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Summary of the 120/240 days decisions of the Supreme Court

In 2005, the Supreme Court introduced a new principle in Filipino seafarers' claims holding that if a seafarer is unable to work for more than 120 days due to his disability or because he is under medical treatment, he is considered to be permanently and totally disabled and automatically entitled to full disability benefits under the provisions of the POEA Contract and the Collective Bargaining Agreement.

Said principle was taken out from the provisions on employees compensation program found in the Labor Code and was applied to the employment of seafarers. Although arguments against the application of the Labor Code provision were made, the Supreme Court has ruled that they are applicable to the employment of Filipino seafarers.

In 2008, the Supreme Court modified the 120 days decision by extending the period of treatment of the seafarer to 240 days. Within the 240 day period, the seafarer may be declared fit or the degree of his disability established. The basis for this extension according to the Supreme Court is found in the Implementing Rules and Regulations of the Labor Code.

While 12 out of the 16 decisions on the matter applied the 120 day principle, the last two decisions of the Supreme Court upheld the 240 day rule. This appears to show that the 240 days ruling is gaining momentum considering that the first 240 day decision (Vergara Case) was exhaustive in its clear modification of the 120 day principle.

In addition to the gaining momentum of the 240 day decision, it is hoped that the Courts would start upholding the new provision in the 2010 POEA Standard contract stating that disability shall be based solely on disability gradings, and not measured by number of days a seafarer is under treatment.

The author will continue monitoring developments which will be reported in future updates.

This article now summarizes in *chronological order* the controversial 120/240 days decisions of the Supreme Court.

1. ***Crystal Shipping, Inc., and/or A/S Stein Line Bergen vs. Deo P. Natividad***, G.R. No. 154798, October 20, 2005, First Division (120-day principle)

The seafarer was diagnosed with cancer and was assessed by the company-designated physician as suffering from Grade 9 disability while his private doctor issued a Grade 1 disability.

The Court ruled that permanent disability is the inability of the worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body. As seafarer was unable to work from August 18, 1998 to February 22, 1999, at the least, or more than 120 days, due to his medical treatment, he was awarded full disability benefits.

While the seafarer was able to work again as Chief Mate in March 2001, this does not alter the fact that as a result of his illness, the seafarer was unable to work as a Chief Mate for almost three years. It is of no consequence that seafarer was cured after a couple of years. What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability.

Note: The Supreme Court clarified this ruling **12 February 2007** holding that seafarer's disability should not be measured

in terms of number of days but by gradings only. However, this clarification was never applied or cited by the Supreme Court in any of the subsequent cases that they rendered.

2. ***United Philippine Lines, Inc. and/or Holland America Line, Inc. vs. Francisco Beseril***, G.R. No. 165934, April 12, 2006, Third Division (120-day principle)

The seafarer was employed as Assistant Chief Cook on-board the vessel. During the term of his contract, he suffered a heart attack. Seafarer was treated and eventually declared fit to work but no longer re-applied for employment.

The Court ruled that the seafarer is deemed to have suffered permanent and total disability since he was unable to perform his job for more than 120 days. Since the seafarer suffered a heart attack on December 5, 1997, he was unable to work for more than 120 days, his cardiac rehabilitation and physical therapy having ended only on May 28, 1998.

3. ***Bernardo Remigio vs. NLRC, C.F. Sharp Crew Management, Inc. & New Commodore Cruise Line, Inc.***, G.R. No. 159887, April 12, 2006, Third Division (120-day principle)

The seafarer, a drummer, experienced symptoms of coronary distress during his employment. The seafarer underwent triple coronary bypass and was later on declared fit.

The Supreme Court, held that since the seafarer was unable to work for a period of at least 11-13 months and therefore more than 120 days, he is considered to have suffered permanent total disability.

4. ***Micronesia Resources, Dynacom Shield Shipping Ltd. and Singa Ship Management, A.S. vs. Fabiolo Cantomayor***, G.R. No. 156573, June 19, 2007, Third Division (120-day principle)

The seafarer was diagnosed to be suffering from coronary artery disease for which he underwent coronary artery by-pass surgery. Seafarer was assessed with Grade 7 disability issued by the company designated physician and an offer of US\$20,900 made to him.

The Supreme Court held seafarer is entitled to US\$60,000 full disability benefits as he is considered permanently and totally disabled having been unable to work for more than 120 days. The company-designated doctor assessed the disability grading of the seaman almost seven months after repatriation.

5. ***Mars C. Palisoc vs. Easways Marine, Inc., Capt Mario R. Braza, and Capt. Macario Terencio***, G.R. No. 152273, September 11, 2007, Second Division (120-day principle)

The seafarer was repatriated due to left renal colic or gallstone impairment. After undergoing the required treatment, the seafarer was declared fit by the company designated physician.

The Supreme Court held that the Labor Code's provision on permanent total disability applies to claims of seafarers. The Court ruled that although the seafarer was declared fit to work by the company doctors, still, the said declaration was made after a period of 120 days. The fact remains that the seafarer's inability to perform his work lasted for more than 120 days because he was repatriated on March 23, 1997 and he was declared fit to work only on August 20, 1997 or after the lapse of 120 days.

6. ***Philimare, Inc./Marlow Navigation Co., Ltd., Bonifacio Gomez and Alberto Gomez vs. Benedicto Suganob***, G.R. No. 168753, July 9, 2008, Second Division (120-day principle)

Seven (7) days on-board the vessel, the seafarer was repatriated due to right shoulder pain. After undergoing treatment with the company physician for more than a month, the seafarer was declared fit to work although he did not work on-board again.

The Court ruled that permanent disability is the inability of the worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body. Clearly, according to the Court, Suganob's disability is permanent since he was unable to work from the time he was medically repatriated on September 17, 2001 up to the time the complaint was filed on April 25, 2001, or more than seven (7) months. Hence, seafarer is entitled to full disability benefits

7. **Jesus Vergara vs. Hammonia Maritime Services, Inc. and Atlantic Marine Ltd.**, G.R. No. 172933, October 6, 2008, Second Division (240-day principle)

The seafarer was repatriated due to eye problem. After undergoing the required treatment, the company doctor declared the seafarer fit to resume further sea duty. The seafarer's private doctors disagreed and gave the opinion that seafarer was not fit to work as a pumpman because the job could precipitate the resurgence of his former condition.

The Supreme Court held that a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability. In the instant case, the company-designated doctor duly made a declaration well within the extended 240-day period that the seafarer was fit to work.

8. **Joelson O. Iloreta vs. Philippine Transmarine Carriers, Inc. and Norbulk Shipping U.K. Ltd.**, G.R. 183908, December 4, 2009, First Division (120-day principle)

The seafarer was repatriated due to a heart problem. Upon repatriation, the seafarer underwent coronary angiography and coronary angioplasty. After undergoing post-surgical work-ups, the company doctor declared the seafarer as fit to resume former work. The seafarer consulted his own doctor who assessed him to be suffering from Grade IV disability. The parties later agreed to refer the seafarer for examination by a third doctor who likewise assessed him to be suffering from Grade IV disability.

As the seafarer was medically repatriated on August 16, 2002 and he is unable to work up to the time he filed his complaint for disability compensation on July 14, 2003 or for almost eleven (11) months, his disability is considered permanent and total.

9. **Leopoldo Abante vs. KGJS Fleet Management Manila and/or Guy Domingo Macapayag, Kristian Gerhard Jepsens Skipsrenderi A/S**, G.R. No. 182430, December 4, 2009, First Division (120-day principle)

The seafarer was repatriated due to injuries he suffered after he slipped while carrying equipment on-board the vessel. After undergoing the required treatment, the seafarer was declared fit to work. He consulted his own doctor who assessed him to be suffering from a disability grading of Grade 6.

The Supreme Court ruled that what determines seafarer's entitlement to permanent disability benefits is his inability to work for more than 120 days. In this case, seafarer is entitled to full disability benefits since it was only on February 20, 2001 that the Certificate of Fitness to Work was issued by the company physician, more than 6 months from the time he was initially evaluated by the doctor on July 24, 2000 and after he underwent operation on August 18, 2000.

10. **Rizaldy M. Quitariano vs. Jepsens Maritime, Inc., Ma. Theresa Gutay and/or Atle Jepsens Management A/S**, G.R. No. 179868, January 21, 2010, First Division (120-day principle)

The seafarer suffered mild stroke during employment. After undergoing the required treatment, the company-designated physician declared him fit to work. This was contested by the seafarer.

The Supreme Court applied the *Crystal Shipping 120-day principle* vis-à-vis the fact that it was only on November 16, 2001 that the "fit to work" certification was issued by the company physician or more than five months from the time the seafarer was medically repatriated on May 30, 2001, seafarer's disability can be considered permanent and total.

11. **Magsaysay Maritime Corp., et.al. vs. Rommel Cedol**, G.R. No. 186180, March 22, 2010, Second Division (240 day principle)

In passing the Supreme Court held that for the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA-SEC and by applicable Philippine laws. If the 120-day initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary

total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

12. ***Oriental Ship Management Co., Inc. vs. Romy Bastol***, G.R. No. 186289, June 29, 2010, First Division (120-day principle)

The seafarer suffered chest pains and was diagnosed to be suffering from anterior myocardial infarction. Although undergoing treatment with the company-designated physician, the seafarer sought a second opinion from his own doctor who assessed him to be suffering from a Grade 1 disability.

The Supreme Court ruled that since the seafarer was under the treatment of company-designated physicians for seven months, he is considered to be permanently and totally disabled and entitled to full disability benefits.

13. ***Carmelito Valenzona vs. Fair Shipping Corporation and/or Sejin Lines Company Limited***, G.R. No. 176884, October 19, 2011, First Division (120-day principle)

The seafarer was diagnosed to be suffering from hypertension, hence, his repatriation. He was treated by the company-designated physician until he was declared fit to work. The seafarer consulted his own doctor who declared him unfit to work in any capacity.

The Supreme Court applied the *Quitoriano Case*. The seafarer was medically repatriated to the Philippines on October 8, 2001. However, it was only on April 25, 2002 or after a lapse of 199 days that the company-designated physician issued a certification declaring him fit to work. Thus, the Court declared just like what it was pronounced in *Quitoriano* that seafarer's disability is considered permanent and total because the "fit to work" certification was issued by the company-designated physician on April 25, 2002, or more than 120 days after he was medically repatriated on October 8, 2001. Thus, the seafarer should be awarded US\$60,000 as his disability benefits.

14. ***Fil-Star Maritime Corp., et.al. vs. Hanziel Rosete***, G.R. No. 192686, November 23, 2011, Third Division (120 day principle)

The seafarer was diagnosed with an eye illness while on-board the vessel. He was treated and eventually assessed with a grade "7" disability. Seafarer contested the assessment and insisted on full benefits.

The Supreme Court held that a total disability does not require that the employee be completely disabled, or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his or her usual work and earn from it. On the other hand, a total disability is considered permanent if it lasts continuously for more than 120 days. What is crucial is whether the employee who suffers from disability could still perform his work notwithstanding the disability he incurred. Evidently, respondent was not able to return to his job as a seafarer after his left eye was declared legally blind. Records show that the petitioners did not give him a new overseas assignment after his disability. This only shows that his disability effectively barred his chances to be deployed abroad as an officer of an ocean-going vessel.

15. ***Magsaysay Maritime Corporation and/or Westfal-Larsen Management A/S vs. Oberto Lobusta***, G.R. No. 177578, January 25, 2012, First Division (240-day principle)

The seafarer was repatriated because he was found to be suffering from severe acute bronchial asthma with secondary infection and lumbosacral muscle strain. The treatment of the seafarer lasted for more than 9 months. The doctor agreed upon by the parties to make an independent assessment which would be binding upon the parties was of the opinion that the seafarer's level of impairment should be 10-25% and that the seafarer ought not to be considered fit to return to work as an Able Seaman.

According to the Supreme Court, a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability.

Upon repatriation, the seafarer was first examined by the Pulmonologist and Orthopedic Surgeon on May 22, 1998. The maximum 240-day (8-month) medical treatment period expired, but no declaration was made that seafarer is fit to work. Nor was there a declaration of the existence of seafarer's permanent disability. On February 16, 1999, the seafarer was still prescribed medications for his lumbosacral pain and was advised to return for reevaluation. May 22, 1998 to February

16, 1999 is 264 days or 6 days short of 9 months. The Court still awarded full disability benefits.

16. ***Alen Santiago vs. Pacbasin Shipmanagement, Inc. and/or Majestic Carriers, Inc.***, G.R. No. 194677, April 18, 2012, Third Division (240-day principle)

The seafarer suffered an accident on-board the vessel. He was repatriated and underwent the required treatment. The seafarer was assessed by the company doctor to be suffering from Grade 12 disability. He went to his own doctor who assessed him to be suffering from Grade 7 disability. The seafarer filed a case with the NLRC claiming US\$60,000 as disability benefits. He anchored his claim on the 120-day Supreme Court ruling in the *Crystal Shipping* case.

The Supreme Court ruled citing the Vergara Case that the company-designated doctor is given an extended period of 240 days within which to determine the fitness or degree of disability of the seafarer.

Here, the company-designated physician opined that seafarer was suffering from a “Grade 12” disability on the 148th day of treatment, and, therefore, within the 240-day period. The rule is that a temporary total disability only becomes permanent when the company-designated physician, within the 240-day period, declares it to be so, or when after the lapse of the same, he fails to make such declaration.

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