



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

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

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., December 17, 2010

This issue contains the following:

Season's Greetings / Holiday Notice

Supreme Court disallows compensation for pre-existing illness; rules illness must be proven to be work-related

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## **Season's Greetings**

To clients and friends,

As always, in lieu of Christmas cards/giveaways, we have donated in your name 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 also 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 34<sup>th</sup> year, we thank all who have continually given us their trust and confidence. We always strive to live up to your expectations.

We extend our very Merry Christmas to all and may your New Year be both peaceful and prosperous.

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**

***Due to officially declared holidays and the weekends, our offices will be closed from Friday, 24 December to Monday, 27 December 2010 and from Friday, 31 December 2010 to Sunday, 2 January 2011.***

*Our offices are open on Tuesday, 28 December to Thursday, 30 December 2010.*

*Our offices reopen on Monday, 3 January 2011.*

*Emails (not faxes) will be monitored but for urgent assistance, please call our:*

***24/7 mobile, 63 917 830 8384***

*Our website [www.delrosariolaw.com](http://www.delrosariolaw.com) has partners' emergency numbers.*

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## Supreme Court disallows compensation for pre-existing illness; rules illness must be proven to be work-related

Seafarer (petitioner) was on a fourth contract with vessel interests (respondents). During this third contract, he had a *generalized tonic-clonic type seizure disorder possibly alcohol-induced*. He was treated for such seizure and was rehired as he was declared fit to work in his PEME.

Unfortunately, on his fourth contract, his seizures recurred and he was again repatriated. He was treated for 120 days and thereafter his treatment was stopped due to non-work-relation of the illness as declared by the company doctor. Seafarer consulted his own private physician who declared that his illness was work-related with a Grade X (20.15%) disability.

Seafarer filed a claim before the Labor Arbiter.

The Labor Arbiter ruled in favor of the petitioner for two reasons: the illness occurred during the effectivity of the contract and his illness was not pre-existing as it could have been discovered during his PEME.

The NLRC overturned the decision of the Labor Arbiter and ruled that petitioner's illness was pre-existing because it was the same illness for which he was medically repatriated under a previous contract with the respondents. Moreover, the commission said that even if petitioner was fit to work at the time of his engagement, it could not be the basis to grant compensation as the results of PEME is not a measure of the seafarer's true state of health.

The Court of Appeals upheld the decision of the NLRC. The court ruled that under the POEA-SEC, for an illness to be compensable, it must be the result of a work-related injury or illness. The court further held that the company physician's findings of non-work-relation deserve greater weight than that of seafarer's physician.

The case was brought before the Supreme Court which ruled against the seafarer.

The Court ruled:

Petitioner's four contracts are independent of each other. The seafarer, when he was in his fourth contract, had a pre-existing illness of seizure disorder. As it was pre-existing, it is not compensable. The fact that petitioner was subsequently rehired despite knowledge of his pre-existing condition of seizure attacks does not make the vessel a guarantor of his health. Although seafarer undertook and passed his PEME, PEME cannot be relied upon on seafarer's true state of health.

Further, even assuming that the illness is not pre-existing, petitioner still has to prove not only that it happened on board the vessel but that it is a result of a work-injury or illness or at least aggravated by the conditions of his work for which he was contracted for. Petitioner failed to discharge this burden. The fact that the cause of the illness is unknown, does not discharge the burden of petitioner to show a reasonable connection between the illness and his work.

Also, the company physician treated seafarer for a number of months and declared such illness as not work-related. The fact that this was disputed by seafarer's own physician is of no moment as the POEA provides for the appointment of a third doctor. This procedure was not availed of by the parties.

*Jerry M. Francisco vs. Bahia Shipping Services, Inc. and/or Cynthia C. Mendoza and Fred Olsen Cruise Lines, Ltd.; G.R. No. 190545 ; November 22,2010 ; Third Division; Associate Justice Conchita Carpio-Morales, Ponente.*

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***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](mailto:ruben.delrosario@delrosario-pandiphil.com).

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