

Major Disruptive Events: Pandemics, Storms, Fires, Oh My!

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Impact of COVID-19 on Maritime Transportation

- Increase in Activities of Suspect Players
- Important to Be Vigilant
 - OFAC Sactions
 - Know Your Customer
 - Sanctions Clauses
- Disputes Arising Out of These Relationships Can Result in Arrests of Vessels and/or Cargo
- Knowledge of How These Maritime Tools Can Be Used Against You or By You is Critical to Protecting Your Interests

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The Vessel Fixture

- Vessel chartered to carry cargo of gasoline from Panama to either Curacao or Aruba
- Vessel owner included "sanctions clause" in vessel charter party

ANY TRADE IN WHICH THE VESSEL IS EMPLOYED UNDER THIS CHARTERPARTY WHICH COULD EXPOSE THE VESSEL, ITS OWNERS, MANAGERS, CREW OR INSURERS TO A RISK OF SANCTIONS IMPOSED BY THE UNITED STATES, OR THE EU, SHALL BE DEEMED UNLAWFUL AND OWNERS SHALL BE ENTITLED, AT THEIR ABSOLUTE DISCRETION, TO REFUSE TO CARRY OUT THAT TRADE. IN THE EVENT THAT SUCH RISK ARISES IN RELATION TO A VOYAGE THE VESSEL IS PERFORMING, THE OWNERS SHALL BE ENTITLED TO REFUSE FURTHER PERFORMANCE AND THE CHARTERERS SHALL BE OBLIGED TO PROVIDE ALTERNATIVE VOYAGE ORDERS.

- Also told charterer that vessel would not be involved in Venezuelan trade
- Vessel loaded and commenced voyage
- Charterer then directed ship-to-ship transfer 50 miles west of Aruba in open water off northern coast of Venezuela

U.S. Venezuelan Sanctions

- Any shipowner engaged in trade that in any way involves or may involve the shipment of petroleum cargoes to or from Venezuela should be concerned about the risk of U.S. sanctions:

As of January 22, 2020, the Treasury Department has imposed sanctions on at least 144 Venezuelan or Venezuelan-connected individuals, and the State Department has revoked the visas of hundreds of individuals and their families. The Trump Administration also has imposed sanctions on Venezuela's state oil company (Petróleos de Venezuela, S.A., or PdVSA), government, and central bank.

Congressional Research Services, *Venezuela: Overview of U.S. Sanctions*, 1 (2020)

Specifically, with respect to the petroleum trade:

On January 28, 2019, pursuant to E.O. [Executive Order] 13850, Treasury designated PdVSA as operating in the oil sector of the Venezuelan economy, and Secretary of the Treasury Steven Mnuchin determined that the company was subject to U.S. sanctions. As a result, all property and interests in property of PdVSA subject to U.S. jurisdiction are blocked, and U.S. persons (companies or individuals) generally are prohibited from engaging in transactions with the company.

* * *

E.O 13884 also authorized financial sanctions and visa restrictions on non-U.S. persons that assist or support the Maduro government

Id. at 2.

U.S. Venezuelan Sanctions (cont.)

- The effect of these U.S. sanctions both expressly and implicitly extend to “any person,” and not just “U.S. persons”
- Executive Order 13884 authorizes the freezing of assets in the U.S. of “any person” determined to (1) have materially assisted or supported any person or entities whose property is blocked pursuant to the Executive Order (such as PdVSA), or (2) be owned or controlled by or to have acted on behalf of any such person or entity. Executive Order No. 13884, 84 Fed. Reg. 152 (Aug. 7, 2019).
- Section 1(a)(iii) of Executive Order 13850 provides for the blocking of property and interests in property in the U.S. of any person determined “to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of ... any person whose property and interests in property are blocked pursuant to this Order.” Executive Order No. 13850, 84 Fed. Reg. 213 (Nov. 2, 2018).
- Because of these regulations, the supply of ocean transportation to or for the benefit of PdVSA (or any other blocked Venezuelan person or entity, or the government of Venezuela) could be construed as material assistance and support under Section 1(a)(iii) of Executive Order 13850, and expose the provider of such ocean transport to U.S. sanctions.

U.S. Venezuelan Sanctions (cont.)

- These sanctions unquestionably are intended to reach non-U.S. third parties.
- U.S. National Security Advisor John Bolton warned last August that “[the U.S. is] sending a signal to third parties that want to do business with the Maduro regime: Proceed with extreme caution.” See Mitra Taj, *U.S. Ready to Target Other Countries for Supporting Venezuela’s Maduro*, Reuters.com, Aug. 6, 2019, available at <https://www.reuters.com/article/us-venezuela-politics-usa/u-s-ready-to-target-other-countries-for-supporting-venezuelas-maduro-idUSKCN1UW1MP> (quoting U.S. National Security Advisor John Bolton).
- Last year the U.S. added to its SDN list numerous foreign entities and vessels that were engaged in carrying oil for PdVSA. Press Release, U.S. Dep’t of the Treasury, *Venezuela-related Designations* (April 12, 2019), available at <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20190725.aspx>.
- With these regulations and policies in place, any vessel carrying cargo directly or indirectly belonging to, or for the benefit of, Venezuela, PdVSA, or any other Venezuelan entity or person on the SDN list, certainly could be exposed to a risk of U.S. sanctions – even if it was not the ship owner’s intention to engage in trade involving Venezuela.
- Being added to the SDN list for violating U.S. sanctions is a serious matter for any entity:
 - Can’t use USD – OFAC filters in US clearing banks will catch funds
 - USD is standard currency in vessel chartering
 - Some charterers will avoid vessels with recent history of carrying cargo for sanctioned entities
 - Republic of the Marshall Islands de-registered a vessel from its registry as a result of SDN listing

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