CARMELITO N. VALENZONA, PETITIONER, VS. FAIR SHIPPING CORPORATION AND/OR SEJIN LINES COMPANY LIMITED, RESPONDENTS.

G.R. No. 176884. October 19, 2011

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

"Permanent disability refers to the inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body. What determines petitioner's entitlement to permanent disability benefits is his inability to work for more than 120 days."[1] On the other hand, "[p]ermanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do. It does not mean absolute helplessness."[2]

This Petition for Review on Certiorari assails the January 17, 2007 Decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 96303 which dismissed the Petition for Certiorari filed by petitioner Carmelito N. Valenzona (petitioner). Also assailed is the February 28, 2007 Resolution[4] denying the motion for reconsideration.

Factual Antecedents

On May 5, 2001, respondent Fair Shipping Corporation, for and on behalf of its principal, respondent Sejin Lines Company Limited, hired petitioner as 2[nd] Assistant Engineer aboard its vessel M/V Morelos for a duration of nine months.[5] Before his embarkation on May 23, 2001,[6] he was declared medically "fit to work."[7]

However, while aboard the vessel on September 29, 2001, petitioner complained of chest pain.[8] He was thus brought to Centro Medico Quirurgico Echauri in Mexico where he was confined up to October 6, 2001 and diagnosed with "hypertensive crisis, high blood pressure."[9]

A day after his repatriation to the Philippines on October 8, 2001,[10] petitioner was examined by Dr. Nicomedes G. Cruz (Dr. Cruz), the company-designated physician who diagnosed his illness as hypertension.[11] Dr. Cruz continuously treated petitioner for six months, i.e., from October 9, 2001 until April 25, 2002.[12]

On April 18, 2002, however, petitioner consulted another doctor, a certain Dr. Mapapala at the Jose Reyes Memorial Medical Center who diagnosed him with "Hypertensive Cardiovascular Disease".[13] Considering his prolonged sickness, petitioner, on April 18, 2002, through Atty. Anastacio P. Marcelo, wrote a letter[14] to respondents demanding payment of the balance of his sickness allowance and permanent disability benefits. However, same went unheeded.[15]

Thereafter, or on April 25, 2002, Dr. Cruz issued a certification declaring petitioner as fit to work.[16]

Unconvinced, on April 27, 2002, petitioner consulted Dr. Rodrigo F. Guanlao, an Internist-Cardiologist at the Philippine Heart Center who diagnosed him with "Ischemic heart disease, Hypertensive cardiovascular disease

and congestive heart failure" and also declared him unfit to work in any capacity.[17]

Hence, petitioner filed a complaint for recovery of disability benefits, sickness allowance, attorney's fees and moral damages.[18]

Ruling of the Labor Arbiter

On January 31, 2003, the Labor Arbiter[19] rendered a Decision[20] the dispositive portion of which reads as follows:

> CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered ordering the respondents in solidum to pay complainant in peso equivalent, the following amount:
>
> 1. P21,581.39 as the balance of his sickness allowance; and
> 2. US$809.00 his one (1) month pay as penalty.
>
> SO ORDERED.[21]

The Labor Arbiter awarded sickness allowance to petitioner equivalent to four months of his basic wage[22] pursuant to the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels[23] (or the POEA's[24] Standard Employment Contract) and petitioner's Collective Bargaining Agreement (CBA).[25] Records however showed that petitioner already received partial payment of his sickness allowance, hence he is entitled only to the remaining balance of P21,581.39.[26]

Anent petitioner's claim for disability benefits, the Labor Arbiter opined that he is not entitled thereto because under the CBA, said benefits can be claimed only for disability resulting from accidents and not due to illness.[27] The Labor Arbiter also held that even under the POEA Standard Employment Contract, particularly Section 20, paragraph B thereof, petitioner is not entitled to disability benefits since he was declared fit to work by the company-designated physician. Corollarily, the Labor Arbiter found the assessment of Dr. Cruz deserving of more credence than the assessments of the private physicians consulted by petitioner because the former treated petitioner more extensively.[28] Nonetheless, the Labor Arbiter noted that respondents failed to deploy petitioner even after he was declared fit to work; thus, the respondents were ordered to pay petitioner his one-month salary as penalty therefor.[29]

Ruling of the National Labor Relations Commission (NLRC)

Both parties filed their appeal to the NLRC. On May 26, 2006, the NLRC rendered its Decision[30] the dispositive portion of which reads:

> WHEREFORE, complainant's appeal is dismissed for lack of merit. On the other hand, respondents' appeal is granted. The Labor Arbiter's award of P21,581.39 by way of balance of the sickness allowance is deleted as the same had been extinguished by payment, while the award of US$809.00 as a penalty is set aside for lack of factual and legal basis.
>
> SO ORDERED.[31]

The NLRC affirmed the findings of the Labor Arbiter that petitioner is not entitled to disability benefits because the CBA provision awarding the same refers to permanent disability suffered by the seafarer resulting from an accident and not from an illness.[32] As such, the NLRC found as irrelevant the issue of whether the company-designated physician's assessment of petitioner's disability deserves credence.[33]

As regards the sickness allowance, the NLRC noted that during the pendency of the case, respondents had already paid the remaining amount of P21,581.39. Consequently, respondents' obligation to pay the same had been

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extinguished.[34]

Anent the amount of US$809.00 imposed upon the respondents as penalty for their failure to re-deploy petitioner, the NLRC ruled that the same is without factual and legal basis. The NLRC held that petitioner is a contractual employee; consequently, after the expiration of his contract, the respondents were not duty-bound to deploy him absent a new contract.[35]

Petitioner filed a motion for reconsideration[36] but same was denied in the Resolution[37] dated July 31, 2006. Petitioner thus filed a Petition for Certiorari[38] with the CA.

Ruling of the Court of Appeals

On January 17, 2007, the CA rendered its Decision[39] denying the petition and affirming the Decision of the NLRC. The CA concurred with the findings of the Labor Arbiter and the NLRC that petitioner is not entitled to disability benefits under the CBA as the same referred to disabilities caused by accidents and not by illness.[40] The CA further ruled that even under the POEA Standard Employment Contract, petitioner is still not entitled to disability benefits because he was declared fit to work by the company-designated physician.[41] The CA found the evaluation of Dr. Cruz more accurate since he treated petitioner for more than six months[42] whereas the physicians consulted by petitioner examined him for only one day.

The dispositive portion of the CA Decision reads:

> WHEREFORE, the petition is DENIED DUE COURSE. The decision of the NLRC is AFFIRMED.[43]

Petitioner moved for reconsideration[44] but same was denied in the Resolution[45] dated February 28, 2007.

Hence, this Petition.

Issue
The main issue raised by both parties is whether petitioner is entitled to receive permanent disability benefits as well as attorney's fees.

The parties' arguments.

Petitioner insists that he is entitled to permanent disability benefits because he was declared unfit to work by his private physicians who are expert cardiologist vis-à-vis Dr. Cruz who is a general and cancer specialist.[46] More significantly, he claims that the assessment of Dr. Cruz that he is fit to work was issued after the lapse of 120 days from the date of his repatriation, as such his disability is considered total and permanent.[47]

On the other hand, respondents argue that petitioner is not entitled to receive permanent disability benefits because he was assessed fit to work by the company-designated physician[48] whose evaluation is more accurate because he treated petitioner for more than six months.[49] Respondents also claim that the mere fact that he was unable to work for more than 120 days does not automatically entitle him to total permanent disability benefits.[50] They argue that the duration of disability is not relevant for purposes of determining disability benefits[51] and that petitioner's degree of disability and amount of disability benefits should be based on the Schedule of Disability under Section 32 of the POEA contract[52] as assessed by the doctor and not by the mere lapse of 120 days.[53]

Our Ruling

The petition is meritorious.

Petitioner is entitled to permanent disability benefits.

a) The certification by the company-designated physician that petitioner is fit to work was issued after 199 days or more than 120 days from the time he was medically repatriated to the Philippines.

Petitioner's Employment Contract[54] specifically provides that the same shall be deemed an "integral part of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels" otherwise known as the POEA Standard Employment Contract. Section 20(B) of the POEA Standard Employment Contract provides:

> B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> x x x x
>
> 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.
>
> x x x x

The Labor Code's provision on permanent total disability applies with equal force to seafarers.[55] Article 192 (c) (1) of the Labor Code provides, viz;

> Art. 192. Permanent total disability. - x x x
>
> x x x x
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;
>
> x x x x[56]

Thus, in Quitoriano v. Jebsens Maritime, Inc.,[57] we held that:

> Thus, Court has applied the Labor Code concept of permanent total disability to the case of seafarers. x x x
>
> x x x x
>
> There are three kinds of disability benefits under the Labor Code, as amended by P.D. No. 626: (1) temporary total disability, (2) permanent total disability, and (3) permanent partial disability. Section 2, Rule VII of the Implementing Rules of Book V of the Labor Code differentiates the disabilities as follows:
>
> Sec. 2. Disability. - (a) A total disability is temporary if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period not exceeding 120 days, except as otherwise provided for in Rule X of these Rules.
>
> (b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.
>
> (c) A disability is partial and permanent if as a result of the injury or sickness the employee suffers a permanent partial loss of the use of any part of his body.

In Vicente v. ECC (G.R. No. 85024, January 23, 1991, 193 SCRA 190, 195):

> x x x the test of whether or not an employee suffers from 'permanent total disability' is a showing of the capacity of the employee to continue performing his work notwithstanding the disability he incurred. Thus, if by reason of the injury or sickness he sustained, the employee is unable to perform his customary job for more than 120 days and he does not come within the coverage of Rule X of the Amended Rules on Employees Compensability (which, in more detailed manner, describes what constitutes temporary total disability), then the said employee undoubtedly suffers from 'permanent total disability' regardless of whether or not he loses the use of any part of his body.

A total disability does not require that the employee be absolutely disabled or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his usual work and earn therefrom (Austria v. Court of Appeals, G.R. No. 146636, Aug. 12, 2002, 387 SCRA 216, 221). On the other hand, a total disability is considered permanent if it lasts continuously for more than 120 days. Thus, in the very recent case of Crystal Shipping, Inc. v. Natividad (G.R. No. 134028, December 17, 1999, 321 SCRA 268, 270-271), we held:

Permanent disability is inability of a worker to perform his job for more than 120 days, regardless of whether or not he lose[s] the use of any part of his body. x x x

Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. It does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.[58]

In Quitoriano, the seafarer therein was medically repatriated to the Philippines on May 30, 2001[59] and upon arrival, he underwent several tests at the Medical Center Manila under the care of Dr. Cruz, the company-designated physician,[60] who incidentally is the same Dr. Cruz who treated petitioner in the instant case. After a lapse of 169 days from his repatriation, or on November 16, 2001, Dr. Cruz declared the seafarer therein fit to work.[61] Unconvinced, the seafarer consulted an independent internist-cardiologist who diagnosed him as suffering from "hypertension cardiovascular disease and hyperlipidemia".[62] The seafarer thus demanded from the shipping company payment of his permanent disability benefits but he was rebuffed on the ground that he was declared fit to work by Dr. Cruz.[63] The seafarer thus filed a complaint to recover his permanent disability benefits and attorney's fees. The case eventually reached this Court raising the issue of whether the CA erred in not finding the disability of the seafarer as permanent and total and for not awarding him attorney's fees.[64] The Court ruled in favor of the seafarer holding that "the fact that it was only on November 16, 2001 that the 'fit to work' certification was issued by Dr. Cruz or more than five months from the time petitioner was medically repatriated on May 30, 2001, petitioner's disability is considered permanent and total."[65]

The ruling in Quitoriano applies in the instant case. Similarly, petitioner herein was medically repatriated to the Philippines on October 8, 2001. However, it was only on April 25, 2002 or after a lapse of 199 days that Dr. Cruz issued a certification declaring him fit to work. Thus, we declare herein, just as we pronounced in Quitoriano, that petitioner's disability is considered permanent and total because the "fit to work" certification was issued by Dr. Cruz only on April 25, 2002, or more than 120 days after he was medically repatriated on October 8, 2001.

b) The company-designated physician's
certification that petitioner is fit to work
does not make him ineligible for permanent
total disability benefits.

We find no merit in respondents' contention that the company-designated physician's assessment that petitioner is

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fit to work makes him ineligible to claim permanent disability benefits.[66] This issue has already been raised, and rebuffed, in United Philippine Lines, Inc. v. Beseril.[67] Petitioners therein argued that "the provisions on disability benefits operate only upon certification by the company-designated physician that the claiming seafarer is indeed disabled, hence, respondent is not eligible for an award of disability benefits as 'he was certified fit for sea duty after the conduct of the last medical examination'".[68] However, this line of argument was resoundingly rebuffed by the Court, thus:

> But even in the absence of an official finding by the company-designated physicians that respondent is unfit for sea duty, respondent is deemed to have suffered permanent disability. Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body. It is undisputed that from the time respondent suffered a heart attack on December 5, 1997, he was unable to work for more than 120 days, his cardiac rehabilitation and physical therapy having ended only on May 28, 1998.
>
> That respondent was found to be 'fit to return to work' by Clinica Manila (where he underwent regular cardiac rehabilitation program and physical therapy from January 15 to May 28, 1998 under UPL's account) on September 22, 1998 or a few months after his rehabilitation does not matter. x x x[69]

Considering the circumstances prevailing in the instant case, we likewise rule that it does not matter that the company-designated physician assessed petitioner as fit to work. It is undisputed that from the time petitioner was repatriated on October 8, 2001, he was unable to work for more than 120 days as he was only certified fit to work on April 25, 2002. Consequently, petitioner's disability is considered permanent and total.[70] In fact, from his repatriation until the filing of his petition before this Court on March 21, 2007,[71] or for more than five years, petitioner claims that he was unable to resume his job as a seaman[72] which thus strongly indicates that his disability is permanent and total. Also, we note that the certification was issued only after petitioner consulted a private physician (Dr. Mapapala) and after he formally demanded from the respondents, through his lawyer, the payment of his sickness allowance, disability benefits and attorney's fees.

Consequently, we find it irrelevant to discuss at this juncture as to which prognosis, that of Dr. Cruz or petitioner's private physicians', is more accurate.

The case of Sarocam v. Interorient Maritime Ent. Inc. is not in point.

The CA[73] erroneously applied Sarocam v. Interorient Maritime Ent. Inc.[74] in ruling that petitioner is no longer entitled to claim disability benefits since he was declared fit to work by Dr. Cruz. The factual circumstances in Sarocam completely differ from the instant case. In Sarocam, the seafarer therein was declared fit to work by the company-designated physician after a lapse of only 13 days from the date of his repatriation[75] hence way before the lapse of the 120-day mark. Moreover, the seafarer therein executed a release and quitclaim in favor of his employers acknowledging receipt of his sickness benefits wages and freeing his employers of any liability.[76]

The amount of permanent disability benefits.

In his Petition, petitioner claims for disability benefits in the amount of US$80,000.00 pursuant to the CBA.[77] In his Memorandum, however, he concedes that the CBA provision does not apply[78] and now claims for only US$60,000.00 as disability benefits pursuant to the POEA Standard Employment Contract.

Indeed, the CBA provision does not apply as the same refers to disability arising from accidents and not due to illness as in the case of petitioner. The pertinent CBA provision reads:

> Sec. I: A seafarer who suffers permanent disability as a result of an accident, regardless of fault but excluding

> injuries caused by a seafarer's willful act, whilst in the employment of the Company including accidents occurring while travelling to or from the Ship, and whose ability to work is reduced as a result thereof, shall in addition to sick pay be entitled to compensation according to the provisions of this agreement. The copy/ies of the medical certificate and other relevant medical reports shall be made available by the Company to the seafarer.[79]

On the other hand, the POEA Standard Employment Contract particularly Section 20(B) (6) thereof provides, to wit:

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

In turn, Section 32 provides that for an impediment considered as total and permanent, a disability allowance of US$60,000.00 (US$50,000.00 x 120%) is granted. Therefore, considering our earlier discussion finding petitioner's disability as permanent and total, he is then entitled to receive disability benefits of US$60,000.00.

Petitioner is entitled to attorney's fees.

Petitioner alleges that he is entitled to attorney's fees pursuant to Article 2208 of the Civil Code because he was forced to litigate to recover his wages.[80] On the other hand, respondents argue that petitioner's claim for attorney's fees is without legal and factual basis.

We find for the petitioner. Circumstances show that he demanded from the respondents the payment of his disability benefits but the same went unheeded. Left with no other recourse, petitioner filed the instant case to recover what is rightfully his under the law. Plainly, he was "compelled to litigate due to respondent[s'] failure to satisfy his valid claim, [thus, he] is x x x entitled to attorney's fees of ten percent (10%) of the total award at its peso equivalent at the time of actual payment."[81]

WHEREFORE, the petition is GRANTED. The January 17, 2007 Decision of the Court of Appeals and its February 28, 2007 Resolution in CA-G.R. SP No. 96303 are REVERSED and SET ASIDE. Respondents are held jointly and severally liable to pay petitioner permanent and total disability benefits of US$60,000.00 and attorney's fees of ten percent (10%) of the total monetary award, both at its peso equivalent at the time of actual payment.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

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[1] Palisoc v. Easways Marine, Inc., G.R. No. 152273, September 11, 2007, 532 SCRA 585, 596-597.

[2] Philippine Transmarine Carriers, Inc. v. National Labor Relations Commission, 405 Phil. 487, 494 (2001).

[3] CA rollo, pp. 256-262; penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Vicente S.E. Veloso and Marlene Gonzales-Sison.

[4] Id. at 284-285.

[5] Contract of Employment, id. at 29.

[6] Petitioner's Position Paper, id. at 19. However, respondents averred that petitioner boarded the vessel on May

21, 2001; see Respondents' Position Paper, id. at 47.

[7] See Certification dated May 3, 2001 of Dr. Wilfredo Jose P. Arguelles, Jr., id. at 30.

[8] Petitioner's Position Paper, id. at 19-20.

[9] Id. at 37.

[10] Respondents' Position Paper, id. at 48.

[11] Respondents' Position Paper, id. at 48. See also Certifications of Dr. Nicomedes G. Cruz, id. at pp. 71 & 72.

[12] Respondents' Position Paper, id. at 48.

[13] Id. at 42.

[14] Id. at 44.

[15] Petitioner's Position Paper, id. at 20.

[16] See Certification of Dr. Nicomedes G. Cruz dated April 25, 2002, id. at 72.

[17] Id. at 43.

[18] Petitioner's Position Paper, id. at 17.

[19] Labor Arbiter Melquiades Sol D. Del Rosario.

[20] CA rollo, pp. 146-156.

[21] Id. at 156.

[22] US$809.00; see Contract of Employment, id. at 29.

[23] Particularly Section 20B thereof; see Decision of the Labor Arbiter, id. at 150.

[24] Philippine Overseas Employment Administration.

[25] Petitioner is a union-member of AMOSUP (Associated Marine Officers and Seaman's Union of the Philippines) which had an existing Collective Bargaining Agreement with the Japan's Seaman's Union (JSU); see Decision of the Labor Arbiter, CA rollo, p. 147; see also petitioner's Notice of Appeal with Memorandum of Appeal, id. at 159.

[26] Decision of the Labor Arbiter, id. at 151.

[27] Decision of the Labor Arbiter, id. at 152-153. The CBA provision reads: "Sec. I: A seafarer who suffers permanent disability as a result of an accident, regardless of fault but excluding injuries caused by a seafarer's willful act, whilst in the employment of the Company including accidents occurring while travelling to or from the Ship, and whose ability to work is reduced as a result thereof, shall in addition to sick pay be entitled to compensation according to the provisions of this agreement. The copy/ies of the medical certificate and other relevant medical reports shall be made available by the Company to the seafarer." Id. at 206.

[28] Decision of the Labor Arbiter, id. at 154-156.

[29] Decision of the Labor Arbiter, id. at 156.

[30] Id. at 209-216; penned by Presiding Commissioner Benedicto Ernesto R. Bitonio, Jr. and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go.

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[31] Id. at 215-216.

[32] Id. at 213-214.

[33] Id. at 214.

[34] Id. at 215.

[35] Id.

[36] Id. at 217-221.

[37] Id. at 223-225.

[38] Erroneously captioned as Petition for Review on Certiorari, id. at 2-16.

[39] Id. at 256-262.

[40] Id. at 259.

[41] Id. at 259-261, citing Sarocam v. Inter-Orient Maritime Enterprises, G.R. No. 167813, June 27, 2006, 493 SCRA 502.

[42] Id. at 261.

[43] Id.

[44] Id. at 264-270.

[45] Id. at 284-285.

[46] Rollo, p. 213.

[47] Id. at 224-225.

[48] Id. at 156-157.

[49] Id. at 161-162, 166, 173.

[50] Id. at 177.

[51] Id. at 182.

[52] Id. at 181.

[53] Id. at 186.

[54] CA rollo, p. 29.

[55] Palisoc v. Easways Marine, Inc., supra note 1 at 592-594.

[56] Emphasis supplied.

[57] G.R. No. 179868, January 21, 2010, 610 SCRA 529.

[58] Id. at 534-536. Emphasis supplied.

[59] Id. at 531.

[60] Id.

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[61] Id.

[62] Id. at 532.

[63] Id.

[64] Id. at 534.

[65] Id. at 536. Emphasis supplied.

[66] Rollo, pp. 156-157.

[67] G.R. No. 165934, April 12, 2006, 487 SCRA 248.

[68] Id. at 260.

[69] Id. at 262. Emphasis supplied.

[70] Quitoriano v. Jebsens Maritime, Inc., supra note 57 at 536.

[71] Rollo, p. 3.

[72] Id. at 15.

[73] CA rollo, p. 261.

[74] G.R. No. 167813, June 27, 2006, 493 SCRA 502.

[75] Id. at 506.

[76] Id.

[77] Rollo, p. 16.

[78] Id. at 225.

[79] CA rollo, p. 206. Emphasis supplied.

[80] Rollo, p. 225.

[81] Quitoriano v. Jebsens Maritime, Inc., supra note 57 at 537.

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