



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

## **Philippine Shipping Updates – Manning Industry**

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., April 16, 2010

### **Supreme Court rules lymphoma not compensable; reiterates extension of 120 days to 240 days for seafarers injury or illness to be treated**

*(Author's Note: In this new ruling, Justice Arturo Brion, former Labor Secretary, reiterates various principles on seafarer's cases including the extension to 240 days for the treatment of a seafarer. Each principle is discussed below in a little more detail in order to guide the manning industry.)*

#### **Facts:**

The seafarer entered into a seven-month contract of employment with the manning agents and its foreign principal on 14 July 2004. After five (5) days, the seafarer was able to board the vessel to commence his employment. While working on-board the vessel, the seafarer felt pain on his left lower quadrant. After being subjected to a series of medical tests and surgical procedure, the seafarer was diagnosed to be suffering from lymphoma. The seafarer underwent treatment both abroad and in Manila upon his repatriation. On the seafarer's initial consultation with the company doctor, the latter considered seafarer's lymphoma as not work-related. The seafarer underwent six (6) chemotherapy sessions at the expense of the agents and its foreign principal and the company doctor after finding the lymphoma to be in complete remission declared the seafarer as fit to work.

The seafarer filed a complaint before the NLRC claiming for total and permanent disability benefits. The Labor Arbiter ruled in favor of the seafarer awarding him USD60, 000 on the ground that the illness is work-related because the same was aggravated by his work. The NLRC affirmed the award and ruled that there was reasonable connection between the seafarer's work and the development of his illness. Fortunately for the seafarer, the Court of Appeals agreed with the ruling of the NLRC and held that the company doctor's pronouncement of "fit to resume sea duties" was inconsistent with the fact that seafarer had previously undergone chemotherapy and that seafarer still needs to undergo periodic check-ups. The vessel interest appealed the ruling to the Supreme Court.

#### **The Supreme Court's ruling:**

##### **1. Law and Rules Applicable on Disability Claims**

Entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the POEA-SEC, as provided under Department Order No. 4, Series of 2000 of the Department of Labor and Employment, and the parties Collective Bargaining Agreement (CBA) bind the seaman and his employer to each other.

##### **2. Requisites for Compensability of a Disability**

For disability to be compensable under Section 20 (B) of the POEA-SEC, two elements must concur: (a) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.

### 3. Duration of Seafarer's Treatment; Declaration of Temporary Total or Permanent Partial or Total Disability

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-SEC and by applicable Philippine laws. If the 120-day 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 be declared fit to work at any time such declaration is justified by his medical condition.

### 4. "Disputably Presumed" work-related as Interpreted by the Supreme Court

Section 20 (B), paragraph (4) provides that "those illnesses not listed in Section 32-A of this Contract are *disputably presumed* as work-related." The burden is therefore placed upon the seaman to present substantial evidence, or such relevant evidence which a reasonable mind might accept as adequate to justify a conclusion that there is a causal connection between the nature of his employment and his illness, or that the risk of contracting the illness was increased by his working conditions. This, the seaman failed to do.

### 5. Lymphoma to be Considered Compensable under ECC Rules

The non-work relatedness of the seaman's illness is reinforced by the fact that under the Implementing Rules and Regulations of the Labor Code (ECC Rules), lymphoma is considered occupational only **when contracted by operating room personnel due to exposure to anesthetics**. The records do not show that the seaman's work as an assistant housekeeping manager exposed him to anesthetics.

### 6. On the Significance of PEME

The Supreme Court ruled in the past that PEME is not exploratory in nature. It was not intended to be a totally in-depth and thorough examination of an applicant's medical condition. The PEME merely determines whether one is "fit to work" at sea or "fit for sea service," it does not state the real state of health of an applicant. In short the "fit to work" declaration in the seafarer's PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment.

### 7. On the Credibility of the Findings of the Company Doctor

It is the company-designated physician who is entrusted with the task of assessing the seaman's disability. Since the company doctor deemed the seafarer as fit to resume sea duties, then such declaration should be given credence, considering the amount of time and effort she gave to monitoring and treating the seafarer's condition. It bears emphasizing that the seafarer has been under the care and supervision of the company physician since his repatriation and no contrary medical evidence exists on record disputing the company doctor's medical conclusions. The extensive medical attention the doctor has given the seafarer undeniably enabled her to acquire familiarity and detailed knowledge of the latter's medical condition.

*Magsaysay Maritime Corporation and/or Cruise Ships Catering and Services International N.V., vs. NLRC and Rommel Cedol; G.R. No. 186180; Second Division; March 22, 2010, Supreme Court Associate Justice Arturo D. Brion, Ponente. (Attys. Agnes Lucero and Herbert Tria of Del Rosario & Del Rosario handled for vessel interests.)*

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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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