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PHILLIPINES. SUPREME COURT DENIES CLAIM BASED ON PANCREATIC CANCER

Ingosstrakh's P&I Correspondent in Phillipines Messrs. Delrosario Pandiphil Inc. have provided report on recent judgement of local Supreme Court which could be of interest for Insured Owners.

Seafarer was engaged as an Able Seaman. During employment, he felt severe abdominal pain, back ache, chest pain and had coughs which caused his repatriation. Seafarer was referred to the company-designated physician (CDP) for examination and treatment and was diagnosed with hypertension secondary to upper respiratory tract infection. Seafarer was not able to return for further consultation with the CDP and instead went home to his province. There, he was confined at a medical facility and was eventually diagnosed pancreatic cancer. Eventually, the seafarer died because of his cancer. The heirs of the seafarer filed a claim for death benefits against the company arguing that seafarer's death is work-related. On the other hand, the company argued that the heirs are not entitled to death benefits because seafarer's death occurred after the termination of his employment contract, he abandoned his treatment and the illness is not work-related.

Both the Labor Arbiter and the NLRC denied the claim as there was no causal relation between the work of the seafarer and pancreatic cancer. However, the Court of Appeals awarded the heirs death benefits on the ground that there is reasonable probability that the illness which caused the death of the seafarer is work-related. Upon appeal, the Supreme Court denied the claim. The Court held that to be entitled to benefits under the POEA Contract, it must be shown that (1) the seafarer suffered an illness (2) during the term of his contract (3) he complied with the procedures prescribed under Section 20-A of the POEA Contract (4) his illness is one of the enumerated occupational diseases or that his illness or injury is otherwise work-related and (5) he complied with the four conditions enumerated under Section 32-A of the POEA Contract for an occupational disease or a disputably-presumed work-related disease to be compensable.

Seafarer abandoned his treatment

The seafarer failed to comply with the procedures prescribed under the POEA-SEC, particularly Section 20-A(3), paragraph 3, which requires that he must submit himself to a post-employment medical examination within three days upon his return. Further, he must report regularly to the company-designated physician specifically on the dates prescribed. When the seafarer is physically

incapacitated to do so, he must submit a written notice to the agency. Otherwise, his failure to do so will result in forfeiture of his right to claim his benefits.

The Court noted that seafarer was repatriated on December 1, 2012. He went to the CDP on December 5, 13 and 18, 2012 who diagnosed him with hypertension secondary to upper respiratory tract infection. When he was asked to report back on January 8, 2013 for a follow-up consultation, not only did seafarer fail to do so, he also failed to notify in writing the company or the CDP that he had already gone home to his province. The only defense the heirs gave was that seafarer's worsening condition prevented him from doing so. The law is clear, however, that all that the seafarer or his family had to do was make a written notification of his hospitalization, or his physical incapacity to report back to the company-designated physician. This they did not do.

Third doctor procedure not followed

The POEA Contract states that if the doctor selected by the seafarer disagrees with the assessment of the company-designated physician, the parties may jointly appoint a third doctor whose decision shall be final and binding on both parties. When the seafarer failed to report back to the CDP, it was because he already went home to his province and had himself checked by another physician in a different clinic. There, he was later determined to have pancreatic cancer.

The records reveal an indisputable disagreement between the findings of the CDP, on one hand, and the personal physician of the seafarer, on the other. The CDP even claims that seafarer never made any reference to any other symptom or condition relating to pancreatic cancer because otherwise, he would have reported it to the company. At this point, it bears stressing that the employee seeking disability benefits carries the responsibility of securing the opinion of a third doctor. In fact, the employee or the seafarer must actively or expressly request for it. The referral to a third doctor has been recognized by the Court to be a mandatory procedure. Failure to comply therewith is considered a breach of the POEA SEC and renders the assessment by the company-designated physician binding on the parties.

Pancreatic cancer not proven to be work-related

Pancreatic cancer is not an occupational disease under the POEA Contract. While the seafarer has the benefit of the legal presumption of work-relatedness of his illness, it is still incumbent upon him or his heirs to prove the work-relatedness of said pancreatic cancer. Case law has held time and time again that for a disease not included in the list of compensable diseases to be compensable, the seafarer still has to establish, by substantial evidence that his illness is or was work-related. The disputable presumption does not amount to an automatic grant of compensation. Here, the heirs failed to prove that seafarer's illness is compensable. Firstly, the heirs did not enumerate his specific duties as an Able Seaman nor did they list down the specific tasks which he performed on a daily basis. Secondly, they did not show that his duties or tasks caused, contributed to the development of, or aggravated his pancreatic cancer. There was no mention of the specific substances or chemicals which he claimed he was exposed to during his employment contract, how

these chemicals could have caused his pancreatic cancer, or measures that the company did or did not take to control the hazards. His heirs merely presented general averments and allegations that his "constant exposure to hazards such as chemicals and the varying temperature, coupled by stressful tasks in his employment caused the aggravation of his medical condition" which are not considered as substantial evidence to prove their cause of action.

TURKEY. NEW TARIFFS AND AMENDMENTS IN RESPECT OF FINES FOR POLLUTION

Ingosstrakh has recently shared with Insured Owners a detailed Circular on new tariffs and amendments in regulations concerning fines for pollution in Turkish waters prepared with assistance of local P&I Correspondent Messrs. Kalimbassieris Maritime A.S.

As it stands, the following alterations are put in effect as of the 15th June:

1. The sea pollution fines will be doubled in Special Environmental Protection Zones which also cover the Marmara Region and Straits (contains all ports and anchorage areas within Istanbul, Kocaeli, Yalova, Bursa, Balikesir, Canakkale, Tekirdag).
2. The article 20 (i-4) concerning administrative fine levels imposed for pollution caused by tankers, ships and other naval vessels discharging solid waste or domestic wastewater, is revised/extended to include additional pollutant types, to avoid discussions on categorization. In this regard, the level of the fine imposed to the vessels less than 150 GT (including) under this category is increased in comparison to previous rates, accordingly, a slight increase is resulted in within this section.
3. Additionally, a new set of administrative fine levels are introduced for ships and other marine vessels using fuel oil containing more sulfur than the content specified in the international conventions and relevant regulations to which Turkey is a contracting state. The fine levels are determined as i) for vessels less than 1000 GT / TRY 200 per GT; ii) for vessels between 1000 GT – 5000 GT / additional to above fine amount TRY 25 per GT; iii) for vessels more than 5000 GT / additional to above fine amounts TRY 5 per GT.
4. Lastly, an administrative fine is imputed on the coastal facilities such as terminals, shipyards, ship demolition yards and yacht marinas, in case of breaching their obligation to notify the local authorities, about a pollution occurring within their area. In such cases, an administrative fine in the amount of TRY 25,000 will be imposed against these facilities. Furthermore, it is articulated that administrative fines from TRY 25,000 to TRY 100,000 shall be imposed if the coastal facilities do not take the necessary measures for the collection and management of marine litter, waste and wastewater. Administrative fines in this paragraph are applied to fishermen's shelters at a rate of its one third.