



Republic of the Philippines
Department of Finance
INSURANCE COMMISSION
1071 United Nations Avenue
Manila



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ATTY. GIEHRJEM P. PURACAN

Attorney-at-Law

Puracan Law Office & Associates

Suite 302, GLC Building

492 T.M. Kalaw corner Mabini Streets

Ermita, Manila

Subject: **Legal Opinion on the Letter of Guarantee Issued by The Thomas Miller P&I Club which was Posted as Collateral Security for the Surety Bond Issued by Visayan Surety and Insurance Corporation**

Dear Atty. Puracan:

This refers to your request for opinion regarding Letter of Guarantee issued by The Thomas Miller P&I Club to serve as collateral security for a Supersedeas Bond issued by Visayan Surety and Insurance Corporation.

According to your letter, Visayan issued Surety Bond, in the nature of a Supersedeas Bond with Bond No. MLA/JCL(15)249 on 22 November 2017 amounting to Five Million Two Hundred Ninety Eight Thousand Four Hundred One and 95/100 Pesos, which was then posted before the National Labor Relations Commission ("NLRC") for the case entitled "*Alexander Pinos vs. NYK-FIL Ship Management, et. al*"¹ ("Case"). The said bond was then secured by a Letter of Guarantee from The Thomas Miller P&I Club.

Specifically, you raised the following issues for this Commission's consideration:

1. Is a Letter of Guarantee a suretyship product?
2. Do these guarantee services fall under Insurance Commission jurisdiction?

¹ Docketed as NLRC (POEA) RAB VII-CASE No. 05-0081-17 (S).

3. Has Visayan Surety & Insurance Corporation ("Visayan") or Thomas Miller P & I (Europe) Ltd. ("Thomas Miller") violated any law or regulations of the Insurance Commission?
4. Is the subject Letter of Guarantee valid?

Our Opinion

As regards the first inquiry, we understand that a letter of guarantee dated 22 November 2017 was issued by Thomas Miller to guaranty the supersedeas bond issued by Visayan in relation to a Case filed before the NLRC. In the said letter of guarantee, Thomas Miller stated that it *jointly and severally* and unconditionally guaranties or undertakes to immediately *reimburse* Visayan of whatever amount it pays once a writ of execution is served unless an injunction is served upon it².

A contract of suretyship is defined under Section 177 of the Insurance Code, as Amended³, to wit:

"Section 177. A contract of suretyship is an agreement whereby a party called **the surety guarantees the performance by another party called the principal or obligor of an obligation or undertaking in favor of a third party called the obligee**. It includes official recognizances, stipulations, bonds or undertakings issued by any company by virtue of and under the provisions of Act No. 536, as amended by Act No. 2206."

(Emphasis supplied.)

From the foregoing definition, it can be deduced that a contract of surety is a tripartite contract which involves a principal or obligor, in whose behalf the contract of surety is issued, the obligee, in favor of whom the contract of surety is being issued, and the surety company, who writes and issues the surety bond and guarantees the performance of the obligor of its undertaking in favor of the obligee⁴. A surety contract is issued to guaranty the performance of an obligor of a particular undertaking or obligation in favor of an obligee.

The essential elements to a contract of surety does not appear to be present in the subject letter of guarantee. First, the parties to a surety contract does not hold true in the subject letter of guarantee. Only Thomas Miller appears to bind himself to fulfill an obligation in favor of Visayan in case of the happening of an event. Second, the letter of guarantee issued by Thomas Miller does not guaranty the performance of an obligation by an obligor. It only guaranties that Thomas Miller will pay whatever will be paid by Visayan in case of the issuance of a writ of execution against it in connection with the Case, provided that there is no Temporary Restraining Order or Injunction that will be issued.

Based on the foregoing, it can be deduced that the *letter of guarantee* issued by Thomas Miller is in the not in the nature of a suretyship product.

² Letter of Guaranty dated 22 November 2017 issued by Thomas Miller.

³ Republic Act No. 10607

⁴ Corporate Suretyship (2013 ed.), Philippine Association of Surety Underwriters, Inc., pp. 16-17.

In response to your second inquiry, since the subject letter of guarantee is not a contract of surety as defined by law, the letter of guarantee issued by Thomas Miller posted as collateral in itself does not appear to be within this Commission's jurisdiction.

With regard to the third query on whether or not Visayan or Thomas Miller violated any law or regulations of the Insurance Commission, we find that based on the records of this Commission, Visayan is licensed to transact non-life insurance business in the Philippines for fire, marine, casualty and surety lines, which include the authority to issue judicial bonds, under Certificate of Authority Number 2016/86-R effective 1 January 2016 until 31 December, 2018, unless sooner revoked or suspended for cause.

As regards the amount of risk undertaken in the subject supersedeas bond, it must be noted that while there is no specific maximum amount of risk that can be undertaken by any insurance or surety company, Section 221 of the Insurance Code, as Amended provides that the limit of a single risk that may be retained by an insurance or surety company is only up to twenty percent (20%) of its net worth, to wit:

"Section 221. No insurance company other than life, whether foreign or domestic, **shall retain any risk on any one subject of insurance in an amount exceeding twenty percent (20%) of its net worth.** For purposes of this section, the term *subject of insurance* shall include all properties or risks insured by the same insurer that customarily are considered by non-life company underwriters to be subject to loss or damage from the same occurrence of any hazard insured against.

xxx"

(Emphasis supplied.)

In the present case, the amount of the bond is well within twenty percent (20%) of Visayan's net worth. Hence, we find no violation on the part of Visayan when in issued the subject supersedeas bond.

On the other hand, it appears that Thomas Miller P & I (Europe) Ltd. is a foreign company that does not have a resident agent in the Philippines. Basing on the facts stated in your letter alone, we are constrained to defer ruling on whether or not it has committed any violation of the laws and regulations of the Insurance Commission until we have gathered sufficient information regarding its business transactions within the country.

With respect to the fourth inquiry on the validity of the letter of guarantee issued by Thomas Miller, we reiterate that, basing on the letter and document provided alone, we find that the said letter of guarantee does not appear to be within the jurisdiction of the Insurance Commission as it is not a suretyship product. As such, we are not in the position to determine the validity of the same.

Please note however that regardless of the validity or invalidity of the letter of guarantee posted as collateral, the Supersedeas Bond issued by Visayan shall remain to be valid and subsisting and the said company shall remain bound on the said bond.

Finally, we wish to emphasize that while the Insurance Code, as Amended does not categorically require the posting of a collateral security for every bond issued by an insurance or surety company, the posting of a collateral for the supersedeas bond is specifically required under the NLRC New Rules of Procedures.

Please note that the opinion rendered by this Commission based solely on the particular facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used, in any manner, in the nature of a standing rule binding upon the Commission in other cases whether for similar or dissimilar circumstances.

Very truly yours,

DENNIS B. FUNA
Insurance Commissioner

