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

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The tanker trade often operates in uncharted legal waters. There is perhaps no better example of this today than the ship owner that finds itself navigating the perilous seas of the U.S. sanctions regimes and its ever-changing enforcement climate. It is not difficult to imagine a situation in which an innocent ship owner unwittingly engages in trade that could expose it and its vessel to the risk of U.S. sanctions. Sometimes the risk is not evident until the charterer suddenly and unexpectedly changes its orders during the voyage, after the cargo is loaded and the ship is underway.

To avoid the perils of U.S. sanctions, the ship owner must first be ever vigilant and skeptical. Counsel advising the vigilant ship owner must have a full understanding of the U.S. sanctions regime, the available remedies under the governing charter party and under U.S. law, and the process by which those remedies may be utilized.

Frequently these situations are not presented as black and white issues, but rather come in shades of grey. Below we share with you lessons learned from recent experiences, and we plot a course whereby you may help the innocent ship owner find safe harbor.

The Situation

A vessel on a voyage charter loads a cargo of gasoline in a foreign port. According to the charter, the cargo is destined for a range of innocuous and unsanctioned ports in the Caribbean with the option to perform a ship-to-ship (STS) transfer within the same range. After the vessel departs the load port, the charterer changes its voyage orders and exercises its option to discharge the cargo in a STS transfer. But something is fishy. The receiving vessel for the STS nominated by the charterer is departing from Venezuelan waters and has been engaged in coastwise trade in Venezuela. Furthermore, trade reports and industry watch dogs claim that the receiving vessel is

commonly used by Venezuelan financiers to smuggle refined petroleum cargos into Venezuela in violation of U.S. sanctions.

The ship owner, naturally concerned, asks the charterer for assurances that the cargo is not destined for Venezuela. While the charterer denies a Venezuelan destination, it fails/refuses to provide any documentary support or assurances with respect to the true ownership of the cargo or the ultimate destination for the cargo after the STS. The ship owner is understandably reluctant to perform the STS. The charter party, however, envisions such an STS as ordered by the charterer. The ship owner is concerned that if it refuses to perform the STS it will be exposed to damages resulting from a breach of the charter party. The ship owner is, however, more concerned that if it performs the STS it may be exposed to the risk of U.S. sanctions.

The Risk – U.S. Venezuela Sanctions

Any ship owner 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 noted in a recent U.S. sanctions overview issued by the Congressional Research Services:

For more than a decade, the United States has imposed sanctions in response to activities of the Venezuelan government and Venezuelan individuals. In response to the authoritarian leadership of Nicolás Maduro, the Trump Administration has significantly expanded 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) (copy attached). 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

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