



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., December 16, 2011 (Issue 2011/08)

This issue contains the following:

Season's Greetings / Holiday Notice

Supreme Court rules that continuous rehiring for eight years does not mean illness was acquired during employment

Supreme Court rules death compensable as alleged suicide was not proven

Season's Greetings

To clients and friends,

As always, in lieu of Christmas cards/giveaways, we have donated in your name to the Sacred Heart Chapel of the Santuario de San Jose, a church put up by our founder, Arturo M. Del Rosario Sr. We have also donated to the Church of the Poor Apostolate (COPA) of the St. James the Great Parish. COPA helps the 100 poorest parishes in the Philippines. We have further donated to Tuloy Foundation which helps street children in Metro Manila. These children are provided a home, education and their daily needs.

As Del Rosario enters its 35th year, we thank all who have continually given us their trust and confidence. May you and your family have a joyous Christmas and may the coming year 2012 bless us all with good health, happiness and prosperity.

For and in behalf of all of us at Del Rosario & Del Rosario and Del Rosario Pandiphil Inc.

Ruben Del Rosario / Arturo Del Rosario

Holiday Notice

During the season of Christmas and New Year, only Friday, December 30 is an official holiday in the Philippines. Our offices will be open during the week and emails will be monitored during the weekends.

For urgent assistance, please call our:

24/7 mobile, 63 917 830 8384

Our website www.delrosariolaw.com has our partners' emergency numbers.

Supreme Court rules that continuous re-hiring for eight years does not mean that the illness was acquired during employment

Seafarer is a Messman who was employed on different contracts by the company since 1992. His last assignment was from November 1999 to July 2000. The seafarer finished his last contract and took his vacation. On March 2001, he re-applied with the company and was made to undergo a PEME. It was during PEME that he was found to be suffering from varicose veins and was declared unfit for sea duty. Because of this "varicose veins", a claim for permanent disability benefits was filed by the seafarer.

The Labor Arbiter dismissed the complaint for lack of merit. On appeal, the NLRC reversed the Labor Arbiter's decision and ordered the company to pay the seafarer disability compensation amounting to US\$60,000.00. A Petition was filed by the company with the Court of Appeals.

The Court of Appeals ruled in favor of the company holding that the seafarer is not entitled to disability compensation since he failed to show work-relation of his medical condition.

When the matter reached the Supreme Court, the claim of the seafarer was still denied. The Court on three points, held:

1. *Need to present evidence even though the illness may be disputably presumed to be work-related.*

"At any rate, granting that the provisions of the 2000 POEA-SEC apply, the disputable presumption provision in Section 20 (B) does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness. Contrary to his position, he still has to substantiate his claim in order to be entitled to disability compensation. He has to prove that the illness he suffered was work-related and that it must have existed during the term of his employment contract. He cannot simply argue that the burden of proof belongs to respondent company.

2. *The fact of continuous rehiring does not mean that the illness was acquired during employment.*

"Thus, respondent company can argue that petitioner's eight (8) years of service with it did not automatically mean that he acquired his varicose veins by reason of such employment. His sea service was not an unbroken service. The fact that he never applied for a job with any other employer is of no moment. He enjoyed month-long "sign-off" vacations when his contract expired. It is possible that he acquired his condition during one of his "sign-off" periods."

3. *Failing the PEME is not indicative of permanent disability.*

“Lastly, there is also no proof that petitioner’s varicose veins caused him to suffer total and permanent disability. The Pre-Employment Medical Examination (*PEME*) he underwent cannot serve as enough basis to justify a finding of a total and permanent disability because of its non-exploratory nature.

Besides, it was not expressly stated in his medical diagnosis that his illness was equivalent to a total and permanent disability. Absent any indication, the Court cannot accommodate him.”

Author’s Note: A side issue in this case was what POEA Contract should be applied – the 1996 contract or the 2000 contract? Supreme Court held that it is the 1996 POEA Contract which should apply but even if the disputable presumption clause in the 2000 POEA Contract (which is not present in the 1996 POEA Contract) is applied, seafarer’s claim should still be denied.

Gilbert Quizora vs. Denholm Crew Management (Philippines), Inc. G.R. No. 185412; Third Division, November 16, 2011, Associate Justice Jose Catral Mendoza, Ponente

Supreme Court rules death compensable as alleged suicide was not proven

The seafarer’s cabin was forced open by the crew and later found his lifeless body on a kneeling position hanging by a strap on his neck inside his locker. The body was turned over to the Saudi police authorities and an autopsy was conducted. The doctor who conducted the autopsy ruled that seafarer committed suicide by hanging himself. Thereafter, the seafarer’s remains were repatriated.

An autopsy was then requested by the family which was conducted by a medico-legal officer of the National Bureau of Investigation (NBI). The results of said autopsy stated that the seafarer died of asphyxia by strangulation which meant that somebody caused his death. The seafarer’s brother filed a complaint for death compensation benefits before the POEA which was eventually transferred to the Labor Arbiter of the NLRC. The Labor Arbiter awarded death benefits of US\$50,000 to the heirs considering that the company failed to overcome the burden of proof that seaman’s death is not compensable. Such award was affirmed by the NLRC on appeal and eventually by the Court of Appeals.

The company elevated the matter to the Supreme Court to question the ruling of awarding death benefits. It was argued that based on the autopsy conducted by the Saudi Arabian authorities, the seaman committed suicide by hanging himself, thus, his death is not compensable. The company also presented the statement of the crew stating that the seaman’s cabin door was locked, they forced it open and found seaman inside the locker room hanging by a strap on his neck in a kneeling position.

The Supreme Court upheld the award of death benefits for the following reasons:

1. The original autopsy report prepared in Saudi Arabia was never presented. What was presented was the English translation of said report which was not only a photocopy but is also unsigned. The identity of the person who made the translation and whether the translator has the recognized competence in both English and the language the medical report was originally written were not established. Thus, there is no clear assurance that the translated words are the accurate translation of the original medical report. Furthermore, the alleged translated medical report was not even signed by the Saudi Arabian doctor which then creates doubt as to its authenticity. The court held that **the unsigned translated medical report is nothing but a self-serving document which ought to be treated as a mere scrap of paper devoid of any evidentiary value even in administrative proceedings**

2. Between the independent report of the NBI and the mere photocopy of the alleged medical report of a Saudi Arabian doctor, the former should prevail and given full credence.

3. The statement of the crew fails to satisfactorily show the circumstances surrounding seaman's death or proves that he committed suicide.

In all, the Supreme Court found that the records are bereft of any substantial evidence showing that the company successfully discharged its burden of proving that the seaman committed suicide so as to evade its liability for death benefits under the POEA Contract.

Author's Note: The POEA Contract involved in this case is circa 1989 where work-relation of death is not a requirement. In the 1989 POEA Contract (as well as the 1995 POEA Contract), once death occurs during the term of employment it is compensable unless excepted by death due to a willful act on his own life by the seaman.

Maritime Factors, Inc. vs. Bienvenido Hindang, G.R. No. 151993; Third Division, October 19, 2011, Associate Justice Diosdado Peralta, Ponente

*"Del Rosario & Del Rosario remains the Philippines' leading firm for maritime law."
from Asia-Pacific, The Legal 500, 2010-2011, p. 347*

*"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.

This publication is sent from time to time to clients and friends. To unsubscribe, reply to this email and put "[unsubscribe](#)" in the subject.

Social Networking Sites



Twitter ID: delrosariopandi



Facebook Page: DelRosarioLaw

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; www.delrosario-pandiphil.com

