

COURT CERTIFIES KU KLUX KLAN CLASS SUIT FILED BY OFWs VS. RECRUITERS, EMPLOYERS!

By JOSEPH G. LARIOS (© 2013 *Fil Am Extra Exchange*)
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dozens of Overseas Filipino Workers (OFWs), who come in the heels of their three colleagues being blown to death and three others seriously incinerated in an offshore oil platform in the Gulf of Mexico abutting Grand Islands, Louisiana, have reached back to Reconstruction-Era laws to punish their fellow Filipino recruiters and American employers for turning their housing quarters into prison and forcing them to work in a hostile work environment reminiscent of the days when American white slave owners were treating their African

American slaves.

In a class-action suit filed before and certified by Judge Kurt D. Engelhardt of the United States District Court in Eastern District of Louisiana in New Orleans, the complainants led by Isidro Baricuatro, Jr., a Filipino certified welder, who was recruited by IPAMS (Industrial Personnel and Management Services, Inc.) in January 2007 and had worked at defendant Grand Isle Shipyard in Louisiana until December 2010 charged that they were forced to live in an overcrowded, substandard housing facilities owned by Grand Isle Shipyard in Louisiana and operated and managed by Grand Isle Shipyard, DNR (Danilo [N. Dayao], Nilfil [Peralta] and Randolph [F. Nunez Malagapo]), Filipino treaty investors visa holders; D&R, re-styled acronym for "Danilo [Dayao] and Randolph [Malagapo], both U.S.-based placement agencies; and Thunder Enterprises, Inc. of Louisiana.

The housing facilities consisted of a former bowling tavern that was turned into a bunkhouse at 18838 Highway 3235, Galliano, Louisiana, where complainants lived and shared the facilities with 100 other workers. The bunkhouse was divided into small rooms with an estimated size of 10 feet by 10 feet each room, each of which containing two sets of bunk beds to accommodate four workers. The room had no toilet. The facilities had a common toilet.

Compared to a typical Clark County Detention Center jail cell in Las Vegas, Nevada, where American boxer Floyd Mayweather was booked for misdemeanor domestic battery and harassment charges by himself in the cell, copies of photos sent to this reporter by the Las Vegas Metropolitan Police Department show Mayweather's cell measuring 7 feet x 14 feet or 6 feet x 10 feet with a sink and a toilet bowl and a bed that still appears too small for one person,

Written by

Thursday, 03 January 2013 20:27 - Last Updated Friday, 04 January 2013 15:12

a bunkhouse at Galliano housing facilities contains two sets of bunk beds to accommodate four workers. The bunk bed room has no toilet.

SMALL ROOM FOR 6 WORKERS

TO SLEEP

When some of the Filipino workers were not sleeping at Galliano facilities, they would be moved to a barge in Lafitte, Louisiana, which has rooms with 10 feet by 10 feet in size each room that accommodates six workers in a room. It has "sleeping mats" rather than actual beds.

If American workers needed the Filipinos' rooms to sleep in, defendants Grand Isle, DNR, D&R, Thunder, Malagapo and Dayao would force the Filipino workers out of their rooms and forced them to sleep elsewhere.

To prevent the Filipino workers from escaping or attempting to escape, the Filipino workers were subjected to an "enforced curfew after 10 p.m." They were locked inside the bunkhouse during curfew and monitored by security cameras.

They can only leave the defendants' premises when the Filipino workers traveled to the local Wal-Mart in Grand Isle's vans during weekends while supervised by at least one Grand Isle representative while American workers can move around without supervision.

The complaint did not mention if the Galliano property and the barge in Lafitte have building permits.

The Filipino workers were prevented from obtaining driver's licenses by their employers although they were allowed to apply because they hold "E-2 and B-1/OCS" work visas nor are they allowed to ride in a car with an American worker.

These Filipino workers worked 12 hours a day, six to seven days a week, without proper meal or rest or break. They were not paid for the two-to-three-hour travel time it takes them to go back and forth to their work place plus additional time spent in donning, doffing and cleaning required for their personal protection and tools.

As welders, fitters and other similarly skilled craftsmen, some plaintiffs were required by "defendant Pregeant" (of Thunder Enterprises) to wash his car, perform maintenance and repair work in his home and perform other non-work-related tasks for his personal benefit.

Defendants Grand Isle, DNR (D&R) and/or V Manpower Philippines (V People) deducted an excessive and unreasonable amount from the Filipino workers wages "often from \$2,000 up to \$3,500 per month for housing and living expenses."

When they were interviewed in the Philippines prior to their hiring, the Filipino workers were promised by their recruiters "adequate living arrangements, including food and housing free of charge."

PLATFORM OWNER

DEDUCTIONS FROM THEIR WAGES ALTHO PAID FOR BY

These expense deductions occurred automatically even if certain complainants were occasionally assigned to work on an offshore oil platform and the owner of the platform rather than Grand Isle, DNR (D&R) and/or V People paid for the complainants' food and shelter.

The defendants also deducted from the complainants' wages the alleged cost of required work-related tools and equipments, forcing complainants to pay these tools and equipments even if defendants benefited from these tools and equipments that the defendants later kept.

When the complainants objected to the "exploitative employment practices," the defendants would threaten them with deportation.

The Filipino workers and Asian Pacific Islanders were exploited, abused and their freedom curtailed while American workers "were treated in accordance with the rights and liberties guaranteed to all workers in the U.S."

Fearing deportation to the Philippines where wages are significantly less, the

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complainants acquiesced to the intolerable working conditions forced on them as defendants capitalized on these fears by exploiting them.

When the workers returned to the Philippines for their vacations, their visas were held by their recruiters in the Philippines so they could not seek work elsewhere. This would also ensure their return to Louisiana. The Filipinos were falsely promised that they could get permanent residences or Green Cards “knowing fully well that their work visas were merely temporary and had no correlation to permanent visa status.”

The other defendants aside from IPAMS Corporation, a labor recruiter in the Philippines authorized by the Philippine Overseas Employment Administration (POEA) in partnership with DNR, are Mark, Bryant and Brad Pregeant, who all serve as directors of Thunder, Pacific Ocean Manning, Inc. (POMI), a Philippine corporation obtaining visas for Filipino workers in partnership with co-defendant V People, a Philippine corporation based in Texas, DNR-Offshore and Crewing Services, Inc. (DNR), Nilfil Peralta, Mark Pregeant, Danilo N. Dayao, and Randolph F. Malagapo.

DNR of 18838 Highway 3235, Galliano, Louisiana, is 50% owned by Dayao, Peralta and Malagapo, D&R, and DNR. The other half is owned by defendant Thunder, organized in Louisiana, and Grand Isle, headed by Mark Pregeant as president and Bryant Pregeant, vice president.

DNR Filipino owners hold treaty investors and primary E-2 visa by using “promissory notes secured purportedly by their respective properties in the Philippines with illiquid ‘shell investments,’” according to the complaint.

The Filipino workers were promised to receive \$1,666.66 per month plus \$75 per day for housing, food, transportation, medical expenses and international phone calls. But due to the exorbitant expenses deducted from their housing and living expenses and tools and equipments, their take home pays fell below the federal minimum wage rate, causing these employers to violate the Filipinos’ Fair Labor Standard Act of 1938 (FLSA).

Defendants Dayao, Malagapo and DNR submitted tax returns yet retained the monies that were owed to complainants as refunds.

RICO, PUNITIVE & TREBLE

DAMAGES SOUGHT

The complainants have also filed against defendants Racketeer Influence and Corrupt Organization (RICO) Act I & II; Civil Rights Act of 1866, 42 U.S.C section 1981; Klu Klux Klan Act of 1871 (for slavery and involuntary servitude), 42, U.S.C. Section 1985; Louisiana Civil Code, Art. 3492 for intentional and negligent infliction of emotional distress, fraudulent/intentional and negligent misrepresentation and false imprisonment; breach of contract; unlawful employment practices conducted since 2001; forced labor in violation of 18 U.S.C Sections 1589 and 1590; involuntary servitude and trafficking, TVPA, 22 U.S.C. Sec. 7102(5)(a); violations of 18 U.S.C. Sections 1584, 1589, 1590, 1592(a) for confiscating their Social Security cards and other immigration documents; forced labor to foreign workers having standing to sue in U.S. in 18 U.S.C. Sec. 1964; to recover compensatory and punitive and treble damages to be proven during trial, including attorney’s fees and liquidated damages as authorized by FLSA.

Lawyers for the complainants are Joseph C. Peiffer, Loretta G. Mince, Alysson L. Mills and Jeanette A. Donnelly of Fishman Haygood Phelps Walmsley Willis & Swanson, L.L.P., of New Orleans; Todd M. Schneider, Carolyn H. Cottrell, Peter B. Schneider and Lee B. Szor of Schneider Wallace Cottrell Konecky, L.L.P. of San Francisco, California and Ellaine A. Carr of Ellaine Carr & Associates, PLLC of Biloxi, Mississippi.

Lawyers for Grand Isle Shipyard, Inc., Thunder Enterprises, Inc. and Mark Pregeant are

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David M. Korn and Maryjo L. Roberts of New Orleans while lawyers for DNR Offshore and Crewing Services, Inc., Nilfil Peralta and IPAMS are Michael T. Tusa, Jr. and James C. Rather, Jr. of Sutton, Alker & Rather, LLC of Mandeville, Louisiana and Larry E. Demmons of Taggart Morton, LLC. (lariosa_jos@sbcglobal.net)

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