DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

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Disputable Presumption Clause in POEA Contract upheld by the Supreme Court

Seaman worked on-board crude tankers since December 2004 with the same company. On November 2006, he complained of intolerable pain on his left foot. He was then repatriated for further medical treatment. He was diagnosed with malignant fibrous histiocytoma. The company-designated doctor opined that work-relation of the illness is dependent on whether seaman was exposed to ionizing radiation, phenoxyacetic acid, cholorophenols, thorotrast, vinyl chloride, arsenic compunds. The company also issued a certification stating that seaman was assessed by the company-designated doctor with a grade "1" disability.

The Labor Arbiter held that seaman is entitled to be paid his total disability compensation plus damages and attorney's fees in the amount of US$115,500 and Php426,645.69.

The NLRC affirmed the decision of the Labor Arbiter.

The Court of Appeals reversed the decision of the NLRC and declared that seaman's illness is not listed as an occupational disease under Section 32-A of the POEA SEC and he failed to prove that his illness is work-related.

The Supreme Court reinstated the decision of the NLRC.

Disputable presumption of work-relation of illness

The Court held that Section 20 B (4) of the POEA Contract clearly established a disputable presumption in favor of the compensability of an illness suffered by a seafarer during the term of is contract. This disputable presumption works in favor of the employee pursuant to the mandate under executive Order No. 247 dated July 21, 1987 under which the POEA-SEC was created: "to secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and "to protect the well-being of Filipino workers overseas." Hence, unless contrary evidence is presented by the seafarer's employer/s, this disputable presumption stands.

The Court further noted that the medical opinion of the company-designated doctor does not categorically state that the illness is not work-related. As such, the imprecise and ambivalent medical opinion of the company-designated doctor regarding work-relation of the illness was construed in favor of the seaman.

Reasonable connection of the illness to work was established

The Court established that seaman was frequently exposed to crude oil that the vessel was carrying. The chemical components of crude oil include, among others, sulphur, vanadium and arsenic compounds. Hydrogen sulphide and carbon monoxide may also be encountered, while benzene is a naturally occurring chemical in crude oil. It has been regarded that these hazardous chemicals can possibly contribute to the formation of cancerous masses. Seaman's illness is a class of soft tissue sarcoma. The etiology of soft tissue sarcomas are multifactorial. These factors include exposure to chemical carcinogens like some of the chemical components of crude oil. Clearly, seaman has provided more than a reasonable relation between the nature of his job and the disease that manifested itself during his employment.

The Court reminded that it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee

and his work to lead a rational mind to conclude that his work as a seafarer may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.

Certification of grade "1" disability by the company and payment of sickwages validates work-relation

The Court considered the certification issued by the company, stating that their doctors assessed seaman's disability at grade "1", as validation of the relation of the illness to the work of the seaman. The defense that the grade "1" disability pertains to the gravity of the ailment and not whether it is work related was not upheld. The Court ruled that the company has no business in certifying the gravity of an illness suffered by an employee unless it is in relation to the latter's employment. As such, the certification issued by the company regarding the classification/grading of the seaman's illness can only be taken as a strong validation of the relation between seaman's illness and his employment as a seafarer with the company.

Also, the Court noted that the company has paid the seaman sickwages which may be considered as recognizing that the illness is work-related. Under the POEA Contract, sickwages are payable only when the seafarer suffers a work-related injury or illness during the term of his contract. As such, an illness which was at the start recognized as work-related cannot evolve to an illness not connected to employment.

Author's Note: The disputable presumption clause of the POEA Contract states: "Those illnesses not listed in Section 32 of the Contract (list of occupational diseases) are disputably presumed as work-related. While the provision appears to have a simple meaning, this has been interpreted in two ways by the Supreme Court in past cases.

In Magsaysay Maritime Corp. v. Cedol (2010), Quizora v. Denholm Crew Management Services, Inc. (2011) and Casomo v. Career Phils. Shipmanagement, Inc. (2012), the Supreme Court held that despite the disputable presumption clause in the POEA Contract, the seafarer still has the burden of proof to present evidence that his illness is work-related.

However, in Fil-Star Maritime, Inc. v. Rosete (2011) and the case subject of this article, the Supreme Court has ruled that in the absence of contrary evidence, the disputable presumption of work-relation stands.

It would also appear that the Court considered the illness of the seaman to be work-related considering that a grade "1" disability was issued and that sickwages were paid. It is the author's view that mere determination of degree of disability should not have been a factor to consider whether the same is work-related. The determination of a degree of disability would just show the extent or gravity of the disability and not whether it is work-related. In the same manner, payment of sickwages should not be considered as recognizing the illness to be work-related. There are instances when sickwages are being paid by the company out of generosity or because at that time, the issue of work-relation has not been established and as such, the illness is disputably presumed to be work-related entitling the seaman to receive sickwages.

In any event, in view of the conflicting Supreme Court decisions on the "disputable presumption", it is important that vessel interests present proof of non-work-relation to ensure that the illness or injury is to be considered non-work-related and thus, not compensable.

Jessie David, represented by his wife, Ma. Theresa David and children, Katherine and Kristina David vs. OSG Shipmanagement Manila, Inc. and/or Michaelmar Shipping Services ; G.R. No. 197205; Third Division, September 26, 2012; Associate Justice Presbitero Velasco, Ponente (Attys. Pamela Coseip-Abarico and Joseph Manolo Rebano of Del Rosario & Del Rosario handled for vessel interests).

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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 .

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