S.Ct. No. 2018-015

IN THE SUPREME COURT OF

THE REPUBLIC OF THE MARSHALL ISLANDS

VIRGILIO T. DIERON, JR.
Plaintiff-Appellant,

v.

STAR TRIDENT XII, LLC, *Defendant-Appellee,* and
STAR BULK SHIPMANAGEMENT COMPANY (CYPRUS) LIMITED
Intervening Defendant-Appellee.

On Appeal from the High Court
H.Ct. Civil No. 2017-044
Carl B. Ingram, Chief Justice, Presiding

DEFENDANT AND INTERVENING DEFENDANT – APPELLEES' ANSWERING BRIEF

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LIMITED

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DEFENDANTS' – APPELLEES' ANSWERING BRIEF

I. INTRODUCTION

Plaintiff – Appellant Virgilio T. Dieron ("Dieron") is a Philippine seafarer who worked on board the vessel the Star Markella (the "Vessel"), registered in the Republic. Defendant – Appellee STAR TRIDENT XII, LLC ("Trident"), a domestic non-resident corporation, is the owner of the Vessel. Intervening Defendant – Appellee STAR BULK SHIPMANAGEMENT COMPANY (CYPRUS) LIMITED ("SBSC") is a corporate affiliate of Trident, and the manager of the Vessel. Dieron worked on board the Vessel under the terms and conditions of the employment contract (the "Contract") he signed with SBSC. The Contract is in the standard form approved by the Philippine Overseas Employment Administration ("POEA"). It includes an elaborate no-fault compensation scheme for personal injury. In his Contract, Dieron agreed that payment under the terms of his Contract shall cover all claims in relation to his employment, including damages for injury arising from tort under the law of any country. He also agreed to arbitrate claims arising from his employment on board the Vessel in the Philippines under Philippine law.

Notwithstanding the unambiguous provisions of his Contract, Dieron filed this action in the High Court of the Republic against Trident, seeking damages for an injury allegedly caused by Trident's alleged negligence, unseaworthiness of the Vessel, and failure to pay maintenance and cure. SBSC moved to intervene as a party Defendant, and the High Court granted SBSC's motion. The High Court further granted Trident's and SBSC's motion to stay Dieron's action pending arbitration, finding that the arbitration agreement in his Contract is valid and must be enforced under this Court's opinion in *Mongaya v. AET MCV BETA LLC et al*., S.Ct. No. 2017-003 (Aug. 10, 2018) (slip opinion), reconsideration denied (Sep. 5, 2018) ("*Mongaya*").

Dieron appeals from the orders of the High Court and contends that: (1) leave to intervene was erroneously granted because SBSC has no significant protectable interest in his claim against Trident; (2) the High Court erred in compelling him to arbitrate with SBSC because he has not asserted any claim against SBSC; (3) *Mongaya* was decided in error; (4) the High Court erred in compelling him to arbitrate with Trident, because proper standards for enforcement of arbitration agreements by non-signatories, which should be considered instead of those articulated in *Mongaya*, have not been satisfied; and (5) the High Court erred in compelling him to arbitrate his claims under Philippine law, because contractual selection of foreign law which deprives a seafarer of a cause of action for unseaworthiness is not allowed.

As discussed below, Dieron's arguments have no merit. Dieron attempted to evade the holding in *Mongaya* by artful pleading of his claim for personal injury arising out of his employment with SBSC on board Trident's Vessel as a tort claim against Trident only. However, under the law of the Republic, Dieron cannot avoid his contractual obligation to arbitrate his claims with SBSC and Trident in the Philippines under Philippine law, in accordance with his Contract. Dieron's renewed arguments for reconsideration of *Mongaya* utterly lack merit. Finally, Dieron's purported mandatory choice-of-law argument is a thinly veiled public policy defense, which is not allowed at the arbitration-enforcement stage, and in any event has no merit. Accordingly, the appealed orders should be affirmed in their entirety.

II. JURISDICTIONAL STATEMENT

Trident and SBSC agree with Dieron's Jurisdictional Statement.

III. STATEMENT OF THE CASE

A. The Nature of the Case

This is a maritime personal injury action arising from employment on board the Vessel, which Dieron is attempting to maintain in the High Court of the Republic, notwithstanding his unequivocal agreement to arbitrate all claims related to his employment in the Philippines under Philippine law. RA 1 at 1-5, reproduced in Appx. A-3, RA 46 at 3 and Exs. "1" to "6" to Dec. of Ma Lilli May M. Maduro (which is a part of RA 46), partially reproduced in Appx. A-1.

B. The Course of the Proceedings

On October 16, 2017, Dieron filed his Complaint in the High Court against Trident, alleging that he suffered personal injury while employed on board the Vessel, and seeking to recover compensatory and punitive damages upon his claims for negligence, unseaworthiness and failure to pay maintenance and cure under the general maritime law of the United States, which Mongaya invoked by way of Title 47 MIRC §113. RA 1 at 1-5.

On December 12, 2017, 2017, Trident moved to stay the action and compel arbitration, and SBSC moved for leave to intervene and compel arbitration. RA 4, RA 5.

On January 17, 2018, Dieron filed his Oppositions to Trident's and SBSC's motions. RA 7, RA 8.

On February 9, 2018, Trident and SBSC filed Replies in support of their respective motions. RA 11, RA 12.

On February 19, 2018, Dieron filed his Sur-Replies in opposition to Trident's and SBSC's motions. RA 17, RA 18.

On February 22, 2018, Trident and SBSC filed their motions to strike Dieron's Sur Replies, or in the alternative, for leave to file Sur-Sur-Replies. RA 24, 25 (Trident), RA 22, 23 (SBSC).

On February 22, 2018, the High Court entered its Order granting leave to Trident and SBSC to file their Sur-Sur-Replies. RA 21.

On March 19, 2018, Trident and SBSC filed Sur-Sur-Replies in support of their respective motions. RA 29, RA 30.

On March 29, 2018, Dieron filed a Motion for leave to file a Response to Trident's Sur-Sur-Reply, and concurrently purported to file its Response. RA 31, 32.

On April 2, 2018, Trident filed a Motion to strike Dieron's purported Response to Trident's Sur-Sur-Reply. RA 33.

On April 3, 2018, Trident filed its Opposition to Dieron's Motion for leave to file a Response to Trident's Sur-Sur-Reply. RA 34.

On April 11, 2018, the High Court issued its Order denying Dieron's Motion to file a Response to Trident's Sur-Sur-Reply and granting Trident's Motion to Strike Dieron's purported Response. RA 37.

On September 27, 2018, the parties filed a Stipulation agreeing that, in light of this Court's opinion in *Mongaya*, the motion to compel arbitration be re-briefed, and the High Court so ordered. RA 44, RA 45.

On October 19, 2018, Trident filed its Amended Motion to Compel Arbitration, in which SBSC joined contingent on its pending Motion for Leave to Intervene being granted. RA 46.

On November 9, 2018, Dieron filed, and on November 13, 2018, and November 15, 2018, reformatted and re-filed, his Opposition to Trident's Amended Motion to Compel Arbitration. RA 47, RA 49, RA 54.

On November 13, 2018, Trident filed, reformatted and re-filed, its Reply in support of its Amended Motion To Compel Arbitration. RA 50, RA 52.

On November 15, 2018, the High Court issued its Order Granting SNSC's Motion For Leave to Intervene. RA 55.

On November 23, 2018, the High Court issued its Order Granting Trident's and SBSC's Motions to Compel Arbitration. RA 56.

On December 21, 2018, Dieron filed his Notice of Appeal from the High Court's Orders granting Leave to Intervene and Compelling Arbitration. RA 57.

C. Statement of Facts

1. Dieron is a citizen of the Republic of the Philippines. RA 1, ¶1.

2. Trident is the owner of the Vessel. *Id*., ¶ 2.

3. On April, 21, 2016, Dieron signed his employment Contract with SBSC. RA 46, Declaration of Ma Lilli May M. Maduro ("Maduro Dec.") and Exhs. "1" through "6" thereto, reproduced as Appx. A-1. The cover page of the Contract shows that Dieron was hired to work on board the STAR MARKELLA. Maduro Dec., Ex. "1".

4. SBSC is an affiliate of Trident (both are wholly owned subsidiaries, directly or indirectly, of Star Bulk Carriers Corp.) and manager of the Vessel with responsibility for hiring crew for the Vessel, and was the authorized representative of Trident in connection with signing up the crew for the Vessel and execution of seafarers' employment contracts, including the contract with Dieron. RA 46, Declaration and Supplemental Declaration of Georgia Mastagaki ("Mastagaki Dec." and "Supp. Mastagaki Dec."), reproduced in Appx. A-4.

5. On June 19, 2016, Dieron was injured in the course of his employment on board the Vessel. RA 1 (Complaint), ¶ 8.

6. The Contract (the POEA standard terms) includes the following provisions:

> Section 20.J.
>
> The Seafarer or his successor in interest acknowledges that payment for injury, illness, incapacity, disability or death or any other benefits of the seafarer under this contract … shall cover all claims in relation to with or in the course of the seafarer's employment, including but not limited to damages arising from the contract, tort, fault or negligence under the laws of Philippines or any other country.
>
> * * *
>
> Section 29. Dispute Settlement Procedures
>
> In cases of claims and disputes arising from this employment, the parties covered by a collective bargaining agreement shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators. If the parties

> are not covered by a collective bargaining agreement, the parties may at their option submit the claim or dispute to either the original and exclusive jurisdiction of the National Labor Relations Commission (NLRC), pursuant to Republic Act (RA) 8042 otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended, or to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators. If there is no provision as to the voluntary arbitrators to be appointed by the parties, the same shall be appointed from the accredited voluntary arbitrators of the National Conciliation and Mediation Board of the Department of Labor and Employment.
>
> * * *
>
> Section 31. Applicable law
>
> Any unresolved dispute, claim or grievance arising out of or in connection with this contract including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants to which the Philippines is a signatory.

RA 46, Maduro Dec., Ex. "1" (Appx. A-1) at p. 3. The contract includes an elaborate no-fault compensation scheme for personal injuries. *Id*., Sec. 20 at p. 2 and Sec. 32 at pp. 3-5.

7. The Maritime Administrator of the Republic approved the standard form POEA contract for the use on board vessels flying the flag of the Republic as follows:

> Under MI-108 §7.45.1.b, the Administrator, at its sole discretion, may allow a conflicting or deviating provision of a seafarer's collective bargaining agreement to satisfy the requirements of the RMI Maritime Act or Maritime Regulations, provided it is not inconsistent with or a lesser standard than the RMI Maritime Act or regulations. It is under this provision, that the Administrator has deemed the following collective bargaining agreements for employment acceptable for use on board RMI flag vessels:
>
> • Philippine collective bargaining agreements or contracts based on the Philippine Overseas Employment Administration Contract of Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers on-Board Ocean-Going Ships and Standard Cadet Training Agreement on Ships Engaged in International Voyage.

RA 46, Declaration of Dennis J. Reeder ("Reeder Dec."), Ex. "2", Republic of the Marshall Islands (RMI) Response to Comments made by the International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations on MLC, 2006, Submitted 5 February 2016, reproduced in Appx. A-2, at 3, item 3.

D. The Disposition Below

1. On November 15, 2018, the High Court granted SBSC's Motion for Leave to Intervene, holding that, under MIRC Rule 24(a) and *Southwest Center for Biological Diversity v. Berg*, 268 F.3d 810, 817 (9th Cir. 2001) ("*Berg*"), SBSC was entitled to intervene of right because SBSC's motion was timely, SBSC had a significant protectable interest in litigating the applicability of the arbitration clause set forth in the Contract, the disposition of the action may practically impair SBSC's interest, and SBSC was not adequately represented. RA 55.

2. On November 23, 2018, the High Court granted Trident's and SBSC's Motions to Compel Arbitration. RA 56. The High Court held that the requirements for enforcing arbitration under both the Arbitration Act 1980, 30 MIRC Ch. 3 (the "Arbitration Act") and the UNCITRAL Model Law on International Commercial Arbitration Act 2018, 30 MIRC Ch. 6 ("UMLICA") were satisfied, that Trident met the standard by enforcement of arbitration agreements by non-signatories set forth by this Court in *Mongaya*, and that Dieron's public policy objections to Philippine law and venue could not be considered in the context of a motion to compel arbitration. *Id*. Accordingly, the Court ordered Dieron to arbitrate his claims against SBSC and Trident in the Philippines under Philippine law in accordance with his Contract. *Id*.

IV. STANDARD OF REVIEW

1. Questions of law are reviewed *de novo*. *Mongaya* at 6 (citations omitted); *Dribo v. Bondrik*, 3 MILR 127, 135 (2010).

2. Denial of a motion to intervene as of right under Rule 24 is reviewed *de novo*. *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 896 (9th Cir. 2011), citing *Berg*, 268 F.3d at 817.

3. An appellate court can affirm a trial court on any ground supported by the record. *RMI v. Lemark*, 3 MILR 19, 27 (2006) ("*Lemark*"), citing *City Solutions, Inc. v. Clear Channel Communications*, 365 F.3d 835, 842 (9th Cir. 2004) (quoting *Dixon v. Wallowa County*, 336 F.3d 1013, 1018 (9th Cir. 2003)).

4. It is well settled in this jurisdiction, as elsewhere, that issues or questions not raised or asserted in the court below are waived on appeal. *Nashion and Sheldon v. Enos and Jacklik*, 3 MILR 83, 88 (2008) ("*Nashion*"), citing *Tibon v. Jihu*, 3 MILR 1, 6 (200) (citing *Jeja v. Lajikam*, 1 MILR (Rev.) 200, 205 (1990)).

V. QUESTIONS PRESENTED FOR DECISION

The questions presented for decision are whether the High Court erred by:

1. Granting SBSC's motion for leave to intervene, in order to seek enforcement of the arbitration clause in Dieron's Contract with SBSC.

2. Ordering Dieron to arbitrate his claims arising out of his employment on board the Vessel with SBSC in accordance with his Contract.

3. Ordering Dieron to arbitrate his claims arising out of his employment on board the Vessel with Trident in accordance with his Contract, notwithstanding that Trident was not a signatory to the Contract.

4. Ordering Dieron to arbitrate his claims under Philippine law under the terms of his Contract, as opposed to the general maritime law.

VI. ARGUMENT

A. Summary of Argument

1. SBSC has a significant protectable interest in enforcing Dieron's obligation in his Contract with SBSC to arbitrate his claims related to his employment with SBSC, and was entitled to intervene of right in this action under MIRCP Rule 24(a)(2). Once SBSC was allowed to intervene, it became a full party to the action, and had the right to move to compel Dieron to arbitrate all claims pleaded in his Complaint, as required by his Contract.

2. This case is governed by UMLICA. The requirements of UMLICA for compelling Dieron to arbitrate with SBSC under the terms of his Contract have been satisfied, and High Court was required to compel arbitration.

3. This case is indistinguishable from *Mongaya. Mongaya* requires Dieron to arbitrate with Trident notwithstanding that Trident is not a signatory of his Contract. *Mongaya* was not erroneously decided. Dieron attempts to manufacture a conflict between tests discussed in *Mongaya* for allowing non-signatories to compel arbitration. However, *Mongaya* held that these tests are substantially similar, and *Mongaya* is consistent with other decisions where non-signatories sought to enforce arbitration clauses in seafarers' employment contracts.

4. UMLICA expressly allows parties to an arbitration agreement to choose the forum and the substantive law of arbitration. It does not allow public policy defenses at the arbitration-enforcement stage, only at the award-recognition stage. Dieron's argument that a purported

mandatory choice-of-law rule bars the application of Philippine law to his claims is a public policy defense, as the cases he relies on plainly state, and in any event lacks merit.

Dieron's argument is based on non-arbitration contractual choice-of-law clauses, and on concerns by U.S. courts about such clauses displacing U.S. statutory law with foreign law in inherently domestic disputes controlled by U.S. statutes. These concerns do not apply to this case which involves arbitration of disputes under an international commercial agreement, and the Republic has not enacted any statutes corresponding to the U.S. statutes in question. The Republic has adopted only non-statutory U.S. general maritime law, and only insofar as it does not conflict with the laws and regulations of the Republic. To the extent that the U.S. general maritime law conflicts with the Maritime Regulation of the Republic under which the terms and conditions of Dieron's Contract were approved for the use on board the vessels flagged in the Republic, such law is not a part of the law of the Republic. Finally, there are no exceptions in UMLICA regarding arbitrability of personal injury or tort claims. Courts have long held that contractual obligations to arbitrate cannot be evaded by artful pleading of claims subject to arbitration as tort claims.

B. The High Court Did Not Err In Granting SBSC Leave To Intervene

Dieron contends that the High Court erred twice in allowing SBSC to intervene: first, because, as Dieron claims, SBSC has no significant protectable interest in Dieron's claim against Trident, Op.Br. at 7-9; and second, because Dieron has not asserted any claims against SBSC, *Id*. at 8-9. Dieron's contentions have no merit.

Dieron cites *Citizens for Balanced Use v. Mont. Wilderness Ass'n.*, 647 F.3d 893 (9th Cir. 2011) ("*Citizens*"), as defining a "significantly protectable interest" which supports intervention of right under Rule 24(a)(2), Op.Br. at 8. In its opinion in *Citizens*, the Court of Appeals stated:

> While an applicant seeking to intervene has the burden to show that the[] four elements [set forth in Rule 24(a)(2)] are met, the requirements are broadly interpreted in favor of intervention. In addition to mandating broad construction, our review is guided primarily by practical considerations, not technical distinctions.
>
> * * *
>
> Whether an applicant for intervention as of right demonstrates sufficient interest in an action is a practical, threshold inquiry' and no specific legal or equitable interest need be established. To demonstrate a significant protectable interest, an applicant must

> establish that the interest is protectable under some law and that there is a relationship between the legally protected interest and the claims at issue.

Id. at 897 (citations omitted and punctuation adjusted).

Here, SBSC sought intervention in order to protect its contractual rights under Sections 20J, 29 and 30 its Contract with Dieron, which provide that the compensation under the Contract shall cover all Dieron's claims in relation to with or in the course of his employment, including but not limited to damages arising from the contract, tort, fault or negligence under the laws of Philippines or any other country, and that any disputes shall be arbitrated in the Philippines under Philippine law.

It is settled law that an interest in enforcing contractual provisions requiring or limiting arbitration justifies intervention of right. *See, e.g*., *Technology & Intellectual Property Strategies Group PC v. Insperity, Inc*., 2012 WL 6001098, No. 12-CV-03163-LHK (N.D.Cal., Nov. 29, 2012) ("*Insperity*") at *7 (a party to a contract has a significant protectable interest that supports intervention of right in appearing in a lawsuit to assure that the contract is correctly interpreted and applied, and to enforce a mandatory arbitration under the contract); *CBS Inc. v. Snyder*, 798 F.Supp. 1019. 1021-1023 (S.D.N.Y. 1992) ("*Snyder*") (labor union had a significant protectable interest that supported intervention of right in order to argue its interpretation of its Collective Bargaining Agreement as allowing arbitration only between the union and employers, and not among the union members without the union's permission).

Moreover, Rule 24(a) does not require that the plaintiff has, or can, state a claim against the intervenor. Indeed, Rule 24(a)(2) would not provide intervention ***of right*** if plaintiff could bar such intervention by simply omitting a particular potential defendant from his complaint.

> [T]here can be persons who intervene on the side of the defendants ... against whom the plaintiff has no claim to assert. Indeed, the intervention of persons under Rule 24 typically will be at the instigation of the intervenors, and not at the urging of the plaintiff, and will be precipitated by the persons' concern that disposition of the action in their absence will as a practical matter impair or impede their ability to protect their interests.

Oakland County v. Federal National Mortg. Ass'n, 276 F.R.D. 491, 498 n.4, 80 Fed.R.Serv.3d 916 (E.D.Mich. 2011) quoting *Mattel, Inc. v. Bryant*, 441 F.Supp.2d 1081, 1097 (C.D.Cal.2005) (additional citations omitted and punctuation adjusted).

In sum, Dieron's contention that SBSC has no legally protectable interest in the Contract to which it is a party, is devoid of merit. As a party to Dieron's employment Contract, SBSC has a significant protectable right to have this Contract, including its exclusive remedy, arbitration and choice of law clauses, correctly interpreted and enforced. Dieron's artful pleading of his claim as a tort claim against Trident only while seeking damages related to his employment under the Contract with SBSC, cannot bar SBSC from intervening of right to enforce its substantive contractual rights under Sections 20J, 29 and 30 of his Contract. The High Court's ruling allowing SBSC to intervene of right was plainly correct under Rule 24(a)(2), MIRCP.

C. The High Court Did Not Err In Compelling Dieron To Arbitrate With SBSC

1. SBSC's Motion To Compel Arbitration Was Properly Brought

Dieron contends that the High Court erred in granting SBSC's motion to compel arbitration because he did not assert any claims against SBSC. Op.Br. at 9. This contention is disingenuous. The High Court granted SBSC leave to intervene in this action as a Defendant for the specific purpose of pursuing its motion to compel Dieron to arbitrate all of his claims related to his employment in the Philippines under Philippine law, as required by Sections 20J, 29 and 30 of his Contract. This gave SBSC all rights of an original party to this action, notwithstanding Dieron's intentional failure to name SBSC as Defendant.

> Intervention of right simply puts the intervenor into the position he would have been in had the plaintiff … properly named him to begin with.

SEC v. Ross, 504 F.3d 1130, 1150-51 (9th Cir. 2007) ("*Ross*") (holding that a choice by plaintiff not to "play[] the game straight-up" and name Bustos as defendant could not deprive Bustos of defenses that he would have had if he had been properly named, and he could assert such defenses, including lack of personal jurisdiction, once he was allowed to intervene.)

> [W]hen a party intervenes, it becomes a full participant in the lawsuit and is treated just as if it were an original party.

Barnes v. Harris, 783 F.3d 1185, 1190-91 (10th Cir. 2015) ("*Barnes*"), citing *Alvarado v. J.C. Penney Co.*, 997 F.2d 803, 804-05 (10th Cir. 1993) (holding that a company that had been granted leave to intervene after the claims against it were voluntarily dismissed, had the right to renew its previously filed motion for summary judgment on a discrete issue even though no claims were pending against it.)

> If a party has the right to intervene under Rule 24(a)(2), the intervenor becomes no less a party than others and has the right to file legitimate motions[.]

Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. DOI, 100 F.3d 837, 844 (10th Cir. 1996) ("*Coalition*").

In sum, once the High Court granted SBSC's motion for leave to intervene as a party Defendant, SBSC had the same rights as if Dieron had originally named it a Defendant. This included the right to move to compel Dieron to arbitrate all of the claims alleged in his Complaint.

2. SBSC's Motion To Compel Arbitration Was Properly Granted

Dieron has not made any assignment of error to the High Court's order granting SBSC's motion to compel arbitration, aside from the disingenuous contention that there was no claim to arbitrate, discussed in the immediately preceding section of this Brief. In any event, no error exists.

a. This case is governed by UMLICA

The High Court granted Trident's and SBSC's motions to compel arbitration under both the Arbitration Act and UMLICA, which partially enacted the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention") into domestic law of the Republic, without deciding which of the two statutes should govern this case. RA 56 at 2, 5-8, 11 and 13-14.

This action was initially filed on October 18, 2017. RA 1. At that time, no part of the Convention had been enacted into the domestic law of the Republic, and the governing statute was the Arbitration Act. *See Mongaya* at 6-8, citing *Chubb Ins. (China) Co. v. Eleni Mar. Ltd.*, S.Ct. Case No. 2016-002 slip op. at 6 (June 6, 2017) ("*Chubb*"). UMLICA came into effect on March 15, 2018, after this case had been extensively briefed under the Arbitration Act. See RA 4, 5, 7, 8, 11, 12, 17, 18.

However, the High Court allowed the parties to re-brief SBSC's and Trident's motion to compel arbitration in light of this Court's opinion in *Mongaya*. This re-briefing took place between October 18, 2018 and November 13, 2018. *See* RA 46, 47, 50. SBSC and Trident's Amended Motion to Compel Arbitration acknowledged the enactment of UMLICA, but noted that the UNCITRAL commentary on the draft text, and some foreign court decisions, stated that "commercial contracts" covered by UMLICA did not include employment contracts. RA 46 at 7,

fn. 1. In his Supplemental Opposition, Dieron cited numerous opinions by U.S. federal Courts of Appeals, holding that, for the purposes of the Convention, commercial contracts include seafarers' employment contracts.[1] RA 47 at 4 and 4 fn. 2. SBSC and Trident agree that these opinions establish that Dieron's Contract is a "commercial contract" covered by UMLICA. Accordingly, this case is governed by UMLICA.[2]

b. <u>UMLICA required the High Court to compel arbitration</u>

UMLICA (reproduced in Appx. B-1) provides in the part relevant here:

> §607. Definition of arbitration agreement.
>
> "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
>
> §608. Arbitration agreement and substantive claim before court.
> (1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

Plainly, Sections 20J, 29 and 30 of Dieron's Contract constitute an "arbitration agreement" with SBSC within the meaning of UMLICA §607. Equally plainly, SBSC immediately greeted Dieron's Complaint against Trident with its motion for leave to intervene and compel arbitration, thus satisfying the first part of UMLICA §608.

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[1] *Rogers v. Royal Caribbean Cruise Line*, 547 F.3d 1148, 1155 (9th Cir. 2008*); Balen v. Holland Am. Line Inc.,* 583 F.3d 647, 655 (9th Cir. 2009) ("*Balen*"); *Bautista v. Star Cruises*, 396 F.3d 1289, 1295 (11th Cir. 2005) ("*Bautista*"); *Freudensprung v. Offshore Tech. Servs., Inc.,* 379 F.3d 327 (5th Cir.2004); *Francisco v. STOLT ACHIEVEMENT MT,* 293 F.3d 270 (5th Cir.2002) ("*Francisco*").

[2] In his Supplemental Opposition, Dieron suggested that the Convention as a whole governs here. *Id*. However, as the Convention was never enacted as a whole into the domestic law of the Republic, *Mongaya* and *Chub*b plainly preclude such a result. This distinction is significant, because the language of UMLICA differs in relevant respects from that of the Convention. *See, e.g*., RA 56 at 7, and the discussion in various sections of this Brief below.

Under §608, the court "shall" refer the parties to arbitration unless it finds that "the agreement is null and void, inoperative or incapable of being performed." Cases decided under the Convention have held that an arbitration agreement is only "null and void" within the meaning of the Convention if it was procured by fraud, mistake or duress, or if the party seeking to enforce it had previously waived its rights.

> [T]he [U.S.] Supreme Court observed:
>
> > "The goal of the Convention, and the principal purpose underlying American adoption and implementation of it, was to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries."
> >
> > The parochial interests of the Commonwealth, or of any state, cannot be the measure of how the "null and void" clause is interpreted. Indeed, by acceding to and implementing the treaty, the federal government has insisted that not even the parochial interests of the nation may be the measure of interpretation. ***Rather, the clause must be interpreted to encompass only those situations-such as <u>fraud, mistake, duress, and waiver</u> that can be applied neutrally on an international scale***.

Ledee v. Ceramiche Ragno, 684 F.2d 184, 187 (1st Cir. 1995), quoting *Scherk v. Alberto-Culver Corp*., 417 U.S. 506, 520 n. 15 (1974) (emphasis added).

This rule has since been accepted by all federal Courts of Appeals, and has been applied to seamen's employment contracts, including the POEA contracts. For example, in *Bautista*, the Court of Appeals rejected seamen's attempts to bring personal injury claims in federal court notwithstanding the arbitration clause in their POEA contracts, which is the same clause as the one involved in this case. *Id*., 396 F.3d at 1293 and 1293 n. 5. The Court stated:

> [T]he Convention's 'null and void' clause ... limits the bases upon which an international arbitration agreement may be challenged to standard breach-of contract defenses. The limited scope of the Convention's null and void clause must be interpreted to encompass only those situations—such as fraud, mistake, duress, and waiver—that can be applied neutrally on an international scale. … Domestic defenses to arbitration are transferrable to a Convention Act case only if they fit within the limited scope of defenses described above.

Id. at 1302 (citations and additional punctuation omitted).

Dieron does not claim fraud, mistake, duress or waiver. *See* Op.Br. at 16 ("Dieron is not challenging the arbitration clause as null and void, inoperative or incapable of being performed[.]"). Accordingly, UMLICA §608 required the High Court to compel Dieron to arbitrate his claims related to his Contract with SBSC, and the High Court properly did so.

D. The High Court Did Not Err In Compelling Dieron To Arbitrate With Trident

1. This case is indistinguishable from *Mongaya*

In *Mongaya*, this Court, adopting a test based on *Mundi v. Union Sec. Life Ins. Co*., 555 F.3d 1042, 1045 (9th Cir. 2009) ("*Mundi*"), but considering and discussing also *Aggarao v. MOL Ship Management Co*., 675 F.3d 355, 373 (4th Cir. 2012) ("*Aggarao*") and other relevant case law, estopped Mongaya from denying that he was required to arbitrate with the non-signatory vessel owner (MCV) and operator (AIL), because: (a) a close relationship existed between MCV and the signatory (ASP), the manager of the vessel on board which Mongaya worked; (b) a relationship existed between the wrongs alleged by Mongaya and duties in his POEA contract with ASP; and (c) Mongaya's claims were intertwined with contractual obligations arising from his POEA contract. *Id*. at 1-4 and 9-15. [3]

This Court concluded that the facts in *Mongaya* were nearly identical to those present in *Aggarao*, because Mongaya, like Aggarao, was injured while performing his POEA contract; Mongaya, like Aggarao, alleged the same claims against the vessel owner, operator and manager for failure to provide him with a safe place to work, appropriate safety equipment, a properly supervised crew, and a properly staffed and seaworthy vessel; and Mongaya's POEA Contract, like Aggarao's, required the "Principal/Employer/Master / Company" to provide a seaworthy ship and other safety precautions to "avoid accident, injury or sickness to the seafarer." *Id*. at 17.

This Court further concluded that a "close relationship – that of owner, operator and manager of the vessel" existed between MCV, AIL and ASP; that a relationship existed among the wrongs alleged by Mongaya, such as the failure to provide a seaworthy vessel and utilize proper safety precautions, and the obligations and duties in Mongaya's POEA contract, which required

[3] Other relevant case law considered in *Mongaya* included *Arthur Andersen LLP v, Carlisle*, 556 U.S. 624 (2009) ("*Carlisle*"); *JLM Industries, Inc. v. Stolt-Nielsen SA*, 387 F.3d 163 (2d Cir. 2004) ("*JLM*"); *MS Dealer Service Corp. v. Franklin*, 177 F.3d 942 (11th Cir. 1999 ("*MS Dealer*"); *Sokol Holdings, Inc. v. BMB Munai, Inc.*, 542 F.3d 354 (2d Cir. 2008) ("*Sokol*"); and *Riley v. BMO Harris Bank, N.A*., 61 F.Supp.3d 92, 98 (D.D.C. 2014).

the employer to provide a seaworthy vessel and safety precautions; and that Mongaya's claims of negligence, unseaworthiness and maintenance and cure are intertwined with the contractual obligations arising from Mongaya's POEA contract, such as the obligations to provide a seaworthy vessel and safety precautions. *Id*. at 18. Therefore, the court held that the doctrine of equitable estoppel applied, and MCV and AIL could compel Mongaya to arbitrate his claims with them. *Id*.

This case likewise involves a non-signatory owner (Trident) and signatory vessel manager (SBSC), which is also a corporate affiliate of Trident and the authorized representative of Trident in signing Dieron's POEA Contract. RA 56 at 8; RA 1, ¶ 2, RA 46 (Mastagaki Dec. and Supplemental Mastagaki Dec.). The relationship between Trident and SBSC here is equally close as the relationship between MCV and ASP in *Mongaya*.

Dieron's Complaint verbatim copied relevant liability allegations from Mongaya's complaint, RA 46 at 9 ("[T]he allegations in this case of unseaworthiness, negligence, and failure to pay maintenance and cure are the same or substantially the same as in *Mongaya*, with changes from the plural to the singular and in the names of the parties."); RA 46 at 8-10; RA 1 (Dieron's Complaint); RA 46, Declaration of Nenad Krek, Ex. "1" (Mongaya's complaint). Moreover, Dieron's POEA Contract is substantially the same as Mongaya's. RA 46 at 9, n. 2; RA 46, Maduro Dec., Exs. "1" through "6" (Dieron's Contract); and RA 46, Declaration of Nenad Krek, Ex. "2" (Mongaya's contract). The relationship between the wrongs alleged by Dieron and the obligations and duties of his POEA Contract is again exactly the same as the relationship between the (same) wrongs alleged by Mongaya and the obligations and duties of the (same) POEA contract.

Finally, as the allegations of Dieron's and Mongaya's complaints are substantially the same, and their respective contracts are substantially the same, Dieron's claims are equally intertwined with the underlying obligations under his POEA Contract as Mongaya's (identical) claims were intertwined with the obligations of Mongaya's (identical) POEA contract.

The only difference between this action and *Mongaya* is that Dieron initially did not join SBSC as a defendant. However, this difference was eliminated when the High Court granted SBSC's motion for leave to intervene as a defendant. RA 55. Once intervention was granted, SBSC became a Defendant upon the Complaint in this action for all intents and purposes, as if it had been an original defendant. *Barnes*, 783 F.3d at 1190-91; *Coalition*, 100 F.3d at 844.

In sum, this case is factually, procedurally and substantively "on all fours" with *Mongaya*, and the same result most obtain here as it did in *Mongaya*.

2. There is no basis for *Mongaya* to be reconsidered

Dieron contends that *Mongaya* was wrongly decided and should be reconsidered and overruled, because: (a) this Court misconstrued and erroneously applied the test for equitable estoppel it adopted from *Mundi,* 555 F.3d at 1045–46, which originated in *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates, S.A*., 269 F.3d 187, 201–02 (3d Cir. 2001) ("*DuPont*"); (b) this Court should instead have followed the test set forth in *MS Dealer* 177 F.3d at 947; and (c) under correct application of either test, Dieron could not be compelled to arbitrate with Trident.

In substance, Dieron's argument comes down to two contentions: (1) *Mundi* was in fact decided under the *MS Dealer* test, not the *DuPont* test, and under the *MS Dealer* test, estoppel is applicable only if plaintiff expressly alleges concerted misconduct by the signatories and the non-signatories; and (2) the *DuPont* test, as adopted by *Mundi*, limits the application of estoppel to the situation where the claim against the non-signatory expressly relies on the contract with the signatory. Neither of these contentions, and none of Dieron's subsidiary arguments that are also addressed below, have any merit.

a. Dieron misconstrues *DuPont* and *Mundi*

Dieron contends that *DuPont* dealt with signatory defendants compelling a non-signatory plaintiff to arbitrate, and did not establish any rule applicable to *Mundi*, *Mongaya* or this case, which involve non-signatory defendants seeking to arbitrate with a signatory plaintiff. *DuPont* indeed dealt with signatory defendants seeking to arbitrate with a non-signatory plaintiff. *Id*., 269 F.3d at 190. However, the opinion noted that courts had developed two separate theories, one used to estop non-signatories from refusing to arbitrate with signatories, and another used to estop signatories, including signatory plaintiffs, from refusing to arbitrate with non-signatories, and restated both theories. *Id*. at 199-200 (citations omitted) and 201, citing *Hughes Masonry Co. v. Greater Clark County School Bldg. Co*., 659 F.2d 836 (7th Cir. 1981) (signatory plaintiff); *J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile S.A*., 863 F.2d 315 (4th Cir. 1988) ("*J.J. Ryan*") (same); *Sunkist Soft Drinks, Inc. v. Sunkist Growers, Inc*., 10 F.3d 753, 757 (11th Cir.1993) (same). *Mundi* quoted this second theory, 555 F.3d at 1046, and this Court properly adopted it in *Mongaya*. The discussion of the second theory in *DuPont* arguably may have been *obiter dicta*, but it restated an existing rule which was developed in the federal appellate opinions it cited.

b. Dieron misconstrues *Mongaya*

Dieron contends that *Mongaya* erroneously applied the *DuPont* test instead of the *MS Dealer* test. However, *Mongaya*, did not adopt the *DuPont* test quoted in *Mundi* to the exclusion of the tests for equitable estoppel articulated by other courts. To the contrary, this Court discussed *Aggarao* (which relied on and cited to *MS Dealer*, *see Aggarao*, 675 F.3d at 373-74), and a number of other opinions listed in fn. 2, *supra*, including *MS Dealer*, *Id*. at 10-14, and stated that these tests are "***substantially similar***." *Id*. at 13 (emphasis added). This Court determined that equitable estoppel can be properly applied to Mongaya's claims by comparing the facts and allegations in his case and those in *Aggarao*, and finding them to be indistinguishable. *Id.* at 15-17.

As this Court in *Mongaya* expressly held that the *Mundi* and the *MS Dealer* tests are substantially similar, *Id*. at 13, and actually relied on *Aggarao*, and its interpretation of *MS Dealer*, in finding that equitable estoppel is applicable to Mongaya's claims, Dieron's argument that this Court erred by following *Mundi* instead of *MS Dealer* is wrong, pointless, and moot.[4]

c. The *MS Dealer* test can be satisfied without express allegations of concerted misconduct

Dieron contends that the *MS Dealer* test always requires express allegations of concerted conduct in order that estoppel be applicable. This is not true. Courts which cited to *MS Dealer* in considering whether non-signatories can compel arbitration under seafarers' employment contracts have held that the requirement of concerted misconduct may be satisfied by an overlap in factual allegations and claims against signatories and non-signatories, or by a close relationship between the signatories and the non-signatories.

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[4] Dieron contends that *DuPont* has been repudiated by the Third Circuit, which had articulated it. This contention has no merit. In *Carlisle*, the U.S. Supreme Court held that the right of non-signatories to compel signatories to arbitrate is governed by traditional principles of state law which allow a contract to be enforced against non-parties to the contract. *Id*. at 630-31. *Carlisle* abrogated *MS Dealer* and *DuPont* alike to the extent that they had articulated a ***federal*** arbitration law rule where *Carlisle* held ***state*** law should apply, but this abrogation did not question the substance of either rule. *See Escobal v. Celebration Cruise Operator*, 482 Fed.Appx. 475, 476 and 476 n.3 (11th Cir. 2012) ("*Escobal*") (following *MS Dealer* while noting that it was abrogated by *Carlisle* on other grounds, and declining to decide whether federal or state law controlled the issue of arbitrability); *Noye v. Johnson & Johnson Servs*., 765 Fed.Appx. 742 (3rd Cir. 2019) ("[T]he test outlined in *DuPont* relied on federal principles and predated [*Carlisle's*] pronouncement that equitable estoppel should be governed by state law.").

In *Aggarao,* the Court of Appeals, following *MS Dealer*, rejected Aggarao's argument that equitable estoppel required express allegations of concerted misconduct, and held that identical claims asserted against signatories and non-signatories arising from the same factual allegations sufficed. *Id*. at 373-75. [5]

Likewise, in *Escobal*, the District Court, citing *MS Dealer*, compelled Escobal to arbitrate with both the signatory employer/vessel operator (CCO) and the non-signatory vessel charterer (CCL) upon a complaint alleging the Jones Act against COO and unseaworthiness against both COO and CCL. 2011 U.S.Dist. LEXIS 163402, Case No. 11-21791-CV-UNGARO (S.D.Fla. June 23, 2011),. at *1-2, 6-7. There were no express allegations of concerted conduct by CCO and CCL, but the District Court held that common factual allegations and overlapping claims sufficed:

> In the present case, Plaintiff's claim against CCL is inextricably intertwined with his claims against CCO. His claims against both Defendants rely on a single set of factual allegations; indeed in the factual allegations common to Plaintiff's claims against both Defendants, Plaintiff makes various allegations regarding "Defendant" without specifying to which Defendant he refers.

2011 U.S.Dist. LEXIS at *7.

The Court of Appeals affirmed, stating:

> Escobal's claim against Cruise Line is inextricably intertwined with his claims against the contract signatory Celebration Cruise Operator. Thus, the district court properly applied equitable estoppel in requiring Escobal to arbitrate his claim against Cruise Line. *See MS Dealer Serv. Corp. v. Franklin*, 177 F.3d 942, 947–48 (11th Cir.1999)[.]

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[5] Dieron's contention that the "*Aggarao* court recognized its grievous error" in compelling arbitration, Op.Br. at 17, is preposterous. The question of arbitrability was settled by the Fourth Circuit's opinion and the District Court could not overrule it. Rather, on remand, the District Court set aside the Philippine arbitral award on the grounds that the arbitrators failed to apply U.S. law, which provided Aggarao with remedies for negligence and unseaworthiness, and thereby violated the U.S. public policy expressed in the prospective waiver doctrine. *Aggarao v. MOL Ship Management Co., Ltd*., 2014 WL 3894079, 2015 AMC 444 (D.Md. Aug. 7, 2014) at *8-14. In this regard, the District Court followed and relied on *Asignacion v. Schiffahrts*, Nos. 13–0607, 13–2409, 2014 WL 632177 (E.D.La. Feb. 10, 2014). However, this decision was reversed by the Fifth Circuit, holding, *inter alia*, that prospective waiver doctrine is limited to statutory rights and remedies, and does not extend to claims under the general maritime law. *Asignacion v. Rickmers Genoa Schiffahrtsgesellschaft mbH & Cie KG*, 783 F.3d 1010, 1020-21 (5th Cir. 2015) ("*Asignacion*"). *See* discussion in Section **VI.E.4**, below.

482 Fed.Appx at 476.

In this case, once SBSC was allowed to intervene, all of Dieron's factual allegations and claims applied to SBSC as well. *Barnes*, 783 F.3d at 1190-91; *Coalition*, 100 F.3d at 844. This case therefore is also indistinguishable from *Escobal*.[6]

Moreover, equitable estoppel under *MS Dealer* does not require that the signatory and the relevant non-signatories be present in the same action. In *Francisco*, the Court of Appeals affirmed an order compelling Francisco to arbitrate his personal injury claim with Stolt-Nielsen Transportation Group, Inc. ("SNTGI"), which was a signatory of his POEA employment contract. *Id*. 293 F.3d at 271-72. Francisco then filed a separate action against two different, non-signatory Stolt affiliates for the same injury. *Francisco v. Stolt Nielsen*, 2002 U.S. Dist. Lexis 23134, 2003 AMC 1065 (E.D.La. 2002) at *2-4.

The District Court compelled Francisco to arbitrate with the non-signatory Stolt entities by holding that the *MS Dealer* requirement of "allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract" was satisfied because the non-signatories were "closely related to another corporate entity that is a signatory to the arbitration agreement," *i.e*., SNTGI. *Id*. at 15-19, citing *J.J. Ryan*, 863 F.2d at 320-21 ("when the charges against a parent company and its subsidiary are based on the same facts and are inherently inseparable, a court may refer claims against the parent to arbitration even though the parent is not formally a party to the arbitration agreement") (citations omitted).

In sum, as applied to seafarers' employment agreements, the *MS Dealer* test is consistent with the *Mundi/DuPont* test, as both tests look at the overlapping factual allegations and claims against signatories and non-signatories, and the close relationship between signatories and non-signatories. In *Francisco* the plaintiff himself alleged such a close relationship, 2002 U.S. Dist.

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[6] On June 28, 2019, the U.S. Supreme Court granted certiorari, 139 S.Ct. 2776 (2019), to review *Outokumpu Stainless USA, LLC v. Converteam SAS*, 902 F.3d 1316 (11th Cir. 2018) ("*Outokumpu*"). *Outokumpu* held that the Convention requires an agreement to arbitrate "signed by the parties" and that equitable estoppel cannot be used to allow a non-signatory to compel arbitration, citing *Yang v. Majestic Blue Fisheries, LLC*, 876 F.3d 996 (9th Cir. 2017) ("*Yang*"). Id., 902 F.3d at 1325-27. The U.S. Solicitor General has filed an amicus curiae brief supporting the petitioner and seeking reversal, *see* https://www.scotusblog.com/case-files/cases/ge-energy-power-conversion-france-sas-v-outokumpu-stainless-usa-llc/, and a motion for leave to participate in oral argument. *Id*. The argument has been set for Tuesday, January 21, 2020. *Id*. *Outokumpu* is not relevant here, because the Convention does not apply in the Republic, and UMLICA does not include "signed by the parties" language. *Mongaya* at 6-7, and 9 n. 2.

Lexis 23134 at *17-18. Here the close relationship is undisputed and undisputable because SBSC and Trident are wholly owned subsidiaries (directly or indirectly) of Star Bulk Carriers Corp., SBSC is Trident's crewing agent, and was authorized by Trident to hire Dieron. RA 46, Mastagaki Dec. and Supplemental Mastagaki Dec. (Appx. A-4).

Dieron cites *Pineda v. Oceania Cruises, Inc*., 283 F.Supp.3d 1307 (S.D.Fla. 2017) ("*Pineda*") and *Voces v. Energy Res. Tech*., 2014 U.S. Dist. LEXIS 193790, Civ. No. H-14-525 (S.D.Tex. December 16, 2014) ("*Voces*"), where only non-signatories were sued, and motions to compel arbitration were denied citing *MS Dealer*. The result in these decisions is not inconsistent with the analysis applied in *Aggarao*, *Escobal* and *Francisco*. The common thread in *Pineda* and *Voces* is that, in contrast with *Francisco*, a close relationship between the signatories and non-signatories did not exist. In *Pineda,* the court acknowledged that:

> Another exception to the general rule requiring a written arbitration agreement between the parties "exists when, 'under agency or related principles, the relationship between the signatory and nonsignatory defendants is sufficiently close that only by permitting the nonsignatory to invoke arbitration may evisceration of the underlying arbitration agreement between the signatories be avoided.

Id. at 1313, citing *MS Dealer*, 177 F.3d at 947 (additional citations omitted).

The *Pineda* court found that this exception was not applicable because, while one of the non-signatories was a corporate parent of the other, neither of them was related to the signatory, and the court also held that the non-signatories failed to prove that the signatory signed Pineda's employment as an agent on the behalf of either of them. *Id*. at 1312-13.[7] In *Voces*, there was no indication or suggestion that the signatory and the non-signatories were related companies, or that any agency relationship existed. These decisions are not inconsistent with the rules set forth in *Mongaya*, *Mundi* and *DuPont*, and their outcomes turned on their specific facts.

Aggarao, *Escobal* and *Francisco* also belie Dieron's contention that the only relationship between signatories and non-signatories that is sufficiently close under the *MS Dealer* test is that

[7] The agency holding in *Pineda* is contrary to *Pagaduan v. Carnival Corporation*, 709 Fed.Appx. 713 (2d Cir. 2017) (the naming, in a seafarer's employment contract, of the vessel on board which he would serve, gives the seafarer notice that he is contracting with the owner of the named vessel). *Id*. at 717. The vessel on board which Pineda served was disclosed in her contract. *Pineda* at 1309. This makes the holding in *Pineda* questionable, but it is not relevant to the above discussion.

of a corporate parent and subsidiary. As discussed above, in *Aggarao* there was no corporate relationship; in *Escobal*, the only relationship noted by the court was that the signatory was the owner, and the non-signatory the charterer of the vessel on board which Escobal worked. *Id.*, 2011 U.S.Dist. LEXIS 163402 at *7, and in *Francisco*, the non-signatory defendants were corporate affiliates of the non-party signatory. *Id*., 2002 U.S. Dist. Lexis 23134 at *17-18.[8]

While, as this Court stated in *Mongaya*, the *Mundi* and the MS Dealer tests are substantially similar, the *Mundi* test better articulates the underlying principles of equitable estoppel than *MS Dealer* as set forth in that opinion and recited elsewhere. The *MS Dealer* rule on its face requires either that the claim against the non-signatories relies on the contract which includes a promise to arbitrate with the signatory, or that there was "concerted misconduct" between the signatories and the non-signatories. As discussed above, maritime courts have held that the requirement of "concerted misconduct" can be satisfied either by overlapping factual allegations and claims, or by a close relationship between the signatories and the non-signatories. The *Mundi* wording, which expressly considers the relationships between the signatories and the non-signatories, and between the alleged wrongs and contractual obligations, and the degree to which the claims are intertwined with contractual obligations, is more flexible, covers all prongs of *MS Dealer*, and avoids potential for confusion and obfuscation, such as reflected in Dieron's arguments here.

d. <u>The *MS Dealer* and *Mundi* tests can be satisfied without plaintiff's reliance on the terms of the written agreement</u>

Dieron cites *Yang,* 876 F.3d at 1003 for the proposition that, under *MS Dealer*, estoppel is available only where the signatory's claim expressly relies on the terms of the written agreement. This argument is manifestly devoid of merit. *MS Dealer* clearly states that express reliance is a disjunctive requirement:

> Existing case law demonstrates that equitable estoppel allows a nonsignatory to compel arbitration in ***two different circumstances***. First, equitable estoppel applies when the signatory to a written agreement containing an arbitration clause "must rely on the terms

[8] Dieron misunderstands this as an issue of corporate veil-piercing. Instead, it is a question of how closely the non-signatory has to be related to the signatory that it would be unfair to allow the plaintiff to exclude the non-signatory from arbitration under plaintiff's contract with the signatory, or stated in other words, that "the arbitration proceedings would be rendered meaningless and the federal policy in favor of arbitration effectively thwarted." *J.J. Ryan*, 863 F.2d at 321 (citations omitted).

> of the written agreement in asserting [its] claims" against the nonsignatory. When each of a signatory's claims against a nonsignatory "makes reference to" or "presumes the existence of" the written agreement, the signatory's claims "arise[ ] out of and relate[ ] directly to the [written] agreement," and arbitration is appropriate. Second, "application of equitable estoppel is warranted ... when the signatory [to the contract containing the arbitration clause] raises allegations of ... substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract. Otherwise, "the arbitration proceedings [between the two signatories] would be rendered meaningless and the federal policy in favor of arbitration effectively thwarted.

MS Dealer, 177 F.3d at 947 (citations omitted) (emphasis added). [9]

Here, as in *Aggarao*, *Escobal*, *Francisco* and *Mongaya*, the "intertwined and concerted misconduct" part of the test applies. The disjunctive requirement of reference on the written agreement is moot.

Dieron makes the same argument as to the *Mundi* test. This argument likewise lacks merit. If this result was intended, *Mundi* would have said so. To the contrary, *Mundi* discussed *Sokol* and stated that:

> The court examined cases in which a nonsignatory was allowed to compel a signatory to arbitrate based on estoppel and reasoned that it was "essential in all of these cases that the subject matter of the dispute was intertwined with the contract providing for arbitration." *Id*. at 361. In addition to the requirement that the factual issues be intertwined, the court required "a relationship among the parties of a nature that justifies a conclusion that the party which agreed to arbitrate with another entity should be estopped from denying an obligation to arbitrate a similar dispute with the adversary which is not a party to the arbitration agreement." *Id*. at 359.

Id. 555 F.3d at 1046.

The court in *Sokol* explained further that the underlying consideration always is whether, under the facts presented, it is unfair for the signatory to claim that its agreement to arbitrate does not extend to the non-signatory:

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[9] In fact, *Yang* did not mention *MS Dealer* at all. It cited on this point a California case, *Goldman v. KPMG LLP*, 92 Cal.Rptr.3d 534 (Cal.App. 2009), which states clearly that the *MS Dealer* rule is disjunctive and encompasses two different circumstances, as quoted above. *Id*., 92 Cal.Rptr.3d at 541.

> The estoppel did not flow merely from x's agreement to arbitrate with someone (y) in disputes relating to the agreement. It flowed rather from the conclusion that the relationships among the parties developed in a manner that made it unfair for x to claim that its agreement to arbitrate ran only to y and not to y<1>.

Id. 542 F.3d at 361.

This discussion, and the emphasis on fairness, particularly in the context of an equitable remedy, is entirely incompatible with Dieron's argument that *Mundi* includes an implied inflexible limitation whereby a signatory can only be required to arbitrate with the non-signatory if its claims expressly rely on the provisions of the contract. To the contrary, the *Mundi* test will be satisfied by such express reliance, but it is by no means limited to it.

Moreover, *Mundi* approvingly cited *MS Dealer,* and *Mongaya* held that the *Mundi*, *JLM*, *Sokol* and the *MS Dealer* tests are substantially similar. *Mongaya* at 13-14. As discussed above, *MS Dealer* explicitly makes reliance on the provisions of the contract a disjunctive, not a conjunctive requirement. There is no reason to believe that the test for equitable estoppel adopted by *Mundi* and *Mongaya* tacitly converted the expressly disjunctive requirement of *MS Dealer* into an implied absolute condition.

E. The High Court Did Not Err By Compelling Dieron To Arbitrate Under Philippine Law In Accordance With His Contract

1. UMLICA expressly allows choice of venue and substantive law of arbitration

Dieron contends that the High Court erred in compelling him to arbitrate in the Philippines under Philippine law, which he contends is in violation of the U.S. Supreme Court precedent prohibiting contractual derogation of vessel owner's obligation to provide a seaworthy vessel under the general maritime law, and 47 MIRC §§853 and 858. Op.Br. at 1, point IV, and 21. This argument is patently devoid of merit.

The Nitijela made it clear in UMLICA (Appx. B-1) that parties to international agreements are free to choose the venue and the substantive law of arbitration (emphasis added):

> §620. Place of arbitration
>
> (1) The parties are free to agree on the place of arbitration.
>
> …
>
> §628. Rules applicable to substance of dispute.

> (1) The arbitral tribunal ***shall*** decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute.

This language is specific to UMLICA and does not appear in the Convention. It codifies the ruling in *Mongaya*, where this Court wrote that "Choice of law provisions in international commercial contracts are an almost indispensable precondition to achievement of the orderliness and predictability essential to any international business transaction[.]" *Id*. at 29-30 (citations omitted and punctuation adjusted). While Dieron complains about this Court characterizing Mongaya's argument that the Court should nullify the choice-of-law clause in the POEA Contract as "absurd," *Mongaya* at 20, Dieron's contention, in the teeth of the mandatory language of UMLICA, that "arbitration or not, RMI law should have been applied," is even more absurd.

Articles 29 and 31 of Dieron's Contract expressly provide for institutional arbitration in the Philippines before the National Labor Relations Commission, or optionally, the National Conciliation and Mediation Board of the Department of Labor and Employment, under Philippine law. Accordingly, under UMLICA §§620 and 628, the High Court correctly ordered Dieron to arbitrate in Philippines under Philippine law in accordance with his Contract.

2. UMLICA does not allow public policy defenses at the arbitration enforcement stage

Assuming that UMLICA §§620 and 628 do not altogether preclude challenges to the agreed venue and substantive law of arbitration, consistent with the Convention, UMLICA does not allow public policy defenses at the arbitration-enforcement stage, but only at the award recognition and enforcement stage.

The Convention (reproduced in Appx. B-2) provides, in its Art. V(2):

> Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
> ...
>
> (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Similarly, UMLICA (Appx. B-1) provides in its §634(2)(b)(ii):

> An arbitral award may be set aside by the High Court only if:

…

(b) the court finds that:

…

(ii) the award is in conflict with the public policy of the Republic.

Federal courts in the United States have held that a public policy defense under Art. V of the Convention is available only *after* arbitration, and not as a defense to a motion to compel arbitration:

> *After* arbitration, a court may refuse to enforce an arbitral award if the award is contrary to the public policy of the country ... Importantly, Article II contains no explicit or implicit public policy defense at the initial arbitration-enforcement stage. *See* New York Convention, art. II. Meanwhile, Article V's public policy defense, by its terms, applies only at the award-enforcement stage. *See id*. art. V(2) (stating when "[r]ecognition and enforcement of an arbitral award may also be refused").

Lindo v. NCL (Bahamas), Ltd., 652 F.3d 1257, 1263 (11th Cir. 2011) (citations omitted) (italics original).

> As an affirmative defense, Escobar contends that the arbitration clause in his employment contract is unenforceable because that clause requires his claims to be governed by Bahamian law. Specifically, Escobar asserts that: (1) Bahamian law does not afford the same rights and remedies as American law, (2) this choice-of-law clause results in a prospective waiver of his right to pursue statutory remedies under American law, and thus (3) his arbitration agreement violates public policy and should not be enforced …
>
> Unfortunately for Escobar, a challenge based on public policy cannot be made at the stage of the proceedings in which the district court is considering whether to compel the parties to arbitrate, which is the stage at which Escobar's case finds itself. At this present arbitration-enforcement stage of a Convention case, the only affirmative defense that a reviewing court can consider is a defense that demonstrates the arbitration agreement is null and void, inoperative, or incapable of performance, under Article II of the New York Convention.
>
> And a null-and-void challenge to enforcing an arbitration agreement must be grounded in standard breach-of-contract-type defenses—such as fraud, mistake, duress, or waiver—which defenses can be applied neutrally before international tribunals. Escobar's public-policy defense—the effective-vindication doctrine—is not that type

> of defense. These traditional breach-of-contract claims do not include public-policy or unconscionability arguments. In fact, at the arbitration-enforcement stage, it is generally premature to make findings about how arbitrators will conduct the arbitral process, whether a claim will be heard, or whether the foreign-law remedies will be adequate or inadequate.

Escobar v. Celebration Cruise Operator, Inc., 805 F.3d 1279, 1287-89 (11th Cir. 2015) ("*Escobar*") (citations and footnotes omitted and punctuation adjusted).

The *Escobar* court noted that this conclusion accords with holdings by the Second and Fourth Circuits in *JLM*, 387 F.3d at 167, 182 (rejecting as "premature" a party's argument that application of an arbitration clause would prevent the vindication of certain rights under the Sherman Act because the arbitration clause allowed for arbitration in London under English law), and *Aggarao*, 675 F.3d at 373 (holding that a party to an arbitration agreement and attendant choice-of-law clause could not raise a public policy defense, which was based on the prospective waiver doctrine, "until the second stage of the arbitration-related court proceedings—the award enforcement stage"). *Id*. at 1289.

This reasoning also applies to UMLICA, which, as discussed above, contains language consistent with relevant language of the Convention. *Escobar* is "on all fours" with our facts, where Dieron seeks to invalidate his agreement to arbitrate under Philippine law by arguing that statutes of the Republic, 47 MIRC §§853 and 858, require that his claim be adjudicated under the general maritime law, which would give him different remedies than Philippine law, and that a contrary result would violate the public policy of the Republic. In sum, even if Dieron's underlying arguments had any merit, these arguments could not be heard at this time, but only after Dieron has obtained an arbitral award and moves to have it set aside.

3. Recast in terms of a purported mandatory choice-of-law rule, Dieron's argument is still a public policy defense

Dieron attempts to recast his public policy defense in terms of a purported mandatory choice-of-law rule which he claims overrides foreign law clauses in seafarers' employment contracts. This argument is still very much a public policy defense, because, by definition, it does not involve "only those situations—such as fraud, mistake, duress, and waiver—that can be applied neutrally on an international scale," see *Escobar*, *supra*, 805 F.3d at 1287-89. To the contrary, it attempts to invalidate an international arbitration agreement by operation of local law.

Dieron's argument also attempts to switch the analysis from the unyielding rule on validity of arbitration clauses under UMLICA, discussed above, to the more malleable rule on validity of non-arbitration choice-of-law clauses. The appellees decline to take the bait, but note that the cases cited by Dieron state plainly that non-arbitration foreign law selection clauses are valid and enforceable except as forbidden by some public policy.

Dieron contends that *Lauritzen v. Larsen*, 354 U.S. 571 (1953) ("*Lauritzen*") established a rule overriding contractual selection of foreign law by a mandatory choice-of-law analysis. The case involved a Danish sailor, Larsen, employed on board a Danish vessel under a contract selecting Danish law. *Id*. at 573. Larsen was injured, and was entitled to, and apparently had received, no-fault compensation under Danish law for his injuries. *Id*. at 573-577. He then sought to recover tort damages under the Jones Act, a U.S. statute that created a cause of action for negligence by a seaman against his employer. *Id*. The Court held that the Jones Act was not intended to apply upon the facts presented, and it was not relevant that Larsen might have obtained larger recovery suing for negligence under the Jones Act than under Danish no-fault compensation law. *Id*. at 592-93.

Along the way to its conclusion, the U.S. Supreme Court articulated seven factors to be considered in maritime choice-of-law analysis, *Id*. at 583-591. It also stated the following about contractual choice of law clauses:

> ***Except as forbidden by some public policy***, tendency of the law is to apply in contract matters the law which the parties intended to apply. We are aware of no public policy that would prevent the parties to this contract, which contemplates performance in a multitude of territorial jurisdictions and on the high seas, from so settling upon the law of the flag-state as their governing code ... We think a quite different result would follow if the contract attempted to avoid applicable law, for example, so as to apply foreign law to an American ship.

Id., l(emphasis added).

Notably, *Lauritzen* endorsed the freedom of contracting parties to choose the law that governs their contract. The U.S. Supreme Court also stated that any exception is a matter of ***public policy***. Dieron however latches on to the final sentence, and attempts to recast it into a holding that a contractual choice of law is only valid if it coincides with the result of the seven-factor analysis. Dieron's contention is belied by the Court's express endorsement of choice of law

clauses "except as forbidden by some public policy." Indeed, the law is settled that the *Lauritzen* choice-of-law analysis is not mandatory, but provides a default rule which applies only in the absence of a contractual law selection clause:

> In the absence of a contractual choice-of-law clause, federal courts sitting in admiralty apply federal maritime choice-of-law principles derived from [*Lauritzen*]. But where the parties specify in their contractual agreement which law will apply, admiralty courts will generally give effect to that choice.

Chan v. Society Expeditions, 123 F.3d 1287, 1296-97 (9th Cir. 1997) (footnote and additional citations omitted). *Accord*, *Bominflot, Inc. v. M/V Heinrich S*, 465 F.3d 144, 148 (4th Cir. 2006) (same).

Dieron also contends that *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972) prohibits contractual foreign law and forum selection clauses. To the contrary, the Court in *Bremen* reversed the opinion below which had refused to enforce such a clause in an international commercial agreement on the grounds of public policy. The Court wrote:

> The Court of Appeals suggested that enforcement would be contrary to the ***public policy*** of the forum under *Bisso v. Inland Waterways Corp*., 349 U.S. 85 (1955), because of the prospect that the English courts would enforce the clauses of the towage contract purporting to exculpate Unterweser from liability for damages to the Chaparral. A contractual choice-of-forum clause should be held unenforceable if enforcement would contravene a strong public policy of the forum in which suit is brought, whether declared by statute or by judicial decision. *See, e. g., Boyd v. Grand Trunk W. R. Co*., 338 U.S. 263 (1949). It is clear, however, that whatever the proper scope of the policy expressed in *Bisso*, it does not reach this case. *Bisso* rested on considerations with respect to the towage business strictly in American waters, and ***those considerations are not controlling in an international commercial agreement***.

Id., 407 U.S. at 16-17 (emphasis added).[10]

[10] Dieron further cites *Razo v. Nordic Empress Shipping Ltd.,* 362 Fed.Appx. 243, 246 (3d.Cir. 2009) ("*Razo*") for the proposition that a shipowner "cannot dodge its potential liability through contractual provisions." The District Court's decision below makes it clear that this comment does not relate to arbitrability, but to the question whether the shipowner could be liable for a seafarer's injury on the theory of unseaworthiness where the vessel was under a bareboat charter. 2008 U.S. Dist. LEXIS 57618 (D.N.J. July 24, 2008) at *15-16. The District Court expressly held that the shipowner could not compel arbitration of Razo's claim because it had no agreement in writing with the seafarer. *Id*. at 16.

In sum, there is no mandatory choice-of-law rule in the general maritime law that would override the terms of Dieron's arbitration agreement. Dieron's arguments raise public policy defenses, which cannot be heard at this stage.

4. Dieron's mandatory choice-of-law argument is contrary to the law of the Republic

Dieron takes the caveat in *Lauritzen* regarding potential application of a foreign law to an American ship, out of the context of that case, which was firmly framed by U.S. statutes that have no counterpart in the Republic. *Lauritzen* dealt with the application of the Jones Act, not of any (non-statutory) claim under the general maritime law, such as unseaworthiness. Moreover, U.S. statutes have required and require that, in order to be documented as a U.S. flag vessel, the vessel must be owned by U.S. citizens and crewed by U.S. citizens (currently, up to 25% of crew may be permanent resident aliens). *See* 46 USC §§ 12103, 8103(a)&(b). Thus, the *Lauritzen* Court was concerned about potential attempts to displace the controlling U.S. statute, the Jones Act, with foreign law in the inherently domestic disputes between American seamen and their employer.

Since *Lauritzen*, the U.S. Supreme Court has occasionally suggested that contractual choice of law and forum clauses in arbitration agreements should not operate in tandem to prospectively waive a party's ***statutory*** rights, but it has never extended this concern beyond federal statutory rights. *Asignacion,* 783 F.3d at 1020-21. Accordingly, the prospective waiver doctrine does not protect a foreign seafarer's desire to pursue a claim for unseaworthiness under the general maritime law. *Id.*[11]

In any event, the *Lauritzen* caveat is not a part of the law of the Republic. The Republic has adopted only the "***non-statutory*** general maritime of the United States of America:"

> Insofar as it does not conflict with any other provisions of this Title or any other law of the Republic, the ***non-statutory*** general maritime law of the United States of America is hereby declared to be and is hereby adopted as the general maritime law of the Republic.

47 MIRC §113 (emphasis added).

[11] *Seas Shipping Co. v. Sieracki*, 328 U.S. 85 (1946), and *Reed v. S.S. Yaka*, 373 U.S. 410 (1963), cited by Dieron, held that a shipowner could not disclaim the duty of seaworthiness to American longshoremen in U.S. ports, and did not involve foreign seafarers or arbitration agreements.

The Republic has no statute corresponding to the Jones Act, and no statutes requiring that the vessels flying the flag of the Republic be owned or crewed by citizens of the Republic. To the contrary, it is common knowledge that vessels registered with the International Registry of the Republic, such as the Star Markella, are foreign owned through non-resident domestic corporations or foreign maritime entities, and are crewed by foreign crews. Any disputes between the crew and the owners / managers of such vessels are, by definition, international disputes. Therefore, the *Lauritzen* caveat, which is motivated and framed by U.S. statutes that do not have a corresponding counterpart in the Republic, has not been adopted by 47 MIRC §113, is not a part of the general maritime law of the Republic, and has no relevance to it or to this case.

The incorporation of the U.S. general maritime law under 47 MIRC §113 is also effective only "[i]nsofar as it does not conflict with any other provisions of this Title," *i.e.*, Title 47, MIRC. The Compact of Free Association between the Republic and the United States does not require the Republic to adopt the general maritime law of the United States. Such adoption was a legislative choice by the Nitijela, and is effective only within the limits set forth in 47 MIRC §113.

Moreover, 47 MIRC §853(2) provides:

> All contracts relating to service aboard a vessel registered under this Title shall be governed in interpretation and application by the Laws of the Republic, including this Chapter and any Regulations thereunder.

The POEA Standard Terms, which are set forth in Dieron's Contract, were approved by the Maritime Administrator of the Republic for use on board the vessels flagged in the Republic,[12] under the authority of Maritime Regulation MI-108 §7.45.1.b, which provides (emphasis added):

> Where the provisions of a seafarer's collective bargaining agreement conflict with or deviate from the Maritime Act and/or these Regulations with regard to the employment of the seafarer on vessels registered in accordance with Chapters 1 through 8 of the Maritime Act, the Maritime Administrator may, ***at its sole discretion***, determine that the conflicting or deviating provision is substantially equivalent to, and shall satisfy the requirements of, the

[12] RA 46, Declaration of Dennis J. Reeder ("Reeder Dec."), Ex. "2", Republic of the Marshall Islands (RMI) Response to Comments made by the International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations on MLC, 2006, Submitted 5 February 2016 (reproduced in Appx. A-2), at 3, item 3.

> Maritime Act or these Regulations, provided it is not inconsistent with or of a lesser standard than the Maritime Act or Regulations.

The standards referred to in the Regulation are (disjunctively) those of 47 MIRC Ch. 8 (reproduced in Appx. B-3) or Ch. 7 of the Regulations, reproduced in Appx. B-4. Dieron does not explain where his Contract fails to meet these standards, which are quite comprehensive, but do not include a cause of action for unseaworthiness. In any event, such determination is left to the sole discretion of the Maritime Administrator.

Clearly, Maritime Regulation MI-108 §7.45.1.b is a Regulation under Title 47, MIRC. By the plain language of 47 MIRC §§113 and 853(2), to the extent that the general maritime law of the United States conflicts with the Regulation, it is not incorporated into the law of the Republic. Accordingly, Dieron contention that the tort cause of action for unseaworthiness under the U.S. general maritime law is always mandatorily applicable in the Republic has no merit. To the contrary, Maritime Administrator's approval of the POEA Contract under the authority of the Regulation supersedes any conflicting provisions of the U.S. general maritime law.

It should be noted that in *Asignacion*, the court also noted that it is far from certain that *Lauritzen's* reference to an "attempt[] to avoid applicable law" was intended to include contractual clauses mandated by governments, as opposed to private parties. *Id*. at 1018-19. It is difficult to see how the choice of Philippine law in Dieron's Contract, which was mandated by the Philippine government [13] and approved by the Maritime Administrator of the Republic "attempt[s] to avoid applicable law." Rather, it reflects the applicable law of the Republic.

5. <u>There is no arbitrability exception for personal injury tort claims</u>

Dieron insists that his claims are personal injury claims in tort and can proceed under tort law without reference to his POEA contract. This does not help his argument. In *Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530 (2012) (*per curiam*), the Supreme Court of Appeals of Virginia had invalidated, on public policy grounds, an arbitration agreement requiring plaintiffs to arbitrate personal injury and wrongful death claims against nursing homes. *Id*., 565 U.S. at 531-32. The U.S. Supreme Court summarily reversed, holding that the Federal Arbitration Act:

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[13] "Arbitration of all claims by Filipino overseas seafarers is an integral part of the POEA's mandate to promote and monitor the overseas employment of Filipinos and safeguard their interests." *Asignacion*, 783 F.3d at 1018, quoting *Balen,* 583 F.3d at 651.

> includes no exception for personal-injury or wrongful-death claims. It requires courts to enforce the bargain of the parties to arbitrate. It reflects an emphatic federal policy in favor of arbitral dispute resolution.

Id., 565 U.S. at 532-33 (citations and additional punctuation omitted). *See also GGNSC Morgantown, LLC v. Phillips*, 2014 U.S. Dist. LEXIS 151910, 2014 WL 5449674 (N.D.W.Va., Oct. 24, 2014) at *17-18 (there is no exception for the arbitrability of wrongful death claims even if plaintiff is a non-signatory who can be bound to the agreement to arbitrate).

Likewise, there is no such exception under UMLICA.

Moreover, it has long been settled that:

> Whether a particular claim is arbitrable depends not upon the characterization of the claim, but upon the relationship of the claim to the subject matter of the arbitration clause. Were the rule otherwise, a party could frustrate any agreement to arbitrate simply by the manner in which it framed its claims … [P]laintiff could not avoid the language of the arbitration clause by casting its complaint in tort.

In re Oil Spill by the Amoco Cadiz, 659 F.2d 789, 794 (7th Cir. 1981) (citations and additional punctuation omitted). *See also Salim Oleochemicals v. M/V Shropshire*, 169 F.Supp.2d 194, 200-201 (S.D.N.Y. 1981) (pleading cargo damage claims in tort as opposed to as a breach of the Bill of Lading contract could not avoid the arbitration agreement in the Bill of Lading, which encompassed cargo damage).

In sum, Dieron has agreed to arbitrate his personal injury claims in accordance with his Contract. His artful pleading of these claims cannot avoid this obligation.

VII. CONCLUSION

Dieron's appeal has no merit. The appealed orders of the High Court granting leave to SBSC to intervene, and granting SBSC's and Trident's motions to compel Dieron to arbitrate his claims with SBSC and Trident in Philippines under Philippine law in accordance with his POEA contract, should be affirmed in all respects.

Respectfully submitted this 12th day of December, 2019 (Majuro date).

DENNIS J. REEDER
NENAD KREK

Attorney for Defendant and Intervening Defendant - Appellees
STAR TRIDENT XII, LLC AND STAR BULK SHIPMANAGEMENT COMPANY (CYPRUS) LIMITED.

S.Ct. No. 2018-015

IN THE SUPREME COURT OF

THE REPUBLIC OF THE MARSHALL ISLANDS

VIRGILIO T. DIERON, JR.
Plaintiff-Appellant,

v.

STAR TRIDENT XII, LLC, *Defendant-Appellee,* and
STAR BULK SHIPMANAGEMENT COMPANY (CYPRUS) LIMITED
Intervening Defendant-Appellee.

On Appeal from the High Court
H.Ct. Civil No. 2017-044
Carl B. Ingram, Chief Justice, Presiding

DEFENDANT AND INTERVENING DEFENDANT – APPELLEES' APPENDIX

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ATTORNEYS FOR DEFENDANT AND INTERVENING DEFENDANT - APPELLEES STAR TRIDENT XII, LLC and STAR BULK SHIPMANAGEMENT COMPANY (CYPRUS) LIMITED

Republic of the Philippines
Department of Labor and Employment
PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION
CONTRACT OF EMPLOYMENT

KNOW ALL MEN BY THESE PRESENTS :

This Contract, entered into voluntarily by and between:

Name of Seafarer : VIRGILIO JR. TIO DIERON

Date of Birth : December 30, 1990 Place of Birth : MENDEZ, CAVITE

Address : F. MENDOZA STREET, GALICIA 3 MENDEZ CAVITE PHILIPPINES

SIRB No. : C0672633 SRC No. : NCR2037111 License No. : 0

hereinafter referred to as the Seafarer

AND

Name of Agent : STAROCEAN MANNING PHILIPPINES INC.

Name of Principal / Shipowner : STAR BULK SHIPMANAGEMENT COMPANY (CYPRUS) LIMITED

Address of Principal / Shipowner : Christodoulou Chatzipavlou (Molos), 179 3036, Limassol, Cyprus

For the following vessel :

Name of Vessel : **STAR MARKELLA**

IMO Number : 9401491 Gross Registered Tonnage (GRT) : 43,158 Year Built : 2007

Flag : MARSHALL ISLANDS Type of Vessel : BULK CARRIER Classification Society : BV

hereinafter referred to as the Employer

WITNESSETH

1. That the seafarer shall be employed on board under the following terms and conditions:

1.1 Duration of Contract	:	9 MONTHS	
1.2 Position	:	O/S	
1.3 Basic Monthly Salary	:	US$ 450.00	
1.4 Hours of Work	:	48 hours/week	
1.5 Overtime	:	US$ 330.00	Fixed Overtime
1.6 Vacation Leave With Pay	:	US$ 105.00	(0.00 leave days per month of service)
1.7 Service Incentive Leave	:	US$ 70.00	/ month
1.8 Owner's Bonus	:	US$ 145.00	/ month
1.9 Point of Hire	:	Manila, Philippines	
2.0 Collective Bargaining Agreement; If any	:	NONE	

2. The herein terms and conditions in accordance with Governing Board Resolution No. 9 and Memorandum Circular No. 10, both series of 2010 shall be strictly and faithfully observed.

3. Any alterations or changes, in any part of this Contract shall be evaluated,verified, processed and approved by the Philippine Overseas Employment Administration (POEA). Upon approval, the same shall be deemed an integral part of the Standard Terms and Conditions Governing the Employment of Filipinos Seafarers On-Board Ocean Going Vessels.

4. Violations of the terms and conditions of this Contract with its approved addendum shall be ground for disciplinary action against the erring party.
against the erring party.

In WITNESS WHEREOF, the parties have hereto set their hands this 21 day of April , 2016

at Paranaque City, Philippines.

VIRGILIO JR. TIO DIERON
Seafarer

Capt. Ricardo B. Astillo
OPERATIONS MANAGER
For the employer

Republic of the Philippines
Philippine Overseas Employment Administration
(In-House Processing)
Certified POEA-Approved Employment Contract
By: MA. LILLIAN M. MADURO
Date:

Department of Labor and Employment
Philippine Overseas Employment Administration
Employment Contract Approved By:
Date :

APR 25 2016

Date

Name and Signature of POEA Official

StarOcean Manning Philippines Inc.

Appendix A-1

ANNEX A

STANDARD TERMS AND CO[illegible]S GOVERNING THE OVERSEAS EMPLOY[illegible] OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING SHIPS

Definition of Terms:

For purposes of this contract, the following terms are defined as follows:

1. Allottee - refers to any person named or designated by the seafarer as the recipient of his remittance to the Philippines.
2. Basic Wage - refers to the salary of the seafarer exclusive of overtime, leave pay and other allowances and benefits.
3. Beneficiary(ies) – refers to the person(s) to whom the death compensation and other benefits due under the employment contract are payable in accordance with rules of succession under the Civil Code of the Philippines, as amended.
4. Compassionate Ground - refers to incidence of death of an immediate member of the seafarer's family which includes his parents, spouse and children if the seafarer is married or his parents if the seafarer is single.
5. Convenient Port - any port where it is practicable, economical, safe and convenient to repatriate the seafarer.
6. Dental Treatment - covers tooth extraction, or dental surgery if necessary, due to accident.
7. Departure - refers to the actual departure from the point of hire of the seafarer through air, sea or land travel transport to join his ship at a Philippine or foreign port.
8. Manning Agency – refers to any person, partnership or corporation duly licensed by the Secretary of Labor and Employment to engage in the recruitment and placement of seafarers for ships plying international waters and for related maritime activities.
9. Philippine Port - refers to any Philippine airport or seaport.
10. Point of Hire - refers to the place indicated in the contract of employment which shall be the basis for determining commencement and termination of contract.
11. Pre-existing illness – an illness shall be considered as pre-existing if prior to the processing of the POEA contract, any of the following conditions are present:
    a. The advice of a medical doctor on treatment was given for such continuing illness or condition; or
    b. The seafarer had been diagnosed and has knowledge of such an illness or condition but failed to disclose the same during pre-employment medical examination (PEME), and such cannot be diagnosed during the PEME.
12. Principal/Employer/Company - any person, partnership or corporation hiring Filipino seafarers to work onboard ocean-going ships.
13. Regular Working Hours - refers to the seafarer's eight (8) hour working hours within a period of 24 hours.
14. Seafarer - refers to any person who is employed or engaged in overseas employment in any capacity on board a ship other than a government ship used for military or non-commercial purposes.
15. Shipwreck – refers to the damage or destruction of a ship at sea caused by collision, storm, grounding or any other marine peril at sea or in port rendering the ship absolutely unable to pursue her voyage.
16. Work-Related Illness - any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied.
17. Work-Related Injury - injury arising out of and in the course of employment.

SECTION 1. DUTIES

A. Duties of the Principal/Employer/Master/Company:
   1. To faithfully comply with the stipulated terms and conditions of this contract, particularly the prompt payment of wages, remittance of allotment and the expeditious settlement of valid claims of the seafarer.
   2. To extend coverage to the seafarers under the Philippine Social Security System (SSS), Philippine Health Insurance Corporation (PhilHealth), Employees' Compensation Commission (ECC) and Home Development Mutual Fund (Pag-IBIG Fund), unless otherwise provided in multilateral or bilateral agreements entered into by the Philippine government with other countries.
   3. To make operational on board the ship the grievance machinery provided in this contract and ensure its free access at all times by the seafarer.
   4. To provide a seaworthy ship for the seafarer and take all reasonable precautions to prevent accident and injury to the crew including provision of safety equipment, fire prevention, safe and proper navigation of the ship and such other precautions necessary to avoid accident, injury or sickness to the seafarer.
   5. To observe the Code of Ethics for Seafarers and conduct himself in the traditional decorum of a master.
   6. To provide a workplace conducive for the promotion and protection of the health of the seafarers in accordance with the standards and guidelines in Title 4 of the ILO Maritime Labor Convention, 2006.

Duties of the Seafarer:
   1. To faithfully comply with and observe the terms and conditions of this contract, violation of which shall be subject to disciplinary action pursuant to Section 33 of this contract.
   2. To abide by the Code of Discipline as provided in the POEA rules and regulations governing overseas contract workers and the Code of Ethics for Seafarers.
   3. To be obedient to the lawful commands of the Master or any person who shall lawfully succeed him and to comply with the company policy including safety policy and procedures and any instructions given in connection therewith.
   4. To be diligent in his duties relating to the ship, its stores and cargo, whether on board, in boats or ashore.
   5. To conduct himself at all times in an orderly and respectful manner towards shipmates, passengers, shippers, stevedores, port authorities and other persons on official business with the ship.
   6. To take personal responsibility for his health while onboard by practicing a healthy lifestyle which includes taking medications and lifestyle changes as prescribed by the company-designated doctor.

SECTION 2. COMMENCEMENT/DURATION OF CONTRACT

A. The employment contract between the employer and the seafarer shall commence upon actual departure of the seafarer from the Philippine airport or seaport in the point of hire and with a POEA approved contract. It shall be effective until the seafarer's date of arrival at the point of hire upon termination of his employment pursuant to Section 18 of this Contract.

B. The period of employment shall be for a period mutually agreed upon by the seafarer and the employer but not to exceed 12 months. Any extension of the contract shall be subject to mutual consent of both parties.

SECTION 3. FREE PASSAGE FROM THE POINT OF HIRE TO THE PORT OF EMBARKATION

The seafarer shall join the ship and be available for duty at the date and time specified by the employer. The seafarer shall travel by air or as otherwise directed at the expense of the employer.

SECTION 4. BAGGAGE ALLOWANCE

The seafarer traveling by air to join a ship or on repatriation shall be entitled to the normal free baggage allowance offered by the airlines. The cost of the excess baggage shall be for the account of the seafarer.

SECTION 5. HYGIENE AND VACCINATION

A. The seafarer shall keep his quarters and other living spaces such as mess rooms, toilets, bathrooms, alleyways and recreation rooms in clean and tidy condition to the satisfaction of the master. Such work is to be performed outside the seafarer's regular working hours and for which no overtime pay shall be claimed.

B. The seafarer shall submit to the order of the master or to the laws of any country within the territorial jurisdiction of which the ship may enter to have such vaccination or inoculation or to undertake measures to safeguard his hea[illegible]he entire crew complement.

C. The company/employer shall e[illegible]t the seafarer shall be informed on the cause, prevention and consequences of HIV/AIDS.

SECTION 6. WAGES

A. All seafarers shall be paid for their work regularly and in full in accordance with this contract. They shall be paid monthly wages not later than 15 days of the succeeding month from the date of commencement of the contract until the date of arrival at point of hire upon termination of their employment pursuant to Section 18 of this contract.

B. Seafarers shall be given a monthly account of the payments due and the amounts paid to them, including wages, additional payments and the rate of exchange used.

SECTION 7. PAYMENT ON BOARD

Payment of shipboard pay in foreign ports shall be subject to the currency control regulations at the port abroad and to the official rate of exchange prevailing at the time of payment. Advances shall be at the master's/employer's discretion and in accordance with the foregoing conditions.

SECTION 8. ALLOTMENTS AND REMITTANCES

A. The seafarer is required to make an allotment which shall be payable once a month to his designated allottee in the Philippines through any authorized Philippine bank. The principal/employer/master/company shall provide the seafarer with facilities to do so at no expense to the seafarer. The allotment shall be at least eighty percent (80%) of the seafarer's monthly basic salary.

B. The principal/employer/master/company may also provide facilities for the seafarer to remit any amount earned in excess of his allotment, **including backwages**, if any, to his designated allottee in the Philippines through any authorized Philippine bank without any charge to him.

C. The allotments shall be paid to the designated allottee in Philippine currency at the rate of exchange indicated in the credit advice of the local authorized Philippine bank.

SECTION 9. FINAL WAGE ACCOUNT & CERTIFICATE OF EMPLOYMENT

The seafarer, upon his discharge, shall be given a written account of his final wages reflecting all deductions therefrom. Where a seafarer is landed in an emergency, the written account of his wages shall be given to him not later than one month from disembarkation. Upon the seafarer's request, he shall also be provided by his principal/employer/master/company his certificate of employment or service record without any charge.

SECTION 10. HOURS OF WORK

A. The seafarer shall perform not more than forty-eight (48) hours of regular work a week. The hours of works shall be determined and prescribed by the master, provided that it conforms with the customary international practices and standards and as prescribed in paragraph B below.

B. Regular working hours for the seafarer shall be eight (8) hours in every 24 hours, midnight to midnight, Monday to Sunday. The normal practice is as follows:
   1. The day worker shall observe the eight (8) regular working hours during the period from 0600 hours to 1800 hours.
   2. The steward personnel shall observe the eight (8) regular working hours during the period from 0500 hours to 2000 hours.
   3. The Radio Operator shall observe the eight (8) regular working hours in every twenty-four (24) hours, midnight to midnight, from Monday to Sunday as established by International Telecommunication Conventions and as prescribed by the master.
   4. For those who are on sea watch, their working hours shall be eight (8) hours per day. Staggering of working hours will be at the master's discretion.

C. The record of the seafarer's daily hours of work or of his daily hours of rest shall be maintained to allow monitoring of compliance to the above provisions. The seafarer shall be provided a copy of the records pertaining to him which shall be endorsed by the master or a person authorized by the master, and by the seafarer.

The seafarer shall be allowed reasonable rest period in accordance with international standards.

SECTION 11. OVERTIME & HOLIDAYS

A. The seafarer shall be compensated for all work performed in excess of the regular eight (8) hours as prescribed above. Overtime pay may be classified as open, fixed or guaranteed.

In computing overtime, a fraction of the first hour worked shall be considered as one full hour. After the first hour overtime, any work performed which is less than thirty (30) minutes shall be considered as half an hour and more than thirty (30) minutes shall be considered one full hour.

B. Overtime work may be compensated at the following rates:
   1. Open overtime - not less than 125 percent (125%) of the basic hourly rate computed based on two hundred eight (208) regular working hours per month.
   2. Guaranteed or fixed overtime - not less than thirty percent (30%) of the basic monthly salary of the seafarer. This fixed rate overtime shall include overtime work performed on Sundays and holidays but shall not exceed one hundred five (105) hours a month.
   3. Overtime work for officers shall be computed based on the fixed overtime rate.
   4. For ratings, overtime work shall be based on guaranteed or open overtime rate, as mutually agreed upon by the contracting parties. For ratings paid on guaranteed overtime, overtime work in excess of 105 hours a month for ratings shall be further compensated by their hourly overtime rate.

C. Any hours of work or duty including hours of watchkeeping performed by the seafarer on designated rest days and holidays shall be paid rest day or holiday pay. The following shall be considered as holidays at sea and in port:

New Year's Day	- January 1
Maundy Thursday	- movable date
Good Friday	- movable date
Araw ng Kagitingan (Bataan& Corregidor Day)	- April 9
Labor Day	- May 1
Independence Day	- June 12
National Heroes Day	- Last Sunday of August
All Saints Day	- November 1
Bonifacio Day	- November 30
Christmas Day	- December 25
Rizal Day	- December 30

D. Emergency Duty

Nothing in this Contract shall be deemed to impair the right of the master of a ship to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, for the purpose of giving assistance to other ships or persons in distress at sea, or to conduct fire, boat, or emergency drill. Accordingly, the master may suspend the schedule of hours of work or hours of rest and require a seafarer to perform any hours of work necessary until the normal situation has been restored or the drill has been completed. As soon as practicable after the normal situation has been restored or the drill has been completed, the master shall ensure that any seafarer who have performed work in a scheduled rest period are provided with an adequate period of rest.

No overtime work and pay shall be considered for such an emergency service or for fire, boat, or emergency drill.

SECTION 12. LEAVE PAY

The seafarer's leave pay shall be in accordance with the number of days leave per month as agreed upon. Days leave shall not be less than four and a half days (4 ½) for each month of service and pro-rated. Leave pay shall be settled onboard or settled within two weeks after arrival of the seafarer at the point of hire.

SECTION 13. SHORE LEAVE

The seafarer shall be allowed shore leave when pract[illegible]upon the consent of the master or his deputy, taking into consideration the operations and [illegible] the ship.

SECTION 14. SUBSISTENCE, SHIP STORES AND PROVISIONS

A. The seafarer shall be provided by the principal/employer/master/company with subsistence consistent with good maritime standards and practices while on board the ship.

B. All stores and provisions issued to the seafarer are only for use and consumption on board the ship and any unused or unconsumed stores or provisions shall remain the property of the employer. The seafarer shall not take ashore, sell, destroy or give away such stores and provisions.

SECTION 15. TRANSFER CLAUSE

The seafarer agrees to be transferred at any port to any ship owned or operated, manned or managed by the same employer, provided it is accredited to the same manning agent and provided further that the position of the seafarer and the rate of his wages and terms of service are in no way inferior and the total period of employment shall not exceed that originally agreed upon.

Any form of transfer shall be documented and made available when necessary.

SECTION 16. GRIEVANCE MACHINERY

A. If the seafarer considers himself aggrieved, he shall make his complaint in accordance with the following procedures:
   1. The seafarer shall first approach the head of the Department in which he is assigned to explain his grievance.
      a. In the Deck, Radio and Catering Department, the head is the Chief Mate.
      b. In the Engine Department, the head is the Chief Engineer.
      c. In the Catering and/or Hotel Department in a passenger ship, the head is the Chief Steward and/or Purser.
   2. The seafarer shall make his grievance in writing and in an orderly manner and shall choose a time when his complaint or grievance can be properly heard.
   3. The seafarer may also seek the assistance of the highest-ranking Filipino seafarer on board.
   4. The Department head shall deal with the complaint or grievance and where solution is not possible at his level, refer the complaint or grievance to the Master who shall handle the case personally.
   5. If no satisfactory result is achieved, the seafarer concerned may appeal to the management of the company or with a Philippine Overseas Labor Office or consular officer overseas. The master shall afford such facilities necessary to enable the seafarer to transmit his appeal.

B. When availed of by the seafarer, the grievance procedure and all actions or decisions agreed upon shall be properly documented for the protection and interest of both parties.

C. The aggrieved seafarer whose employment is covered by an existing CBA shall elevate any unsatisfactory resolution of his grievance to voluntary arbitration as agreed upon under the CBA. The aggrieved party whose employment is not covered by an existing CBA may elevate his complaint to the Maritime Industry Labor Arbitration Council (MILA) prior to any other forum.

D. The foregoing procedures shall be without prejudice to other modes of voluntary settlement of disputes and to the jurisdiction of the Philippine Overseas Employment Administration (POEA) or the National Labor Relations Commission (NLRC) over any unresolved complaints arising out of shipboard employment that shall be brought before it by the seafarer.

SECTION 17. DISCIPLINARY PROCEDURES

The Master shall comply with the following disciplinary procedures against an erring seafarer:

A. The Master shall furnish the seafarer with a written notice containing the following:
   1. Grounds for the charges as listed in Section 33 of this Contract or analogous act constituting the same.
   2. Date, time and place for a formal investigation of the charges against the seafarer concerned.

B. The Master or his authorized representative shall conduct the investigation or hearing, giving the seafarer the opportunity to explain or defend himself against the charges. These procedures must be duly documented and entered into the ship's logbook.

C. If after the investigation or hearing, the Master is convinced that imposition or a penalty is justified, the Master shall issue a written notice of penalty and the reasons for it to the seafarer, with copies furnished to the Philippine agent.

D. Dismissal for just cause may be effected by the Master without furnishing the seafarer with a notice of dismissal if there is a clear and existing danger to the safety of the crew or the ship. The Master shall send a complete report to the manning agency substantiated by witnesses, testimonies and any other documents in support thereof.

SECTION 18. TERMINATION OF EMPLOYMENT

A. The employment of the seafarer shall cease when the seafarer completes his period of contractual service aboard the ship, signs-off from the ship and arrives at the point of hire.

B. The employment of the seafarer is also terminated effective upon arrival at the point of hire for any of the following reasons:
   1. When the seafarer signs-off and is disembarked for medical reasons pursuant to Section 20 (A)[5] of this Contract.
   2. When the seafarer signs-off due to shipwreck, ship's sale, lay-up of ship, discontinuance of voyage or change of **ship** principal in accordance with Sections 22, 23 and 26 of this Contract.
   3. When the seafarer, in writing, voluntarily resigns and signs off prior to expiration of contract pursuant to Section 19 (G) of this Contract.
   4. When the seafarer is discharged for just cause as provided for in Section 33 of this Contract.

SECTION 19. REPATRIATION

A. If the ship is outside the Philippines upon the expiration of the contract, the seafarer shall continue his service on board until the ship's arrival at a convenient port and/or after arrival of the replacement crew provided that, in any case, the continuance of such service shall not exceed three months. The seafarer shall be entitled to earned wages and benefits as provided in his contract.

B. If the ship arrives at a convenient port before the expiration of the contract, the principal/employer/master/company may repatriate the seafarer from such port, provided the unserved portion of his contract is not more than one (1) month. The seafarer shall be entitled only to his earned wages and earned leave pay and to his basic wages corresponding to the unserved portion of the contract, unless within 60 days from disembarkation, the seafarer is rehired at the same rate and position, in which case the seafarer shall be entitled only to his earned wages and earned leave pay.

C. If the ship arrives at a convenient port within a period of three (3) months before the expiration of his contract, the principal/employer/master/company may repatriate the seafarer from such port provided that the seafarer shall be paid all his earned wages. In addition, the seafarer shall also be paid his leave pay for the entire contract period plus a termination pay equivalent to one (1) month of his basic pay, provided, however, that this mode of termination may only be exercised by the principal/employer/master/company if the original contract period of the seafarer is at least nine (9) months; provided, further, that the conditions for this mode of repatriation shall not apply to dismissal for cause.

D. The seafarer, if discharged at a port abroad for any reason shall be repatriated to the Philippines via sea or air or as may otherwise be directed by the principal/employer/company. He shall be provided with accommodation and food, allowances and medical treatment, if necessary, until he arrives at the point of hire.

E. When the seafarer is discharged for any just cause, the employer shall have the right to recover the costs of his replacement and repatriation from the seafarer's wages and other earnings.

F. The seafarer, when discharged and repatriated as directed by the principal/employer/master/company shall be entitled to basic wages from date of signing off until arrival at the point of hire except when the discharge is in accordance with the above or for disciplinary reasons.

If the seafarer delays or makes a detour or proceeds to a destination other than through the travel itinerary arranged by the employer to the point of hire, the employment of the seafarer will be considered terminated at the time the seafarer signs off the ship and all additional expenses shall be to the seafarer's account. The seafarer shall be entitled to earned wages and basic wage calculated based on the origin[illegible]duled date of arrival at the point of hire. All other liabilities of the company in this event sh[illegible] at the time the seafarer is terminated. Any illness, injury or death sustained by the seafar[illegible] to the above shall be considered non-work related and shall not be compensated.

G. A seafarer who requests for early termination of his contract shall be liable for his repatriation cost as well as the transportation cost of his replacement. The employer may, in case of compassionate grounds, assume the transportation cost of the seafarer's replacement.

H. The seafarer shall report to the manning agency within 72 hours upon arrival at point of hire.

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship;
2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.
3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

   The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

   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. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. 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.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.
5. In case a seafarer is disembarked from the ship for medical reasons, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former ship or another ship of the employer.
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 his 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.

   The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.

7. 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 such as from the Social Security System, Overseas Workers Welfare Administration, Employees' Compensation Commission, Philippine Health Insurance Corporation and Home Development Mutual Fund (Pag-IBIG Fund).

B. COMPENSATION AND BENEFITS FOR DEATH

1. In case of work-related death of the seafarer, during the term of his contract, the employer shall pay his beneficiaries the Philippine currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.
2. Where death is caused by warlike activity while sailing within a declared war zone or war risk area, the compensation payable shall be doubled. The employer shall undertake appropriate war zone insurance coverage for this purpose.
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 Home Development Mutual Fund (Pag-IBIG Fund).
4. The other liabilities of the employer when the seafarer dies as a result of work-related injury or illness during the term of employment are as follows:
   a. The employer shall pay the deceased's beneficiary all outstanding obligations due the seafarer under this Contract.
   b. The employer shall transport the remains and personal effects of the seafarer to the Philippines at employer's expense except if the death occurred in a port where local government laws or regulations do not permit the transport of such remains. In case death occurs at sea, the disposition of the remains shall be handled or dealt with in accordance with the master's best judgment. In all cases, the employer/master shall communicate with the manning agency to advise for disposition of seafarer's remains.
   c. The employer shall pay the beneficiaries of the seafarer the Philippine currency equivalent to the amount of One Thousand US dollars (US$1,000) for burial expenses at the exchange rate prevailing during the time of payment.

C. It is understood that computation of the total permanent or partial disability of the seafarer caused by the injury sustained resulting from warlike activities within the warzone area shall be based on the compensation rate payable within the warzone area as prescribed in this Contract.

D. No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.

E. A seafarer who knowingly conceals a pre-existing illness or condition in the Pre-Employment Medical Examination (PEME) shall be liable for misrepresentation and shall be disqualified from any compensation and benefits. This is likewise a just cause for termination of employment and imposition of appropriate administrative sanctions.

F. When requested, the seafarer shall be furnished a copy of all pertinent medical reports or any records at no cost to the seafarer.

G. The amounts paid to the seafarer due to accidental or natural death, or permanent total disablement by virtue of the provisions of RA 8042 as amended by RA 10022 and its implementing rules and regulations shall form part of and shall be deducted from the total amount that the seafarer is determined to be finally entitled to under this Contract.

H. Subsistence allowance benefit as provided in RA 8042, a[illegible]ded by RA 10022. The principal/employer/company shall grant to the seafarer who is invol[illegible]ase or litigation for the protection of his rights in a foreign country, a subsistence allowance [illegible]east One Hundred United States Dollars (US$100) per month for a maximum of six (6) months.

I. Compassionate Visit as provided in RA 8042, as amended by RA 10022. When a seafarer is hospitalized and has been confined for at least seven (7) consecutive days, he shall be entitled to a compassionate visit by one (1) family member or a requested individual. The employer shall pay for the transportation cost of the family member or requested individual to the major airport closest to the place of hospitalization of the seafarer. It is, however, the responsibility of the family member or requested individual to meet all visa and travel document requirements.

J. The seafarer or his successor in interest acknowledges that payment for injury, illness, incapacity, disability or death and other benefits of the seafarer under this contract and under RA 8042, as amended by RA 10022, shall cover all claims in relation with or in the course of the seafarer's employment, including but not limited to damages arising from the contract, tort, fault or negligence under the laws of the Philippines or any other country.

SECTION 21. WAR AND WARLIKE OPERATIONS ALLOWANCE

A. The POEA shall be the sole authority to determine whether the ship is within a war risk trading area. It shall also determine the amount of premium pay to which the seafarer shall be entitled to when sailing in that war-risk trading area.

B. The seafarer when sailing within a war-risk trading area shall be entitled to such premium pay as the POEA may determine through appropriate periodic issuances.

C. If at the time of the signing of the contract, an area is declared a war or war-risk trading area and the seafarer binds himself in writing to sail into that area, the agreement shall be properly appended to the Contract for verification and approval by the Philippine Overseas Employment Administration (POEA). The seafarer shall comply with the agreement or shall bear his cost of repatriation when he opts not to sail into a war or war-risk trading area.

D. If a war or warlike operations should arise during the term of this Contract in any country within the ship's trading area, the seafarer may sail with the ship within and out of the trading area if required by the Master.

SECTION 22. TERMINATION DUE TO SHIPWRECK AND SHIP'S FOUNDERING

Where the ship is wrecked necessitating the termination of employment before the date indicated in the contract, the seafarer shall be entitled to earned wages, medical examination at employer's expense to determine his fitness to work, repatriation at employer's cost and one month basic wage as termination pay.

In case of termination of employment of the seafarer before the expiration of the term of his contract due to shipwreck, actual or constructive total loss or foundering of the ship, the seafarer shall be entitled to earned wages, medical examination at employer's expense to determine his fitness to work, repatriation at employer's cost and one month basic wage as termination pay.

SECTION 23. TERMINATION DUE TO SALE OF SHIP, LAY-UP OR DISCONTINUANCE OF VOYAGE

Where the ship is sold, laid up, or the voyage is discontinued necessitating the termination of employment before the date indicated in the Contract, the seafarer shall be entitled to earned wages, repatriation at employer's cost and one (1) month basic wage as termination pay, unless arrangements have been made for the seafarer to join another ship belonging to the same principal to complete his contract in which case the seafarer shall be entitled to basic wages until the date of joining the other ship.

SECTION 24. TERMINATION DUE TO UNSEAWORTHINESS

A. If the ship is declared unseaworthy by a classification society, port state or flag state, the seafarer shall not be forced to sail with the ship.

B. If the ship's unseaworthiness necessitates the termination of employment before the date indicated in the Contract, the seafarer shall be entitled to earned wages, repatriation at cost to the employer and termination pay equivalent to one (1) month basic wage.

SECTION 25. TERMINATION DUE TO REGULATION ¼, CONTROL PROCEDURES OF THE 1978 STCW CONVENTION, AS AMENDED

If the seafarer is terminated and/or repatriated as a result of port state control procedures/actions in compliance with Regulation ¼ of the 1978 STCW Convention, as amended, his termination shall be considered valid. However, he shall be entitled to repatriation and earned wages and benefits only.

SECTION 26. CHANGE OF PRINCIPAL

A. Where there is a change of Principal of the ship necessitating the pre-termination of employment of the seafarer, the seafarer should be entitled to earned wages and repatriation at employer's expense. He shall also be entitled to one (1) month basic pay as termination pay.

B. In case arrangements have been made for the seafarer to directly join another ship of the same Principal to complete his contract, he shall only be entitled to basic wage from the date of his disembarkation from his former ship until the date of his joining the new ship.

SECTION 27. LOSS OF OR DAMAGE TO CREW'S EFFECTS BY MARINE PERIL

A. The seafarer shall be reimbursed by the employer the full amount of loss or damage to his personal effects but in no case shall the amount exceed the Philippine currency equivalent to the amount of Two Thousand US dollars (US$2,000) if his personal effects are lost or damaged as a result of the wreck or loss or stranding or abandonment of the ship or as a result of fire, flooding, collision or piracy.

B. In case of partial loss, the amount shall be determined by mutual agreement of both parties but in no case to exceed the Philippine currency equivalent to the amount of Two Thousand US dollars (US$2,000).

C. Reimbursement for loss or damage to the seafarer's personal effects shall not apply if such loss or damage is due to (a) the seafarer's own fault, (b) larceny or theft or (c) robbery.

D. Payment of any reimbursement shall be computed at the rate of exchange prevailing at the time of payment.

SECTION 28. GENERAL SAFETY

A. The seafarer shall observe and follow any regulation or restriction that the master may impose concerning safety, drug and alcohol and environmental protection.

B. The seafarer shall make use of all appropriate safety equipment provided him and must ensure that he is suitably dressed from the safety point of view for the job at hand.

SECTION 29. DISPUTE SETTLEMENT PROCEDURES

In cases of claims and disputes arising from this employment, the parties covered by a collective bargaining agreement shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators. If the parties are not covered by a collective bargaining agreement, the parties may at their option submit the claim or dispute to either the original and exclusive jurisdiction of the National Labor Relations Commission (NLRC), pursuant to Republic Act (RA) 8042 otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended, or to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators. If there is no provision as to the voluntary arbitrators to be appointed by the parties, the same shall be appointed from the accredited voluntary arbitrators of the National Conciliation and Mediation Board of the Department of Labor and Employment.

The Philippine Overseas Employment Administration (POEA) shall exercise original and exclusive jurisdiction to hear and decide disciplinary action on cases, which are administrative in character, involving or arising out of violations of recruitment laws, rules and regulations involving employers, principals, contracting partners and Filipino seafarers.

SECTION 30. PRESCRIPTION OF ACTION

All claims arising from this contract shall be made within three (3) years from the date the cause of action arises, otherwise the same shall be barred.

SECTION 31. APPLICABLE LAW

Any unresolved dispute, claim or grieva[illegible]ng out of or in connection with this contract including the annexes thereof, shall be governed by th[illegible] the Republic of the Philippines, international conventions, treaties and covenants to which the Ph[illegible] is a signatory.

SECTION 32. SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED

HEAD

Traumatic head injuries that result to:

1	Apperture unfilled with bone not over three (3) inches without brain injury	Gr. 9
2	Unfilled with bone over three (3) inches without brain injury	Gr. 3
3	Severe paralysis of both upper or lower extremities or one upper and one lower extremity	Gr. 1
4	Moderate paralysis of two (2) extremities producing moderate difficulty in movements with self-care activities	Gr. 10
5	Slight paralysis affecting one extremity producing slight difficulty with self-care activities	Gr. 10
6	Severe mental disorder or Severe Complex Cerebral function disturbance or post-traumatic psychoneurosis which require regular aid and attendance as to render worker permanently unable to perform any work	Gr. 1
7	Moderate mental disorder or moderate brain functional disturbance which limits worker to the activities of daily living with some directed care or attendance	Gr. 6
8	Slight mental disorder or disturbance that requires little attendance or aid and which interferes to a slight degree with the working capacity of the claimant	Gr. 10
9	Incurable imbecility	Gr. 1

FACE

1	Severe disfigurement of the face or head as to make the worker so repulsive as to greatly handicap him in securing or retaining	Gr. 2
2	Moderate facial disfigurement involving partial ablation of the nose with big scars on face or head	Gr. 5
3	Partial ablation of the nose or partial avulsion of the scalp	Gr. 9
4	Complete loss of the power of mastication and speech function	Gr. 1
5	Moderate constriction of the jaw resulting in moderate degree of difficulty in chewing and moderate loss of the power or the expression of speech	Gr. 6
6	Slight disorder of mastication and speech function due to traumatic injuries to jaw or cheek bone	Gr. 12

EYES

1	Blindness or total and permanent loss of vision of both eyes	Gr. 1
2	Total blindness of one (1) eye and fifty percent (50%) loss of vision of the other eye	Gr. 5
3	Loss of one eye or total blindness of one eye	Gr. 7
4	Fifty percent (50%) loss of vision of one eye	Gr. 10
5	Lagopthalmos, one eye	Gr. 12
6	Ectropion, one eye	Gr. 12
7	Ephiphora, one eye	Gr. 12
8	Ptosis, one eye	Gr. 12

Note: (Smeller's Chart – used to grade for near and distant vision).

NOSE AND MOUTH

1	Considerable stricture of the nose (both sides) hindering breathing	Gr. 11
2	Loss of the sense of hearing in one ear	Gr. 11
3	Injuries to the tongue (partial amputation or adhesion) or palate-causing defective speech	Gr. 10
4	Loss of the three (3) teeth restored by prosthesis	Gr. 14

EARS

1	For the complete loss of the sense of hearing on both ears	Gr. 3
2	Loss of two (2) external ears	Gr. 8
3	Complete loss of the sense of hearing in one ear	Gr. 11
4	Loss of one external ear	Gr. 12
5	Loss of one half (1/2) of an external ear	Gr. 14

NECK

1	Such injury to the throat as necessitates the wearing of a tracheal tube	Gr. 6
2	Loss of speech due to injury to the vocal cord	Gr. 9
3	Total stiffness of neck due to fracture or dislocation of the cervical pines	Gr. 8
4	Moderate stiffness or two thirds (2/3) loss of motion of the neck	Gr. 10
5	Slight stiffness of the neck or one third (1/3) loss of motion	Gr. 12

CHEST-TRUNK-SPINE

1	Fracture of four (4) or more ribs resulting to severe limitation of chest	Gr. 6
2	Fracture of four (4) or more ribs with intercostal neuralgia resulting in moderate limitation of chest expansion	Gr. 9
3	Slight limitation of chest expansion due to simple rib functional without myositis or intercostal neuralgia	Gr. 12
4	Fracture of the dorsal or lumbar spines resulting severe or total rigidity of the trunk or total loss of lifting power of heavy objects	Gr. 6
5	Moderate rigidity or two thirds (2/3) loss of motion or lifting power of the trunk	Gr. 8
6	Slight rigidity or one third (1/3) loss of motion or lifting power of the trunk	Gr. 11
7	Injury to the spinal cord as to make walking impossible without the aid of a pair of crutches	Gr. 4
8	Injury to the spinal cord as to make walking impossible even with the aid of a pair of crutches	Gr. 1
9	Injury to the spinal cord resulting to incontinence of urine and feces	Gr. 1

ABDOMEN

1	Loss of the spleen	Gr. 8
2	Loss of one kidney	Gr. 7
3	Severe residuals of impairment of intra-abdominal organs which requires regular aid and attendance that will unable worker to seek any gainful employment	Gr. 1
4	Moderate residuals of disorder of the intra-abdominal organs secondary to trauma resulting to impairment of nutrition, moderate tenderness, nausea, vomiting, constipation or diarrhea	Gr. 7
5	Slight residuals or disorder of the intra-abdominal organs resulting in impairment of nutrition, slight tenderness and/or constipation or diarrhea	Gr. 12
6	Inguinal hernia secondary to trauma or strain	Gr. 12

PELVIS

1	Fracture of the pelvic rings as to totally incapacitate worker to work	Gr. 1
2	Fracture of the pelvic ring resulting to deformity and lameness	Gr. 6

determined to be finally entitled to under this Contract.

H. Subsistence allowance benefit as provided in RA 8042, as amended by RA 10022. The principal/employer/company shall grant to the seafarer who is involved in any case or litigation for the protection of his rights in a foreign country, a subsistence allowance of at least One Hundred United States Dollars (US$100) per month for a maximum of six (6) months.

I. Compassionate Visit as provided in RA 8042, as amended by RA 10022. When a seafarer is hospitalized and has been confined for at least seven (7) consecutive days, he shall be entitled to a compassionate visit by one (1) family member or a requested individual. The employer shall pay for the transportation cost of the family member or requested individual to the major airport closest to the place of hospitalization of the seafarer. It is, however, the responsibility of the family member or requested individual to meet all visa and travel document requirements;

J. The seafarer or his successor in interest acknowledges that payment for injury, illness, incapacity, disability or death and other benefits of the seafarer under this contract and under RA 8042, as amended by RA 10022, shall cover all claims in relation with or in the course of the seafarer's employment, including but not limited to damages arising from the contract, tort, fault or negligence under the laws of the Philippines or any other country.

SECTION 21. WAR AND WARLIKE OPERATIONS ALLOWANCE

A. The POEA shall be the sole authority to determine whether the ship is within a war risk trading area. It shall also determine the amount of premium pay to which the seafarer shall be entitled to when sailing in that war-risk trading area.

B. The seafarer when sailing within a war-risk trading area shall be entitled to such premium pay as the POEA may determine through appropriate periodic issuances.

C. If at the time of the signing of the contract, an area is declared a war or war-risk trading area and the seafarer binds himself in writing to sail into that area, the agreement shall be properly appended to the Contract for verification and approval by the Philippine Overseas Employment Administration (POEA). The seafarer shall comply with the agreement or shall bear his cost of repatriation when he opts not to sail into a war or war-risk trading area.

D. If a war or warlike operations should arise during the term of this Contract in any country within the ship's trading area, the seafarer may sail with the ship within and out of the trading area if required by the Master.

SECTION 22. TERMINATION DUE TO SHIPWRECK AND SHIP'S FOUNDERING

Where the ship is wrecked necessitating the termination of employment before the date indicated in the contract, the seafarer shall be entitled to earned wages, medical examination at employer's expense to determine his fitness to work, repatriation at employer's cost and one month basic wage as termination pay.

In case of termination of employment of the seafarer before the expiration of the term of his contract due to shipwreck, actual or constructive total loss or foundering of the ship, the seafarer shall be entitled to earned wages, medical examination at employer's expense to determine his fitness to work, repatriation at employer's cost and one month basic wage as termination pay.

SECTION 23. TERMINATION DUE TO SALE OF SHIP, LAY-UP OR DISCONTINUANCE OF VOYAGE

Where the ship is sold, laid up, or the voyage is discontinued necessitating the termination of employment before the date indicated in the Contract, the seafarer shall be entitled to earned wages, repatriation at employer's cost and one (1) month basic wage as termination pay, unless arrangements have been made for the seafarer to join another ship belonging to the same principal to complete his contract in which case the seafarer shall be entitled to basic wages until the date of joining the other ship.

SECTION 24. TERMINATION DUE TO UNSEAWORTHINESS

A. If the ship is declared unseaworthy by a classification society, port state or flag state, the seafarer shall not be forced to sail with the ship.

B. If the ship's unseaworthiness necessitates the termination of employment before the date indicated in the Contract, the seafarer shall be entitled to earned wages, repatriation at cost to the employer and termination pay equivalent to one (1) month basic wage.

SECTION 25. TERMINATION DUE TO REGULATION ¼, CONTROL PROCEDURES OF THE 1978 STCW CONVENTION, AS AMENDED

If the seafarer is terminated and/or repatriated as a result of port state control procedures/actions in compliance with Regulation ¼ of the 1978 STCW Convention, as amended, his termination shall be considered valid. However, he shall be entitled to repatriation and earned wages and benefits only.

SECTION 26. CHANGE OF PRINCIPAL

A. Where there is a change of Principal of the ship necessitating the pre-termination of employment of the seafarer; the seafarer should be entitled to earned wages and repatriation at employer's expense. He shall also be entitled to one (1) month basic pay as termination pay.

B. In case arrangements have been made for the seafarer to directly join another ship of the same Principal to complete his contract, he shall only be entitled to basic wage from the date of his disembarkation from his former ship until the date of his joining the new ship.

SECTION 27. LOSS OF OR DAMAGE TO CREW'S EFFECTS BY MARINE PERIL

A. The seafarer shall be reimbursed by the employer the full amount of loss or damage to his personal effects but in no case shall the amount exceed the Philippine currency equivalent to the amount of Two Thousand US dollars (US$2,000) if his personal effects are lost or damaged as a result of the wreck or loss or stranding or abandonment of the ship or as a result of fire, flooding, collision or piracy.

B. In case of partial loss, the amount shall be determined by mutual agreement of both parties but in no case to exceed the Philippine currency equivalent to the amount of Two Thousand US dollars (US$2,000)

C. Reimbursement for loss or damage to the seafarer's personal effects shall not apply if such loss or damage is due to (a) the seafarer's own fault, (b) larceny or theft or (c) robbery.

D. Payment of any reimbursement shall be computed at the rate of exchange prevailing at the time of payment.

SECTION 28. GENERAL SAFETY

A. The seafarer shall observe and follow any regulation or restriction that the master may impose concerning safety, drug and alcohol and environmental protection.

B. The seafarer shall make use of all appropriate safety equipment provided him and must ensure that he is suitably dressed from the safety point of view for the job at hand.

SECTION 29. DISPUTE SETTLEMENT PROCEDURES

In cases of claims and disputes arising from this employment, the parties covered by a collective bargaining agreement shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators. If the parties are not covered by a collective bargaining agreement, the parties may at their option submit the claim or dispute to either the original and exclusive jurisdiction of the National Labor Relations Commission (NLRC), pursuant to Republic Act (RA) 8042 otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended, or to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators. If there is no provision as to the voluntary arbitrators to be appointed by the parties, the same shall be appointed from the accredited voluntary arbitrators of the National Conciliation and Mediation Board of the Department of Labor and Employment.

The Philippine Overseas Employment Administration (POEA) shall exercise original and exclusive jurisdiction to hear and decide disciplinary action on cases, which are administrative in character, involving or arising out of violations of recruitment laws, rules and regulations involving employers, principals, contracting partners and Filipino seafarers.

SECTION 30. PRESCRIPTION OF ACTION

All claims arising from this contract shall be made within three (3) years from the date the cause of action arises, otherwise the same shall be barred.

SECTION 31. APPLICABLE LAW

Any unresolved dispute, claim or grievance arising out of or in connection with this contract including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants to which the Philippines is a signatory.

SECTION 32. SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED.

HEAD

Traumatic head injuries that result to:

1. Aperture unfilled with bone not over three (3) inches without brain injury _____ Gr. 9
2. Unfilled with bone over three (3) inches without brain injury _____ Gr. 3
3. Severe paralysis of both upper or lower extremities or one upper and one lower extremity Gr. 1
4. Moderate paralysis of two (2) extremities producing moderate difficulty in movements with self-care activities _____ Gr. 10
5. Slight paralysis affecting one extremity producing slight difficulty with self-care activities _ Gr. 10
6. Severe mental disorder or Severe Complex Cerebral function disturbance or post-traumatic psychoneurosis which require regular aid and attendance as to render worker permanently unable to perform any work _____ Gr. 1
7. Moderate mental disorder or moderate brain functional disturbance which limits worker to the activities of daily living with some directed care or attendance _____ Gr. 6
8. Slight mental disorder or disturbance that requires little attendance or aid and which interferes to a slight degree with the working capacity of the claimant _____ Gr. 10
9. Incurable imbecility _____ Gr. 1

FACE

1. Severe disfigurement of the face or head as to make the worker so repulsive as to greatly handicap him in securing or retaining _____ Gr. 2
2. Moderate facial disfigurement involving partial ablation of the nose with big scars on face or head _____ Gr. 5
3. Partial ablation of the nose or partial avulsion of the scalp _____ Gr. 9
4. Complete loss of the power of mastication and speech function _____ Gr. 1
5. Moderate constriction of the jaw resulting in moderate degree of difficulty in chewing and moderate loss of the power or the expression of speech _____ Gr. 6
6. Slight disorder of mastication and speech function due to traumatic injuries to jaw or cheek bone _____ Gr. 12

EYES

1. Blindness or total and permanent loss of vision of both eyes _____ Gr. 1
2. Total blindness of one (1) eye and fifty percent (50%) loss of vision of the other eye _____ Gr. 5
3. Loss of one eye or total blindness of one eye _____ Gr. 7
4. Fifty percent (50%) loss of vision of one eye _____ Gr. 10
5. Lagopthalmos, one eye _____ Gr. 12
6. Ectropion, one eye _____ Gr. 12
7. Ephiphora, one eye _____ Gr. 12
8. Ptosis, one eye _____ Gr. 12

Note: (Smeller's Chart – used to grade for near and distant vision).

NOSE AND MOUTH

1. Considerable stricture of the nose (both sides) hindering breathing _____ Gr. 11
2. Loss of the sense of hearing in one ear _____ Gr. 11
3. Injuries to the tongue (partial amputation or adhesion) or palate-causing defective speech Gr. 10
4. Loss of the three (3) teeth restored by prosthesis _____ Gr. 14

EARS

1. For the complete loss of the sense of hearing on both ears _____ Gr. 3
2. Loss of two (2) external ears _____ Gr. 8
3. Complete loss of the sense of hearing in one ear _____ Gr. 11
4. Loss of one external ear _____ Gr. 12
5. Loss of one half (1/2) of an external ear _____ Gr. 14

NECK

1. Such injury to the throat as necessitates the wearing of a tracheal tube _____ Gr. 6
2. Loss of speech due to injury to the vocal cord _____ Gr. 9
3. Total stiffness of neck due to fracture or dislocation of the cervical pines _____ Gr. 8
4. Moderate stiffness or two thirds (2/3) loss of motion of the neck _____ Gr. 10
5. Slight stiffness of the neck or one third (1/3) loss of motion _____ Gr. 12

CHEST-TRUNK-SPINE

1. Fracture of four (4) or more ribs resulting to severe limitation of chest _____ Gr. 6
2. Fracture of four (4) or more ribs with intercostal neuralgia resulting in moderate limitation of chest expansion _____ Gr. 9
3. Slight limitation of chest expansion due to simple rib functional without myositis or intercostal neuralgia _____ Gr. 12
4. Fracture of the dorsal or lumber spines resulting severe or total rigidity of the trunk or total loss of lifting power of heavy objects _____ Gr. 6
5. Moderate rigidity or two thirds (2/3) loss of motion or lifting power of the trunk _____ Gr. 8
6. Slight rigidity or one third (1/3) loss of motion or lifting power of the trunk _____ Gr. 11
7. Injury to the spinal cord as to make walking impossible without the aid of a pair of crutches _____ Gr. 4
8. Injury to the spinal cord as to make walking impossible even with the aid of a pair of crutches _____ Gr. 1
9. Injury to the spinal cord resulting to incontinence of urine and feces _____ Gr. 1

ABDOMEN

1. Loss of the spleen _____ Gr. 8
2. Loss of one kidney _____ Gr. 7
3. Severe residuals of impairment of intra-abdominal organs which requires regular aid and attendance that will unable worker to seek any gainful employment _____ Gr. 1
4. Moderate residuals of disorder of the intra-abdominal organs secondary to trauma resulting to impairment of nutrition, moderate tenderness, nausea, vomiting, constipation or diarrhea _____ Gr. 7
5. Slight residuals or disorder of the intra-abdominal organs resulting in impairment of nutrition, slight tenderness and/or constipation or diarrhea _____ Gr. 12
6. Inguinal hernia secondary to trauma or strain _____ Gr. 12

PELVIS

1. Fracture of the pelvic rings as to totally incapacitate worker to work _____ Gr. 1
2. Fracture of the pelvic ring resulting to deformity and lameness _____ Gr. 6

REPUBLIC OF THE MARSHALL ISLANDS
MARITIME ADMINISTRATOR

Office of the Maritime Administrator

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5 February 2016

Ms. Corinne Vargha
Director of the International Labour Standard Department
International Labour Office
4 route des Morillons
CH-1211 Genève 22
SWITZERLAND

Ms. Vargha,

I have the honor to inform you that the Republic of the Marshall Islands (RMI) Maritime Administrator, on behalf of the RMI Permanent Secretary of the Ministry of Foreign Affairs, wishes to submit the out of cycle report directly requested (Direct Request 2014) by the Committee of Experts on the Applications of Conventions and Recommendations (CEACR) with respect to MLC, 2006.

Please accept, Madam, the assurances of my highest consideration.

Captain Thomas F. Heinan
Deputy Commissioner of Maritime Affairs
Republic of the Marshall Islands

cc: The Permanent Secretary, Ministry of Foreign Affairs, Republic of the Marshall Islands

Republic of the Marshall Islands (RMI)
Response to Comments made by the International Labour Organization (ILO)
Committee of Experts on the Application of Conventions and Recommendations on MLC, 2006

Submitted 5 February 2016

1. The Committee requests the Government to consider amending the DMLC Part I to better implement paragraph 10 of Regulation 5.1.3 giving due consideration to Guideline B5.1.3, so to ensure not only that it provides a reference to the relevant national legal provisions embodying the relevant provisions of the Convention but that it is also provides, to the extent necessary, concise information on the main content of the national requirements. It also suggests that the Government instruct its inspectors to review DMLC Part IIs to ensure that they provide more information on the ways in which the national requirements are to be implemented between inspections.

   The RMI Maritime Administrator (the "Administrator") has no intention of amending its DMLC Part I, particularly since it was not created in a vacuum. Prior to the official publication of the document, the Administrator submitted its draft DMLC Part I and all supporting materials for review to the ILO, specifically to the Director of the Department of Labour Standards, Ms. Cleopatra Doumbia-Henry. Ms. Henry provided suggestions for improvement and these are reflected in the current version of the DMLC Part 1. Additionally, the DMLC Part I has been carefully designed to reference all relevant national requirements in order to direct the reader to the full text of the requirements in context. It would appear that only the Committee of Experts has an issue with the RMI DMLC Part I as it has been successfully used without confusion by RMI vessel operators and Administrator inspectors since 2010, when the RMI initiated its program of voluntary certification in advance of the Convention's entry into force.

   Insofar as "instructing inspectors to review DMLC Part IIs to ensure that they provide more information on the way in which the national requirements are to be implemented between inspections," the Administrator is unclear about the Committee's intent here. Our inspectors are well-versed on what is required of them during and between inspections. In addition, this type of instruction is not something that would be reflected in either a DMLC Part I or Part II. Moreover, the onus for identifying measures for "ongoing compliance" is placed upon the shipowner by Standard A5.1.3.10.

2. The Committee therefore requests that the Government clarify whether any substantial equivalencies have been adopted.

   The "Administrator's Determinations" articulated in Marine Notice 2-011-33 pertain to derogations, exemptions or other flexible applications of the Convention requiring tripartite consultations under Maritime Labour Convention, 2006 (MLC, 2006) Article VII.

   The Administrator's usage of the term "substantially compliant" with MLC, 2006 refers to the fact that, in meeting the requirements of the RMI Maritime Act (MI-107), RMI Maritime Regulations (MI-108) and the Mobile Offshore Unit Standards (MI-293), these units substantially comply with the MLC, 2006 requirements because of the way in which the

Convention provisions are woven into and found throughout the RMI laws and regulations. For example, MI-293 §3.3.1 provides:

> §3.1.1 Minimum Safe Manning Certificate (MSMC)
>
> .1 Each unit shall be issued a MSMC by the Administrator to ensure that the unit's proposed complement contains the number and grades/capacities of personnel to fulfill the tasks, duties, and responsibilities required for the safe operation of the unit, for protection of the marine environment, and for dealing with emergency situations. The intent is to ensure the Master, officers, and other crew members are not required to work more hours than is safe in relation to the performance of their duties and the safety of the unit and that there is compliance with the requirements for rest hours in accordance with RMI law and regulations.
>
> .2 In all instances, sufficient personnel shall be on board to cover all watchkeeping requirements of the unit. There shall be sufficient qualified persons on board to deal with peak workload conditions; for instance DP, mooring or unmooring, anchor handling, receiving stores or materials, or performing industrial operations. For MOUs on location, the minimum number of required personnel may be subject to increase in order to comply with local coastal State requirements.
>
> .3 A Master, who holds or carries an Offshore Installation Manager (OIM) endorsement, may fulfill both the Master and OIM positions, as required on the MSMC.

MI-108, §7.51 then established the limits on hours of rest. Therefore, units, even though considered installations and not subject to MLC, 2006 when on location, do in fact have to meet similar, if not the same requirements as a ship.

Insofar as inspections, the Administrator is neither suggesting nor has it implemented any type of substantial equivalency under MLC, 2006 with respect to Title 5. Units are required to undergo flag State inspections to verify that the requirements of RMI laws and regulations have been met. Units are not, however, required to be certified under MLC, 2006 because they are considered installations.

While most units spend the majority of their time on location in the waters of a coastal State, there are occasions when they need to get underway for purposes of relocation or drydocking. Notwithstanding, it is not practical to turn on and off the requirements of a convention. For example, because a unit is now in navigational mode and considered a "ship" for a brief period of time, it is unrealistic to expect the unit to suddenly comply with the certification requirements of Title 5.

The RMI has developed a program of voluntary compliance with the MLC, 2006 for offshore units; with some operators utilizing the program so far. It is for these units that comply fully with the MLC, 2006 requirements and undergo certification that the Administrator reserves

the right under Article VI to deem regulations or measures substantially equivalent to provisions in Part A of the Code.

The Administrator has adopted a number of substantial equivalences related to the requirements in Part A of the Code in Titles 1-4 with respect to ships (rather than offshore units). Any such substantial equivalencies are indicated on individual DMLC Part Is and not on the *pro forma* document.

3. The committee requests that the Government clarify the relationship between seafarers' employment agreements and the articles of agreement under the Maritime Regulations and provide information regarding the minimum notice period for termination of the employment agreements for ships' masters. The Committee also requests that the Government provide information with respect to any substantial equivalencies it has adopted regarding collective agreements.

A seafarer's employment agreement includes both a contract of employment and Articles of Agreement (See MI-108 §1.03). A seafarer's employment agreement is a contract between the seafarer and the ship owner/operator whereas the Articles of Agreement are an agreement between the Master of a vessel and members of the crew and officers. The seafarer's employment agreement must contain all elements required by MI-108 §7.45.1. The Articles of Agreement are required by MI-108 §7.46.1. While there is some overlap on issues addressed in the seafarer's employment agreement, the Articles of Agreement also cover conduct aboard the vessel. See also Marine Notice 7-046-1. The minimum notice period for the early termination of an employment agreement for ships' Masters may not be shorter than seven (7) days. See MI-108 §7.45.

Under MI-108 §7.45.1.b, the Administrator, at its sole discretion, may allow a conflicting or deviating provision of a seafarer's collective bargaining agreement to satisfy the requirements of the RMI Maritime Act or Maritime Regulations, provided it is not inconsistent with or a lesser standard than the RMI Maritime Act or Regulations. It is under this provision, that the Administrator has deemed the following collective bargaining agreements for employment acceptable for use onboard RMI flag vessels:

- Philippine collective bargaining agreements or contracts based on the Philippine Overseas Employment Administration Contract of Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers on-Board Ocean-Going Ships and Standard Cadet Training Agreement on Ships Engaged in International Voyage; and

- Greek collective bargaining agreements

4. The Committee requests the Government to provide information on the application of paragraph 13 of Standard A2.3, and to clarify who is responsible for keeping the records of seafarers daily hours of rest or work on board ship, in accordance with paragraph 12 of Standard A 2.3.

Please see paragraphs 1.3 and 1.4 of Marine Notice 7-051-2 (Minimum Hours of Rest) for the application of paragraph 13 of Standard A2.3. In accordance with paragraph 4.1 of that

THE TRUST COMPANY OF THE MARSHALL ISLANDS, INC.

REGISTERED AGENT

Trust Company Complex, Ajeltake Road, Ajeltake Island
Majuro, Republic of the Marshall Islands MH96960

Telephone: +692-247-3018 Fax: +692-247-3017
Email: tcmi@ntamar.net

October 18, 2017

Via Email & Registered Mail No. RB 980 171 195 US

STAR TRIDENT XII LLC
c/o Star Bulk Shipmanagement Company (Cyprus) Limited
179 Christodoulos Hadjipavlou
Molos Area
3036 Limassol
Cyprus
Email: acct@cy-starbulk.com

Dear Sirs:

The Trust Company of the Marshall Islands, Inc. (TCMI), as Registered Agent for service of process in the Republic of the Marshall Islands for STAR TRIDENT XII LLC, pursuant to §20(2) of the Business Corporations Act, has received the attached documents, which are hereby forwarded to you. These documents were served upon us today, October 18, 2017 by the High Court bailiff.

Please acknowledge receipt of the attached by email to tcmi@ntamar.net or by signing and returning a copy of this letter.

Yours truly,

KC Samuel

Enclosures

TCM 1

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Attorney for Plaintiff,
VIRGILIO T. DIERON, JR.

IN THE HIGH COURT

OF THE

REPUBLIC OF THE MARSHALL ISLANDS

VIRGILIO T. DIERON, JR., Plaintiff, v. STAR TRIDENT XII, LLC Defendant	H.Ct. Civil No. 2017 - 245 **COMPLAINT FOR DAMAGES FOR NEGLIGENCE AND FOR UNSEAWORTHINESS**

To: Defendant STAR TRIDENT XII, LLC, non-resident domestic Marshall Islands company

You are hereby summoned and required to file with the Clerk of Courts of the High Court of the Marshall Islands a written Answer to the Complaint which is herewith served upon you no later than 21 days from the date you were served with this Summons. You are also required to serve a copy of your written Answer on Plaintiff's attorney, Tatyana E. Cerullo, by email at info@marshallislandslawyers.com and TC.LAW.LLLC@gmail.com. If you fail to file your written Answer as directed above, you may be declared in default and the Court may enter judgment against you on the Complaint without further notice to you.

DATED: October 16, 2017 By: _____

Asst Clerk of Courts

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(808)722-6816
Attorney for Plaintiff,
VIRGILIO T. DIERON, JR.

IN THE HIGH COURT

OF THE

REPUBLIC OF THE MARSHALL ISLANDS

VIRGILIO T. DIERON, JR., Plaintiff, v. STAR TRIDENT XII, LLC Defendant	H.Ct. Civil No. 2017 - 245 **COMPLAINT FOR DAMAGES FOR NEGLIGENCE AND FOR UNSEAWORTHINESS**

COMPLAINT FOR DAMAGES FOR NEGLIGENCE AND FOR UNSEAWORTHINESS

Plaintiff VIRGILIO T. DIERON, JR. ("Plaintiff") files this Complaint against Defendants STAR TRIDENT XII, LLC as "Defendant".

PARTIES

1. Plaintiff is a citizen of the full age of majority of the Republic of the Philippines, who was severely injured on board Defendant's vessel, the M/V STAR MARKELLA.

2. Defendant, STAR TRIDENT XII, LLC is the registered owner of the M/V STAR MARKELLA. Defendant registered its vessel, the M/V STAR MARKELLA, under the laws of the Republic of the Marshall Islands. The M/V STAR MARKELLA's official Marshall Islands number is 9401491.

JURISDICTION AND APPLICABLE LAWS

3. The High Court has admiralty jurisdiction over this action under 47 MIRC §116 and Article VI(3) of the Constitution of the Republic of the Marshall Islands.

4. Section 102 of the Maritime Administration Act of 1990, 47 MIRC §102, as amended, makes the laws of the Marshall Islands applicable to vessels registered under the laws of the Marshall Islands, such as Defendant's vessel, the M/V STAR MARKELLA.

5. Section 113 of Maritime Administration Act of 1990, 47 MIRC §113, as amended, adopts the non-statutory General Maritime Law of the United States of America, which is declared to be the General Maritime Law of the Marshall Islands.

6. Defendant is liable under the United States General Maritime Law as adopted by the Republic of the Marshall Islands which provides liability for both negligence and breach of the warranty of seaworthiness, which is a non-delegable duty by the owner of the vessel.

7. Plaintiff is entitled to damages as provided for by the General Maritime Law of the United States, including past and future loss of wages, past and future loss of found, past and future loss of medical expenses, past and future pain and

suffering, past and future mental anguish and past and future disfigurement and loss of enjoyment of life.

FACTS

8. Plaintiff suffered severe injuries while serving as an employee on board the M/V STAR MARKELLA while that vessel was at port at Itacostisasra, Brazil on June 19, 2016, resulting in the traumatic amputation of plaintiff's left arm, the traumatic amputation of plaintiff's left leg, the fracture of plaintiff's right wrist and the loss of vision in plaintiff's right eye, disfiguring damage to plaintiff's face and brain injury. Plaintiff also has been diagnosed with post-traumatic stress disorder.

CAUSES OF ACTION – NEGLIGENCE AND UNSEAWORTHINESS

9. On or about June 19, 2016 at approximately 23:48 hours, local time, plaintiff was struck by a mooring windlass which broke from the deck while plaintiff was tightening the brake, resulting in the severe and catastrophic damages to the plaintiff. Plaintiff is totally and permanently disabled.

10. Pursuant to the General Maritime Law of the United States of America, and the vessel's flag, the Marshall Islands, the Defendant had the absolute duty to provide the Plaintiff with a safe and seaworthy vessel.

11. However, this duty was breached and violated by the Defendant in the particulars herein described since the M/V STAR MARKELLA and its appurtenances were unseaworthy, and such unseaworthiness was a direct and proximate cause of the accident which caused the severe injuries to Plaintiff VIRGILIO T. DIERON, JR.

12. The accident which caused VIRGILIO T. DIERON, JR.'s injuries was both directly and proximately caused by the direct and vicarious acts of negligence of the Defendants STAR TRIDENT XII, LLC, including, but not limited to the employees/agents of Defendant, and the unseaworthiness of the Defendant's vessel, the M/V STAR MARKELLA, including, but not limited to:

a) failing to provide Plaintiff VIRGILIO T. DIERON, JR. with a safe place in which to work;
b) failing to provide Plaintiff VIRGILIO T. DIERON, JR. with appropriate safety equipment sufficient to avoid the dangers which led to his injuries;
c) failing to properly supervise the crew of the vessel and maintain appropriate safety standards;
d) failing to generally exercise that degree of care commensurate with the conditions existing at the time;
e) failing to properly man the vessel and provide proper training to the Plaintiff to safely undertake the task at hand;
f) failing to properly supervise Plaintiff VIRGILIO T. DIERON, JR.'s activities;
g) failing to assign the requisite number of men to the task assigned;
h) failing to provide Plaintiff VIRGILIO T. DIERON, JR. with a seaworthy vessel; and
i) any other acts of the Defendants' negligence and unseaworthiness that may be proven at trial of this matter.

13. As a result of the severe injuries, direct and vicarious acts proximately caused by the various acts of the Defendant, Plaintiff VIRGILIO T. DIERON, JR. has or will suffer the following non-exclusive particular list of damages:

a) past and future pain and suffering;
b) past and future mental anguish;
c) permanent disfigurement;
d) past and future medical, custodial and rehabilitation expenses;
e) past and future loss of income and other such employee benefits;
f) past and future loss of society, consortium and enjoyment of life;
g) loss of found;

h) maintenance and cure; and
i) punitive damages.

14. Under the General Maritime Law, Defendant owes Plaintiff, VIRGILIO T. DIERON, JR., the absolute right to any medical expenses (cure). Defendant has failed to provide full maintenance and cure and this failure justifies general, compensatory and punitive damages.

WHEREFORE, Plaintiff VIRGILIO T. DIERON, JR. prays:

1 For Judgment granting Plaintiff general and compensatory damages in the amount of USD $25,000,000 under the General Maritime Law of the United States of America as recognized by the Republic of the Marshall Islands; and

2. For Judgment for punitive damages in the amount of USD $25,000,000 and for all other general and equitable relief, including attorney's fees, costs and interest.

Tatyana Cerullo

Tatyana Cerullo
Attorney for Plaintiff
VIRGILIO T. DIERON, JR.

IN THE HIGH COURT

OF THE

REPUBLIC OF THE MARSHALL ISLANDS

VIRGILIO T. DIERON, JR., Plaintiff, vs. STAR TRIDENT XII, LLC Defendant.	H.Ct. Civil No. 2017-245 **DECLARATION OF GEORGIA MASTAGAKI**

DECLARATION OF GEORGIA MASTAGAKI

I, Georgia Mastagaki, declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief:

1. I am President and Secretary of Defendant Star Trident XII, LLC ("Trident"), the Owner of the vessel STAR MARKELLA.

2. Star Bulk Shipmanagement Company (Cyprus) Limited ("SBSC") is the manager of the STAR MARKELLA under that certain Ship Management Agreement with Star Trident XII, LLC dated October 26, 2015.

3. SBSC's obligations under the Ship Management Agreement include, among other things, selecting and engaging the Vessel's crew, including payroll arrangements, pension administration, and insurances for the crew.

4. Both SBSC and Trident are wholly owned (directly or indirectly) subsidiaries of Star Bulk Carriers Corp.

Dated: November 27, 2017.

Georgia Mastagaki

STAR TRIDENT XII LLC MARSHALL ISLANDS

Appendix A-4

IN THE HIGH COURT

OF THE

REPUBLIC OF THE MARSHALL ISLANDS

VIRGILIO T. DIERON, JR., Plaintiff, vs. STAR TRIDENT XII, LLC Defendant.	H.Ct. Civil No. 2017-245 **SUPPLEMENTAL DECLARATION OF GEORGIA MASTAGAKI**

SUPPLEMENTAL DECLARATION OF GEORGIA MASTAGAKI

I, Georgia Mastagaki, declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief:

1. I am President and Secretary of Defendant Star Trident XII, LLC ("Trident"), the Owner of the vessel STAR MARKELLA.

2. Star Bulk Shipmanagement Company (Cyprus) Limited ("SBSC") was the authorized representative of Trident in connection with signing up the crew for the STAR MARKELLA and execution of seafarers' employment contracts, including the contract with Plaintiff Virgilio T. Dieron, Jr.

3. No entity other than Trident and SBSC has participated in the operation of the STAR MARKELLA.

Dated: January 31, 2018.

Georgia Mastagaki

TITLE 30 - CIVIL REMEDIES AND SPECIAL PROCEEDINGS
CHAPTER 6 - UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION ACT, 2018

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

UNICITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION ACT, 2018

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Section **Page**

TITLE 30 - CIVIL REMEDIES AND SPECIAL PROCEEDINGS
CHAPTER 6 - UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION ACT, 2018

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

UNICITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION ACT, 2018

AN ACT to implement the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which convention was acceded to by the Republic on November 6, 2006, but as yet has not been enacted into law. The proposed law is patterned after the UNCITRAL Model Law on International Commercial Arbitration.

Commencement:	*March 15, 2018*
Source:	*P.L. 2018-0061*

DIVISION 1: GENERAL PROVISIONS

§600. Short Title.

This Act may be cited as the *UNCITRAL Model Law on International Commercial Arbitration Act 2018*.

§601. Scope of Application.

(1) This Act applies to international commercial arbitration, subject to any agreement in force between the Republic and any other State or States.

(2) The provisions of this Act, except sections 608, 609, 617H, 617I, 617J, 635 and 636, apply only if the place of arbitration is in the territory of the Republic.

(3) An arbitration is international if:

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) one of the following places is situated outside the State in which the parties have their places of business:

(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

(4) For the purposes of paragraph (3) of this section:

(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;

(b) if a party does not have a place of business, reference is to be made to his habitual residence.

(5) This Act shall not affect any other law of the Republic by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Act.

§602. Definitions and rules of interpretation.

(1) For the purposes of this Act:

(a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

(b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

(c) "court" means a body or organ of the judicial system of a State;

(d) where a provision of this Act, except section 628, leaves the parties free to determine a certain issue, such freedom includes

the right of the parties to authorize a third party, including an institution, to make that determination;

(e) where a provision of this Act refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;

(f) where a provision of this Act, other than in sections 625(a) and 632(2)(a), refers to a claim, it also applies to a counter-claim, and where it refers to a defense, it also applies to a defense to such counter-claim.

(2) In the interpretation of this Act, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

(3) Questions concerning matters governed by this Act which are not expressly settled in it are to be settled in conformity with the general principles on which this Act is based.

§603. Receipt of written communications.

(1) Unless otherwise agreed by the parties:

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this section do not apply to communications in court proceedings.

§604. Waiver of right to object.

A party who knows that any provision of this Act from which the parties may derogate or any requirement under the arbitration agreement has not

been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefore, within such period of time, shall be deemed to have waived his right to object.

§605. Extent of court intervention.

In matters governed by this Act, no court shall intervene except where so provided in this Act.

§606. Court or other authority for certain functions of arbitration assistance and supervision.

The functions referred to in sections 611(3), 611(4), 613(3), 614, 616(3) and 634(2) shall be performed by the High Court.

DIVISION 2: ARBITRATION AGREEMENT

§607. Definition of arbitration agreement.

"**Arbitration agreement**" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

§608. Arbitration agreement and substantive claim before court.

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this section has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

§609. Arbitration agreement and interim measures by court.

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

DIVISION 3: COMPOSITION OF ARBITRAL TRIBUNAL

§610. Number of arbitrators.

(1) The parties are free to determine the number of arbitrators.

(2) Failing such determination, the number of arbitrators shall be three.

§611. Appointment of arbitrators.

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this section.

(3) Failing such agreement, (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the High Court;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the High Court.

(4) Where, under an appointment procedure agreed upon by the parties,

(a) a party fails to act as required under such procedure, or

(b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(c) a third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may

request the High Court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this section to the High Court shall be subject to no appeal. The High Court, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

§612. Grounds for challenge.

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

§613. Challenge procedure.

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this section.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in section 612(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party

agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this section is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the High Court to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

§614. Failure or impossibility to act.

(1) If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the High Court to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this section or section 613(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this section or section 612(2).

§615. Appointment of substitute arbitrator.

Where the mandate of an arbitrator terminates under section 613 or 614 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

DIVISION 4: JURISDICTION OF ARBITRAL TRIBUNAL

§616. Competence of arbitral tribunal to rule on its jurisdiction.

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration

agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this section either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the High Court to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

DIVISION 5: INTERIM MEASURES AND PRELIMINARY ORDER

§617. Power of arbitral tribunal to order interim measures.

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.

(2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:

(a) Maintain or restore the status quo pending determination of the dispute;

(b) Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;

(c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or

(d) Preserve evidence that may be relevant and material to the resolution of the dispute.

§617A. Conditions for granting interim measures.

(1) The party requesting an interim measure under section 617(2)(a), (b) and (c) shall satisfy the arbitral tribunal that:

(a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

(2) With regard to a request for an interim measure under section 617(2)(d), the requirements in paragraphs (1)(a) and (b) of this section shall apply only to the extent the arbitral tribunal considers appropriate.

§617B. Applications for preliminary orders and conditions for granting preliminary orders.

(1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

(2) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.

(3) The conditions defined under section 617A apply to any preliminary order, provided that the harm to be assessed under section 617A(1)(a), is the harm likely to result from the order being granted or not.

§617C. Specific regime for preliminary orders.

(1) Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.

(2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.

(3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.

(4) A preliminary order shall expire after twenty days from the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.

(5) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court. Such a preliminary order does not constitute an award.

§617D. Modification, suspension, termination.

The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

§617E. Provision of security.

(1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

(2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order

unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

§617F. Disclosure.

(1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.

(2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case. Thereafter, paragraph (1) of this section shall apply.

§617G. Costs and damages.

The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

§617H. Recognition and enforcement.

(1) An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued, subject to the provisions of section 617I.

(2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification of that interim measure.

(3) The court of the State where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

§617I. Grounds for refusing recognition or enforcement.

(1) Recognition or enforcement of an interim measure may be refused only:

(a) At the request of the party against whom it is invoked if the court is satisfied that:

(i) Such refusal is warranted on the grounds set forth in section 636(1)(a)(i), (ii), (iii) or (iv); or

(ii) The arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or

(iii) The interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under the law of which that interim measure was granted; or

(b) If the court finds that:

(i) The interim measure is incompatible with the powers conferred upon the court unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or

(ii) Any of the grounds set forth in section 636(1)(b)(i) or (ii), apply to the recognition and enforcement of the interim measure.

(2) Any determination made by the court on any ground in paragraph (1) of this section shall be effective only for the purposes of the application to recognize and enforce the interim measure. The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

§617J. Court-ordered interim measures.

A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the

territory of the Republic, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

DIVISION 6: CONDUCT OF ARBITRAL PROCEEDINGS

§618. Equal treatment of parties.

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

§619. Determination of rules of procedure.

(1) Subject to the provisions of this Act, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Act, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

§620. Place of arbitration.

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this section, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

§621. Commencement of arbitral proceedings.

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

§622. Language.

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

§623. Statements of claim and defense.

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defense in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

§624. Hearings and written proceedings.

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

§625. Default of a party.

Unless otherwise agreed by the parties, if, without showing sufficient cause,
(a) the claimant fails to communicate his statement of claim in accordance with section 623(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defense in accordance with section 623(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

§626. Expert appointed by arbitral tribunal.

(1) Unless otherwise agreed by the parties, the arbitral tribunal

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

§627. Court assistance in taking evidence.

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of the Republic assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

DIVISION 7: MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

§628. Rules applicable to substance of dispute.

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

§629. Decision-making by panel of arbitrators.

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

§630. Settlement.

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of section 631 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

§631. Form and contents of award.

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under section 630.

(3) The award shall state its date and the place of arbitration as determined in accordance with section 620(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this section shall be delivered to each party.

§632. Termination of proceedings.

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this section.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings;

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of sections 633 and 634(4).

§633. Correction and interpretation of award; additional award.

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

(a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award. If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this section on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this section.

(5) The provisions of section 631 shall apply to a correction or interpretation of the award or to an additional award.

DIVISION 8: RECOURSE AGAINST AWARD

§634. Application for setting aside as exclusive recourse against arbitral award.

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this section.

(2) An arbitral award may be set aside by the High Court only if:

(a) the party making the application furnishes proof that:

(i) a party to the arbitration agreement referred to in section 607 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the Republic; or

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Act; or

(b) the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the Republic; or

(ii) the award is in conflict with the public policy of the Republic.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under section 633, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

DIVISION 9: RECOGNITION AND ENFORCEMENT OF AWARDS

§635. Recognition and enforcement.

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this section and section 636.

(2) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof. If the award is not made in an official language of the Republic, the court may request the party to supply a translation thereof into such language.

§636. Grounds for refusing recognition or enforcement.

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in section was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication

thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the Republic; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of the Republic.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this section, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

DIVISION 10: RESIDUAL APPLICATION, SHORT TITLE, AND EFFECTIVE DATE

§637. Residual application.

The Arbitration Act 1980 applies to actions and proceedings brought under this Act to the extent that the *Arbitration Act 1980* is not in conflict or not inconsistent with this Act or the Convention as ratified by the Marshall Islands.

§638. Effective Date.

This Act shall take effect on the date of certification in accordance with Article IV, Section 21 of the Constitution.

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Appendix B-2

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (1) *(e)*, the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order

to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation

shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

(a) Signatures and ratifications in accordance with article VIII;

(b) Accessions in accordance with article IX;

(c) Declarations and notifications under articles I, X and XI;

(d) The date upon which this Convention enters into force in accordance with article XII;

(e) Denunciations and notifications in accordance with article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

CHAPTER 8.

MERCHANT SEAFARERS

ARRANGEMENT OF SECTIONS

An act to govern generally, the rights duties responsibilities and treatment of merchant seafarers **(Rev2003) [The legislation in this Chapter 8 was previously codified as Part X of 34 MIRC 3].**

Commencement:	13 September 1990
Source:	P.L. 1990-92
	P.L. 2000-8
	P.L. 2001-27

PART I - GENERAL

§801. Short title.

This Chapter may be cited as the Merchant Seafarers Act. **[Short title supplied by Reviser during the recodification of the original Act.]**

§802. Application.

(1) The rights and obligations of every person employed on any vessel registered under this Title, and any person employing such person shall, with respect to terms and conditions of employment and other matters relating to employment and the internal order of such vessel, be governed by this Chapter.

(2) The provisions of this Chapter shall not apply to:

(a) persons employed solely in ports in repairing, cleaning, stevedoring and loading or unloading the vessels;

(b) persons employed on private yachts; and

(c) pilots. **[P.L. 1990-92, §150; P.L. 2001-27, § 802.]**

§803. Definitions.

For the purpose of this Chapter, the following expressions have the meaning hereby assigned to them:

(a) "Master" means any person having command of a vessel;

(b) "seafarer(s)" means any or all members of the crew and officers other than the Master and pilots, employed or engaged in any capacity on board any vessel;

(c) "crew" means collectively the persons, other than officers and the Master, serving in any capacity on board a vessel;

(d) "shipowner" includes the charterer of any vessel where he mans, victuals and navigates such vessel at his own expense or by his own procurement;

(e) "vessel" means any vessel registered under this Title;

(f) "fishing vessel" means a decked vessel used for catching fish, whales, seals, walrus and other living creatures at sea;

(g) "processing vessel" means a vessel used exclusively for processing fish and other living resources of the sea;

(h) "foreign trade" means trade between foreign countries or between the Republic and foreign countries;

(i) "domestic commerce" means any vessel exclusively engaged in coastwise trade or transportation between atolls, islands and/or ports within the waters of the Republic;

(j) "overriding operational conditions", in the context of hours of rest, means essential shipboard work which cannot be delayed for safety reasons and which could not reasonably have

been anticipated at the commencement of a voyage; and

(k) "accommodations" means sleeping rooms; mess rooms; sanitary, hospital, recreation, store room and catering accommodations provided for the use of seafarers and the Master but does not include any accommodation which is also used by or provided for the use of passengers. **[P.L. 1990-92, §151; P.L. 2001-27, § 803. Additional definitions for clarification.]**

§804. Full complement required.

A vessel of the Republic shall not be navigated unless it has in its service and on board such complement of officers and crew as is necessary for safe navigation. The Maritime Administrator may, from time to time, make such Rules and Regulations as are deemed by him necessary and appropriate to ensure compliance with this requirement. **[P.L. 1990-92, §152.]**

§805. Officers' licenses.

Except when prevented by *force majeure,* all officers of vessels of the Republic subject to compliance with the International Convention on Standards of Training, Certification and Watchkeeping, 1978, as amended and revised from time to time, shall obtain licenses to fill their relative positions from the Maritime Administrator authorized to issue licenses. **[P.L. 1990-92, §153; P.L. 2001-27, §805.]**

§806. Penalty for misuse of licenses or certificates.

Any person who shall receive or shall have in his possession any Republic license, certificate or document issued to officers or crew by the Maritime Administrator, or any certificate or document issued pursuant to Chapter 9 of this Title, to which he is not lawfully entitled, or any false license, certificate or document, with intent to use the same unlawfully; or who without lawful authority shall alter or change any genuine license, certificate or document; or who shall in any manner transfer or arrange for the transfer of any such license, certificate or document; or who shall aid or abet the perpetration of any of the foregoing acts shall, for each offense, be liable to a fine of not more than ten thousand dollars (US$10,000), or imprisonment for not more than one year, or both, and forfeit the right to continued possession of or any future seafarer certification and documentation for service aboard vessels of the Republic. **[P.L. 1990-92, § 154; P.L. 2001-27, §806.]**

§§807-809. ***Reserved.***

PART II - RIGHTS AND DUTIES OF THE MASTER

§810. Termination of employment.

Any contractual provision to the contrary notwithstanding, the shipowner, with or without good cause, may at any time terminate the employment of and dismiss the Master. **[P.L. 1990-92, § 155.]**

§811. Duties of the Master.

The Master shall, among others, have the following duties:

(a) to enter into Shipping Articles with seafarers as hereinafter provided;

(b) to maintain discipline on board the vessel and to take all such steps as are necessary and appropriate in connection therewith;

(c) to assume responsibility for the receipt of cargo by the vessel, stowage of cargo

on board the vessel insofar as such stowage affects the safety or navigability of the vessel, and for the discharge of cargo from the vessel;

(d) to assume full responsibility for the safety of the members of the crew and passengers, if any, and to take all necessary and appropriate steps in connection therewith;

(e) to assume full responsibility for the navigation of the vessel at all times;

(f) to assume full responsibility for the vessel's funds and the disbursement thereof;

(g) to see that the vessel's log books are properly and accurately kept;

(h) to keep in his custody all of the vessel's documents;

(i) to make all reports required by laws of the Republic or Regulations or by the regulations of any ports at which the vessel may call; and

(j) to render assistance in the saving of life and property at sea. **[P.L. 1990-92, §156; P.L. 2001-27, § 811.]**

§812. Special powers of Masters.

When a vessel is at sea, the Master is authorized to:

(a) marry passengers or other persons aboard;

(b) issue birth certificates for children born at sea; and

(c) bury persons who have died on board the vessel while at sea. **[P.L. 1990-92, § 157.]**

§813. Certain seafarer's rights provided for Master.

Except as otherwise provided, the Master of a vessel of the Republic shall enjoy the same rights and shall have the same liens upon the vessel in respect of wages, maintenance and cure and repatriation as are provided for seafarers. **[P.L. 1990-92, §158.]**

§814. Master's wrongful death.

The personal representative of the Master of a vessel of the Republic shall enjoy the same rights and shall have the same liens upon the vessel in case of the Master's wrongful death as are provided in respect of seafarers. **[P.L. 1990-92, §159.]**

§§ 815-819. ***Reserved.***

PART III - RIGHTS AND DUTIES OF SEAFARERS

§820. Shipping Articles required.

Before the Master of any vessel of the Republic engaged in foreign trade shall sail from any port, there shall be in force Shipping Articles (sometimes referred to as Articles) with every seafarer on board his vessel, except with persons who are apprenticed to, or servants of, himself or the vessel's owner. The Shipping Articles shall be written or printed and shall be subscribed by every seafarer shipping on the vessel and shall state the period of engagement or voyage or voyages and the term or terms for which each seafarer shall be shipped, and the rate of pay for each, and such other items as may be required by Regulation. **[P.L. 1990-92, §160; P.L. 2001-27, § 820.]**

§821. Penalty for alteration of Shipping Articles.

If any person fraudulently alters or makes false entry in any Shipping Articles, and if any person aids in committing or procures to be committed any such offense, he shall, in respect of each offense, be liable for a fine not exceeding five hundred (US$500). **[P.L. 1990-92, §161.]**

§822. Penalty for shipment without Shipping Articles.

If any person shall be carried to sea as an officer or one of the crew on board any vessel making a voyage as hereinbefore specified, without entering into Shipping Articles with the Master of such vessel in the form and manner and at the place and times in such cases required, the vessel shall be held liable for such offense to a penalty of not more than two hundred dollars (US$200). But the vessel shall not be held liable for any person carried to sea, who shall have secretly stowed himself away without the knowledge of the Master, mate or of any of the officers of the vessel, or who shall have falsely personated himself to the Master or officers of the vessel, for the purpose of being carried to sea. **[P.L. 1990-92, §162.]**

§823. Duration and extension of Shipping Articles.

(1) Shipping Articles for the duration of a single voyage terminate as soon as unloading of the cargo is completed at the last port of destination, or, if the vessel carries ballast only, upon the arrival at the last port of destination.

(2) Shipping Articles for the duration of a round voyage terminate as soon as unloading of any cargo is completed at the port where the seafarers were engaged.

(3) If the voyage is extended to a port other than that port designated in the Shipping Articles as the end of the voyage, the Articles shall be extended and the wages shall be continued accordingly. If the voyage be shortened, the wages shall be paid to the date of termination of the voyage.

(4) Where Shipping Articles are not for a stated period they shall be deemed to be for a period of not less than one year and shall terminate at the expiration of the one year period, provided that at least five (5) days prior notice has been given. In the absence of such notice the agreement shall continue but shall be terminable thereafter upon at least five (5) days notice by either party. Nothing in this Subsection (4) shall apply to or preclude Shipping Articles for a stated period of time.

(5) When Shipping Articles expire while the voyage is still incomplete, they shall be extended until the vessel arrives at the port of her destination, and the wages shall be continued accordingly. **[P.L. 1990-92, §163.]**

§824. Termination of Shipping Articles.

Where the Shipping Articles have terminated because of:

(a) transfer of registry;

(b) transfer of ownership;

(c) abandonment of vessel; or

(d) loss of vessel,

the seafarer shall be entitled to compensation equal to fifteen (15) days base wages, or the base wages until the expiration of the period for which he was engaged, whichever shall be least; provided however that the seafarer is not employed as a seafarer during such period and provided

further that during such period the seafarer has not refused substantially equivalent seagoing employment. **[P.L. 1990-92, §164.]**

§825. Required documents for seafarers.

(1) The Maritime Administrator shall by Regulation require identification books, sea service records, medical fitness certificates, certificates of proficiency or competence, or other official certification and documentation to be obtained and carried on board vessels of the Republic subject to compliance with the requirements of the International Convention on Standards of Training, Certification and Watchkeeping, 1978, as amended and revised from time to time.

(2) If any seafarer forges or fraudulently alters or procures the forgery or fraudulent alteration of any such official document he shall forfeit to his employer all wages above the amount payable to an ordinary seafarer for the period during which he was employed in reliance upon such forged or altered document and shall be subject to the penalties provided for in Section 806 of this Chapter. **[P.L. 1990-92, §165; P.L. 2001-27, §825.]**

§826. Minimum age at sea.

(1) Notwithstanding any other provision of this Chapter, persons under the age of fifteen (15) years shall not be employed or work on vessels of the Republic registered under this Title, except on vessels upon which only members of the same family are employed, school-ships or training ships.

(2) The Master shall keep a register of all persons under the age of fifteen (15) years employed on board his vessel, as required by Regulation.

(3) Provided, that such persons may occasionally take part in the activities on board such vessels during school holidays, subject to the conditions that the activities in which they are engaged:

(a) are not harmful to their health or normal development;

(b) are not such as to prejudice their attendance at school; and

(c) are not intended for commercial profit.

(4) Persons under the age of eighteen (18) years shall not be employed or work on coal-burning vessels as trimmers or stokers. **[P.L. 1990-92, §166.]**

§827. Payment of wages.

(1) Wages shall commence on the day specified and agreed to in the Shipping Articles or at the time of presence on board the vessel for the purpose of commencing work, whichever first occurs, and shall terminate on the day of discharge or termination of the Articles.

(2) In the absence of any agreement to the contrary the shipowner or the Master of the vessel shall pay to every seafarer his wages within two (2) days after the termination of the Articles, or at the time when the seafarer is discharged, whichever is first.

(3) A seafarer is entitled to receive in local currency, on demand, from the Master one-half of his wages actually earned and payable at every intermediate port where the vessel shall load or deliver cargo before the voyage is ended, but not more than once in any ten (10) day period. In case of wrongful failure to pay a seafarer wages on demand, the seafarer becomes entitled to a payment of full wages earned.

(4) Every Master shall deliver to the seafarer, before paying off, a full and true account of his wages and all deductions to be made therefrom on any account whatsoever, and in default shall, for each offense, be liable to a penalty of not more than twenty-five dollars (US$25).

(5) In lieu of subsections (1) through (4) above, the shipowner may implement a fixed salary plan which establishes a practical, modern salary system that will ensure a regular monthly income to the seafarer whilst on active service and during leave periods. For the purpose of the penalty provision in the preceding Section 827(4), it shall be deemed that no default has occurred provided that such arrangements are agreed between the Master and the seafarer and are reflected as an addendum to the Articles of Agreement between the Master and seafarers. **[P.L. 1990-92, §167; P.L. 2001-27, §827. Provision to accommodate modern payroll systems.]**

§828. Wages for unjustifiable discharge.

Any seafarer who has signed Shipping Articles and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge and without consent, shall be entitled to receive in addition to his earned wages a sum equal in amount to one month's wages as compensation. **[P.L. 1990-92, §168.]**

§829. Stowaway entitled to wages, if there is an agreement.

A stowaway signing the vessel's Articles is entitled to wages, but not to maintenance and cure as herein provided. The Master shall discharge him at the first convenient port of call. Nothing in this Section shall require a stowaway to be signed on Shipping Articles. **[P.L. 1990-92, §169.]**

§830. Grounds for discharge.

The Master may discharge a seafarer for justifiable cause, including any of the following grounds:

(a) unjustified failure to report on board at such times and dates as may be specified by the Master;

(b) incompetence to perform duties for which the seafarer has represented himself as qualified;

(c) theft, embezzlement or willful destruction of any part of the vessel, its cargo or stores;

(d) serious insubordination or willful disobedience or willful refusal to perform assigned duties;

(e) mutiny or desertion;

(f) habitual intoxication, quarreling or fighting;

(g) possession of dangerous weapons, narcotics or contraband articles;

(h) intentional concealment from the shipowner or Master at or prior to engagement under the Shipping Articles of a condition which resulted in sickness or injury;

(i) assistance to stowaways; and

(j) willful violation of the laws of the Republic or applicable local criminal laws. **[P.L. 1990-92, §170.]**

§831. Advances and allotment of wages.

(1) It shall be unlawful to pay any seafarer wages in advance of the time when they are

actually earned, or to pay such advance wages or make any order or note or other evidence of the indebtedness therefor to any other person, or to pay to any person for the shipment of any seafarer when payment is deducted or to be deducted from a seafarer's wages. Any person violating any of the provisions of this Section shall be punished with a fine of not more than fifty dollars (US$50).

(2) It shall be lawful for the Master and any seafarer to agree that an allotment of a portion of the seafarer's earnings may be payable to a spouse, children, grandchildren, parents, grandparents, brothers or sisters, or to a bank account in the name of the seafarer.

(3) The provisions of this Section shall not apply to, or render unlawful:

(a) deductions from the wages of a seafarer pursuant to the laws of the country at whose port the seafarer signed on or of which he is a national;

(b) requirements of a labor organization of which the seafarer is a member if such deductions represent dues or other obligations to a labor organization of which the seafarer is a member and are remitted to such organization; or

(c) the written consent of the seafarer, if such deductions are paid into a fund established for the exclusive benefit to seafarers and their families and dependents or for the purpose of providing medical or hospital care, pensions on retirement or death of the seafarer, life insurance, unemployment benefits or compensation for illness or injuries. **[P.L. 1990-92, §171.]**

§832. Wages and clothing exempt from attachment.

The wages and clothing of a seafarer shall not be subject to attachment or arrestment from any Court; and any assignment or sale of wages or of salvage made prior to the accruing thereof shall not bind the seafarer, except for allotments. **[P.L. 1990-92, §172.]**

§833. Vacation allowance and holidays.

(1) Every Master and seafarer shall be entitled, after 12 months of continuous service on a vessel or for the same employer, to receive an annual vacation allowance equivalent to:

(a) not less than 12 days base wages, in the case of Masters and officers; and

(b) not less than 8 days base wages, in the case of other members of the crew.

(2) Every seafarer shall be entitled to a minimum of five (5) paid holidays per year. **[P.L. 1990-92, §173. Modification made to Subsection (1)(a) and (b).]**

§834. Agreements as to loss of lien or right to wages.

No seafarer shall by any agreement forfeit his lien upon the ship or be deprived of any remedy for recovery of his wages to which he would otherwise have been entitled; and every stipulation by which any seafarer consents to abandon his right to his wages in the case of the loss of the ship or to abandon any right which he may have obtained in the nature of salvage, shall be wholly void and inoperative. **[P.L. 1990-92, §174.]**

§835. Wages not dependent on freight earned.

No right to wages on the part of any seafarer shall be dependent on the earning of freight by the vessel. Nothing in this Section, however, shall be construed to prevent any profit-sharing plan by which the officers and crew are to be compensated with profits in addition to their established wages. **[P.L. 1990-92, §175; P.L. 2001-27, §835.]**

§836. Wages, maintenance and cure for sick and injured seafarer.

(1) In the event of disabling sickness or injury, while a seafarer is on board a vessel under signed Shipping Articles, or off the vessel pursuant to an actual mission assigned to him by, or by the authority of the Master, the seafarer shall be entitled to:

(a) full wages, as long as he is sick or injured and remains on board the vessel;

(b) medical and surgical treatment and supply of proper and sufficient medicines and therapeutical appliances, until medically declared to have reached a maximum cure or to be incurable, but in no event more than thirty (30) weeks from the day of the injury or commencement of the sickness;

(c) an amount equal to board and lodging up to a maximum period of thirty (30) weeks, and one-third of his base wages during any portion of such period subsequent to his landing from the vessel but not to exceed a maximum period of sixteen (16) weeks commencing from the day of injury or commencement of the sickness; and

(d) repatriation as provided in Section 843 including, in addition, all charges for his transportation, accommodation and food during the journey and maintenance up to the time fixed for his departure.

(2) The shipowner or his representative shall take adequate measures for safeguarding property left on board by a sick, injured or deceased seafarer.

(3) The seafarer shall not be entitled to any of the foregoing benefits:

(a) if such sickness or injury resulted from his willful act, default or misconduct;

(b) if such sickness or injury developed from a condition which was intentionally concealed from the employer at or prior to his engagement under the Articles;

(c) if he refuses medical treatment for such sickness or injury or is denied such treatment because of misconduct or default; or

(d) if at the time of his engagement he refused to be medically examined.

(4) The seafarer shall have a maritime against the vessel for any wages due him under this Section. **[P.L. 1990-92, §176.]**

§837. Benefit of compensation for loss of life.

In addition to wages, maintenance and cure under Section 836 of this Chapter, and in addition to any liability for wrongful death under Section 836 of this Chapter, a seafarer on board a vessel under signed Shipping Articles or off the vessel pursuant to an actual mission assigned to him by, or by the authority of the Master, shall be entitled as provided by Regulation to the benefit of a direct compensation for loss of life, payable to his designated beneficiary or beneficiaries. It shall be the shipowner's obligation to provide such benefit free of any charge to the seafarer. **[P.L. 1990-92, §177.]**

§838. Wrongful death

Not withstanding any provision of law to the contrary, whenever the death of a seafarer, resulting from an injury, shall be caused by wrongful act, omission, neglect or default occurring on board a vessel, the personal representative of the deceased seafarer may maintain a suit for damages, for the exclusive benefit of the deceased's wife, husband, parent, child or dependent relative, against the vessel, person or corporation which would have been liable if death had not ensued. **[P.L. 1990-92, §178.]**

§839. Death on board.

In the event of a death on board a vessel, an entry shall be made into the vessel's logbook by the Master and one of his officers. He shall also report the death to the authorities at the first port of arrival and shall submit a statement signed by him to the Maritime Administrator for vessels engaged in foreign trade; or to the Minister of Transport and Communications for vessels engaged in domestic commerce pursuant to Chapter 9 of this Title. The logbook entry and statement shall contain the first and last name, sex, nationality, year and place of birth of the deceased person, the cause of death, place of death (latitude, longitude), date and time of death and the names of next-of-kin, if known, and name of the vessel. If the deceased person is a seafarer, the entry and statement shall contain, in addition, his rank or rating, place and address of his residence or domicile and the number of his license with date of issuance. The statement submitted by the Master shall be countersigned by any attending physician aboard, otherwise by one of the ship's officers. A list of personal effects and amounts of money left on board the vessel shall be attached. **[P.L. 1990-92, §179; P.L. 2001-27, § 839.]**

§840. Issuance of death certificate.

Upon the request of anyone having a legal interest, and where a death has been reported in accordance with the requirements of the preceding Section, the Maritime Administrator or the Minister of Transport and Communications, as the case may be, shall issue a death certificate containing the particulars set forth in the preceding Section. Where the deceased was a citizen or a resident of the Republic said certificate shall be recorded in the Republic as required by law. **[P.L. 1990-92, §180; P.L. 2001-27, §840.]**

§841. Burial expenses.

In the case of death of a seafarer occurring on board the vessel or in case of his death occurring on shore, if at the time he was entitled to medical care and maintenance at the shipowner's expense, the shipowner shall be liable to defray reasonable local funeral expenses and make payment of the base wages of the deceased seafarer up to the end of the month in which the death occurs. **[P.L. 1990-92, §181.]**

§842. Working hours, rest hours and overtime.

In relation to members of the crew on a vessel engaged in foreign trade:

(a) the normal hours of work in port and at sea shall be eight per day;

(b) work performed over and above the eight-hour period shall be considered as overtime and shall be compensated for at overtime rates;

(c) a sufficient number of men shall be employed to promote safety of life at sea and to avoid excessive overtime;

(d) whenever the Master of any vessel shall fail to comply with this Section, he shall be liable to a penalty not exceeding one hundred dollars (US$100). **[P.L. 1990-92, § 182; P.L. 2001-27, § 842.]**

§843. Repatriation.

(1) Nothing contained herein shall be deemed to abridge or diminish a seafarer's right to repatriation under generally accepted international rules and agreements, including those administered by the International Labor Organization (ILO).

(2) Any seafarer who is put ashore at a port other than the one where he signed the Shipping Articles and who is put ashore for reasons for which he is not responsible, shall be returned as a crew member or otherwise, but without expense to him:

(a) at the shipowner's option, to the port at which he was engaged or where the voyage commenced or to a port of the seafarer's own country; or

(b) to another port, agreed upon between the seafarer and the shipowner or the Master.

However, in the event that the seafarer's contract period of service has not expired, the shipowner shall have the right to transfer him to another of the shipowner's vessels to serve thereon for the balance of the contract period of service.

(3) Any seafarer whose period of employment is terminated by reason of completion of the voyage for which he was engaged or by expiration of his contract period of employment shall be entitled to repatriation, at no expense to him, to the port at which he was engaged or to such other port as may be agreed upon. **[P.L. 1990-92, § 183; P.L. 2001-27, § 843. Provision to assure repatriation rights of crew.]**

§844. Loss of right of repatriation.

A seafarer shall forfeit his right of repatriation in case of:

(a) desertion;

(b) entering into a new agreement with the same owner after his discharge;

(c) entering into a new agreement with another owner within one week after his discharge;

(d) criminal offenses under Sections 847, 849, and 850 of this Chapter; or

(e) unjustifiable repudiation of the Shipping Articles.

(f) failure of the seafarer to request repatriation within one week from the time that he is in condition to be repatriated. **[P.L. 1990-92, §184; P.L. 2001-27, § 844.]**

§845. Offenses against the internal order of the vessel.

(1) Any seafarer on a vessel of the Republic who commits any of the following offenses may, in addition to any criminal penalties provided herein, be punished by the Master as follows:

(a) for neglecting or refusing without reasonable cause to join his vessel or to proceed to sea in his vessel, or for absence without leave at any time within 24 hours of the vessel's sailing from any port, either at the commencement or during the progress of the voyage, or for absence at any time, without leave and without sufficient reason from his vessel and from his duty, not amounting to desertion, by forfeiture from his wages of not more than two (2) days wages or the amount sufficient to defray any expenses which shall have been properly incurred in hiring a substitute;

(b) for quitting the vessel without leave before she is placed in security, by forfeiture from his wages of not more than one month's wages;

(c) for intoxication or willful disobedience to any lawful command by being placed in restraint until such intoxication or disobedience shall cease, and by forfeiture from his wages of not more than four (4) days wages;

(d) for continued intoxication or willful disobedience to any lawful command or continued willful neglect of duty being placed in restraint until such intoxication,

disobedience or neglect shall cease, and by forfeiture, for every 24 hours' continuance of such intoxication, disobedience or neglect, of a sum of not more than twelve (12) days wages;

(e) for willfully damaging the vessel or embezzling or willfully damaging any part of the stores or cargo, whether on board the vessel, in boats or ashore, by forfeiture out of his wages of a sum equal in amount to the loss thereby sustained;

(f) for any act of smuggling, whereby loss or damage is occasioned to the Master or shipowner, by payment to such Master or shipowner of such a sum as is sufficient to reimburse the Master or shipowner for such loss or damage, and the whole or any part of his wages may be retained in satisfaction or on account of such liability;

(g) for assaulting any Master, pilot or officer, by forfeiture from his wages of not more than three (3) months pay; or

(h) for mutiny or desertion, by forfeiture of all accrued wages.

(2) All earnings forfeited as a result of penalties imposed by the Master pursuant to this Section shall be applied to reimburse the Master or shipowner for any loss or damage resulting from the act for which the forfeiture was imposed; and any balance, with an accounting thereof, shall thereupon be forwarded to the Maritime Administrator. **[P.L. 1990-92, §185.]**

§846. Prohibition of corporal punishment.

Flogging and all other forms of corporal punishment are hereby prohibited on board any vessel. **[P.L. 1990-92, §186.]**

§847. Barratry; drunkenness; neglect of duty.

Whoever, being a Master, seafarer, or other person on any vessel, by willful breach of duty or by reason of drunkenness, does any act tending to the immediate loss or destruction of, or serious damage to, such vessel or her cargo, or tending immediately to endanger the life or limb of any person belonging to or on board such vessel, or by willful breach of duty or by neglect of duty or by reason of drunkenness refuses or omits to do any lawful act proper and requisite to be done by him for preserving such vessel and her cargo from immediate loss, destruction or serious damage or for preserving any person on such vessel from immediate danger to life or limb, shall be subject to imprisonment and a fine of not more than two thousand five hundred dollars (US$2,500). **[P.L. 1990-92, §187.]**

§848. Desertion.

(1) Any seafarer who deserts from his vessel with the intention of not returning to duty and who remains unlawfully in a foreign country shall be guilty of desertion and shall be liable to answer for any damages or losses suffered by the shipowner as a consequence of such desertion.

(2) The Master shall make an entry of all desertions in the logbook and file a report with the Maritime Administrator. The local authorities of the port shall be notified and requested to apprehend and deliver the deserter. **[P.L. 1990-92, §188.]**

§849. Incitement of seafarer to revolt or mutiny.

Whoever, being of the crew of a vessel of the Republic, endeavors to make a revolt or mutiny on board such vessel, or combines, conspires or confederates with any other person on board to

make such revolt or mutiny, or solicits, incites or stirs up any other of the crew to disobey or resist the lawful orders of the Master or other officers of such vessel, or to refuse or neglect his proper duty on board thereof, or betray his proper trust, or assemble with others in a tumultuous and mutinous manner, or makes a riot on board thereof, or unlawfully confines the Master or other commanding officer thereof, shall be fined not more than one thousand dollars (US$1,000) or imprisoned for not more than five (5) years, or both. **[P.L. 1990-92, §189.]**

§850. Revolt or mutiny of seafarer.

Whoever, being of the crew of a vessel of the Republic, unlawfully and with force, or by fraud or intimidation, usurps the command of such vessel from the Master or other lawful officer in command thereof, or deprives him of authority and command on board, or resists or prevents him in the free and lawful exercise thereof, or transfers such authority and command to another not lawfully entitled thereto, is guilty of a revolt and mutiny and shall be fined not more than two thousand dollars (US$2,000), or imprisoned for not more than ten (10) years or both. **[P.L. 1990-92, § 190.]**

§851. Entry of offenses in Log Book.

Upon the commission of any offense, an entry thereof shall be made in the official Log Book of the vessel of the day on which the offense was committed, and any penalty or fine imposed, and shall be signed by the Master and by the mate or one of the crew; and the offender, if still on the vessel, shall, before her next arrival at any port or, if she is at the time in port, before her departure therefrom, be furnished with a copy of such entry and have the same read over distinctly and audibly to him, and may thereupon make such a reply thereto as he thinks fit; and a statement that a copy of the entry has been so furnished or the same has been so read over, together with his reply, if any, made by the offender, shall likewise be entered and signed in the same manner. **[P.L. 1990-92, §191.]**

§852. Abandonment of seafarer.

(1) Whoever, being Master or in charge of a vessel of the Republic, maliciously and without justifiable cause forces any member of the crew of such vessel on shore in order to leave him behind in any foreign port or place, or refuses to bring to such place as is required under the Articles any member of the crew of such vessel, in condition and willing to proceed when the Master is ready to proceed, shall be fined not more than five thousand dollars (US$5,000).

(2) The abandoned seafarer shall retain his right to repatriation. **[P.L. 1990-92, §192; P.L. 2001-27, §852. Penalty provisions increased.]**

§853. Contracts for seafaring labor.

(1) The following clause shall appear, or be by force of law included, in all contracts for seafaring labor on board vessels of the Republic:

"The parties to this contract hereby stipulate that the terms and conditions laid down herein shall be subject to the applicable provisions of the Maritime Law and Regulations of the Republic of the Marshall Islands. Any dispute as to the terms and conditions of this contract shall be resolved in accordance with the Maritime Law and Regulations of the Republic of the Marshall Islands."

(2) All contracts relating to service aboard a vessel registered under this Title shall be governed in interpretation and application by the Laws of the Republic, including this Chapter and any Regulations thereunder. **[P.L. 1990-92, §193.]**

§854. Freedom of association.

Seafarers and their employers, without distinction whatsoever, shall have the right to establish, and to become members of, organizations of their choosing, always subject to jurisdiction of the Republic. **[P.L. 1990-92, §194.]**

§855. Protection of freedom of association.

It shall be unlawful for any employer, employer organization or labor organization to coerce any seafarer in the exercise of his choice whether to establish, become a member of or participate in any labor organization, provided that any provision in a labor contract entered into pursuant to Section 857 of this Chapter shall not be deemed to be violative of this Section. **[P.L. 1990-92, §195.]**

§856. Bargaining and execution of labor contract.

(1) It shall be lawful for any employer or employer organization and any labor organization representing seafarers to bargain and enter into a labor contract concerning wages and other terms and conditions of employment; provided, that no labor contract provisions may be contrary to the laws of the Republic or deprive the Republic of any jurisdiction over labor relations.

(2) A copy of any labor contract between the employer and an organization representing seafarers employed on a vessel shall be placed on board the said vessel and shall be made available to maritime or judicial authorities when requested. **[P.L. 1990-92, §196.]**

§857. Provisions authorized in labor contracts.

It shall be lawful for any employer or employer organization and any labor organization to agree to be bound by any provisions in entering into a labor contract, provided that such provisions are not prohibited by the Laws or Regulations of the Republic. **[P.L. 1990-92, §197.]**

§858. Provisions prohibited in labor contracts.

It shall be unlawful for any employer or employer organization or employee or labor organization to attempt to bargain for, or to enter into, any labor contract containing any provision which attempts to set aside the application of or is inconsistent with or is violative of the laws of the Republic, or which prescribes terms or conditions of employment less favorable to seafarers than those set forth in this Chapter, or which discriminates as to terms and conditions of employment on the basis of race, color, gender or creed; and any such prohibited provisions shall be deemed null and void. **[P.L. 1990-92, §198; P.L. 2001-27, §858.]**

§859. Protection of labor contract.

Whenever an employer or employer organization and a labor organization have entered into a labor contract providing that such labor organization shall be sole bargaining representative of seafarers pursuant to Section 857 of this Chapter, it shall be unlawful:

(a) for the employer or employer organization to bargain with or enter into a labor contract pertaining to such seafarers with any other labor organization ; or

(b) for any other labor organization to attempt to bargain with or enter into a labor contract pertaining to such seafarers with the employer or employer organization; prior to thirty (30) days before the termination of such agreement or before the expiration of three (3) years from the effective date of such agreement, whichever event shall first

occur. **[P.L. 1990-92, §199. Format was modified for consistency with the format and style of the Code.]**

§860. Strikes, picketing and like interference.

(1) It shall be unlawful for any person or labor organization to promote or to engage in any strike or picketing, or any boycott or like interference with the internal order or operation of a vessel, unless:

(a) a majority of seafarers on the vessel involved have voted by secret ballot that such action be taken; and

(b) at least thirty (30) days written notice of intention to take such action has been given to the employer or the Master; and

(c) the procedures of conciliation, mediation and arbitration under Section 861 of this Chapter, have been followed to conclusion.

(2) Nothing contained in Subsection (1) hereof shall be deemed to permit any strike or picketing, or any boycott or like interference with the internal order or operation of a vessel contrary to the provisions in any existing labor contract or any contract for seafaring labor. **[P.L. 1990-92, § 200.]**

§861. Conciliation, mediation and arbitration of labor disputes, differences or grievances.

(1) It is declared to be the policy of the Republic to place upon employers and employer organizations and employees and labor organizations the primary responsibility for avoidance of any interruption in foreign or domestic maritime commerce.

(2) In the event that an agreed settlement between the parties to any dispute, difference or grievance is not effected, the following conciliation, mediation and arbitration procedures, as may be further implemented by Regulation, shall apply:

(a) if the dispute is not resolved, crew members shall present their case to the employer through the Master or his appointee, or, if the matter is to the prejudice of the Master, then directly to the employer. Crew members may be represented in the matter by a labor organization which is a party to a labor contract entered into pursuant to Section 856 of this Chapter, and which covers the crew members. Efforts shall be made to conciliate the matter and to find an agreeable solution thereto;

(b) if a conciliation acceptable to both parties cannot be made at this stage, either party may call upon the Maritime Administrator, or an agent appointed by the Maritime Administrator, to act as mediator to endeavor to find a solution to the matter satisfactory to the parties;

(c) in the event that the dispute cannot be resolved by conciliation or mediation, either party may submit the matter to an independent arbitrator or arbitrators for a final determination, as provided by Regulation. If the parties cannot agree upon a choice of arbitrator or arbitrators, the matter shall be finally determined by the Maritime Administrator or his appointed agent, acting as sole arbitrator.

(3) Any arbitration award may be enforced, if necessary, by any Court of competent jurisdiction. **[P.L. 1990-92, § 201; P.L. 2001-27, §861.]**

§862. Time-bar.

(1) Claims arising out of the Shipping Articles are subject to a one year's prescription.

(2) The following rights of action are subject to a two (2) year prescription;

(a) the right of action for death of a seafarer caused by wrongful act, neglect or default on the high seas;

(b) claims of the shipowner against the Master for acts committed during the performance of his duties; and

(c) all other tort claims.

(3) All other claims are subject to a three (3) year prescription.

(4) The period of prescription of the claims laid down in the preceding Subsections runs from the time when the right of action accrues. **[P.L. 1990-92, §202. Subsection (1) was altered for style purposes.]**

§863. Accommodations.

(1) The Maritime Administrator may make Rules and Regulations with respect to the accommodations to be provided in vessels of the Republic taking into consideration the different types of vessels, dates of construction and seafarers of different stature and rank.

(2) If the provisions of any Rule or Regulation made under this section are contravened in the case of a ship, the owner or Master shall be subject to a penalty of not more than one thousand dollars (US$1,000). **[P.L. 2001-27, §863.]**

§864. Maritime Administrator to make rules and regulations.

The Maritime Administrator may make Rules and Regulations not contrary to the provisions of this Chapter relating to conditions and terms of employment, wages, vacations and leave, hours of work and rest, repatriation, minimum age, compensation for sickness, injury or death of masters, seafarers, and seagoing laborers employed on vessels engaged in foreign trade and documented under the laws of the Republic. **[P.L. 1990-92. § 203; P.L. 2001-27, § 864.]**

§865. Uniformity of application and construction.

In this Title unless the context otherwise requires:

(a) words in the singular number include the plural, and in the plural include the singular.

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender. **[P.L. 2000-8, effective March 22, 2000. P.L. 2001-27, §865.]**

PAGES 1577-1578 ARE OMITTED, NEXT PAGE IS 1579.

CHAPTER 7
SEAFARERS

7.38 Manning Requirements for Vessels Registered under the Maritime Act.

All vessels that fly the RMI flag shall have a sufficient number of seafarers on board to ensure that vessels are operated safely, efficiently and with due regard to security. Every vessel shall be manned by a crew that is adequate, in terms of size and qualifications, to ensure the safety and security of the vessel and its personnel, under all operating conditions, in accordance with minimum safe manning documentation issued by the Maritime Administrator, or an official who is authorized to act for and on behalf of the Maritime Administrator. When determining, approving or revising manning levels, the need to avoid or minimize excessive hours of work shall be taken into account to ensure sufficient rest and to limit fatigue. In keeping with these principles in applicable international instruments, the following shall be maintained:

.1 Required Minimum Number of Deck Officers.

a. No vessel registered under the provisions of the Maritime Act shall be navigated unless it has on board and in its service a duly certified Master holding an RMI Certificate of Competence.

b. On a vessel engaged on an international voyage but in a non-navigational status, there may be on board and in its service, in lieu of the prescribed duly certified Master, an Officer in Charge holding an RMI Certificate of Competence.

c. The number of Deck and Navigation Watch Officers required, and the grades in which they shall be duly certificated, shall be prescribed for each vessel by the Maritime Administrator, or an official who is authorized to act for and on behalf of the Maritime Administrator.

d. This section is not applicable to private yachts, except private yachts limited charter and yachts engaged in trade.

.2 Required Minimum Number of Engineers.

a. No vessel engaged in commerce propelled by machinery of 750 kilowatts (1000 horsepower) or greater shall be navigated unless it has on board and in its service a duly certificated Chief Engineer.

b. The numbers of assistant engineers and engine room watch officers required, and the grades in which they shall be duly certificated, shall be prescribed for each vessel by the Maritime Administrator.

c. Refer to 7.38.1b for non-navigational status requirements.

d. This section is not applicable to private yachts, except private yachts limited charter and yachts engaged in trade.

.3 Required Minimum Number and Ratings of Crew.

The Maritime Administrator, or an official who is authorized to act for and on behalf of the Maritime Administrator, may prescribe for any vessel a required minimum number of crew for its safe navigation and operation, and may require a specified number of crew members to be rated and/or certificated as he or she deems necessary. This section is not applicable to private yachts, except private yachts limited charter and yachts engaged in trade.

.4 Required Minimum Number of Certified Persons Proficient in Survival Craft and Crowd Control.

Every passenger ship shall have on board for each lifeboat, or other survival craft carried, an assigned number of certified survival craft crewmembers and an assigned number of persons designated to assist passengers in an emergency.

.5 Responsibility of Shipowners/Operators.

Shipowners and Operators responsible for employing seafarers for service on board vessels shall ensure that:

a. seafarers, on being newly employed in service aboard the vessel, are provided with reasonable opportunity to become familiar with their specific duties and with all ship arrangements, installations, shipboard equipment, operating procedures and ship characteristics that are relevant to their routine or emergency duties before assignment to those duties;

b. a knowledgeable officer or crew member shall be designated who will be responsible for ensuring that an opportunity is provided to each newly employed seafarer to receive essential information in a language the seafarer understands;

c. verification of ship's officers shall be reported for each vessel as directed by, and on forms obtained from, the Maritime Administrator or an official who is authorized to act for and on behalf of the Maritime Administrator; and

d. seafarers who are engaged as ship's cooks are 18 years of age or older, trained, qualified and documented as competent for the position.

.6 Minimum Safe Manning Certificate.

The Maritime Administrator, or an official who is authorized to act for and on behalf of the Maritime Administrator, shall issue to each vessel a Minimum Safe Manning Certificate setting forth the required *minimum* numbers of officers, crew and other persons, in specified grades, ratings and functions, which have been prescribed for the safe navigation and operation of that vessel and the protection of the crew and passengers on board. This Certificate shall be readily available for inspection with a copy conspicuously posted. This section is not applicable to private yachts, except private yachts limited charter and yachts engaged in trade.

7.39 Temporary Authorization as Officer.

Where it has been established by the Maritime Administrator, or an official who is authorized to act for and on behalf of the Maritime Administrator, that an emergency situation exists which reasonably precludes the engagement of the required complement of duly certificated Navigation and Engine Watch

Officers as prescribed in paragraphs 7.38.1 and 7.38.2 above, the Maritime Administrator may authorize temporary service of qualified persons in Watch Officer capacities on board a vessel, other than a passenger ship, as follows:

.1 Required Sea Service.

A duly certificated Navigation or Engine Watch Officer, who has completed at least six (6) months of service in the capacity for which he or she is certificated and while holding such certificate, may be authorized to serve temporarily in the capacity next highest to that for which he or she is presently certificated, but not as Master or Chief Engineer, for a period not to exceed six (6) months, provided he or she is in all other respects eligible for examination for a certificate in such higher capacity, has submitted an application for such examination, and undertakes to complete that examination prior to the expiration of the six-month period.

.2 Temporary Period of Service.

A person not duly certificated may be authorized to serve temporarily in capacities not higher than Navigation or Engine Watch Officer, for a period not to exceed six (6) months, provided he or she is in all other respects eligible for examination for a certificate in one (1) of said capacities, has submitted an application for such examination and undertakes to complete said examination prior to the expiration of the six-month period; and further provided he or she has first successfully completed a preliminary examination as to his or her qualifications and competence as shall be required by the Maritime Administrator or an official who is authorized to act for and on behalf of the Maritime Administrator to whom application is made.

.3 Temporary Permit.

An authorization granted pursuant to this Regulation shall be in the form of a Temporary Permit issued by the Maritime Administrator, or an official who is authorized to act for and on behalf of the Maritime Administrator, which shall be valid only for service on board the specific vessel named therein.

.4 Number of Temporary Permits Allowed.

Not more than one (1) Mate and one (1) Assistant Engineer shall be authorized to serve on board the same vessel at the same time under a Temporary Permit.

.5 Prohibited Permits.

Temporary permits shall not be granted in the capacities of Master, Chief Engineer, Radio Officer, GMDSS General Operator or Ship Security Officer.

.6 Revocation or Suspension.

Temporary Permits may be revoked or suspended on the grounds set forth in Regulation 1.06.4, or at any time upon notice by the Maritime Administrator, or an official who is authorized to act for and on behalf of the Maritime Administrator, when the Maritime Administrator declares that the emergency situation referred to above no longer exists.

Maritime Act Sections 103, 109, 115, 802, 804, 805 and 806.

7.40 Change of Command Appointment and Log Entry.

Whenever there occurs a change of Master of a vessel, the shipowner or his or her authorized agent shall designate and appoint the new Master in writing and the new Master shall enter the following statement in the vessel's log book:

> "I, (name of new Master), a citizen of (country of citizenship), holder of the RMI Certificate of Competence No. (number of certificate) in the grade of Master, assumed command of the vessel on (date on which officially took command) at the port of (port where change effected)."

Maritime Act Sections 810 and 811.

7.41 Master's Duties and Responsibilities.

.1 Master's Authority.

The Master of any type vessel registered in the RMI shall have overriding authority and discretion to take whatever action he or she deems to be in the best interest, safety and security of passengers, officers, crew, cargo, ship and marine environment.

.2 Required Log Books for Vessels of 100 Gross Tons and Over.

a. Bridge Navigation Log and Engine Room Log.

Every self-propelled vessel of 100 gross tons or over shall keep a Bridge Navigation and an Engine Room log book which shall be maintained in bound volumes aboard ship. All entries made in such log books shall be signed by the Master or officer designated by the Master who shall make such entries, and all such entries shall be made as soon as possible after the occurrences to which they relate.

b. Bell Log.

In addition to keeping of Bridge Navigation and Engine Room log books, every vessel shall have a bridge and an engine room record wherein shall be contained the times and nature of all orders passed between the navigation bridge and the engine room.

c. Cargo Log Book.

Bulk carriers shall maintain a cargo log book as prescribed by SOLAS VI/7.8. The requirement may be fulfilled by having it incorporated in relevant shipboard SMS checklists as long as the checklist developed contains all the information required under the SOLAS regulation to be recorded.

d. Radio Log Book.

SOLAS IV/17 requires that a record be kept of all incidents connected with the radio communication service which appear to be of importance to safety of life at sea. Every vessel shall keep a log of radio service and GMDSS operations convenient to the radio installation during the voyage. Every radio operator shall enter in the radio log book his or her name, the dates served onboard the vessel, and an indication of the designated duties. In addition, all incidents which may occur connected with the radio service and GMDSS operations which

are of importance to the safety of life at sea shall also be recorded in the appropriate section of the radio log book, as well as the daily noon position of the ship. The Master shall inspect and sign each day's entries.

e. Medical Log.

Each vessel shall keep a medical log book wherein shall be entered every case of illness or injury happening to any member of the crew, passenger or other persons engaged in the business of the vessel; the nature thereof; the medical treatment; and the results.

f. Official Log Book and Entries.

Every Master of a vessel shall make or cause to be made in an official log book entries including, but not limited to, the following:

(1) every offense and any penalty or fine imposed;

(2) every death occurring on board and every burial at sea, with all information required by Section 839 of the Maritime Act;

(3) every marriage taking place on board, with the names, citizenship and residences of the parties;

(4) every birth occurring on board, with the sex of the infant and names of the parents;

(5) the name of every seafarer or apprentice who ceases to be a member of the crew otherwise than by death, with the place, time, manner and cause thereof;

(6) wages due any seafarer or apprentice who dies during the voyage, and the gross amount of all deductions made therefrom;

(7) a statement of any collisions, allisions, groundings, spills or other marine casualties which may have been experienced immediately after the occurrence or as soon thereafter as practicable;

(8) before departing from any port, load line and draft information;

(9) time of muster of crew at their boat and fire stations, followed by drills or training, respectively, either in port or at sea, or reason why not held;

(10) date of enclosed space entry and rescue drills, which must be held at least once every two (2) months;

(11) date of security drills and exercises, with details being recorded as specified in Regulation 7.41.8 below;

(12) the closing and opening of watertight doors and of all inspections and drills as required by SOLAS Regulations in force, as amended;

(13) drill of ship's crew in the use of the line-throwing apparatus at least once every three (3) months; but the actual firing of the apparatus shall not be required;

(14) search for stowaways and contraband, which search shall be conducted prior to the vessel's departure from each port;

(15) date and results of area(s) inspected as required under Regulation 7.41.17; and

(16) upon each change of Master, the information required under Regulation 7.40.

g. Electronic Log Data and Record Book Systems.

(1) Electronic data systems for recordation and retention of Log Data and Records may be used provided that the design of the equipment and software, including future updates, shall be such as to enable recording of information required by the SOLAS Convention and the Guidelines for the Recording of Events Related to Navigation, MARPOL, STW 78 Convention, ILO Standards and that the systems comply with the requirements set by the Maritime Administrator.

(2) Electronic log data and record systems software shall provide verifiable security from tampering and inappropriate revisions of data along with back-up arrangements for both the system (means of recording log data or record) and the log data or record itself, once recorded.

(3) For the purpose of meeting the intent of the log book requirement to be maintained in bound volumes, the Maritime Administrator shall accept a hard copy (printout) of each day's entry of Log Data, duly signed and dated by the Master or Officer designated by the Master to make such entries, and retained in binders onboard the ship for the duration prescribed in subsection h. below.

h. Log and Record Book Retention.

At the termination of each voyage, or not less frequently than semi-annually, the logs and records shall be forwarded to the shipowner and/or operator. All such logs and records shall be retained for a period of at least two (2) years from the date of receipt. In the event of a casualty occurring during a voyage covered by such log books or records, they shall be retained for so long as instructed by the Maritime Administrator.

.3 Certificates to be Given by Master.

Each exercise of a special power granted to Masters under Section 812 of the Maritime Act shall be evidenced by an appropriate certificate, referring to a log entry of the event, and shall be signed by the Master and executed upon a form to be supplied, on request and payment of fees, by the Maritime Administrator. The fee structure is contained in RMI Marine Notice 1-005-1.

Maritime Act Section 812.

.4 Manning of Survival Craft.

a. The Master shall place in charge of each lifeboat or other survival craft a deck officer (or certificated survival craft crewmember if a passenger ship) and shall also designate a second-in-command. The person so placed in charge shall have a list of the survival craft's crew, and shall assure himself or herself that those individuals placed under his or her orders are acquainted with their duties. The Master shall also assign to each life raft a member of the crew proficient in the handling, launching and operation of life rafts.

b. The Master shall assign to each motor lifeboat at least one (1) member of the crew capable of working the motor. He or she shall similarly assign to each lifeboat equipped with radio and searchlight apparatus, at least one (1) member of the crew capable of working such equipment.

.5 Muster List and Emergency Procedure.

The Master of each vessel of 500 or more gross tons shall ensure that the ship's complement can effectively coordinate their activities in an emergency situation and in performing functions vital to safety or to the prevention of pollution by allotting to each officer and member of the crew special duties to be undertaken in the event of an emergency or the need for heightened security and shall cause to be drawn up and posted a muster list showing said assignments, which list shall further indicate the particular station to which each crew member must go. The muster list shall assign such duties as the Master deems necessary for the safety and security of the vessel, its crew and cargo. The Master shall further specify and publish definite signals for calling all the crew to their boat and fire stations, and shall give full particulars of these signals to all crew and passengers.

.6 Fire and Abandon Ship Drills.

The Master of each vessel (excluding passenger ships and mobile offshore units (MOUs)) shall cause the crew to be exercised at fire (SOLAS Ch. III/19.3.4) and abandon ship (SOLAS Ch. III/19.3.3) drills at least monthly to satisfy the requirements of SOLAS Ch. III/19.3, or within 24 hours of the vessel leaving port if more than 25% of the crew have not participated in fire and abandon ship drills collectively satisfying the requirements of SOLAS Ch. III/19.3.2 on board that particular ship the previous month.

For passenger ships, the Master of each vessel shall cause the crew to be exercised at fire and abandon ship drills at least weekly to satisfy the requirements of SOLAS Ch. III/30.2. The entire crew need not be involved in every drill, but each crew member must participate in at least one (1) abandon ship drill and one (1) fire drill each month as required by SOLAS Ch. III/ 19.3.2.

Masters of MOUs, in accordance with the IMO 2009 Mobile Offshore Drilling Units Code, Ch. 14.12, shall cause the crew to be exercised at fire and abandon ship drills weekly, or within 24 hours of a personnel change if more than 25% of the crew have not participated in fire and abandon ship drills collectively satisfying the requirements of SOLAS Ch. III/19.3 on board that particular MOU the previous month.

Such drills, to the extent practicable, shall be conducted as if an actual emergency existed, and as a minimum, consist of the following points:

a. Weather permitting, lowering of at least one (1) lifeboat to the embarkation point after any necessary preparation for launching shall be performed to ascertain that the gear is in good working order. The motor and hand-propelling gear of each lifeboat, where fitted, shall be operated sufficiently to ascertain that it is in proper operating condition.

b. All fire pumps shall be started and sufficient outlets opened to determine that the system is in proper working order.

c. All watertight doors in use while the vessel is underway shall be operated.

d. All emergency lighting for mustering and abandonment and communications systems shall be tested at every abandon ship drill.

e. Persons assigned to the use of rescue and safety equipment shall demonstrate their proficiency in the use of such equipment.

f. In accordance with SOLAS Ch. III/19.2.2 and 19.2.3, as amended, passengers scheduled to be on board for more than 24 hours shall be mustered at their stations within 24 hours after their embarkation and instructed in the use of life preservers and the action to take in an emergency. The crew shall be instructed in crowd control duties.

g. In addition to the requirements of SOLAS Ch. III/19.4, at the discretion of the Master, the crew may receive additional on-board training sessions or presentations related to lifesaving and firefighting measures, as appropriate.

h. Each lifeboat shall be launched and maneuvered in the water by its assigned crew, at least once in every three (3) months, during an abandon ship drill, and the crew shall be exercised in the use of oars and other means of propulsion where fitted.

i. In the case of a lifeboat arranged for free-fall launching from a height of 20 meters or less, at least once every three (3) months during an abandon ship drill the crew shall board the lifeboat, properly secure themselves in their seats and commence launch procedures up to but not including the actual release of the lifeboat (i.e., the release hook shall not be released). The lifeboat shall then either be free-fall launched with only the required operating crew on board, or lowered into the water by means of the secondary means of launching with or without the operating crew on board. In both cases the lifeboat shall thereafter be maneuvered in the water by the operating crew. At intervals of not more than six (6) months, the lifeboat shall either be launched by free-fall with only the operating crew on board, or simulated launching shall be carried out.

j. With regard to free-fall lifeboats being launched from heights greater than 20 meters, launching by falls is acceptable, provided that a simulated free-fall launch is conducted at least every six (6) months.

k. For vessels fitted with fast rescue boats, training exercises are to be carried out weekly, whereas actual launch and recovery drills are to be carried out at least every three (3) months.

l. Mustering is required for newly embarked passengers who will stay more than 24 hours aboard passenger ships. Mustering at the beginning or during the voyage shall be conducted prior to or immediately upon departure from any port at which an embarkation takes place. Whenever new passengers embark, a passenger safety briefing, which may be included in the muster, shall be given prior to or immediately upon departure.

.7 Enclosed Space Entry and Rescue Drills.

Crew members with enclosed space entry or rescue responsibilities shall participate in an enclosed space entry and rescue drill to be held on board the ship at least once every two (2) months in accordance with SOLAS Ch. III/19.3.3 and 19.3.6.

.8 Security Drills and Exercises.

a. The Master of every Vessel subject to the ISPS Code shall ensure that shipboard personnel are proficient in all assigned security duties at all security levels through the conduct of drills and exercises and shall identify and address security-related deficiencies encountered during such drills and exercises. Drills shall test individual elements of the

SSP such as those listed in the ISPS Code, Part B, Section 8.9. Exercises shall test the connectivity, communications and cooperation among all parties that may be involved in a security incident. When practicable, the Company and ship should participate in the drills or exercises being conducted by a port facility whereat they may be located.

b. The Master shall ensure:

(1) the effective implementation of the provisions of the SSP;

(2) that drills are conducted at least once every three (3) months;

(3) in addition, in cases where more than 25% of the ship's personnel have changed, at any one time, with personnel that have not previously participated in any drill on that ship within the last three (3) months, that a drill is conducted within one (1) week of the change;

(4) that exercises are carried out at least once each calendar year with no more than 18 months between exercised; and

(5) that records indicating type of drill or exercises, SSP element(s) covered, and who participated shall be kept by the Ship Security Officer (SSO) and maintained on board for a period of three (3) years. They may be kept in any format but must be protected from unauthorized disclosure. The records shall be in a form to be readily available to port State control officers if so requested.

.9 Person Overboard Drills.

All ships shall conduct a drill or training for person overboard procedures at intervals of not more than three (3) months.

.10 Recovery of Persons from the Water.

All ships shall have ship-specific plans and procedures for recovery of persons from the water, taking into account the guidelines developed by the IMO. The plans and procedures shall identify the equipment intended to be used for recovery purposes and measures to be taken to minimize the risk to shipboard personnel involved in recovery operations.

.11 Line-Throwing Apparatus.

On vessels fitted with a line-throwing apparatus, the Master shall cause the crew to be exercised in the use of such apparatus at least once in every three (3) months, except that the actual firing of the apparatus shall not be required. The service line shall not be used for drill purposes. In lieu thereof, any flexible line of proper size and length, suitably flaked or laid out, may be used.

.12 Onboard Familiarization and Training.

a. All persons employed or engaged aboard vessels documented under the Maritime Act shall receive familiarization training after being assigned to a vessel and prior to assuming routine duties on board. It shall be the responsibility of the shipowner/operator to accomplish this training in accordance with the guidelines provided in STCW, SOLAS Chapters IX, XI-1 and XI-2 and as established by the Maritime Administrator. Every crew member with assigned emergency or security duties shall be familiar with these duties before the voyage begins.

b. A training manual complying with the requirements of SOLAS Ch. III - 35 shall be provided on board. Onboard training in the use of the vessel's life-saving appliances, including survival craft equipment, the use of the vessel's fire extinguishing appliances and security duties shall be given as soon as possible but not later than two (2) weeks after a crew member joins the vessel.

.13 Accident Prevention.

The Master of each vessel shall appoint from amongst the crew a suitable person or a committee responsible for accident prevention, and such person or committee shall in addition to any other duties assigned by the Master hold safety meetings, conduct routine inspections and ensure that any conditions aboard the vessel not in substantial compliance with the applicable provisions of the accident prevention code or codes and guidelines currently approved or provided by the Maritime Administrator are brought to the prompt attention of the Master.

.14 Ship's Port Arrival/Departure Check List.

Every Master shall establish and review the Ship's Port Arrival/Departure Safety Check List on arrival and before departure and the vessel loading/unloading procedures for the safe navigation and operation of the ship.

Maritime Act Section 811.

.15 Nautical Publications.

The Master shall ensure that adequate and up-to-date charts, sailing directions, lists of lights, notices to mariners, tide tables and all other nautical publications necessary for the intended voyage are carried by the vessel.

.16 Security.

a. The Master shall have overriding authority and responsibility to make decisions with respect to the security of the ship, and the Company shall ensure that the Company Security Officer (CSO), Master and Ship Security Officer (SSO) are given necessary support.

b. The SSO shall be responsible for the security of the ship, including implementation and maintenance of the ship security plan and for the liaison with the CSO and the Port Facility Security Officer (PFSO) and shall, if other than the Master, be accountable to the Master.

.17 Documented Inspections.

Frequent and documented inspections available for review shall be carried out on board vessels, by or under the authority of the Master, with respect to:

a. seafarer accommodations for cleanliness, decently habitable and maintained in good state of repair;

b. sanitary facilities meeting minimum standards of health and hygiene, reasonable standards of comfort and maintained in good working order and state of repair;

c. adequate supplies of food and drinking water;

d. all spaces and equipment used for the storage and handling of food and drinking water meeting minimum standards of health and hygiene; and

e. galley and other equipment for the preparation and service of meals meeting minimum standards of health and hygiene, reasonable standards of comfort and maintained in good working order and state of repair;

.18 Emergency Preparedness.

The Master shall prepare an annual program for drills and exercises in accordance with the Company Guidelines or SMS to meet the requirements of the ISM Code, Part A-8, to ensure proper training for emergency actions in different types of situations is carried out throughout the year.

7.42 Medical Care of Officers and Crew.

.1 Responsibility of Shipowner/Operator.

Shipowners and Operators shall ensure that health protection and medical care (including essential dental care) are provided in accordance with the ILO Standards for seafarers working on board vessels taking into consideration cultural and religious backgrounds are maintained which:

a. ensures the application to seafarers of any general provisions on occupational health protection and medical care relevant to their duties, as well as of special provisions specific to work on board vessels;

b. gives health protection and medical care as comparable as possible to that which is generally available to workers ashore, including prompt access to the necessary medicines, medical equipment and facilities for diagnosis and treatment and to medical information and expertise;

c. gives seafarers the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable;

d. ensures that, to the extent consistent with the Maritime Act and practice, medical care and health protection services while a seafarer is on board a vessel or landed in a foreign port are provided free of charge to seafarers;

e. are not limited to treatment of sick or injured seafarers but include measures of a preventive nature; and

f. provide for the use of a standard medical report form, the contents of which shall be kept confidential and shall only be used to facilitate the treatment of seafarers.

.2 Hospital.

Vessels carrying 15 or more seafarers and engaged in a voyage of more than three (3) days' duration shall provide separate hospital accommodation to be used exclusively for medical purposes and that will, in all weathers, be easy of access, provide comfortable housing for the occupants and be conducive to their receiving prompt and proper attention. Vessels engaged in coastal trade and capable of reaching qualified medical care and medical facilities within eight (8)

hours and vessels or offshore installations capable of providing medical evacuation by helicopter may be exempted from this requirement.

.3 Medical Doctor.

Vessels carrying 100 or more persons and ordinarily engaged on international voyages of more than three (3) days duration shall carry a qualified medical doctor who is responsible for providing medical care. Certain alternative equivalent arrangements may be considered for offshore installations.

.4 Standard of Competence for Medical First Aid/Medical Care.

Vessels which do not carry a medical doctor shall be required to have one (1) seafarer on board who is in charge of medical care and administering medicine as part of their regular duties and one (1) seafarer on board competent to provide medical first aid. A single individual may serve in both capacities, provided he/she is certified for the two (2) competencies. Seafarers designated to provide medical first aid or designated to take charge of medical care shall meet the standard of competence respectively specified in the applicable sections of STCW, and as established by the Maritime Administrator, and shall undergo, at approximately five-year intervals, refresher courses to enable them to maintain and increase their knowledge and skills and to keep up-to-date with new developments.

.5 Medicine Chest.

Each vessel shall carry and maintain an adequate medicine chest bearing in mind the number of persons aboard and the nature and duration of the voyage. In the determination of the contents of the chest, consideration shall be given to the minimum acceptable recommendations of the International Labor Organization, the World Health Organization or as established by the Maritime Administrator for the vessel type. The medicine chest and its contents, as well as the medical equipment and medical guide carried on board, shall be properly maintained and inspected at regular intervals, not exceeding 12 months, by responsible persons who shall insure that the labeling, expiry dates and conditions of storage of all medicines and directions for their use are checked and all equipment functioning as required.

.6 Medical Guide.

All required medicine chests must contain the most recent medical guide sufficiently detailed to assist persons other than a ship's doctor in administering to the ordinary needs of sick or injured persons on board and without supplementary medical advice by radio or radiotelephone.

a. The most recent editions of the International Medical Guide for Ships and the Medical First Aid Guide for Use in Accidents Involving Dangerous Goods shall be carried on board vessels.

b. Where a cargo which is classified dangerous has not been included in the most recent edition of the Medical First Aid Guide for Use in Accidents Involving Dangerous Goods, the necessary information on the nature of the substances, the risks involved, the necessary personal protective devices, the relevant medical procedures and specific antidotes shall be made available to the seafarers. Such specific antidotes and personal protective devices shall be on board whenever dangerous goods are carried. This information shall be integrated with the vessel's policies and programs on occupational safety and health.

.7 Medical Advice.

a. Vessels shall carry a complete and up-to-date list of radio stations through which medical advice can be obtained and, if equipped with a system of satellite communication, carry an up-to-date and complete list of coast stations through which medical advice can be obtained.

b. The Master, and such other officers as the Master may designate at his or her discretion, shall be instructed in the use of the ship's medical guide and the medical section of the most recent edition of the International Code of Signals so as to enable them to make full use of all available medical advice by radio or radiotelephone and in the providing of information to assist a doctor in giving such advice.

7.43 Health and Safety Protection and Accident Prevention.

.1 Each shipowner shall ensure that seafarers are provided with occupational health protection and live, work and train on board vessels in a safe and hygienic environment.

.2 Compliance with the requirements of applicable international instruments on acceptable levels of exposure to workplace hazards on board vessels and on the development and implementation of vessel occupational safety and health policies and programs shall be considered as meeting the requirements of this regulation.

.3 Watchkeeping personnel shall have no more than 0.04% blood alcohol level during watchkeeping duties, and watchkeeping personnel shall not consume alcohol within four (4) hours prior to serving as a member of a watch.

Maritime Act Section 864.

7.44 Accommodations, Recreational Facilities, Food, Water and Catering.

.1 Accommodations and Recreational Facilities.

a. Each shipowner shall ensure that ships that fly the RMI flag are provided with decent accommodations and recreational facilities for seafarers working or living on board, or both, and maintained consistent with promoting the seafarers' health and well-being in accordance with the MLC, 2006.

b. The Maritime Administrator may, as and when necessary, prescribe by Marine Notice and/or Marine Guideline standards appropriate to the provision of health and safety protection and accident prevention, in light of the specific needs, customs and habits of the crew.

.2 Food, Water and Catering.

a. There shall be maintained on board the following minimum standards:

(1) food and drinking water supplies, having regard to the number of seafarers on board, their religious requirements and cultural practices as they pertain to food, and duration and nature of the voyage, shall be suitable in respect of quantity, nutritive value, quality and variety;

(2) the organization and equipment of the catering department shall be such as to permit the provision to the seafarers of adequate, varied and nutritious meals prepared and served in hygienic conditions; and

(3) catering staff shall be properly trained or instructed and documented as competent for their positions.

(4) cooks shall be at least 18 years of age and documented as competent for their positions.

b. The Maritime Administrator may, as and if necessary, prescribe scales of provisions appropriate to the customs and habits of the crew.

c. Seafarers living on board a vessel shall be provided with food free of charge during the period of engagement.

Maritime Act Sections 103, 863 and 864.

7.45 Conditions of Employment.

.1 Seafarer Employment Agreement.

a. The conditions of employment and shipboard living arrangements on board every vessel shall be subject to examination and approval by the Maritime Administrator. Such conditions and arrangements shall be approved if they are not in conflict with the requirements of the Maritime Act and:

(1) are embodied in a clearly written and legally enforceable contract for seafaring labor; or

(2) are embodied in a clearly written and legally enforceable labor contract concluded between a shipowner or shipowners organization and a seafarers organization constituted in accordance with the substantive provisions of the applicable International Conventions; or

(3) are ordered in accordance with the Maritime Act by a court having jurisdiction over both the shipowner and seafarers concerned; or

(4) are otherwise substantially equivalent to those specified in the applicable International Conventions.

b. Where the provisions of a seafarer's collective bargaining agreement conflict with or deviate from the Maritime Act and/or these Regulations with regard to the employment of the seafarer on vessels registered in accordance with Chapters 1 through 8 of the Maritime Act, the Maritime Administrator may, at its sole discretion, determine that the conflicting or deviating provision is substantially equivalent to, and shall satisfy the requirements of, the Maritime Act or these Regulations, provided it is not inconsistent with or of a lesser standard than the Maritime Act or Regulations.

c. Seafarers' employment agreements shall be signed by both the seafarer and the shipowner/operator, or a representative of the shipowner/operator, and each shall retain an original copy of the signed agreement for the duration of its term, provided that:

(1) where this may not be possible at the time of joining a vessel, the employment agreement may be signed in the original by the shipowner/operator or its representative in its office and sent electronically to the crewing agency where the electronic copy of the agreement is received and signed in the original by the seafarer allowing the seafarer to hold an agreement with his/her own original signature when joining the vessel. Two (2) copies of the agreement signed in the original by the shipowner/operator or its representative shall then be forwarded to the vessel as soon as reasonable and, upon receipt, the seafarer shall countersign two (2) originals of the agreement and return one to the shipowner/operator or its representative; or

(2) in lieu of original shipowner/operator signatures, electronic signatures of the shipowner may be used so long as such signatures are legible and verifiable.

(3) regardless of the procedure used by the shipowner/operator to achieve compliance with the above signature requirements for employment agreements, the procedure must be properly documented.

d. Seafarers' employment agreements shall be agreed to by the seafarer under conditions which ensure that the seafarer has an opportunity to review and seek advice on the terms and conditions in the agreement and freely accepts them with a sufficient understanding of the seafarer's rights and responsibilities before signing.

e. Seafarers' employment agreements shall as a minimum contain the following particulars:

(1) the seafarer's full name, date of birth and birthplace;

(2) the name and address of the shipowner/operator, or a representative of the shipowner/operator;

(3) the place at which and date on which the seafarer's employment agreement is entered into;

(4) the capacity in which the seafarer is to be employed;

(5) the amount of the seafarer's wages or the formula for calculating such wages;

(6) the amount of paid annual leave or the formula for calculating such paid annual leave;

(7) the termination of the agreement and the conditions thereof, including:

i. if the agreement has been made for an indefinite period, the conditions which entitle either party to terminate the agreement, as well as the required period of notice, provided that such period shall not be less for the shipowner than for the seafarer;

ii. if the agreement has been made for a definite period, the date fixed for the termination of the agreement; and

iii. if the agreement has been made for a voyage, the port of destination and the time period for discharge of the seafarer after completion of the voyage;

(8) the health and social security protection benefits to be provided to the seafarer by the shipowner, including a statement as to applicable national provisions;

(9) the seafarer's entitlement to repatriation; and

(10) reference to a collective bargaining agreement, if applicable.

f. Should there be a restriction on the term of a seafarer employment agreement in an applicable collective bargaining agreement, such a restriction shall also be applicable to the seafarer employment agreement for service onboard an RMI vessel, provided the restriction is not in conflict with RMI laws or regulations. However, absent such a restriction, the seafarer's ability to extend his/her contract beyond its expiration date or 12 months, if so desired, would not be limited, subject to mutual agreement between the seafarer and the shipowner.

g. Seafarers and shipowners shall provide for minimum notice periods for the early termination of a seafarer's employment agreement. The duration of these minimum periods shall be determined after consultation with the shipowners' and seafarers' organizations concerned, but shall not be shorter than seven (7) days.

h. Any seafarer may request termination of the seafarer's employment agreement on shorter notice than is required by the employment agreement or without notice on grounds of injury, illness, compassionate or other urgent reasons. Such termination shall be executed without penalty of whatever nature to the seafarer.

i. To the extent not prohibited by the laws, regulations and practices of the RMI, seafarers' employment agreements shall be understood to incorporate any applicable collective bargaining agreement. Clear information, including any labor contract, shall be made available to the crew on board every vessel as to the conditions of employment thereon.

j. Evidence of contractual or similar arrangements shall be maintained by the shipowner/operator for seafarers who are not employees of the shipowner/operator.

.2 Recruitment and Placement Services.

The employment of seafarers by shipowners/operators through the use of recruitment and placement services based in countries or territories to which MLC, 2006, does not apply shall be prohibited unless it can be demonstrated by the shipowner/operator, as far as practicable, that such services meet the relevant requirements set forth by MLC, 2006.

Maritime Act Chapter 8, Part III.

7.46 Shipping Articles.

.1 Official Form Required.

a. Shipping Articles, sometimes referred to as Articles of Agreement, is an agreement entered into between the ship's Master and the seafarers aboard his or her ship. It shall be in the English language. The Maritime Administrator shall prescribe by Marine Notice the form and contents of the Articles of Agreement. No other form shall be used in lieu of the official form except that a foreign language version may be appended thereto or otherwise made a part thereof; provided, however, that on any vessel the initial form of Shipping Articles prescribed therein shall be required only upon expiration of the Articles currently in effect or within one (1) year from the effective date of this Regulation, whichever is later.

b. For those vessels which have instituted a different format, the language shall reference Regulation 7.46.1, the terms of which when not specifically stated in the new format are to be considered incorporated by such reference. Any such new format shall be proposed to the Maritime Administrator for review and approval prior to use.

.2 Definitions.

For the purposes of this regulation only, the following definitions shall apply:

a. Seafarers means any and all members of the crew and officers other than the Master and pilots, employed or engaged in any capacity on board any vessel, unless specified otherwise.

b. Crew means collectively those other than officers and Master, serving in any capacity on board a vessel.

c. Hotel Staff means those persons on board providing services to passengers who are not regularly assigned to perform shipboard safety and pollution prevention related duties and are not part of the ship's marine crew as defined above. Accordingly, hotel staff are not required to sign Shipping Articles; however, they may be parties to other contractual arrangements.

d. Industrial Personnel means those persons on board offshore installations or vessels engaged in the exploration, exploitation and production of energy, mineral and marine resources or maintenance and repair work who are not regularly assigned to perform shipboard safety and pollution prevention related duties and are not part of the vessel's marine crew as defined above. Accordingly, industrial personnel are not required to sign Shipping Articles; however, they may be parties to other contractual arrangements.

.3 Time of Signing-on Articles.

Every seafarer joining a vessel to commence employment on board shall sign the Shipping Articles prior to the vessel's departure from the port at which the seafarer so joined the vessel. The Master shall officiate at the signing-on of each seafarer and shall sign his or her name to the Shipping Articles in attestation of he or she having so acted. Any seafarer signing such Shipping Articles must be given an opportunity to examine and seek advice on the agreement before signing as well as such other facilities as are necessary to ensure that they have freely entered into an agreement with the Master with a sufficient understanding of their rights and responsibilities. The seafarer concerned must be provided with a copy of the terms of the Shipping Articles.

.4 Signing-Off of Articles Not a Waiver.

The signing-off of Shipping Articles by a seafarer at the time of his or her discharge from employment on board shall not constitute a waiver on his or her part of any claims he or she may have against the shipowner, the vessel or its Master at that time.

Maritime Act Chapter 8, Part III.

7.47 Required Certification.

.1 Training and Qualifications.

a. Seafarers shall not work on vessels registered under the Maritime Act unless they are trained or certified as competent or otherwise qualified to perform their duties.

b. Seafarers shall not be permitted to work on a vessel registered under the Maritime Act unless they have successfully completed basic training for personal safety on board ship.

c. Training and certification in accordance with the requirements of the regulations of STCW and as established by the Maritime Administrator shall be considered as meeting the requirements of sub-paragraphs a. and b. of this regulation.

.2 Officer's Certificate of Competence.

a. Appropriate Certification.

Shipowners and Operators responsible for employing seafarers for service on board vessels shall ensure that seafarers assigned to any vessel owned or managed by shipowner/operator hold appropriate certificates in accordance with the provisions of STCW and as established by the Maritime Administrator, or an official who is authorized to act for and on behalf of the Maritime Administrator.

b. Certificate of Competence or Temporary Permit.

Every Mate, Chief Engineer, Watch Officer and Radio Officer shall cause a copy of his or her Certificate of Competence or Temporary Permit to be provided to the ship's Master as soon as practicable after reporting on board a vessel for duty. Willful failure of any officer to comply with this provision may be grounds for the suspension or revocation of his or her Certificate of Competence or Temporary Permit.

c. Penalty for Non-possession.

The penalty provision in Section 109(4) of the Maritime Act shall also apply where a Master has allowed any function or service in any capacity required to be performed by a person holding an appropriate Certificate of Competence, to be performed by a person not holding the required certificate, a valid dispensation or having the documentary proof required by Regulations of STCW and as established by the Maritime Administrator.

Maritime Act Sections 103 and 805.

.3 Seafarer's Identification and Record Books.

a. Requirements.

Each person employed on board a vessel registered under the Maritime Act, other than those persons exempted by the Administrator in accordance with Resolution VII adopted by the 94th (Maritime) session of the International Labour Conference or National law or regulation, shall have in his or her possession an official RMI Seafarer's Identification and Record Book and/or card, as applicable, issued by an official of the Maritime Administrator, containing any certificates of special qualification issued to the holder by an official of the Maritime Administrator, and in which all service at sea shall be entered and certified by the Master. Such entries for service at sea shall not contain any statement as to the quality of work of the seafarer concerned or as to their wages.

b. Qualifications.

As a prerequisite, the applicant must demonstrate having received and successfully completed basic training in accordance with the requirements of the regulations of STCW and as established by the Maritime Administrator.

c. Validity and Renewal.

The Seafarer's Identification and Record Book shall be valid for a period of five (5) years, and shall be subject to renewal for periods of five (5) years thereafter.

d. Penalty for Non-possession.

The Master and/or owner of a vessel shall be liable to a penalty of US$250 for each person employed on board the vessel who does not possess a current and valid official Identification and Record Book. Such penalty shall be remitted if an official Identification and Record Book is obtained within 30 days of the inspection or other report which establishes the default. This penalty can only be imposed by the Maritime Administrator.

.4 Medical Certificates.

Seafarers shall not work on a vessel registered under the Maritime Act unless they are certified as medically fit to perform their duties.

a. Requirements.

Each seafarer employed on board a vessel registered under the Maritime Act shall be in possession of a physical examination certificate in the official form required by the RMI; STCW; or by another State Party to the ILO Convention Concerning the Medical Examination of Seafarers and such physical examination certificate shall be in compliance with the requirements of the MLC, 2006, attesting to the holder's medical fitness for duty. The certificate must be signed by a medical practitioner licensed in the place of examination and issued not more than two (2) years previous to the date of signing of the Articles of Agreement in force. The medical certificate shall state in particular that:

(1) the hearing and sight of the seafarer concerned, and the color vision in the case of a seafarer to be employed in capacities where fitness for the work to be performed is liable to be affected by defective color visions, are all satisfactory; and

(2) the seafarer is not suffering from any medical or psychological condition likely to be aggravated by service at sea or to render them unfit for such service or to endanger the health of other persons on board.

b. Refusal of Medical Certificate.

Any seafarer who has been refused a certificate or has had a limitation imposed on their ability to work shall be given the opportunity to have a further examination by another independent medical practitioner or by an independent medical referee.

c. Valid Time Period.

Unless a shorter period of required by reason of the specific duties to be performed by the seafarer concerned or is required under STCW:

(1) the maximum period of validity for a medical certificate shall be two (2) years unless the seafarer is under the age of 18, in which case the maximum period of validity shall be one (1) year.

(2) the maximum period of validity for a color vision certificate shall be six (6) years.

Should the period of validity of a certificate expire in the course of a voyage, the certificate shall continue in force until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period shall not exceed three (3) months.

d. Urgent Circumstances.

In urgent circumstances a person may be employed without holding a currently valid official medical certificate until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that:

(1) the period of such permission does not exceed three (3) months; and

(2) the seafarer concerned is in possession of a medical certificate which is expired for a period not greater than six (6) months.

.5 Availability of Seafarers Documents.

Shipowners and operators shall ensure that documentation and data relevant to all seafarers employed on board a vessel registered under the Maritime Act are maintained and readily accessible, and include, without being limited to, documentation and data on their experience, training, medical fitness and competence in assigned duties.

7.48 Certificates of Service.

In the absence of an official Seafarer's Identification and Record Book, the detailed sea service of each person employed on board a vessel must be certified in writing, separately for each capacity served in, and such certificate shall bear the signature of the Master and the seal or stamp of the vessel, shall not contain any statement as to the quality of work or wages, and shall be in the following form:

Certificate of Service

(a)	Name of Seafarer	(i)	Total Service (Months and Days)
(b)	Citizenship	(j)	Name of Vessel (Steam or Motor)
(c)	Rank or Rating	(k)	Official Number
(d)	Book or Certificate Number	(l)	Port of Registry
(e)	Place of Engagement	(m)	Gross Tonnage
(f)	Date of Engagement	(n)	Propulsion Power (kW)
(g)	Place of Discharge	(o)	Nature of Voyage
(h)	Date of Discharge	(p)	Remarks

I hereby certify to the best of my knowledge that all entries herein were made by me and are correct. In witness whereof, I have this date affixed my signature and the seal or stamp of the vessel.

_____ _____

Signature of Master Date

Maritime Act Sections 103 and 825.

7.49 Minimum Age.

.1 Prohibition.

In accordance with § 826 of the Maritime Act, persons under the age of 16 years shall not be employed or work on vessels of the RMI.

.2 Nighttime Work.

The employment or engagement of seafarers less than 18 years of age for work at night shall be prohibited. For the purposes of this Regulation, "night" shall be defined as the period starting at 20:00 hrs and ending at 06:00 hrs.

.3 Nighttime Work Exceptions.

An exception to strict compliance with the night work restriction may be made by the Maritime Administrator or his representatives when:

a. the effective training of the seafarers concerned, in accordance with established programs and schedules, would be impaired; or

b. the specific nature of the duty or a recognized training program requires that the seafarers covered by the exception perform duties at night and the authority determines, after consultation with the organizations of the shipowners and the seafarers concerned, that the work will not have a detrimental impact on their health or well-being.

.4 Hazardous Work.

The employment of seafarers less than 18 years of age for work which is likely to jeopardize their health or safety shall be prohibited. The types of employment or work which is considered "hazardous" shall be determined by the shipowner/operator in accordance with the relevant international standards and Marine Notice.

Maritime Act Section 826.

7.50 Benefit of Compensation for Loss of Life.

.1 Amount of Compensation.

The amount of direct compensation for loss of life for each seafarer shall aggregate no less than US$10,000 or its equivalent in foreign currency, regardless of the seafarer's nationality, rank, seniority or other circumstances.

.2 Exceptions.

The shipowner shall bear the costs of direct compensation for loss of life upon the death of a seafarer from any cause, except:

a. if death resulted from the willful act of the seafarer;

b. if death developed directly from a condition which was intentionally concealed from the employer at or prior to engagement under the Articles; or

c. if death was caused directly by war or an act of war, declared or undeclared. But this clause shall not apply if at the time of the act the vessel had entered a known zone of international hostility for the purpose of trade.

.3 Medical Examination.

A seafarer shall not be entitled to the benefit of a direct compensation for loss of his or her life if he or she avoids or refuses a medical examination at the time of his or her employment.

.4 Presumption of Death.

If the body of a missing Master or seafarer has not been found within six (6) months after: (a) an incident of damage involving the vessel on which he or she sailed, or (b) an incident which otherwise points to the reasonable conclusion that the seafarer is dead, he or she shall be presumed dead and the direct compensation for loss of life shall become due and payable. Such presumption shall be rebuttable in a court of competent jurisdiction, and where the presumption is rebutted any such compensation paid shall be recoverable by the shipowner.

.5 Shipowner's Obligation.

The shipowner's obligation to provide the benefit of direct compensation for loss of life shall arise at the earlier of the times indicated below:

a. upon signing on the Articles; or

b. when the seafarer, at the request of the shipowner and prior to signing on the Articles, commences travel to join his or her assigned vessel. For the purpose of this Regulation the seafarer shall be deemed to be employed or engaged on board the assigned vessel from the commencement of his or her travel.

.6 Termination of Obligation.

The shipowner's obligation to provide the benefit of direct compensation for loss of life shall terminate at the later of the times indicated below:

a. upon signing off the Articles; or

b. when the seafarer has returned from his or her assigned vessel to his or her place of residence or declared destination. For the purpose of this Regulation the seafarer shall be deemed to be employed or engaged on board the assigned vessel until he or she has reached his or her place of residence or declared destination.

.7 Suspension of Obligation.

The shipowner's obligation to provide the benefit of direct compensation for loss of life shall be suspended:

a. upon and during the period of a desertion as defined in the Maritime Act; or

b. during any unauthorized and unreasonable delays by the seafarer when traveling to his or her assigned vessel or from his or her assigned vessel to his or her residence or declared destination, or during any unauthorized and unreasonable deviations from the prescribed or customary travel routes.

.8 Seafarer's Residence.

Unless otherwise agreed in writing between the seafarer and the Master or the shipowner, the expression "residence" shall mean the seafarer's home address as shown in the Articles.

.9 Beneficiaries.

a. The compensation hereunder shall be paid to the seafarer's designated beneficiary or beneficiaries, or in the absence of such designated beneficiary or beneficiaries, to his or her estate or to his or her personal legal representative.

b. The designated beneficiaries shall either be entered in an appropriate space in the columnar entries of the Articles of Agreement or on a separate form to be provided by the shipowner.

.10 Other Death Benefits.

The amount of the direct compensation payable under this Regulation shall be determined by aggregation and subtraction of any other lump-sum death benefits in favor of the seafarer which are also provided or contributed to by the shipowner.

.11 Satisfaction of Obligation.

The shipowner shall secure his or her obligation to provide a benefit of direct compensation for loss of life by any one (1) or a combination of the following:

a. a guarantee from a P&I Club approved by the Maritime Administrator, whereby the Club guarantees payment of the compensation hereunder; or

b. a life insurance policy from an insurance company approved by the Maritime Administrator; or

c. in lieu of the guarantee or life insurance, by depositing and maintaining at all times a payment bond from a bonding company approved by the Maritime Administrator, in an amount equal to US$10,000 times the number of seafarers on the one (1) vessel in his or her fleet with the largest number of seafarers; or

d. participation in an approved national or international scheme.

.12 Certification.

a. If the shipowner participates in a national or international plan approved by the Maritime Administrator, he or she shall annually file with the Maritime Administrator a certificate or other satisfactory evidence of both participation in and contribution to the approved plan.

b. The shipowner or his or her P&I Club or his or her insurance company or his or her bonding company shall file with the Maritime Administrator a certificate of insurance or guarantee or participation for every vessel, or a payment bond as required under paragraph 7.50.11c. Such certificate or bond shall be renewed and refiled 10 days before its expiration date. Such certificate or bond may be issued for a period from inception until canceled.

c. Certificates of Insurance shall be in substantially the following form, unless prescribed otherwise by a convention to which the Republic of the Marshall Islands is a signatory:

REPUBLIC OF THE MARSHALL ISLANDS
OFFICE OF THE MARITIME ADMINISTRATOR
CERTIFICATE OF INSURANCE PURSUANT TO
MARITIME REGULATION 7.50

NOT TRANSFERABLE

NAME OF VESSEL:
OFFICIAL NUMBER:
PORT OF REGISTRY: MAJURO
NAME AND ADDRESS OF OWNER:

This is to certify that there is in force in respect of the above-named vessel while in the above ownership a policy of insurance satisfying the requirements of Maritime Regulation 7.50.

PERIOD OF INSURANCE: FROM

TO

The insurer may cancel this Certificate only by giving 30 days written notice of cancellation to the Maritime Administrator whereupon the liability of the insurer hereunder shall cease as from the date of the expiry of the said period of notice, but only as regards incidents arising thereafter.

DATE:

This Certificate has been issued for and on behalf of:

_____
(NAME OF INSURANCE COMPANY)

BY _____
(NAME AND TITLE OF OFFICER OR AUTHORIZED MANAGER OR AGENT)

d. Certificates of Guarantee of Payment shall be substantially in the following form unless prescribed otherwise by a convention to which the Republic of the Marshall Islands is a signatory:

REPUBLIC OF THE MARSHALL ISLANDS
OFFICE OF THE MARITIME ADMINISTRATOR
GUARANTEE OF PAYMENT PURSUANT TO
MARITIME REGULATION 7.50

NAME OF VESSEL:
OFFICIAL NUMBER:
PORT OF REGISTRY: MAJURO
NAME AND ADDRESS OF OWNER:

This is to certify that there is in force in respect of the above-named vessel while in the above ownership a guarantee of payment satisfying the requirements of Maritime Regulation 7.50.

PERIOD OF GUARANTEE: FROM

TO

The guarantor warrants that it will pay the direct compensation for loss of life provided for under Section 837 of the Maritime Act directly to the beneficiaries and/or legal representatives of the deceased seafarer upon their demand, if for any reason the Owner does not pay the said compensation. The guarantor further warrants that it will not raise any other defenses against claims for such compensation except those available to the Owner under the Regulation 7.50.

The guarantor may cancel this guarantee only by giving 30 days written notice of cancellation to the Maritime Administrator, whereupon the obligations of the guarantor hereunder shall cease as from the date of the expiry of the said period of notice, but only as regards incidents arising thereafter.

DATE:

This Guarantee has been issued for and on behalf of:

_____
(NAME OF GUARANTOR)

BY _____
(NAME AND TITLE OF OFFICER OR AUTHORIZED MANAGER OR AGENT)

Maritime Act Section 837.

7.51 Hours of Work and Hours of Rest.

.1 Terms Used.

a. hours of work shall mean the time during which seafarers are required to do work on account of the vessel;

b. hours of rest shall mean the time outside hours of work; this term does not include short breaks;

c. normal hours of work in port and at sea shall mean eight (8) per day.

.2 Limits on Hours of Rest.

a. Standard

In accordance with the requirements of the MLC, 2006, the Maritime Administrator has established the provisions for hours of rest to be the standard to which shipowners and operators shall comply. Shipowners and operators shall, within the following limits, fix a minimum number of hours of rest which shall be provided in a given period of time. Shipowners and operators shall take account of the danger posed by fatigue of seafarers, especially those whose duties involve navigational safety and the safe and secure operation of the vessel.

b. Minimum Rest Hours

The minimum number of hours of rest shall not be less than:

(1) 10 hours in any 24-hour period; and,

(2) 77 hours in any seven-day period.

c. Additional Provisions.

(1) Hours of rest may be divided into no more than two (2) periods, one of which shall be at least six (6) hours in length, and the interval between consecutive periods of rest shall not exceed 14 hours.

(2) Musters, fire-fighting and lifeboat drills, and drills prescribed by these Regulations and by international instruments, shall be conducted in a manner that minimizes the disturbance of rest periods and does not induce fatigue.

(3) When a seafarer is on call, such as when a machinery space is unattended, the seafarer shall have an adequate compensatory rest period if the normal period of rest is disturbed by call-outs to work.

(4) Night work of seafarers under the age of 18 shall be prohibited unless the effective training of the seafarers concerned would be impaired or the specific nature of the duty or a recognized training program requires that the seafarers covered by this exception perform duties at night and it has been determined that the work will not be detrimental to their health or well-being.

d. Right of the Master.

Nothing in this section shall be deemed to impair the right of the Master of a ship to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea.

(1) Accordingly, the Master may suspend the schedule of hours of rest and require a seafarer to perform any hours of work necessary until the normal situation has been restored.

(2) As soon as practicable after the normal situation has been restored, the Master shall ensure that any seafarers who have performed work in a scheduled rest period are provided with an adequate period of rest.

.3 Record.

a. A table with the shipboard working arrangements shall be prepared in accordance with the standardized format established by the Maritime Administrator, and shall be posted in an easily accessible location which shall contain for every position at least:

(1) the schedule of service at sea and service in port;

(2) the minimum hours of rest required by these Regulations or applicable collective agreement.

b. Records of seafarers' daily hours of rest shall be maintained to allow monitoring of compliance with these Regulations. The records shall be in a standardized format established by the Maritime Administrator. The records may be maintained in electronic form.

c. The table of shipboard working arrangements and records of daily hours of rest shall be in the working language(s) of the ship and in English. The seafarer shall receive a copy of the records pertaining to him or her which shall be endorsed by the master, or a person authorized by the Master, and by the seafarer.

.4 Payment of Wages.

a. Terms Used.

(1) Basic pay or wages means the pay, however composed, for normal hours of work and does not include payments for overtime worked, bonuses, allowances, paid leave or any other additional remuneration;

(2) Consolidated wage means a wage or salary which includes the basic pay and other pay-related benefits that may include compensation for all overtime hours which are worked and all other pay-related benefits, or it may include only certain benefits in a particular consolidation.

(3) These arrangements shall be reflected as an addendum to the Articles of Agreement or contained in the seafarer's employment agreement.

b. Wages.

(1) The shipowner shall ensure that payments due to seafarers working on vessels are made at no greater than monthly intervals and in accordance with any applicable seafarer's employment agreement or collective bargaining agreement.

(2) Seafarers shall be given a monthly account (paper or electronic) of the payments due and the amounts paid, including wages, additional payments and the prevailing market rate or official published rate of exchange used where payment has been made in a currency or at a rate different from the one to which agreed. Seafarers will be provided with a private secure access to electronic accounts.

(3) The shipowner shall take measures to provide seafarers with a means to transmit all or part of their earnings to their families or dependents or legal beneficiaries.

(4) Any charge of service to transmit seafarer earnings shall be of reasonable amount, and the rate of currency exchange, unless provided otherwise, shall be at the prevailing market rate or the official published rate and not unfavorable to the seafarer.

Maritime Act Sections 827 and 831.

c. Salary Plans.

(1) The shipowner may implement a fixed salary plan, which establishes a practical, modern salary system that will ensure a regular monthly income to the seafarer while on active service and during leave periods. Such arrangements are to be agreed between the Master and the seafarer and be reflected as an addendum to the Articles of Agreement.

(2) For the purpose of the penalty provision in Part 8, Section 827(4) of the Maritime Act, it shall be deemed that no default has occurred under the following controlled circumstances:

i. There exists an offshore based account system which utilizes an electronic transfer of wage payments to perform the wage accounting function, provided that individual wage account slips are transmitted to the ship electronically for the officer/seafarer and mailed to the officer/seafarer's mailing address by a specified date, and

ii. The officer/seafarer receives a shipboard transaction statement before signing off the ship, which shall be followed by a final wage account slip to the officer/seafarer's mailing address by a specified date in the month following the date on which the sign-off occurs.

(3) These arrangements are to be agreed between the Master or the shipowner/operator and the seafarer and reflected as an addendum to the Articles of Agreement or contained in the seafarer's employment agreement.

Maritime Act Section 827.

d. Profit-Sharing.

Although the right to wages on the part of any seafarer shall not be dependent upon the earning of freight by the vessel, nothing in this section shall be construed to prevent any profit-sharing plan by which the officers and crew are to be compensated with profits in addition to their established wages.

Maritime Act Section 835.

.5 Overtime.

a. Terms Used.

For the purposes of calculating overtime compensation:

(1) Normal working hours in port and at sea shall mean eight (8) hours per day.

(2) Overtime shall mean work performed over and above normal working hours.

b. Rate.

The rate or rates of compensation for overtime shall be for no less than one and one-quarter times the basic pay or wages per hour, unless otherwise stipulated in a seafarer's employment agreement or collective bargaining agreement.

c. Exceptions.

Work performed outside of normal working hours shall not be compensated for as overtime when necessary for the safety of the vessel, its passengers, officers, crew, cargo or for the saving of other vessels, lives or cargo, or for the performance of fire, lifeboat, or other emergency drills. Such work shall be conducted in a manner that minimizes the disturbance of rest periods and does not induce fatigue.

d. Alternatives.

In the special circumstances of lightering, drilling, offshore supply or other specialized maritime operations not constituting an international voyage of more than 24 hours duration, the shipowner may agree with the crew in writing that overtime is to be compensated by additional paid vacation or by additional tangible benefits other than money.

Maritime Act Section 842.

7.52 Social Protections.

.1 Liability Insurance.

Each shipowner shall be required to maintain at all times satisfactory third party liability insurance as described in Regulation 2.23.2 which covers, among other things, all reasonable costs incurred in meeting the shipowner's obligations, under any circumstances, including insolvency, to provide for seafarer health protection, medical care, long-term disability, death, welfare measures, repatriation, abandonment and/or unemployment compensation.

a. The liability insurance required by 7.52.1 with respect to abandonment as defined in 7.52.7 shall be sufficient to cover:

(1) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, a relevant collective bargaining agreement and RMI Maritime Act and RMI Maritime Regulations, limited to four (4) months of any such outstanding entitlements;

(2) All expenses reasonably incurred by the seafarer, including the cost of repatriation in accordance with 7.52.5; and

(3) The essential needs of the seafarer and any other reasonable costs or charges arising from the abandonment.

b. The liability insurance required by 7.52.1 with respect to long-term disability and death shall provide for the payment of all contractual claims covered by it which arise during the period of validity of such insurance. For the purpose of this regulation, contractual claims shall mean any claim which relates to death or long-term disability of seafarers due to an occupational injury, illness or hazard as set out in the RMI Maritime Act, the seafarers' employment agreement or collective agreement.

.2 Security for Costs.

In addition to the insurance coverage required by 7.52.1, the Maritime Administrator may at any time require a shipowner to obtain insurance, post a bond or provide other security to cover anticipated costs of obligations owed to the Master, officers and crew under any circumstances, subject to the provisions of the Maritime Act.

.3 Satisfaction of Obligations for Social Protections.

The shipowner shall secure his or her obligation to provide for repatriation and other obligations provided for in Regulation 7.52 by any one (1) or a combination of the following:

a. a guarantee, from a P&I Club approved by the Maritime Administrator, whereby the P&I Club guarantees payment of the shipowner's obligations hereunder; or

b. an insurance policy, from an insurance company approved by the Maritime Administrator, which covers the shipowner's obligations hereunder; or

c. by depositing and maintaining with the Administrator at all times a payment bond or financial guarantee, from a bonding company approved by the Maritime Administrator, in an amount equal to the shipowner's obligations for outstanding wages and other entitlements due to the seafarers on every vessel in the shipowner's fleet in accordance with their seafarers employment agreements, relevant collective bargaining agreements, RMI Maritime Act and Maritime Regulations; or

d. participation in a national or international plan, as approved or established by the Maritime Administrator.

.4 Certification.

a. If the shipowner secures his or her obligations with a guarantee from a P&I Club as provided in 7.52.3a, the shipowner or the P&I Club shall file with the Maritime

Administrator a certificate of guarantee for every Marshall Islands flagged vessel in the shipowner's fleet.

b. If the shipowner secures his or her obligations with an insurance policy as provided in 7.52.3b, the shipowner or the insurance company shall file with the Maritime Administrator a certificate of insurance for every RMI flagged vessel in the shipowner's fleet.

c. If the shipowner secures his or her obligations with a payment bond or financial guarantee as provided in 7.52.3c, the shipowner or the bonding company shall file such payment bond with the Maritime Administrator.

d. If the shipowner participates in a national or international plan as provided in 7.52.3d, he or she shall file annually with the Maritime Administrator a certificate or other satisfactory evidence of both participation in and contribution to the Maritime Administrator approved or established plan for every RMI flagged vessel in the shipowner's fleet.

e. Any certificate or bond filed with the Maritime Administrator pursuant to 7.52.3a, 7.52.3b or 7.52.3c shall be renewed and re-filed 10 days before its expiration date. Such certificates or bonds may be issued for a specific period of time or for an indefinite period of time and until cancellation.

f. Each new or renewal certificate or evidence of the shipowner's method of securing its obligations to provide financial security as required in 7.52.1 shall be conspicuously posted aboard each vessel where the information may be made available to the seafarers.

.5 Repatriation.

a. Entitlements.

(1) In accordance with the Maritime Act, seafarers shall be entitled to repatriation, at no expense to them, to the port at which they were engaged, the port where the voyage commenced, a port within the seafarer's own country, or to such other port as may be agreed upon under the following circumstances:

i. when the period of employment is terminated by reason of completion of the voyage for which the seafarer was engaged;

ii. upon the termination of the seafarer employment agreement by the seafarer for justified reasons;

iii. upon the termination of the seafarer employment agreement by the shipowner due to the seafarer no longer being able to carry out his/her duties under the seafarer employment agreement or where the seafarer cannot be expected to carry them out in the specific circumstances; or

iv. upon the expiration of the contract period of employment.

(2) A list of the precise entitlements to be accorded by the shipowner for repatriation shall be provided to each seafarer employed by that shipowner. This list shall include entitlements relating to the destination of repatriation, the mode of transport, the items of expense to be covered and other arrangements to be made for the seafarer by

the shipowner.

b. Forbidden Employment Condition.

It shall be a maritime offense for any shipowner to require the Master, any officer or any crew member to purchase in advance his or her own repatriation transportation as a condition of initial or continued employment. Furthermore, it shall be a maritime offense for any shipowner to attempt to recover the cost of repatriation from the seafarer's wages or other entitlements except where the seafarer has been found, in accordance with RMI laws, regulations or other applicable measures or the provisions of applicable collective bargaining agreements to be in serious default of the seafarer's employment obligations. Nothing in these Regulations shall prejudice any right of a shipowner to recover the cost of repatriation under other contractual arrangements.

c. Duration of Service.

The duration of service on board, as mutually agreed upon between the seafarer and the shipowner following which a seafarer is entitled to repatriation shall be less than 12 months. The right to repatriation shall be retained by a seafarer at the end of any satisfied contract period, extended or otherwise, unless forfeited pursuant to § 844 of the Maritime Act.

d. Seafarer's Copy.

Each RMI flagged ship must carry and make available to all seafarers aboard the ship a copy of the applicable provisions of the Maritime Act regarding repatriation written in English and the working language of the ship.

Maritime Act Sections 843 and 844.

.6 Unemployment Compensation.

a. Indemnity.

Each shipowner shall ensure that, in every case of loss or foundering of any vessel, each seafarer on board shall be paid an indemnity against unemployment resulting from loss or foundering.

b. Rights and Legal Remedies.

Such compensation shall be without prejudice to any other rights and legal remedies a seafarer may have under the Maritime Act for loses or injuries arising from a vessel's loss or foundering.

c. Pay Rate and Period.

The indemnity against unemployment resulting from a vessel's foundering or loss shall be paid for the days during which the seafarer remains in fact unemployed at the same rate as the wages payable under the employment agreement, but the total indemnity payable to any one seafarer may be limited to two (2) months' wages.

.7 Abandonment

A seafarer shall be deemed to have been abandoned where, in violation of the

requirements of the Maritime Labour Convention, 2006 or the terms of the seafarers' employment agreement, the shipowner:

a. fails to cover the cost of the seafarer's repatriation; or

b. has left the seafarer without the necessary maintenance and support; or

c. has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two (2) months.

Maritime Act Sections 834, 862 and 864.

7.53 On Board Complaint Procedures, Conciliation, Mediation and Arbitration.

The following procedures shall apply to on board complaints, conciliation, mediation and arbitration under Section 861 of the Maritime Act:

.1 On Board Complaint Procedures.

a. There shall be on board complaint procedures that allow for the fair and effective handling of seafarer complaints alleging violations of the relevant ILO Conventions**.**

b. All seafarers shall be provided, together with a copy of their seafarers' employment agreement, a copy of the on board complaint procedures applicable to the ship. The Maritime Administrator shall prescribe by Marine Notice provisions for development of the on board complaint procedure.

c. Any victimization of a seafarer for filing a complaint is strictly prohibited. Victimization is understood to mean any adverse action taken or threatened by any person with respect to a seafarer for lodging a complaint which is not manifestly vexatious or maliciously made.

d. Utilization of on board compliant procedures shall not prejudice a seafarer's right to seek redress through conciliation and mediation, arbitration or legal means.

.2 Conciliation and Mediation Procedures.

a If the matter cannot be resolved through the on board complaint procedure in the appropriate timeframe allotted, officer and/or crew members shall have 10 days thereafter to bring it through the Master or his or her appointee to the employer; or if the matter may be to the prejudice of the Master, then directly to the employer. The employer and the officer and/or crew members shall have a period of 20 days there from to bring about conciliation.

b. If after 20 days, the matter has not been conciliated, then either party shall have a further 20 days to bring the matter for mediation to the Maritime Administrator, or its appointed representative.

c. The conciliation and mediation procedures shall be informal.

.3 Arbitration Rules.

a. If the Maritime Administrator, or its appointed representative is unable to successfully

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IN THE SUPREME COURT

OF THE

REPUBLIC OF THE MARSHALL ISLANDS

VIRGILIO T. DIERON, JR.,

Plaintiff,

vs.

STAR TRIDENT XII, LLC, and STAR BULK SHIPMANAGEMENT COMPANY (CYPRUS) LIMITED

Defendants.

S.Ct. Civil No. 2018-015

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2019, Majuro date, Defendants'-Appellees' Answering Brief and Appendix were served on Richard J. Dodson, Kenneth H. Hooks III, Tatyana Cerullo, and Melvin Narruhn, Attorneys for Plaintiff, by sending to them via email transmission in pdf. format to:

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Dated this 12h day of December, 2019 (Majuro date).

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