



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Updates – Manning Industry

By: Ruben Del Rosario, Managing Director, Del Rosario Pandiphil Inc., December 12, 2006

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Statistics from the NLRC

NLRC Commissioner and two other POEA officials charged with direct bribery

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Statistics from the NLRC

The latest statistics from the NLRC is for the year 2004. Based on NLRC 2004 statistics, an estimated 3,061 cases were filed in the NLRC by the seafaring industry in the year 2004. The National Capital Region received 1,481 cases while the rest were from outside the National Capital Region.

It may be surprising to note that only 1.3% of Filipino seafarers ended up filing cases in the NLRC. This is based on an estimated 3,061 cases filed by seafarers in the entire Philippines and assumes that there are 220,000 seafarers.

Of the estimated 3,061 cases filed, 1,481 cases were filed in the National Capital Region with breakdown as follows:

Breakdown:

14.30% or 213 – Illegal Dismissal

53.20% or 788 - Disability Benefits

14.30% or 213 - Death Benefits

18.20% or 267 – Other money claims

NLRC Commissioner and two POEA officials charged with direct bribery

NLRC Commissioner Victoriano Calaycay and two other POEA officials were charged with direct bribery after being entrapped by National Bureau of Investigation (NBI) agents. P200,000 was allegedly given by a complainant to Commissioner Calaycay in a hotel restaurant in Manila allegedly in exchange for the facilitation of a POEA license. All are now out on P30,000 (US\$600) bail. Labor Secretary Arturo Brion has been quoted as saying he will suspend the charged officials.

In a separate news item, the findings of the Social Weather Station 2005-2006 "Diagnostic Study of the Judiciary" state that 17% of the judges believe that Regional Trial Court judges are corrupt, 14% feel that their colleagues in the Metropolitan Trial Court take bribes and 12% think that judges in the Court of Appeals are on the take. The study was sponsored by the Asia Foundation with support of the United States Agency for International Development.

PEME not measure of seafarer's true state of health

In a case decided on September 27, 2006, the Supreme Court ruled that a seafarer cannot rely on his PEME to prove that he acquired his illness during employment. The Court held that while a PEME may reveal enough for vessel interests to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform vessel interests of seafarer's true state of health. The PEME could not have divulged respondent's illness considering that the examinations were not exploratory. It was only after respondent seafarer was subjected to extensive medical procedures including MRI of the thoracic and lumbosacral spine that seafarer's illness was finally diagnosed as a case of avascular necrosis of the hip with septic arthritis. As seafarer had revealed that his illness antedated his employment by nine days, his claim was dismissed since disability arising from a pre-existing illness is not compensable. (NYK-FIL Ship Management, Inc. and/or NYK Ship Management HK., Ltd., vs. NLRC and Lauro A. Hernandez, G.R. No. 161104, September 27, 2006, Third Division, Justice Conchita Carpio-Morales, Ponente)

Supreme Court upholds findings of company-designated physician; sustains validity of Release and Quitclaim

In a decision of June 27, 2006, the Supreme Court upheld the findings of the company physician. The summary of the case is as follows:

Seafarer suffered lumbar sprain and had diabetes. After treatment by the company-designated physician, he was declared "fit to work". After three months, he was paid sickness wages and he signed a release and quitclaim. After eleven months, seafarer filed a claim for benefits and argued that his personal physicians found him "unfit to work" and entitled to Grade 8 disability. The Supreme Court ruled that under the POEA Standard Employment Contract, it is the company-designated physician that determines fitness to work. The company physician extensively treated seafarer and seafarer had no more medical complaints. Seafarer never questioned the competency and assessment of the company physician. In fact, seafarer signed a release and quitclaim which he understood as it was in Filipino wherein he admitted the correctness of the assessment of the company doctor and acknowledged that he could no longer claim for disability benefits (Benjamin L. Sarocam vs. InterOrient Maritime Ent. Inc. and Demaco United Ltd., G.R. No. 167813, June 27, 2006, First Division, Justice Romeo Callejo Sr., Ponente)

FAME inducts officers for 2006 – 2007

Engr. Samuel T. Lim of Great Southern Maritime Services Corp. is the newly elected President of the Filipino Association of Mariners Employment. He succeeds Josephine Francisco of NYK-Fil Ship Management Inc. The other elected officers are Marlon Rono of Magsaysay Maritime as VP-Internal Affairs, Jose Albar G. Kato of Albar Shipping as VP-External Affairs; Ericson M. Marquez as Secretary; Commo. Adonis B. Donato of OSM Maritime Services Inc. as Treasurer; Directors are Capt. Reynaldo Casareo (Cargo Safeway), Capt. Teodoro Quijano (Barko Int'l), Capt. Victor Del Prado (Klaveness Maritime); James Nicoll (Philippine Hammonia), Capt. Alfonso Del Castillo (TSM Shipping), Capt. Lou Atienza (Euro-Asiatic Shipping Inc.), Vicente Aldanese Jr. (CMS Crew Management), Michael Estaniel (Trans-Global Maritime), Capt. Jose Mangabat (Blue Manila) and Reuben Romero (Southfield Agencies). The induction of officers was held recently during the Christmas Party of FAME with Labor Secretary Arturo Brion as inducting officer.

Seasons Greetings / Holiday Notice

To clients and friends,

In lieu of Christmas cards and giveaways this year, 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 30th year**, we thank all who have continually given us their trust and confidence. We will always strive to live up to 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,

Ruben Del Rosario / Arturo Del Rosario

*P.S. **Holiday Notice.** Aside from the weekends, our offices will be closed Monday, 25 December; Tuesday, 26 December; Monday, 1 January and Tuesday 2 January. For urgent assistance, please call our 24/7 mobile, 63 917 830 8384. You may also call the following: Charles de la Cruz 63 917 536 4269; Joseph Rebano 63 920 938 4634; Herbert Tria 63 917 322 8712*

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 mail@delrosario-pandiphil.com.

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This publication is only intended to summarize general points of interest in the material discussed herein. It is not intended to be exhaustive, accurate or to be legal advice with respect to the matters discussed.

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