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Analyzing the POEA standard employment contract for seafarers

A critical assessment of the application of this contract by the quasi-judicial and judicial bodies in Philippine

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List of abbreviations

AMOSUP: Associated Marine Officers and Seaman's Union of the Philippines

CA: Court of Appeal

CBA: Collective Bargaining Agreement

DOLE: Department of Labour and Employment

GDP: Gross Domestic Product

GSIS: Government Service Insurance System

ITF: International Transport Workers' Federation

LA: Labor Arbitrator

MLC: Marine Labour Convention

NBI: National Bureau of Investigation

NCMB: National Conciliation and Mediation Board

NLRC: National Labour Relations Commission

P&I: Protection and Indemnity insurance

PEME: Pre-Employment Medical Examination

POEA SEC: Philippine Overseas Employment Administration Standard Employment Contract

POEA: Philippine Overseas Employment Administration

PVA: Panel of Voluntary Arbitrators

RABs: Regional Arbitration Branches

ROC: Republic of China (Taiwan)

SSS: Social Security System

STCW: International Convention on Standards of Training, Certification and Watchkeeping for Seafarers

TRO: Temporary Restraining Order

VA: Voluntary Arbitrator

1 Introduction

Overseas employment workers play an important role in Philippines economy. Nearly ten percent of gross domestic product ("GDP") is contributed by overseas workers remittances[1]. The department of labor and employment ("DOLE") and the Philippine Overseas Employment Administration ("POEA") are two of the agencies set out to protect the rights of Philippines overseas workers.

According to the POEA 2010-2014 statistic report, over 400,000 Filipino seafarers work on-board ocean-going vessels. Because of the relatively high standard of training and language skills of the Filipinos, they are the most hired workers in today's shipping industry in terms of number[2]. Due to the lack of commonly accepted judicial standards in place, however, there exists many areas of conflict between the Filipino workers and their foreign employers. In spite of the government's attempts to improve the relations between the seafarers and their employers and, to bring equality and fairness into the contractual relation, more and more Filipino seafarers file petitions against shipowners seeking to obtain compensation and benefits.

"Contracts are legally enforceable agreements which represent a vehicle for planned exchanges[3]." There are three kinds of seafarers' contracts that apply to Filipino crews, namely the individual employment contract, Philippine Overseas Employment Administration Standard Employment Contract (hereinafter POEA SEC) and Collective Bargaining Agreement[4] (hereinafter CBA or Collective Agreement). Individual employment contract states the terms and condition pertaining to the particular contracted employee's ranking, wage and employment period[5]. POEA SEC and CBA regulate the general employment terms and condition, including obligations, minimum wage and working hours[6].

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[1] International Monetary Fund, IMF Country Report No.13/102, page 43
[2] Ellis, N., Sampson, H., *The global labour market for seafarers working aboard merchant cargo ships*, 2013, p14
[3] Jill Poole, *Contract Law* (UK: Oxford, 2012), p.1
[4] CBA is the contract negotiated between labor union and the employer. The most common CBA for Filipino crew is AMOSUP (Associated Marine Officers and Seaman's Union of the Philippines) CBA negotiated between AMOSUP and employers
[5] International Transport Workers' Federation, "ITF agreement," http://www.itfseafarers.org/itf_agreements.cfm
[6] Ibid

According to Philippine Labor Code Art 18, Filipino workers cannot be directly hired by foreign employers. It is the reason all Philippine overseas workers must have a valid signatory POEA SEC in order to work on foreign-flagged vessels. If a seafarer is a member of a labor union and covered by a valid CBA, the CBA will be the supplement to POEA SEC.

Most of the claims and disputes by far arise from issues regarding compensation and benefits, which is regulated in POEA SEC SECTION 20. As IG P&I Club recorded[7], in November 2009, there were 23 cases with a total value of USD 1.2 million US concerning such issues recorded. By February 2011, additional 18 cases were recorded, making the total value more than USD 2.5 million. By February 2012, there were 59 cases with a value in excess of USD 4 million. By September 2013, there were a total 98 cases with a value of more than USD 6.2 million.

It is a necessity that issues regarding work-related injury, illness or even death on board vessels be addressed in the terms of the contract. While the mechanism of compensation and benefits are detailed in the negotiated contract[8] agreed by parties. Disputes are often solved by petitions filed by the employees who try to interpret the terms differently from the custom usage and seek for a chance of unjust enrichment[9], rather than by the binding rules of the contract.

But, "It is not the seafarers who to blame for he present situation; but the current legal system which an increasing number of claimant lawyers, with diverse backgrounds, are able to exploit their personal gain."[10] While the there is a loophole in the "final and executory" nature of the decision from National Labour Relations Commission (hereinafter NLRC), the National Conciliation and Mediation Board (hereinafter NCMB) makes a "Prejudice caused to shipowner employers." [11]

Also NLRC/NCMB, court of appeal and even the Supreme Court sometime set the clear evidence aside and made decisions in favor of the labors in some cases. From P&I comment,

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[7] IG Personal Injury Subcommittee, International Group position paper on Garnishment, 03 October 2013
[8] POEA SEC Section 20. Compensation and Benefits
[9] IG Personal Injury Subcommittee, International Group position paper on Garnishment, 03 October 2013
[10] Ibid
[11] Ibid

"To some shipowners the frustration is so immense that they consider changing crew nationalities away from Filipinos[12]"

1.1 Structure and scope

This study will look into the problems described above in the introduction both on the legal aspect and through a practical approach. In this context, the study has the following scope:

(1) Examine the grounds to interpret POEA SEC terms.

(2) Assess in which ways the judicial and quasi-judicial bodies in Philippines are interpreting POEA SEC

When it comes to the legal aspect of the problem, the first issue with which this thesis will deal concerns the analysis of the applicable law and the interpretation of POEA standard terms and conditions governing the overseas employment of Filipino seafarers on-board ocean-going ships through the lens of the Philippine law. Secondly, there will be a presentation on the decisions given by quasi-judicial and judicial bodies concerning the topic of the study. Thirdly, it will be necessary to draw attention to the dispute settlement procedure. In this part, there will be a look into the implications to the shipping industry and the economy of Philippine resulted from increasing conflicts and associated cases. Lastly, the critical assessment of the court's decisions will take place, followed by thoughts and comments on resolutions of the current situation for Filipino workers who are important to the shipping industry.

1.2 Methodology

The main sources for this paper are the POEA SEC, Philippines Constitution, Philippines Civil Code, Philippines Labour Code, and decisions from Philippines legal system. Taking into account, that an accurate interpretation of Philippines law is important to access the right way to interpret the POEA SEC.

Other sources include articles from P&I clubs and commentary from shipping industry. It their considerations regarding the issue are important, because this is a practical issue relating the shipping industry, manning agency and P&I clubs.

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[12] Gard P&I news 209, 16 January 2013, http://www.gard.no/web/updates/content/20734098/crew-claims-in-the-philippines-when-the-contract-is-not-enough

2 POEA standard terms and conditions governing the overseas employment of Filipino seafarers on-board ocean-going ships

2.1 General principle of contract

2.1.1 Rules of interpretation

Under English law, the terms and condition expressed in the contract is deemed to be final and binding, no matter what the true intention of parties before making the contract is. Under Norwegian law, not only the final binding contract per se, but the background and intention of parties during negotiate and make contract should also be take into consideration.

It could be found out from the Philippine Civil Code that Philippine law is more like the spirit to exam the contract under Norwegian law. According to Philippine Law, if the terms of the contract are so obscure that it is impossible to ascertain the intention of the parties, then the agreement must be null and void[13]. Moreover, if the terms of the contract are clear enough, these terms shall prevail over the intention of the parties. Only if the wording of the agreement casts doubt upon the real intention of the parties, should this intention must govern the interpretation of the contract[14].

A contract reflects a mutual agreement between the parties. That is to say, every party has duties and rights according to the contracts. As it is stated on the Philippine Civil Code, a contract is binding upon the parties and it is not allowed for one of them to disregard the terms and conditions of the contract[15].

Along with this, a contract must be always performed bearing in mind the usage and the good faith among the parties. The Philippine Civil Code also follows this reasoning[16].

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[13] Philippine Civil Code, Title II Contracts, Chapter 5 Interpretation of Contract, Article 1378
[14] Ibid, Article 1370
[15] Ibid, Chapter 1 General Provisions, Article 1308
[16] Ibid, Article 1315

2.1.2 Rules of applicable law

Follow Section 31. , The applicable law in connection with the contract is the law of the Republic of the Philippines, international convention, treaties and covenants that sign by the Philippines. Nevertheless, the main obligation and rights of the parties entering into contractual agreements are regulated in the POEA SEC. Only if there is a loophole or ambiguous interpretation in the contract, Philippine law is the supplementary tool to make up the deficiency. Conversely, if there is no ambiguity in the terms of the contract, then the latter should be binding upon the parties and these terms should be the only rules governing the legal relationship between the parties.

Because of the nature of seafarer's contracts, they are not considered as regular employment defined under the Labor Code[17]. In the case *Pentagon International Shipping, Inc. vs. William B. Adelantar*[18], the Supreme Court clearly stated that seafarer is a contractual employee. Another case the Supreme Court stated "the employer might re-hiring a seafarer due to practical considerations namely, his experience and qualification. However, this does not alter the status of his employment from being contractual."[19]

Though in the next year, the Labor Arbitrator (hereinafter LA) in the case *Roberto Ravago vs. Esso Eastern Marine, Ltd. and Trans-Global Maritime Agency, Inc.*[20], alleged seafarer is a regular employee because he is repeatedly contracted. But the Supreme Court denied this opinion and emphasized that seafarer is contractual employee. His rights and obligation are regulated in the contract terms and conditions on a per contract basis.

The next chapter addresses the rules of interpretation involving contracts applied to POEA SEC. the interpretation given to this contract by the Supreme Court is compared therein with the general rules on interpreting contracts.

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[17] Article 280. Regular and casual employment.
[18] Pentagon International Shipping, Inc. vs. William B. Adelantar, G.R. No. 157373, July 27, 2004
[19] Marcial Gu-Miro, vs. Rolando C. Adorable and Bergesen D.Y. Manila, G.R. No. 160952. August 20, 2004
[20] Roberto Ravago vs. Esso Eastern Marine, Ltd. and Trans-Global Maritime Agency, Inc., G.R. No. 158324. March 14, 2005

2.2 Issue regarding the interpretation of the POEA SEC

2.2.1 Interpretation of section 20 Compensation and benefits

2.2.1.1 Assessing if the illness is compensable

Under POEA SEC Section 20 (Compensation and Benefits), the employer is liable to compensate the seafarer who gets work-related injury, illness or death during the term of the contract[21]. The two prerequisites for compensation are: 1) that the event must happen within the period of contract and, 2) must be work-related.

The employment period can be found in Section 2 (Commencement/ Duration of Contract) and Section 18 (Termination of Employment). The commencement of the contract is from the time when the contracted seafarer actually departs from Philippine, either airport or seaport, for employment, and the termination of the contract is at the time when the seafarer is repatriated from ship and actually arrives at the place of hire. This reflects the practice of the industry. The same principle can also be found in the R.O.C.[22] Exemplar of Fixed Term Employment Contract for Employing Seafarers Article 5[23].

"The exigencies of their work necessitates that they be employed on a contractual basis."[24] As it mentioned above, the seafarer is a contractual worker for providing his skill for a fix period of time. In practice, he usually repeatedly contracts to the same employer but this fact doesn't make him fall in the scope of normal employer under Labor Law.

Continuous or overtime work will make the employee fatigue. Thus the contract not only regulated the hours of working[25] on board, which is in accordance with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers

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[21] In the event of cardio-vascular (Section 32A 11) and cerebro-vascular (Section 32A 12), followed within 24 hours after termination of contract is still in the compensable scope.
[22] Republic of China (Taiwan)
[23] "The effective date is the first day that Party B (employee) serves on board when the vessel is within the territory of the R.O.C; however, the effective date will be the day that the vessel leaves a port for other countries. The termination of the contract depends on the time Party B arrives in Republic of China."
[24] Marcial Gu-Miro, vs. Rolando C. Adorable and Bergesen D.Y. Manila, G.R. No. 160952, August 20, 2004
[25] POEA SEC Section 10 Hours of Work

("STCW"), but also each period of employment cannot exceed 12 months, which is in accordance with Marine Labour Convention 2006[26](hereinafter MLC convention).

For the seafarers mental and physical health, they need a break after "long periods away from home, limited communication and consistently high work loads."[27] The rest period could be from days to months between each contract under different circumstances.

What is the time lapse for a contract to be considered continuous or independent? Taking into account that there is usually only few months rest between contracts, due to the short break between contracts, in the long run, most contracts would seem to have a continuous nature.

In the case *Gilbert Quizora, vs Denholm Crew Management (Philippines), Inc.*[28], the seafarer was continuously hired for 9 years covering 7 contracts, all of the medical examination before every contract shows fit for duty, and there was always sign-off period in between. The Supreme Court ruled that a rehired seafarer's illness is not equivalent to his getting ill during employment, considering the possibility that the seafarer acquired his illness during one of his sign-off period. Also in another case *Magsaysay Maritime Corporation, et al. vs. Henry M. Simbajon*[29], the Supreme Court ruled that a seafarer was hired by the same company for 3 years that he could acquired his illness, at some other time when he was not on board.

But only few months after the later case, another opposite opinion presented in the case *Magsaysay Mitsui Osk Marine, Inc. and/or MOL Tankship Management (Asia) Pte. Ltd. vs. Juanito G. Bengson*[30], the Supreme Court opined that the seafarer work for the same continuous for 12 years, the working nature must took a toll on the seafarer's body, thus he could not contracted his illness elsewhere but during the employment.

As it was stated above, MLC convention prescribes that the seafarer has the right to be repatriated within a contract period of less than 12 months. The purpose of this rule is to pro-

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[26] Title 2: Condition of employment, Title 2 Regulation2.5 Repatriation, Standard A2.5 – Repatriation, (b) the maximum duration of service periods on board following which a seafarer is entitled to repatriation - such periods to be less than 12 months

[27] Andy Smith, "Adequate Crewing and Seafarers' Fatigue: The International Perspective"p.5, January 2007

[28] Gilbert Quizora, vs Denholm Crew Management (Philippines), Inc., G.R. No. 185412. November 16, 2011

[29] Magsaysay Maritime Corporation, et al. vs. Henry M. Simbajon, G.R. No. 203472. July 9, 2014, page 8 in the transcript

[30] Magsaysay Mitsui Osk Marine, Inc. and/or MOL Tankship Management (Asia) Pte. Ltd. vs. Juanito G. Bengson, G.R. No. 198528. October 13, 2014, page 9 in the transcript

tect the mental and physical health of the seafarer. In line with this, the POEA SEC also provides the contract period should not exceed 12 months. This standard contract prescribes that within 12 months the contract can be extended provided that there was a mutual agreement between the seafarer and the employer. However, in practice, usually this period is extended beyond 12 months.

Along with this, this mutual agreement can be express or tacit. In the case *Inter-Orient Maritime, Inc. and/or Tankoil Carriers, Ltd. vs. Cristina Candava* [31], a seafarer was hired for a 9 months contract from January 2002 to 28 October the same year. On the expiration, the employer could not find a replacement crew for him thus he extended work until February 2003. The Supreme Court ruled that

> "there was an implied renewal of Joselito's(seafarer's) contract of employment for another 9 months starting from the expiration of the allowable three month extension on January 28,2003…"[32]

the maximum allowable period of service is 12 month under POEA SEC, thus the period after 12 month is deemed as a new contract.

Nevertheless, regardless of the fact that this mutual agreement is express or tacit, if a seafarer keeps working for the same employer for a period longer than 12 months any subsequent working period that exceeds this period of time is to be considered another contract. From the *Gilbert Quizora, vs Denholm Crew Management (Philippines), Inc. case*, it is possible to infer that the Supreme Court considers that in spite of short breaks between the end of a contractual relationship and the beginning of another one due to a subsequent rehiring a given illness acquired during this short break is to be considered stemming from one single work period. Since the activities behind such illness were carried out on behalf of the same employer.

Conversely, in the *Magsaysay Mitsui Osk Marine, Inc. and/or MOL Tankship Management (Asia) Pte. Ltd. vs. Juanito G. Bengson case*, the Supreme Court ruled that due to the continuous work previously performed by the seafarer, he could not have contracted the illness elsewhere, implying that such an ailment had to be work-related. Notwithstanding, there was a

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[31] Inter-Orient Maritime, Inc. and/or Tankoil Carriers, Ltd. vs. Cristina Candava, G.R. No. 201251. June 26, 2013, page 7 in the transcript
[32] Ibid

break in the contractual relationship. Therefore, there is room to infer that it is possible that the cause for the seafarer to become ill could be connected to something other than his work activities. Thus, arguably the grounds that the Supreme Court used in the *Gilbert Quizora, vs Denholm Crew Management (Philippines), Inc. case* could also be applied to the *Magsaysay Mitsui Osk Marine, Inc. and/or MOL Tankship Management (Asia) Pte. Ltd. vs. Juanito G. Bengson case*.

The reason for this is that although a long period of employment could be a strong basis to affirm that the illness was acquired within that contract period, provided there is a connection between the work performed and such an ailment, if there is a break, in any case, the disease could have another source.

Only work-related injury, illness or death as a result of work-related injury or illness is compensable. A work-related injury must be arising out of and in the course of employment[33]. The work-related illness is defined as those occupational diseases listed in Section 32A (Occupational Diseases) with conditions therein satisfied and determined by the company-designated doctor, but it should not be pre-existing before process the contract. Section 20A 4, provided that even if the illnesses are not in the list are disputably presumed as work-related.

2.2.1.2 Who decides if the illness is work-related?

It is the company-designated physician who determines whether the illness is work-related or not, however, the contracted seafarer, if not satisfied with the result, still has the right of choice to find his own doctor for a medical examination. If there is a conflict between the seafarer assigned doctor and company-designated physician, the solution is given in Section 20A 3 paragraph 4, the seafarer and the employer can joint agree to ask for a third doctor's opinion, and this third doctor's decision shall be final and binding.

In spite of this section of the contract prescribing that "the third doctor's opinion is final and binding" sometimes as it can be found in the case, the court upheld the opinion of seafarer appoint doctor, because according to the court the company-designated doctor is "self-serving…. for the company" and discard the assessment of the company-designated doctor. Nevertheless, the allegation that one doctor is favoring one party can also be said regarding the

[33] POEA SEC Definition of Terms 17

seafarer appointed doctor. Precisely because of this, the contract prescribes the third doctor's opinion rule.

Sometimes as it can be found in the case *German Marine Agencies, Inc. and Lubeca Marine Management HK Ltd. vs. National Labor Relations Commission and Froilan S. De Lara*[34], the court not only upheld the opinion for the doctor who actually conducted the surgery as finally and binding but also due to disagreement chose to set aside the third doctor opinion rule. Therefore, there seems to be also room to question if the opinion of the surgeon is in fact favoring the seafarer or not. The purpose of the third opinion rule is to clarify any doubt regarding to the situation of the seafarer, and by doing so, avoid potential disputes.

Along with this, according to the court the consent to doctor's opinion can be both explicit and tacit, as it can be found in the same case, since the company did not formally appoint a doctor but still the doctor was paid by the company.

From the case above, it could be assumed that the court criterion to uphold of a doctor is based on the task that doctor performed the treatment to the seafarer. In some cases, a doctor would only do an assessment of the presumed work-related illness or disability. In others, a doctor will conduct the treatment. In the latter cases, the court finds that their opinion should be binding and final. Nonetheless, as it can be found in the case *Santiago vs. Pacbasin Shipmanagement, Inc.*[35], the court choses to uphold the opinion of the doctor who made the initial assessment not the treatment. Thus, it seems that the difference between the doctor who made the treatment and the one who perform the assessment cannot be used as a criterion also.

As it mentioned above, according to the contract, if there is conflict between the company-designated physician and the seafarer's doctor. A third doctor can be agreed and appointed by both parties and the third doctor's opinion shall be final and binding.

When the company-designated doctor make the assessment, the risk to prove that the assessment is wrong shift to the seafarer. It is only when the seafarer is not satisfied with the company doctor's assessment, he will seek for another doctor's opinion. The employer will not know the existence of another assessment before the seafarer raise the issue.

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[34] German Marine Agencies, Inc. and Lubeca Marine Management HK Ltd. vs. National Labor Relations Commission and Froilan S. De Lara, G.R. No. 142049, January 30, 2001

[35] Alen Santiago vs. Pacbasin Shipmanagement, Inc. and/or Majestic Carriers, Inc.,G.R. No. 194677. April 18, 2012

The circumstances in the case *Philippine Hammonia Ship Agency, Inc. (now known as BSM Crew Service Centre Philippines, Inc.), et al. vs. Eulogio V. Dumadag*[36,] described this issue. The Supreme Court ruled that it is the seafarer's duty to secure the opinion of a third doctor. The reason was also given from the Supreme Court stated that:

> "The petitioners (employer) could not have possibly caused the non-referral to a third doctor because they were not aware that Dumadag(seafarer) secured separate independent opinions regarding his disability." [37]

Since the seafarer is the only person who knows there is a different opinion from his doctor against the assessment from the company-designated doctor, it is the seafarer's duty to get a consensus regarding his medical assessment.

2.2.1.3 On the work-related injury assessment time bar

There is a time bar for the seafarer to establish the injury and illness is work-related or the right to claim the benefits will forfeit. The seafarer must go to company-designated doctor for a post-employment medical examination within three working days after his repatriation. Thus the burden to prove it is work-related falls on the seafarer. In the case *Jebsens Maritime Inc., represented by Ms. Arlene Asuncion and/or Alliance Marine Services, Lld., vs. Enrique Undag*[38], the Supreme Court ruled that a health certificate got two months after the seafarer's repatriation cannot prove the illness is work-related. According to the court the reason to maintain the three days time bar is as follows:

> "Within three days from repatriation, it would be fairly easier for a physician to determine if the illness was work-related or not. After that period, there would be difficulty in ascertaining the real cause of the illness. To ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits."[39]

One exception is also described in the same paragraph, if the seafarer is so ill and weak that he could not submit himself to the company-designated physician a written notice must be deliver to the agency in the same period.

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[36] Philippine Hammonia Ship Agency, Inc. (now known as BSM Crew Service Centre Philippines, Inc.), et al. vs. Eulogio V. Dumadag, G.R. No. 194362. June 26, 2013, page 9 in the transcript
[37] Ibid
[38] Jebsens Maritime Inc., represented by Ms. Arlene Asuncion and/or Alliance Marine Services, Lld., vs. Enrique Undag , G.R. No. 191491, December 14, 2011,
[39] Ibid

There are two case decisions concerning this issue. In the case *Wallem Maritime Services, Inc., and Wallem Ship Management, Ltd., vs. National Labor Relations Commission and Elizabeth Inductivo*[40], the Supreme Court stated,

> "Indeed, for a man who was terminally ill and in need of urgent medical attention one could not reasonably expect that he would immediately resort to and avail of the required medical examination".

In another case *Crew and Ship Management International Inc. and Salena, Inc. vs. Jina T. Soria*[41], the seafarer failed to comply the three day mandatory report procedure but the Supreme Court untied him from the rule due to he had physical infirmity.

From these cases, it is possible to infer that the three days time bar is not an absolute rule to the court, but a relative one. Precisely because if the seafarer is severely ill, this time bar limit can be extended. This exception applies even in above cases where the seafarers did not even request the post-employment exam before or after repatriation. Therefore, arguably there are some sections of the POEA SEC that are not to be interpreted as applicable whatever the circumstances, but taking into account the situations. As in the case *Jebsens Maritime Inc., represented by Ms. Arlene Asuncion and/or Alliance Marine Services, Lld., vs. Enrique Undag*[42], the court ruled that two month was exceeding a reasonable time for establishing the connection between the illness and the work activity. Notwithstanding, in this case, the seafarer was not found severely ill. Hence, there might be room to affirm that two month may be an acceptable time limit where a seafarer was severely ill depending on the circumstances. In a Concurring Opinion, of the case *Interorient Maritime Enteprises, Inc. vs. Victor M. Creer, III*[43], judge J. Leonen stated that

> "In my view, the legal and contractual limitation of the exception to the mandatory post-employment examination to instances where the seafarer is 'physically incapacitated to do so' will be contrary to the constitutional requirement for protection to labor and the priority that the state should grant to health."

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[40] Wallem Maritime Services, Inc., and Wallem Ship Management, Ltd., vs. National Labor Relations Commission and Elizabeth Inductivo, G.R. No. 130772. November 19, 1999

[41] Crew and Ship Management International Inc. and Salena, Inc. vs. Jina T. Soria, G.R. No. 175491. December 10, 2012,

[42] Jebsens Maritime Inc., represented by Ms. Arlene Asuncion and/or Alliance Marine Services, Lld., vs. Enrique Undag, G.R. No. 191491. December 14, 2011,

[43] Interorient Maritime Enteprises, Inc. vs. Victor M. Creer, III, G.R. No. 181921. September 17, 2014, page 5 in the concurring opinion

Therefore, all the terms of the contract should be interpreted in a way as not to infringe the other rights of the seafarers.

It would be inappropriate to draw the conclusion that the relaxation of the three days time bar rule would affect the competitively of the Filipino seafarers. In the words of the judge mentioned above:

> "Some may argue that the relaxation of the three-day rule will reduce the competitiveness of Filipino seafarers. I do not believe so. The competitiveness of our seafarers is attributed to their skills, creativity, and resiliency. Competitiveness has very little to do with the mandatory three-day post-employment medical examination period."[44]

Another different question arose: "what if the employer refuse the seafarer's request for post-employment exam?" In the case *Interorient Maritime Enterprises, Inc., Interorient Enterprises, Inc. and Liberia and Dorothea Shipping Co., Ltd. vs. Leonora S. Remo*[45], the seafarer requested a post-employment exam but the employer never arranged him to undertake any assessment by company-designated doctor, thus he failed to comply the three days mandatory report procedure and then turned to a self-serving doctor for treatment. The Supreme Court denied that the seafarer lost his right to claim and stated:

> "… the absence of a post-employment medical examination cannot be used to defeat respondents(seafarers) claim since the failure to subject the seafarer to this requirement was not due to the seafarers fault but to the inadvertence or deliberate refusal of petitioners(employers)."[46]

This decision makes it clear that for the court what matters is if the seafarer requested the post-employment exam. Thus the seafarer would be discharged from his obligation the moment he did so request the mentioned exam. From that moment on, the seafarer is still entitled to the right to claim. Moreover, this is clearly an example of a shift of the risk in the contractual relationship. It is for the seafarer to request an exam but on the other hand it is for the employer to provide this service.

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[44] Ibid, page 6
[45] Interorient Maritime Enterprises, Inc., Interorient Enterprises, Inc. and Liberia and Dorothea Shipping Co., Ltd. vs. Leonora S. Remo, G.R. No. 181112, June 29, 2010,
[46] Ibid

2.2.1.4 Regarding the payment of sickness and disability allowance

In the case of work-related injury or illness, the employer is liable for the full wage, while the seafarer is still on board, and the cost of medical treatment in foreign ports. When the seafarer need to be repatriated from the ship and receive further medical treatment on land, the employer has to bear the cost of repatriation and treatment, and the seafarer is entitled to an additional sickness allowance.

The amount of sickness allowance is the basic wage of the seafarer, computes the days counting from the day he signed off from the ship until the time he is declared fit to work or disability grading, provided in section 32(Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Diseases or Illness Contracted), assessed by the company-designated physician. This sickness allowance period should not exceed 120 days and not less than a month. During this period the seafarer is deemed as "temporary total disability". There is no difference degree assessment of temporary total disability. This "temporary total disability" period does not indicate that the seafarer has actual body irreparable damage. The true meaning is that the seafarer cannot work in this maximum 120 days period due to work-related illness or injury. It is nothing to do with the further assessment about disability grading either. If the illness or injury is later found out not work-related, the sickness allowance is payable until the company-designated doctor make this assessment.

In the situation concerning that the medical reason causes the seafarer repatriate that later be found out is non work-related. The company is liable for the sickness allowance, once the seafarer is repatriated for medical reason, at the time when he is under treatment and waiting for the company-designated doctor to decide if the injury or illness is work-related. The supported Supreme Court decision could be found in the case *Transocean Ship Management (Phils.), Inc., Carlos S. Salinas, and General Marine services Corporation vs. Inocencio Vedad; Inocencio Vedad vs. Trancencio Ship Management (Phils.), Inc., Carlos S. Salinas, and General Marine Services Corporation*[47].

If the seafarer is declared fit for duty after the medical treatment, the sickness allowance is the only benefit he could get. If the seafarer is further assessed disability grad due to irrepa-

[47] Transocean Ship Management (Phils.), Inc., Carlos S. Salinas, and General Marine services Corporation vs. Inocencio Vedad; Inocencio Vedad vs. Trancencio Ship Management (Phils.), Inc., Carlos S. Salinas, and General Marine Services Corporation. G.R. Nos. 194490-91;G.R. Nos. 194518 & 194524, March 20, 2013

rable physical damage, he could receive the said sickness allowance plus a disability allowance depends on different grad as compensation.

The company-designated physician should assess the grading of disability solely base on the disability schedule provided under section 32. The number of days the seafarer under treatment or the number of days the sickness allowance is paid shall not be taken into consideration.

Since the seafarer is entitled sickness allowance and disability allowance, if a disability grad assessment is applicable under section 32, no loss of earning is compensable. In the case *Power Shipping Enterprises Inc. et.al. vs. NLRC, et.al*[48]*,* the court of appeal ruled that grant the loss of earning "would be repugnant to the rule of double recovery"[49]. The latter rule means that if a seafarer received a certain amount due to impairment, he cannot receive another kind of compensation for the same cause.

2.2.1.5 Grounds for receiving compensation

There are the two condition that will forfeit the seafarer's right of compensation which stated in Section 20 D and E. One is that the seafarer causes the injury, incapacity, disability or death by his willful, criminal act or intentional breach of his duties and the burden of proof falls on the employer. Another condition is if the seafarer knowingly concealed that the illness is pre-existing before the contract.

In the case *NLRC OFW CASE NO. (M) 03-07-1801-00*[50], a seafarer's widow filed a claim for death benefits of her husband died on board due to fight with another seafarer. Both the LA and NRLC ruled that the cause of death was not work-related thus it is not qualified for the compensation and benefits under Section 20, because that the death due to deliberate acts during the contract period is nevertheless not compensable. Also in the cases *Maritime Factors Inc., vs. Bienvenido R. Hindang* and *Crewlink vs. Teringtering*[51], that the death due to the seafarer committed suicide is not compensable.

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[48] Power Shipping Enterprises Inc. et.al. vs. NLRC, et.al., CA-GR SP No. 75052, February 27, 2004
[49] Ibid
[50] NLRC OFW CASE NO. (M) 03-07-1801-00, March 20, 2006
[51] Maritime Factors Inc., vs. Bienvenido R. Hindang, G.R. No. 151993, October 19, 2011; Crewlink vs. Teringtering, G.R. No. 166803, October 14, 2012

The compensation and benefits under POEA SEC are separated from the benefits under Philippine laws such as Social Security System, Overseas Workers Welfare Administration, Employees' Compensation Commission, Philippine Health Insurance Corporation and Home Development Mutual Fund, stated in Section 20A 7.

In respect of the claims arising from the contract the time bar is three years from the date the cause of action arises.

2.2.1.6 Defining pre-existing illness

Before processing the contract, if the seafarer has an illness or physical condition, which was given medical advice or treatment. The illness shall be considered as pre-existing. If an illness or physical condition cannot be found by pre-employment medical examination (hereinafter PEME), but the seafarer has known and intentionally failed to disclose such condition. It shall also be considered as pre-existing.

Every seafarer has to undertake a PEME every time before he enters into a new contract. He should take the PEME no more than two months before he joins on board, and the PEME certificate will be considered valid for 2 years[52]. The PEME is not a thorough body exam, but just a basic assessment to see if a person fits for sea work duty. Every country has their own medical examination form, and the check-up items are not exactly the same. A seafarer has to undertake those items listed on both his home country's medical examination form and the medical form of the vessel's flag state that he is going to provide service for. No matter what, the all exam result must be in normal condition or meet the minimum requirement for the seafarer to perform the work onboard. Take a deck officer for example, whose eye vision is not perfect without corrected, who can reach the requirement 20/20 for both eyes after correction, he is considered fit for duty. But his blood pressure must be within the normal range at the time he is measured in the approved PEME clinic. Hence, a declared fit for duty PEME is only a certificate to show that the seafarer is competent for sea duty instead of his true physical condition. It is supported by the Supreme Court in the case *NYK-FIL Ship Man-*

[52] UK P&I Club, "PEME FAQ"
http://www.ukpandi.com/loss-prevention/peme/peme-faq/

agement, Inc. and/or NYK Ship Management HK., Ltd., vs. NLRC and Lauro A. Hernandez[53], stated that:

> "While a PEME may reveal enough for petitioners to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform petitioners of a seafarers true state of health. The PEME could not have divulged respondents illness considering that the examinations were not exploratory."[54]

2.2.1.7 Section 32 schedule of disability or impediment for injuries suffer and diseases including occupational diseases or illness contracted

This section is the basis to determine the disability grad and the amount of disability allowance. There are 14 impediment grads (from 1 to 14) and the most serious is grad 1. A total 136 injuries result in 14 parts of human body is listed and each item is given to a correspondent grad. For example: "Lower extremities, Loss of both feet at ankle joint or above" is classified under grad 1. In the note of this section states that any item classified under grad 1 is also called "total and permanent disability" (sometime abbreviate to "total permanent disability" or "permanent disability" in the judicial decisions). Thus in comparison of total permanent disability, other disability grad from 2 to 14 is called "partial permanent disability".

As it could be found in present cases *Gilbert Quizora, vs. Denholm Crew Management (Philippines), Inc.* and *Magsaysay Maritime Corporation, et al. vs. Henry M. Simbajon*[55], that seafarers claim for the disability benefit when their employer refused to renew their contracts or rehire them. In these cases the Supreme Court denied that non-rehiring is indicative of disability.

A totally different decision, the seafarer was unemployed for three years "is an eloquent proof of his permanent disability" [56] to the court.

From these cases, arguably it is not possible to assess the Supreme Court's criterion to determine if a seafarer is considered to be disabled or not based on the break of the contractual relationship. Hence, there is a significant amount of uncertainty to be bore by the employer.

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[53] NYK-FIL Ship Management, Inc. and/or NYK Ship Management HK., Ltd., vs. NLRC and Lauro A. Hernandez, G.R. No. 161104, September 27, 2006,
[54] Ibid
[55] Gilbert Quizora, vs. Denholm Crew Management (Philippines), INC., G.R. No. 185412. November 16, 2011; Magsaysay Maritime Corporation, et al. vs. Henry M. Simbajon, G.R. No. 203472. July 9, 2014
[56] Ai O. Eyana Vs. Philippine Transmarine Carriers, Inc., Alain a. Garillos, Celebrity Cruises, Inc. (U.S.A.), G.R. No. 193468. January 28, 2015

The disability compensation amount is based on the schedule of disability[57]. Each grad is referred to a percentage. The amount of disability allowance is a fixed amount of 50,000 US dollars times the applicable percentage. Hence, if a seafarer suffers permanent disability as grad 1, the compensable amount would be 50,000 US dollars x 120.00%, a total of 60,000 US dollars.

There are some issues invoved with the disability grading system in the contract.
It could be found in the case *NYK-FIL Ship Management, Inc. and/or NYK Ship Management HK., Ltd., vs. NLRC and Lauro A. Hernandez*[58] that thecompany-designated doctor made an assesment of disability of grad 9.5 which cannot be find in schedule providede in the contract.

In another case *Gilbert Quizora, vs. Denholm Crew Management (Philippines), Inc.*[59], a seafarer was declared unfit for duty by PEME because he has varicose veins, which does not fall in the permanent disability grad schedule. The Supreme Court ruled that, an unfit for duty medical report dose not declared or has the same meaning that the seafarer has permanent disability.

The disability is only based on the schedule provided in section 32. Therefore, the physical or mental condition of the seafarer is not the only aspect to be taken into account when assessing if the seafarer is to be characterized as disabled. Along with his health state, the particular ailment needs to match the disability schedule in the above-mentioned section of the contract.

2.2.1.8 Section 32 A occupational diseases

This section is the criterion to see if a disease is work-related. The listed disease is deemed as work-related if the correspondent nature of employment satisfied.

It is provide in secion20A 4, that illness not listed here are disputably presumed as work-related. A broad of interpretation then appeared in disputes. In the case *Dohle-Philman Manning Angency Inc., et al. vs. Heirs of Andres Gazzingan represented by Lenie L. Gazzin-*

[57] See Annex 1.
[58] NYK-FIL Ship Management, Inc. and/or NYK Ship Management HK., Ltd., vs. NLRC and Lauro A. Hernandez, G.R. No. 161104, September 27, 2006,
[59] Gilbert Quizora, vs. Denholm Crew Management (Philippines), Inc., G.R. No. 185412. November 16, 2011

gan[60], the Supreme Court ruled that if the working nature of the seafarer aggravated his illness, the illness is deemed as work-related. In spite of the fact that this case was also concerning pre-existing illness.

However, in the earlier case *Sealanes Marine Services, Inc. and Marine & Transportation Services (SAUDIA), Ltd., vs. The Hon. National Labor Relations Commission, Philippine Overseas Employment Administration and Evelyn F. Arante*[61], even the working condition worsened the seafarer health, the employer is not liable because the illness was pre-existing. As the court stated, sometimes cancer could be consider a pre-existing illness. Therefore the seafarer will not be entitled to receive any benefit. Nevertheless cancer is one of the occupant diseases listed in section 32A of the contract. Hence, as long as the seafarer got the disease due to the conditions set up therein, like exposure to substances such as magenta, the cancer would be considered a work-related disease.

An exception was provided in the note, "death or disability which is directly cause by sexually transmitted diseases or arose from complications thereof shall not be compensable nor shall be entitled to the benefits provided in the contract"

2.3 Concluding remarks

As it was shown above, according to the POEA SEC, only work-related illness, injury or death is compensable, and the event must happen during the employment period. It is the company-designated physician to determine if the ailment is work-related and further assess the disability grad, if needed, based on the schedule provided in section 32. When there is conflict between company-designated physician and seafarer's doctor, a third doctor may be agreed by both parties, and the assessment from the third doctor shall be final and binding.

The disease listed in section 32 A with conditions therein satisfied is also considered work-related. Those illness are not in the section 32A is deemed as work-related if prove by substantial evidence.

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[60] Dohle-Philman Manning Angency Inc., et al. vs. Heirs of Andres Gazzingan represented by Lenie L. Gazzingan, G.R. No. 199568. June 17, 2015

[61] Sealanes Marine Services, Inc. and Marine & Transportation Services (SAUDIA), Ltd., vs. The Hon. National Labor Relations Commission, Philippine Overseas Employment Administration and Evelyn F. Arante, G.R. No. 84812. October 5, 1990

However, in practice, there exist different views exposed in the Supreme Court decision and made decisions based on other ground than the terms regulated in the contracts.

3 Decision

3.1 Total permanent disability

When a seafarer suffers work-related injury or illness and further cause a permanent physical disability, he will be entitled to disability allowance. The grad of disability and the allowance amount is based on the schedule provided in section 32 of the contract.

However, in the following cases, instead of using the basis provided in the contract, the Supreme Court made decisions based on other source of law, i.e. Labor Code.

3.1.1 Disability grading criterion 120-day rule[62]

In August 1998, a chief mate was diagnosed ill due to a problem with his neck and repatriated since it was found that he was unfit for duty. Later, it was found out that the cause behind his suffering was cancer. As a result, he had his treatment in Manila, in September of the same year. In this context, the company-designated physician assessed the permanently disability grading as 9. The chief mate sought for another doctor's certificate and got the assessment as permanently disability grading 1(the most severe).

The Labor Arbitrator ruled that the chief mate was entitled to the compensation as provided for total disability grading 1. NLRC first overturned the LA decision and ruled that the petitioner only needed to pay the compensation as disability grade 9, impediment, as the company-designated doctor assessed. On the motion of reconsideration, NLRC affirmed the ruling from LA and set aside the assessment made the company-designated specialist by stating that

> "However, upon respondent's motion for reconsideration, citing jurisprudence that findings of company-designated doctors are self-serving, the NLRC affirmed the ruling of the RAB with respect only to the award of disability benefits."[63]

In 2005, the Supreme Court cited the definition of disability as it was stated "Permanent disability is the inability of a worker to perform his job for more than 120 days, regard-

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[62] Crystal Shipping, Inc., and/or A/S Stein Line Bergen vs. Deo P. Natividad, G.R. NO. 154798. October 20, 2005

[63] Ibid

less of whether or not he loses the use of any part of his body[64].” As the Supreme Court ruled in this case, the seafarer was entitled to receive compensation as if he had permanent disability and says: “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[65].” In spite of the fact that the chief mate was clearly able to resume his activities, since he had begun to work in March 2001. Moreover, he kept working for three years more.

This is the famous *Crystal* case. Such decision was responsible for bringing about a so-called “120-day rule”, which shocked the entire maritime industry. In fact, the definition of permanent total disability that was quoted in that decision relates to disputes which arose in connection with the Labor Code[66] instead of being based on standard contracts. In the disputes mentioned, the compensation should be paid by the “system[67]”, that is to say, the Social Security System (“SSS”) and the Government Service Insurance System (“GSIS”)[68]. In light of this, the manning industry argues that labour law principles do not apply to seafarers[69]. Also in the previous case *Roberto Ravago vs. Esso Eastern Marine, Ltd., et al.*[70] the Supreme Court clear ruled that a seafarer is a contractual employee and contracted to work for a fixed period of time. His obligation and rights are regulated in the contract every time he signed. He is not a regular employee as defined in Labor Code Art. 280.

In the motion of reconsideration, the petitioner (Crystal Shipping) argued that according to the POEA SEC, total disability should be based only on the gradings provided under section 32 and the gradings should be assessed and determined by the company-designated physician.

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[64] Government Service Insurance System v. Cadiz, G.R. No. 154093, 8 July 2003; Ijares v. Court of Appeals, G.R. No. 105854, 26 August 1999
[65] Ibid
[66] Labor Code Article 192 3.1. “Temporary total disability lasting continuously for more than one hundred twenty (120) days, except as otherwise provided for in the Rules;”
[67] Labor Code Article 192 1. “Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in his permanent total disability shall, for each month until his death, be paid by the System during such a disability…”
[68] Labor Code Article 167 5. “"System" means the SSS or GSIS, as the case may be”
[69] Gard P&I news 189, 01 February 2008, http://www.gard.no/web/updates/content/52758/personal-injury-permanent-disability-in-the-philippines
[70] Roberto Ravago vs. Esso Eastern Marine, Ltd., et al., G.R. No. 158324. March 14, 2005

In 2007, in the resolution[71] of the *Crystal case*, the Supreme Court clarified that under POEA SEC the disability should only be based on the grade and not on the number of days by stating "Admittedly, POEA Memorandum Circular No. 55, Series of 1996 does not measure disability in terms of number of days but by gradings only."[72]. In spite of the clarification provided by the resolution, the decision was not overturned. The Supreme Court explained that the employer misread the decision.

The precious decision took into account the assessment from the seafarer's doctor. Since the seafarer assigned doctor made an assessment that the seafarer is under disability grad 1, thus he was entitled disability benefits, even thought the company-designated physician only assessed his disability as grad 9. The Supreme Court upheld the NLRC's opinion that "medical certificates issued by company-designated physicians are palpably self-serving and biased in favor of the company who sought their services and therefore should not be given evidentiary weight and value." For this reason, the Supreme Court maintained the opinion concerning conflicts between company-designated physician and the doctor appointed by the seafarer and refused to give weight to company-designated doctors' assessment.

After the correction of the way to measure disability, the Supreme Court still cited the *Crystal case* and made the decision based on the "120-day rule" as the criterion to meet total and permanently disability in the subsequent cases[73]. It seems like the Supreme Court does not

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[71] Crystal Shipping, Inc., and/or A/S Stein Line Bergen, vs. Deo P. Natividad, G.R. No. 154798. February 12, 2007

[72] Ibid

[73] Decisions made based on 120 day rule:
Source: UK P&I club, Philippine Shipping Update, Issue 2012/09,
http://www.ukpandi.com/loss-prevention/article/philippine-shipping-update-issue-2012-09-5601/
1. United Philippine Lines, Inc. and/or Holland America Line, Inc. vs. Francisco Beseril, G.R. No. 165934, April 12, 2006; Bernardo Remigio vs. NLRC, C.F. Sharp Crew Management, Inc. & New Commodore Cruise Line, Inc., G.R. No. 159887, April 12, 2006; Micronesia Resources, Dynacom Shield Shipping Ltd. and Singa Ship Management, A.S. vs. Fabiolo Cantomayor, G.R. No. 156573, June 19, 2007; Mars C. Palisoc vs. Easways Marine, Inc., Capt Mario R. Braza, and Capt. Macario Terencio, G.R. No. 152273, September 11, 2007; Philimare, Inc./Marlow Navigation Co., Ltd., Bonifacio Gomez and Alberto Gomez vs. Benedicto Suganob, G.R. No. 168753, July 9, 2008; Joelson O. Iloreta vs. Philippine Transmarine Carriers, Inc. and Norbulk Shipping U.K. Ltd., G.R. 183908, December 4, 2009; Leopoldo Abante vs. KGJS Fleet Management Manila and/or Guy Domingo Macapayag, Kristian Gerhard Jebsens Skipsrenderi A/S, G.R. No. 182430, December 4, 2009; Rizaldy M. Quitoriano vs. Jebsens Maritime, Inc., Ma. Theresa Gutay and/or Atle Jebsens Management A/S, G.R. No. 179868, January 21, 2010; Oriental Ship Management Co., Inc. vs. Romy Bastol, G.R. No. 186289, June 29, 2010; Carmelito Valenzona vs. Fair Shipping Corporation and/or Sejin Lines Company Limited, G.R. No. 176884, October 19, 2011; Fil-Star Maritime Corp., et.al. vs. Hanziel Rosete, G.R. No. 192686, November 23, 2011

follow the resolution strictly. Moreover, a new criterion to meet total and permanent disability was developed by the Supreme Court in the case analyzed in the following section.

3.1.2 Disability grading criterion 240-day rule[74]

In September 2000, a Filipino seafarer, employed as a pumpman on board, was sent home because of work-related eye injury and he felt he was losing his vision. After the treatment, in January 2001, the seafarer's vision is back to 20/20 for both eyes, with correction, thus the company-designated physician assessed the seafarer is fit for duty. Then the seafarer sought another doctor for further treatment. The non company-designated doctor consider him was not fit for duty. Then the seafarer filed a petition for total and permanent disability and cited the 120-day rule established in the *Crystal* case as an argument.

The Labour Arbitrator gave merit to seafarer. In the appeal, NLRC reversed the decision from LA, denied the seafarer's complaint. In the court of appeal via a petition for certiorari affirmed the decision from NLRC. Then the petition went in front of the Supreme Court. Supreme Court ruled that the petitioner (seafarer) lack of merit and dismissed the complaint and explained:

> "As these provisions operate, the 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."[75]

In this case, there was no dispute that the seafarer suffered a work-related injury. While there was no opinion from an agreed third doctor, the Supreme Court upheld the assessment as fit for duty by the company-designated physician in accordance with the POEA SEC, stated

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[74] Jesus E. Vergara, vs. Hammonia Maritime Services, Inc. and Atlantic Marine Ltd., G.R. No. 172933. October 6, 2008

[75] Ibid

"…we find the NLRC and the CAs conclusions on the petitioners fitness to work, based on the assessment/certification by the company-designated physician, to be legally and factually in order." rather than the assessment from seafarer appointed doctor. Those opinions are in accordance with POEA SEC terms.

Under POEA SEC section32 concerning the schedule of total and permanent disability, only when the seafarer is blind or total and permanent loss of vision of both eyes consists the disability grading 1. It is known from the case fact that both of the seafarer's eyes are in good condition thus the seafarer's condition did not meet the criterion of grading 1.

In the decision the Supreme Court first declared that the benefit and compensation payment system under POEA SEC differs from the system under the Labor Code[76], this is the same principle as above mentioned in section 20A 7. In the other hand, explain all the disputes arising from POEA SEC shall be governed by the laws of the Republic of the Philippines as POEA SEC regulated and cited articles from Labor Code.

"Temporary total disability lasting continuously for more than one hundred twenty (120) days, except as otherwise provided for in the Rules;"[77] Differ from *Crystal case*, the Supreme Court focused on the last part of this article "the Rule", and referred to Rule X, Section 2 of the Rules and Regulations implementing Book IV of the Labor Code[78]. Based on the Rule, the Supreme Court ruled

> "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

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[76] "In real terms, this means that the shipowner an employer operating outside Philippine jurisdiction does not subject itself to Philippine laws, except to the extent that it concedes the coverage and application of these laws under the POEA Standard Employment Contract. On the matter of disability, the employer is not subject to Philippine jurisdiction in terms of being compelled to contribute to the State Insurance Fund that, under the Labor Code, Philippine employers are obliged to support. (This Fund, administered by the Employees Compensation Commission, is the source of work-related compensation payments for work-related deaths, injuries, and illnesses.) Instead, the POEA Standard Employment Contract provides its own system of disability compensation that approximates (and even exceeds) the benefits provided under Philippine law."

[77] Jesus E. Vergara, vs. Hammonia Maritime Services, Inc. and Atlantic Marine Ltd., G.R. No. 172933. October 6, 2008

[78] Period of entitlement. (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or 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 anytime 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 as determined by the System.

> expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability." [79]

In the other words, a temporary total disability for more than 240 days becomes permanent disability.

Apparently the Supreme Court set the disability schedule in the binding contract aside and made a new criterion to determined permanent disability again. This decision made a so-called 240-day rule. It can be found in the subsequent cases[80] that the Supreme Court cited *Vergara case* and made decision based on 240-day rule.

The Supreme Court further denied the seafarer's 120-days argument stated that:

> "Crystal Shipping was a case where the seafarer was completely unable to work for three years and was undisputably unfit for sea duty due to respondent's need for regular medical check-up and treatment which would not be available if he were at sea. While the case was not clear on how the initial 120-day and subsequent temporary total disability period operated…"[81]

This decision was made merely a year after the *Crystal case* resolution, which clarified the criteria to meet permanent disability is not based on numbers of days. The Supreme Court in this case not only set aside the criteria of disability under contract terms but also altered its own resolution and extended the 120 days criterion in *Crystal case* to 240 days.

It seems like the Supreme Court has establish its own standard to exam if the seafarer is in total permanent disability. However, in the recent case, the Supreme Court ruled that depend on the circumstance, the 240 day rule is not applied to every case in certain condition.

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[79] Jesus E. Vergara, vs. Hammonia Maritime Services, Inc. and Atlantic Marine Ltd., G.R. No. 172933. October 6, 2008

[80] Source: UK P&I club, Philippine Shipping Update, Issue 2012/09, http://www.ukpandi.com/loss-prevention/article/philippine-shipping-update-issue-2012-09-5601/
Magsaysay Maritime Corp., et.al. vs. Rommel Cedol, G.R. No. 186180, March 22, 2010; Magsaysay Maritime Corporation and/or Westfal-Larsen Management A/S vs. Oberto Lobusta, G.R. No. 177578, January 25, 2012; Alen Santiago vs. Pacbasin Shipmanagement, Inc. and/or Majestic Carriers, Inc., G.R. No. 194677, April 18, 2012

[81] Jesus E. Vergara, vs. Hammonia Maritime Services, Inc. and Atlantic Marine Ltd., G.R. No. 172933. October 6, 2008

3.1.3 Neither 120 days nor 240 days apply

In *Crystal case* the Supreme Court make decision based on 120-day rule as the criterion to meet total and permanent disability, In spite of the resolution, in the *Vergara* case changed the previous criterion and based on 240-day rule. Though as it could be found, that many cases ruled based on either 120 days or 240 days as the criteria to meet permanent disability, however, both of the rules do not absolute apply to every case.

As it can be found in the recent case *Splash Philippines, Inc., et al. vs. Ronulfo G. Ruizo*[82], in December, 2005, a seafarer felt pain in his lumber and groin during on board the ship and was diagnosed with "Block Right Kidney by Stone Repeat U/S showed No Improvement" by a Medical center in Australia. At the time he finished his contract on December 21, 2005, he was sent to a company-designated physician and was diagnosed with a kidney ailment. He was suggested to a further medical check-up. In the period he was under treatment, he filed a petition for permanent disability benefits due to unable to work for more than 120 days. In February 5, 2007, the seafarer did not undertake the extracorporeal shockwave lithotripsy, which the physician believed ""[t]here is possibility of declaring the patient fit to work after treatment."[83] In May 07,2007, the seafarer sought for another internist who assessed him as disability grading seven.

The LA rule that the seafarer was not entitled any disability benefit since there was no such assessment made by the company-designated doctor and his refusal to undergo the treatment provided by the employer. Also the seafarer alleged that he was unable to work for 120 days. Nonetheless, the 120 days rule was already reviewed by the Supreme Court in the *Crystal case* resolution. The complaint was denied by the NLRC. The CA granted the seafarer's disability benefit held that he was unable to work for 120 days thus he was deemed as permanent disability.

The Supreme Court opined that the 120 days rule has been clarified by the *Crystal* case resolution, which in turn was modified by the Supreme Court in the *Vergara case*. The circumstances should be exam to decide if the 120 days rule or the 240 days rule applies.

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[82] Splash Philippines, Inc., et al. vs. Ronulfo G. Ruizo, G.R. No. 193628. March 19, 2014
[83] Ibid

In this case, the seafarer was under treatment in the initial 120 days period and underwent a further treatment afterwards. Thus, the focus should shift to the issue that there was no declaration of either fitness to work or the existence of a permanent disability upon the maximum 240 days. The reason that the company-designated doctor did not make the assessment was that the seafarer failed to show up to follow the suggestion treatment, which would make him cured. Hence, it was not the company-designated physician's fault that there was no disability assessment or fitness declaration. It was the seafarer's refusal to undergo the treatment and escaped the possibility of recovery from the illness. Besides, even the seafarer's doctor gave him disability grad as 7, which is only partial permanent instead of total permanent disability. The Supreme Court concluded that the seafarer was not entitled to any disability benefit.

From above decision, it could be found that neither 120 days rule nor 240 days rule was applicable if the seafarer and the employer agreed to extend the treatment when it is needed. In this case, the Supreme Court on one hand invoked the *Crystal case* resolution that disability is not based on days of treatment, however, in the other hand, it did not deny the 240 days rule that the temporary disability becomes permanent if company-designated doctor declare so or upon the expiration of the maximum 240 days.

In the above cases, there are three different criteria from the Supreme Court. The first was established in the *Crystal case* and concerns the 120 days rule. The second was stated in *Vergara case,* regarding the 240 days rule. Finally, the last criterion was advanced in the case *Splash Philippines, Inc., et al. vs. Ronulfo G. Ruizo*[84]*,* and addresses the conditions in which the 240 days rule is not applicable. Notwithstanding, none of them followed the terms and conditions in the contract.

According to Philippine law the Supreme Court only rules on questions of law[85]. Moreover, there are different criteria to be met before a case is brought to that court, procedural requirements. In case a petition does not meet this requirement, the Supreme Court can dismiss a case through the adaption of minute resolutions. The latter consists of decisions usually denying a petition and concern only procedural matters. In this context, a minute resolution

[84] Ibid
[85] Internal Rules of The Supreme Court, Rule 3, Section 1

must not advance new arguments or establish new grounds for a question of law, not related to precede issues.

The Philippine Constitution prescribes that the Supreme Court must provide a decision within a maximum period of 24 months[86]. Notwithstanding, in practices, the court takes a few years to do so.

Also, according to Philippine law, the decisions of the Supreme Court are to be considered source of law. The Supreme Court provides the guidelines to interpret the Constitution and its decisions must not have retroactive effect. However, depending on the circumstances, those decisions can bear the mark of retroactivity.

The judicial system in the Philippine is guided by the doctrine of the *stare decisis*. That is to say, once a question of law has been analyzed it should be shielded against further argument. Additionally, all the other courts based in that country are required by law to follow the decisions issued by the Supreme Court.

Usually, the decisions of the Supreme Court are also binding upon the latter. However, it may review its own precedent if the circumstances so provide. Notwithstanding, the court must have strong grounds to deviate from an established precedent.

As it can be found from the above-mentioned cases, the Supreme Court does not follow the rule relating to the act of issuing a resolution. Moreover, it is not possible to draw the conclusion that the Supreme Court used the *Crystal case* resolution as a way of establishing a precedent, given the fact, that new criteria were advanced by the court.

3.2 Which doctor's assessment should be trusted

As it states in the contract, it is the company-designated doctor to make assessment. The seafarer can also seek for another doctor's opinion. If there is conflict between these two doctors, a third doctor can be appointed by both parties. The third doctor's opinion shall be final and binding.

[86] The Constitution of The Republic of The Philippines, Article VIII Judicial Department, Section 15(1)

3.2.1 Company-designated physician

In June 1995, a seafarer was ill on board while the vessel is at the port of New Zealand. His condition was reported to the ship's master. Instead of sending the seafarer to the hospital in New Zealand right away, the master chose to arrange the seafarer disembarked in the next port, Manila. After ten days, the vessel arrived in Manila and waited for hours to enter the port due to berth congestion. Finally from 24 June 1995 to 26 July 1995, the seafarer was under treatment by a team of medical specialists. A company-designated doctor assessed that the seafarer may be allowed to go back to work. Another certificate from the doctor attending the seafarer's treatment assessed he has partial disability and is not fit for duty. The seafarer then filed a petition for sickness allowance and disability allowance.

The LA opined that the uncertainty in the assessment of may be fit for duty, could also be unfit for work. Thus it should give weight to the assessment of the doctor handling the seafarer's treatment. The NRLC and court of appeal affirmed the decision. The Supreme Court further sated, it is the employer designated which hospital the seafarer should be confined, and

> "the very act of paying the hospital bills by the petitioners (employer) constitutes their confirmation of such designation….The Court agrees with the appellate courts ruling that petitioners (employer) act of committing private respondent for treatment at the Manila Doctors Hospital and paying the hospital bills therein is tantamount to company-designation." [87]

As mentioned above, the seafarer was sent to the company designated hospital for treatment. The Supreme Court upheld that the assessment from the specialist who undertook the treatment is more reliable than that of the company-designated doctor who just did an assessment but no treatment.

In the recent case *Ricardo A. Dalusong Vs. Eagle Clarc Shipping Philippines, Inc., et al.*[88], the seafarer was repatriated due to work injury and assessed disability grad 8 after an initial treatment. He further received a serious treatment and was finally assessed as disability grad 11 by the company-designated doctor. Two month later, he got an assessment stated that he was suffering partial permanent disability and unfit for sea duty from a private doctor. Then he filed a petition for total permanent disability benefit.

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[87] German Marine Agencies, Inc. and Lubeca Marine Management HK Ltd. vs. National Labor Relations Commission and Froilan S. De Lara, G.R. No. 142049, January 30, 2001

[88] Ricardo A. Dalusong Vs. Eagle Clarc Shipping Philippines, Inc., et al., G.R. No. 204233. September 3, 2014

The LA ruled that since the company-designated final assessed the seafarer as disability grad 11, he was only entitled disability benefit as such grad. The NLRC, however, overturn the decision and stated that the seafarer was unable to work for 120 days and is unfit for sea duty. The CA reinstated the decision and opinion from the LA.

The Supreme Court held that the assessment by the doctor who carried out the seafarer's serious treatment and exam is more appropriate to given weight instead of the another doctor just assessed the seafarer's condition once.

3.2.2 Third doctor

According to the contract, in the absence of a third doctor, the company-designated physician's assessment should be given weight. In the *Crystal case*, the company-designated was considered "self-serving" and the assessment was set aside. But in recent cases, the third doctor rule seems to be reinstated.

In the case *Julius R. Tagalog vs. Crossworld Marine Services, Inc., et al.*[89], the seafarer was declared fit for duty by the company-designated doctor after several months treatment. Later the seafarer sought for another private doctor's assessment and the result was unfit for duty. The Supreme Court upheld the assessment by company-designated doctor, because under the contract the seafarer should have to seek for a third doctors opinion, there was no a third doctor's opinion, and further stated: "the private doctor had only examined petitioner once while the company-designated physician had monitored petitioner's medical condition for several months."[90]

The Supreme Court also emphasized in other cases *Rommel B. Daraug vs. KGJS Fleet Management, Manila, Inc., et al.* and *Maersk Filipinas Crewing Inc./ Maersk Services Ltd., and/or Mr. Jerome Delos Angeles vs. Nelson Mesina*[91]*,* that if there's conflict between doctors, a third doctor may be agreed jointly between both parties. The opinion from the third doctor

[89] Julius R. Tagalog vs. Crossworld Marine Services, Inc., et al., G.R. No. 191899. June 22, 2015
[90] Ibid
[91] Rommel B. Daraug vs. KGJS Fleet Management, Manila, Inc., et al., G.R. No. 211211. January 14, 2015; Maersk Filipinas Crewing Inc./ Maersk Services Ltd., and/or Mr. Jerome Delos Angeles vs. Nelson Mesina, G.R. No. 200837. June 5, 2013

should be final and binding. "The duty to secure the opinion of a third doctor belongs to the employee for disability benefits"[92]

In 14 January 2015, the NLRC issued a memorandum about "Third Doctor on Disability Claims of Seafarers." When there is a dispute related to the conflict between company-designated doctor and seafarer's doctor, and no third doctor was appoint. The Labor Arbiters will give 15 days to parties to secure this service of a third doctor. If a third doctor is assigned in this period, he will have 30 days to give his assessment, and it is final and binding. If parties fail to assigned a third doctor, the reason will be recorded and provide to the Research, Information and Publication Division of the NLRC.

3.3 If the illness, disease or death compensable

As previous mentioned in section 2.2.1 of this work, two prerequisite, the event happened in the employment period and it is work-related, must to be meet in order to the seafarer entitle compensation and benefits under POEA SEC section 20. The following sections only focus on if the illness, disease or death falls in the scope of compensable.

3.3.1 Work-related disease

The work-related diseases are those diseases listed in the Section 32-A of the contract. In spite of acquire the listed illness, also the four condition must be also satisfied in order to entitle the compensation. If the illness is not in the list, it is disputably presumed as work-related, but the seafarer has to prove that the working nature has aggravated or worsen the ailment. Notwithstanding, in the case *Fil-Pride Shipping Company, Inc., et al. vs. Edgar A. Balasta*[93], the Supreme Court seems to consider that a particular illness is not important when it comes to the compensation at issue. In its decision the court stated that:

> "it is not the injury which illness compensated but rather the incapacity to work resulting in the impairment of one's earning capacity…. the list of illnesses/diseases in Section 32-A does not preclude other illnesses/diseases not so listed from being compensable. The POEA-SEC can-

[92] Magsaysay Maritime Corporation, et al. Vs. Henry M. Simbajon, G.R. No. 203472, July 9, 2014
[93] Fil-Pride Shipping Company, Inc., et al. vs. Edgar A. Balasta, G.R. No. 193047. March 3, 2014

> not be presumed to contain all the possible injuries that render a seafarer unfit for further sea duties."[94]

However, the illness is important to the contract.

Afterwards, the court seemed to reveal its previous ruling. In September 2006, a seafarer carried out PEME and was declared fit for duty and then worked as 4th engineer onboard a vessel. In May 2007, he felt pain on his abdomen accompanied by "chills, diarrhea, general feeling of weakness and muscle spasms"[95]. He was repatriated in May 12, 2007. Five days later, on May 17, 2007, the seafarer informed his employer that he had to receive *Whipple* surgery, and employer agreed that the cost would be paid back to him. On 18 June 2007, the company-designated doctor, who is a cancer surgeon, assessed the seafarer that he suffered non work-related illness and no grad of disability was made. The seafarer then filed a petition for disability benefit.

The disability benefit was awarded by the LA. The LA set aside the company-designated physician's assessment and opined the seafarer "did not need to establish causal connection between his work and his illness" and his risk of contracting the illness is increased by the working nature.

The NLRC gave weight to the company-designated doctor's assessment and rule that the seafarer failed to provide evidence to prove that the illness is work-related or was worsen by the working nature. "That he contracted the illness during his employment contract does not automatically translate to its work-relatedness."

The CA opined that the seafarer's working environment is enough to prove that he exposed to a condition, which aggravate his illness.

The Supreme Court concluded that if the seafarer is entitled to compensation and benefits under POEA SEC section 20, the following conditions must be met and proves by the seafarer. First, the seafarer is suffering an illness. Second, the illness must happen during the term of the contract. Third, the seafarer must follow the 3 days mandatory post-employment report procedure. Forth, the illness must be work-related. And last, the illness is one if the occupant

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[94] Ibid
[95] Ibid

disease listed in the section 32-A and the conditions provided therein satisfied. The comment on the dispute concerning work-related says:

> "the disputable presumption does not signify an automatic grant of compensation and/or benefits claim; the seafarer must still prove his entitlement to disability benefits by substantial evidence of his illness' work-relatedness." [96]

This implies that the disputable presumption clause does not prescribe that all the illness is work-related. On the other hand, if the illness can be proved by substantial evidence instead of mere allegation, even it is not one of the disease listed in the contract, the proved illness is work-related.

Besides his failure to prove that the illness is work-related, the seafarer sent him self to company-designated doctor five days after repatriation which already exceed the three day mandatory report requirement and his right to claim is forfeit.

Along with this, the definition of sickness in the Labor Code Article 173 (l) prescribes that sickness is related to an illness permanently deemed as work-related listed by the Commission, or any ailment stemming from the nature of work, which is subject to proof that the working conditions increase the risk or contracting such an illness. The Code also states that the Commission is responsible for determining and approving occupational and work-related diseases in order to assess the right to receive compensation, taking in to account the hazards of the employment.

However, the POEA SEC has its own definition in the contract. The decision should examine the contract terms and conditions and use the labor code to supplement the contract only if there is any ambiguous in the interpretation.

3.3.2 Distinguishing between pre-existing illness or work-aggravated ailment

According to the terms of the contract, only work-related illness and death is compensable. And it is nevertheless not compensable if the ailment is pre-existing before the contract. As mentioned above, the PEME cannot show the true health condition of a seafarer. There are some cases in which the seafarers were declared fit for duty after a PEME. Notwithstanding, the Supreme Court placed different opinion in these cases.

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[96] Jebsen Maritime Inc., Apex Maritime Ship Management Co. Llc., and/or Estanislao Santiago, vs. Wilfredo E. Ravena, G.R. no. 200566. September 17, 2014

In the case *Sealanes Marine Services, Inc. and Marine & Transportation Services (SAUDIA), Ltd., vs The Hon. National Labor Relations Commission, Philippine overseas Employment Administration and Evelyn F. Arante*[97], a captain at the period of his contract went to a hospital and was diagnosed as "gastro-duodenitis" when the vessel stayed in a port on July 19, 1986,. Three days after he relieved from captain position. He was noticed by the employer to undergo a medical exam on his own expense upon arrival to Philippine. In this further exam found that the captain has "non-functioning GALL BLADDER" due to NIDDM (Non-Insulin Dependent Diabetic Mellitus). He was advised to have weekly exam. On January 8, 1987, his medical report showed that he also has cancer of pancreas. On January 31, 1987, he filed a complaint for medical expense to POEA. He died on June 29, 1987. Then his wife filed a petition for death compensation and benefits.

The POEA administrator awarded the seafarer and stated the seafarer has the illness during the contract no matter if it is work-related. Then the respondent commission affirmed the decision on appeal. The Supreme Court overturned the decision and opined:

> "It cannot be said that the disease, which caused his death, occurred during his employment. The pre-employment medical examination conducted upon him could not have divulged his disease considering the fact that most, if not all, such examinations are not so exploratory. Therefore, it would be unfair to hold petitioners liable for the amount of death compensation provided for under the standard format contract for such award is unwarranted under the circumstances."

A similar decision could also be found in the case *NYK-FIL Ship Management, Inc. and/or NYK Ship Management HK., Ltd., vs. NLRC and Lauro A. Hernandez*[98], a contracted seafarer was found fit for duty in PEME and declared he has no disease or ailment. Twenty-five days after he joined the vessel, he suffered high fever and pains at his left hip socket. The seafarer was repatriated and received treatment from company-designated doctor. During the treatment he admitted that nine days before the employment he experienced "fever…moderate to high grade, intermittent, associated with chills, body malaise and pain on [the] lumbosacral

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[97] Sealanes Marine Services, Inc. and Marine & Transportation Services (SAUDIA), Ltd., vs The Hon. National Labor Relations Commission, Philippine overseas Employment Administration and Evelyn F. Arante, G.R. No. 84812, October 5,1990

[98] NYK-FIL Ship Management, Inc. and/or NYK Ship Management HK., Ltd., vs. NLRC and Lauro A. Hernandez, G.R. No. 161104, September 27, 2006

area radiating to left lower extremity"[99]. Later found out the unusual health condition is septic arthritis and/or avascular necrosis. Before he underwent a surgery, he filed a complaint[100] for disability compensation as grad 1. After the surgery, the company-designated doctor gave opinion that the seafarer will be able to independent in daily life activity but is not fit for work on board vessels and assessed disability grading half of nine[101].

The LA ruled that the seafarer was entitled the disability equivalent to the amount of 6530 US dollars benefits as half of nine as the company-designated doctor assessed. The NLRC found company-designated doctor negligence because there is no grad half of nine in the grad schedule, plus the seafarer is no longer able to work on board vessels thus the seafarer was entitled compensation as permanent disability. The court of appeal affirmed the decision from the NLRC. The Supreme Court then found septic arthritis and/or avascular necrosis, which the seafarer suffered, was caused by pre-existing illness. Thus the seafarer was not entitled to disability compensation.

In front of the Supreme Court, the seafarer argued that he has been declared fit for duty by the PEME implied that he was in a health condition before the contract period. In the decision from the Supreme Court,

> "While a PEME may reveal enough for petitioners (employer) to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform petitioners of a seafarers true state of health. The PEME could not have divulged respondents illness considering that the examinations were not exploratory…claim that the issuance of a clean bill of health to a seafarer after a PEME means that his illness was acquired during the seafarers employment is a *non sequitor*."[102]

It is to say, again, a declared fit for duty PEME is not enough to show that the seafarer was perfectly healthy or has no pre-existing illness before the contract.

The LA in this case, in one hand followed the contract term accredited the assessment made by company-designated doctor, in the other hand did not exam the contract thoroughly

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[99] Ibid
[100] NLRC OFW (M) Case No. 99-11-1946-00
[101] Section 32, Lower Extremities, item 26 Complete immobility of a hip joint in full extension of the thigh, classified as grad 9
[102] NYK-FIL Ship Management, Inc. and/or NYK Ship Management HK., Ltd., vs. NLRC and Lauro A. Hernandez, G.R. No. 161104, September 27, 2006

and prudently that there is no half grad in the disability schedule. There is no applicable percentage in the disability allowance schedule could be found.

The NLRC and the court of appeal directly set aside the compensable disability criteria only looked the fact that the seafarer could not be employ the profession as seafarer and rewarded him the highest level of disability.

> "A seafarer is a contractual, not a regular employee, and his employment is contractually fixed for a certain period of time. His employment, including claims for death or illness compensations, is governed by the contract he signs every time he is hired, and is not rooted from the provisions of the Labor Code."[103]

This case showed that in the settlement system, one court does not coordinate in the basis of decision with the other. The Supreme Court was correct in denying the benefits to the seafarer, given the fact that it was a pre-existing illness, something that can be inferred from the words of the seafarer himself. On the other hand, the LA was wrong in confirming the company-designated doctor assessment, since no 9.5 grad can be found in the contract. This case clearly illustrates that sometimes deciding organs in the system do not follow the contract, causing the existence of a significant amount of uncertainty, and exposing the employer to a great risk.

From above mentioned two cases, PEME is not a thorough physical examine and could not tell the true health condition of a seafarer. A fit for duty certificate is not an automatic proof that the seafarer has no pre-existing illness.

However, sometimes the Supreme Court ruled it is compensable even the illness is pre-existing and was known by both employer and employee.

In the case *Seagull Shipmanagement and Transport, INC., and Dominion Insurance Corporation, vs. National Labor Relations Commission and Benjamin T. Tuazon*[104]*,* a seafarer had a heart surgery in 1986. In 1991, before he was assigned to work on board, the employer asked him to provide a certificate that he could do normal physical activities. He provided the said certificate then later he was declared fit for duty. One day during his contract period, his felt coughing and shortness of breathing and was confined in a hospital in a foreign port from

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[103] Ibid

[104] Seagull Shipmanagement and Transport, INC., and Dominion Insurance Corporation, vs. National Labor Relations Commission and Benjamin T. Tuazon, G.R. No. 123619. June 8, 2000

December 12 to 27. The doctor diagnosed that he needed heart surgery thus he was repatriated in the next day. Then he had a heart surgery by a company-designated doctor in Philippine. He also bore the cost of medical treatment. The seafarer then filed a petition ask for sickness allowance and disability benefit.

The Supreme Court rule that the seafarer had done with the obligation to disclose his medical history, and he also provided a certificate that he could do normal physical work, thus the later heart surgery was resulted from the working nature of the seafarer on board ship.

> "Even assuming that the ailment of the worker was contracted prior to his employment, this still would not deprive him of compensation benefits. For what matters is that his work had contributed, even in a small degree, to the development of the disease and in bringing about his eventual death. Neither is it necessary, in order to recover compensation, that the employee must have been in perfect health at the time he contracted the disease. A worker brings with him possible infirmities in the course of his employment, and while the employer is not the insurer of the health of the employees, he takes them as he finds them and assumes the risk of liability. If the disease is the proximate cause of the employee's death for which compensation is sought, the previous physical condition of the employee is unimportant, and recovery may be had for said death, independently of any pre-existing disease"[105]

The above words from the Supreme Court that the seafarer could be entitled to compensation and benefits even the illness is pre-existing is apparent against the terms in the contract.

The same wrong basis to decide could also be found in the case *Dohle-Philman Manning Angency, Inc., et al. vs. Heirs of Andres Gazzingan*[106], a seafarer underwent the PEME before his employment and was declared fit for duty but at the same time he was found ventricular hypertrophy in his electrocardiogram. He embarked onboard as a mess boy within one month. During his service period, he suffered chest pain when the vessel alongside at a port in Colombia. Then he was diagnosed to have Acute Type-B Dissection. After his repatriate, he received medical treatment. On august 8, 2006, he was informed from company-designate doctor that he suffered from a non work-related illness and the sickness allowance was paid until the same day. He was under treatment until September 06, at the same year. The seafarer filed a petition for total disability compensation.

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[105] Ibid

[106] Dohle-Philman Manning Angency, Inc., et al. vs. Heirs of Andres Gazzingan, G.R. No. 199568. June 17, 2015,

The LA granted the seafarer 50,000 US dollars, the correct amount for total disability should be 60,000 US dollars instead, for total disability benefit, "…it is enough that the nature of the seafarer's work had contributed even in a small degree to the development of the disease…" The NLRC overturned LA decision on the basis that the company-designated doctor's assess the illness is not work-related thus deny the claim of disability compensation. The court of appeal set aside the decision form the NLRC and reinstalled the decision from LA.

The Supreme Court denied the assessment by company-designated doctor, which was based on PEME instead of post-employment examination. And also quote the same decision from *NYK-FIL Ship Management, Inc. and/or NYK Ship Management HK., Ltd., vs. NLRC and Lauro A. Hernandez case*[107], that the PEME cannot show the true health condition of the seafarer. Then the Supreme Court agreed that the seafarer suffered a work-related illness and further cited a case[108], which was ruled and based on 120-day rule disability criterion, and ruled that the seafarer is qualified for the total and permanent disability.

Unfortunately, it seems that in the case *NYK-FIL Ship Management, Inc. and/or NYK Ship Management HK., Ltd., vs. NLRC and Lauro A. Hernandez* the Supreme Court wrongly cited the PEME as a shield. This is because PEME is not a detailed exam. Thus the Supreme Court considered that the seafarer cannot rely on this exam as an alternative to show that he did not have a pre-existing illness. On the other hand, in the case *Dohle-Philman Manning Angency, Inc., et al. vs. Heirs of Andres Gazzingan*, the PEME found a disease. Nevertheless, the Supreme Court chose to ignore such a finding stating that the PEME is not a detailed exam. Therefore, it could not be used to assert the presence of a pre-existing illness. Arguably, the court reasoning in this case is wrong, due to the fact that if the PEME found a disease, the fact that this exam is not exploratory cannot be used to discard the allegation of a pre-existing illness in cases where the exam found one.

In the earlier case *Jebsens Maritime Inc., represented by Ms. Arlene Asuncion and/or Alliance Marine Services, Lld., vs. Enrique Undag*[109], the seafarer has to prove his illness is

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[107] NYK-FIL Ship Management, Inc. and/or NYK Ship Management HK., Ltd., vs. NLRC and Lauro A. Hernandez, G.R. No. 161104, September 27, 2006

[108] Inter-Orient Maritime, Inc. and/or Tankoil Carriers, Ltd. vs. Cristina Candava, G.R. No. 201251, June 26, 2013, Second Division

[109] Jebsens Maritime Inc., represented by Ms. Arlene Asuncion and/or Alliance Marine Services, Lld., vs. Enrique Undag, G.R. No. 191491. December 14, 2011,

work-related by substantial evidence instead of mere allegations. Thus, in spite of the fact that for the court it is possible that the nature of the work could have contributed just to a small degree to aggravate the illness it is nevertheless for the seafarer to prove that the activity performed is directly connected to the injury. Therefore while the court acknowledges that the degree of the injury do not need to be severe it on the other hand requires due proof of the fact. This is a mechanism to avoid fraud or false allegations.

Notwithstanding, the court does not define what is to be considered this small degree. For instance, in the case *Magsaysay Mitsui Osk Marine, Inc. and/or MOL Tankship Management (Asia) Pte. Ltd. vs. Juanito G. Bengson*[110], the Supreme Court stated, "[i]t is already recognized that any kind of work or labor produces stress and strain normally resulting in wear and tear of the human body." Caution should be taken in order not to erode the line between the normal wear and tear of the body resulting from any labor and a work-related illness. Otherwise there would be too much risk to be bore by the employer.

If according to Philippine Labor Code[111] in case of doubt or uncertainty, shall interpreter in favor of the labor. On the other hand, the risk the employer/shipowner shall bear should never be too great so as to undermine contractual relationship. In this vein, the uncertainty created by the absence of a reasonable criterion behind the Supreme Court decision brings about a high degree of uncertainty and risk for the ship owner.

3.3.3 Deliberate act

It is not compensable if the injury, disability or death is caused by the seafarer's deliberate act. In the case *Wallem Maritime Services, Inc., and Reginaldo Oben/Wallem Shipmanagement Limited vs. Donnabelle Pedrajas and Sean Jade Pedrajas*[112], a contracted seafarer found death with a rope tied his neck and was hanging on board the ship during the employment period while the vessel was in Italy. The Italian government authority then carried out the investigation of his death and found two suicide notes with him. The medicine examiner underwent the autopsy and stated that the seafarer committed suicide by hanging himself and found

[110] Magsaysay Mitsui Osk Marine, Inc. and/or MOL Tankship Management (Asia) Pte. Ltd. vs. Juanito G. Bengson, G.R. No. 198528. October 13, 2014
[111] Chapter I GENERAL PROVISIONS Article 4 Construction in favor of labor
[112] Wallem Maritime Services, Inc., and Reginaldo Oben/Wallem Shipmanagement Limited vs. Donnabelle Pedrajas and Sean Jade Pedrajas, G.R. No. 192993. August 11, 2014

the test result of cocaine was positive. The original document of the investigation was kept in Italy including two suicide notes.

After the seafarer's body sent back to Philippine, his family asked Philippine National Police Crime Laboratory to exam the body again and National Bureau of Investigation (hereinafter NBI) to investigate the incident. The conclusion of both organizations is that homicide cannot be totally excluded. Then the spouse filed a claim for death compensation and benefits under POEA SEC.

The LA ruled that the employer is not liable based on the Forensic Report from Italian authority that the seafarer committed suicide and his death was self-inflicted. The NLRC and the court of appeal overturned the LA decision saying that the seafarer's death is not proven to be self-inflicted and did not give credence to the Forensic Report from Italy authority.

The Supreme Court opined that it should give more weight to the report from Italy because the Italian authority investigated the death of the seafarer immediately after the incident. The Supreme Court ruled that the deliberate act by a seafarer resulting his death is not compensable.

Under POEA SEC, the burden of proof falls on the employer. In this case employer successfully proved the seafarer's death is resulting from his willful act by the Forensic Report.

In the case *Maritime Factors inc., vs., Bienvenido R. Hindang*[113], a seafarer was found by other crewmember that he was hanging by a strap on his neck in a kneeling position and died on board in his cabin with the door locked On July 27, 1994. The vessel was in the territory sea of the Kingdom of Saudi Arabia. When the ship arrived in port, the authority of the Kingdom of Saudi Arabia undertook the medical exam of the seafarer's body. The medical examiner conducted an autopsy and concluded that the seafarer committed suicide by hanging himself. The original report was kept in the Kingdom of Saudi Arabia When the body arrived in Philippine, the seafarer's family asked the NBI to carry out another autopsy. The NBI concluded that the cause of the seafarer's death was Asphyxia by Strangulation, Ligature, and based on the autopsy findings meant that somebody caused the seafarer's death. Then the brother filed a petition for the death compensation benefits.

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[113] Maritime Factors inc., vs., Bienvenido R. Hindang, G.R. No. 151993, October 19, 2011

The LA conclude that under POEA SEC the burden to prove the seafarer was killing himself falls on the employer, and the employer is failed to do so, upheld the report from NBI that the seafarer did not commit suicide, and denied the medical report from Saudi Arabia authority because it was submitted in photocopy and fax transmission form. An amount of 50,000 US dollars was granted to the death compensation. The NLRC and the court of appeal affirmed the LA's decision in all.

The Supreme Court reversed the aforesaid decisions, opined that the Saudi Arabia authority exam the seafarer in first-hand condition and conducted an autopsy, this evidence could not be set aside just because it is a photocopy or fax while the original document is kept in a foreign country. Besides both of the report did not mention there was any struggle or violence situation shown on the seafarer's body, concluding that the seafarer committed suicide.

Both of the cases show that, in principle, the employer is liable for the seafarer's death during the term of his contract but "The employer may be exempt from liability if it can successfully prove that the seaman's death was caused by an injury directly attributable to his deliberate or willful act."[114] It is as described in section 20 D of the contract.

3.4 Concluding remarks

As it was shown in the study, there was no consistent interpretation and standard from the Supreme Court. The Supreme Court sometimes ruled the case based on the terms and condition in the contract. However, in a comparative numbers of cases the Supreme Court wrongly apply the Labor Code and made decision in favor of the seafarers.

4 Dispute settlement procedure

Before addressing the structure of the dispute settlement procedure, it is important to mention that according to Philippine Constitution all disputes must be solved in an amicable way, promoting the conciliation between the parties. Therefore, along with the judicial settlement procedure, the Philippine system provides alternatives in the form of quasi-judicial bodies.

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[114] Crewlink,INC. and/or Gulf Marine Services, vs. Editha Teringtering,for her behalf and in behalf of minor Eimaereach Rose De Garcia Teringtering, G.R. No. 166803, October 14, 2012

Philippine Constitution XIII, section3, paragraph 3 expressed, "The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary mode in settling dispute, including conciliation, and shall enforce their mutual compliance herewith to foster industrial peace." Also in Labour Code 217, 1."… the Labour Arbiters shall have original and exclusive jurisdiction to hear and decide…" It is prescribed in the law to resolve the dispute amicably through arbitration.

POEA was established by the mandate of DOLE Executive Order No 247. It has the original and exclusive jurisdiction to the claims and dispute arising from the POEA SEC[115]. According to the contract, if the disputes arise from a covered CBA, the parties shall solve the claim by voluntary arbitrator ("VA") or panel of voluntary arbitrators ("PVA"). If there is no applicable CBA, the parties can also choose either VA/PVA or NLRC for the settlement. If there's no provision governing the VA, NCMB was assigned to charge over of accredited voluntary arbitration matter.

Concluding from above, if there is a covered CBA in the dispute, the seafarer should go to NCMB to seek for voluntary arbitration. In spite of the rules stated in the contract, the NLRC chairman Gerardo Nograles issued a Memorandum[116] on 2 August, 2010, announcing that if the dispute involved a covered CBA, parties shall submit the dispute to NCMB. Since the study focuses only on cases arising from POEA SEC thus only the cases brought to NLRC are addressed.

NLRC is a quasi-judicial organization attached to DOLE, which resolves dispute locally and overseas.[117] NLRC deals around 42,170 cases every year. "At the RABs (Regional Arbitration Branches), 68% of the total cases are disposed of in favor of labor (workers), while 32% in favor of management (employer). On appealed cases the Commission Proper disposed of 50% in favor of labor, and 50% in favor of management.[118]"

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[115] POEA SEC Section 29

[116] "…you are hereby directed to immediately dismiss the complaint and/or terminates proceedings which were initially processed in the grievance machinery as provided for in the existing Collective Bargaining Agreements (CBAs) between the parties, through the issuance of an Order of Dismissal and referral of the disputes to the National Conciliation and Mediation Board (NCMB) for voluntary arbitration…"

[117] NLRC, "Mandate, Mission, Vision", http://nlrc.dole.gov.ph/?q=node/5

[118] 2013 Performance report of the National Labor Relations Commission (NLRC)

The quasi-judicial system follows a specific structure. Firstly, in the case of no applicable CBA, the parties should resolve the dispute by the labour arbiter, which is compulsory arbitration, assigned by NLRC. Secondly, if one of the party is not satisfied with the decision, they can appeal to NLRC commission within ten days after the arbitration. Thirdly, after the appeal, they can ask motion for reconsideration with NLRC. If there is still no consensus between parties, they can submit petition to court of appeal. Denial of the motion for reconsideration with NLRC is final and executory unless the court of appeal issues a temporary restraining order ("TRO") within ten days. If the final decision is favorable to the seafarer, NLRC will issue the writ of execution and the employer has to give garnishment of the compensation. The employer can still forward the case to Supreme Court.

This procedure seems to be more favorable to the seafarers. This is because the seafarer can ask the garnishment enforce in full before the finality from court of appeal or Supreme Court. This explains why P&I clubs criticize this procedure and propose a way of "escrow".

"It is better to enter a tiger's mouth than a court of law"[119] P&I clubs usually suggest shipowners to pay off the compensation, even it is a settlement under duress[120], to prevent cost incurred by taking further legal action. But the "peaceful" way of solution didn't smooth the conflicts, it aggregate the numbers of similar cases instead.

Seeing that the situation is getting worse, in 29 November 2013, a letter to NLRC, IG P&I proposed "Recognising escrow as a mode of executing the judgment award of the NLRC " to DOLE in order to solve the problem of restitution when the decision by the NLRC/NCMB overturned by the CA or Supreme Court. Most of the situations are the shipowner couldn't get the garnishment back when the seafarer already spent all or part of the money.

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[119] Steven N. Robinson, and George R.A. Doumar, (1987) ""It is Better to Enter a Tiger's Mouth than a Court of Law" or Dispute Resolution Alternatives in U.S.-China Trade," *Penn State International Law Review*: Vol. 5: No. 2, Article 5.

[120] IG Personal Injury Subcommittee, International Group position paper on Garnishment, 03 October 2013

Unfortunately, in the reply letter from DOLE says the "final and executing" procedure is mandate from the Article 223 of the labor code[121]. DOLE clearly expressed there is nothing they can do when the right of the procedure is regulated in the Philippine Law. It also implies that DOLE refuses to do any change of the current procedure and system and no more comment in relation to the flaw of garnishment procedure was made.

In the shipping industry, it is obvious that cost is one of the most predominant considerations for shipowner to hire crew for their ships. When the "hidden cost[122]" of Filipino crew is continuing to put weight on the employers, there is a clear negative impact on the industry.

[121] Philippines Labor Code, Art. 223. Appeal. "Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders."
[122] Paul Johnson, "Hidden cost of a Filipino contract ", Britannia P&I club news, 2006
http://www.docsrush.net/1718802/the-hidden-costs-of-a-filipino-contract-britannia-steam-ship.html

5 Conclusion

Based on the principle of interpretation, it is possible to argue that the Supreme Court is interpreting the contract in a wrong way by applying the Labor Code in deciding the outcome of disputes arising from POEA SEC. The terms of the contract are clear and precise enough, and the Philippine law should only be applied in case of doubt.

The basic policy of Labor Code is to protect labor, provide an equal working opportunity and regulate the relations between workers and employers[123]. Philippine Labour Code, Article 4 states "All doubts in the implementation and interpretation of the provisions of this code, including its implementing rules and regulations, shall be resolved in favor of labour." However, the Labor Code is not applicable to the POEA SEC.

The POEA SEC is a standard contract negotiated by parties, and it is a contract that "reflect the consensus of all stakeholders after a serious of tripartite consultations."[124] The right and obligation of both parties are governed by the terms and conditions stated in the contract. Hence, it seems like the Supreme Court frequently cited the wrong sources of law to broad interpret the contract.

The main purpose to set up organizations like NLRC and NCMB is to protect labors, the more vulnerable party in the employment relationship and to provide alternatives other than relying on the judicial body to settle disputes. However, cases in which labors, often persuade by layers to file petition, abuse the system have already brought employers great burden. Besides, the different criteria to the decision making among the arbitrator, NLRC/NCMB, court of appeal and the Supreme Court does not make the dispute settlement procedure easier. Furthermore, the decisions from the Supreme Court are not consistent, and thus, the complications within this whole system remain.

As it could be seen from the decisions and the dispute settlement system, the disputes seem to be solved in favor of seafarers. This situation brings about a financial burden to ship-

[123] Labor Code Article 3 Declaration of basic policy
[124] POEA Memorandum Circular No 10, dated October 26 2010,

owners and P&I clubs. Along with this, there is a manning problem associated with this issue, taking into account that the Filipino are the main workforce used in the shipping industry.

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Annex1.

SCHEDULE OF DISABILITY ALLOWANCES

IMPEDIMENT GRAD		IMPEDIMENT	
1	US$ 50,000	x	120.00%
2	"	x	88.81%
3	"	x	78.36%
4	"	x	68.66%
5	"	x	58.96%
6	"	x	50.00%
7	"	x	41.80%
8	"	x	33.59%
9	"	x	26.12%
10	"	x	20.15%
11	"	x	14.93%
12	"	x	10.45%
13	"	x	6.72%
14	"	x	3.74%

Source: POEA SEC section 32