

I. Introduction

A. *Deployment and Protection of Overseas Filipino Seabased Workers Around the World*

Filipino seabased workers are deployed to countries throughout the world. In 1984, the total number of seafarers registered by the Philippine Overseas Employment Agency (“POEA”) was 50,604.¹ By 2002, the number reached 209,593.² Though there has been a recent decrease in their deployment,³ one writer states that twenty percent of all seafarers⁴ onboard international ocean-going vessels today are Filipino.⁵ Accordingly, nearly all major maritime disasters will involve a Filipino seafarer.⁶ The incidences of litigation stemming from work related accidents have likely also increased.⁷ Foreseeing that employment conflicts would arise, the government of the Philippines put measures in place to protect its citizen seafarers who were deployed to countries all over the globe, including the United States.⁸ The two Filipino government agencies largely responsible for the regulation of the recruitment and employment of Filipino seafarers are the

1. Philippine Overseas Employment Administration, *Deployment of Overseas Filipino Workers, 1984-2002*, at [http://www.poea.gov.ph/docs/Deployment%20Summary%20\(LB_SB\)%201984%202002.xls](http://www.poea.gov.ph/docs/Deployment%20Summary%20(LB_SB)%201984%202002.xls)

2. *Id.*

3. Our Latest Report, *Despite the Risks, Filipino Seafarers Toil in the World's Oceans*, (visited July 25, 2003) at <http://www.pcij.org/stories/2003/seafarers.html>

4. For the purposes of this document, “seafarer” refers to both male and female “seamen.”

5. Our Latest Report, *Despite the Risks*, at

[http://www.poea.gov.ph/docs/Deployment%20Summary%20\(LB_SB\)%201984%202002.xls](http://www.poea.gov.ph/docs/Deployment%20Summary%20(LB_SB)%201984%202002.xls)

6. *Id.*

7. *Cf.* Susan A. Macmanus, *The Impact of Litigation on Municipalities: Total Cost, Driving Factors, and Cost Containment Mechanisms*, 44 Syracuse L. Rev. 833, 835 (1993) (discussing the effect of population increases on litigation).

8. *See* Presidential Decree No. 442, as amended, Lab. Code of the Phil., Book 1, tit. 1, art. 12, 14, 17, 20 & 21 (2003), reprinted in Chan Robles Virtual Law Library, Philippine Labor Circular (visited July 23, 2003) < <http://www.chanrobles.com/legal4labor4.htm> > (discussing the Philippine government’s objective to regulate the hiring of Filipino workers).

National Labor Relations Commission and the Philippines Overseas Employment Administration.⁹

B. National Labor Relations Commission (“NLRC”)

The NLRC was established under sections 213 through 225 of the Philippine Labor Code.¹⁰ The NLRC is attached to the Philippine Department of Labor and Employment.¹¹ It has established labor arbiters who have jurisdiction to hear claims by Filipino workers involving unfair labor practices, termination disputes, and claims for actual, exemplary and other forms of damages arising from employer-employee relations.¹² Under new rules established by the NLRC, labor arbiters have original and exclusive jurisdiction to decide claims of “overseas Filipino workers provided for by law”, which includes seafarers.¹³ Section 218 of the Philippine Labor Code construes the authority of the NLRC.¹⁴ It provides in pertinent part, that the NLRC has the power and authority to promulgate rules and regulations governing the hearing and disposition of cases before it and to conduct investigations for the purpose of determination of a question, matter or controversy within its jurisdiction.¹⁵ The NLRC acts in concert with

9. See generally Alexandra E. Mora, *Navigating the Waters of Forum-Selection Clauses in Maritime Employment Contracts*, 12 U.S.F. Mar. L. J. 115 (2000) (discussing, in part, Forum-Selection Clauses in Philippine Maritime Employment Contracts).

10. International Labour Organization, *National Labour Relations Commission – Phillipines* (last visited July 25, 2003), at www.ilo.org/public/english/employment/gems/eo/law/philip/nlrc.htm

11. *Id.*

12. *Id.*

13. See *Amended POEA Standard Employment Contract* (last visited July 27, 2003) at http://maritimeadvocate.com/i20_phil.php (amended standard POEA contract implemented in full on June 5, 2002).

14. *Supra* note 8.

15. *Id.*

the Philippine Overseas Employment Administration to govern the recruitment and employment of Filipino seafarers.¹⁶

C. Philippine Overseas Employment Administration (“POEA”)

The POEA is the central government authority under the NLRC in charge of regulating the employment of Filipino workers and professionals overseas.¹⁷ Under *POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers*, Part IV, section one, the POEA has established that there shall be minimum standard employment contracts for seafarers that are in accordance with accepted international standards and maritime practice.¹⁸ The standard terms and conditions, pursuant to POEA regulations, illustrate the minimum requirements for every individual contract approved by the POEA.¹⁹

II. Examination of the Standard Filipino Seafarer Employment Contract

A. Grievance Machinery

16. *Hiring Filipino Workers through POEA* (last visited July 23, 2003) at <http://www.poea.gov.ph/html/gpb.htm>

17. *Id.*

18. *See POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers* (last visited July 23, 2003) at www.poea.gov.ph

19. *Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels* (last visited July 21, 2003), at <http://www.poea.gov.ph/docs.sec.pdf>

The POEA has established minimum requirements of individual seafarer contracts to protect seafarers by securing the best possible terms and conditions of employment.²⁰ Included in the *Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels* (“Standard Terms”) is a standard method of grievance for seafarers. Section 16 of Standard Terms, entitled “grievance machinery” provides a protocol for complaints made by Filipino seafarers.²¹ It provides that if the employee considers himself aggrieved, he or she shall make a complaint in accord with the following:

1. The seafarer shall first approach the head of the Department in which he is assigned to explain [the] grievance.
2. The seafarer shall make [his or her] grievance in writing and in an orderly manner and shall choose a time when his complaint or grievance can be properly heard.
3. The Department head shall deal with the complaint or grievance and where solution is not possible at [his or her] level, refer the complaint or grievance to the Master who shall handle the case personally.
4. If no satisfactory result is achieved, the seafarer concerned may appeal the management of the company or with the Philippines Overseas Labor Office or consular officer overseas. The master shall afford such facilities necessary to enable the seafarer to transmit his appeal.
5. If after observing the grievance procedure the master finds that the seafarer violated terms of his Contract or has committed [a] breach of discipline, the master shall discipline the seafarer or, if warranted, terminate his employment.

20. *Id.*

21. *See Id. Standard Terms* § 16.

6. The seafarer may also seek the assistance of the highest ranking Filipino seafarer on board.²²

However, Standard Terms, section 16(c) provides that the above-mentioned protocol “shall be without prejudice to other modes of voluntary settlement of disputes and to the jurisdiction of the POEA or the NLRC over any unresolved complaints arising out of shipboard employment that shall be brought before it by the seafarer.”²³

B. Arbitration

A key component of the Standard Terms requirement for seafarer contracts is section 29, titled *Dispute Settlement Procedures*.²⁴ It requires that any claim or dispute arising from employment be submitted to the original and exclusive jurisdiction of an arbitrator or panel of arbitrators, if the party making the claim or dispute is part of a collective bargaining agreement.²⁵ Where the Filipino employee is not part of a collective bargaining agreement, the parties may submit their dispute to the original and exclusive jurisdiction of either the NLRC or a voluntary arbitrator or panel of arbitrators.²⁶ The arbitration provision in Filipino seafarer contracts is a continuing source of controversy. Although the provision was created to protect Filipino seafarers

22. *Id.*

23. *Id.* Standard Terms § 16(c).

24. *Id.* Standard Terms § 29.

25. *Id.*

26. See The Maritime Advocate.com, *Dispute Settlement Procedures*, Issue 20 (visited July 23, 2003) at http://www.maritimeadvocate.com/i20_phil.php (discussing that if a party is a part of a collective bargaining agreement, he or she shall submit to jurisdiction of a voluntary arbitrator, but if no arbitrator is listed in the contract, the parties shall choose from a list of voluntary arbitrators of the National Conciliation and Mediation Board of the Department of Labour and Employment; but if the seafarer is without a collective bargaining agreement, he or she shall choose between voluntary or involuntary arbitration before the NLRC).

by securing a forum for their disputes,²⁷ it appears their preferred redress for claims is the American court system.²⁸ Filipino seafarers have consistently made an effort to forego the arbitration provision in the standard contract and bring actions under state law.²⁹

C. Choice of Laws Provision

Section 31 of Standard Terms is a choice of law provision.³⁰ It stipulates that all unresolved claims, disputes or grievances pursuant to the Filipino seafarer contract shall be governed by the laws of the Philippines, treaties and covenants, and international conventions where the Philippines is a signatory.³¹ Some American courts debate whether choice of law provision giving rise to arbitration in the Philippines is valid under

27. See supra, note See generally Presidential Decree No. 442, as amended, Lab. Code of the Phil., Book 1, tit. 1, art. 12, 14, 17, 20 & 21 (2003), reprinted in Chan Robles Virtual Law Library, Philippine Labor Circular (last visited July 23, 2003) < <http://www.chanrobles.com/legal4labor4.htm> > (discussing the Philippine government's objective to regulate the hiring of Filipino workers).

28. See Francisco v. Stolt Achievement MT, 293 F.3d 270 (5th Cir. 2002) (holding arbitration provision was not excepted from Convention); Nunez v. Am. Seafoods, 52 P.3d 720 (Alaska 2002) (Reversing lower court's decision that forum selection clause is invalid because it violated seaman's right to sue under Jones Act); Marinechance Shipping LTD. v. Sebastian, 143 F.3d 216 (5th Cir. 1998) (holding forum selection clause in seaman's contract was unenforceable); Lejano v. K.S. Bandak, (E.D.La. 2000) (denying seaman's motion to remand personal injury action to state court); De Joseph v. OdFJell Tankers, Inc., 196 F. Supp. 2d 476 (S.D.Tx. 2002) (dismissing Filipino seaman's suit filed under Jones Act and general maritime laws); Amanquiton v. Peterson, 813 So. 2d (Fla. Dist. Ct. App. 2002) (holding ship owner did not have sufficient nexus with Florida or United States to confer subject matter jurisdiction to hear seaman's Jones Act claim); Celebrity Cruises, Inc. v. Hitosis, 785 So. 2d 521 (Fla. Dist. Ct. App. 2001) (holding forum selection clause was permissive, not mandatory); Jaranilla v. Megasea Maritime Ltd., 171 F. Supp. 2d 644 (E.D. La. 2001) (holding seaman's contract not subject to the Convention due to language in Federal Arbitration Act); Boyd v. Grand Truck W. R. Co., 338 U.S. 263 (1949) (discussing provision in railroad employee's contract calling for suit to be brought only where injury occurred or where employee resided conflicted with Federal Employers' Liability Act prohibiting any contract to enable carrier to exempt itself from liability created by the Act); Webster v. Royal Caribbean Cruises, Ltd., 124 F. Supp. 2d 1317 (S.D.Fl. 2000) (holding forum selection clause calling for dispute to be brought in Norway or in seaman's country of domicile was enforceable); Gavino v. Italia, WL 12223576 (E.D.La. 2001) (denying Filipino seaman's Motion to Remand or alternatively, for a Jury Trial because lawsuit fell within confines of Convention); M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972) (vacating Court of Appeals decision to give effect to forum selection provision calling for treating any disputes before London Court of Justice).

29. See cases cite supra note 28.

30. *Standard Terms* § 31.

31. *Id.*

the auspices of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards,³² of which both the Philippines and the United States is a signatory, or if other United States legislation supercedes the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, thereby giving Filipino seamen access to the American court system.³³

III. Examination of United States Legislation

A. *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (“Convention”), is enforced by the United States in accordance with Title 9, section 201, of the United States Code.³⁴ The Convention is a reciprocal agreement between signatories, which provides that foreign arbitral awards will be recognized and enforced in the territory of any other Contracting State.³⁵ Section 201, Article II, states that “[e]ach 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.”³⁶ The Convention exclusively protects agreements that are considered

32. See cases cited supra note 28.

33. See, e.g., Janarilla, 171 F. Supp. 2d (holding that forum selection clause in Filipino seaman contract was not subject to Convention on Recognition and Enforcement of Foreign Arbitral Awards).

34. 9 U.S.C. § 201(2003).

35. See *Id.*

36. *Id.*

commercial under the national law of the State making such declaration.³⁷ Presumably then, the Convention would ensure deference be granted to arbitration provisions included in Filipino seafarer employment contracts. However, some American judges have come to the conclusion that the Convention is in conflict with other U.S. legislation and/or Filipino employee rights.³⁸

B. *Jones Act*

The Jones Act³⁹ is a law enacted by Congress that protects the crewmembers of fresh-water and ocean-going vessels.⁴⁰ It governs the liability of vessel operators and marine employers for work related injuries and/or deaths of employees.⁴¹ As a federal cause of action, the U.S. Congress intended the Jones Act to provide the same liability standards for all seamen's injuries throughout the nation.⁴² It provides a remedy for an injured seaman⁴³ whose injuries arise from a defect in the vessel or from the negligence of a vessel owner and/or vessel employee, during the course of the seaman's employment.⁴⁴ Under the Jones act, an injured seaman has the opportunity to recover lost wages from the time of injury to the time of the trial, lost future wages, medical expenses arising from the injury and past and future mental anguish, pain and suffering.⁴⁵

37. *Id.*

38. *See supra* note 33.

39. 46 U.S.C. 688 (1970); *available at* <http://www.jonesact.com/>

40. *Id.*

41. *Id.*

42. *Id.*

43. For the purposes of this document "seaman" refers to both male and female "seamen."

44. 46 U.S.C. § 688.

45. *Id.*

C. *Savings to Suitors Clause*

The saving to suitors clause is also regularly cited by Filipino plaintiffs in order to supplant the authority of the Convention.⁴⁶ Title 28, section 1333, of the United States Code provides in pertinent part, that “district courts shall have original jurisdiction, exclusive of the courts of the States, of any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.”⁴⁷ Though section 1333 confers jurisdiction to federal courts pertaining to admiralty and maritime civil claims, the “saving to suitors ...” language of 1333 preserves common law remedies and allows concurrent state court jurisdiction over some admiralty disputes.⁴⁸ Thus, the Filipino seafarer arbitration cases are often treated differently by different jurisdictions.⁴⁹ If the savings to suitors clause is utilized as the Filipino claimants would prefer, the concurrent state jurisdiction granted by the clause prevails and the civil claim can be addressed in state court.⁵⁰ The effect is to invalidate the arbitration provision of the standard Filipino seafarer contract.⁵¹ In another interpretation of the saving to suitors clause, federal jurisdiction is conferred, and Filipino seafarer contract cases are removed to federal court.⁵² When the contract disputes are

46. See e.g., Nunez, 52 P.3d 720 (discussing whether seaman has right to sue under Jones Act in spite of forum selection clause calling for all matters arising from employment disputes to be subject to arbitration in the another country).

47. 28 U.S.C. § 1333 (2003).

48. E.g., George Tadross, *The Saving to Suitors Clause vs. The Limitation of Liability Act: A Compromise as Found in Lewis v. Lewis & Clark Marine, Inc.*, 26 Tul. Mar. L.J. 695, 701 (2002) (discussing the history and purpose of the saving to suitors clause).

49. See cases cited *supra* note 28.

50. See Nunez, *supra* note 42.

51. *Id.*

52. See 28 U.S.C. § 1333.

removed, the cases are often dismissed in accord with the Convention, and the arbitration provisions are effectuated.⁵³

D. *Federal Arbitration Act*

Chapter One of Title IX of the U.S. Code, adopted in 1924, is commonly known as the Federal Arbitration Act (“FAA”).⁵⁴ The FAA contains laws that govern domestic arbitration. Section Two of the FAA, entitled “[v]alidity, irrevocability, and enforcement of agreements to arbitrate” provides that “[a] written provision in any maritime transaction or a contract evidencing a transaction involving commerce ... is valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.”⁵⁵ Section One of the FAA defines “maritime transactions” and “commerce.”⁵⁶ The definition of “maritime transactions” pursuant to the FAA does not include seamen employment contracts.⁵⁷ Thus, some courts have held that Chapter One of Title IX is not ground for enforcing the arbitration provision in standard Filipino seamen contracts.⁵⁸

E. *Forum Non Conveniens*

53. See Francisco, 293 F.3d 270; see also Martin Davies, *Forum Selection Clause in Maritime Cases*, 27 Tul. Mar. L.J. 367, 386 (2003) (stating that many will greet decision to validate arbitration clauses with satisfaction because it keeps foreign seamen out of U.S. courts).

54. 9 U.S.C. § 1 (2003).

55. *Id.*

56. *Id.*

57. See *Id.* “Maritime Transactions” under the FAA “means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction.”

58. See Jaranilla, 171 F. Supp. 2d at 646.

Yet another mechanism employed to disrupt the effect of arbitration provisions is the doctrine of forum non-conveniens.⁵⁹ Under forum non conveniens, a court shall dismiss a dispute because it is subject to jurisdiction in another country and because the foreign country provides a more appropriate forum than a U.S. court for resolving the dispute.⁶⁰ It is incumbent on the defendant making the motion to show that the alternative forum has jurisdiction and that public and private interests weigh in favor of dismissal.⁶¹ Defendants that request a Filipino seafarer contract dispute be dismissed on forum non conveniens grounds bear a heavy burden to show the Philippines is an adequate alternative forum.⁶² Thus, it is important to understand the character of arbitration proceedings in the Philippines.

IV. Analysis of the of Arbitration/Arbiters in the Philippines

A. *Qualifications*

59. See Hitosis, 785 So. 2d at 523. (Florida Supreme Court affirmed lower courts application of *Kinney test*. *Kinney test* stipulates that action could be dismissed on forum non conveniens grounds if four criteria are present: (1) adequate alternative forum exists which possesses jurisdiction over entire case, (2) all relevant factors of private interest favor alternative forum, weighing in strong presumption against disturbing plaintiff's forum choice, (3) if the balance of private interests is at or near equipoise, court finds that factors of public interest balance in favor of trial in alternative forum and (4) if balance favors such a forum, the trial judge must ensure the plaintiffs can reinstate their suit in the alternative forum without undue inconvenience or prejudice); *but see Lejano*, 705 So. 2d 158, 170 (stating that unless the "results in the remedy provided by the alternative forum [are] so clearly inadequate or unsatisfactory such that it is no remedy at all," courts should not consider alternative forum's adequacy when deciding whether to enforce forum selection provision; rather "there is a presumption that the substantive law of a foreign forum is adequate").

60. See Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981) (applying the *Gilbert* analysis to cases where a motion to dismiss is made on forum non conveniens grounds).

61. *Id.*

62. See *Id.*

If Filipino seafarer matters are to be dismissed on forum non-conveniens grounds, or upon affirmation of the Convention, it becomes important to understand who will preside over an arbitration, and in what manner the proceeding will take place.⁶³ Under article 215 of the Philippine Labor Code, the qualifications of arbiters provided by the National Labor Relations Commission is set forth.⁶⁴ All Executive Labor Arbiters and Labor Arbiters must be members of the Philippine Bar and must have practiced law in the Philippines for at least seven (7) years, with a least three (3) years exposure in the field of labor-management relations.⁶⁵ If international arbitration matters are not referred to the National Labor Relations Commission, they are usually referred to the International Chamber of Commerce⁶⁶ (ICC) or the American Arbitration Association⁶⁷ (AAA).⁶⁸

B. Arbitration Proceeding Framework

63. See generally *Hitosis*, 785 So. 2d at 523 (reasoning that in order for arbitration to be dismissed on forum non conveniens grounds, defendant has burden of showing Philippines is adequate alternative forum).

64. See Lab. Code of the Phil., Book 5, tit. 2, art. 215 (2003), reprinted in Chan Robles Virtual Law Library, Philippine Labor Circular (last visited July 27, 2003) < <http://www.chanrobles.com/legal4labor.htm>> (discussing the qualifications of Executive Labor Arbiters and Labor Arbiters under the NLRC).

65. *Id.*

66. The International Chamber of Commerce promotes trade, investment and the market economy system worldwide. It is also home to the ICC International Court of Arbitration. See ICC The World Business Organization (last visited August 11, 2003) at <http://www.iccwbo.org/> (discussing the many arms of the ICC).

67. The American Arbitration Association is the nations largest Alternative Dispute Resolution provider. To serve its clients, it has established international offices. It has assisted in the establishment of ADR systems for corporations, unions, government agencies, law firms and the courts. See American Arbitration Association, *Dispute Resolution Services Worldwide*, (last visited August 11, 2003) at <http://www.adr.org/index2.1.jsp?JSPssid=15765>.

68. Asia-Pacific Economic Cooperation Guide to Arbitration and ADR in Apec Member Economies, *Institutions for dispute resolution outside of the courts*, (last visited July 27, 2003) at <http://www.arbitration.co.nz/content.asp?section=Institutions> for dispute resolution outside of the courts.htm

The Philippines is committed to enforce awards under the Convention.⁶⁹ Pursuant to that commitment, the Filipino government provides a liberal framework regarding how arbitration may proceed.⁷⁰ Though arbitration in the Philippines is normally conducted in English or Tagalog⁷¹, there is no prohibition on the use of any other language.⁷² Likewise, there is no prohibition of representation by foreign lawyers or non-Filipino citizens as arbitrators.⁷³ If applicable, foreign law and/or rules of an international arbitration institution may govern the substance of the dispute in arbitration.⁷⁴ An award pursuant to arbitration may be vacated upon findings that the award was procured by corruption, fraud, and other inadmissible means, evident partiality or corruption in the arbitrators, misconduct on the part of the arbitrators in refusing to postpone the hearing upon a showing of sufficient cause, refusal of the arbitrator to hear pertinent evidence or material to the dispute, willful non-disclosure by one of the arbitrators that he or she was disqualified to act, any misbehavior by which the rights of any party have been materially prejudiced, or wrongful execution of the proceeding, such that a mutual, final and definite award was not made.⁷⁵ Under Filipino law, an arbitration agreement, domestic or

69. See Asia-Pacific Economic Cooperation, *Untitled Document* (last visited July 27, 2003) at <http://www.arbitration.co.nz/print.asp?country=PHL> (discussing the Philippines as one of the Asia-Pacific Economic Cooperation members). The Asia-Pacific Economic Cooperation, created in 1989, is a forum comprising twenty-one economies of the Asia-Pacific region. It has evolved as an important instrument to promote trade, economic, and investment cooperation. It created *Dispute Mediation Services* to resolve disputes among its members, some of whom adhere to the 1958 Convention on Recognition and Enforcement of Foreign Arbitral Awards.

70. See *Id.* (stating that although rules of procedure pertaining to arbitration are compulsory, parties are given flexibility in applying them).

71. See *Id.* (stating Filipino and English are the two official languages of the Philippines). Tagalog is also a major language and serves as the base for Filipino. It is mostly spoken by people from the Tagalog regions in the main island of Luzon.

72. *Id.*

73. *Id.*

74. *Id.*

75. See Asia-Pacific Economic Cooperation, *Untitled Document*, (last visited July 27, 2003) at <http://www.arbitration.co.nz/print.asp?country=PHL>

international, is valid, enforceable and irrevocable on the same basis as any other contract.⁷⁶

V. Examination of United States Case Law

A. *Affirming Enforcement of Forum Selection/Arbitration Clause*

In 2002, the United States District Court for the Eastern District of Louisiana considered the viability of an arbitration provision in a Filipino seaman contract.⁷⁷ In Francisco v. Stolt Achievement M/T,⁷⁸ a Philippine national was injured on a chemical tanker ship located on the Mississippi river.⁷⁹ Stolt Achievement (the operator of the vessel) had hired the seaman pursuant to the contract requirements of the POEA.⁸⁰ Consequently, the seaman contract mandated that any claims arising from employment shall be submitted to arbitration in the Philippines.⁸¹ The claimant brought his suit in Louisiana state court asserting claims under the Jones Act, but alleged the savings to suitors clause authorized the suit in state court.⁸² Stolt removed the case to federal district court, alleging the arbitration agreement should be enforced because it was subject to the Convention.⁸³ Upon denying Francisco's Motion to Remand, the district court granted Stolt's Motion to Compel Arbitration and dismissed the suit.⁸⁴ Francisco

76. *Id.*

77. Francisco, 293 F.3d 270.

78. *Id.*

79. *Id.*

80. *Id.* at 271.

81. *Id.*

82. *Id.*

83. Francisco, 293 F.3d at 272.

84. *Id.*

appealed to the Fifth Circuit Court of Appeals, and the lower court's decision was affirmed.⁸⁵

The Fifth Circuit considered whether the Convention precluded the action from being remanded to state court.⁸⁶ The court determined it should compel arbitration in the Philippines if four criteria are present:

- 1) an agreement in writing to arbitrate the dispute;
- 2) the agreement provides for arbitration in the territory of a Convention signatory;
- 3) the agreement arises out of a commercial legal relationship; and
- 4) a party to the agreement is not an American citizen.⁸⁷

Since the criteria were present in the case, the Fifth Circuit held the Convention "required" district courts to compel arbitration.⁸⁸ The court explained that neither the language of the Convention nor limiting language ratifying the Convention provided an alternative to enforcement of Filipino seamen contracts containing arbitration clauses so long as a "commercial" relationship existed between the seafarer and employer.⁸⁹ Finally, the court noted that where the scope of an arbitration clause is in question, the clause should be construed in favor of arbitration.⁹⁰

In Marinechance Shipping, LTD. v. Sebastian,⁹¹ the Fifth Circuit similarly held the arbitration clauses in Filipino seamen contracts were enforceable.⁹² In coming to its

85. *Id.* at 278.

86. *Id.* at 273.

87. Sedco, Inc. v. Petroleos Mexicanos Mexican Nat'l Oil Co., 767 F.2d 1140, 114-45 (5th Cir. 1985) cited in Francisco, 293 F.3d 270.

88. Sedco, Inc., 767 F. 2d 1140, 114-45 citing Francisco, 293 F.3d 270.

89. Francisco, 293 F.3d at 274.

90. Sedco, 767 F.2d at 1145 citing Francisco, 293 F.3d 270.

91. 143 F.3d 216.

92. *Id.*

conclusion, the court considered the policy implications of enforcing the arbitration provisions.⁹³ It cited rationale from the U.S. Supreme Court case, Carnival Cruise Lines, Inv. v. Shute,⁹⁴ where a Washington state passenger asserted that cruise line tickets requiring all disputes be handled in Florida was unenforceable because it was not the product of negotiation. The Court acknowledged the selection of a forum in advance reduces the vessel owner's exposure to suits all over the world and informs seamen where a cause of action may be maintained.⁹⁵ In both the Fifth Circuit and Supreme Court decisions, the underlying rationale for enforcement was that the arbitration clause was fundamentally fair.⁹⁶

B. *Denying Enforcement of Forum Selection/Arbitration Clause*

The Third District Court of Appeal, Florida, came to a contrary decision in Celebrity Cruises, Inc. v. Hitosis.⁹⁷ In Hitosis, a Filipino seaman filed in Miami-Dade County, Florida, to recover damages suffered aboard his employer's vessel.⁹⁸ The seaman's complaint contained counts arising under the Jones Act.⁹⁹ The appellant cruise line filed motions to dismiss based on a forum selection clause in the seaman's contract and forum non-conveniens.¹⁰⁰ The Third DCA held the forum selection clause was

93. See *Id.* at 220; see also *M/S Bremen*, 407 U.S. 1 (stating that the elimination of uncertainties by agreeing in advance on a forum is an indispensable element in international trade, commerce, and contracting).

94. 499 U.S. 585.

95. *Id.*

96. *Id.* at 593.

97. 785 So. 2d 521.

98. *Id.*

99. *Id.*

100. *Id.*

permissive,¹⁰¹ not mandatory,¹⁰² and that the defendant did not carry the burden of proving the Philippines was an adequate alternative forum for arbitration of the dispute.¹⁰³

The court explained that although the seaman contract contained standard “grievance machinery,” which grants the Philippines jurisdiction over employment suits, it also provides that “[t]his procedure shall be without prejudice to any action that the parties may take before appropriate authority.”¹⁰⁴ The Third DCA interpreted the aforementioned language, and determined it was illustrative of a permissive jurisdiction clause.¹⁰⁵ Therefore, the provision provided for jurisdiction in the Philippines, but did not exclude jurisdiction or venue in another forum.¹⁰⁶ Also, because the defendants were American companies; the ship’s home port was Puerto Rico; Hitosis was provided maintenance and cure for approximately two years; and medical witnesses were located in Florida, the court determined the defendant did not meet its burden of showing the Philippines was an adequate alternative forum.¹⁰⁷

In Jaranilla v. Megasea LTD.,¹⁰⁸ the U.S.D.C, E.D. Louisiana, also found a Filipino seaman’s contract was not subject to the Convention.¹⁰⁹ As grounds for its decision, the district court cited to the Federal Arbitration Act, which “specifically

101. See Garcia Granados Quinones v. Swiss Bank Corp., S.A., 509 So. 2d 273 (Fla. 1987) (holding that a permissive jurisdiction clause is one providing there may be jurisdiction over a particular matter in a given forum).

102. See *Id.* (holding that a mandatory jurisdiction clause is one that must be applied when not unreasonable or unjust).

103. Hitosis, 785 So. 2d at 522.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.* at 523.

108. 171 F. Supp. 2d 644.

109. *Id.* at 647.

excludes seafarers' from the scope of 'commercial' contracts.”¹¹⁰ Because the United States only applies the Convention to differences arising out of legal relationships that are “commercial,” the Convention could not apply.¹¹¹ As a result, the district court remanded the case to the state of Louisiana for lack of federal question subject matter jurisdiction.¹¹²

VI. Conclusion

The dispute over the validity of arbitration provisions in Filipino seamen contracts can be confusing and convoluted. Jurisdictions throughout the United States inconsistently interpret language from United States legislation to either comport with or upset the enforceability of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The effect is that no “standard” regarding the efficacy of the arbitration provisions is ensured. It is necessary for the United States Supreme Court to finally assert specifically when the judiciary should grant deference to the Convention and/or under what circumstances the Convention should be superceded by other United States legislation.

110. *Id.* at 646; *see also* 9 U.S.C. § 1.

111. 171 F. Supp. 2d at 647.

112. *Id.*