



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

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

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., January 9, 2015 (Issue 2015/01)

*“Del Rosario ... 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*

### **Supreme Court rules that finding of the company-designated doctor is more credible; seafarer should follow the third doctor conflict resolution procedure as required by the POEA contract**

In three cases, the Supreme Court ruled that the findings of the company-designated doctor is more credible than that of the seafarer's private doctor. In addition, the Court ruled that seafarer must follow the conflict resolution procedure on the appointment of a third doctor as required by the POEA standard employment contract.

In ***Bahia Shipping Services, Inc. and Fred Olsen Cruise Lines Limited v. Crisante Constantino*** (G.R. No. 180343; July, 9, 2014) the seafarer, after being diagnosed with back pains during employment was repatriated and treated by the company-designated doctors for 6 months until he was declared fit to work. The seafarer even affirmed the findings of the company-designated doctor by signing a “Certificate of Fitness for Work”.

More than seven months after, the seafarer consulted his own private doctor who assessed him to have suffered from permanent partial disability with a Grade 11 impediment under the POEA Contract and declared him unfit for further sea duties.

On the basis of the report of his personal doctor, the seafarer filed a complaint before the Labor Arbiter.

The Supreme Court held that the findings of the company-designated doctors were more credible as they extensively treated the seafarer for 6 months as compared to the one day consultation conducted by seafarer's personal doctor.

Also, the Supreme Court noted that the seafarer failed to set into motion the process of selecting a third doctor in accordance with the POEA Contract considering the conflict between the findings of his doctor and that of the company-designated doctor. This is the duty of the seafarer as he alone is aware of the conflict and for failing to avail of the dispute resolution procedure stated in the POEA Contract, the findings of the company-designated doctor should prevail.

In ***Formerly INC Shipmanagement Inc., (now INC Navigation Co., Philippines, Inc.), Reynaldo Ramirez and/or Interorient Navigation Co., Ltd./Limassol, Cyprus v. Benjamin Rosales*** (G.R. No. 195832, October 1, 2014) the Supreme Court was again faced with two different opinions from the doctors. The company-designated doctors declared the seafarer with a grade “7” disability while on the other hand, the seafarer's

doctor assessed him with a grade "1" disability. Moreover, the seafarer argued that since he was unable to work for more than 120 days, he is now considered to be permanently and totally disabled entitled to grade "1" maximum disability benefits.

The Court held that the claim of the seaman is dismissible due to prematurity as he failed to follow the conflict resolution procedure in the POEA Contract of referring the conflicting medical opinions to a third doctor.

By way of guidance, the Supreme Court clarified how a conflict situation should be handled in this manner: Upon notification that the seafarer disagrees with the company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA Contract, shall be final and binding on the parties. Upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties.

In the same case, the Supreme Court stated that even if the findings of the seafarer's doctor were taken into consideration, the company-designated physician's assessment should prevail over that of the former. The company-designated physician had thoroughly examined and treated the seafarer for almost 8 months until his disability grading was issued. In contrast, the seafarer's physician only attended to the seafarer once.

Under these circumstances, the assessment of the company-designated physician is more credible for having been arrived at after months of medical attendance and diagnosis, compared with the assessment of a private physician done in one day on the basis of an examination or existing medical records.

In the more recent case of ***Bahia Shipping Services, Inc., Fred Olsen Cruise Line, and Ms. Cynthia Mendoza vs. Joel Hipe*** (G.R. No. 204699; November 12, 2014), the Supreme Court again reiterated the above rules in denying the claim of the seafarer. The first ground for the denial was because the medical findings of seafarer's personal doctor is not supported by any diagnostic tests and/or procedures as would adequately refute the fit-to-work assessment of the company-designated doctor, but merely relied on a review of seafarer's medical history and his physical examination.

As second ground for denial, The Supreme Court noted that the seafarer failed to comply with the procedure laid down under the POEA Contract with regard to the appointment of a third doctor whose decision shall be final and binding on them in case the seafarer's personal doctor disagrees with the company-designated physician's fit-to-work assessment. The Court held that the seafarer's non-compliance with the said conflict resolution procedure results in the affirmance of the fit-to-work certification of the company-designated physician.

**Author's Note:** The Supreme Court has now been firm that the conflict resolution procedure of appointing a third doctor as found in the POEA Contract should be followed. The Supreme Court has likewise definitely clarified that initially, it is the obligation of the seafarer to notify the company of his intention to avail of the procedure for the appointment of a third doctor by submitting the contradicting opinion of his personal doctor. Thereafter, the company now has the burden of initiating the process of referral to a third doctor agreed by the parties.

On a related note, the NLRC has now required the Labor Arbiters, at the first instance to determine if the parties are willing to appoint a third doctor in the event of conflicting findings of their own doctors. However, the appointment of a third doctor is not compulsory on the parties and if such doctor is not appointed, the case will proceed to be tried based on their merits.

*Bahia Shipping Services, Inc. and Fred Olsen Cruise Lines Limited v. Crisante Constantino; G.R. No. 180343; July, 9, 2014; Second Division; Associate Justice Arturo Brion, Ponente*

*Formerly INC Shipmanagement Inc., (now INC Navigation Co., Philippines, Inc.), Reynaldo Ramirez and/or Interorient Navigation Co., Ltd./Limassol, Cyprus v. Benjamin Rosales; G.R. No. 195832, October 1, 2014; Second Division; Associate Justice Arturo Brion, Ponente (Attys. Gina Guinto and Herbert Tria of Del Rosario & Del Rosario handled for vessel interests)*

*Bahia Shipping Services, Inc., Fred Olsen Cruise Line, and Ms. Cynthia Mendoza vs. Joel Hipe ; G.R. No. 204699, November 12, 2014; First Division; Associate Justice Estela Perlas-Bernabe, Ponente*

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