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## POEA upheld in Louisiana

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A Filipino crewmember - Lito Martinez Asignacion - was injured whilst working on-board the Marshall Islands Flagged vessel "M/V Rickmers Dailan". The vessel was docked in the port of New Orleans. After receiving treatment for nearly a month, Asignacion was repatriated to the Philippines, where he continued to receive medical attention.

Despite the fact that Asignacion was employed under a Philippine Overseas Employment Administration ("POEA") contract requiring that all disputes were governed by the laws of the Republic of the Philippines and subject to the exclusive jurisdiction of the Philippines National Labour Relations Commission ("NLRC"), Asignacion sued Rickmers, the vessel owner, in Louisiana State Court for damages. Not surprisingly Rickmers challenged the jurisdiction of the Louisiana State Court and sought to enforce the arbitration clause in the POEA contract. The state court agreed, and ordered arbitration in the Philippines where the Grade 14 disability rating was upheld and Asignacion was awarded a lump sum of US\$1,870 due under the terms of the POEA.



However, that was not the end of the matter. Asignacion filed a motion in Louisiana State Court asking that the award be set aside on the grounds it violated United States public policy. Rickmers then had the suit removed to Federal (District) Court and brought an additional action seeking to enforce the Philippine award.

The District Court determined that The Convention on the Recognition and Enforcement of Foreign Arbitral Awards - the New York Convention (the "Convention") applied. The Convention requires courts of contracting states to give effect to private agreements to arbitrate and to recognise and enforce arbitration awards made in other contracting states.

In the US the Court should confirm the award unless a reason specified within the convention exists. One example being that the convention permits a signatory to refuse to recognise or enforce an award if recognition or enforcement would be contrary to the public policy of that country.

Arbitral awards falling under the convention are enforced under the Federal Arbitration Act. Federal policy strongly favours arbitration and the Supreme Court has previously advised that this policy applies with special force in the field of international commerce. Courts are permitted to vacate a decision only in very unusual circumstances.

After a choice of law analysis the district court found that because the Marshall Islands adopt United States general maritime law, that to enforce the Philippines award would violate public policy which is there for the protection of seamen. Asignacion's public policy defence primarily consisted of a complaint about the adequacy of remedies under Philippine law and the fact that United States public policy requires that foreign arbitral panels give seamen an adequate choice-of-law.

Accordingly the US District Court for the Eastern District of Louisiana found the award to be unenforceable as a matter of public policy because it denied the claimant the opportunity to pursue remedies to which he was entitled as a seaman.

Subsequently, in April 2015, the court of appeals for the fifth circuit reversed the District Court's decision and ruled that the Philippine panel's award was enforceable, holding that the employment agreement's mandated application of Philippine law did not violate US public policy.

In reaching this decision the fifth circuit noted that the Supreme Court has rejected the argument that all disputes must be resolved by US courts applying US law, even where the remedies under applicable foreign law may be less wide than those available in the US. To do so would demean the standards of justice elsewhere in the world and unnecessarily promote the primacy of United States law over the laws of other countries.

The Supreme Court has also held that it would place a great burden on ship-owners if it were to impose the duty of shifting from one compensation regime to another whenever a vessel passes the boundaries of territorial waters, and that the availability of certain benefits should not depend on the wholly fortuitous circumstance of the vessels location at the time of an injury.

The importance of the POEA standard terms also weighed heavily in favour of enforcing the agreement because of the fact that it promotes and safeguards the interests of Filipinos.

Following on from this decision by the fifth circuit Court of Appeal Asignacion applied to the US Supreme Court for a writ of certiorari to review the fifth circuit's decision. This application was denied. While not binding on other Federal Circuit Courts of appeals, the fifth circuit's decision in Asignacion is a welcome decision that should assist shipowners and their P & I Associations to uphold agreed law and jurisdiction provisions in crew contracts.

Article by Paul Brewer, Americas Syndicate Manager

