



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Updates – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., December 21, 2009

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Season's Greetings

To clients and friends,

As always, in lieu of Christmas cards/give-aways, 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 33rd 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 the coming 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 Thursday, 24 December to Sunday, 27 December 2009 and from Wednesday, 30 December 2009 to Sunday, 3 January 2010.

Our offices are open on Monday, 28 December and Tuesday, 29 December 2009.

Our offices reopen on Monday, 4 January 2010.

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 has partners' emergency numbers.

Update on Proposed Migrant Workers Act

The proposed bill has been approved by the bicameral conference committee. It now goes for a vote before the plenary session of Congress. The Joint Manning Group has been working and is still hopeful that the proposed bill do not unduly prejudice the interests of the seafaring industry. We will keep you updated.

Court of Appeals reverses NLRC; upholds findings of company physician and upholds as valid release signed by seafarer

Seafarer strained his back while lifting a 50-kilo flour bag. He was treated for his back pain and was declared fit to work. He was paid his sickness benefits and medical claims in exchange for receipt/ quitclaim.

He reapplied for redeployment but was made to sign a waiver of claims in case his previous back pain recurs. However, he was denied redeployment on the ground that he had gallbladder polyps. He consulted his own physician who diagnosed him to be suffering from Grade 6 disability.

The Labor Arbiter and the NLRC awarded full disability benefits of US\$60,000 as seafarer was unable to work for more than 120 days.

The Court of Appeals reversed the decision of the NLRC.

The court ruled that seafarer accepted the fact that he was fit to work when he applied for redeployment. The fact that he also executed an affidavit/undertaking not to claim for his previous injury also showed he accepted such fitness to work.

The court ruled that more weight should be given to findings of the company physician who conducted extensive medical attention to the seafarer over one who merely based his opinion on medical records.

On the fact the seafarer had not been able to work for more than 120 days, the Court held that “he had already been fully compensated his sickness benefits and all other medical claims in the aggregate sum of US\$1,194.88.”

The court further held that the release documents which released vessel interests from liability should be given credence as the worker voluntarily accepted a reasonable amount in settlement of his claims. Thus, the deed of release or quitclaim is deemed a valid and binding compromise agreement which cannot be set aside merely because seafarer subsequently changed his mind.

Skippers United Pacific, Inc. and Commercial S.A., vs. National Labor Relations Commission, and Marino B. Daang ; G.R. S.P. No. 107561; Special Ninth Division; October 15, 2009, Court of Appeals Associate Justice Rebecca De Guia-Salvador, Ponente. (Attys. Catherine Mangahas and Joseph Rebanos of Del Rosario & Del Rosario handled for vessel interests.)

Court of Appeals reverses NLRC on compensation for “bony-impacted wisdom teeth”; PEME does not state real state of health of applicant

Seafarer was diagnosed by the company-designated physician of having ameloblastoma which is a benign, non-malignant tumor of the right lower jaw which is often the result of non-extracted bony impacted wisdom tooth. (This is the reason why dentists recommend the extraction of impacted wisdom teeth.)

Seafarer underwent a medical operation. Seafarer alleged that after his operation, he was no longer employed by the vessel interests. He then filed a complaint for permanent total disability benefits.

The Labor Arbiter denied the complaint and ruled that respondent’s illness was not work-related.

The NLRC reversed the decision of the Labor Arbiter and awarded US\$60,000.00.

The Court of Appeals reversed the decision of the NLRC. The court ruled that respondent's illness of ameloblastoma was not work-related as it is not listed as an occupational disease in the Amended Rules on Employees' Compensation. Further, there was no reasonable connection between the respondent's illness and the nature of his job. The court reiterated the rule that **awards of compensation cannot rest on speculations and presumptions as the claimant must prove a positive thing.**

Moreover, the court disagreed with the NLRC which ruled that the PEME's finding of "fitness to work" precluded the employer from declaring otherwise. The fact that respondent was declared fit to work before boarding **does not necessarily** follow that he is free from any illness nor that any illness that he may have suffered onboard is considered work-related. **PEME is 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 for sea service, it does not state the real state of health of an applicant."**

Career Phils., Ship Management Inc. and/or Columbia Ship Management Ltd., vs. Damaso Casomo, et al.; G.R. No. 102925, Six Division, November 12, 2009, Court of Appeals Associate Justice Arcangelita Romilla-Lontok, Ponente; (Attys. Catherine Mangahas and Charles de la Cruz 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 .

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

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