



**\$ 338,684,718.81**

**@ 53.50**

The amount of money you see on the screen is NOT the prize money for the Power Ball. It is also not the prize for the Super Lotto.

USD 338,684,718.81 is the total amount of money awarded by the NLRC and the MVA to seafarers in a total of 10,974 crew claims decided from 2013 - 2017. Let me break this down to you in the next slide. We tried to secure data before 2013 from NLRC and MVA but we were told by NLRC that no data is available before 2013.

You will note that the numbers for the cases filed is not the same as the cases decided. This is because claims filed and heard the previous year are decided on the following year.



### NLRC / MVA JUDGMENT AWARD

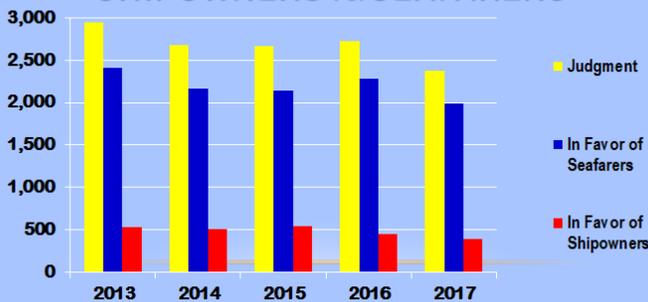


YEAR	CASES FILED	CASES DECIDED	JUDGMENT AWARD IN PHP
2013	2,907	2,410	2,197,511,683.14
2014	2,703	2,168	3,239,541,590.61
2015	2,605	2,135	4,388,121,301.01
2016	2,619	2,275	4,365,891,303.71
2017	2,503	1,986	3,928,566,577.60
<b>TOTAL</b>	<b>13,337</b>	<b>10,974</b>	<b>18,119,632,456.07 @ 53.50</b>
			<b>\$ 338,684,718.81</b>

NLRC – National Labour Relations Commission  
MVA – Maritime Voluntary Arbitrators



### PROFILE OF DECIDED CASES SHIPOWNERS vs. SEAFARERS



This is an illustration of how the NLRC and MVA decided on seafarers' claims from 2013 -2017.

This slide demonstrates how much the NLRC / MVA favours the seafarers. It is quite distressing being confronted with the bitter reality that the Philippine labour justice system has little sympathy to the plight of the Owners.



### NLRC / MVA DECISIONS : SEAFARERS vs SHIPOWNERS



YEAR	CASES DECIDED	JUDGMENT FOR SEAFARERS	% OF DECISION IN FAVOUR OF SEAFARERS	JUDGMENT FOR SHIPOWNERS	% OF DECISION IN FAVOUR OF SHIPOWNERS
2013	2,940	2,410	82%	530	18%
2014	2,678	2,168	81%	510	19%
2015	2,671	2,135	80%	536	20%
2016	2,726	2,275	83%	451	17%
2017	2,373	1,986	83%	387	17%
<b>TOTAL</b>	<b>13,388</b>	<b>10,974</b>	<b>82%</b>	<b>2,414</b>	<b>18%</b>

Does the Philippines really want to slaughter the goose that lays billion dollar eggs and responsible for driving the Philippine economy?

The answer is : Of course not!

The Philippine legal system is designed to protect the vulnerable sector. Labour is perceived as a weak sector that requires the State to cover it with its mantle of protection.

The following slides show a list of our laws which explains why our legal system is lopsided. The constitution, the AMWA, the Labor Code and POEA Contract, all proclaim the guarantee to protect labor.



## WHY PHILIPPINE LEGAL SYSTEM IS LABOR-FRIENDLY?

### 1. The Philippine Constitution

“The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.” (Article 11, Declaration of Principles and State Policies)



### 2. The Migrant Workers and Overseas Filipinos Act of 1995

“The state shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. Towards this end, the State shall provide adequate and timely social, economic and legal services to Filipino migrant workers.”  
(Section 2. Declaration of Policies)



### 3. The Philippine Labor Code

Construction in favor of labor.  
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 labor. (Article 4)



### 4. POEA – Standard Employment Contract for Seafarer , 2010

Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related. (Subsection A No. 4, Section 20)

The mandate of our Labour Code is that doubt should be decided in favour of labour. On reflection you may draw the conclusion that the NLRC and MVA doubted the defense raised by the shipowners’ lawyers so they decided for the seafarers.

Our Supreme Court (SC) in numerous cases have overturned and set aside rulings of the NLRC / MVA on serious errors of law. The SC decision may be issued 3 to 5 years after NLRC / MVA rulings became final and executory. In the intervening 3-5 years while SC is reviewing the case, money paid to the seafarers and his very enterprising lawyer has vanished into thin air.

The question is, will you be able to recover the money paid? NLRC said Yes. NLRC has in fact provided the procedures how to recover.

The BIG question is WHERE? Where will you find the seafarer? And, if you are lucky to find the seafarer, does he/she still have the money? Probably NOT. Because the lawyer got 50% or 60% of the award.

The victory in the SC is reduced to a paper victory.



### **BASIS FOR EXECUTION OF JUDGMENT** **PENDING RESOLUTION BY** **THE HIGHER COURTS**



- (a) The Secretary of Labor and Employment xxx or any Labor Arbiter or Med-Arbiter, or the voluntary arbitrator or panel of voluntary arbitrators may, motu proprio or on motion of any interested party, issue a writ of execution on a judgment within five (5) years from the date it becomes final and executory, requiring a sheriff xxx to execute or enforce final decisions, orders or awards of the Secretary of Labor and Employment xxx or the Labor Arbiter or Med-Arbiter, or voluntary arbitrator or panel of voluntary arbitrators. xxx (Article 224, Book V Labor Relations, Philippine Labor Code)

On this slide is set out the legal basis why the NLRC / MVA implements the judgment award whilst the case is pending final decision in the SC.

At this point, I would like to walk you through the evolution of the POEA – SEC.



### **HISTORY OF THE POEA STANDARD** **EMPLOYMENT CONTRACT FOR SEAFARERS** **(POEA SEC)**



1. **29 December 1983** – Memo Circular No. 2, Series of 1983  
Number of Seafarers Deployed : [53,944](#)
2. **14 July 1989** – Memo Circular No. 41, Series of 1989  
Number of Seafarers Deployed : [103,280](#)
3. **12 December 1996** – Department Order No. 33, Series of 1996  
Number of Seafarers Deployed : [175,469](#)

The 1996 POEA Contract provides that any illness, injury occurring whilst the seafarer is serving his contract on board is entitled to benefits and/or compensation.

This means, that all that must be established is that the seafarer contracted the illness or sustained the injury or died whilst he is on board the Owner's ship.

Unfortunately, NLRC or POEA has no available data on seafarer's claims from 1983 – 1996. We have however gathered from reliable sources in the NLRC that number of claims of seafarers is not significant.



4. **05 May 2000** – Department Order No. 4, Series of 2000  
Number of Seafarers Deployed : 198,324

5. **05 June 2002** – Memo Circular No. 2, Series of 2002  
Number of Seafarers Deployed : 209,593

6. **10 November 2010** – Memo Circular No. 10, Series of 2010  
Number of Seafarers Deployed : 347,150

In May 2000, the POEA Contract was amended. This is in response to the demand of the shipowners for the Philippine authorities to take immediate action to stop the Filipino seafarers from filing claims of “tortious damages” against the shipowners in foreign jurisdictions where ships can be arrested and Owners subjected to compulsory legal processes.

The salient features of the POEA Contract Circa: 2000 are;

Section 20 titled Compensation and Benefits provides that;

13.1) Only work-related death is compensable.

13.2) Owners are liable only for work-related injury or illness during the term of the contract.

13.3) Deliberate non-disclosure of pre-existing medical condition during the PEME is a valid cause for termination and forfeiture of benefits.

13.4) Payment of compensation for long term disability or death in the Philippines shall bar the filing of claim for the same cause in foreign jurisdictions.



## POEA SEC : YEAR 2000 AMENDING POEA SEC 1996 SALIENT PROVISIONS



### “SECTION 20. COMPENSATION AND BENEFITS

- Only work-related death is compensable. (Sub-section A, Section 20)
- Shipowners are liable only for work-related injury or illness occurring during the term of the contract. (Sub-section B, Section 20)



- Deliberate non-disclosure of a pre-existing medical condition during the PEME is a valid cause for termination and denial of benefits. (Sub-section E, Section 20)
- Payment of disability or death compensation in the Philippines shall bar the filing of claims for the same cause in foreign jurisdiction. (Sub-section G, Section 20)

The objective of the drafters of the amendments to the POEA Contract Circa 2000 is to reduce, if not stop liability exposure of Owners from baseless or nuisance claims filed by disgruntled Filipino seafarers.



## THE MANILA TASK FORCE



04 October 2004 – Manila Task Force meeting held in Manila.

### List of Participants:

DOLE Secretary Patricia Sto. Tomas  
NLRC Chairman Roy Señeres  
Industry Stakeholders  
Various Shipowners

### Three (3) Major Industry Concerns were identified:

1. Crew Cost
2. Crew Competency
3. Crew Claims

Just a little over three (3) years the 2000 POEA Contract - the Owners hit the Alarm Button. In the Manila Task Force held in October 2004, the Owners called the attention of then DOLE Secretary Sto. Tomas to the worrying increase in the number of claims filed and won by seafarers at the NLRC.

On these slides is the annual perspective showing the number of seafarers deployed versus the number of claims filed by seafarers.

Looking at statistics from this perspective, you will note that there is a very small number of seafarers who sued the Owners.

But why did the Owners panic? The reason was and is – the scale of the monetary award. The small number of claims has burned a BIG hole in the pockets of the Owners.



## NUMBER OF SEAFARERS DEPLOYED VS. CLAIMS 2003 - 2007

YEAR	DEPLOYMENT	NLRC	MVA	% OF CLAIMS
2003	216,031	1,458	4	.68%
2004	229,002	1,481	5	.65%
2005	247,983	733	16	.30%
2006	274,497	Not available	15	-
2007	266,553	Not available	18	-



## NUMBER OF SEAFARERS DEPLOYED VS. CLAIMS 2008 - 2012

YEAR	DEPLOYMENT	NLRC	MVA	% OF CLAIMS
2008	261,614	1,307	25	.36%
2009	330,424	1,805	23	.55%
2010	347,150	1,713	25	.50%
2011	369,104	Not available	56	-
2012	366,865	Not available	78	-



# DID PUTTING IN “WORK RELATED” IN THE POEA – SEC WORK?



## NUMBER OF SEAFARERS DEPLOYED VS. CLAIMS 2013 - 2017

YEAR	DEPLOYMENT	CLAIMS	% OF CLAIMS
2013	367,166	2,907	.79%
2014	401,826	2,703	.67%
2015	519,977	2,605	.50%
2016	442,820	2,619	.59%
2017	387,072	2,503	.65%
<b>TOTAL</b>	<b>2,118,861</b>	<b>13,337</b>	<b>.63%</b>

Apparently not! As this slide illustrates how the number of claims increased in direct proportion to the number of seafarers deployed.

Since data from NLRC or MVA are not available, we conducted a random survey among colleagues in the manning industry. We gathered that 7 out of 10 claims they have pending before NLRC / MVA are challenges to pronouncement of the company designated doctor that the medical condition of the seafarer is not work –related.

Let me now get into the heart of my assigned topic – preventing and managing crew claims. After feeding your frustrations with a lowdown of the claim situation, let me raise your hopes by saying all is not lost - there is a solution.

And the good news is, the solution is in your hands.



## MARITIME LABOR CONVENTION 2006 REGULATION A4.2 – SHIPOWNERS' LIABILITY

1. Each member shall adopt laws and regulations requiring that shipowners of ships that fly its flag are responsible for health protection and medical care of all seafarers working on board the ships in accordance with the following minimum standards:



- (a) shipowners shall be liable to bear the costs for seafarers working on their ships in respect of sickness and injury of the seafarers occurring between the date of commencing duty AND the date upon which they are deemed duly repatriated, OR arising from their employment between those dates.



- (b) shipowners shall provide financial security to assure compensation in the event of death OR long-term disability of seafarers due to an occupational injury, illness or hazard, as set out in the national law, the seafarers' employment agreement OR collective bargaining agreement.

My proposed solution – align the POEA Contract and / or the CBA with the MLC, particularly Regulation A4.2 on Shipowner's Liability.

Regulation A4.2 imposes liability on shipowners for illness, injury or death occurring between the date the seafarer joins the ship and the date the seafarer signs off the ship.

If you recall Regulation A4.2 is almost identical to the 1996 POEA Contract.

As Owners how do you effect the change? The answer is by stipulating in your CBA compliance with Regulation A4.2.



On a bigger picture, the 2010 POEA Contract is currently under review.

WISTA Philippines is privileged to be invited by the POEA to submit our proposed amendments. WISTA Philippines is advocating for deletion of work-related in Section 20 as a pre-condition for entitlement to benefits and/or compensation. Because we have learned from our collective experience from handling and dealing with our own claims that the leading cause is the declaration by the company doctor that the illness or injury is not work related.

I was involved in the drafting of the 2010 POEA contract. The tripartite discussions began in 2008, when the MLC was being introduced to stakeholders. At that time, we already hold discussions on aligning the POEA Contract with MLC in preparation for the MLC coming into force in 2013.

Now let me get personal.

As a manning agent for over 20 years, I have keen experience of hearing the panic in the voice of our bank manager because the NLRC sheriff had just handed to her an Order of Garnishment.

As a manning agent for over 20 years, I have gone through the experience of squeezing every cell in my brain trying to explain to my principal why there is ZERO chance of recovering the money paid to the seafarer at the NLRC despite winning the case in the SC.

For the past 18 years we have grappled with “ work – related “ as a pre-condition to entitlement to benefits. Unfortunately, it did not put our business and industry in a good place. With the global commerce becoming more and more challenging – with less and less ships trading and more and more Filipino seafarers losing their jobs, the crew claim situation can turn to worse.

We now have in our hands the chance to avert a potentially worrying claim situation. We can effect the change.

As a final note, may I leave you with this question, which I trust you to process and consider –



**DO YOU WANT  
TO SHAKE THE  
STATUS QUO?**