
**Industry Expertise:
Loss Prevention**

PEME scheme

The Standard Club's loss prevention (LP) department is a multi-disciplinary team which was established in 1989 and has continually evolved in order to meet the needs of members in an ever changing maritime industry. The team includes master mariners, naval architects, ship production engineers and specialist surveyors.



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The Standard Club's enhanced PEME scheme has been designed to provide specific benefits for both members and the seafarers they employ. Members benefit from having all the necessary information relating to the risk associated with the employment of a specific seafarer. Seafarers benefit from an increased monitoring of their health and the opportunity to obtain treatment for existing medical conditions before they go to sea, where medical assistance is harder to arrange, particularly in the event of an emergency.

The tests and examinations included as part of the club's enhanced PEME scheme are designed to detect the most common pre-existing conditions in seafarers. The enhanced PEME scheme is in line with guidance issued by the International Group of P&I Clubs (IG).

While the club's scheme is advisory, in circumstances where a seafarer fails to obtain a Standard Club PEME certificate but is still compliant with the relevant Department of Health requirements, the club will issue specific advice to the member. This advice is designed to mitigate the risk associated with the seafarer's medical condition and ensure that the seafarer's medical needs are considered prior to employment.

Personal Illness: A Claims Perspective

– by **Richard Stevens, Divisional Claims Director, International**

The club's PEME scheme initially focused on clinics operating in the Philippines before expanding in 2019 to include Indonesia, India and Ukraine. These jurisdictions were selected because, between them, they represented almost 55% of all crew claims received, based upon a review of the club's claims data between 2010 and 2015.

The Philippines is an especially important jurisdiction because claims from Filipino seafarers account for about 40% of all crew claims received. The reasons why there are so many more claims from the Philippines are arguably twofold. Firstly, a large proportion of

seafarers worldwide are Filipinos. This situation is unlikely to transform significantly in the near future. Secondly, there is also an apparent, and regular, bias in the Filipino courts towards Filipino seafarers when considering claims brought by those seafarers.

The club will often share our member's disappointment when the Filipino courts – the lower courts rather than the higher courts of appeal – rule in favour of a seafarer bringing a claim for disability benefits arising from an illness/medical condition allegedly contracted aboard the member's vessel. Such decisions are usually in the face of strong evidence in our member's favour that the illness complained of had no connection to the employment aboard a vessel and the cause of the condition was more to do with a lifestyle choice of the seafarer. Unfortunately, these decisions detract from inspiring confidence in the Filipino court system.

We feel that by recommending an enhanced PEME scheme which is adopted by members and manning agents, the number of unmeritorious claims being litigated in the courts in the Philippines (or elsewhere) will fall. For example, a serious underlying health problem suffered by a seafarer, which is unrelated to his work aboard the vessel, but which might give rise to a claim for contractual benefits, may be identified by the enhanced PEME, where it might have been missed previously. By drawing such conditions to the attention of the member/manning agent, it is hoped that the level of knowledge regarding a potential employee will increase and therefore allow for an informed decision to be taken about whether to employ a seafarer aboard a vessel.

Explanation of the scheme

Members will be aware that Standard Club previously operated a limited PEME scheme in 2009. The original scheme only comprised a list of accredited clinics. The clinics were not routinely audited, and the scheme was discontinued. The newly enhanced Standard Club PEME scheme seeks to combine rigorous accreditation with continuous monitoring to ensure that the certificates issued to seafarers are a true and accurate representation of their health.

MAMS

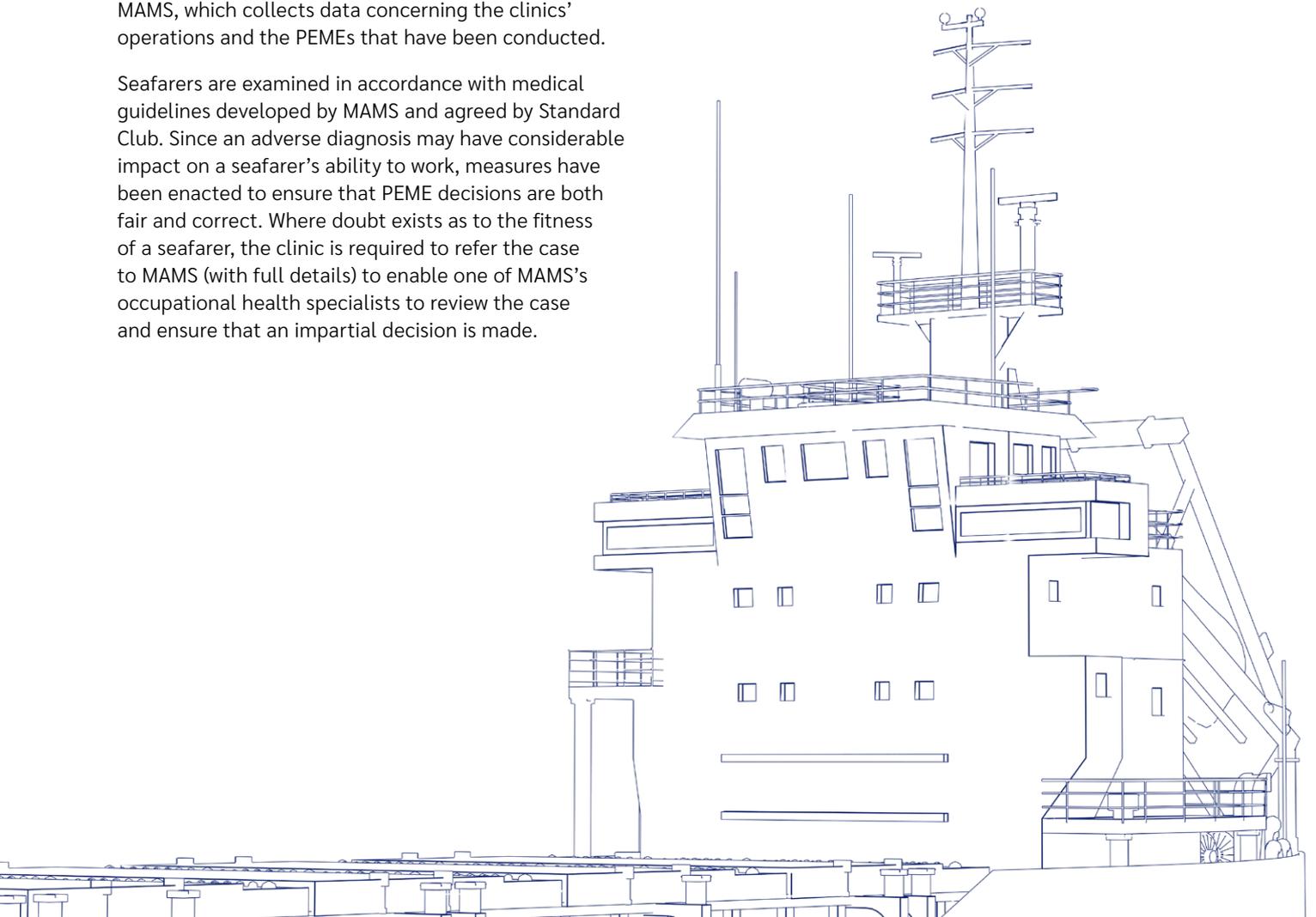
The PEME scheme is run and administered in partnership with the Marine Advisory Medical Service (MAMS), a UK-based company that specialises in medical repatriation and the accreditation of medical facilities based outside of the UK. MAMS has been assisting clubs in the IG with the formulation of custom-built PEME programmes since 2001. In keeping with the ILO Guide to the Medical Examination of Seafarers, MAMS has the objective of ensuring only crew who are fit for their role at sea are employed, so that they are not a danger to themselves or others.

The initial pilot scheme was administered in the Philippines for a period of one year to allow Standard Club to gauge the appetite amongst members for a full international PEME scheme and to adapt the scheme's operations. The enhanced Standard Club PEME scheme, with assistance from MAMS, is now administered in four countries (Philippines, India, Indonesia and Ukraine). These clinics are monitored on a monthly basis by MAMS, which collects data concerning the clinics' operations and the PEMEs that have been conducted.

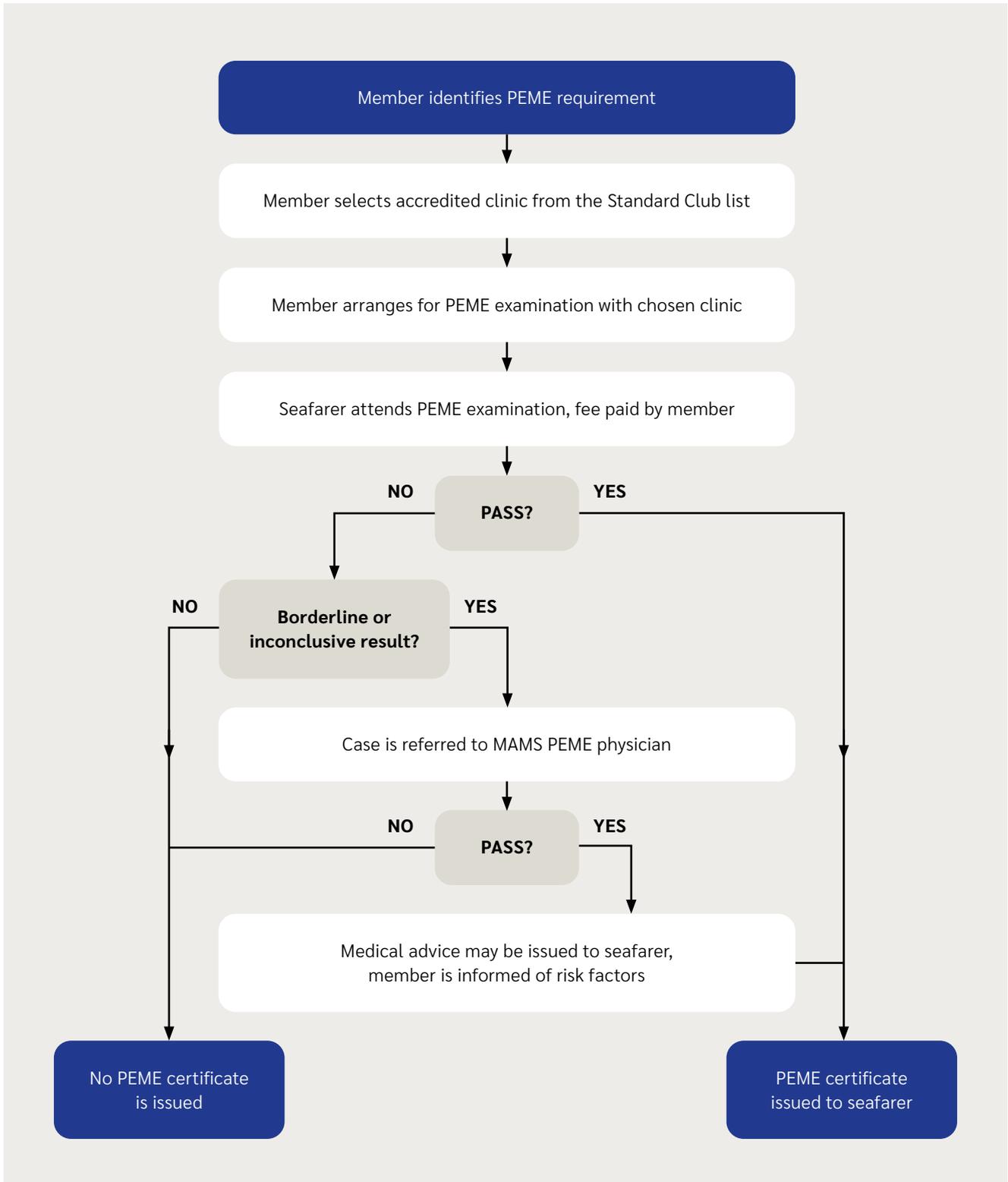
Seafarers are examined in accordance with medical guidelines developed by MAMS and agreed by Standard Club. Since an adverse diagnosis may have considerable impact on a seafarer's ability to work, measures have been enacted to ensure that PEME decisions are both fair and correct. Where doubt exists as to the fitness of a seafarer, the clinic is required to refer the case to MAMS (with full details) to enable one of MAMS's occupational health specialists to review the case and ensure that an impartial decision is made.

It should be noted that, since many conditions that render a seafarer unfit for sea service are temporary and treatable, an initial failure of a Standard Club PEME examination will not necessarily mean the end of a seafarer's maritime career. Early diagnosis is the key to maintaining a seafarer's long-term health and should therefore be considered beneficial for the seafarer and employer.

Members and/or manning agents are responsible for meeting the costs of the PEME scheme at the point of use. Members wishing to use the scheme need only select a clinic from the Standard Club's list and inform the clinic that the seafarer requiring the PEME falls within the Standard Club PEME scheme. Thus informed, the clinic will ensure that the PEME is conducted in accordance with the scheme's rigorous standards and that the seafarer's certificate represents as close as possible the seafarer's current state of health.



Scheme flow chart



Quality Control

Quality control is paramount to the scheme's success. To prevent the forgery of PEME certificates, each certificate is branded and marked with anti-counterfeit measures by the Marine Advisory Medical Repatriation Service. It also displays a unique serial number which can be used to authenticate the details of the PEME and identify the person to whom it was issued. Such safeguards are also included on the certificates of accreditation, which (as a requirement of the scheme) must be displayed by participating clinics. These are renewed on an annual basis.

During the life of the scheme, the standards of practice and probity of all participating clinics are closely monitored. Every clinic is annually audited using the MAMS-specific PEME checklist and each clinic is required to submit statistics concerning its activities on a monthly basis. These statistics are designed to enable both MAMS clinicians and Standard Club to spot patterns that may indicate that a clinic is not operating in accordance with the rigorous standards demanded by the enhanced PEME scheme. Only those clinics capable of and willing to maintain the high standards required are allowed to remain on the accredited list. This is to ensure seafarers receive the best standard and quality of examination. The system for the removal of a clinic from the Standard Club's list has been designed to ensure that the smallest amount of time possible elapses between the discovery of a failing clinic and the action taken, to ensure that it will not adversely affect the efficiency of the scheme and the safety of seafarers.

Additional services

While the delivery of high-quality PEMEs on behalf of Standard Club is the primary goal of the scheme, the club's partnership with MAMS also provides the opportunity to take advantage of the other services on offer. MAMS offers a broad spectrum of services from repatriation to forensic medicine, from medico-legal opinions to disembarkation of hostages post piracy.

MAMS has multilingual staff, as well as a dedicated Chinese language service cell based in its Singapore office, who can co-ordinate matters in China and also facilitate the repatriation arrangements of Chinese seafarers returning to their own country after accident and illness.

MAMS additional services

MAMS also provides articles for the club's loss prevention publications, focusing on preventative measures designed to reduce personal illness and injury incidents on board ships.

Filipino crew claims

– by Surani Shefras, Senior Claims Executive, International

Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, 2010 plus subsequent revisions (POEA)

All contracts of employment relating to a Filipino crewmember are subject to the POEA.

The POEA sets out the rights and obligations of Filipino seafarers, including the benefit entitlements that arise from a work-related illness or occupational disease. Section 32 of the POEA sets out a detailed Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Diseases or Illness Contracted. Each illness/injury is allocated a disability grading which has a corresponding monetary value, with a maximum allowance for a grade 1 disability of \$60k.

Under the POEA, the illness must be work-related and must have existed during the term of the seafarer's employment. As a general rule, the principle of work-relatedness requires that the illness in question must be included in the list of accepted occupational diseases under Section 32-A. Where the illness in dispute is not included in the list, the seafarer benefits from the terms of Section 20(B), which creates a rebuttable presumption of work-relatedness. This presumption shifts the onus of proof to the employer to prove that the illness is not work-related.

A seafarer may also be compensated if a pre-existing condition is aggravated by their work. The burden of proving work-aggravation of an existing condition rests with the claimant.

A seafarer is obliged to disclose in his PEME, or to his employer, any past medical conditions, disability or history of illness. Failure to disclose a known condition will preclude the seafarer from claiming any benefits.



Application of the POEA

There have been some helpful Supreme Court decisions since the 2010 revision of the POEA which assist in interpreting how the POEA is being applied in practice.

A 2018 Supreme Court decision, *Heirs of Marceliano Olorvida, Jr. vs. BSM Crew Service Centre Philippines, Inc. et. al.* provides a summary of the principles governing recovery of death benefits under the POEA.

1. Work-related illness

The first requirement for claiming death benefits is to prove that the seafarer's death is work-related. This is accomplished by establishing that: (a) the cause of death was reasonably connected to the seafarer's work; or (b) the illness which caused the seafarer's death is an occupational disease as defined under the POEA Contract; or (c) the working conditions aggravated or exposed the seafarer to the disease which caused his death.

2. Terms of employment

The second requirement for successfully claiming death benefits is proof that the seafarer died during the term of his contract. As an exception to the rule, death benefits are due even if the seafarer dies outside employment as long as he was medically repatriated on account of a work-related injury or illness.

In the *Marceliano Olorvida* case, the court denied death benefits to the estate of a seafarer who died of lung cancer two years after the completion of contract. The court concluded that the cause of death was not work-related and that the death did not occur within the term of employment.

A 2013 decision,¹ *Magsaysay Maritime Services and Princess Cruise Lines, LTD vs Earlwin Meinrad Antero F. Laurel* reviewed the application of the POEA to cases involving occupational disease. Here, the claimant alleged that his pre-existing genetic thyroid condition was exacerbated during the course of his employment.

The court held that the pre-existing condition was aggravated by the stress of being a pastry chef and by a poor diet. The judge used the opportunity to reiterate one of the basic tenets of the court's approach to the question of work-relatedness as follows:

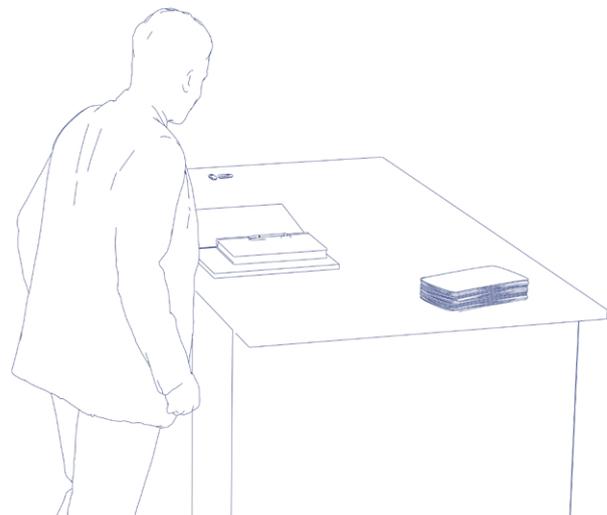
"It is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had."

The court went on to underline the purpose of the POEA, which "is designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. Its provisions must, therefore, be construed and applied fairly, reasonably and liberally in their favour. Only then can its beneficent provisions be fully carried into effect."

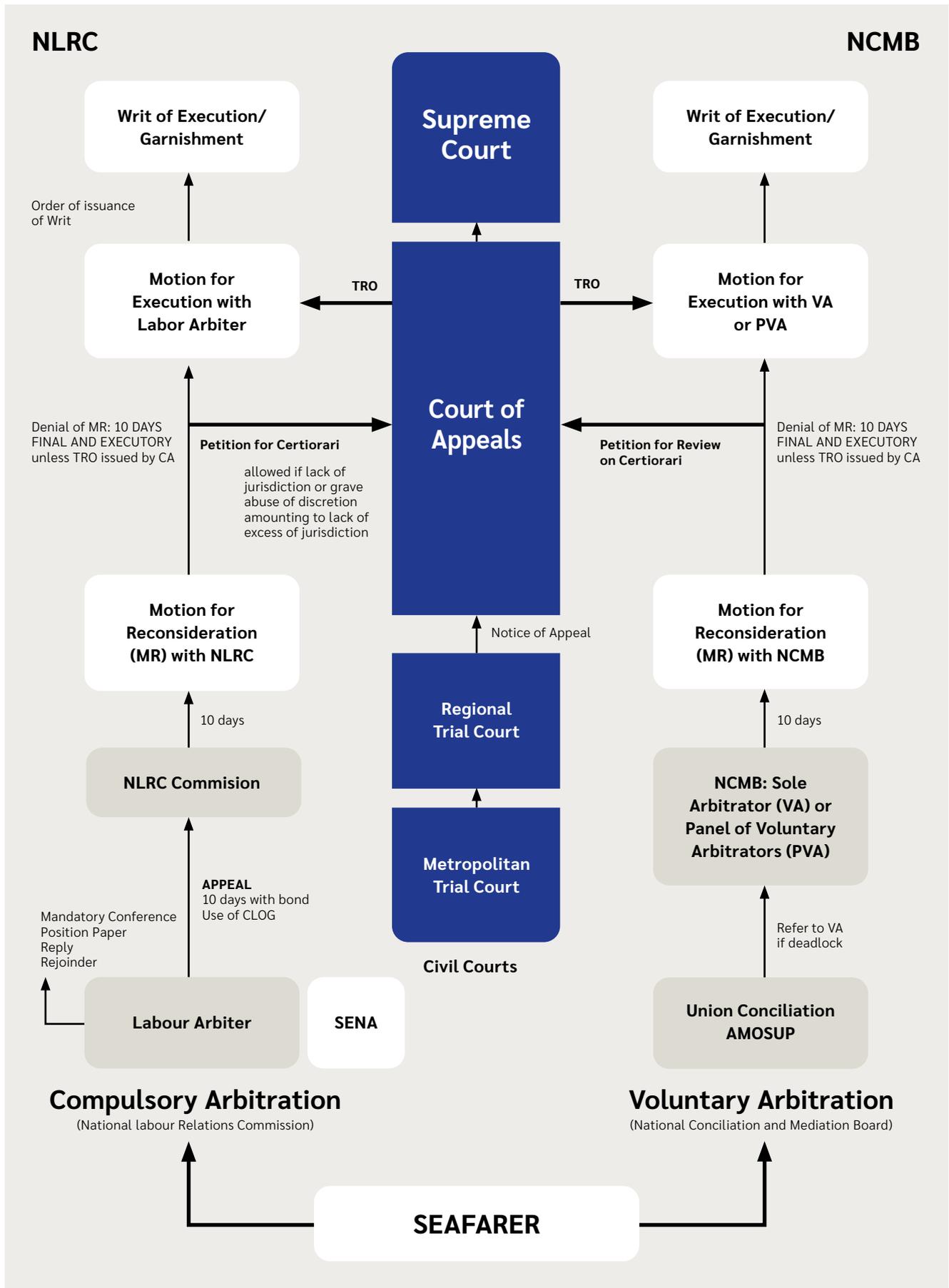
The benefits of an enhanced PEME

Another principle that has been reiterated in multiple Supreme Court decisions² relates specifically to the relevance of PEMEs to a seafarer's state of health. The Supreme Court judges have repeatedly held that, while a PEME may reveal enough for vessel interests to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform vessel interests of the seafarer's true state of health. PEMEs are not exploratory and are therefore not viewed as providing an accurate picture of the seafarer's state of health.

This view has been beneficial to the employer as it avoids any implication that it is a shipowner's responsibility to discover, as opposed to the seafarer's obligation to disclose, any relevant pre-existing conditions.



The Filipino Court Structure





The Filipino Court Structure

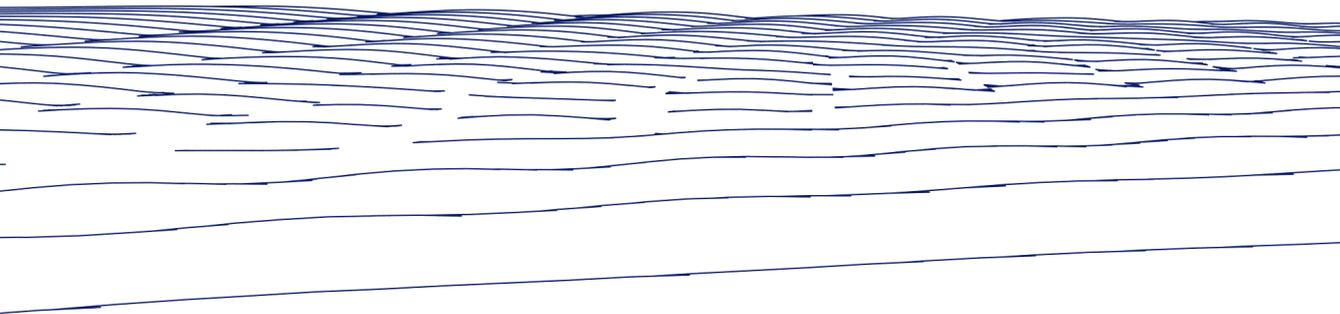
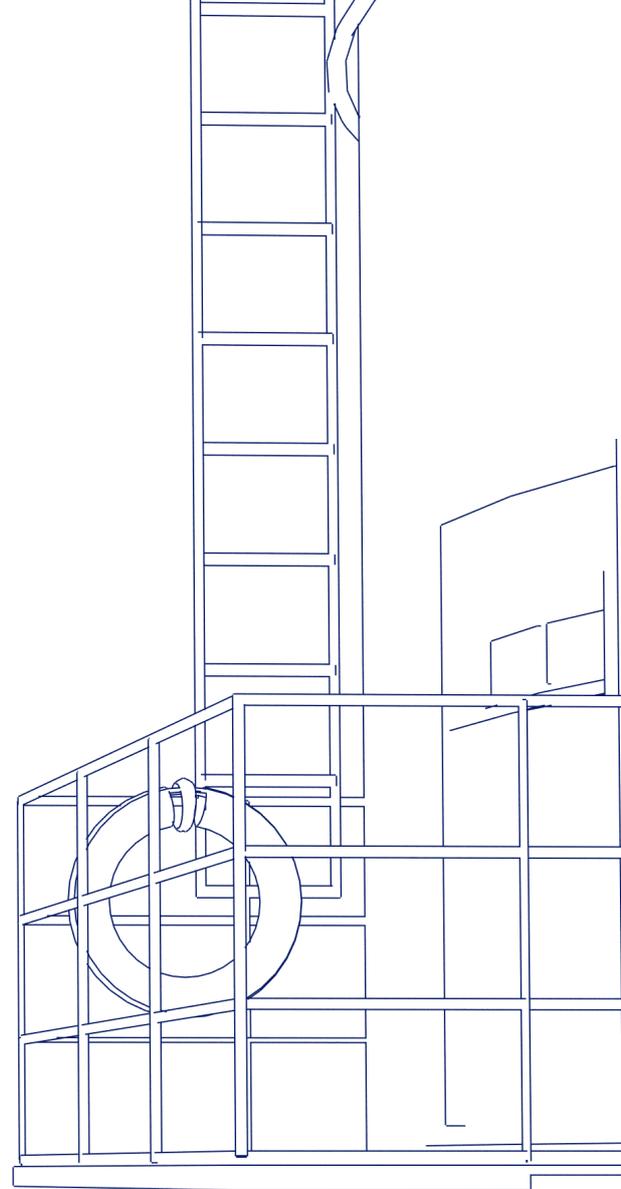
While the Supreme Court decisions that are being handed down appear logical, it can take a long time for a claim to reach the Supreme Court, with many inconsistent lower court and tribunal decisions along the way. The Filipino Court structure is complex and best understood when viewed diagrammatically.

Conclusion

The cost of employing unfit seafarers goes beyond the individual's benefits. One unfit seafarer can cost a shipowner significant sums in legal costs, crew replacement costs, deviation costs, business interruption, etc – the list goes on. Reducing the number of unfit seafarers on board our members' ships will generate significant direct and knock-on savings for all concerned.

With thanks to Leanne O'Loughlin

- 1 Magsaysay Maritime Services and Princess Cruise Lines, LTD vs Earlwin Meinrad Antero F. Laurel, GR No. 195518.
- 2 Vetyard vs Suarez (March 15, 2014); Simbajon vs Magsaysay (July 9, 2014); Talosig vs United Philippine Lines (July 28, 2014); Status vs Delalamon (July 20, 2014)



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