Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

SCANMAR MARITIME SERVICES, INC. and CROWN SHIPMANAGEMENT, INC.,
Petitioners,

- versus -

CELESTINO M. HERNANDEZ, JR.,
Respondent.

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G.R. No. 211187

Present:

SERENO,* *C.J.*,
LEONARDO-DE CASTRO,**
DEL CASTILLO,
JARDELEZA, *and*
TIJAM, *JJ.*

Promulgated:
APR 16 2018

DECISION

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the June 27, 2013 Decision[2] and February 5, 2014 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 124003, which dismissed the Petition for *Certiorari* filed therewith and thus affirmed the December 9, 2011 Decision[4] and February 2, 2012 Resolution[5] of the National Labor Relations Commission (NLRC) ordering petitioners Scanmar Maritime Services, Inc. and Crown Shipmanagement, Inc. (collectively petitioners) to pay respondent Celestino M. Hernandez, Jr. (respondent) US$66,000.00 as disability benefits and attorney's fees.

Antecedent Facts

On July 2, 2009, petitioner Scanmar Maritime Services, Inc., for and

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* On leave.
** Acting Chairperson per Special Order No. 2540 dated February 28, 2018.
1 *Rollo*, pp. 11-30.
2 Id. at 32-41; penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Rosmari D. Carandang and Leoncia Real-Dimagiba.
3 Id. at 43.
4 Id. at 256-264; penned by Presiding Commissioner Leonardo L. Leonida and concurred in by Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Lacap.
5 Id. at 280-281.

in behalf of its foreign principal, petitioner Crown Shipmanagement, Inc., entered into a Contract of Employment[6] with respondent for a period of nine months as Able Seaman for the vessel Timberland. Respondent underwent the pre-employment medical examination (PEME), where he was declared fit for work.[7] He was deployed on August 3, 2009 and boarded the vessel the next day.

During the course of his employment, respondent experienced pain in his inguinal area and pelvic bone. The pain continued for weeks radiating to his right scrotum and right medial thigh. He informed the Captain of the vessel and was brought to a hospital in Sweden on February 3, 2010 where he was found unfit to resume normal duties. Consequently, respondent was medically repatriated to the Philippines on February 6, 2010.[8]

On February 8, 2010, respondent was referred to the company-designated physician at Metropolitan Medical Center for medical evaluation. He was diagnosed to have *Epididymitis, right, Varicocoele, left*[9] and was recommended to undergo Varicocoelectomy, a surgical procedure for the management of his left Varicocoele.[10] On March 26, 2010, the company-designated Urological Surgeon, Dr. Ed R. Gatchalian (Dr. Gatchalian), performed Varicocoelectomy on him at the Metropolitan Medical Center[11] after obtaining clearance from a Cardiologist.[12] The procedure was a success and respondent was immediately discharged the following day.[13] Thereafter, he continuously reported to Dr. Gatchalian for medical treatment and evaluation. He was subjected to numerous laboratory examinations, medication, and was advised to refrain from engaging in strenuous activities, such as lifting, while recovering.

Despite continuing medical treatment and evaluation with the company-designated physician, respondent filed on July 20, 2010 a complaint with the NLRC for permanent disability benefits, damages, and attorney's fees against petitioners. On August 12, 2010, respondent consulted his own physician, Dr. Antonio C. Pascual (Dr. Pascual), a Cardiologist, who diagnosed him with *Essential Hypertension, Stage 2, Epididymitis, right, Varicocoele, left, S/P Varicocoelectomy* and certified

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6 Id. at 111.
7 Id. at 112.
8 See CA Decision, id. at 33.
9 See Medical Report dated February 9, 2010 and March 4, 2010, id. at 64-65 and 68, respectively.
10 See Medical Report dated February 18, 2010, id. at 67.
11 See Medical Report dated March 26, 2010 and Metropolitan Medical Center Operation Sheet dated March 26, 2010, id. at 71 and 123-124, respectively.
12 See Medical Report dated March 18, 2010, id. at 69-70.
13 Medical Report dated March 27, 2010 and Metropolitan Medical Center Discharge Summary/Hospital Abstract, id. at 72 and 125, respectively.

him medically unfit to work as a seaman.[14]

Meanwhile, on August 24, 2010, Dr. Gatchalian pronounced respondent fit to resume sea duties.[15]

Proceedings before the Labor Arbiter

In his position paper, respondent averred that for almost a year since November 2009, when he first sought medical attention for his work-related illness on board the vessel, he failed to earn wages as a seafarer. Due to loss of his earning capacity as a result of his unfitness for further sea duties, as attested by the medical findings of his own physician, Dr. Pascual, respondent claimed that he was entitled to permanent total disability benefits amounting to US$60,000.00 pursuant to the POEA-SEC as well as moral, exemplary and compensatory damages for ₱500,000.00 each and 10% attorney's fees.

Petitioners, on the other hand, disclaimed respondent's entitlement to any disability compensation or benefit since his illness was not an occupational disease listed as compensable under the POEA-SEC[16] and was not considered work-related. Petitioners maintained that respondent was never declared unfit to work nor was he rendered permanently, totally or partially, disabled, averring that Dr. Gatchalian, the urological surgeon who closely monitored respondent's condition, already declared him fit to resume sea duties. Petitioners insisted that Dr. Gatchalian's assessment should prevail over that rendered by Dr. Pascual, who examined respondent only once. Further, according to petitioners, respondent's failure to consult a third doctor who is tasked to settle the inconsistencies in the medical assessments in accordance with the provisions of the POEA-SEC was fatal to his cause.

In a Decision[17] dated April 1, 2011, the Labor Arbiter awarded respondent total and permanent disability compensation in the amount of US$60,000.00 and attorney's fees in the amount of US$6,000.00. The Labor Arbiter found that respondent's illness had a reasonable connection with his work condition as an Able Seaman, thus, was work-related and compensable. At any rate, his illness, although not listed as occupational disease, enjoyed the disputable presumption of work-connection or work-aggravation under the POEA-SEC. The Labor Arbiter then found credence in the assessment made by respondent's physician, Dr. Pascual, who

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14 See Medical Certificate dated August 12, 2010, id. at 131-132.
15 See Medical Report dated August 24, 2010, id. at 85-87.
16 Philippine Overseas Employment Authority-Standard Employment Contract.
17 Id. at 159-169; penned by Executive Labor Arbiter Fatima Jambaro-Franco.

certified respondent to be suffering not only from Varicocoele but also from Stage 2 Hypertension, an illness which was likewise work-related.

Proceedings before the National Labor Relations Commission

Petitioners appealed to the NLRC ascribing serious error on the findings of the Labor Arbiter. Petitioners maintained that respondent's Varicocoele was not work-related; that respondent was declared fit for sea duties by Dr. Gatchalian whose declaration correctly reflected respondent's condition as compared to Dr. Pascual who was not even a specialist in urological disorders; that no third doctor was sought to challenge Dr. Gatchalian's assessment in violation of the procedure laid down in the POEA-SEC; that respondent's alleged hypertension could not be made as basis for the payment of disability benefits as there was no proof that he acquired or suffered such illness during the term of his employment; and that respondent was not entitled to attorney's fees.

In a Decision[18] dated December 9, 2011, the NLRC dismissed the appeal and affirmed the Decision of the Labor Arbiter. The NLRC sustained the Labor Arbiter's finding that respondent was permanently and totally disabled; that there was causal connection between the work of respondent and his illnesses (Varicocoele and Stage 2 Hypertension); and that Dr. Pascual's certification deserves more weight than the certification of Dr. Gatchalian that was issued after 120 days which, by operation of law, transformed respondent's disability to total and permanent, as was pronounced in the case of *Quitoriano v. Jebsens Maritime, Inc.*[19]

Petitioners filed a Motion for Reconsideration[20] of the NLRC Decision but was denied in the NLRC Resolution[21] of February 2, 2012.

Proceedings before the Court of Appeals

Petitioners filed a Petition for *Certiorari* with Urgent Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Mandatory Injunction to enjoin the enforcement and execution of the NLRC judgment. Petitioners attributed grave abuse of discretion on the NLRC in affirming the Labor Arbiter's award of US$60,000.00 as disability benefits and attorney's fees of US$6,000.00.

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18 Id. at 256-264; penned by Presiding Commissioner Leonardo L. Leonida and concurred in by Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Lacap.

19 624 Phil. 523 (2010).

20 *Rollo*, pp. 265- 277.

21 Id. at 280-281.

The CA, in a Decision[22] dated June 27, 2013, dismissed petitioners' Petition for *Certiorari* and held that the NLRC did not commit any grave abuse of discretion in rendering its assailed rulings. The CA found that there was no error in the NLRC's appreciation of the causal connection between respondent's work as a seaman and his illnesses; that the NLRC correctly upheld the assessment of Dr. Pascual based on its inherent merit; and that the NLRC properly considered respondent's disability as total and permanent based on the Court's ruling in the *Quitoriano* case. The CA likewise found justification in the award of attorney's fees since respondent was forced to litigate to protect his interest.

Petitioners sought reconsideration[23] of the CA Decision. In a Resolution[24] dated February 5, 2014, petitioners' motion was denied.

Issues

Hence, petitioners filed the present Petition for Review on *Certiorari*, arguing that:

> I.
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> THE FILING OF THE COMPLAINT WAS PREMATURE AND SHOULD HAVE BEEN DISMISSED OUTRIGHT BECAUSE
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> A. THE COMPANY-DESIGNATED PHYSICIAN HAD NOT YET GIVEN A DISABILITY ASSESSMENT/FIT TO WORK ASSESSMENT WITHIN THE ALLOWABLE 240-DAY PERIOD WHEN RESPONDENT FILED THE CASE. THERE IS THEREFORE NO ASSESSMENT TO CONTEST OR TO HAVE A CAUSE OF ACTION AGAINST.
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> B. EVEN ASSUMING ARGUENDO THAT THE COMPLAINT WAS NOT PREMATURELY FILED ON THE ABOVE GROUND, RESPONDENT'S FAILURE TO COMPLY WITH THE POEA SEC ON THE MATTER OF REFERRING THE MEDICAL ASSESSMENT TO AN INDEPENDENT AND THIRD PHYSICIAN RENDERED THE FILING OF THE COMPLAINT PREMATURE.
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> II.
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> ABSENT ANY SERIOUS DOUBTS AS TO THE LEGITIMACY AND FAIRNESS OF THE ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN, THE COURT OF APPEALS HAS NO AUTHORITY WHATSOEVER TO DISREGARD THE FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN IN FAVOR OF SEAFARER'S ONE-TIME PHYSICIAN OF CHOICE.

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22 Id. at 32-41.
23 Id. at 523-530.
24 Id. at 43.

CREDENCE SHOULD BE THEREFORE ACCORDED TO THE ASSESSMENT OF THE COMPANY DESIGNATED PHYSICIAN ESPECIALLY SINCE THE LATTER IS A SPECIALIST AS COMPARED TO THE SEAFARER'S PHYSICIAN OF CHOICE WHO POSSESSES DIFFERENT MEDICAL SPECIALIZATION.

III.
RESPONDENT IS NOT ENTITLED TO ATTORNEY'S FEES.[25]

Petitioners contend that respondent's complaint was prematurely filed and lacked cause of action as there was no medical assessment yet by the company-designated physician and the 240-day allowable period within which the company-designated physician may assess respondent had not yet lapsed at the time it was filed. Petitioners assert that the mere lapse of the 120-day period does not automatically vest an award of full disability benefits, as it may be extended up to 240 days if the seafarer requires further medical attention, as in this case. Moreover, the lack of a third doctor opinion is fatal to respondent's cause.

Petitioners, thus, posit that the timely fit to work assessment of Dr. Gatchalian, which was rendered after close monitoring of respondent's condition, should have been accorded probative weight by the labor tribunals, rather than the pronouncement of Dr. Pascual, who examined respondent only once and who is not even a specialist in urological disorders.

Our Ruling

The Court finds merit in the Petition.

The filing of respondent's complaint was premature. Respondent is not entitled to total and permanent disability compensation.

We find serious error in both the rulings of the NLRC and CA that respondent's disability became permanent and total on the ground that the certification of the company-designated physician was issued more than 120 days after respondent's medical repatriation. As correctly argued by petitioners, the 120-day rule has already been clarified in the case of *Vergara v. Hammonia Maritime Services, Inc.*,[26] where it was declared

[25] Id. at 646-647.
[26] 588 Phil. 895 (2008).

that the 120-day rule cannot be simply applied as a general rule for all cases in all contexts.

Article 192(c)(1) of the Labor Code provides that:

> Art. 192. Permanent total disability. – x x x
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> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

The Rule referred to in this Labor Code provision is Section 2, Rule X of the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code, which states:

> Sec. 2. *Period of Entitlement* – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

Section 20B(3) of the POEA-SEC, meanwhile provides that:

> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.
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> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
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> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

In *Vergara*, this Court has ruled that the aforequoted provisions should be read in harmony with each other, thus: (a) the 120 days provided under Section 20B(3) of the POEA-SEC is the period given to the

> employer to determine fitness to work and when the seafarer is deemed to be in a state of total and temporary disability; (b) the 120 days of total and temporary disability may be extended up to a maximum of 240 days should the seafarer require further medical treatment; and (c) a total and temporary disability becomes permanent when so declared by the company-designated physician within 120 or 240 days, as the case may be, or upon the expiration of the said periods without a declaration of either fitness to work or disability assessment and the seafarer is still unable to resume his regular seafaring duties.[27]

Thus, in the case of *C.F. Sharp Crew Management, Inc. v. Taok,*[28] a seafarer may be allowed to pursue an action for total and permanent disability benefits in any of the following conditions:

> (a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;
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> (b) 240 days had lapsed without any certification being issued by the company-designated physician;
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> (c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;
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> (d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;
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> (e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;
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> (f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;
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> (g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and
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> (h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains

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27 *Island Overseas Transport Corporation v. Beja,* 774 Phil. 332, 345-346 (2015).

28 691 Phil. 521 (2012).

> incapacitated to perform his usual sea duties after the lapse of the said periods.[29]

Upon respondent's repatriation on February 6, 2010, he received extensive medical attention from the company-designated physicians. He was endorsed to a urological surgeon, Dr. Gatchalian, who recommended and performed surgery on him on March 26, 2010 to address and treat his varicocoele. After surgery, his condition was continually monitored as he still complained of scrotal and groin pains.[30] He thereafter underwent Inguinoscrotal Ultrasound on May 28, 2010 and July 16, 2010.[31] He was subjected to further physical and laboratory exams and was recommended by Dr. Gatchalian to undergo CT Sonogram to further evaluate his condition and recovery, as shown in a Medical Report dated August 19, 2010.[32] On August 24, 2010 or 197 days from repatriation, respondent was cleared to go back to work.[33]

After the lapse of 120 days from the date of repatriation, respondent's treatment still continued; thus, the 240-day extension period was justified. At the time respondent filed his complaint on July 20, 2010, or 162 days since repatriation and without a definite assessment from the company-designated physician, respondent's condition could not be considered permanent and total. "[T]emporary total disability only becomes permanent when the company-designated physician, within the 240-day period, declares it to be so, or when after the lapse of the said period, he fails to make such declaration."[34]

Both the NLRC and the CA mistakenly relied on the case of *Quitoriano v. Jebsens Maritime, Inc.*,[35] which applied our ruling in *Crystal Shipping, Inc. v. Natividad*[36] that total and permanent disability refers to the seafarer's incapacity to perform his customary sea duties for more than 120 days. In *Quitoriano,* the seafarer filed a claim for total and permanent disability benefits on February 26, 2002 or before October 6, 2008, the date of the promulgation of *Vergara,* and the prevailing rule then was that enunciated by this Court in *Crystal Shipping.* The Court already delineated the effectivity of the *Crystal Shipping* and *Vergara* rulings in the case of *Kestrel Shipping Co., Inc. v. Munar*[37] by enunciating that, if the maritime complaint was filed prior to October 6, 2008, the 120-day rule applies; but if

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29 Id. at 538-539.
30 See Medical Reports dated June 1, 17, 29 and July 13, 2010, *rollo,* pp. 79-82.
31 See Medical Reports dated May 28, 2010 and July 20, 2010, id. at 78 and 83, respectively; also Metropolitan Medical Center Ultrasound Reports dated May 28, 2010 and July 16, 2010, id. at 129-130.
32 Id. at 84.
33 Id. at 85-87.
34 *Santiago v. Pacbasin ShipManagement, Inc.,* 686 Phil. 255, 267 (2012).
35 Supra at note 18.
36 510 Phil. 332 (2005).
37 702 Phil. 717 (2013).

the complaint was filed from October 6, 2008 onwards, the 240-day rule applies. In this case, respondent filed his complaint on July 20, 2010, hence, it is the 240-day rule that applies.

In this case, respondent filed his complaint for total and permanent disability benefits while he was still considered to be temporarily and totally disabled; while the company-designated physician was still in the process of assessing his condition and determining whether he was still capable of performing his usual sea duties; and when the 240-day period had not yet lapsed. From the foregoing, it is evident that respondent's complaint was prematurely filed. His cause of action for total and permanent disability benefits had not yet accrued.

Moreover, respondent's failure to comply with the procedure prescribed by the POEA-SEC, which is the law between the parties, provided a sufficient ground for the denial of his claim for total and permanent disability benefits.

Section 20B(3) of the POEA-SEC provides that it is the company-designated physician who is entrusted with the task of assessing a seafarer's disability. The provision also provides for a procedure to contest the company-designated physician's findings. Respondent, however, failed to comply with the procedure when he filed his complaint on July 20, 2010 without a definite assessment yet being rendered by the company-designated physician. Worse, he sought an opinion from Dr. Pascual, an independent physician, on August 12, 2010 despite the absence of an assessment by the company-designated physician. The medical certificate of Dr. Pascual, nevertheless, was of no use and will not give respondent that cause of action that he lacked at the time he filed his complaint. Indeed, a seafarer has the right to seek the opinion of other doctors under Section 20-B(3) of the POEA-SEC but this is on the presumption that the company-designated physician had already issued a certification as to his fitness or disability and he finds this disagreeable.[38] The Court is thus unconvinced to put weight on the findings of Dr. Pascual given that respondent has breached his duty to comply with the procedure prescribed by the POEA-SEC.

WHEREFORE, the Petition is **GRANTED**. The June 27, 2013 Decision and February 5, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 124003 are **REVERSED** and **SET ASIDE**. Celestino M. Hernandez, Jr.'s complaint docketed as NLRC OFW Case No. (M) 07-09866-10 is **DISMISSED**.

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[38] *New Filipino Maritime Agencies Inc. v. Despabeladeras*, 747 Phil. 626, 642 (2014).

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

(On leave)
MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

NOEL GIMENEZ TIJAM
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.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

ANTONIO T. CARPIO
Acting Chief Justice[*]

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[*] Per Special Order No. 2539 dated February 28, 2018.