



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., October 28, 2010

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Update on the Amended Migrant Workers Act (AMWA – Republic Act No. 10022)

IG Clubs Position on the Certificate of Cover

My article of October 27, 2010, particularly on the statement that you should check with your P&I Club, has generated some queries on whether the IG Club position on the Certificate of Cover has changed. It has **not** changed and the IG Clubs position remains and is as follows:

*It is **not** for the Club to authorize issuance of the Certificate of Cover. The (IG) Circulars stated that shipowner entered Members, in close liaison with their Manning Agents, will need to consider the insurance required to achieve compliance with the AMWA and that the POEA and the JMG are aware that the Certificate of Cover has not been approved by the IG and that no assumptions should be drawn from the wording of the COC in relation to the scope of Club cover.*

POEA Standard Employment Contract has been amended; becomes effective 12 November 2010

POEA Governing Board Resolution No. 10 dated 4 October 2010 and POEA Memorandum Circular No. 10 dated 26 October 2010 which amends the POEA Standard Employment Contract was published in the Manila Times today, 28 October 2010. It becomes effective 15 days from publication which is on Friday, 12 November 2010. The said GBR and MC can be downloaded at www.delrosariolaw.com

Certain AMWA compulsory insurance provisions have been incorporated in the amended contract. Also, issues on the 120 days have been addressed.

Del Rosario is currently reviewing the amendments and will revert at the next shipping update.

Supreme Court rules major depression not compensable; failure to undergo post-medical examination within 3 working days from arrival, a ground for denial of benefits

Seafarer (Respondent) was deployed but was repatriated after twenty-three (23) days, pursuant to his request that he will be relieved. Respondent then consulted an independent physician who diagnosed him to be suffering from major depression with psychotic features R/O traumatic disorder.

Respondent filed a complaint for payment of disability benefits, sickness allowance, damages and attorney's fees, alleging that the working conditions at the vessel exposed him to humiliation and mental abuse causing him to suffer hypertension and depression. He further alleged that his request for post-employment medical examination upon repatriation was denied by the petitioner.

Petitioners (vessel interests) averred that respondent's repatriation was due to his letter-request to be relieved from work and that his alleged hypertension and depression could not have been acquired during his brief stay on board the vessel.

The Labor Arbiter ruled in favor of the respondent and awarded him permanent total disability benefits amounting to US\$60,000.00, sickness allowance, moral and exemplary damages and attorney's fees. The Labor Arbiter held that since respondent's pre-medical employment records showed that he was fit for sea duty, he could only have acquired the illnesses complained of during his duty at the vessel. The Labor Arbiter also added that while major depression is not listed as an occupational disease, respondent had proven that it was work-related and the risk of contracting it was increased by the working conditions aboard the vessel.

The NLRC set aside the decision of the Labor Arbiter and dismissed respondent's complaint. The NLRC held that respondent made a request to be relieved and the latter failed to undergo the mandatory post-employment medical examination. Moreover, respondent failed to show that his repatriation was due to a work-related illness and that depression is not an occupational disease, hence, not compensable. The NLRC further noted that respondent sought medical assistance only a month after his repatriation.

The Court of Appeals reversed the decision of the NLRC and reinstated that of the Labor Arbiter. The appellate court ruled that respondent's depression which rendered him unfit to work was a direct result of the demands of his shipboard employment and the harsh and inhumane treatment of the vessel's officers towards him.

The Supreme Court granted the petition and dismissed the complaint. **The Court ruled that respondent failed to undergo post-employment medical examination by a company-designated physician within three (3) working days from arrival. Hence, he forfeited his right to claim disability benefits. The Court said that respondent merely consulted an independent physician more than one (1) month after his arrival.** The Court also ruled that mental diseases to be compensable, the POEA-SEC requires that it must be due to traumatic injury to the head in which did not occur to the respondent. The Court held that "For an injury or illness to be duly compensated under POEA Contract, there must be a showing that the injury or illness and the ensuing disability occurred during the effectivity of the employment contract."

Philippine Transmarine Carriers, Inc., Global Navigation, Ltd., vs. Silvano Nazam ; GR No. 190804; Third Division; October 11, 2010, Supreme Court Associate Justice Conchita Carpio-Morales , Ponente. (Atty. Herbert Tria of Del Rosario & Del Rosario handled for vessel interests)

*"The Philippines' top shipping firm, **Del Rosario & Del Rosario** has a wealth of talent at its disposal."*

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.

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