**120 days vs. 240 days Total Permanent Disability**
**of the Filipino Seafarer, Which Will Prevail?**

*By: Attorney Imelda L. Barcelona*

The diametrically opposing rulings of the First and Second Divisions of the Philippine Supreme Court (SC) on the issue of when is a Filipino seafarer permanently disabled triggered a wide and noisy debate among the manning industry stakeholders.

Throwback over eight (8) years ago, or to be exact, on 20 October 2005, the First Division of the SC in reviewing a case involving entitlement of a Filipino seafarer to disability benefits issued the following ruling in the case of Crystal Shipping, Inc. and/or A/S Stein Line Bergen v. Deo P. Natividad, viz;

> "Petitioner tried to contest the above by showing that respondent was able to work again as a Chief Mate in March 2001. Nonetheless, this information does not alter the fact that as a result of his illness, respondent was unable to work as a Chief Mate for almost three years. It is of no consequence that respondent was cured after a couple of years. The law does not require that the illness should be incurable. What is important is that he was unable to perform his customary work for more than 120 days which constitute permanent total disability. An award of a total and permanent disability benefit would be germane to the purpose of the benefit, which is to help the employee in making ends meet at the time when he is unable to work." *(Underscoring ours for emphasis)*

This ruling threw the manning industry into chaos. Crew claims rose to unprecedented level. Whilst lawyers representing the seafarers exalted the ruling, manning agents/shipowners mourned the same.

Three (3) years after the controversial Crystal v. Natividad case, the Second division of the SC in reviewing an almost identical case involving entitlement of a Filipino seafarer to disability benefits, speaking through the former Department of Labor and Employment (DOLE) Secretary Mr. Justice Brion in the case of Jesus E. Vergara v. Hammonia Maritime Services, Inc., et al., said;

> "As we 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." *(Underscoring ours for emphasis)*

The tripartite team tasked to draft the amendment to the 2005 POEA-SEC, mindful of the confusion caused by the seemingly irreconcilable rulings of the two (2) divisions of the SC in the Crystal and Vergara cases, painstakingly crafted the language in the following provisions of the Amended POEA-SEC on disability benefits and entitlements, viz;

> Section 20, A, 2, viz;
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> "xxx However, if after the repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by a company-designated physician." *(Underscoring ours for emphasis)*
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> And, Section 20, A, 6, viz;
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> "In case of permanent and 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 disease shall be governed by the rates and rules of compensation applicable at the time the illness or disease was contracted.
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> The disability shall be based solely on the disability gradings provided under Section 32 of his 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." *(Underscoring ours for emphasis)*
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> Finally, Section 20, A, 3;
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> "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 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." *(Underscoring ours for emphasis)*

The afore-quoted provisions contained in the Amended POEA-SEC gives clarity to conflicting issues raised in the Crystal and Vergara cases, specifically on the following significant concerns, viz:

1. The company-designated physician or health care provider attending to the sick or injured seafarer is the exclusive authority that can determine when the seafarer is Fit to Resume Work or whether the seafarer is disabled. And, if the seafarer is disabled, the disability assessment issued by the company-designated physician shall be superior;

2. The permanent total or partial disability of the seafarer will not be measured by the number of days the seafarer is under treatment or the number of days the seafarer is paid his sickness allowance, and:

3. 120 days is the maximum number of days a seafarer is entitled to receive sickness allowance.

What is the relevance of the aforequoted provisions of the Amended POEA-SEC against the backdrop of the SC rulings on Crystal and Vergara cases?

It is the writer's view that the relevant provisions of the Amended POEA-SEC can be invoked by the manning agents/shipowners in mounting their defense against claims filed by seafarers who were deployed after the effectivity of the Amended POEA-SEC i.e. 12 November 2010.

The next question is how preponderant is the Amended POEA-SEC against Crystal and Vergara rulings?

In the Crystal case, the SC lifted the definition of total permanent disability in a previous SC decision in the case of Government Service Insurance System (GSIS) v. Cadiz, 08 July 2003. Whilst in the Vergara case, in defining what is a total and permanent disability, the Court relied on Rule X, Section 2 of the Implementing Rules and Regulation of the Labor Code. Both in essence fall under the category of general laws. The Amended POEA-SEC is a law specifically governing the overseas employment of Filipino Seafarers to ships trading international waters – it is a special law.

In the case of Liwayway Vinzons-Chato v. Fortune Tobacco, 19 June 2007, the SC reiterated the long standing principle in statutory construction in resolving the issue of which is superior between a general law and a special law, the SC said;

> "A general law and a special law on the same subject are statutes in *pari material* and should, accordingly, be read together and harmonized, if possible, with a view to giving effect to both. The rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special law must prevail since it evinces the legislative intent more clearly than that of a general statute and must not be taken as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all." *(Underscoring ours for emphasis)*

Finally, the question is – how potent are the above arguments vis–à–vis claims filed by seafarers against manning agents/shipowners before the NLRC?

My answer is it will depend on how you will prepare your defense and how you will lay out your arguments because like any other controversy brought before the courts for disposition there are no guarantees.

NLRC statistics from 2010 to 2013 show that shipowners' winning average is a dismal 19%. Maintaining the status quo is unthinkable for an industry that poured almost USD 5 billion to the Philippine economy in the past year. It is therefore vital to keep on pushing the envelope until a level playing field is firmly established.

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