

KCRW INVESTIGATES **TROUBLED WATERS**

A private justice system leads to secrecy and mistreatment on the high seas

Imagine losing a limb, going blind or almost dying on the job. And then imagine not being able to hold those responsible accountable. Welcome to the largely secret world of arbitration.

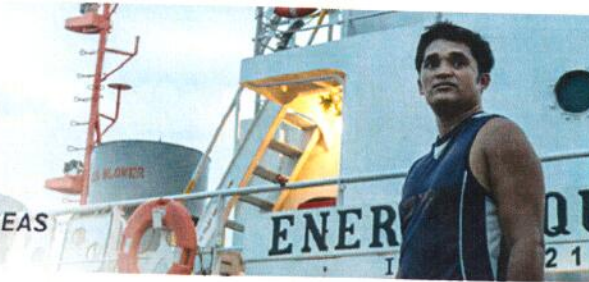
Exhibit KD
Page 1 of 14

OCT 03, 2016 By **Karen Foshay**



TROUBLED WATERS

HOW A PRIVATE JUSTICE SYSTEM EXPLOITS WORKERS ON THE HIGH SEAS



LISTEN TO THE STORIES:

PART 1: THE SECRET WORLD OF ARBITRATION

For many of the sea workers who come ashore at the Port of Long Beach, it's the first time they've touched ground in weeks. They are some of the millions of workers helping move 90 percent of the globe's trade. Maritime trade has always been a grueling and dangerous profession, but it is now seeing some of its long time protections stripped.

Imagine losing a limb, going blind or almost dying on the job. And then imagine not being able to hold those responsible accountable. Welcome to the largely secret world of arbitration. It's routinely used by shipping and cruise companies worldwide to keep injured workers out of courts and out of the public eye

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Troubled waters: The secret world of arbitration

PART 2: LOW WAGES ON THE HIGH SEAS

At the Port of Long Beach, ship workers pile into a van to travel to a local shopping outlet, thanks to the services of the Seafarers Center of Long Beach. Some are speaking Tagalog, others Korean and a few whisper in Romanian. In English, one tells the driver he needs

Exhibit KD

Page 2 of 14

shoes, another says he needs pants. It doesn't take long for them to share stories of injury and exploitation.

Seafarers move millions of people and billions of goods around the world every year. It's always been a dangerous profession, and that's why it's had global protections for hundreds of years. But some of those are unraveling thanks to a private system of justice that some say is anything but just.

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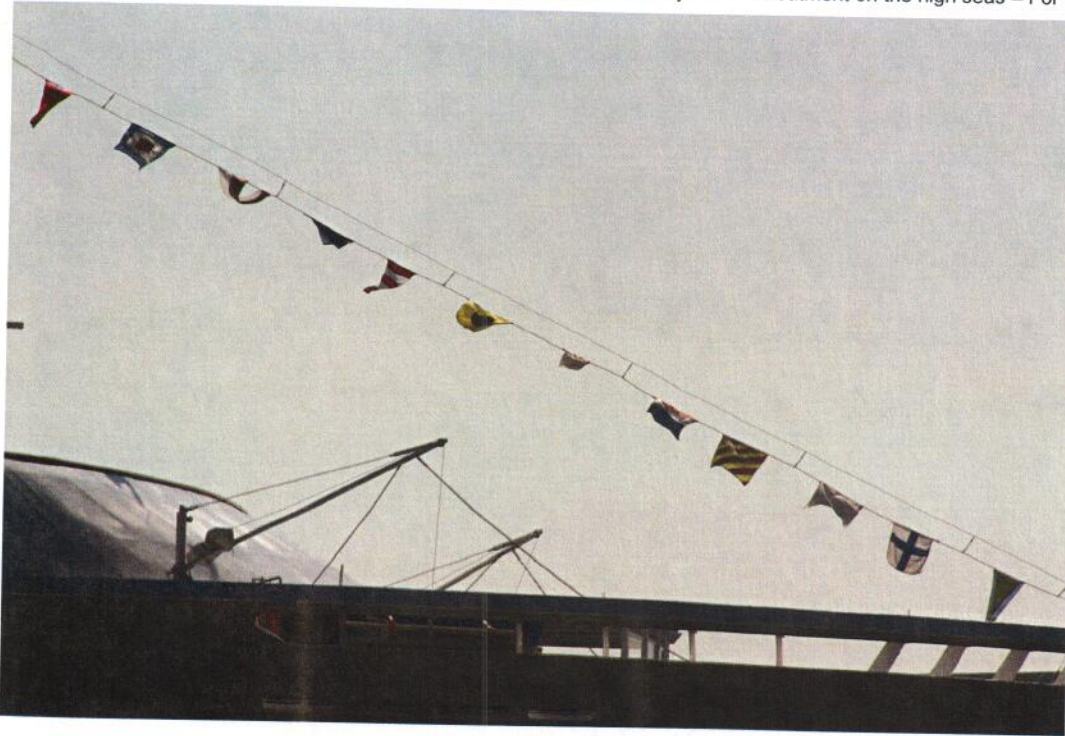
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Stories by Karen Foshay with additional reporting by Aurora Almendral
Troubled Waters was made possible thanks to the the Conrad N. Hilton Foundation.

READ THE STORIES:

PART 1: THE SECRET WORLD OF ARBITRATION



Foreign flags adorn a ship at the Port of Long Beach. Photo: Karen Foshay

Long Beach

For most of the hundreds of seafarers who come ashore daily at the Port of Long Beach, it's the first time they've touched ground in weeks. They are some of the millions of workers helping move 90 percent of the globe's trade. Maritime trade has always been a grueling and dangerous profession, but it is now seeing some of its long time protections stripped.

When talking to ship workers on a stop in Long Beach, it doesn't take long to hear the stories of death, injury and arbitration.

Erwin, a Filipino national, has spent over a decade as a seafarer on various cargo vessels. He has witnessed a work related death and several injuries, including his own.

His finger was amputated in an onboard accident; afterward, he learned he had no right to sue his employer for damages or negligence. He had had unknowingly agreed to mandatory arbitration when he signed his employment agreement.

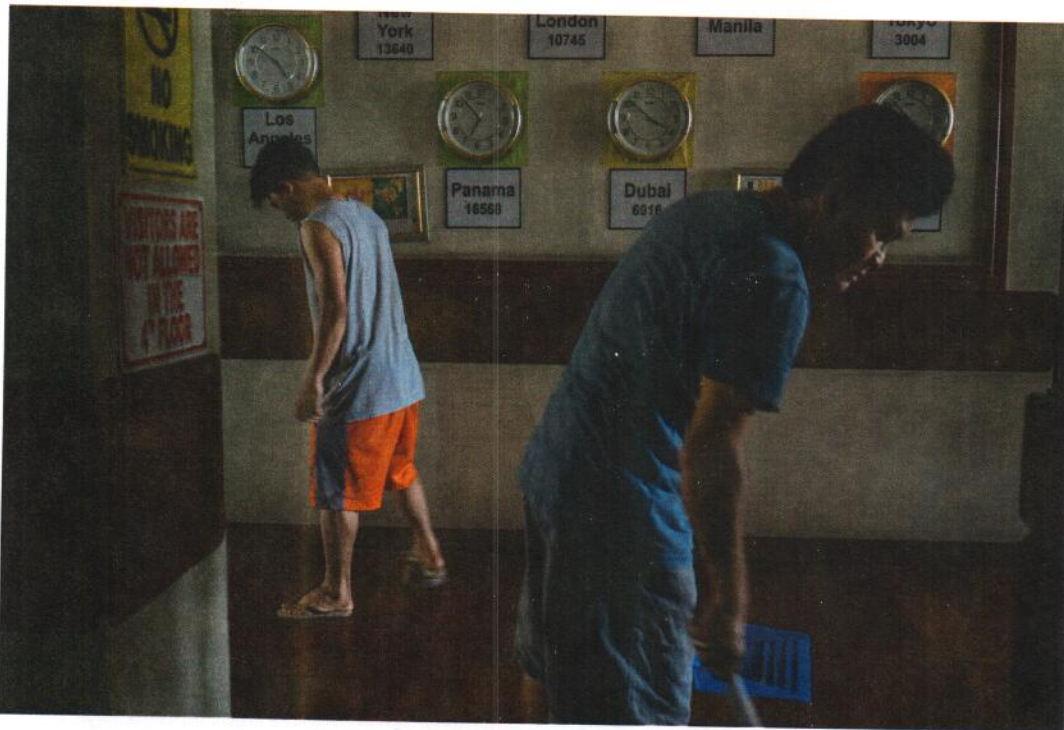
Arbitration is a process in which legal disputes are resolved in a private hearing, as opposed to a courtroom. Generally, the laws that apply in the public justice system don't in arbitration. Often it's the companies drafting the rules of arbitration. For example, they can put limits on what kinds of evidence is collected or who can be deposed.

Erwin ultimately received \$4000 for the amputation, much less than what he may have received had he been allowed to bring his claim to a US courtroom, says Carlos Llinas, a maritime attorney based in Los Angeles.

"It would be much higher. Juries traditionally compensate hundreds of thousands of dollars for that type of injury," says Llinas, who has represented seafarers in both wage and injury cases.

The use of arbitration clauses within employment contracts is increasingly common within the shipping and cruise industries. Carnival, the world's largest cruise line, with 10 cruise line brands and 120,000 employees worldwide, includes arbitration clauses in many of its employee and passenger contracts.

Often the employer requiring the arbitration also pays for the arbitrator, who doesn't have to be a judge or a lawyer. Their decision is final and with few exceptions, not subject to appeal. The arbitration hearings are private and companies can make injured workers fly anywhere in the world to attend them. If workers don't show up, they automatically lose.



Men clean the floors inside the Apostleship of the Sea dormitory in Manila, a place where seafarers can stay for a low price while waiting to be employed in a ship. The Apostleship of the Sea is a Catholic organization that supports and provides services for seafarers who are often vulnerable to abuse. (Photo: Hannah Reyes Morales)

Princess Cruise Lines requires arbitration in Bermuda, even though its world headquarters is in Santa Clarita. Norwegian Cruise Line, based in Miami, requires workers to travel to the Bahamas for arbitration. Carnival Corporation requires arbitration in Panama. Exhibit KD
Page 5 of 14

Llinas has had clients, including an American, ordered to arbitration hearings sometimes thousands of miles away, and at their own expense.

One cruise worker from Honduras was told to go to Malta. An Indian ship worker was ordered to the Philippines.

"This is effectively like sending me to Antarctica or Mars! I'll never do it right? So it's all a facade," says Llinas. "It's all intended to get rid of these types of claims."

If you are Filipino, like Erwin, you arbitrate back home.

The Philippine government requires its citizens to agree to arbitration before you can work overseas. "It's not fair," he says.

In 1995, the Philippine Overseas Employment Administration (POEA), a division of the country's Department of Labor and Employment, inserted arbitration clauses into its employment contracts, which must be signed before a citizen can work abroad. The clause forbids Filipinos from filing a claim in US court and instead requires them to arbitrate in the Philippines.

The cost savings of these arbitration agreements can be in the millions for shipping company owners.

Injured onboard

While working on a cargo vessel in New Orleans in 2010, Lito Asignacion was burned across 35 percent of his body. His treating physician described the injuries as "catastrophic" and said Asignacion needed multiple skin grafts. He never got them all.

Even though federal maritime law guarantees Asignacion a right to sue his employer and receive medical care, a judge enforced the arbitration clause in his employment contract and sent him home to the Philippines.

There, he was awarded just \$1870 in arbitration.

Had he been able to bring his claim in front of a US jury, Asignacion's attorney, Richard Dodson thinks the shipping owner would have had to pay millions in damages, compensation and long term disability costs.

"This is a man who needs over \$100,000 in surgeries and he got \$1870. It's just grossly unfair," says Dodson.

Exhibit KD

Page 6 of 14



Lito Asignacion and his family. (Photo: Jake Salvador)

"I was very disappointed that the US judiciary was not fair. They sign up big businesses, rich ship owners and they don't bother and give importance to those who work for them," says Asignacion.

"We are the ones who need who work. And then when injury happens, you realize that you get nothing from them. That is very unfair for a seafarer like me," he says.

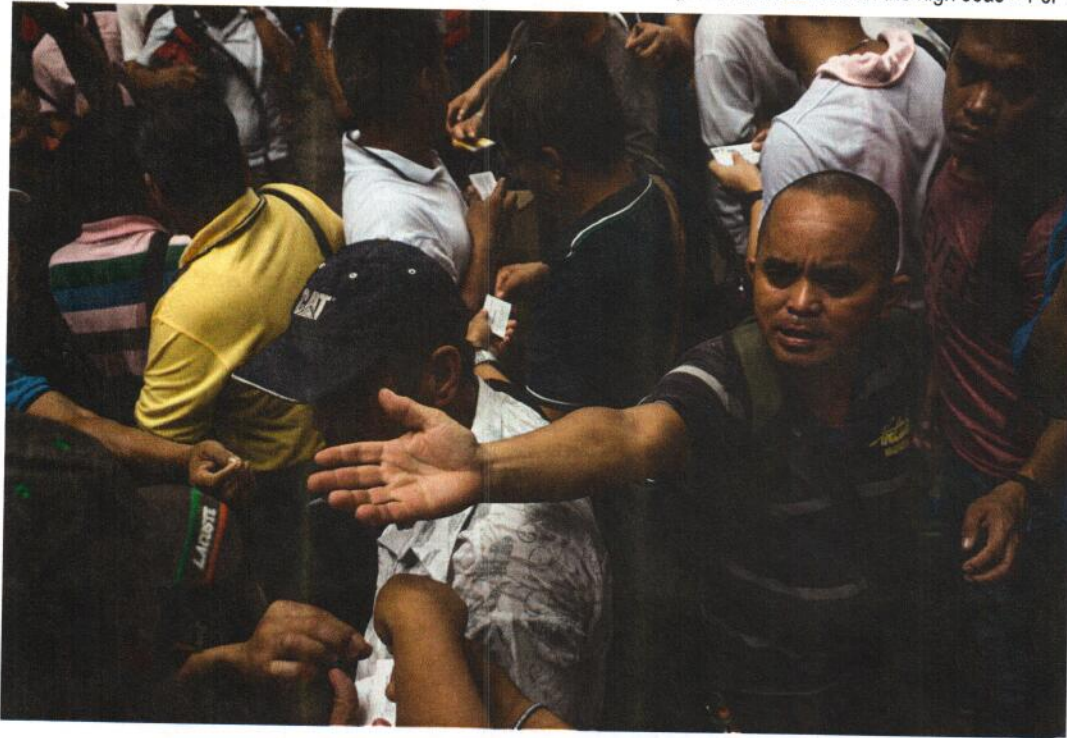
As an inspector for the international transport workers federation in long beach, Stefan Mueller, says he's seen employers order ailing sea workers hauled out of local hospital beds and forced onto flights to Manila.

"They'll ship them as soon as they can, even if they are barely able to move or still need medical care," says Mueller.

Emmanuel Navarette lost part of his leg while working on a cruise ship. He was in a Miami hospital when he got a visit from his employer. They wanted to put him on a plane back to the Philippines, against his doctor's orders. His attorney had[a] to file an emergency motion to let him stay in the hospital.

"It's extremely cheap to get medical treatment in the Philippines, but the problem is they can't get the quality of treatment," says Mueller, "Often it's a death sentence."

Luneta Park



Thousands gather to find work in Manila's Luneta Park. (Photo: Hannah Reyes Morales)

A quarter of all seafarers in the world are Filipino. And most find jobs here in Manila's Luneta Park, the epicenter of the global maritime labor market.

Metropolitan Hospital is nearby and treats sailors who are too injured to go back out. And around the corner from it, thousands are thronging Kalaw street, ready to replace them.

Attorney Dennis Gorecho gives a weekly sidewalk lecture on seafarers' rights. The workers don't know that buried in the fine print is an arbitration clause. They can't sue their employer for negligence; and if they're hurt, a company doctor determines their compensation. And injured workers get nothing until all appeals are exhausted, which have been known to take up to 10 years.

"When they don't read their contract and that's the basic reason why they are being abused," says Gorecho.

In the contract is a compensation chart for injuries.

A private justice system leads to secrecy and mistreatment on the high seas – For The Curious

- 32. Irregular union or fracture in a thigh or leg with shortening of 6" to 8 cms..... Gr. 10
- 33. Failure of fracture of both hips to unite..... Gr. 1
- 34. Failure of fracture of a hip to unite..... Gr. 3
- 35. Paralysis of both lower extremities..... Gr. 1
- 36. Paralysis of one lower extremity..... Gr. 3
- 37. Scar the size of a palm or larger left on an extremity..... Gr. 14

NOTE: Any item in the schedule classified under Grade 1 shall be considered or shall constitute total and permanent disability.

SCHEDULE OF DISABILITY ALLOWANCES

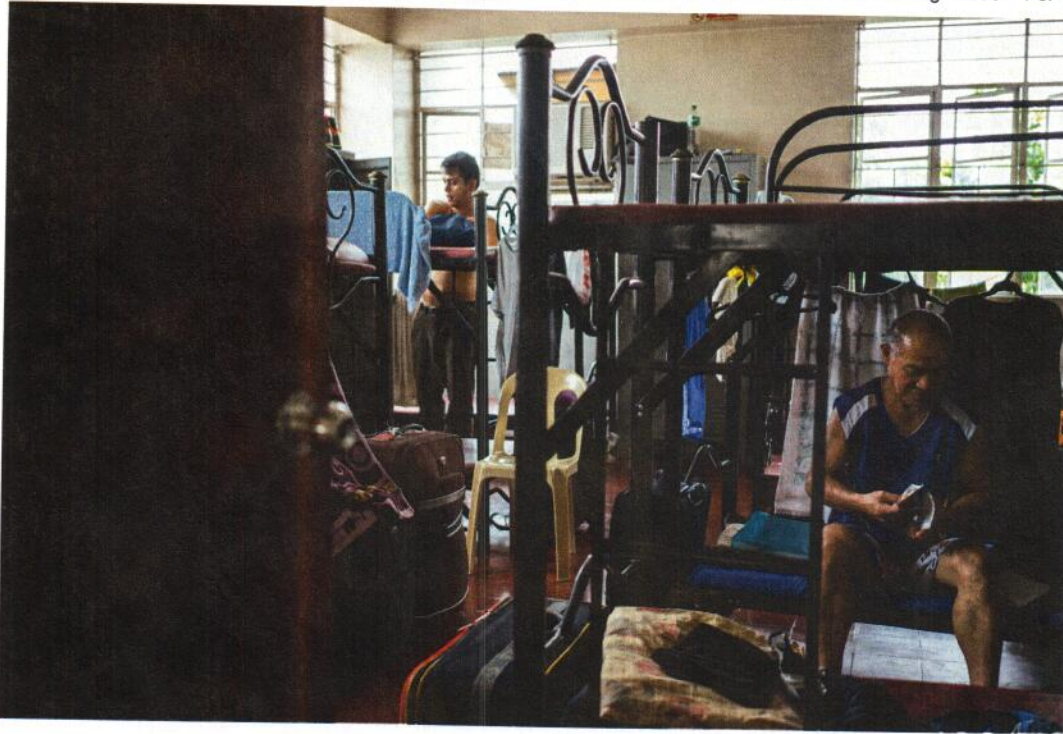
Impediment Grade		Impediment	
1	US\$50,000	X	120.00%
2	"	X	88.81%
3	"	X	78.36%
4	"	X	68.68%
5	"	X	58.96%
6	"	X	50.00%
7	"	X	41.80%
8	"	X	33.50%

Go deaf in one ear, you get \$7400. Lose a leg, \$39,000. An amputated hand, \$29,000.

Earlier this year the POEA made several amendments to the Seafarers Protection Act, the federal law aimed at protecting the country's seafarers. The new rules make "ambulance chasing" punishable to up to two years in jail and restricts the percentage attorneys earn representing seafarers to ten percent.

Gorecho does his best to inform seafarers of their rights and the requirements they must fulfill in order to arbitrate, but he believes the system tends to benefit the companies rather than the workers.

"It's really disappointing," he says. "The company gets richer and richer and the seafarer loses something or gets injured he will still have to fight for his right for his claim in spite of his service to the company and that's really the David and Goliath situation," he says.



Filipino seafarers are seen in their room in the Apostleship of the Sea dormitory in Manila, a place where seafarers can stay for a low price while waiting to be employed in a ship. The Apostleship of the Sea is a Catholic organization that supports and provides services for vulnerable seafarers worldwide. (Photo: Hannah Reyes Morales)

Some observers think the Philippine government writes these laws and employment contracts favorable to big business in order to keep its citizens employed. Nine percent of the country's gross domestic product comes from remittances. By law, all overseas Filipinos must remit 80 percent of their paychecks to banks in the Philippines. Those remittances totaled \$5.5 billion in 2014.

According to Stefan Mueller, most Americans don't know about the exploitation experienced by the people who make their beds on bargain cruises or deliver big screen TVs to Costco. At the same time, he's not sure American consumers would want to pay a lot more for their goods and services.

"To keep the profits the same we push the wages further and further down. In a way it's an American story, it's supply and demand story. Capitalism at its finest."

PART 2: A PRIVATE JUSTICE SYSTEM LEADS TO SECRECY AND MISTREATMENT ON THE HIGH SEAS



A ship flies several flags at the Port of Long Beach. Photo: Karen Foshay

The ship workers pile into the van. Some are speaking Tagalog, others Korean and a few whisper in Romanian. In English, one tells the driver he needs shoes, another says he needs pants.

These men just got off a cargo vessel at the Port of Long Beach. They are being transported to a local shopping outlet, thanks to the services of the Seafarers Center of Long Beach. They have just a few hours to get their shopping in and make some money transfers before they must return to the ship. For all of them, it's the first time they've stepped on the ground in months.

During the van ride, with a promise of anonymity, they open up about the amount they earn for doing one of the most perilous jobs in the world.

One worker says he made \$1.75 an hour for his first job on a ship but now makes \$3.75. Another says he currently makes about \$850 a month. One laughs when asked he receives overtime; the answer is no.

"And everyday, everyday work, no holidays!" he says.

Louisiana attorney and maritime law professor Richard Dodson has represented dozens of workers in cases against shipping companies. "The protections of seafarers has gotten far worse," he says.

While many of these companies are US based, they are exempt from US labor laws and can pay a fraction of the minimum wage. They can do this because they are "foreign flag vessels," ships based in the US but registered in other countries.

Princess Cruise Lines is based in Santa Clarita and its parent company, Carnival, is the largest cruise operator in the world and is headquartered in Miami. Carnival and Princess ships fly the flag of Panama and can treat their employees in accordance with Panamanian law. This is called operating under "flags of convenience" or "flagging out."

Flagging out can save shipping companies hundreds of millions of dollars, and that's why nearly 90 percent of them do it, says Dodson. Of the thousands of ocean going ships, fewer than 100 fly the US flag. "All american owners have flagged out to the Marshall Islands, Panama Liberia, wherever so they can hire cheap labor, avoid income tax and avoid the safety regulations," says Dodson.

This leads to long days of work and little pay.

On cruise ships, there can be additional pay deductions for the cost of a worker's uniform, ticket and even company-mandated shoes.

These are illegal to charge an American worker, but not a foreign one.

Reggie Legarde says he experienced this firsthand when he worked as a waiter on a California based cruise. "I pay for my ticket back and forth, my uniforms, my shoes, I pay for all of that." The shoes weren't even the right size, but he had to wear them anyway.

Additionally, although his contract stated he was to earn \$800 a month, working 48 hours a week, he claims he put in 72 hour work weeks and earned \$90 a month, with no days off. Tips from customers supplemented his salary.

When he looked into suing for breach of contract, he realized he couldn't because he had signed a contract with an arbitration clause. "I never heard that word before my lawyer tell me," he says. "And even when I heard the word, I didn't know what it means. Arbitration? What is that?"

Arbitration is a process in which the parties give up their right to go to court and instead agree settle their dispute privately. The arbitrators don't have to be a judge or a lawyer and their decisions are final and generally not subject to appeal. The rules afforded in a US court of law are not always applicable in arbitration.

“There is not a fair process of presenting evidence and keeping out unreliable evidence,” says Tonya Meister, Legarde’s attorney. “In some of the employment contracts the arbitration clauses actually preclude you from getting any information from the cruise line, so it really stacks the deck against the seafarer.”

Arbitration contracts are commonly found in employment contracts within the shipping and cruise industry. The government of the Philippines requires all of its citizens to sign an employment contract with an arbitration clause before they can take jobs overseas. That clause says Filipinos must arbitrate in the Philippines. US courts have enforced these clauses despite hundred year old federal maritime laws guaranteeing all seafarers a right to sue in US court.

In arbitration, most everything is confidential. The details of a case, who’s responsible, who’s to blame are kept secret.

Attorney Carlos Llinas says this gives cover for bad behavior by ship owners. “We have a system of justice in place that makes companies accountable for their actions,” he says, “But if all of the sudden those companies are able to circumvent the American justice system then you are essentially giving them carte blanche.”

A spokesperson for the Chamber of Shipping of America declined comment for this story, noting it does not have a position on arbitration “because it is an issue with which they have not actively engaged.”

We requested comment for this story from Carnival Corporation and the Cruise Lines International Association, an industry trade group, and they declined.

The Philippine Overseas Employment Administration referred us to the Philippine Department of Labor for comment. Our requests have not been answered.

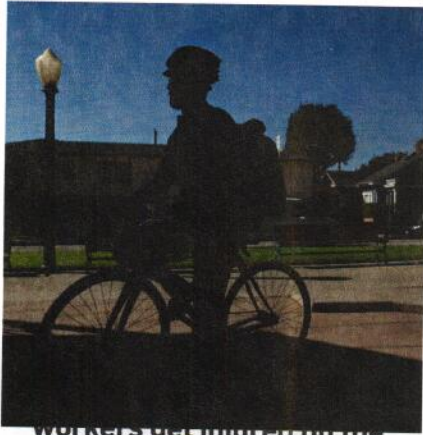
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Page 13 of 14



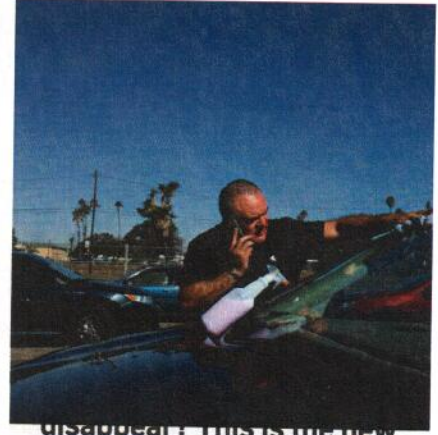
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