



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

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

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., May 14, 2012 (Issue 2012/06)

### **New Supreme Court decision reiterates 240 days ruling; awards disability grading issued after 120 days but before 240 days**

On March 9, 2005, seafarer was accidentally hit by two falling scaffolding pipes while on-board the vessel. The incident resulted into injuries to the head, neck and shoulder. On March 17, 2005, he was medically repatriated and was treated by the company doctor, Dr. Lim. He underwent treatment for more than 120 days and on his 148<sup>th</sup> day of treatment, on August 13, 2005, he was assessed with a Grade 12 disability.

Three months after, seaman consulted his own physician who assessed that his extremities and reflexes were normal and that he was able to do daily chores although experiencing neck pains and headaches. Seaman then consulted another doctor, Dr. Vicaldo, who assessed him with a Grade 7 disability and declared him unfit to resume work as a seaman as he would require further treatment for him to be symptom free.

Seaman then filed a complaint for payment of disability benefits, illness allowance, and reimbursement of medical expenses, damages and attorney's fees.

The Labor Arbiter ruled that seaman was totally and permanently disabled having been unable to work for more than 120 days and thus, entitled to full disability benefits of US\$60,000. The NLRC modified the award to US\$5,225.00 based on the Grade 12 disability assessment of the company physician. The Court of Appeals disagreed with the 120 day ruling and affirmed the decision of the NLRC.

The issue brought before the Supreme Court was whether seaman should be entitled to full disability benefits on account of his inability to perform work as a seaman for more than 120 days.

The Supreme Court ruled that the 120 days rule does not apply and that seafarer was only entitled to US\$5,525 based on the Grade 12 disability assessment of the company physician which was issued before 240 days.

#### ***240 days not 120 days***

The Supreme Court ruled that the reliance of the seaman on the case of Crystal Shipping (120 days rule), is not totally correct. This issue has been clarified in the Vergara case where it was ruled that the standard terms of the POEA Standard Employment Contract agreed upon are

intended to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code, as amended, and the applicable implementing rules and regulations.

In Vergara (and more recently in Magsaysay vs. Lobusta, January 2012), the Court enunciated the rule that “a temporary total disability only becomes permanent when so declared by the company physician within the period he is allowed to do so, or upon the expiration of the maximum 240 day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability.”

In this case, the company doctor did not declare a permanent disability and did not allow the 240 day period to lapse without declaring any disability. Instead, on the 148<sup>th</sup> day, the company doctor declared a Grade 12 disability. Thus, seafarer cannot be declared permanently disabled as he was given a Grade 12 disability prior to the 240 days.

The Court stressed thus: **“the rule is that a temporary total disability only becomes permanent when the company-designated physician, within the 240 day period, declares it to be so, or when after the lapse of the same, he fails to make such declaration.”**

***The findings of the company-designated doctor prevails***

The Court further ruled that the disability grading of the seafarer’s doctor should not to be given more weight than the disability grading given by the company-designated doctor. The POEA Standard Employment Contract clearly provides that when a seafarer sustains a work-related illness or injury while on-board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. However, if the doctor appointed by the seafarer makes a finding contrary to that of the assessment of the company-designated physician, the opinion of a third doctor may be agreed jointly between the employer and the seafarer and the decision of the said third doctor is final and binding on both of them. In this case, there was no agreement on a third doctor. Thus, the Court has no choice but to uphold the findings of the company physician.

***The degree of disability issued by the company-designated doctor is made as basis for payment of disability benefits***

The Supreme Court held that seaman is entitled only to US\$5,525 based on the following:

- a. The finding of the company-designated doctor was found to be credible.
  
- b. The finding of the company-designated doctor was supported by the opinion of seaman’s personal doctor; the seafarer’s personal doctors found that the seafarer was not permanently disabled as he was given a disability grading of only Grade 7; and, further, that the seafarer’s reflexes were normal and that he was ambulatory and able to perform his daily chores.
  
- c. The Grade 12 disability assessment of the company-designated doctor was issued within the 240 days period (issued on the 148<sup>th</sup> day of treatment).

**Author’s Note:** This is the second straight decision coming from the Supreme Court affirming the 240 days ruling rather than the 120 days ruling. As of now, there are four rulings of the Supreme Court which has sustained the 240 days view.

This is the first ruling of the Supreme Court that categorically sustained payment of disability benefits based on the assessment of the company-designated doctor which was issued within the period of 240 days. In previous cases, the Supreme Court upheld the 240 days on the ground that seaman was declared fit within said period.

***This decision stresses the importance of regularly monitoring the treatment of the seafarer and obtaining an opinion from the company-designated doctor as to the degree of disability or fitness to work of the seafarer within 240 days.***

***The decision validates Del Rosario's repeated recommendation that a disability grading must be obtained prior to the end of the 240 day period, although, it is always best to obtain said disability grading prior to the end of the 120 day period if at all practicable.***

*Allen Santiago vs. Pacbasin Shipmanagement, Inc. and/or Majestic Carriers, Inc. ; G.R. No. 194677 ; Third Division ; April 18, 2012 ; Associate Justice Jose Catral Mendoza, Ponente (Attys. Saben Loyola and Charles de la Cruz of Del Rosario & Del Rosario handled the vessel interests).*

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***"Few will dispute Del Rosario & Del Rosario's position as the Philippines' leading maritime law firm." from Asia-Pacific, The Legal 500, 2012, p. 388***

***"This unparalleled shipping firm remains at the forefront of the market." "They are in a league of their own." "They are the runaway leaders in shipping." Chambers Asia Pacific, 2012 p. 832***

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