



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., December 19, 2012 (Issue 2012/19)

In this issue:

Season's Greetings

Holiday Notice

240 days rule reiterated by the Supreme Court

Season's Greetings

To clients and friends,

Del Rosario celebrated its 35th year this 2012.

We thank all who have continually given us their trust and confidence. It is with your support that we are able to continually strive for "integrity, quality and efficiency" remembering to always "exceed client expectations". We always remind ourselves to be transparent in our handling of claims and cases. We are always mindful of constructive criticism as this will lead us to better service. We continue to encourage client feedback and we will address all concerns. Throughout the years, we have built a reputation that we value and will always protect.

As always, in lieu of Christmas cards/giveaways, we have donated to the Sacred Heart Chapel of the Santuario de San Jose Parish, a church put up by our founder, Arturo M. Del Rosario Sr. We have also donated to the Church of the Poor Apostolate (COPA) of the St. James the Great Parish. COPA helps the 130 poorest parishes in the Philippines. We have further 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 36th year, we wish you and your family a joyous Christmas and may the coming year 2013 bless all with good health, happiness and prosperity.

For and in behalf of all of us at DelRosarioLaw and Del Rosario Pandiphil Inc.

Ruben Del Rosario / Arturo Del Rosario

Holiday Notice

Due to officially declared holidays in the Philippines during this season of Christmas and New Year, our offices will be closed on the following days;

22 December (Saturday) to 25 December (Tuesday); our offices will re-open on 26 December (Wednesday)

29 December (Saturday) to 1 January 2013 (Tuesday); our offices will re-open on 2 January 2013 (Wednesday)

Emails will be monitored but for urgent matters, please call:

Our website www.delrosariolaw.com has our partners' emergency numbers.

240 days rule reiterated by the Supreme Court

Seaman fractured his arm while working and was repatriated on 26 February 2003 for further treatment. Seaman was referred to the company-designated doctor where he underwent an operation and further physical therapy sessions. Seaman was supposed to undergo a physical capacity test to determine fitness on 28 August 2003 but did not return to the doctor for examination. Instead, seaman filed a claim for disability benefits with the NLRC on 29 August 2003. On 1 September 2003, the seaman consulted another doctor who assessed him with a grade "11" disability with a note that he is "unfit to work at the moment". On 10 September 2003, the seaman again consulted another doctor which assessed him with a grade "10" disability with a note that he is "unfit to go back to work at sea at whatever capacity".

The Labor Arbiter awarded full disability benefits to the seaman on the basis that the company-designated physician failed to make any pronouncement on seaman's fitness to resume sea service within 120 days as required by law.

The NLRC reversed and set aside the findings of the Labor Arbiter and ruled that the assessments with respect to the degree of seaman's disability by his two doctors who examined him only once cannot prevail over the extensive medical examinations conducted by the company-designated physician.

The Court of Appeals rendered a new judgment finding seaman as suffering from partial permanent disability Grade 10 and awarded US\$7,465 disability benefits. The Court of Appeals held that while seaman's disability has exceeded 120 days, there was no showing that his earning power was wholly destroyed and he is still capable of performing remunerative employment.

The Supreme Court affirmed the decision of the Court of Appeals.

The Supreme Court held that a seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor.

The Supreme Court reiterated their ruling in Vergara v. Hammonia that if the 120 days 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.

The company-designated physician therefore had a period of 240 days from the time that seaman suffered his injury within which to make a finding on his fitness for further sea duties or degree of disability. 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.

The Supreme Court further held that despite the lapse of the 120-day period, seaman was still considered to be under a state of temporary total disability at the time he filed his complaint on 29 August 2003, 184 days from the date of his medical repatriation which is well-within the 240-day applicable period in this case. Hence, he cannot be said to have acquired a cause of action for total and permanent disability benefits.

Nevertheless, the Supreme Court awarded US\$7,465 disability benefits to the seaman based on his own evidence that he is suffering from a grade "10" disability in the absence of proof to the contrary.

Author's Note: In C.F. Sharp v. Taok [please refer to our Philippine Shipping Update dated 10 September 2012 (Issue 2012/11)], a case cited here, the Supreme Court held that when the seaman filed a claim for permanent disability benefits prior to 120 days, he did not have a cause of action yet as he was only considered to be under temporary total disability. As such, the claim there was dismissed. In this case, while the Supreme Court noted that at the time the seaman filed his complaint he did not have a cause of action for permanent disability benefits (as the complaint was filed just 184 days after repatriation when he was still considered to be under temporary total disability), the award of US\$7,465 was still sustained.

Also, both the Court of Appeals and the Supreme Court appears to have erroneously awarded US\$7,465 disability

benefits to the seaman based on a grade "10" disability. Under the POEA Contract, a grade "10" disability is equivalent to US\$10,075. It is a grade "11" disability which is equivalent to US\$7,465.

For this year 2012, the Supreme Court had already upheld the 240 days principle in seven (7) different cases. Overall, there are now nine (9) Supreme Court decisions upholding the 240 days principle.

Benjamin Millan vs. Wallem Maritime Services, Inc., Reginaldo Oben and/or Wallem Shipmanagement, Ltd. G.R. No. 195168; Second Division, November 12, 2012, Associate Justice Estela Perlas-Bernabe, Ponente

"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

Social Networking Sites



Twitter ID: [delrosariopandi](#)



Facebook Page: [DelRosarioLaw](#)

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.



Del Rosario & Del Rosario / Del Rosario Pandiphil, Inc.

Office Address: 15th Floor, Pacific Star Building, Makati Avenue, 1200 Makati City, Philippines

Telephone: 63 2 810 1791 * **Fax:** 63 2 817 1740/ 63 2 810 3632

24/7 mobile: (63) (917) 830-8384; mail@delrosario-pandiphil.com; www.delrosariolaw.com