



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., August 28, 2015 (Issue 2015/17)

“Del Rosario & Del Rosario is more or less unrivalled when it comes to maritime work in the Philippines” from Asia-Pacific, The Legal 500, 2014, p. 497

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Supreme Court compensates illness as long as employment contributed to some degree to the development of the disease; cause of illness is unknown and presumption of work-relation will apply

The company hired the seafarer as a messman. Prior to his engagement, seafarer underwent a pre-employment medical examination (PEME) which yielded normal results except for a finding of left ventricular hypertrophy in his electrocardiogram test (ECG). Seafarer was thus pronounced fit for sea duty and boarded the vessel for his employment.

During employment, seafarer experienced chest pains. He was then confined at a port hospital due to chest pain, shortness of breath and back pain. He was diagnosed with Acute Type-B Dissection. Eventually, seafarer was medically repatriated. Upon arrival in Manila, seafarer was brought directly to the care of the company-designated doctors for further medical evaluation and was diagnosed with dissecting aneurysm. The company-designated physician issued an opinion that based on the findings in the PEME, seafarer is suffering from a non-work-related illness as the factors of acquiring the illness are congenital in nature.

Seafarer then filed a complaint for disability benefits as he argued that his condition should be considered work-related and he is now incapable of performing work.

The Labor Arbiter granted the claim but the NLRC denied it. Upon petition, the Court of Appeals sustained the award of the Labor Arbiter. Such decision was later on affirmed by the Supreme Court.

Seafarer’s work contributed to the development of the illness.

The Court held that seafarer’s work as a messman is not confined mainly to serving food and beverages to all officers and crew; he was likewise tasked to assist the chief cook/chef steward, and thus performed most if not

all the duties in the ship's steward department. In the performance of his duties, he is bound to suffer chest and back pains, which could have caused or aggravated his illness. Seafarer's strenuous duties caused him to suffer physical stress which exposed him to illness. It is therefore reasonable to conclude that seafarer's employment has contributed to some degree to the development of his disease.

The stress caused by his job actively contributed to the progression and aggravation of his illness. In compensation cases, 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 may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.

Illness is disputably presumed to be work-related

The Court further reasoned that the POEA-SEC has created a presumption of compensability for those illnesses which are not listed as an occupational disease. Together with this presumption is the burden placed upon the claimant to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease and only a reasonable proof of work-connection, not direct causal relation is required to establish compensability of illnesses not included in the list of occupational diseases. As a causal link was established between seafarer's employment and his ailment, the presumption now operates in favor of the claimant and the burden is shifted to the company to overcome the statutory presumption which they were unable to do.

The Court was not persuaded that seafarer's genetic predisposition has caused his ailment and that his smoking habits hastened its development. It explained that the specific cause of aortic dissection is still unknown and the risk factors may only seem to be associated in some way with the disease. Other factors such as working and living under stressful conditions also contribute to its development.

Also, the reliance on the company-designated doctor's opinion that the illness is not work-related is not availing. Such opinion is inconclusive for purposes of determining the compensability of seafarer's illness. The assessment was based merely upon a review of the seafarer's PEME. It was not based on the post-employment medical examination conducted on the seafarer after his medical repatriation. In the absence of reasonable findings, diagnostic tests and procedures to support the assessment, the same cannot be simply taken at face value. Moreover, the company-designated physician hastily concluded that aortic dissection is hereditary without necessarily considering other varied factors that can contribute to the development of the disease.

Author's Note: *The High Court is reminding the vessel interests that opinions of company-designated physicians can be sustained only if certain criteria are satisfied: (1) opinions must be based on post-employment medical examination and not on mere review of pre-employment medical examination as done in the above case; (2) opinions must be based on reasonable findings, diagnostics tests and procedures to support the opinion; (3) opinions must come from the doctor who personally attended to the seafarer in the course of his treatment; (4) opinions must not be based on mere probability; (5) opinions of company-designated physicians will not be automatically given credence for the simple reason that no contrary opinion was submitted by the seafarer.*

Dohle-Philman Manning Agency, Inc Dohle (IOM) Limited and/or Capt. Manolo Gacutan v. Heirs of Andres Gazingan represented by Lenie Gazingan, G.R. No. 199568, June 17, 2015, Second Division, Associate Justice Mariano Del Castillo, Ponente.

Memo on Collection of Provincial Coastwatch Environmental Monitoring System User Fee by the Province of Zambales, Philippines

A recent cause of concern for vessels passing through the territorial waters of or docking at any port in the Province of Zambales, Philippines is Ordinance No. 28 Series of 2015 (copy attached) which mandates the collection of a "Provincial Coastwatch Environmental Monitoring System User Fee." A number of Owners have

already received a billing from the said provincial government beginning August 2015.

The ordinance appears to be aimed at monitoring entry of foreign vessels (e.g. Chinese fishing boats) in contested areas and avoid dumping of waste in Philippine waters. Further, it seems to be applicable to both international and domestic vessels and is likewise intended to prevent casualties, and monitor/enforce environmental laws.

The subject ordinance provides that:

- It applies to “any person or company who owns, leases, controls or operates a vessel.”
- Area covered is the territorial waters of Zambales (West Philippine sea) within 15 km. to 100 km. from the baseline.
- The International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA; composed of more than 80 member countries) provides for a “User Pays Principle” which allegedly covers vessels using coastal watch services. The same principle was adopted in the ordinance.
- Fees and charges in the use of the coastal watch system shall fall under the IALA’s User Pays Principle and “shall be added to the usual and standard shipping fees and charges prescribed by law.”
- The rates per GWT are as follows: US\$0.03580 foreign non-passenger, US\$0.04100 foreign passenger, US\$8.25 foreign fishing vessel and US\$12.57 other foreign commercial ships. For barges US\$6,325 (annual) and motorized coal/ore carriers US\$7,725 (annual). Domestic vessels are also subject to charges at lower rates.
- Ships docking at any port in Zambales that have “not paid the appropriate fees and charges after the given grace period shall not be allowed to leave, until such fees and charges are paid and clearance shall be issued by the Office of the Governor.”
- A private entity Xanatos Philippines Corporation (which appears to be a subsidiary of a Canadian Firm, Xanatos Marine, Ltd.) has been tasked to collect the fees and charges for the Province of Zambales.
- There is also an “Emission Testing” requirement for all vessels with engine or boiler of 45 horsepower or higher docking at any sea port in Zambales. The Certificate of Emission Compliance (“CEC”) issued by an accredited emission testing center is valid for 12 months renewable for the same period.

Based on its wordings, it is unclear whether the ordinance applies only to vessels docking at a Zambales port or even to vessels just passing through its territorial waters. If it applies to the latter case, said ordinance may run counter to a vessel’s right of innocent passage under international laws/conventions. Apparently, the ordinance was patterned after similar regulations in other countries applying the IALA User Pays Principle.

We are currently verifying with local authorities the specific coverage of as well other material information about said ordinance. We also seek confirmation from the IG Clubs’ local correspondents in other countries that there are indeed similar regulations so we can raise this in our discussions with the regulators.

We will revert with developments particularly with clarification on the coverage of the ordinance and manner of compliance by those so covered.

Note: Copy of the ordinance is posted at our website or you may email us for a copy.

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"Del Rosario & Del Rosario is often first port of call for employment law within the maritime industry, where it represents shipowners, agents, insurers and port owners." Asia-Pacific, The Legal 500, 2014, p. 494

"Offers comprehensive shipping expertise. Maintains an excellent reputation for representing P&I firms and handling collision and crew casualties. A strong team that is well known in the market." Chambers Asia Pacific, 2014 p. 949

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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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