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# SECOND DIVISION

# [ G.R. No. 198367, August 06, 2014 ]

## OSG SHIPMANAGEMENT MANILA, INC., MERCEDES M. RAVANOPOLOUS, OSG SHIPMANAGEMENT (UK) LTD. & M/T DELPHINA, PETITIONERS, VS. JOSELITO B. PELLAZAR, RESPONDENT.

## D E C I S I O N

**BRION, J.:**

For resolution is the present petition for review on *certiorari*,[1] assailing the decision[2] dated May 12, 2011 and resolution[3] dated August 24, 2011 of the Court of Appeals (*CA*) in CA-G.R. SP No. 108877.

### The Antecedents

In September 2006, the respondent Joselito B. Pellazar (*Pellazar*), an oiler in the vessel *M/T Delphina*, filed a **complaint for permanent total disability benefits and damages** against the petitioners,[4] local manning agent C.F. Sharp Crew Management (*C.F. Sharp*) and its President, Arturo Rocha. The complaint was amended to include C.F. Sharp's principal, OSG Ship Management (*UK*) Ltd., operated by Mercedes Ravanopoulos (*Ravanopoulos*). The petitioners manifested that the Philippine Overseas Employment Administration (*POEA*) accreditation of the M/T Delphina had been transferred to OSG Ship Management Manila, Inc. (*OSG Manila*) and, that in accordance with POEA procedures, OSG Manila assumed full responsibility for all contractual obligations to seafarers incurred by C.F. Sharp.

Pellazar was deployed to the *M/T Delphina* on July 3, 2005 under an employment contract for eight months. On November 12, 2005, while he was on duty onboard the vessel, **his right hand was injured after it was struck by a solid iron pipe**. He was given medical attention in a hospital in Brazil. On November 26, 2005, **he was medically repatriated**.

Upon his arrival in Manila, Pellazar reported to OSG Manila and was referred on November 29, 2005 to the company-designated physicians, Dr. Pedro S. De Guzman (*Dr. De Guzman*) and Dr. Raymond C. Banaga (*Dr. Banaga*) of the Physicians' Diagnostic Services Center, Inc. Dr. De Guzman was also the Medical Director of the Center while Dr. Banaga was Pellazar's attending physician. Pellazar's working diagnosis was "*complete fracture, distal part of 5$^{th}$ finger, right hand post-casting.*" He continued to report to the company-designated physicians until August 14, 2006[5] for evaluation and treatment.

For the duration of Pellazar's treatment and evaluation, he was subjected to an x-ray examination (his right finger), went through therapy sessions and was referred to an orthopedic specialist, as well as a physiatrist. He also underwent surgery (removal of pin, 5th digit, right hand) at the Dr. Fe del Mundo Medical Center Foundation Philippines, Inc.[6] The company-designated physicians gave Pellazar a Grade 10 disability rating[7] for "*loss of grasping power for large objects between fingers and palm of one hand.*"[8]

On September 30, 2006, Pellazar consulted a physician of his choice, Dr. Raul F. Sabado (*Dr. Sabado*) of the Dagupan Orthopedic Center in Dagupan City, who diagnosed him with "*loss of grasping power of 5th finger, loss of opposition between finger and thumb (r) and ankylosis of the 5$^{th}$ finger (r)*," and certified that he was "permanently unfit for any sea duty."[9] In addition to Dr. Sabado's certification, Pellazar claimed that despite the lapse of 120 days, and the fact that he had already undergone maximum medical care, he was still unfit for sea work; thus, the complaint for disability benefits under the Collective Bargaining Agreement (CBA).[10]

The petitioners denied liability. They asked that the complaint be dismissed for prematurity. They alleged that Pellazar, a member of the Associated Marine Officers' and Seamen's Union of the Philippines (*AMOSUP*) bypassed the provisions of the CBA requiring that a seafarer with a complaint should follow the grievance procedure onboard the vessel or, through the union upon his return home. Further, under the POEA-approved contract, the parties covered by a CBA are required to submit their claim or dispute to a voluntary arbitrator or panel of voluntary arbitrators. Pellazar, they argued, failed to comply with his duty to observe the dispute resolution provisions of the CBA.

The foregoing notwithstanding, the petitioners argued that Pellazar was not entitled to disability compensation higher than what was provided under a Grade 10 disability rating as that was the company-designated physician's assessment of his disability. A Grade 10 disability is compensated US$10,075.00 under the POEA Standard Employment Contract (*POEA-SEC*).

**The Compulsory Arbitration Rulings**

In a decision[11] dated April 23, 2007, Labor Arbiter Florentino R. Darlucio ruled in Pellazar's favor and awarded him permanent total disability benefits of US$75,000.00 under the parties' CBA, plus $7,500.00 as attorney's fees, to be paid, jointly and severally, by OSG Manila, OSG (UK), Ravanopoulos and *M/T Delphina*. LA Darlucio held that Pellazar was entitled to permanent total disability benefits since he had been incapacitated to continue his employment as a seafarer.

The petitioners appealed. In its decision[12] of November 29, 2008, the National Labor Relations Commission (*NLRC*) modified the labor arbiter's decision. It ruled that Pellazar is entitled only to an award of $10,075.01 which is the equivalent of a Grade 10 disability in accordance with the disability rating given to him by the company-

designated physicians; the loss of grasping power for large objects between the fingers and palm of a hand has been classified as Grade 10 disability under the POEA-SEC.

The NLRC gave more weight to the assessment of the company-designated physicians, particularly Dr. Banaga, over that of Dr. Sabado who examined Pellazar for only a day. It stressed that it was Dr. Banaga who painstakingly treated Pellazar for a reasonable period of time. Through the extensive medical attention given to Pellazar, the NLRC emphasized, Dr. Banaga acquired a detailed knowledge and familiarity with Pellazar's injury which enabled him to arrive at a more accurate appraisal of Pellazar's condition as compared to Dr. Sabado who had not been privy to Pellazar's case from the very beginning.

Pellazar moved for reconsideration, but the NLRC denied the motion in its resolution of February 27, 2009,[13] prompting him to seek relief from the CA through a petition for *certiorari*.

In its decision under review, the CA granted the petition, reversed the challenged NLRC rulings and, reinstated LA Darlucio's award of permanent total disability benefits to Pellazar thereby disregarding the Grade 10 disability rating—in accordance with the POEA-SEC—of the company-designated physicians. ***It stressed that permanent total disability is not determined by gradings but by the number of days the disability has lasted.*** It explained that under Article 192 of the Labor Code, a disability shall be deemed total and permanent if the temporary disability has lasted for more than a continuous period of 120 days and this is the concept of permanent total disability that the Supreme Court has applied in ***Wallem Maritime Services, Inc. v. NLRC***,[14] reiterated in subsequent cases as ***Crystal Shipping, Inc., v. Natividad***[15] and lately, ***Oriental Shipmanagement Co., Inc. v. Bastol.***[16] The petitioners moved for reconsideration, but the CA denied the motion in its resolution of August 24 2010; [17] hence, the present petition.

**The Petition**

The petitioners seek a reversal of the NLRC rulings on the following grounds:

1. The CA committed a serious error of law when it automatically declared Pellazar permanently and totally disabled for the reason that he had been unable to work for more than 120 days from his repatriation. In making such a conclusion, the CA disregarded the provisions of the POEA-SEC and the CBA on a seafarer's entitlement to disability compensation.

Under Section 20 (B) 3 of the POEA-SEC, it is the company-designated physician who determines the fitness to work or the disability of a seafarer as a result of a work-related injury or illness. Under Section 20 (B) 6, in case of permanent total or partial disability, the seafarer shall be compensated in accordance with the schedule of benefits (impediment grades with the corresponding amount of compensation) enumerated in Section 32 of the same document; computation of his benefits shall be governed by the rates and rules of compensation applicable at the time the illness or injury was contracted.

Also, under Section 20.1.5 of the CBA which Pellazar himself cited in his submissions, the certification that a seafarer is permanently unfit for further sea service in any capacity is lodged solely and exclusively with the company doctor. A seafarer assessed at less than 50% disability grading shall be entitled to full disability benefits of US $75,000.00 only if the company doctor certifies that he is permanently unfit to work. There was no such certification in Pellazar's case as he was given only a disability Grade 10 rating by Drs. De Guzman and Banaga.

2. The assessment of the company-designated physicians with respect to Pellazar's condition or disability should be accorded respect not only because they are the ones entrusted in providing medical care and declaring Pellazar's fitness for work, but also because of the amount of time and effort they spent in treating and evaluating him. Pellazar's treatment and evaluation involved surgery, physical therapy and constant medical attention and close observation, as compared with the "single and fleeting medical treatment" of Pellazar by Dr. Sabado, his chosen physician.

3. The award of attorney's fees to Pellazar is not warranted in the absence of bad faith in their denial of his claim for permanent total disability compensation. From the inception of Pellazar's medical repatriation, they have extended unconditional support to him providing him immediate medical treatment and prompt payment of illness wages. The company-designated physicians, complemented by a team of specialists, took care of him for the entire duration of his evaluation and treatment and issued to Pellazar a Grade 10 disability rating which petitioners have no reason to doubt in the absence of evidence that their findings were arrived at arbitrarily or fraudulently.

**The Case for Pellazar**

In his Comment,[18] Pellazar prays that the petition be denied for lack of merit. He contends that the CA committed no palpable error or grave abuse of discretion in reinstating the labor arbiter's decision as it was supported by substantial evidence.

Pellazar insists that his chosen physician, Dr. Sabado, certified him to be totally unfit for sea duty because of the right hand injury which he sustained while in the employ of the petitioners. He maintains that the injury had never been resolved and even deteriorated despite medical treatment by the doctors for more than 120 days making his disability permanent and total not only under the POEA-SEC but also under the Labor Code, as well as jurisprudence, citing ***Wallem Maritime Services, Inc. v. NLRC.***[19]

Pellazar contends that he is not precluded from seeking a second opinion as the POEA-SEC does not exclusively provide that only the company-designated physician can evaluate and treat a seafarer who sustained an injury or illness. He submits that the assessment of the company-designated physician is not binding on the courts.

**The Court's Ruling**

**We grant the petition.**

***Preliminary considerations***

***a. Certiorari under Rule 65 before the CA and appeal under Rule 45 before the Court***

In a Rule 45 petition for review of the CA decision, which was rendered under a Rule 65 proceeding, what the Court determines is the legal correctness of the CA decision, *i.e.,* whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision brought before it - not whether the NLRC decision on the merits of the case was correct. In ruling for legal correctness, the Court views the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it.

From the substantive point of view, the CA may not go beyond the determination of whether the NLRC's decision is tainted with grave abuse of discretion because the ruling that is brought before it is already a final and executory ruling of the NLRC, there being no appeal provided for under the law. Accordingly, the Court generally accords respect to the NLRC's factual findings and its conclusions from these findings since the absence of an appeal from the NLRC's ruling is a statutory recognition of the labor tribunals' expertise on the field of labor standards, labor relations and allied legislation.

The substantive justification goes hand in hand with the procedural justification. From the procedural point of view, the CA has a limited scope in reviewing the NLRC decision because of the intrinsic limitation of the sole available remedy itself. A writ of *certiorari* is a remedy that lies only to correct acts rendered without jurisdiction, in excess of jurisdiction, or with grave abuse of discretion - and not mere errors of judgment. For emphasis therefore, when a petition for certiorari is filed, the judicial inquiry should be limited to the issue of whether the NLRC acted with grave abuse of discretion amounting to lack or in excess of jurisdiction[20] - and not whether the NLRC ruling is intrinsically correct or not.[21]

Given this framework, the Court finds that the CA legally erred in its determination of the presence or absence of grave abuse of discretion.

***Substantive Considerations***

***A. Disability benefits as a matter of contract and law***

**1. Mere lapse of the 120 day period does not warrant payment of permanent total disability benefits**

Entitlement to disability benefits by seamen on overseas work is a matter governed, not only by medical findings but, by Philippine law and by the contract between the parties.

The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability

Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code.

By contract, Department Order No. 4, series of 2000 of the Department of Labor and Employment (the POEA Standard Employment Contract) and the parties' CBA bind the seaman and his employer to each other. The terms under the POEA-SEC are to be read in accordance with what the Philippine law provides.

In *Vergara v. Hammonia Maritime Services*,[22] the Court interpreted the interplay of these legal and contractual provisions relating to the kind of disability recognized and the period involved. The Court observed:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. **For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability*** as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

In other words, the mere lapse of the 120-day period itself does not automatically warrant the payment of permanent total disability benefits. Hence, the NLRC could not have gravely abused its discretion in not granting Pellazar permanent total disability benefits based on this as the entitlement to disability is governed not by the period of disability per se but by the specific provisions of the law and contract. It must be observed that Pellazar continued to undergo medical treatment under the care of the petitioners' company designated doctors until he was finally given a Grade 10 disability in August 2006.

Under the CBA and the POEA-SEC, it is the company-designated physician who shall determine a seafarer's disability or his fitness to work. In granting Pellazar a Grade 10 disability rating in accordance with the finding of the company designated physician, the NLRC simply observed the provisions of the parties' POEA-SEC. For this reason, no grave abuse of discretion can similarly be imputed against the NLRC.

**2. The NLRC's reliance on the findings of company-designated physician is not tainted with grave abuse of discretion on two grounds:**

**i. Non-compliance with the procedure under the POEA-SEC and CBA**

Under the POEA-SEC and the AMOSUP/IMEC TCCC CBA, the degree of disability arising from a work-connected injury or illness of a seafarer or his fitness to work shall be assessed by the company-designated physician to make the employer liable. Section 20(B) 3 of the POEA-SEC provides:

> Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.
>
> 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. 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.

The parties' CBA,[23] on the other hand, states:

> The degree of disability which the Employer, subject to this agreement, is liable to pay shall be determined by a doctor appointed by the Employer. If the doctor appointed by the seafarer and his union disagrees with the assessment, a third doctor may agree jointly between the Employer and the Seafarer and his Union, and the third doctor's decision shall be final and binding on both parties.

After Pellazar was medically repatriated because of his injury, he immediately reported to the company-designated physicians, as required by the POEA-SEC, led by Dr. De Guzman. He then underwent evaluation and treatment under the management of Dr. Banaga. This treatment started immediately upon his referral to the two doctors on November 29, 2005 and lasted for several months until August 14, 2006. Eventually, the company-designated physicians granted him a Grade 10 disability.

Controversy arose, however, when Pellazar consulted a physician of his choice, whose findings are in conflict with those of the company-designated physicians. This conflict invariably leads to the question of whose findings should prevail.

The Court was faced with the same question in *Philippine Hammonia v. Dumadag.*[24] Applying the similar provisions in the POEA-SEC and in the parties' CBA, the Court observed that the parties are bound by the terms and conditions contained in these instruments, particularly the above quoted provision on the mechanism prescribed to determine liability for a disability benefits claim. Since the seafarer pursued his claim before the labor tribunals without referring the conflicting opinions to a third doctor for final determination, the seafarer actually breached his contractual obligation. In reversing the labor tribunals' rulings (and the CA which affirmed it), the Court said:

> **We find the rulings of the labor authorities seriously flawed** as they were rendered **in total disregard of the law between the parties** — the POEA-SEC and the CBA — on the prescribed procedure for the determination of disability compensation claims, particularly with respect to the resolution of conflicting disability assessments of the company-designated physician and Dumadag's physicians, without saying why it was disregarded or ignored; it was as if the POEA-SEC and the CBA did not exist. **This is grave abuse of discretion, considering that, as labor dispute adjudicators, the LA and the NLRC are expected to uphold the law.**

In the present case, since there is a conflict in the assessment of the company-designated physicians and Dr. Sabado's certification in relation to Pellazar's fitness or unfitness to work, the matter should have been referred to a third doctor for final determination as required by the POEA-SEC and the parties' CBA. Since Pellazar was responsible for the non-referral to the third doctor because of his failure to inform the manning agency that he would be consulting Dr. Sabado, he should suffer the consequences of the absence of a binding third opinion. Thus, the NLRC was well within the bounds of its jurisdiction, in upholding the disability assessment of Drs. De Guzman and Banaga as against Pellazar's physician of choice.

**ii. The company designated physician's findings, although not binding on the Court, generally prevails over other medical findings**

By recognizing that a disagreement between the company-designated physicians and the physician chosen by the seafarer may exist, the POEA-SEC itself impliedly recognizes the seafarer's right to request a second medical opinion from a physician of his own choice. That the seafarer should not be prevented from seeking an independent medical opinion proceeds from the theory that a company-designated physician, naturally, may downplay the compensation due to the seafarer because that is what the employer, after all, expects of him.[25] Accordingly, the Court observed that labor tribunals and the courts are not bound by the medical findings of the company-designated physician and that the inherent merits of its medical findings will be weighed and duly considered.[26]

However, even on this context, the NLRC's ruling awarding Pellazar disability benefits based on the Grade 10 rating of Drs. De Guzman and Banaga can fully withstand a Rule 65 challenge since ***the Grade 10 rating had ample basis in the extensive evaluation and treatment of Pellazar by these two company doctors,*** including an orthopedic specialist and a physiatrist.

In stark contrast, Dr. Sabado, Pellazar's chosen physician, examined him only once and could have treated him for a few hours only, considering as the petitioners point out, that Pellazar came all the way from Antipolo, where he resides, to Dagupan City, where Dr. Sabado is practicing his profession.[27] It is as if, the petitioners aver, Pellazar sought out Dr. Sabado in Dagupan City for a favorable certification.

While Dr. Sabado's diagnosis was consistent with that of the company-designated physicians (which centered on the injury in Pellazar's 5th right finger and the resulting loss of grasping power of said fifth finger), Dr. Sabado certified Pellazar to be permanently unfit for sea service.[28] Notwithstanding Dr. Sabado's unfit-to-work certification (which the LA relied upon in ruling in Pellazar's favor), the NLRC gave more credence to the Grade 10 disability rating of Pellazar than the assessment of Dr. Sabado.

***The NLRC's mere disagreement with the LA, however, does not give rise to grave abuse of discretion, unless the NLRC's contrary conclusion had no basis in fact and law.*** In the present case, the NLRC ruling was actually based on the extensive evaluation and treatment of Pellazar's medical condition by the company doctors. Under a Rule 65 petition, the CA does not determine which of the conflicting findings or assessment should be preferred; but rather, whether in deciding to uphold one over the other, the NLRC exceeded the bounds of its jurisdiction or committed grave abuse of discretion. The CA's finding in this regard finds no support in its decision because of its misplaced reliance on the 120-day period, as earlier discussed.

**3. No entitlement to full disability benefits**

Since the company-designated physicians gave Pellazar only a Grade 10 disability - and not a permanent total disability - he cannot be entitled to the full disability benefits of US$75,000.00 under the AMOSUP-IMEC TCCC CBA. Section 20.1.5 of the CBA on **Permanent Medical Unfitness** provides:

> **A seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall, for the purpose of this paragraph as regarded (sic) as permanently unfit for further sea service in any capacity and entitled to 100% compensation, i.e. US$125,000 for senior officers, US$100,000 for junior officers and US$75,000 for ratings. Furthermore, any seafarer assessed at less than 50% disability under the contract but certified as permanently unfit for further sea service in any capacity by the company doctor, shall be entitled to 100% compensation** (emphasis and underscoring ours).

We find no ambiguity in the language of this cited CBA provision. There can be no interpretation of its meaning other than that Pellazar cannot be entitled to the full disability benefits of US$75,000 as the **company-designated physicians had not certified him to be permanently unfit for further sea service. He is entitled only to the Grade 10 disability rating certified by Drs. De Guzman and Banaga equivalent to US$10,075.01 pursuant to the POEA-SEC which provides that "*in case of permanent total or partial disability of the seafarer caused by injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in the Contract*."**[29]

***B. Award for attorney's fees***

Lastly, the award of attorney's fees is without legal basis as the petitioners, in light of the above discussion, are well within their rights under the POEA-SEC and the CBA to deny Pellazar's claim for permanent total disability benefits.

**WHEREFORE**, premises considered, we **GRANT** the petition. The assailed decision and resolution of the Court of Appeals are **SET ASIDE**. The decision dated November 29, 2008 of the National Labor Relations Commission is **REINSTATED.**

**SO ORDERED.**

*Carpio, (Chairperson), Del Castillo, Perez,* and *Perlas-Bernabe, JJ.,* concur.

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[1] *Rollo*, pp. 24-56.

[2] Id. at 11- l9 and 67-75; penned by Associate Justice Mario L. Guariña III and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Manuel M. Barrios.

[3] Id. at 22 and 79.

[4] CA *Rollo*, pp. 44-45.

[5] Id. at 123-140 and 338-352.

[6] Id. at 67.

[7] Supra note 4, at 140 and 352.

[8] CA *rollo,* p. 140.

[9] Id. at 80.

[10] This CBA refers to the Associated Marine Officers' and Seamen's Union of the

Philippines/International Maritime Employees' Committees, Total Crew Cost, Collective Bargaining Agreement (AMOSUP/IMEC TCC CBA), id. at 153-176.

[11] Id. at 21-28.

[12] Id. at 30-36.

[13] Id. at 39-40.

[14] G.R. No. 163838, 566, September 25, 2008, 566 SCRA, 338, 348.

[15] 510 Phil. 332 (2005).

[16] G.R. No. 186289, June 29, 2010, 622 SCRA 352.

[17] Supra note 3.

[18] *Rollo,* pp. 131-146.

[19] Supra note 13.

[20] *Empire Insurance Company v. NLRC,* G.R. No. 121879, August 14 1998, 294 SCRA 263, 269-270.

[21] *Tagle v. Equitable PC Bank,* G.R. No. 172299, April 22, 2008, 552 SCRA 424, 440-441, citing *Madrigal Transport, Inc. v. Lapanday Holdings Corporation,* supra note 4.

[22] 588 Phil. 895 (2008). See also *Magsaysay Maritime Corp. v. Lobusta,* G.R. No. 177578, 664 SCRA 137, 144-148 (2012).

[23] Supra note 9, at 14, Section 20.1.4.2.

[24] G.R. No. 194362, June 26, 2013.

[25] *Crystal Shipping, Inc. v. Natividad*, G.R. No. 154798, October 20, 2005, 473 SCRA 559. See also the Resolution in G.R. No. 154798 dated February 12, 2007. See also *NYK-Fil Ship Management, Inc. v. Talavera*, G.R. No. 175894, November 14, 2008, 571 SCRA 183, 193.

[26] In *Maersk Filipinas Crewing Inc. v. Mesina,* G.R. No. 200837, 697 SCRA 601, 616 (2013), the Court observed that "[w]hile it has been held that failure to resort to a third doctor will render the company doctor's diagnosis controlling, it is not the absolute and automatic consequence in all cases."

[27] *Rollo*, p. 93, Petitioners' Motion for Reconsideration with the CA, p.14, last

paragraph.

[28] Supra note 8.

[29] Section 20(B) 6.

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