



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE

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SECOND DIVISION

**HARTMAN CREW PHILS.,** G.R. No. 249567  
(formerly **ASSOCIATED**  
**SHIPMANAGEMENT, INC.)\*** Present:  
and **SEA GIANT**  
**SHIPMANAGEMENT, LTD.,\*\*** **PERLAS-BERNABE, S.A.J.,**  
*Petitioners,* *Chairperson,*

**HERNANDO,**  
**INTING,**  
**GAERLAN, and**  
**DIMAAMPAO, JJ.**

- versus -

**RANDY V. ACABADO,**  
*Respondent.*

Promulgated:

**SEP 29 2021**

X-----X

DECISION

**INTING, J.:**

Before the Court is a Petition for Review on *Certiorari*<sup>1</sup> seeking the reversal of the Decision<sup>2</sup> dated June 21, 2019 and the Resolution<sup>3</sup> dated September 18, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 152789 which set aside the Decision<sup>4</sup> dated May 30, 2017 and the Resolution<sup>5</sup> dated July 27, 2017 of the National Labor Relations Commission (NLRC) in NLRC LAC No. (OFW-M)05-000328-17(4)/NLRC NCR Case No. OFW (M) 12-15046-16 and reinstated with modification the Labor Arbiter's (LA) Decision<sup>6</sup> dated March 2, 2017.

*The Antecedents*

\* Referred to as "Hartmann Crew Philippines, Inc. (formerly Associated Ship Management Services, Inc.)" in some parts of the *rollo* (see *rollo*, pp. 41 and 469).

\*\* Referred to as "Seagiant Shipmanagement" (see *rollo*, p. 646).

<sup>1</sup> *Rollo*, Vol. I, pp. 3-40.

<sup>2</sup> *Id.* at 44-54; penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Ricardo R. Rosario (now a Member of the Court) and Perpetua T. Atal-Paño, concurring.

<sup>3</sup> *Id.* at 56-57.

<sup>4</sup> *Id.* at 311-319; penned by Presiding Commissioner Gregorio O. Bilog, III, with Commissioner Dominador B. Medroso, Jr., concurring; Commissioner Erlinda T. Agus, on leave.

<sup>5</sup> *Id.* at 267-268.

<sup>6</sup> *Id.* at 488-524; penned by Labor Arbiter Joel A. Allones.

*AM*

Randy V. Acabado (Acabado) filed a Complaint for disability benefits and other money claims against Hartman Crew Philippines (formerly, Associated Ship Management Services) (Hartman) and Sea Giant Shipmanagement Ltd. (Sea Giant) (collectively, petitioners) and Alberto L. Gomez (Gomez).<sup>7</sup>

According to Acabado, Hartman, as manning agent for the principal Sea Giant, hired him as Wiper, with a basic monthly salary of US\$462.<sup>8</sup> He started working onboard M/T Gaschem Rhone on March 16, 2015. On August 23, 2015, while transferring the lube oil pump spare part, Acabado injured his knees. The next day, he slipped and fell from the stairs. On August 25, 2015, Acabado felt “locking” on his right knee which prompted him to report his condition to the Second Officer, who in turn prepared an Accident Report<sup>9</sup> stating that Acabado’s right knee was slightly twisted. On August 27, 2015, Acabado underwent therapy after a doctor from Indonesia examined him. Upon the arrival of the vessel in Singapore on August 29, 2015, Acabado underwent an x-ray. The result showed that he had “meniscus tear” on his right knee. Acabado was brought to Mt. Elizabeth Hospital where Dr. Jeffrey Goh examined him and recommended his repatriation and surgery.<sup>10</sup>

Upon arrival in the Philippines on August 29, 2015, Acabado immediately reported to Hartman’s main office where he was referred to Dr. Natalio Alegre II (Dr. Alegre). Acabado requested that his left knee be included for post-medical examination, but Sea Giant denied the request. On September 16, 2015, he underwent surgery on his right knee at the Chinese General Hospital.<sup>11</sup> After surgery, he underwent several sessions of physical therapy until Dr. Alegre discontinued the treatment on April 4, 2016. On June 14, 2016, Delia Andrada showed Acabado a copy of the 20<sup>th</sup> Progress Report<sup>12</sup> dated March 31, 2016 and offered to pay him disability benefits. On January 13 and 17, 2016, Acabado consulted physicians at the Philippine Orthopedic Center where he was diagnosed with “medial meniscus tear” on both knees.<sup>13</sup> On January 19, 2017, the attending physician at the Ospital ng Makati diagnosed<sup>14</sup> Acabado with “medial meniscal tear, left. S/p meniscectomy, right medial meniscus.”<sup>15</sup>

Meanwhile, petitioners and Gomez alleged that after Acabado’s

<sup>7</sup> *Id.* at 45.

<sup>8</sup> See Contract of Employment dated March 4, 2015, *rollo*, Vol. II, p. 646.

<sup>9</sup> *Id.* at 661.

<sup>10</sup> *Rollo*, Vol. I, pp. 45-46.

<sup>11</sup> See Operation Sheet dated September 16, 2015, *rollo*, Vol. II, p. 671.

<sup>12</sup> *Id.* at 690.

<sup>13</sup> See Clinical Abstract dated January 13, 2016, *id.* at 691. See also Clinical Abstract dated January 17, 2016, *id.* at 692.

<sup>14</sup> See Clinical Abstract dated January 19, 2016, *id.* at 693.

<sup>15</sup> *Rollo*, Vol. I, p. 46.

repatriation on August 29, 2015, they referred him to Dr. Alegre, who diagnosed him with “meniscal tear, medical, knee right” as evidenced by 1<sup>st</sup> Progress Report<sup>16</sup> dated September 1, 2015. Dr. Alegre also issued 13<sup>th</sup> Progress Report<sup>17</sup> dated January 16, 2016 and indicated the disability grading of Grade 10 (stretching leg of the ligaments of a knee resulting in instability of the joint). Dr. Alegre’s 20<sup>th</sup> Progress Report dated March 31, 2016 reiterated the disability rating of Grade 10. Dr. Alegre discontinued the treatment on Acabado, and petitioners offered him disability benefits based on the rating of Grade 10.<sup>18</sup>

Petitioners averred that Acabado did not comply with the terms and conditions of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) when he filed the case without obtaining the opinion of a third physician. Also, they asserted that the findings of the company-designated physician were more credible than those of Acabado’s physicians because the former monitored and examined his condition from the date of repatriation until recovery. They further argued that Acabado was not entitled to damages and attorney’s fees because they acted in good faith. They prayed that the complaint be dismissed or that the award of disability benefits be limited to Grade 10.<sup>19</sup>

#### *The Ruling of the LA*

On March 2, 2017, the LA rendered his Decision,<sup>20</sup> to wit:

WHEREFORE, premises considered, judgment is hereby rendered finding that respondents failed to properly assess and issue the disability grading of complainant’s medical condition on or before the 240<sup>th</sup> day from his repatriation and his medical condition or disability thereby entitling complainant to total and permanent disability benefits.

Respondent Hartman Crew Philippines and individual respondent Alberto L. Gomez are hereby ordered to jointly and solidarily pay complainant Randy V. Acabado total and permanent disability benefits amounting to Sixty Thousand US Dollars (US\$60,000.00) or its equivalent in Philippine currency at the time of payment.

Attorney’s fees equivalent to ten percent (10%) of the judgment award is likewise hereby awarded.

SO ORDERED.<sup>21</sup>

<sup>16</sup> *Rollo*, Vol. II, p. 669.

<sup>17</sup> *Id.* at 682.

<sup>18</sup> *Rollo*, Vol. I, pp. 46-47.

<sup>19</sup> *Id.* at 47.

<sup>20</sup> *Rollo*, Vol. I, pp. 487-524.

<sup>21</sup> *Id.* at 524.

Petitioners, together with Gomez, elevated the case to the NLRC.<sup>22</sup>

*The Ruling of the NLRC*

On May 30, 2017, the NLRC held:

WHEREFORE, judgment is hereby rendered ordering respondents Hartmann<sup>23</sup> Crew Philippines and Alberto L. Gomez to pay, jointly and severally, complainant the amount of US\$ 10,075.00 plus attorney's fees in the amount of US\$1,007.50.

SO ORDERED.<sup>24</sup>

The NLRC held that the Grade 10 disability assessment given by the company-designated physician should be the basis for the seafarer's claim for permanent total disability benefit because he was the one who handled Acabado's case since repatriation. It declared that the series of specialized treatments negate any claim that the evaluation of Dr. Alegre is biased in favor of the company. Meanwhile, it observed that the Philippine Orthopedic Center and the Ospital ng Makati did not declare Acabado as permanently and totally disabled.<sup>25</sup>

The NLRC denied Acabado's Motion for Reconsideration<sup>26</sup> on July 27, 2017.<sup>27</sup>

*The Ruling of the CA*

On June 21, 2019, the CA held:

We SET ASIDE the NLRC Decision promulgated on 30 May 2017, and the Resolution promulgated on 27 July 2017. We REINSTATE with MODIFICATION the Decision of the Labor Arbiter dated 02 March 2017, thus: we ORDER the respondents Hartman Crew Philippines, and Sea Giant Shipmanagement to pay the petitioner Randy Verin Acabado the following sums: (1) US\$60,000.00 as permanent total disability benefits; and (2) US\$6,000.00 as attorney's fees. All the monetary awards are subject to interest at the rate of 6% *per annum* from the finality of this Decision, until the award is fully satisfied.

IT IS SO ORDERED.<sup>28</sup>

<sup>22</sup> *Rollo*, Vol. I, p. 48.

<sup>23</sup> Spelled as "Hartman" in other parts of the records.

<sup>24</sup> *Rollo*, Vol. I, p. 319.

<sup>25</sup> *Id.* at 316-318.

<sup>26</sup> *Id.* at 287-309.

<sup>27</sup> *Id.* at 267-268.

<sup>28</sup> *Id.* at 53.

The CA ruled that Acabado is conclusively presumed to be suffering from permanent and total disability because the company-designated physician did not issue a final and definite assessment of Acabado's rating within the 120-day or 240-day period. It declared that in the absence of a final and definite disability assessment by the company-designated physician, Acabado was entitled to US\$60,000.00 as permanent and total disability benefits, plus attorney's fees.<sup>29</sup>

The CA denied petitioners' Motion for Reconsideration<sup>30</sup> on September 18, 2019.<sup>31</sup>

### *The Petition*

Petitioners are now before the Court asserting that:

#### I.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN FINDING THAT RESPONDENT IS ENTITLED TO TOTAL AND PERMANENT DISABILITY BENEFITS

#### II.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN TOTALLY DISREGARDING THE DECLARATION OF THE COMPANY-DESIGNATED PHYSICIAN

#### III.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN FINDING THAT RESPONDENT IS ENTITLED TO DISABILITY BENEFITS DESPITE BELATEDLY DISPUTING THE DECLARATION OF THE COMPANY-DESIGNATED PHYSICIAN

#### IV.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN AWARDING RESPONDENT ATTORNEY'S FEES<sup>32</sup>

According to petitioners, the company-designated physician declared on January 16, 2016 that Acabado's injury corresponded to a Grade 10 disability rating under POEA-SEC. They argue that the disability benefits of Acabado cannot be determined on the mere number of days of treatment: the POEA-SEC does not measure disability in

<sup>29</sup> *Id.* at 52-53.

<sup>30</sup> *Id.* at 63-74.

<sup>31</sup> *Id.* at 56-57.

<sup>32</sup> *Id.* at 10.

terms of the number of days but by disability grading only. They also pointed out that even Acabado's physician did not establish total and permanent disability but merely advised Acabado to undergo physical therapy sessions.<sup>33</sup>

Petitioners further argue that Acabado failed to observe the procedures on the referral to a third doctor. They aver that Acabado, after securing a different disability grading from a doctor of his choice, immediately filed a complaint with the LA without first informing petitioners and requesting a third-doctor's opinion.<sup>34</sup>

Petitioners finally assert that the award of attorney's fees should be deleted for lack of legal basis.<sup>35</sup>

Acabado in his Comment<sup>36</sup> maintains that the CA was correct in its ruling.<sup>37</sup>

Petitioners filed a Reply<sup>38</sup> and Acabado a Rejoinder,<sup>39</sup> with both reiterating their respective arguments.

#### *The Issue*

Whether the CA correctly held petitioners liable to pay respondent permanent total disability benefits and attorney's fees.

#### *The Court's Ruling*

The Court denies the petition.

A petition for review on *certiorari* is a mode of appeal where the issue is limited to questions of law.<sup>40</sup> Generally, a Rule 45 review by the Court in labor cases does not delve into factual questions or to an evaluation of the evidence submitted by the parties.<sup>41</sup> This rule, however, is not absolute. In cases where the factual findings of the tribunals or

<sup>33</sup> *Id.* at 12-20.

<sup>34</sup> *Id.* at 25.

<sup>35</sup> *Id.* at 36.

<sup>36</sup> *Rollo*, Vol. II, pp. 730-768.

<sup>37</sup> *Id.* at 758.

<sup>38</sup> *Id.* at 781-789.

<sup>39</sup> *Id.* at 772-779.

<sup>40</sup> *Pastrana v. Bahia Shipping Services*, G.R. No. 227419, June 10, 2020, citing *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 415 (2014).

<sup>41</sup> *Magsaysay Maritime Corp. v. Buico*, G.R. No. 230901, December 5, 2019, citing *Magsaysay Mol Marine, Inc., et al. v. Atraje*, 836 Phil. 1061, 1074 (2018).

courts below are in conflict with each other, the Court may make its own examination and evaluation of the evidence on record.<sup>42</sup>

Such is the case at bar.

*The 120/240 Day Rule.*

A seafarer's entitlement to disability benefits for a work-related illness or injury is governed by the Labor Code, its Implementing Rules and Regulations (IRR), the POEA-SEC, and prevailing jurisprudence.<sup>43</sup>

In *Elburg Shipmanagement Phils., Inc., et al. v. Quiogue, (Elburg)*,<sup>44</sup> the Court outlined the rules with respect to the period within which the company-designated physician must issue a final and definitive disability assessment. To quote:

In summary, if there is a claim for total and permanent disability benefits by a seafarer, the following rules (*rules*) shall govern:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.<sup>45</sup>

Case law has also held that *Elburg* should be read as requiring the company-designated physician to issue a final and definitive disability assessment within 120 or 240 days from the date of the seafarer's

<sup>42</sup> *The Heirs of the Late Delfin Dela Cruz, et al. v. Phil. Transmarine Carriers, Inc., et al.*, 758 Phil. 382, 390 (2015), citing *Asian Terminals, Inc. v. Simon Enterprises, Inc.*, 705 Phil. 83 (2013).

<sup>43</sup> *Pastrana v. Bahia Shipping Services*, *supra* note 40.

<sup>44</sup> 765 Phil. 341 (2015).

<sup>45</sup> *Id.* at 362-363.

repatriation. The initial 120 days within which the company-designated physician must issue a final and definitive disability assessment may be extended for another 120 days. The extended period, however, may only be availed of by the company-designated physician under justifiable circumstances.<sup>46</sup>

To avail of the extended 240-day period, the company-designated physician must perform some complete and definite medical assessment to show that the illness still requires medical attendance beyond 120 days, but not to exceed the 240-day period. The employer bears the burden of proving that its designated physician had a reasonable justification to invoke the 240-day period.<sup>47</sup>

*Effect of failure to issue a final and definitive assessment.*

The company-designated physician's duty to issue a final and definitive assessment of the seafarer's disability within the prescribed periods of 120 or 240 days is imperative. Failure on his/her part to do so will render his/her findings nugatory and transform the disability suffered by the seafarer to one that is permanent and total.<sup>48</sup>

Verily, the provision under Section 20(A)(3) of the 2010 POEA-SEC on the appointment of a third doctor, jointly agreed on by the employer and the seafarer, presupposes that the company-designated physician came up with a valid, final, and definite assessment as to the seafarer's fitness or unfitness to work before the expiration of the 120-day or 240-day period.<sup>49</sup>

Failure of the company-designated physician to issue a final and definite assessment of the seafarer's disability rating within the 120/240-day period renders irrelevant the opinions of the independent physicians because the seafarer is already conclusively presumed to be suffering from a permanent and total disability, and thus, entitled to the benefits corresponding thereto.<sup>50</sup>

Our jurisprudence is replete with cases which pronounce that before a seafarer should be compelled to initiate referral to a third doctor, there must first be a final and categorical assessment made by the company-

<sup>46</sup> *Pastrana v. Bahia Shipping Services*, *supra* note 40.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Hernandez v. Magsaysay Maritime Corporation, et al.*, 824 Phil. 552, 560 (2018).

<sup>50</sup> *Pastrana v. Bahia Shipping Services*, *supra* note 40.



designated physician as to the seafarer's disability within the 120/240-day period. Otherwise, the seafarer shall be considered permanently disabled by operation of law.<sup>51</sup>

*No final and definite medical findings within the period in the case.*

The assessment of the company-designated physician of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days must be definite for it to be controlling in determining the medical condition of the seafarer. A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work.<sup>52</sup>

According to petitioners, the company-designated physician declared on January 16, 2016 that Acabado's injury corresponded to disability Grade 10 of the POEA-SEC.<sup>53</sup>

The subject document reads:

"January 16, 2016

MR. ALBERTO GOMEZ,  
ASM PRESIDENT AND CEO  
ASSOCIATED SHIP MANAGEMENT SERVICES, INC.

RE: RANDY ACABADO  
WPR/GASCHEM RHONE/  
August 29, 2015  
13<sup>th</sup> Progress Report 140 days

Dear MR. ALBERTO GOMEZ:

Mr. RANDY ACABADO followed-up on 16 January 2016.

Subjective Complaints  
Mild pain over the right knee.

Objective Complaints  
Unremarkable surgical incisions over the right knee.  
No tenderness, no swelling, no atrophy.  
Range of motion of right knee is functional.

<sup>51</sup> *Abundo v. Magsaysay Maritime Corp.*, G.R. No. 222348, November 20, 2019.

<sup>52</sup> *Id.*, citing *Sunit v. OSM Maritime Services, Inc., et al.*, 806 Phil. 505, 519 (2017).

<sup>53</sup> *Rollo*, Vol. I, p. 12.

Assessment  
Meniscal Tear, Right  
S/P Meniscectomy

Plans  
Physiotherapy is continued  
Follow-up is advised on 04 February 2016.

Thank you very much.

(signed)  
NATALIO G. ALEGRE II, M.D.  
Attending Physician<sup>54</sup>

Even the March 31, 2016 Progress Report stated: “Physical therapy is continued. Follow-up is advised on 14 April 2016.”<sup>55</sup>

Evidently, the company-designated physician failed to give a definite and final assessment and grading within the period allowed, as his advice was to continue physical therapy and to have Acabado return to his clinic for follow-up.

An assessment is deemed interim where the seafarer was still required to continue medical treatment or continue his rehabilitation. Also, a “suggestive” disability grading will not suffice as a final and definitive medical assessment. A statement that is clearly devoid of any definitive declaration as to the capacity of the seafarer to return to work or at least a categorical and final degree of disability will not meet the requirements of the law.<sup>56</sup>

To stress, when the doctor fails to give a definitive rating of the seafarer’s disability within the 240-day period, his or her total and temporary disability lapses into a total and permanent disability.<sup>57</sup>

As petitioners in the case failed to show that their company-designated physician came up with a definite and final medical assessment and grading within the 120 or 240-day period allowed by the rules, Acabado’s disability is deemed permanent and total upon the lapse of such period.

<sup>54</sup> *Rollo*, Vol. II, p. 682.

<sup>55</sup> *Id.* at 690.

<sup>56</sup> *Abundo v. Magsaysay Maritime Corp.*, *supra* note 51, citing *Belchem Philippines, Inc./United Philippine Lines, et al. v. Zafra, Jr.*, 759 Phil. 527 (2015).

<sup>57</sup> *Id.*, citing *Carcedo v. Mainé Marine Philippines, Inc. et al.*, 758 Phil. 166, 184 (2015) further citing *Libang, Jr. v. Indochina Ship Management, Inc., et al.*, 743 Phil. 286, 300 (2014).

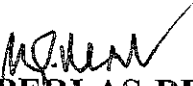
Acabado is also entitled to attorney's fees, which is justified under Article 2208<sup>58</sup> of the Civil Code, considering that he was compelled to litigate to satisfy his claims for disability benefits.<sup>59</sup>

**WHEREFORE**, the petition is **DENIED** for lack of merit. The Decision dated June 21, 2019 and the Resolution dated September 18, 2019 of the Court of Appeals in CA-G.R. SP No. 152789 are **AFFIRMED**.

**SO ORDERED.**

  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

WE CONCUR:

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

  
**SAMUEL H. GAERLAN**  
*Associate Justice*

<sup>58</sup> Article 2208 of the Civil Code provides:

Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

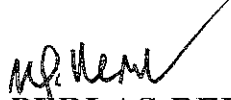
In all cases, the attorney's fees and expenses of litigation must be reasonable.

<sup>59</sup> See *Astra Marine International, Inc. v. Malvas*, G.R. No. 250299 (Notice) February 3, 2020; See also *Jebsens Maritime, Inc. v. Pasamba*, G.R. No. 220904, September 25, 2019 and *Teekay Shipping Phils., Inc. v. Mateo*, G.R. No. 243258 (Notice), January 7, 2019.

**JAPAR B. DIMAAMPAO**  
*Associate Justice*

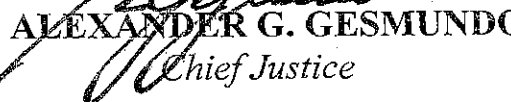
**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*

