

# ALON

## Ocean Wave

2018  
25<sup>th</sup> January

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Topics of interest relating to the Philippine Maritime Industry and Shipping

**120/240 Days**

Understanding the issue and how to limit potential exposure in legal claims by correct case management.

Latest developments



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## The 120 / 240 Day Issue – respecting the parameters of the Employment Contract

### Background ( A brief history of the issue)

This is now a long running issue (over ten years) and there has been a recent resurgence of cases from the Supreme Court (SC) causing concern as ship owners are being found liable for total disability. This is even happening when a seafarer has reached “fit to work” status and the cases having been dismissed at NLRC and Court of Appeal level can be overturned by the Supreme Court (SC) because of it’s position, that if medical treatment has exceeded 120 days, a seafarer will be classed as totally disabled.



### What is the actual issue?

It is not really complicated or a mystery, but deeply frustrating and the effects are serious to ship owners and comes down to the power of the Philippine courts position and interpretation of the Standard Employment contract compared to the position of the maritime industry. The standard employment contract (SEC) being the Philippines Overseas Employment Administration (POEA) contract for Filipino seafarers serving on international vessels, the current version full title;

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

*Came into effect on the 12<sup>th</sup> November 2010*

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

### SECTION 20B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

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

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

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



The POEA contract also states in;

### *Section 20 A. COMPENSATION AND BENEFITS*

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



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

-  To provide sick wages up to 120 days.
-  Provide medical treatment until a seafarer has been assessed by the company designated physician as having reached maximum medical cure or fit to work.



Medical treatment for example, a spinal injury or even simple Tuberculosis (TB) where recommended treatment is for 6 months, will exceed the benchmark of the 120days (4 months) specified as sick wages. While the maritime industries position is that there is no defined time (number of days) as to the owners obligation for medical treatment or assessment of disability, we need to be aware of the position adopted by the courts, who have (inappropriately), placed owners liability for total disability in juxtaposition with the period for sick wages.

Under the POEA contract, disability is based **solely** upon the grading medical assessment of the attending company designated physician (CDP).

### What is the courts position?

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

This position was modified nearly 10 years ago in a case where one SC justice adopted a different position, this was the **Vergara vs. Hammonia Maritime Services, Inc. et al.** (G.R. No. 172933, 6 October 2008) ([Pandiman](#))

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

The above case made direct reference to the Labour Code of the Philippines, where we reproduce for ease of reference;

### *Rule X – Temporary Total Disability*

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

The separation and distinction of the POEA contract and the Labour Code of the Philippines was explained by the Department of Labour and Employment (DOLE) Department Order No. 4, Series of 2000, which emphasized the Department's objective of ensuring the continued employment of the Filipino seafarers and maintaining the Philippine





global comparative advantage in ship manning. The Standard Terms and Conditions Governing the Employment of Filipino Seafarer On Board Ocean-Going Vessels was amended to achieve these visions and design. The then new standard terms and conditions reflected the consensus of all stakeholders as determined through several tripartite consultations conducted by the POEA. It was created for the simple purpose of serving the peculiar and special needs of seafarers. It governs the contractual relationship between the seafarer and the employer. Hence, any claim by virtue of the said contractual relationship should be governed by the terms and conditions of the contract.

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

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

#### How to avoid unnecessary exposure – case management



To ensure that owners are not exposed to inappropriate “Total Disability” awards, the medical condition needs to be monitored closely and if treatment approaches 120 days an **interim assessment** established to stop total disability being automatically applied and to “**cap**” the owners liability in addition to opening the gateway to a further 120 day period.

We (**Pandiman**) have a monitoring system that ensures an interim assessment is obtained and evaluated to protect the owner and P&I Club, thereby providing a “gateway into a further 120 day period (240 days in total, eight (8) months). In the vast majority of cases this period will be sufficient to have fully managed the case to either;

1. The medical condition being resolved or
2. Maximum medical cure having been attained and a final disability grading given)

We still however within the industry observe cases where ship owners have been exposed to total disability because certain key steps have not been addressed. This we observe in what we call “secondhand cases”. This is not to say a manning agent has not acted in the owners best interest, but is the result of not understanding the potential exposure and the consequences. We observed last year too many **secondhand cases** (*cases initially handled by a manning agency, unfavourable decision at the labour court, owner informed and case becoming a P&I case, with Pandiman being brought in at a late stage*) wherein the manning agency believing that as long as a seafarer is receiving the correct treatment everything is OK. That despite successful medical treatment (medical condition resolved or reached maximum medical cure) the seafarer still filed a claim for disability at the labour courts.

Unfortunately reality is that too many seafarers do not want to accept a position that their condition has been resolved or the actual and true disability grading as established by the Company Designated Physician (CDP). Seafarers file cases demanding to be Grade 1 (total disability). It is at this point that good case management of the initial stages of the case will determine a correct outcome or unfortunately the ship owner being exposed to an award of total disability because the progression of the treatment up to and through the 120 day period was not corrected documented. In these cases the 120 day period was passed with no interim assessment and the courts have awarded total disability based on this.

Recently this has been highlighted in several Supreme Court decisions clarifying the 120/240 days from the courts perspective, particularly on the need for a justification of the extension to 240 days.







To justify the extension of a further 120-day period to the 240-day period, the company-designated physician (CDP) must first document the need for the medical extension. For example, the CDP must state that the illness still requires

medical attendance beyond the initial 120 days but not to exceed 240 days, that the standard treatment period for the condition is over 120 days. Without such justification from the CDP, thenb courts will rule "the seafarer's disability shall be conclusively presumed to be permanent and total." (See *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, G.R. No. 211882, July 29, 2015, 764 SCRA 431

In *Robelito Malinis Talaroc v. Arpaphil Shipping Corporation* (G.R. No. 223731, 30 August 2017), the Supreme Court summarised the guidelines as follows:

the following guidelines are observed when a seafarer claims permanent and total disability benefits:

-  The company-designated physician must issue a medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
-  If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
-  If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
-  If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification

It is important to also clarify the courts perception of CDP, it is not sufficient for a medical coordinator in a general medical update to comment on further treatment. As 120 days is approached the actual specialist attending to the seafarer must place in writing the requirement for further medical treatment and the interim disability grading at that time. Documents provided only by a medical coordinator have not been given weight in court.

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