

ALON

Ocean Wave

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Topics of interest relating to the Philippine Maritime Industry and Shipping

Supreme Court Rulings,
Intermingling the Labour Code with the POEA, this is a detailed view for those who wish to know the full picture.

120 Days to 240 Days

A life-line to prevent total exposure ?



As a stop-gap only,
Disability should be based on medical condition **not**
the number of days



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120 days the Supreme Court intermingling the Labour Code of the Philippines with the Employment Contract (POEA) in awarding total disability.

How did the Situation come about ?

The issue first appeared in a case called **Crystal Shipping vs. Natividad** (G.R. No. 154798, 20 October 2005) with the Supreme Court making its ruling in 2007. This case was handled by Pandiman and was a medical illness case of a Chief Officer with a thyroid problem. His employment was under the POEA contract (two versions ago) prior to the introduction of the (1998) POEA in 2000 and did not delineate between work and non-work related issues. The then jurisprudence was that if an illness or injury happened during the term of the contract then the ship owner had an obligation;

Fausto Inductivo vs Wallem Maritime” the Supreme Court upheld that even if a condition is pre-existing then if it manifests itself during the term of the contract then the owners liability has been established.

But even assuming that the ailment of Faustino Inductivo was contracted prior to his employment on board “MT Rowa,” this is not a drawback to the compensability of the disease. It is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits provided therefore. It is enough that the employment had contributed, even in a small degree, to the development of the disease and in bringing about his death”.

Our advice had been to address the claim based on the doctors assessment of Grade 9, however the seafarer filed a case at the NLRC. While under the then jurisprudence the owner had a liability the defense was that it should be limited to the company doctors grading. The case progressed up to the Supreme Court where the decision rendered was unexpected and mixed elements from the Labour Code of the Philippines and elements of the POEA contract.

What is the actual issue

It is not really complicated or a mystery, but the effects have been serious to ship owners and comes down to the power of the Philippine Supreme Courts position and interpretation of the Standard Employment contract (The POEA from prior to and including the 2000 versions) compared to the position of the maritime industry. The standard employment contract is the Philippines Overseas Employment Administration (POEA) contract for Filipino seafarers serving on international vessels, the current version (effective from November 2010) full title;

*STANDARD TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING SHIPS**

- *This is the current version which came in to force November 2010, to be aligned with the upcoming MLC the term “vessel” has ben replaced with “ship”*

For a case to reach the Supreme Court it can take seven (7) years, the cases currently decided upon are from the POEA contract year 2000, the full title being;

STANDARD TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING VESSELS (2000)



The below references are therefore from the 2000 POEA,

It is in Section 20 that the reference to medical treatment and sick wages (120days) is found, we reproduce below for ease of reference we have highlighted the pertinent part;

SECTION 20B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

The position of the industry is that the POEA contract stands alone, distinct and separate from other benefits provided under Philippine law or any private medical life insurance or pension a seafarer may have. In regards to Section 20B item 3 above (highlighted in yellow) then the position of the maritime industry is that the ship owners obligation is



To provide sick wages up to 120 days.



Provide medical treatment until a seafarer has been assessed by the Company Designated Physician (CDP) as having reached maximum medical cure or fit to work.

Medical treatment for example, spinal injury or even simple Tuberculosis (TB) where recommended treatment is 6 months, is far in excess of the 120days (4 months) stipulated in the POEA. Therefore the maritime industries position is that there is no defining time (number of days) as to the owners obligation for medical treatment or assessment of disability, but that any disability is based upon the grading medical assessment of the attending Company Designated Physician (CDP).

The argument by the Supreme Court is that they have interpreted Section 20B item 3 (highlighted in yellow above) as one directive. That basic wages as sick wages will be applied for 120 days and that the owner's obligation to provide medical treatment up to maximum medical cure or fit to work will be done within the 120 day period, otherwise after such a period the seafarer will be deemed to be permanently disabled.

There has been one case where one SC justice adopted a different position, this was the **Vergara vs. Hammonia Maritime Services, Inc. et al.** (G.R. No. 172933, 6 October 2008) this case also handled by Pandiman

However, with this case of *Vergara*, the Supreme Court held that a temporary total disability only becomes permanent when so declared by the Company Designated Physician (CDP) within the periods he is allowed to do so, **or upon the expiration of the maximum 240-day medical treatment period** without a declaration of either fitness to work or the existence of a permanent disability. If the initial 120-day treatment or temporary total disability period is exceeded, the company-designated doctor can still make a declaration within the extended 240-day period that the seafarer is fit to work.



In the Verga case the Supreme Court made direct reference to the Labour Code of the Philippines, where we reproduce for ease of reference;

Rule X – Temporary Total Disability

Section 2. Period of entitlement (a) The income benefit shall be paid beginning of the first such day of such disability. If caused by an injury or ill sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the system may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions determined by the system.

The separation and distinction of the POEA contract and the Labour Code of the Philippines, was explained by the Department of Labour and Employment (DOLE) Department Order No. 4, Series of 2000.

In view of recent developments in the international maritime industry affecting the recruitment and employment of Filipino seafarers on ocean-going vessels and cognizant of the Department's objective of ensuring the continued employment of the Filipino seafarers and maintaining the Philippine global comparative advantage in ship manning. The Standard Terms and Conditions Governing the Employment of Filipino Seafarer On Board Ocean-Going Vessels is hereby amended reflecting the consensus of all the stakeholders as determined through several tripartite consultations conducted by the Philippine Overseas Employment Administration.

The amended POEA contract was created for the simple purpose of serving the peculiar and special needs of seafarers. It governs the contractual relationship between the seafarer and the employer. Hence, any claim, by virtue of the contractual relationship, should be governed by the terms and conditions of the POEA contract.

The following were the initial cases in the 120 day issue,

A. *Crystal Shipping vs. Natividad* (G.R. No. 154798, 20 October 2005) (Pandiman)

In this case, the Supreme Court ruled that permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body," citing previous cases decided on employees' compensation principles. As the decision in the Crystal Shipping case was extraordinary and although a decision by the Supreme Court becomes final and jurisprudence (SCRA), we did file a *Motion to Clarify* seeking the courts position on the POEA contract and the specific provisions. It is clear from the courts answer, that having debated the Employment contract it was clear that the court was at odds with itself realizing it had applied the Labour Code when the POEA contract was very specific. In a Resolution dated 12 February 2007, the Supreme Court clarified that the POEA Standard Employment Contract "**does not measure disability in terms of number of days but by grading only.**" This wording was later directly utilized by the POEA in the revised 2010 POEA contract

B. *Remigio vs. NLRC, et al.* (G.R. No. 159887, 12 April 2006.)

Six months later, this case was decided, wherein the Supreme Court expounded on the concept of permanent total disability by citing Section 2, Rule VII of the Implementing Rules of Book V of the Labor Code which states that "(a) disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days."



C. ***Micronesia Resources, et al. vs. Cantomayor*** (G.R. No. 156573, 19 June 2007)

Citing *Remigio*, the Supreme Court disregarded the fact that the seafarer therein did not even obtain a **second** opinion, attesting to any disability and granted Grade 1 disability benefits based on the fact that the seafarer had not been able to resume the same work or activity for more than 120 days.

D. ***Palisoc vs. Easways Marine, Inc., et al.*** (G.R. No. 152273, 11 September 2007) (Pandiman)

E. ***Philmare Inc., et al. vs. Suganob*** (G.R. No. 168753, 9 July 2008)

F. ***Wallem Maritime Services, Inc., et al. vs. NLRC, et al.*** (G.R. No. 163838, 25 September 2008)

In the above three (3) cases, the Supreme Court again awarded permanent total disability benefits on the ground that the seafarers therein were unable to perform their jobs for more than 120 days, citing the above cases of *Crystal Shipping* and *Remigio*.

G. ***Vergara vs. Hammonia Maritime Services, Inc. et al.*** (G.R. No. 172933, 6 October) (Pandiman)

However, with this case of *Vergara*, the Supreme Court held that a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, **or upon the expiration of the maximum 240-day medical treatment period** without a declaration of either fitness to work or the existence of a permanent disability. If the initial 120-day treatment or temporary total disability period is exceeded, the company-designated doctor can still make a declaration within the extended 240-day period that he seafarer is fit to work.



See note

H. ***Abante vs. KGJS Fleet Management Manila, et al.*** (G.R. No. 182430, 4 December 2009) (Pandiman)

Without mentioning the case of *Vergara*, the Supreme Court held that “(t)he failure of the company-designated physician to pronounce petitioner fit to work within the 120-day period entitles him to permanent total disability benefit in the amount of US\$60,000.00.” Instead, the Supreme Court cites the case of *Palisoc vs. Easways Marine, Inc., et al.*



See note

I. ***Iloreta vs. Philippine Transmarine Carriers, Inc., et al.*** (G.R. No. 183908, 4 December 2009) (Pandiman)

Again, in citing the cases of *Philmare Inc., et al. vs. Suganob* and *Remigio vs. NLRC, et al.*, the Supreme Court held that “(a)pplying the standards reflected above *vis-à-vis* the fact that from the time petitioner was medically repatriated on August 16, 2002 up to the time he filed his complaint for disability compensation on July 14, 2003 or for almost eleven (11) months, petitioner remained unemployed, his disability is considered permanent and total.”



See note

J. ***Quitortiano vs. Jepsens Maritime, Inc., et al.*** (G.R. No. 179868, 21 January 2010)

In citing *Remigio*, the Supreme Court held that “(a)pplying the standards reflected in the immediately quoted ruling of the Court *vis-à-vis* the fact that it was only on November 16, 2001 that the “fit to work” certification was issued by Dr. Cruz or **more than five months** from the time petitioner was medically repatriated on May 30, 2001, petitioner’s disability is considered **permanent and total**.”



See note





The Vergara case was not a solution to the problem but did extend the time to 240 days, however successive SC justices have never referred to this case.



As can be seen from the above three (3) cases, the Supreme Court did not immediately reaffirm the 240-day ruling in *Vergara*, but granted permanent total disability benefits based on the 120-day period.

The Supreme Courts eventual change to a 240 Day ruling

After the 2008 Supreme Court case of *Vergara vs. Hammonia Maritime Services, Inc., et al.*, only the 2010 case of ***Magsaysay Maritime Corp., et al. vs. NLRC and Rommel B. Cedol*** was promulgated applying the *Vergara* doctrine. The rest of the Supreme Court decisions on disability compensation vis-à-vis the period of treatment prior and subsequent to *Vergara* and *Magsaysay*, expressly stated that if the seafarer is unable to work for more than 120 days, the seafarer is deemed entitled to permanent total disability benefits.

However, **four (4) years after *Vergara***, the Supreme Court promulgated **SIX (6) DECISIONS**, categorically affirming the *Vergara* doctrine that if the initial 120-day period for treatment was exceeded and no declaration was made with respect to a disability/impediment grading or “fitness to work” because the seafarer required further medical treatment, said treatment should continue up to a maximum of 240 days. The Supreme Court further clarified that at any time within the 240-day period, the seafarer may be declared “fit to work” or given a corresponding disability rating/impediment grade. But if the 240-day period lapsed without any declaration or issuance of a disability rating/impediment grade, the **temporary total** disability becomes a **permanent total** disability, which would entitle the seafarer to maximum disability benefits.

Below is a survey of the 2012 Supreme Court cases with the pertinent facts and the nature of each case highlighted for easy reference.

- A. ***Magsaysay Maritime Corporation, et al. vs. Oberto S. Lobusta*** ([Pandiman](#))
(G.R. No. 177578, 25 January 2012)
First Division [*Ponente*: Associate Justice Martin S. Villarama, Jr.]

Applicable POEA Contract: **1996** POEA Standard Employment Contract

Nature of Injury/Illness and Number of Days under Treatment:

Oberto S. Lobusta (“Lobusta”) was repatriated for “severe acute bronchial asthma with secondary infection and lumbosacral muscle strain.” **After nine (9) months, the company-designated physicians (“CDP”) did not declare Lobusta as “fit to work” nor assess him with a disability grading.** The parties consulted a third doctor, who declared that Lobusta “ought not to be considered fit to return to work as an Able Seaman.”

Decision of the Labor Arbiter:

Lobusta is entitled to (a) US\$2,060.00 as medical allowance, (b) US\$20,154.00 as disability benefits, and (c) 5% of the awards as attorney’s fees.

Decision of the National Labor Relations Commission (NLRC):

Decision of the Labor Arbiter **affirmed**.



Decision of the Court of Appeals (CA):

Decision of the NLRC **modified**. Lobusta is entitled to a) US\$2,060.00 as medical allowance, b) US\$60,000.00 as disability benefits, and c) 5% of the total monetary award as attorney's fees.

Decision/Ruling of the Supreme Court:

Decision of the CA **affirmed**.

Citing *Palisoc v. Easways Marine, Inc.* and *Remigio v. National Labor Relations Commission*, the Supreme Court ruled that: (a) the POEA Standard Employment Contract was formulated by the POEA pursuant to its mandate under Executive Order No. 24727 "to secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith," and "to promote and protect the well-being of Filipino workers overseas;" (b) Section 29 of the 1996 POEA Standard Employment Contract itself provides that all rights and obligations of the parties to the contract, including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants where the Philippines is a signatory; and (c) even without this provision, a contract of labor is so impressed with public interest that the Civil Code expressly subjects it to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.

Under Article 192 (c) (1) under Title II, Book IV of the Labor Code, a disability is deemed total and permanent if the disability last continuously for more than 120 days, except as otherwise provided in the Rules.

HOWEVER, the Supreme Court took note of its prior ruling in **Vergara** that:

...(T)he seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

X X X X

As outlined above, a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability.

Applying the foregoing, the maximum 240-day (8-month) medical-treatment period expired, but no declaration was made that Lobusta is fit to work. Nor was there a declaration of the existence of Lobusta's permanent disability / disability grading.



B. **Alen H. Santiago vs. Pacbasin Shipmanagement, Inc., et al.**
(G.R. No. 194677, 18 April 2012)
Third Division [*Ponente*: Associate Justice Jose C. Mendoza]

Applicable POEA Contract: **2000** POEA Standard Employment Contract

Nature of Injury/Illness and Number of Days under Treatment:

Alen H. Santiago (“Santiago”) was repatriated because he was accidentally hit by two (2) falling scaffolding pipes while performing a task, and his head, neck and shoulder were injured. **After six (6) months, the CDP**

assessed Santiago with a Grade 12 Disability Rating. Santiago consulted Dr. Efren Vicaldo (“Dr. Vicaldo”), who assessed him with a Grade 7 Disability Rating but also declared Santiago as “unfit to resume work as a seaman.”

Decision of the Labor Arbiter:

Santiago is entitled to US\$66,712.80 as disability benefits, sickness allowance, and attorney’s fees.

Decision of the NLRC:

Decision of the Labor Arbiter **modified. Santiago is only entitled to partial permanent disability equivalent to Grade 12 (US\$5,225.00)** plus 10% thereof as attorney’s fees.

Decision of the CA:

Decision of the NLRC **affirmed.**

Decision/Ruling of the Supreme Court:

Decision of the CA **affirmed.**

The Supreme Court applied the case of *Vergara* and ruled that since Santiago was assessed by the CDP to be suffering a Grade 12 Disability Rating within the 240-day period, then he was merely suffering from a permanent partial disability and not a permanent total disability which would have entitled him to a maximum disability benefit of \$60,000.00.

The Supreme Court took note that even after Santiago was informed by the CDP of his finding, he sought the opinion of independent doctors. However, said doctors’ finding stated, amongst others, that Santiago’s reflexes were normal and that he was ambulatory and able to perform his daily chores although he still experienced neck pains and headaches. These findings negate a claim for total disability.

Finally, the Supreme Court noted that even though Dr. Vicaldo examined Santiago, the former, after only a single session, gave Santiago a Grade 7 Disability Rating, which would not entitle him to permanent total disability compensation. However, the Supreme Court stated that because there was no agreement on a third doctor who should have examined Santiago anew and whose finding should have been final and binding, it is “left without choice but to uphold the certification made by (the CDP) with respect to Santiago’s disability.”

C. **C.F. Sharp Crew Management, Inc. et al. vs. Joel D. Taok**
(G.R. No. 193679, 18 July 2012)
Second Division [*Ponente*: Associate Justice Bienvenido L. Reyes]

Applicable POEA Contract: **2000** POEA Standard Employment Contract

Nature of Injury/Illness and Number of Days under Treatment:

The seafarer was repatriated with a diagnosis of “atrial fibrillation” and cardiomyopathy. **While still undergoing treatment, or 45 days after repatriation, Taok filed a Complaint with the NLRC, and did not subject himself to further medical examination.**



Decision of the Labor Arbiter:

Complaint for disability benefits is **dismissed**. Taok has no cause of action for disability benefits because he was still undergoing treatment with the CDP and there exists no medical finding that he was disabled.

Decision of the NLRC:

Decision of the Labor Arbiter **affirmed**.

Decision of the CA:

Decision of the NLRC **reversed and set aside**. Taok is entitled to US\$60,000.00 as permanent total disability benefits, US\$1,584.00 as sickness wages plus ten (10) percent as attorney's fee.

Decision/Ruling of the Supreme Court:

Decision of the CA **reversed and set aside**. Taok's complaint is **dismissed** for lack of merit.

The NLRC's dismissal of Taok's complaint was warranted since at the time Taok filed his complaint, he had no cause of action against his employers. When Taok filed his complaint, the 120-day period for him to be considered in legal contemplation as totally and permanently disabled under Article 192 (c) (1) of the Labor Code had not yet lapsed. Only 55 days had elapsed since Taok signed-off from the vessel based on Section 20 (B) (3) of the POEA Standard Employment Contract.

Citing *Vergara*, the Supreme Court discussed the significance of the 120-day period as one when the seafarer is considered to be totally yet temporarily disabled, thus, entitling him to sickness wages. This is also the period given to the employer to determine whether the seafarer is fit for sea duty or permanently disabled and the degree of such disability. However, if the employer's failure to make a declaration on the fitness or disability of the seafarer is because of the latter's need for further medical attention, the period of temporary and total disability may be extended to a maximum of 240 days.

Therefore, the 120-day or 240-day period and the obligations the law imposed on the employer are determinative of when a seafarer's cause of action for total and permanent disability may be considered to have arisen.

D. ***PHILASIA Shipping Agency Corporation, et al. vs. Andres G. Tomacruz***

(G.R. No. 181180, 15 August 2012)

First Division [*Ponente*: Associate Justice Teresita J. Leonardo-De Castro]

Applicable POEA Contract: **2000** POEA Standard Employment Contract

Nature of Injury/Illness and Number of Days under Treatment:

Andres G. Tomacruz ("Tomacruz") was repatriated for kidney stones. **After 249 days, the CDP declared Tomacruz "fit to work."** Tomacruz consulted Dr. Vicaldo, who assessed Tomacruz with a Grade 7 Disability Rating, but also declared him to be unfit to resume work as a seaman in any capacity.

Decision of the Labor Arbiter:

Complaint is **dismissed**. Tomacruz is **not** entitled disability benefits, sickness allowance, damages and attorney's fees.

Decision of the NLRC:

Decision of the Labor Arbiter **affirmed**.

Decision of the CA:

Decision of the NLRC **reversed and set aside**. Tomacruz is entitled to US\$60,000.00 as permanent total disability benefits and ten percent (10%) attorney's fees.



Decision/Ruling of the Supreme Court:
Decision of the CA **affirmed**.

Applying *Vergara*, the Supreme Court ruled that when the CDP made a declaration that Tomacruz was supposedly “fit to work,” 249 days had already lapsed from the time he was repatriated. As such, his temporary total disability should be deemed total and permanent, pursuant to Article 192 (c)(1) of the Labor Code and its implementing rules. Even though Tomacruz was declared “fit to work,” the fact remains that he was unable to work for more than 240 days. Consequently, Tomacruz’s disability is considered permanent and total, and the fact that he was declared fit to work by the CDP “does not matter.”

E. *Wallem Maritime Services, Inc. vs. Ernesto C. Tanawan* (Pandiman)
(G.R. No. 160444, 29 August 2012)
First Division [*Ponente*: Associate Justice Lucas P. Bersamin]

Applicable POEA Contract: **1996** POEA Standard Employment Contract

Nature of Injury/Illness and Number of Days under Treatment:

Ernesto C. Tanawan (“Tanawan”) was repatriated for “multiple left toes fracture (*i.e.*, left 2nd proximal phalanx and 3rd to 5th metatarsal).” **After six (6) months, the CDP declared Tanawan as “fit to work.”** Tanawan consulted Dr. Rimando Saguin (“Dr. Saguin”), who assessed him with a Grade 12 Disability Rating. He also consulted Dr. Hernando D. Bunuan (“Dr. Bunuan”) for an eye injury that he supposedly sustained while on board the vessel.

Decision of the Labor Arbiter:

Tanawan is entitled to disability benefits for: a) Foot injury – US\$5,225.00, and b) Eye injury – US\$20,900.00; plus ten percent (10%) attorney’s fees.

Decision of the NLRC:

Decision of the Labor Arbiter **reversed**. Tanawan’s complaint **dismissed** for lack of merit.

Decision of the CA:

Decision of the NLRC **annulled and set aside**. Decision of the Labor Arbiter **reinstated**.

Decision/Ruling of the Supreme Court:

Decision of the CA **modified**. The award of US\$20,900.00 as disability benefits for the eye injury is **deleted**.

The period from the time Tanawan began his treatment until he was declared “fit to work” lasted 172 days, during which Tanawan was unable to perform his job, an indication of a permanent disability. The Supreme Court ruled that under the law, there is permanent disability if a worker is unable to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body.

That the CDP did not render any finding of disability is of no consequence. Disability should be understood more on the loss of earning capacity rather than on the medical significance of the disability. Even without an official finding by the CDP that Tanawan is disabled and/or unfit for sea duty, Tanawan may still be declared to be suffering from a permanent disability if he is unable to work for more than 120 days. What clearly determines Tanawan’s entitlement to permanent disability benefits is his inability to work for more than 120 days. Although the CDP already declared Tanawan fit to work, Tanawan’s disability is still considered permanent and total because the declaration was belatedly made—*i.e.* more than 120 days after repatriation.

The claim for disability benefit for the eye injury is denied in view of Tanawan’s non-reporting of the injury to his employers and of his failure to prove that the injury was sustained during the term of his employment.



- F. **Fair Shipping Corp., et al. vs. Joselito T. Medel** (Pandiman)
(G.R. No. 177907, 29 August 2012)
First Division [*Ponente*: Associate Justice Teresita J. Leonardo-De Castro]

Applicable POEA Contract: **1996** POEA Standard Employment Contract

Nature of Injury/Illness and Number of Days under Treatment:

Joselito T. Medel ("Medel") figured in an accident: during the conduct of emergency drills onboard the vessel, one of Medel's co-workers lost control of the manual handle of a lifeboat, causing the same to turn uncontrollably and strike Medel in the forehead and injuring his eye. **After 11 months, the CDP declared Medel as "fit to resume sea duties."**

Decision of the Labor Arbiter:

Medel is entitled to US\$60,000.00 as disability benefits, and ten (10%) percent attorney's fees.

Decision of the NLRC:

Decision of the Labor Arbiter **set aside**. Complaint is **dismissed** for lack of merit.

Decision of the CA:

Decision of the NLRC **reversed and set aside**. The Decision of the Labor Arbiter is **reinstated** only with respect to the award of disability benefits. The award of attorney's fees is deleted.

Decision/Ruling of the Supreme Court:

Decision of the CA **affirmed**.

Citing *Remigio*, *Vergara*, and *Lobusta*, the Supreme Court ruled that from the time Medel signed off from the vessel up to the time he was declared fit to work, **more than 11 months, or approximately 335 days, have lapsed**. During this period, Medel was totally unable to pursue his occupation as a seafarer. It is evident that the maximum 240-day medical treatment period expired in this case without a declaration of Medel's fitness to work or the determination of the existence of his permanent disability. Accordingly, Medel's temporary total disability should be deemed permanent; thus, he is entitled to permanent total disability benefits.

Although the contract involved in *Vergara* was the **2000** POEA Standard Employment Contract, the Supreme Court applied the ruling therein to the case of *Lobusta*, which involved the **1996** POEA Standard Employment Contract. As noted in *Lobusta*, the first paragraph of Section 20 (B) (3) of the 2000 POEA Standard Employment Contract was copied verbatim from the first paragraph of Section 20 (B) (3) of the 1996 POEA Standard Employment Contract.

- G. **Pacific Ocean Manning, Inc., et al. vs. Benjamin D. Penales** (Pandiman)
(G.R. No. 162809, 5 September 2012)
First Division [*Ponente*: Associate Justice Teresita J. Leonardo-De Castro]

Applicable POEA Contract: **1996** POEA Standard Employment Contract

Nature of Injury/Illness and Number of Days under Treatment:

Benjamin D. Penales ("Penales") sustained a fracture in his left arm when a mooring rope rifted and recoiled in his direction. **While still undergoing treatment, or two (2) months after repatriation, Penales filed a Complaint with the NLRC, and did not subject himself to further medical examination.**

Decision of the Labor Arbiter:

The Labor Arbiter came up with her own assessment of Medel and ruled that he is entitled to disability benefits equivalent to a Grade 8 Disability Rating (33.59%) or US\$16,795.00, plus ten (10%) percent thereof as attorney's fees.



Decision of the NLRC:

The NLRC **remanded** the case back to the Labor Arbiter for the appointment of a physician who is more in a position to ascertain the degree of disability on the ground that the determination of Penales' disability/grading requires the determination of his actual physical condition and his injuries.

Decision of the CA:

Decision of the NLRC **reversed and set aside**. Penales is entitled to US\$60,000.00 as disability benefits, and ten (10%) percent attorney's fees.

Decision/Ruling of the Supreme Court:

Decision of the CA **reversed and set aside**. The case is **remanded** to the Labor Arbiter for the determination of the impediment grade to be assigned to Penales' disability at the time of his last treatment.

The Supreme Court ruled that there was no question that Penales is entitled to disability benefits since he was found to be disabled in all prior decisions. However, applying the cases of *PHILASIA Shipping Agency Corporation v. Tomacruz* and *Vergara*, the Supreme Court nonetheless ruled that from the time Penales

became injured on 31 August 2000, until his last treatment on January 26, 2001, **only 148 days had lapsed**. While this might have exceeded 120 days, this was well within the 240-day maximum period for the CDP to either declare Penales "fit to work" or assign an impediment grade to his disability at that time. It is worthy to note that when Penales filed a complaint before the Labor Arbiter on 2 October 2000, not only was he remiss in regularly attending his scheduled treatment sessions, **but only 32 days had passed from the time of his injury**.

The Supreme Court also pronounced that under the POEA Standard Employment Contract, the seafarer has the duty to faithfully comply with and observe the terms and conditions of the contract, including the provisions governing the procedure for claiming disability benefits. When Penales filed his complaint and refused to undergo further medical treatment, he prevented the company-designated physician from fully determining his fitness to work within the time allowed by the POEA SEC and by law.

Analysis/Conclusion

At the outset, it will be noted that three (3) of the above decisions awarded the seafarers maximum disability benefits in the amount of US\$60,000.00. In contrast, three (3) of the above decisions awarded the seafarer therein corresponding disability benefits equivalent to the disability rating / impediment grade issued by the CDPs. One (1) case, *Pacific Ocean Manning, Inc., et al. vs. Benjamin D. Penales*, was remanded back to the Labor Arbiter for the determination of the seafarer's disability rating / impediment grade at the time of his last treatment. **However, in six (6) of the above decisions, which involve both the 1996 and 2000 POEA Standard Employment Contract, the Supreme Court seems to be sending out a rather strong message that it has abandoned the so-called 120-day period in favor of the 240-day period of treatment.**

As it stands, if a seafarer's period of treatment exceeded 120 days and no declaration was made with respect to his disability/impediment grading or "fitness to work" because he required further medical treatment, said treatment should continue up to a maximum of 240 days. At any time within the 240-day period, the seafarer may be declared "fit to work" or given a corresponding disability rating/impediment grade. But if the 240-day period lapsed without any declaration or issuance of a disability rating/impediment grade, the **temporary total** disability becomes a **permanent total** disability, which would entitle the seafarer to maximum disability benefits.

In fact, in *C.F. Sharp Crew Management, Inc. et al. vs. Joel D. Taok*, the Supreme Court even went so far as to provide an outline of the only instances when a seafarer may pursue an action for permanent total disability benefits;

- a) the CDP failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days.



- b) 240 days had lapsed without any certification being issued by the CDP.
- c) the CDP declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20 (B) (3) of the POEA Standard Employment Contract are of a contrary opinion.
- d) the CDP acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well.
- e) the CDP recognized that he is totally and permanently disabled but there is a dispute on the Disability Grading;
- f) the CDP determined that his medical condition is not compensable or work-related under the POEA Standard Employment Contract but his doctor-of-choice and the third doctor selected under Section 20 (B) (3) of the POEA Standard Employment Contract found otherwise and declared him unfit to work.
- g) the CDP declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits.
- h) the CDP declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.

There appear to be a very clear trend that the Supreme Court in regards to disability compensation vis-à-vis the period of treatment can definitely be seen to have moved to a period of 240 days which in essence has improved the position for ship owners in the defense of disability claims prematurely filed against them. However, it needs to be clearly remembered that the cases (all cases) to date above are cases involving the 1996 and 2000 POEA Standard Employment Contract.

The Future and the Current 2010 POEA Contract

It will be interesting to see how the Supreme Court decides on a case involving the current **2010 POEA Standard Employment Contract**, which expressly mandates that disability should be based solely on the disability grading provided under Section 32 of the contract and should not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.

The provisions of the Labor Code apply only to disability benefit claims under the Social Security System (State benefits). The separate distinction of the claims under the Social Security System and under the POEA contract is evident, Section 20(3) of the POEA contract states that the benefits under the POEA contract shall be separate and distinct from, and will be in addition to whatever benefits which the seafarer is entitled to under Philippine laws from the Social Security System, Compensation Commission, Philippine Health Insurance Corporation and Pag-ibig (Home Development Fund).

The POEA is a government approved contract and is a contract made directly between the seafarer and the ship owner, who is represented by a local (POEA approved) manning agency. Again the industry's position being that the POEA should be the binding contract, which is separate and distinct. Where the Vergara case extended the time from 120 to 240 days and appears to help, in essence it is a completely different position than that we as an industry are trying to establish, that the POEA is separate and distinct and that disability is based on a medical grading not the number of days.



In the current 2010 POEA;

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

3. *In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.*

The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

The 2010 POEA contract also states ;

7. *It is understood and agreed that the benefits mentioned above shall be separate and distinct from, and will be in addition to whatever benefits which the seafarer is entitled to under Philippine laws from the Social Security System, Overseas Workers Welfare Administration, Employee's Compensation Commission, Philippine Health Insurance Corporation and Pag-ibig, if applicable.*

The 2010 POEA contract – the wording issued by the Supreme Court in the motion filed by Pandiman in the Motion to clarify, is used directly;

6. *In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or diseases shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.*

The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.



In conclusion we need to keep defending cases in line with the position that the POEA contract is separate and distinct.

What can be done to reduce claims exceeding 120 days is by prudent that prompt reporting of medical cases and responsible medical handling.

Pandiman has dedicated teams which monitor court appointments and medical appointments as well as case history, this information through a dedicated claims handling data base is provided to the Claims Executive assigned to the case known as POST



This bespoke system (**POST**) designed in house is versatile from the ability to review all the case history (legal, medical and notes), to specific reports and statistics again by legal or medical criteria through an interactive dock at the top of the screen (Fig 1).

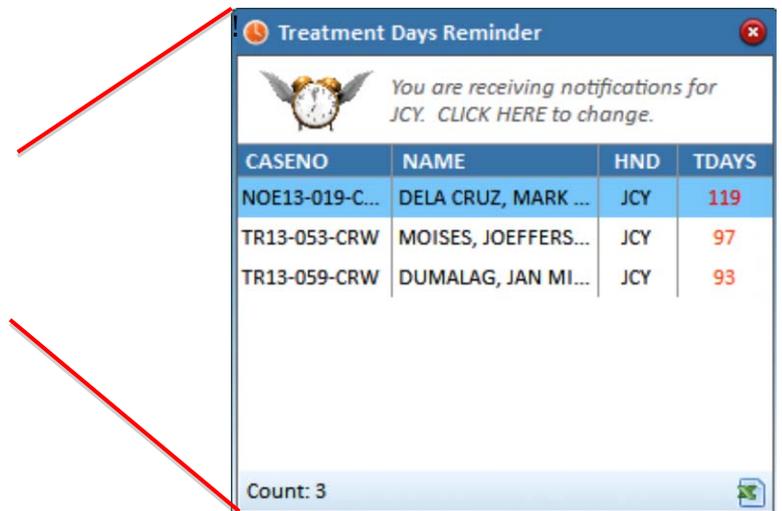


Fig 1

Fig 2

Upon logging into the **POST**, then claims executive will see a window that will pop-up on the lower right corner of their computer screen. This will notify the claims executive about their specific cases for that day and when a seafarer is subject for interim assessment (reached 90-100 days of treatment) OR is nearing the 120th day of treatment (As shown in Figure 2. The Nth day of treatment is based on the first day of treatment provided in the Crew Maintenance System based on the POEA and relevant employment contract..



The previous issued guidelines in order to monitor and control potential cases still apply;

- ➡ It is important that notice of all seafarers who are repatriated sick or injured are reported to the ship owner for discussion with their P&I Club.
- ➡ Delay in approving recommended medical treatment or surgical intervention should be avoided.
- ➡ The treating doctors must closely monitor a crewmembers medical progress and provide regular reports, particularly the closer to the 120 days treatment continues.
- ➡ Doctors must assess and advise on the length of required treatment. If less than 120 days the seafarer must be declared fit before the 120th day or provide a disability grading.

- ➡ If treatment will last more than 120 days, but the condition is curable, the doctor should provide a statement that the seafarer is not totally and permanently disabled.
- ➡ If the seafarer will require treatment for more than 120 days and is unlikely to improve the doctor should provide a disability grading before the 120 days have elapsed.
- ➡ If the disability is likely to improve after 120 days the doctor should assess the disability and also comment that subject to unforeseen circumstances the seafarer should become fit to work.
- ➡ All cases going to the NLRC, Court of Appeal and Supreme Court need to be defended consistently in line with the industry position.

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