



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

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

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., April 26, 2013 (Issue 2013/05)

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### **Supreme Court clarifies 120 / 240 days rule**

On October 24, 2006, seafarer started to experience severe pain in his lumbar region when he assisted in manually lifting the ship's anchor windlass motor. He was seen by a doctor in South Africa and eventually repatriated and placed under the care of the company-designated physicians for further treatment and evaluation. On May 3, 2007 or after 197 days of treatment, seafarer was assessed with disability Grade 8.

In the interim, the seafarer filed a complaint against his employers on 11 April 2007 (181 days after he was signed off the vessel) claiming full disability benefits. The Labor Arbiter awarded US\$60,000.00 to the seafarer considering that he was already permanently unfit to work having not worked for more than 120 days. The NLRC and the Court of Appeals affirmed the decision of the Labor Arbiter. The Supreme Court further affirmed the decision awarding \$60,000.

#### ***120 days / 240 days rule***

The Supreme Court stated that under Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1, may be considered as total and permanent disability. However, if those injuries or disabilities with a disability grading from Grades 2 to 14 which are partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is still considered as totally and permanently disabled. In this particular case, the seafarer had a Grade 8 disability but was unable to engage in gainful employment for more than 120 days, thus, he is considered totally and permanently disabled.

As to the argument that the 240 days instead of 120 days should apply, the Court held that the 240 days rule cannot apply as the seafarer's claim on April 11, 2007 was made before October 6, 2008 when the Vergara vs. Hammonia ruling on the 240 days was promulgated. Prior to October 6, 2008, the 120 days rule applies.

The Court clarified the 120 / 240 days rule as follows:

**A seafarer who is unable to work for more than 120 days shall be considered totally and permanently disabled unless the company doctor, before the end of the 120 days, states that he needs further treatment. If the company doctor states that the seafarer needs such further treatment, the period to determine total and permanent disability shall be extended to 240 days.**

*Authors Note: There is now a great need to closely monitor the treatment of seafarers. If further treatment is*

**required beyond 120 days, then the company doctor must make a clear declaration that further treatment is required beyond 120 days. This will extend the determination of total and permanent disability to 240 days. If no declaration of further treatment is made before 120 days, then the seafarer will be considered totally and permanently disabled after the 120 days of treatment.**

*It should be noted that under the 2010 POEA Contract, it is now expressly stated that disability shall be based solely on the disability grading provided therein and shall not be measured or determined by the number of days a seafarer is under treatment. It remains to be seen what will be the impact of this provision in the 2010 POEA Contract be in relation to the current 120/240 days rulings of the Supreme Court. There is as yet no Supreme Court decision on this point.*

*Kestrel Shipping Co., Inc./Capt. Amador P. Sevillion and Atlantic Manning Ltd., vs. Francisco D. Munar; G.R. No. 198501; First Division; January 30, 2013; Associate Justice Bienvenido Reyes, Ponente (Attys. Jerome Pampolina and Herbert Tria of Del Rosario & Del Rosario handled for vessel interests)*

## **Supreme Court upholds findings of seafarer's personal doctor, but general rule is that finding of company-designated physician must be respected**

The seafarer fell from a height of 2 meters and injured his shoulder. He sought consult in Philadelphia and was advised that he is not fit to work and should undergo further examination and treatment. The seafarer was not repatriated as there was no replacement for him. When the vessel reached Korea, the seafarer again sought consult with a doctor who again recommended his repatriation for treatment as he is unfit to work.

Upon repatriation, the seafarer was referred to the company designated doctor who after more than 2 months, declared him fit. Not satisfied with the findings of the company designated doctor as he was still feeling pain, he immediately consulted his own doctor who treated him for another 2 months. Thereafter, he also consulted a specialist for his condition who determined that his condition will prevent him from fulfilling his duty as a seafarer. Seafarer was also examined by another doctor who assessed him with a grade "7" disability.

The Labor Arbiter held that the seafarer is entitled to US\$20,900 disability benefits based on the grade "7" assessment of his personal doctor. Such award was affirmed by the NLRC.

Upon further appeal, the Court of Appeals dismissed the complaint and held that seafarer is not entitled to disability benefits as he was declared fit by the company-designated doctor.

The Supreme Court reinstated the decision of the NLRC.

**The Court ruled that under the POEA-SEC, the general rule is that it is the company-designated physician who determines the fitness or disability of a seafarer who suffered or is suffering from an injury or illness.** However, the findings of the company-designated doctor cannot be upheld in this case considering the unanimity of the findings not only of seafarer's independent physicians but also those doctors who were consulted abroad that seafarer is unfit to work. As such, this case must be considered as an exception to the general rule.

*Author's Note: The Supreme Court appears to have given weight to the findings of two doctors that the seafarer consulted abroad which stated that he is unfit to work. The Supreme Court failed to consider that the foreign doctors merely stated that seafarer is unfit to work at that time he was examined. The Court failed to consider that seafarer was still to be treated in the Philippines.*

*The Supreme Court also gave credence to the findings of seafarer's personal doctor because after seafarer was declared fit by the company-designated doctor, it took him just two days to contest the same by seeking further treatment with other doctors who found him unfit to work.*

*This is a rare case when the Supreme Court en banc ruled on an issue involving a seafarer's claim.*

*Ramon Nazareno vs. Maersk Filipinas Crewing Inc., and Elite Shipping A/S ; G.R. No.168703; En Banc; February 26, 2013; Associate Justice Diosdado Peralta, Ponente*

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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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