



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

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

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., July 5, 2013 (Issue 2013/09)

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### **Supreme Court rules the return of excess payment made during execution proceedings in view of agreement by seafarer**

The case involves a seafarer who was claiming disability benefits under a collective bargaining agreement in the amount of US\$80,000 and sick wages in the amount of US\$1,320. After the proceedings with the Labor Arbiter, the seafarer was awarded his claim plus 10% thereof as attorney's fees or the total amount of US\$89,452. The Labor Arbiter's decision was affirmed by the NLRC and after the NLRC denied the company's Motion for Reconsideration, an entry of judgment was issued to certify that the decision is already final and executory.

Execution proceedings were commenced by the seafarer and in due course, the company was constrained to pay the full judgment award although it still had the remedy of elevating the case to the Court of Appeals by virtue of a Petition for Certiorari. In exchange for payment, the seaman and his counsel executed a document recognizing that payment will not bar the right of the company to file a petition and should the same be successful, the seafarer will return the money paid to him because of the execution proceedings.

A petition was then filed by the company and the Court of Appeals ruled that seafarer is entitled only to US\$60,000 disability benefits. The company manifested before the Court of Appeals that the decision should be modified and compel the seafarer to return the excess amount of US\$29,452 in favour of the company.

The Court of Appeals noted that payment has been previously made and considered the Petition moot as the NLRC decision already became final and executory 10 days after the denial of the Motion for Reconsideration. In fact, payment was made even before the petition was filed.

This ruling of the Court of Appeals was questioned by the company before the Supreme Court.

The Supreme Court said that the decision of the NLRC is subject to judicial review of the Court of Appeals by filing a Petition for Certiorari within 60 days from notice of the decision or resolution being assailed. As such, when the company filed a Petition for Certiorari within 60 days and although after the NLRC already issued an entry of judgment, the Court of Appeals can still grant the petition and accordingly nullify or modify the decision of the NLRC. If the Court of Appeals grants the petition and nullifies the decision of the NLRC, in contemplation of law, the NLRC decision is void and will not attain a final and executory status.

***As to the return of funds, the seafarer previously agreed he would return the amount paid should the Petition for Certiorari be granted by the Court of Appeals. The Supreme Court noted that since the Court of Appeals granted the petition, although partially, the seafarer must comply with his obligation to return the***

**excess amount paid to him.**

**The undertaking of the seafarer was a fair and binding agreement and to allow him to retain the excess amount paid to him would result to unjust enrichment to the prejudice of the company.**

*Philippine Transmarine Carriers, Inc. v. Leandro Legaspi; G.R. No. 202791; Third Division; June 19, 2013; Associate Justice Jose Catral Mendoza, Ponente (Attys. Maricris Ferrer and Herbert Tria of Del Rosario & Del Rosario handled for vessel interests)*

## **Department of Labor and Employment issues order allowing seafarers to communicate an on-board complaint to the POEA**

The Department of Labor and Employment issued Department Order No. 127, Series of 2013 on the matter of Conciliation-Mediation of Labor Disputes in the Overseas Ship Manning Industry. The DOLE has directed all concerned government agencies to open all communication lines to strengthen the modes of conciliation and mediation of labor disputes in the maritime industry. A Filipino seafarer may communicate an on-board complaint to the POEA either through email, phone call or postal mail. The POEA will provide the seafarer impartial advice on the complaint and assist them in following the complaint procedures. All complaints should be strictly held in confidence.

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***“Few will dispute Del Rosario & Del Rosario’s position as the Philippines’ leading maritime law firm.” from Asia-Pacific, The Legal 500, 2012, p. 388***

***“This unparalleled shipping firm remains at the forefront of the market.” “They are in a league of their own.” “They are the runaway leaders in shipping.” Chambers Asia Pacific, 2012 p. 832***

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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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