



DEL ROSARIO PANDIPHIL Inc.

***“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***

Philippine Shipping Update – Manning Industry

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., October 15, 2014 (Issue 2014/18)

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Supreme Court rules Hepatitis B Virus not work-related

Seaman was engaged as Chief Cook after being declared fit in his pre-employment medical examination (PEME). Seaman alleged that while lifting heavy provisions, he felt dizzy which caused him to lose his balance and fall hitting his chest and abdomen on the metal stairs. Seaman felt pain in his chest and abdomen area and reported the matter to his superiors. He was just told to consume painkillers and apply liniment to the affected areas. Upon reaching port, seaman allegedly was seen by a medical officer and was diagnosed with enlarged prostate gland, fatty liver and hypertension stage II and was advised to be repatriated for further medical examination and treatment. However, no medical certificate was given to him.

Upon arrival in the Philippines, seaman alleged that he reported to his manning agent and requested referral to the company-designated doctor but this was denied to him on the ground that his illnesses are not work-related.

On the other hand, the company denied the allegations of the seaman and contended that he did not have any medical incident on-board the vessel and was repatriated due to the expiration of his employment contract. Upon repatriation, the seaman did not request for medical referral and instead manifested his intention to be lined up for another deployment. It was only when the seaman underwent PEME for redeployment was it found that he was not fit for employment as he was infected with the Hepatitis B Virus (HBV). Considering the nature of seaman's employment, he was no longer deployed.

A complaint was filed by the seaman claiming disability benefits, sickwages, damages and attorney's fees. The Labor Arbiter, NLRC and the Court of Appeals all denied the claim of the seaman considering that it was not shown that seaman's HBV is work-related.

The Supreme Court likewise held that seaman failed to present evidence to show work-relation of the HBV.

The Court held that in order to claim disability benefits under the POEA Contract, it must not only be shown that there is a disability present. What must be shown is that there is a causal connection between the illness and the work for which he was contracted to perform. The claimant must submit proof as would constitute a reasonable basis for either concluding that the conditions of the employment of the claimant caused or aggravated the risk of contracting said ailment. The evidence must be real and substantial and not merely apparent.

In this case, the Court noted that HBV is passed from person to person either through blood, semen and other bodily fluids. The seaman failed to prove that his work exposed him to risks of acquiring HBV. Neither was he able to prove that he contracted his ailment during his employment. It is highly improbable, remote or totally nil that the work of the seaman as Cook, whose job mainly involves the preparation of food, exposed him to contracting HBV. Especially with the fact that no substantial evidence was presented by the seaman to this effect.

Vicente B. Vista versus Maine Marine Philippines, Inc., and/or Ms. Arlyn Fernandez, Misuga Kaiun Company Limited; GR. No. 21147; Second Division; July 7, 2014; Extended Minute Resolution (Attys. Pedrito Faytaren and Herbert Tria handled for vessel interests).

POEA issues Resolution downgrading the internationally recognized transit corridor within the Gulf of Aden from High Risk Area status to Extended Risk Zone Status

Due to a decreased likelihood of a piracy attack in the Gulf of Aden due to the implementation of the Best Management Practices, Series 4 prepared by international shipping organizations and increased military assets in the area, a new agreement was reached with the International Bargaining Forum (IBF) limiting the high risk areas and benefits of premium pay to seafarers. The Internationally Recognized Transit Corridor (IRTC) within the Gulf of Aden has now been downgraded from High Risk Area Status to Extended Risk Zone Status which means that the necessity to pay additional compensation for transit within the IRTC is removed and that such payment shall be only apply if the vessel is subject to a confirmed attack.

In view of this, the POEA has issued the following guidelines contained in POEA Governing Board Resolution No. 26, Series of 2014 dated 22 September 2014:

1. Seafarers on board ships transiting the coordinates provided below shall no longer be covered by the High Risk Area bonus/additional compensation:

East Bound Lane:

Start position of 045° East and runs between 11° 48' N and 11° 53'N.

The lane then runs straight, at a course of 72°

The termination of the lane is at 053° East, between 14° 18' N

West Bound Lane:

Start position begins at 053° East, between 14° 25'N and 14° 30'N

The lane runs straight through a course 252°

The termination of the lane is at 045° East, between 11° 55'N and 12° 00'N

However, where a ship sailing/ operating within the said coordinates is attacked, the high risk area bonus/ additional compensation shall be paid. The attack shall be recorded in the ship's logbook and shall be confirmed in writing and submitted to the employer/ manning agency to ensure that proper compensation is provided to seafarers.

2. On the other hand, seafarers who are onboard ships transiting the following high risk areas shall be entitled to High Risk Area bonus/ additional compensation and benefits, pursuant to Governing Board Resolution Nos. 12 and 13, both Series of 2012, and Memorandum Circular No. 09, Series of 2012:

- IBF Warlike Operations Area -12 nautical miles off Somali North Coast Territorial waters extending up to the 12 nautical miles limit from due north of the north-western border of Somalia with Ethiopia to due north of Cape Guardafui

- IBF High Risk Area-Gulf of Aden+ 400 nautical miles off Somali East Coast The Western Border of this High Risk Area runs from the coastline at the border of Djibouti and Somalia to position 11 48 N, 45 E; from 12 00 N, 45 E to Mayyun Island in the Bab El Mandeb Straits. The Eastern Border runs from Rhiy di-Irisal on Suqutra Island to position 14 18 N, 53 E; from 14 30 N. 53 E to the coastline at the border between Yemen and Oman, together with a 400 mile zone off the eastern coast of Somalia, i.e. from Suqutra Island down to the Kenyan border in the South.

- IBF Extended Risk Zone- West Indian Ocean

The western border of the Extended Risk Zone runs from the coastline at the border of Djibouti and Somalia to position 11 48 N, 45 E; from 12 00 N, 45 E to Mayyun Island in the Bab El Mandeb Straits.

The eastern border is set at 78 E, the southern border is set at 10S and the northern border set at 26 N.

- IBF High Risk Area- Gulf of Guinea

The territorial waters of Benin and Nigeria, including ports, terminals and roads anchorages, the delta of the Niger river, other in land waterways and port facilities, except only when the vessel is attached securely to a berth or SBM facility in a guarded port area.

3. The manning associations, seafarers unions and international shipowners are directed to conduct and extensive information dissemination campaign to ensure the widest circulation of the mentioned POEA Resolution.

“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

“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

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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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