



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

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

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., July 19, 2010

### **Supreme Court rules HIV / Aids not compensable; orders return of paid death benefits**

Seafarer was employed as First Engineer. After one month on board the vessel, he became ill and was found to be suffering from advanced mycobacterium tuberculosis, advanced Human Immunodeficiency Virus (HIV) disease, cardiac dysrhythmias and anemia.

On June 1999, he was repatriated for further medical treatment and evaluation. Approximately two (2) years after his repatriation, seafarer died of pneumonia and AIDS was the underlying cause of his death. Seafarer's wife and their children (petitioners) demanded payment of death benefits from vessel interests (respondents).

The Labor Arbiter dismissed the complaint. The Arbiter held that seafarer's illness was pre-existing and that he was already afflicted with HIV when he boarded the respondents' vessel. The Arbiter also noted that the seafarer admitted to his foreign nurse that he had concealed his condition from the respondents.

The NLRC reversed the decision of the Labor Arbiter and ordered the respondents to pay US\$60,000 as death benefits and US\$15,000 to each of their three (3) children. The commission held that the Labor Arbiter erred in concluding that seafarer's illness was pre-existing based on the National Reference Testing Center for HIV Testing and the foreign nurse's report. The HIV testing report did not identify the seafarer by name and that the foreign nurse's report was unsigned. The commission further ruled that seafarer's illness was aggravated by his employment as he was exposed to various engine toxics and deleterious residues and substances such as metallic iron, oxides, asbestos and carbon monoxides.

The Court of Appeals reversed the decision of the NLRC. The court ruled that **death arising from a pre-existing illness is not compensable**. The court said that although, seafarer was pronounced fit to work after undergoing the PEME, PEME is not so exploratory and cannot determine the person's real state of health. The court declared that the PEME result is unreliable to determine person's real state of health because a **PEME is not so exploratory**. Further, seafarer failed to disclose his true state of health and failed to show a reasonable connection between his working conditions and his illness.

Petitioners went before the Supreme Court. The Court ruled that petitioners are not entitled to death benefits.

Seafarer was repatriated for medical reasons on June 1999. When the seafarer died on June 2001, approximately two (2) years after his repatriation, his employment with the respondents had long been terminated. The Court ruled that **“death must occur during the term of his contract of employment.”**

The Court held that death of a seaman during the term of employment makes the employer liable to his heirs for death compensation benefits. Once it is established that the seaman died during the effectivity of his employment contract, the employer is liable. **However, if the seaman dies after the termination of his contract of employment, his beneficiaries are not entitled to the death benefits.**

Moreover, the court enumerated three (3) reasons to deny petitioners' claim that there was a reasonable connection between the seafarer's work and the illnesses that caused his death: (1) the PEME determines whether one is fit to work at sea or fit for sea service. It does not reveal the real state of health of an applicant ; (2) in the absence of any record of blood transfusion of the seafarer while on board, it appears that he acquired his AIDS through sexual relations with an infected person and not because of his brief **two (2) months** stay on board or his working conditions during that period ; (3) HIV / AIDS is a disease of the immune system that does not progress to the point of attracting opportunistic infections until the immune system has substantially been weakened by the progress of the disease. It does not reach this advanced

stage in **two (2) months' time** as established medical literature shows. Based on these three (3) considerations, the Court cannot escape the conclusion that the petition is without merit.

**Further, the Court ordered petitioners to return the amount of Php 4,737,810.00 to the respondents.**

*Lydia Escarcha, for and in behalf of Joseph Erwin M. Escarcha, Sheila May Escarcha, and Alyssa M. Escarcha vs. Leonis Navigation Co., Inc. and/or World Marine Panama, S.A.,; G.R. No. 182740; Third Division; July 5, 2010, Supreme Court Associate Justice Arturo D. Brion, Ponente. (Attys. Herbert Tria and Florencio Aquino 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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