

**Del Rosario Pandiphil Inc.**

## **Shipping and the Law**

### **Court reduces disability grading; upholds POEA contract provisions**

By: Ruben Del Rosario, Managing Partner, Del Rosario & Del Rosario, July 27, 2005

Seafarer fell during a lifeboat drill accident causing pain on his chest and back and swelling on his left clavicle bone. He was eventually declared unfit for sea duties as he was diagnosed to suffer *cervical disc disease level of C3 C4 C5 C6 with Radiculopathy*. The company physician gave him a disability Grade 10 (US\$12,090). Dissatisfied, seafarer filed a complaint before the Labor Arbiter for full disability benefits of Grade 1 (US\$60,000). The parties agreed to seek the opinion of another doctor who likewise gave a disability grading of Grade 10.

The Labor Arbiter awarded US\$60,000 as Grade 1 disability benefits as complainant could no longer go back to his previous work. On appeal, the NLRC affirmed the Labor Arbiter as complainant's injury being for life is analogous to the grade 1 injuries in the POEA Schedule of Disability.

The Court of Appeals reversed the ruling of the NLRC and awarded Grade 10 (US\$12,090) disability benefits.

The Court ruled:

1. The seafarer deserves to be compensated for his injury. However, the POEA contract is clear that it is the company designated physician and the POEA Schedule of Disability Benefits that must be followed. The company physician and another physician agreed upon by the parties both gave a grading of 10 on seafarer's disability.
2. The Labor Arbiter and the NLRC do not have specialized knowledge in the medical field. The company physician has such specialized knowledge and treated seafarer from the very beginning. Their findings of Grade 10 therefore has basis.
3. The contract is still the law between the parties. In this case, the seafarer is claiming under the POEA contract and thus the terms thereof must be respected.

In the words of Justice Amelita Tolentino:

"Indeed, the law takes precedence over the contract of the parties. Laws are deemed written into the terms of the contract. However, the contract is still the law between the parties. Especially in this case where the party is claiming under the contract, the terms thereof must at least be respected. If the same will not be applied, it must be for the same reason. To our mind, it is certainly a grave abuse of discretion on the part of the public respondent (NLRC) when it replaced the findings of the company-designated physician with its own finding and totally disregarded the basic provisions of the POEA contract without any justification for doing so. Since the contract is the law between the parties, we cannot ignore the provisions therein without stating any valid reason therefore."

**Career Philippines Shipmanagement, Inc. et.al. vs. NLRC, et.al., CA-G.R. SP No. 79150, April 27, 2005 (Justice Amelita Tolentino, Special Ninth Division, Court of Appeals)**

*Note: Attys. Herbert Tria and Dennis Acaban of Del Rosario & Del Rosario handled case for vessel interests.*