



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

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

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., March 6, 2012 (Issue 2012/03)

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### **New Supreme Court decision favors 240 day rule; declaration of fitness or disability must be made within 240 days; otherwise, seafarer is considered permanently and totally disabled**

An able seaman was diagnosed to be suffering from severe acute bronchial asthma with secondary infection and lumbosacral muscle strain. He was repatriated for further treatment. In October 1998, the company-designated physician declared that seaman's back problem may be resolved after spine surgery was conducted. As to the lung problem, the pulmonologist opined that his obstructive airway disease needs to be monitored regularly. He was then declared disabled with a suggested disability grading of 10-20%. Treatment continued and in February 1999, the company-designated physician declared that seaman's obstructive pulmonary disease tends to be a chronic problem and that he reached maximum medical cure.

Wanting to confirm the opinion of the company designated doctor, the company suggested that seaman should be examined by another doctor. The new appointed doctor also stated that seaman is permanently unfit for sea service. The parties were not able to come into terms with respect to the quantum of benefits seaman should be entitled to which resulted into the filing of a complaint before the NLRC.

During the proceedings before the Labor Arbiter, the company again suggested that seaman be examined by another physician for an independent medical examination whose findings would be considered final. Seaman agreed to this. The said doctor eventually declared that respondent is not considered fit to return to work as an able seaman although his impairment is only mild. Settlement did not materialize and a decision was issued by the Labor Arbiter awarding US\$20,154 for payment of disability benefits and medical allowance of US\$2,060 plus 5% attorney's fees. The Labor Arbiter held that since the disability is only mild, he is not entitled to full disability benefits. The Labor Arbiter also held that the provisions of the Labor Code do not apply to claims for benefits filed based on the POEA Contract.

The NLRC affirmed the decision of the Labor Arbiter. The Commission ruled that respondent's condition may only be considered as a permanent partial disability and that the provisions of the Labor Code are not applicable to his claim.

The Court of Appeals reversed the decision of the NLRC and declared that respondent was suffering from permanent total disability and increased the award to US\$60,000.00. The court further ruled that respondent's disability brought about by his bronchial asthma is permanent and total as he had been unable to work since May 1998 or for more than 120 days. The Court of Appeals based its ruling on the concept of permanent and total disability under the Labor Code.

The Supreme Court affirmed the decision of the Court of Appeals.

The Supreme Court ruled that in determination of disability benefits, it is not only the provisions of the POEA Contract which must be followed. The principle of the Labor Code on disability is also applicable in such cases. The Supreme Court extensively cited the decision in Vergara v. Hammonia Maritime Services where it was held that:

“As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. **For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work.** He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.** The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.”

Here, ***since the company-designated doctor did not issue a declaration that the seaman is fit to work or assessed a disability grading within the period of 240 days, then seaman is considered to be permanently and totally disabled and entitled to full disability benefits of US\$60,000.***

The court also gave credence to the later medical report of the doctor that the seaman is “ought not to be considered fit to return to work as a seaman”, hence, it validates that his disability is permanent and total as provided under the POEA Contract and the Labor Code considering that he is no longer employable.

***Author’s Note:*** This decision of the Supreme Court tends to favor the position that a seafarer can only be declared permanently and totally disabled, therefore entitled to full disability benefits, when there is no declaration of fitness or determination of disability assessment within 240 days. This is in contrast with the several decisions of the Supreme Court limiting such evaluation period only to 120 days.

Thus, the author reiterates the importance of having a declaration of fitness or determination of disability issued within 240 days. Better still, if the same could be possibly achieved within 120 days.

Noteworthy also is the Supreme Court’s explicit ruling that the provisions of the POEA Contract are not the sole factor in determining disability compensation as the concepts in the Labor Code also apply.

*Magsaysay Maritime Corporation and/or Wastfal-Larsen Management A/S vs. Oberto Lobusta; G.R. No. 177578; January 25, 2012 ; First Division ; Associate Justice Martin Villarama, Jr. , Ponente*



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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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**Del Rosario Pandiphil Inc. / Del Rosario & Del Rosario**

**Office Address:** 15th Floor, Pacific Star Building, Makati Avenue, 1200 Makati City, Philippines

**Telephone:** 63 2 810 1791 \* **Fax:** 63 2 817 1740/ 63 2 810 3632

**24/7 Emergency Mobile:** (63) (917) 830-8384; [mail@delrosario-pandiphil.com](mailto:mail@delrosario-pandiphil.com); [www.delrosario-pandiphil.com](http://www.delrosario-pandiphil.com)

