



DEL ROSARIO PANDIPHIL Inc.

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., November 3, 2015 (Issue 2015/21)

“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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UPDATE: Collection of Provincial Coastwatch Environmental Monitoring System User Fee by the Province of Zambales, Philippines

This is an update on the above Ordinance of the Province of Zambales.

The Filipino Shipowners Association (FSA) has requested Congress to further endorse the matter to the Department of the Interior and Local Government (DILG) to seek the immediate revocation of the Ordinance.

FSA is likewise seeking for the cancellation of any and all invoices that have been issued by the Province to all shipowners and shipping companies.

In view of the above, we maintain that those who receive billings reply that the legality of the ordinance is still being determined and that in the meantime, no payments should be made on the said billings.

As of this writing, the Province of Zambales has not issued any amendment or revision to the Ordinance.

This newsletter will give timely updates on the ordinance.

Supreme Court denies claims based on stomach cancer as no substantial evidence to prove work-relation

After passing the pre-employment medical examination (PEME), seafarer was engaged as chief cook on-board

the vessel. Four months into his employment, seafarer experienced vomiting, anorexia, weight loss, and palpitations followed by dizziness and a feeling of lightheadedness. As such, he was medically repatriated for examination and treatment.

Upon examination, the company-designated physician diagnosed the seafarer with stomach cancer. The doctor further opined that said condition is not work-related as its risk factors included age, diet rich in saturated fat, fatty acid, linoleic acid, and genetic predisposition.

On the other hand, seafarer alleged that his work as chief cook involved food intake which contributed to or aggravated his gastric cancer. He claimed that although the cause of gastric cancer was unknown, there was speculation that smoked food may be promoting factors. Seafarer further invoked the presumption laid down in the provision of the POEA Contract that his illness was work-related. As he passed the PEME, he argued that the company was now estopped from claiming that he was unfit to work prior to his deployment or that he did not contract his illness aboard the vessel.

The claim was brought before the Labor Arbiter who denied the same for lack of merit. Such decision was affirmed on appeal by the NLRC. However, the Court of Appeals took a different view and held the company liable for payment of full disability benefits.

When the case reached the Supreme Court, the award was stricken down.

The Court held that a person who claims entitlement to benefits provided by law must establish his right thereto by substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion". The Court cannot grant a claim for disability benefits without such substantial evidence because to do so would be offensive to due process. Hence, the burden is on the seafarer to prove that he suffered from a work-related injury or illness during the term of his contract.

In this case, the seafarer failed to discharge this burden. He failed to prove the required causal connection between his stomach cancer and his work as chief cook aboard the vessel.

In his submissions, seafarer admitted that the cause of stomach cancer was unknown, but stressed that there is speculation that smoked food may be promoting its development; that his illness is presumed to be work-related; and that since he had passed the PEME, this estopped the company from claiming that he was unfit to work prior to his deployment or that he did not contract his illness on board the vessel.

The Court noted that the records of the case would only show that seafarer was afflicted with stomach cancer plus the argument that his work caused or aggravated his stomach cancer. Only general statements were made on work-relation of the illness which was considered to be self-serving because they are unproved or uncorroborated allegations that simply raised the possibility that seafarer's stomach cancer could have been or might have been work-related. Even if the seafarer erects his claim on the probability of work-connectedness, such claim would still fail. Probability of work-connection must at least be anchored on credible information and not on self-serving allegations.

On the other hand, the company-designated physician opined that stomach cancer may be more often multi-factorial in origin involving both inherited predisposition and environmental factors and that it is not work-related. In the absence of a second opinion from seafarer's own physician of choice, the Court cannot arbitrarily disregard the finding of the company-designated doctor. As said opinion was unopposed and uncontradicted by equally credible and trustworthy countervailing substantial evidence from the claimant, the Court is not at liberty to reject, with no show of reason, the testimony of the company-designated physician.

In addition, it cannot be pointed out that seafarer's successfully passing the PEME should be basis for the conclusion that he acquired his illness on board the vessel. This is a non-sequitur. The PEME conducted upon a seafarer would not or could not necessarily reveal or disclose his illness because such examination is not at all fool-proof or thoroughly exploratory.

Philippine Transmarine Carriers, Inc. and Norwegian Crewing Management v. Julia Aligway (as substitute for her deceased husband Demetrio Aligway, Jr.), G.R. No. 201793, September 16, 2015, Second Division, Associate Justice Mariano Del Castillo, Ponente.

Firm News

Del Rosario Law / Del Rosario Pandiphil exchange program with GARD P & I

In line with the exchange training program between Del Rosario Law / Del Rosario Pandiphil, Del Rosario Partner Denise Cabanos and Del Rosario Pandiphil Senior Claims Executive Rhodylyn De Torres visited GARD P & I in Arendal, Norway to attend the one week "Introduction to Marine Insurance Course" given by the GARD Academy.

Denise and Rhodylyn likewise spent a one week immersion/interaction program with the People Claims Department of GARD P & I.

Prior to proceeding to Arendal, Denise and Rhodylyn visited GARD Oslo and Skuld Oslo where they likewise had interactive meetings.

The Del Rosario Law / Del Rosario Pandiphil – GARD P & I exchange program aims to enrich the cooperation and knowledge between the two companies.

Many thanks to GARD P & I for the warm reception and hosting Denise and Rhodylyn during their stay in Arendal.

Joseph Rebano speaks at Japan P & I Loss Prevention Seminar

DelRosarioLaw Partner Joseph Rebano was a guest speaker at the Japan P & I Loss Prevention Seminar in Manila which was held at the Maranaw Luzon Shipping Co., Inc. Training Center on 23 October 2015. Joseph's topic was "Updates and Jurisprudence on Health Issues on Ships" and the seminar was attended by senior crew and managers from Daichi Chuo Kisen Kaisha, Daichi Chuo Marine, Philippine Standard Shipmanagement Inc, Maranaw Luzon Shipping Co., IMS Philippines Maritime Corp, and NS United Marine Philippines Inc.

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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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