
3. Ensure transparency and accountability in the development of policies and regulations. This means institutionalized consultative mechanisms involving stakeholders in the land-based and sea-based sectors.
4. Further protection of certain types of OFWs, such as domestic workers and seafarers. This includes the ratification of the ILO Convention on Decent Work for Domestic Workers and the Maritime Labor Convention.
5. Vigorous pursuit of bilateral agreements with receiving countries, for the better protection and welfare of OFWs.
6. Stronger and more harmonious coordination with government agencies, for the better protection and welfare of OFWs.
7. Ensure measures that implement and promote anti-corruption, anti-fixer, and anti- red tape laws and regulations, including the operationalization of the POEA Efficiency and Integrity Board.

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*"Del Rosario & Del Rosario remains the Philippines' leading firm for maritime law."  
from Asia-Pacific , The Legal 500, 2010-2011, p. 347*

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from Asia-Pacific, The Legal 500, 2009-2010, p. 341*

This publication aims to provide commentary on issues affecting the manning industry, analysis of recent cases and updates on legislation. It is meant to be brief and is not intended to be legal advice. For further information, please email [ruben.delrosario@delrosario-pandiphil.com](mailto:ruben.delrosario@delrosario-pandiphil.com) .

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