Republic of the Philippines
Supreme Court
Manila

EN BANC

KEPPEL CEBU SHIPYARD, INC.,
Petitioner,

G.R. Nos. 180880-81

- versus -

PIONEER INSURANCE AND SURETY CORPORATION,
Respondent.

x - x

PIONEER INSURANCE AND SURETY CORPORATION,
Petitioner,

G.R. Nos. 180896-97

Present:

- versus -

SERENO, *CJ*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,*
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,**
PEREZ,
MENDOZA,
REYES and
PERLAS-BERNABE, *JJ.*

KEPPEL CEBU SHIPYARD, INC.,
Respondent.

Promulgated:
SEPTEMBER 18, 2012

x ---------- x

* No part.
** On official leave.

R E S O L U T I O N

MENDOZA, *J.*:

On June 7, 2011, the Court *En Banc,* acting on the referral by the Second Division, issued a Resolution[1] accepting these cases which stemmed from the *Motion to Re-Open Proceedings and Motion to Refer to the Court En Banc* filed by Keppel Cebu Shipyard, Inc. *(KCSI)* on the ground that "there are serious allegations in the petition that if the decision of the Court is not vacated, there is a far-reaching effect on similar cases already decided by the Court."[2]

Pioneer Insurance and Surety Corporation *(Pioneer)* sought reconsideration of the June 7, 2011 Resolution to re-open, but its motion was denied by the Court in its Resolution,[3] dated December 6, 2011.

Brief Statement of the Antecedents

On January 26, 2000, KCSI and WG&A Jebsens Shipmanagement, Inc. *(WG&A)* entered into, and executed, a Shiprepair Agreement[4] wherein KCSI agreed to carry out renovation and reconstruction of M/V Superferry 3 *(Superferry 3)*, owned by WG&A, using its (KCSI's) dry docking facilities. Among others, the Shiprepair Agreement provided the following terms and conditions:

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[1] *Rollo*, (G.R. Nos. 180880-81, Vol. II), pp. 3329-3342; *rollo* (G.R. Nos. 180896-97, Vol. II), pp. 3457-3470, with dissents by Associate Justices Eduardo Antonio Nachura, Presbitero J. Velasco and Arturo D. Brion; Chief Justice Renato C. Corona and Associate Justice Lucas P. Bersamin took no part;
[2] Id. at 3349; id. at 3460.
[3] Id. at 3481-3483; id at 3562-3564.
[4] CA *rollo*, pp. 174-175.

> We, WG & A JEBSENS SHIPMGMT. Owner/Operator of M/V "SUPERFERRY 3" and KEPPEL CEBU SHIPYARD, INC. (KCSI) enter into an agreement that the Drydocking and Repair of the above-named vessel ordered by the Owner's Authorized Representative shall be carried out under the Keppel Cebu Shipyard Standard Conditions of Contract for Shiprepair, guidelines and regulations on safety and security issued by Keppel Cebu Shipyard. Among the provisions agreed upon by the parties are the following:
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> x x x x
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> 3. Owner's sub-contractors or workers are not permitted to work in the yard without written approval of the Vice-President-Operations.
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> 4. In consideration of Keppel Cebu Shipyard allowing Owner to carry out own repairs onboard the vessel, the Owner shall indemnify and hold Keppel Cebu Shipyard harmless from all claims, damages, or liabilities arising from death or bodily injuries to Owner's workers, or damages to the vessel or other property however caused.
>
> x x x x
>
> 12. The Owner and Keppel Cebu Shipyard shall endeavor to settle amicably any dispute that may arise under this Agreement. Should all efforts for an amicable settlement fail, the disputes shall be submitted for arbitration in Metro Manila in accordance with provisions of Executive Order No. 1008 under the auspices of the Philippine Arbitration Commission.

The Shiprepair Agreement also contained KCSI's "Standard Conditions of Contract for Shiprepair," which provided, among others, the following:

> x x x x
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> 7. The Contractor shall perform the work in accordance with the usual practice at the Contractor's shipyard but shall comply with the Customer's reasonable requests regarding materials and execution of the order insofar as such requests fall within the scope of the Work specified in the contractual specifications, and are made prior to the commencement of the work.
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> x x x x
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> 20. The Contractor shall not be under any liability to the Customer either in contract or otherwise except for negligence and such liability shall itself be subject to the following overriding limitations and exceptions, except:

> (a) The total liability of the Contractor to the Customer (including the **liability** to replace under Clause 17) or of any Sub-Contractor shall be **limited** in respect of any and/or defect(s) or event(s) to the sum of Pesos Philippine Currency **Fifty Million** Only.
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> x x x x
>
> 22. (a) The Customer shall keep the vessel adequately insured for the vessel's hull and machinery, her crew and the equipment on board and on other goods owned or held by the Customer against any and all risks and liabilities and ensure that such insurance policies shall include the Contractor as a co-assured.
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> x x x. [Emphases supplied]

Prior to the execution of the Shiprepair Agreement, Superferry 3 was already insured by WG&A with Pioneer for US$8,472,581.78.

On February 8, 2000, while undergoing repair, Superferry 3 was gutted by fire. WG&A declared the vessel's damage as a "total constructive loss" and filed an insurance claim with Pioneer.

On June 16, 2000, Pioneer paid the insurance claim of WG&A in the amount of US$8,472,581.78. In exchange, WG&A executed a Loss and Subrogation Receipt in favor of Pioneer.

Believing that KCSI was solely responsible for the loss of Superferry 3, Pioneer tried to collect the amount of US$8,472,581.78 from KCSI but it was frustrated. Thus, Pioneer sought arbitration with the Construction Industry Arbitration Commission *(CIAC)* pursuant to the arbitration clause in the Shiprepair Agreement.

During the arbitration proceedings, an amicable settlement was forged between KCSI and WG&A. Pioneer, thus, stayed on as the remaining claimant.

On October 28, 2002, the CIAC rendered its Decision[5] finding that both WG&A and KCSI were **equally guilty of negligence** which resulted in the fire and loss of Superferry 3. The CIAC also ruled that the liability of KSCI was limited to the amount of ₱50,000,000.00 pursuant to Clause 20 of the Shiprepair Agreement.

Accordingly, the CIAC ordered KCSI to pay Pioneer the amount of ₱25,000,000.00, with interest at 6% per annum from the time of the filing of the case up to the time the decision was promulgated, and 12% interest per annum added to the award, or any balance thereof, after it would become final and executory. The CIAC further ordered that the arbitration costs be imposed on both parties on a *pro rata* basis.[6]

Both parties appealed to the Court of Appeals *(CA).* In its final disposition of the cases, the CA, through its Amended Decision,[7] **affirmed the decision of the CIAC** but deleted its order that KCSI pay legal interest on the amount due to Pioneer.

Again, both parties appealed to this Court.

In its Decision,[8] dated September 25, 2009, the *Third Division*[9] of the Court partially granted the appeals of both parties. In granting the petition of Pioneer, the Court found that KCSI was *solely* liable for the loss of the vessel and that WG&A properly declared the loss of the vessel as constructive total loss. The Court also declared that Clause 20 of the Shiprepair Agreement which limited KCSI's liability to the amount of

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[5] *Rollo* (G.R. Nos. 180880-81, Vol. I), pp. 1022-1113; *rollo* (G.R. Nos. 180896-97, Vol. I), pp. 229-320.
[6] Id. at 1113; id. at 319.
[7] Id. at 39-110; id. at 146-217.
[8] *Rollo* (G.R. Nos. 180880-81, Vol. II), pp. 2551-2589; *rollo* (G.R. Nos. 180896-97, Vol. II), pp. 1945-1983.
[9] Associate Justice Consuelo Ynares-Santiago, as Chairperson, and Associate Justice Minita V. Chico-Nazario, Associate Justice Presbitero J. Velasco, Jr., Associate Justice Antonio Eduardo B. Nachura, and Associate Justice Diosdado M. Peralta, as members.

₱50,000,000.00 was invalid. As for the petition of KCSI, the Court found merit in KCSI's assertion that the salvage recovery value of the vessel amounting to ₱30,252,648.09 must be considered and deducted from the amount KCSI was liable to Pioneer. Thus, the Court disposed:

> WHEREFORE, the Petition of Pioneer Insurance and Surety Corporation in G.R. No. 180896-97 and the Petition of Keppel Cebu Shipyard, Inc. in G.R. No. 180880-81 are PARTIALLY GRANTED and the Amended Decision dated December 20, 2007 of the Court of Appeals is MODIFIED. Accordingly, KCSI is ordered to pay Pioneer the amount of ₱360,000,000.00 less ₱30,252,648.09, equivalent to the salvage value recovered by Pioneer from M/V "Superferry 3," or the net total amount of **₱329,747,351.91**, with six percent (6%) interest per annum reckoned from the time the Request for Arbitration was filed until this Decision becomes final and executory, plus twelve percent (12%) interest per annum on the said amount or any balance thereof from the finality of the Decision until the same will have been fully paid. The arbitration costs shall be borne by both parties on a pro rata basis. Costs against KCSI.
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> SO ORDERED.[10] [Emphasis and underscoring supplied]

Aggrieved, KCSI moved for the reconsideration[11] of the September 25, 2009 Decision and, subsequently, prayed that its motion be set for oral arguments.[12] Following the opposition filed by Pioneer and the reply filed by KCSI, the Special Third Division of the Court on June 21, 2010, resolved to deny with finality KCSI's motions for lack of merit.[13]

Undaunted, KCSI again sought reconsideration of the decision of the Third Division of the Court, reiterating its prayer that these cases be set for oral arguments. KCSI also prayed that these cases be referred to the Court *En Banc* and set for its consideration.[14] Following a reorganization of the

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[10] *Rollo* (G.R. Nos. 180880-81, Vol. II), pp. 2551-2589; *rollo* (G.R. Nos. 180896-97, Vol. II), pp. 1945-1983.
[11] Id. at 2686-2784; id. at 1984-2044.
[12] Id. at 2785-2790; id. at 2176-2181.
[13] Id. at 2893-2894.; id. at 2231-2232.
[14] Id. at 2896-2906; id. at 2233-2241

divisions of the Court, these cases were transferred to the Second Division.[15] On October 20, 2010, the Second Division of the Court resolved to deny KCSI's second motion for reconsideration.[16]

On November 4, 2010, the Court issued an order for Entry of Judgment, stating that the decision in these cases had become final and executory.[17]

Through its *Motion to Re-Open Proceedings and Motion to Refer to the Court En Banc,*[18] dated November 23, 2010, and its *Supplemental Motion,*[19] dated December 13, 2010, KCSI sought the re-opening of the proceedings, and pleaded that these cases be referred to the Court *En Banc.* Pioneer filed its Opposition[20] to KCSI's motions.

On April 11, 2011, persuaded by KCSI's arguments, the Second Division of the Court resolved to refer these cases to the Court *En Banc* for acceptance.[21] As earlier stated, on June 7, 2011, the Court *En Banc* resolved to accept the cases.[22] Pioneer sought reconsideration but its motion was denied.[23]

In the disposition of the subject petitions, the Court is confronted with procedural and substantive issues:

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[15] *Rollo* (G.R. Nos. 180880-81, Vol. II), p. 3004.
[16] *Rollo* (G.R. Nos. 180880-81, Vol. II); pp. 3262-3266; *rollo* (G.R. Nos. 180896-97, Vol. II), pp. 3339-3343.
[17] Rollo (G.R. Nos. 180880-81, Vol. II), pp. 3271-3272.
[18] *Rollo* (G.R. Nos. 180880-81, Vol. II), pp. 3279-3290; *rollo* (G.R. Nos. 180896-97, Vol. II), pp. 3351-3364.
[19] *Rollo* (G.R. Nos. 180896-97, Vol. II), pp. 3392-3410.
[20] *Rollo* (G.R. Nos. 180880-81, Vol. II), pp. 3297-3325; *rollo* (G.R. Nos. 180896-97, Vol. II), pp. 3425-3453.
[21] Id. at 3293; id. at 3421. Second Division members were Associate Justice Antonio T. Carpio, Associate Justice Antonio B. Nachura, Associate Justice Diosdado M. Peralta, Associate Justice Roberto A. Abad, and Associate Justice Jose Catral Mendoza.
[22] Id. at 3329-3342; id. at 3457-3470, with dissents by Associate Justices Eduardo Antonio Nachura, Presbitero J. Velasco and Arturo D. Brion; Chief Justice Renato C. Corona and Associate Justice Lucas P. Bersamin took no part.
[23] Id. at 3481-3486; id. at 3562-3567.

Procedural:

Is the Court *En Banc* in violation of the doctrine of immutability of judgment in taking cognizance of the foregoing cases, considering that these cases were already adjudged as final and executory?

Did the failure to elevate the records from the court of origin to the Court render void any decision made by the latter?

Substantive:

As restated by the Court in its September 25, 2009 Decision, the substantive issues for resolution of the Court are the following:

A. To whom may negligence over the fire that broke out on board M/V "Superferry 3" be imputed?

B. Is subrogation proper? If proper, to what extent can subrogation be made?

C. Should interest be imposed on the award of damages? If so, how much?

D. Who should bear the cost of the arbitration?[24]

The Court shall first dispose of the procedural issues.

Anent the first procedural issue, Pioneer, in essence, faults the Court *En Banc* when it took cognizance of the foregoing cases and ordered their reopening in its June 7, 2011 Resolution. It argues that the decision in the present cases had already become final and, according to the principle of immutability of judgment, once a judgment attains finality, it becomes immutable and unalterable, however unjust the result of error may appear.

[24] Id. at 2569; id. at 1963.

The rule is not absolute.

The Internal Rules of the Supreme Court provides that the Court *En Banc* shall act on the following matters and cases:

> (a) cases in which the constitutionality or validity of any treaty, international or executive agreement, law, executive order, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question;
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> (b) criminal cases in which the appealed decision imposes the death penalty or *reclusion perpetua*;
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> (c) cases raising novel questions of law;
>
> (d) cases affecting ambassadors, other public ministers, and consuls;
>
> (e) cases involving decisions, resolutions, and orders of the Civil Service Commission, the Commission on Elections, and the Commission on Audit;
>
> (f) cases where the penalty recommended or imposed is the dismissal of a judge, the disbarment of a lawyer, the suspension of any of them for a period of more than one year, or a fine exceeding forty thousand pesos;
>
> (g) cases covered by the preceding paragraph and involving the reinstatement in the judiciary of a dismissed judge, the reinstatement of a lawyer in the roll of attorneys, or the lifting of a judge's suspension or a lawyer's suspension from the practice of law;
>
> (h) cases involving the discipline of a Member of the Court, or a Presiding Justice, or any Associate Justice of the collegial appellate court;
>
> (i) cases where a doctrine or principle laid down by the Court *en banc* or by a Division my be modified or reversed;
>
> (j) cases involving conflicting decisions of two or more divisions;

> (k) cases where three votes in a Division cannot be obtained;
>
> (l) Division cases where the subject matter has a huge financial impact on businesses or affects the welfare of a community;
>
> (m) Subject to Section 11(b) of this rule, other division cases that, in the opinion of at least three Members of the Division who are voting and present, are appropriate for transfer to the Court *en banc*;
>
> (n) cases that the Court *en banc* deems of sufficient importance to merit its attention; and
>
> (o) all matters involving policy decisions in the administrative supervision of all courts and their personnel.[25] [Underscoring supplied]

On April 11, 2011, four (4) members of the Court's Second Division found that these cases were appropriate for referral-transfer to the Court *En Banc.*[26] Then, on June 7, 2011, the Court *En Banc* by a vote of two-thirds (2/3) of its members,[27] settled the issue of immutability of judgment when it accepted the referral, reasoning out that there were serious allegations in the petition that if the decision of the Court would not be vacated, there would be a far-reaching effect on similar cases.

Verily, "under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land."[28] This rule notwithstanding, the Court *En Banc* had re-opened and

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[25] A.M. No. 10-4-20-SC (May 4, 2010), Rule 2, Sec. 3.
[26] *Rollo* (G.R. Nos. 180896-97), p. 3421.
[27] Id. at 3457-3470.
[28] *FGU Insurance Corporation v. Regional Trial Court Of Makati City, Branch 66*, G.R. No. 161282, February 23, 2011, 644 SCRA 50.

accepted several cases for review and reevaluation for special and compelling reasons. Among these cases were *Manotok IV v. Heirs of Homer L. Barque*,[29] *Apo Fruits Corporation and Hijo Plantation, Inc. v. Land Bank of the Philippines*,[30] *League of Cities of the Philippines v. Commission on Elections*,[31] and *Navarro v. Ermita*.[32]

In these cases, the exception to the doctrine of immutability of judgment was applied in order to serve substantial justice.[33] The application was in line with its *power and prerogative to suspend its own rules and to exempt a case from their operation if and when justice requires it.* "The power to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter even that which this Court itself had already declared final."[34]

It bears mentioning, however, that when the Court *En Banc* entertains a case for its resolution and disposition, it does so without implying that the Division of origin is incapable of rendering objective and fair justice. The action of the Court simply means that the nature of the cases calls for *en banc* attention and consideration. Neither can it be concluded that the Court has taken undue advantage of sheer voting strength. It is merely guided by the well-studied finding and sustainable opinion of the majority of its actual membership that, indeed, the subject case is of sufficient importance meriting the action and decision of the whole Court. It is, of course, beyond cavil that all the members of the Highest Court of the land are always imbued with the noblest of intentions in interpreting and applying the germane provisions of law, jurisprudence, rules and resolutions of the Court

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[29] G.R. Nos. 162335 & 162605, December 18, 2008, 574 SCRA 468.
[30] G.R. No. 164195, April 5, 2011, 647 SCRA 207.
[31] G.R. Nos. 176951, 177499 and 178056, April 12, 2011, 648 SCRA 344.
[32] G.R. No. 180050, April 12, 2011, 648 SCRA 400.
[33] Id.
[34] *Navarro v. Executive Secretary Eduardo Ermita*, G.R. No. 180050, April 12, 2011, 648 SCRA 400; and *Manotok IV v. Heirs of Homer L. Barque*, G.R. Nos. 162335 & 162605, December 18, 2008, 574 SCRA 468, 492.

to the end that public interest be duly safeguarded and the rule of law be observed.[35]

On the second procedural issue, the rule is that the reviewing court can determine the merits of the petition solely on the basis of the pleadings, submissions and certified attachments by the parties.[36] The purpose of the rule is to prevent undue delay that may result as the elevation of the records of lower tribunals to the Court usually takes time.[37] After all, the parties are required to submit to the Court certified true copies of the pertinent records of the cases.

In this case, the Third Division of the Court deemed the attachments to the petition and the voluminous pleadings filed sufficient and, on the basis thereof, ruled on the merits of these cases. The Court finds no fault in the procedure undertaken by the members of the Division in this regard. As stated by the Court in its October 20, 2010 Resolution:

> *Second*: The elevation of the case records is merely discretionary upon this Court. Section 8, Rule 45 of the Rules of Court provides that the Court **may** require the elevation of the complete records of the case or specified parts thereof within fifteen (15) days from notice. It also bears mentioning that, under Section 4(d) of the same rule, the petition for review on *certiorari* filed shall be "accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and **such material portions of the record as would support the petition.**" Indeed, with the attachments to the consolidated petitions, the Court deemed it sufficient to rule on the merits of the case.[38]

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[35] *Lu v. Lu*, G.R. No. 153690, February 15, 2011, 643 SCRA 23; *Firestone Ceramics v. Court of Appeals*, 389 Phil. 810 (2000); and *People v. Ebio*, 482 Phil. 647 (2004).
[36] See also *Eureka Personnel & Management Services, Inc. v. Valencia*, G.R. No. 159358, July 15, 2009, 593 SCRA 36.
[37] *B.E. San Diego v. Alzul*, G.R. No. 169501, June 8, 2007, 524 SCRA 402; *San Miguel Corporation v. Aballa*, 500 Phil. 170 (2005); *Atillo v. Bombay*, 404 Phil. 179 (2001).
[38] *Rollo* (G.R. Nos. 180880-81, Vol. II), p. 3264; *rollo* (G.R. Nos. 180896-97, Vol. II), p. 3341.

At any rate, the records of the cases at bench are now before the Court.

The Court now proceeds to delve into the substantive issues.

With respect to the finding of negligence, the Court cannot maintain the earlier findings and rulings.

The CIAC and the CA arrived at the same Findings of Facts

In the September 25, 2009 Decision, the Third Division premised its re-evaluation of the facts regarding the issue of negligence on its finding that the CA and the CIAC differed in their findings. Thus, it stated:

> To resolve these issues, it is imperative that we digress from the general rule that in petitions for review under Rule 45 of the Rules of Court, only questions of law shall be entertained. Considering the **disparate** findings of fact of the CIAC and the CA which led them to **different conclusions,** we are constrained to revisit the factual circumstances surrounding this controversy.[39] [Emphases supplied]

It appears, however, that there was **no disparity** in the findings of fact of the CIAC and the CA. Neither was there any variance in the conclusions arrived at by the two tribunals – that both KCSI and WG&A were **equally negligent** in causing the fire which resulted in the burning and the loss of Superferry 3.

As to the immediate cause of the fire, there is no dispute that the same was caused by the ignition of the flammable lifejackets caused by the sparks or hot molten slags from the welding works being done at the upper deck. As stated by the CIAC:

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[39] Id. at 2569; id. at 1963.

> This tribunal rules that the immediate cause of the fire was the sparks or hot molten slag falling through holes on the deck floor and coming into contact with and igniting flammable lifejackets stored in the ceiling void directly below. The sparks or hot molten slag was the result of the cutting of the bulkhead door on Deck A. The presence of the holes and the life jackets underneath the deck directly contributed to the cause of the fire.[40]

As to who was responsible for causing the fire, **both the CIAC and the CA were one in finding that both KCSI and WG&A were equally negligent.** In fact, the CA, after its own review of the facts and evidence, quoted with approval a majority of the findings of the CIAC. Thus, it wrote:

> **THE YARD AND THE WG&A ARE EQUALLY NEGLIGENT**
>
> The symbiotic relation between the litigants, insofar as the repair and reconstruction of the vessel, is aptly summarized by the CIAC, to quote:
>
> x x x x x x x x x
>
> The Tribunal rules that the Respondent has possession, control and custody of the vessel for all works related to the repairs and additional work under the ship repair agreement and where its rules and regulations cover the vessel and its crew. The Respondent, however, does not exercise control and custody of the Ship's crew, its maintenance and repair crews, subcontractors and workers where the work is not covered by the ship repair agreement, or where there is no work order, or where the Vessel has signed a waiver for its own work or for unauthorized works.
>
> x x x x x x x x x x x x
>
> A review of the records reveals that the fire broke out at around 10:25 in the morning of 8 February 2000. The CIAC summarized the immediate cause of the fire, as follows, thus:
>
> xxx. Angelino Sevillejo tried to put out the fire by pouring the contents of a five-liter drinking water container on it and as he did so, smoke came up from under Deck A. He got another container of water which he also poured whence the smoke was coming.

[40] *Rollo* (G.R. Nos. 180880-81, Vol. I), p. 1060; *rollo* (G.R. Nos. 180896-97, Vol. I), p. 267.

> In the meantime, other workers in the immediate vicinity tried to fight the fire by using fire extinguishers and buckets of water. But because the fire was inside the ceiling void, it was extremely difficult to contain or extinguish; and it spread rapidly because it was not possible to direct water jets or the fire extinguishers into the space at the source. Fighting the fire was extremely difficult because the life jackets and the construction materials of the Desk B ceiling were combustible and permitted the fire to spread within the ceiling void. From there, the fire dropped into the Deck B accommodation areas at various locations, where there were combustible materials. Respondent points to cans of paint and thinner, in addition to the plywood partitions and foam mattresses on Deck B x x x.

After investigation, the CIAC justified its finding of ***concurrent negligence,*** to wit:

> **The Negligence of WG&A:**
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> x x x x x x x x x
>
> The Tribunal rules that work orders and additional works when duly signed and authorized form part of the ship repair agreement and other documents referred to in the agreement. The Tribunal also rules that the **Work Order of January 26, 2000 refers to five welders to work on the restaurant of the promenade deck only**.
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> x x x x x x x x x
>
> The Tribunal finds sufficient evidence to rule that the original request for welders [was] for hot works for the restaurant at the promenade deck only. Based on this ruling, the Tribunal finds that the Claimant used the welders beyond the scope of the Work Order and therefore unauthorized when the welders were used outside of the promenade deck. **For the hotworks outside of the promenade deck to be authorized, the said work must be covered by another work order** or at the very least, discussed, and included in the minutes of the production meeting and the **corresponding hotworks permit** issued.
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> x x x x x x x x x
> [Emphases and underscoring supplied]

The Negligence of the Yard:

As aptly ruled by the CIAC, the negligent participation of the Yard in the fire incident is as follows:

> "Precisely because of the requirement that all hot works are to be undertaken by the Yard, the Yard necessarily must obtain the hotworks permit. Looking at the Hotwork Permit document itself, the Tribunal finds that it is the Yard workers who apply and obtain the permit to perform hot works. The said permit carries a request by the Yard Foreman, Yard Supervisor, and Yard Superintendent, Inspected by the Yard Safety Assistant, and approved by Yard Safety Superintendent or Supervisor. Tribunal agrees with Claimant that hot works permit is the responsibility of the Yard worker to obtain prior to initiating any hot works."

Thus, while it is settled that it is the Yard employee who is required to secure a permit in order that all precautions could be taken, such as providing a fire watch, fire extinguisher, fire bucket, and removing the ceiling underneath as well as the flammable lifejackets, nonetheless, Dr. Joniga was equally negligent. Rebaca asked Sevillejo to stop the hot works in Deck A for lack of hot works permit and informed Dr. Joniga about it. He advised Dr. Joniga to call the ship's electrician to inspect the area. The ship electrician removed the ceiling panel and it was ascertained that, fortunately, no fire had started. However, when Sevillejo finished the task, Dr. Joniga again directed Sevillejo to cut an opening on the steel bulkhead below the stairway next to the beauty parlor in Deck A, without requiring or ascertaining that Sevillejo should first secure the required permit.[41] [Emphasis in the original. Underscoring supplied]

In other words, the issue of the conflicting claims between the parties - as to who should be responsible for the loss of Superferry 3 - was resolved by the CIAC against both parties. As this finding of fact by the CIAC was affirmed by the CA, the Court must have a strong and cogent reason to disturb it.

[41] Id. at 46-50; id. at 153-157.

It is a hornbook doctrine that, save for certain exceptions,[42] the findings of fact of administrative agencies and quasi-judicial bodies like the CIAC, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the CA.[43] It is well-settled that "the consequent policy and practice underlying our Administrative Law is that courts of justice should respect the findings of fact of said administrative agencies, unless there is absolutely no evidence in support thereof or such evidence is clearly, manifestly and patently insubstantial."[44] Moreover, in petitions for review on *certiorari*, only questions of law may be put into issue.

Be that as it may, the Court, after making its own assiduous assessment of the case, concurs with the conclusions arrived at by the tribunals below that the loss of Superferry 3 cannot be attributed to one party alone.

WG&A was negligent because, although it utilized the welders of KCSI, it used them *outside* the agreed area, the restaurant of the promenade deck. If they did not venture out of the restaurant, the sparks or the hot molten slags produced by the welding of the steel plates would not have reached the combustible lifejackets stored at the deck below.

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[42] Instances when the findings of fact of the trial court and/or Court of Appeals may be reviewed by the Supreme Court are: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) the findings are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) the finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. *(Misa v. Court of Appeals, G.R. No. 97291, August 5, 1992, 212 SCRA 217, 221-222))*

[43] *National Housing Authority v. First United Constructors Corporation*, G.R. No. 176535, September 7, 2011, 657 SCRA 175, 231*; Public Estates Authority v. Elpidio Uy*, 423 Phil. 407, 416 (2001), citing *Cagayan Robina Sugar Milling Co v. Court of Appeals*, 396 Phil. 830, 840 (2000).

[44] *Diesel Construction Co., Inc. v. UPSI Property Holdings, Inc.*, G.R. No. 154885, March 24, 2008, 549 SCRA 12, 21-22; *Blue Bar Coconut Philippines v. Tantuico*, 246 Phil. 714, 729 (1988).

On the part of KCSI, it failed to secure a hot work permit pursuant to another work order. Had this been applied for by the KCSI worker, the hot work area could have been inspected and safety measures, including the removal of the combustible lifejackets, could have been undertaken. In this regard, KCSI is responsible.

In short, both WG&A and KCSI were equally negligent for the loss of Superferry 3. The parties being mutually at fault, the degree of causation may be impossible of rational assessment as there is no scale to determine how much of the damage is attributable to WG&A's or KCSI's own fault. Therefore, it is but fair that both WG&A and KCSI should *equally* shoulder the burden for their negligence.

With respect to the defenses of KCSI that it was a co-assured under Clause 22(a) of the contract and that its liability is limited to ₱50,000,000.00 under Clause 20 of the Shiprepair Agreement, the Court maintains the earlier ruling on the invalidity of Clause 22(a) of the Shiprepair Agreement.

It cannot, however, maintain the earlier ruling on the invalidity of Clause 20 of the Shiprepair Agreement, which limited KCSI's liability to ₱50,000,000.00. In the September 25, 2009 Decision, the Third Division found Clause 20 of the Shiprepair Agreement invalid, seeing it as an unfair imposition by KCSI, being the dominant party, on WG&A.

Basic is the rule that parties to a contract may establish such stipulations, clauses, terms, or conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, and public policy.[45] While greater vigilance is required in determining the validity of

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[45] *Philippine Airlines, Inc. v. Court of Appeals*, 325 Phil. 303 (1996); *St. Paul Fire & Marine Insurance Co. v. Macondray & Co.*, 162 Phil. 172 (1976); *Sea-Land Services, Inc. v. Intermediate Appellate Court*, 237 Phil. 531 (1987); *Pan American World Airways, Inc. v. Intermediate Appellate Court*, 247 Phil. 231 (1988); *Citadel Lines, Inc. v. Court of Appeals*, 263 Phil. 479 (1990).

clauses arising from contracts of adhesion,[46] the Court has nevertheless consistently ruled that contracts of adhesion are not invalid *per se* and that it has, on numerous occasions, upheld the binding effect thereof.[47]

In its Decision, the Third Division placed great weight in the testimony of Engr. Elvin F. Bello, WG&A's fleet manager, that while he assented to the Shiprepair Agreement, he did not sign the fine-print portion thereof where Clause 20 was found because he did not want WG&A to be bound by them.[48] This testimony however, was correctly found by the CIAC as clearly self-serving, because such intention of WG&A was belied by its actions before, during and after the signing of the Shiprepair Agreement.

As pointed out by the CA, WG&A and its related group of companies, which were all extensively engaged in the shipping business, had previously dry-docked and repaired its various ships with KCSI under ship repair agreements incorporating the same standard conditions on at least 22 different occasions. [49] Yet, in all these instances, WG&A had not been heard to complain of being strong-armed and forced to accept the fine-print provisions imposed by KCSI to limit its liability.

Also, as pointed out by the CIAC, if it were true that WG&A did not want to be bound under such an onerous clause, it could have easily transacted with other ship repairers, which may not have included such a provision.[50]

After the signing of the Shiprepair Agreement, the record is bereft of any other evidence to show that WG&A had protested such a provision

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[46] *Everett Steamship Corporation, v. Court of Appeals*, 358 Phil. 129 (1998); *Ayala Corporation v. Ray Burton Development Corporation*, 355 Phil. 475 (1998).
[47] *Palmares v. Court of Apppeals*, 351 Phil. 664 (1998); *Ridjo Tape and Chemical Corporation v. Court of Appeals*, 350 Phil. 184 (1998).
[48] *Rollo* (G.R. Nos. 180880-81, Vol. II), pp. 2584-2585; *rollo* (G.R. Nos. 180896-97, Vol. II), pp. 1978-1979.
[49] *Rollo* (G.R. Nos. 180880-81, Vol. I), pp. 53-54; *rollo* (G.R. Nos. 180896-97, Vol. I), pp. 160-161.
[50] *Rollo* (G.R. Nos. 180896-97, Vol. 1), p. 248.

limiting the liability of KCSI. Indeed, the parties bound themselves to the terms of their contract which became the law between them.

While contracts of adhesion may be struck down as void and unenforceable for being subversive of public policy, the same can only be done when, under the circumstances, the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely depriving the former of the opportunity to bargain on equal footing.[51] This is not the situation in this case.

The Court is not unaware of the case of *Cebu Shipyard Engineering Works, Inc. v. William Lines, Inc.*,[52] where the Court struck down an almost similar provision limiting the liability of the ship repairer. In the said case, however, the Court found the provision unconscionable not only because the ship repairer therein was solely negligent in causing the loss of the vessel in their custody, but also because the limited liability clause sought to be enforced unduly restricted the recovery of the insurer's loss of ₱45,000,000.00 to only ₱1,000,000.00. Careful in not declaring such a provision as being contrary to public policy, the Court said:

> Although in this jurisdiction, contracts of adhesion have been consistently upheld as valid per se; as binding as an ordinary contract, the Court recognizes instances when reliance on such contracts cannot be favored especially where the facts and circumstances warrant that subject stipulations be disregarded. **Thus, in ruling on the validity and applicability of the stipulation limiting the liability of CSEW for negligence to One Million (₱1,000,000.00) Pesos only, the facts and circumstances vis-a-vis the nature of the provision sought to be enforced should be considered, bearing in mind the principles of equity and fair play.**
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> x x x x

[51] *Philippine Airlines, Inc, v. Court of Appeals*, supra note 45, citing *Saludo, Jr. v. Court of Appeals,* G.R. No. 95536, March 23, 1992, 207 SCRA 498.
[52] 366 Phil. 439 (1999).

> Considering the aforestated circumstances, let alone the fact that negligence on the part of petitioner has been sufficiently proven, it would indeed be **unfair** and **inequitable** to **limit** the liability of petitioner to **One Million Pesos only**. As aptly held by the trial court, "it is rather **unconscionable** if not overstrained." To allow CSEW to limit its liability to One Million Pesos notwithstanding the fact that the total loss suffered by the assured and paid for by Prudential amounted to Forty Five Million (₱45,000,000.00) Pesos would sanction the exercise of a degree of diligence short of what is ordinarily required because, then, it would not be difficult for petitioner to escape liability by the simple expedient of paying an amount very much lower than the actual damage or loss suffered by William Lines, Inc. [Emphases supplied][53]

Therefore, to say that Clause 20 of the Shiprepair Agreement is invalid on the basis of the *Cebu Shipyard* is *non sequitur*. In *Cebu Shipyard*, the Court struck down an almost similar provision limiting the liability of the ship repairer only after taking into account the circumstances and the unconscionable effect thereof and, as earlier underscored, after applying the principles of equity and fair play.

The differences in the factual milieu in *Cebu Shipyard* and this case inevitably lead the Court to arrive at a different conclusion. In *Cebu Shipyard*, the ship repairer was **solely** negligent. In this case, both WG&A and KCSI were **equally negligent** in causing the loss of the Superferry 3. In *Cebu Shipyard*, the liability of the ship repairer was limited to ₱1,000,000.00 only. In this case, it was ₱50,000,000.00.

In *Cebu Shipyard*, the limited liability was conspicuously unconscionable and disproportionate as the ship repairer would only pay a paltry ₱1,000,000.00 of the ₱45,000,000.00 liability, or a ratio of 1:45. In this case, the ratio is a little over 1:3 considering that the liability of the ship repairer, KCSI, is only₱164,873,675.95, as will be later shown.

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[53] Id. at 457-458.

The Court, thus, finds Clause 20 just and equitable under the circumstances and should be sustained as having the force of law between the parties to be complied with in good faith.

With the liability of KCSI to WG&A for the loss of Superferry 3 being limited to ₱50,000,000.00, it goes without saying that Pioneer, as subrogee of WG&A, may only claim the amount of ₱50,000,000.00 from KCSI. Well-settled is the rule that the insurer can be subrogated only to the rights as the insured may have against the wrongdoer. As Article 2207 of the Civil Code states:

> Article 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of***, the insurance company shall be subrogated to the rights of the insured*** against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury. [Emphasis supplied)

In sum, both KCSI and WG&A should be held responsible for the loss of Superferry 3 assessed at ₱360,000,000.00. As stated by the Third Division of the Court in its Decision, the salvage value recovered by Pioneer from M/V Superferry 3, amounting to ₱30,252,648.09 should be deducted, thus, leaving ₱329,747,351.91 as the amount of the loss. This amount, divided between KCSI and WG&A, results in each party shouldering ₱164,873,675.95. Nevertheless, the limited liability clause of the Shiprepair Agreement being valid, Pioneer, as subrogee of WG&A, may only claim a maximum amount of ₱50,000,000.00 from KCSI.

The amount of ₱50,000,000.00 that KCSI is liable to pay Pioneer should be with interest at 6% *per annum* from the filing of the case until the award becomes final and executory. Thereafter, the rate of interest shall be 12% *per annum* from the date the award becomes final and executory until

its full satisfaction. The arbitration costs shall be borne by both parties on a *pro rata* basis.[54]

A final point. As both KCSI and WG&A are equally responsible for the loss of Superferry 3, questions arise: should the liability of Pioneer to WG&A be proportionately limited? Is Pioneer entitled to any refund? Whether or not Pioneer is entitled to the restitution of any excess payment is a question that cannot be adjudicated in this case. The Court cannot make a final finding or pronouncement on the matter because WG&A is not a party in this case. WG&A should be heard in this regard as it may have defenses to fend off the possible claim for refund by Pioneer. It should be stressed that their relationship is governed by their contract of insurance, where their respective rights and obligations are defined, and by their subsequent settlement or arrangement, if any. Due process dictates that these should be threshed out in a separate action. Needless to state, this decision is without prejudice to such action.

WHEREFORE, the September 25, 2009 Decision of the Third Division is hereby **MODIFIED**. Accordingly, Keppel Cebu Shipyard, Inc. is ordered to pay Pioneer Insurance and Surety Corporation the amount of ₱50,000,000.00 plus interest at the rate of 6% *per annum* from the filing of the case until the award becomes final and executory. Thereafter, the rate of interest shall be 12% *per annum* from the date the award becomes final and executory until its full satisfaction.

The arbitration costs shall be borne by both parties on a *pro rata* basis.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

[54] *Eastern Shipping Lines, Inc. v. Court of Appeals*, GR. No. 97412, July 12, 1994, 234 SCRA 78, 97.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

I join dissent of J. Brion.
PRESBITERO J. VELASCO, JR.
Associate Justice

Pls see my Dissent
ARTURO D. BRION
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

I take no part due to prior participation in the Court of Appeals
LUCAS P. BERSAMIN
Associate Justice

See my concurring opinion.
ROBERTO A. ABAD
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

(On Official Leave)
MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

See my dissenting opinion
BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I hereby certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice