US bulletin

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The Standard
for service and security

Standard Club

Introduction

The Standard Club has long recognised the importance of New York as a global hub. This bulletin looks at some issues specific to our US membership and our non-US members who call at US ports.

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New York remains one of the busiest ports in the US and, perhaps more importantly, New York is a global centre for marine insurance, service and finance industries. Not to mention that it also provides an accessible jumping point between London and the many established and growing marine markets in the Americas.

The Standard Club's New York office plays a key role in the club's network of offices. It was opened in 1998 and serves the club's North and South American members, who account for more than 15% of tonnage entered with the club. We are extremely proud of our North American membership – all market leaders in their particular fields. The New York claims team, working in conjunction with the underwriting team in London, strive to remain the club of choice within this market.

In addition to servicing the needs of our North and South American members, the New York office acts as a correspondent office to assist all the club's members when trading in the Americas. In support of this role, the office has a close working relationship with the many correspondents, lawyers and experts in both North and South America.

While we love the diversity of the various jurisdictions across the Americas, each state presents its own unique set of challenges. The New York office is well placed to advise both members and colleagues who are operating within American waters – everything from personal injury litigation, regulatory matters, geo-political issues, recommended experts and beyond.

On 1 January of this year and after nearly 10 years as president of the New York office, LeRoy Lambert assumed the position of general counsel. This is a new role within the Americas and we are delighted that LeRoy has taken up the challenge of ensuring that the club remains engaged with the many legal issues relating to general maritime federal law, state law and the dynamic legal environment across the Americas. At the same time, Leanne O'Loughlin stepped up as President/Regional Claims Director to continue to ensure the ongoing success and growth of our business in the Americas.

The New York office is part of the club's global network of offices that gives members the ability to contact a club representative 24 hours a day.

In this edition

Leanne and LeRoy are ably supported by Rebecca Hamra and Clement Lehembre. All of the members of the New York team have contributed to this special edition of the bulletin, and their biographies at the back of the publication tell you a bit more about the people who represent the club in the Americas.

Cargo claims under the Harter Act

This article highlights the importance of a USA Clause Paramount making COGSA applicable to the period prior to loading and post discharge.

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Case study
After carriage from Dunkirk to New York, a cargo of steel coils, in good condition, is discharged by the carrier and awaits delivery at the terminal to the consignee. To avoid delay, the ship sails from Dunkirk with one crew member less than required. Through a clerical error, the coils are delivered to the wrong party. The correct party sues the carrier for the value of the goods. The bill of lading contained a clause incorporating COGSA, but the clause did not make COGSA applicable to the periods before loading and post discharge.

Is the carrier liable to the cargo owner for the loss under US law? Most likely, yes, due to the Harter Act.

What is the Harter Act and when does it apply?
The Harter Act was enacted in 1893. Though Congress enacted COGSA over 40 years after the Harter Act, Congress did not repeal the Harter Act. Rather, the Harter Act applies when COGSA does not.

The Harter Act differs from COGSA in several respects:

- The Harter Act applies to voyages between US ports and voyages between US and foreign ports; COGSA only applies to the latter.
- The Harter Act applies from delivery at load port by the shipper to delivery to the consignee at discharge port; COGSA applies only between loading and unloading, `tackle to tackle'.
- The Harter Act contains no package limitation; COGSA limits the carrier's liability to $500 per package.
- The Harter Act has no statute of limitation; COGSA requires claims to be brought within one year.

Importantly, the shipper and carrier may stipulate that COGSA or any other law governs the period during which the cargo is in the custody of the carrier, including prior to loading and post discharge, so long as they do not select a foreign law or forum that would reduce the responsibility of the carrier under COGSA.

Since the voyage in the above case study is from a foreign port (Dunkirk) to a US port (New York), both the Harter Act and COGSA apply. Specifically, COGSA applies `tackle to tackle', while the Harter Act applies from unloading until delivery to the consignee. Because the carrier did not include a USA Clause Paramount, which would make COGSA applicable to the entire time the cargo was in the custody of the carrier, and because the loss occurred between unloading and delivery, the liability of the carrier for the loss of cargo post discharge will be governed by the Harter Act. The carrier may not rely on the 'tackle to tackle' provisions of COGSA and contend its only obligation was to discharge the cargo.

Exemptions from liability

Both the Harter Act and COGSA exempt the carrier from liability if the loss or damage results from an error in the navigation or management of the ship and other perils such as perils of the sea, acts of God or public enemies, inherent vice of the cargo and insufficiency of packaging, among others. However, the way a carrier can avail itself of the exemption under the Harter Act versus COGSA could not be more different.

Under the Harter Act, a carrier has the burden to prove that it exercised due diligence to provide a seaworthy and properly manned, equipped and supplied ship before it may benefit from the exemption, regardless of whether or not a lack of due diligence caused the loss or damage. Having exercised due diligence to provide a seaworthy ship is a 'condition of the exemption' under Harter; a causal relation between the unseaworthiness and the loss or damage is not required. By contrast, under COGSA, the carrier proves a complete defence if it shows the loss or damage was due to an error in navigation or management of the ship.

Fortunately, then, this condition of exemption applies under Harter only with respect to losses caused by errors in navigation or in the management of the ship. So, here, the misdelivery of the coils is unrelated to any error in navigation or management of the ship. The fact that the ship sailed lacking a required crew member, even under Harter, is not relevant.

Limitations of liability

Under COGSA, a carrier is permitted to limit its liability to $500 per package or customary freight unit. The Harter Act contains no limitation of liability provision, but courts have held that the COGSA $500 per package limitation is reasonable under the Harter Act.

Time bar

In contrast with the one-year time bar limitation from the delivery under COGSA, the Harter Act does not contain a statute of limitation and therefore the doctrine of laches applies. However, as in the case of the $500 package limitation, courts have held that the COGSA one-year limitation is reasonable under the Harter Act.

Conclusion

All other things being equal, the carrier in the case study will be liable to the cargo owner for the full value of the cargo, without the benefit of the $500 package limitation and without the benefit of the one-year time bar. To minimise risk of liability when a cargo claim arises, carriers should incorporate a USA Clause Paramount in their bills of lading or the charterparties providing that COGSA applies to the voyage to or from a US port during the entire period the cargo is in the actual or constructive custody of the carrier, including prior to loading and after discharge.

Coastwise trade in the United States

The US coastwise laws impose restrictions on the ownership and operation of vessels in US domestic trade. There are several statutes that make up the coastwise laws of the United States. For purposes of this overview, we will focus on the Coastwise Merchandise Statute (46 USC. § 55102), commonly known as the Jones Act.

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The Jones Act restricts the transportation of merchandise between coastwise points[1] to vessels that are owned, operated and controlled by US citizens. The purpose of the Jones Act is to ensure that US domestic trade is carried out by US built, manned, flagged and controlled ships. The Jones Act has a dual purpose which is to ensure that the nation maintains a sizable fleet of US owned and crewed commercial vessels, which are available for military use in national emergencies.

The Jones Act defined

Pursuant to the Jones Act, to operate in the US coastwise trade, a vessel must be a coastwise-qualified vessel. Subject to limited exceptions, such a vessel must be:

- built in the United States
- documented (ie registered) under the US flag
- manned by predominantly US crews
- never operated under a foreign-flag
- owned and operated by US-organised companies or persons that are controlled and 75% owned by US citizens at every tier of ownership.

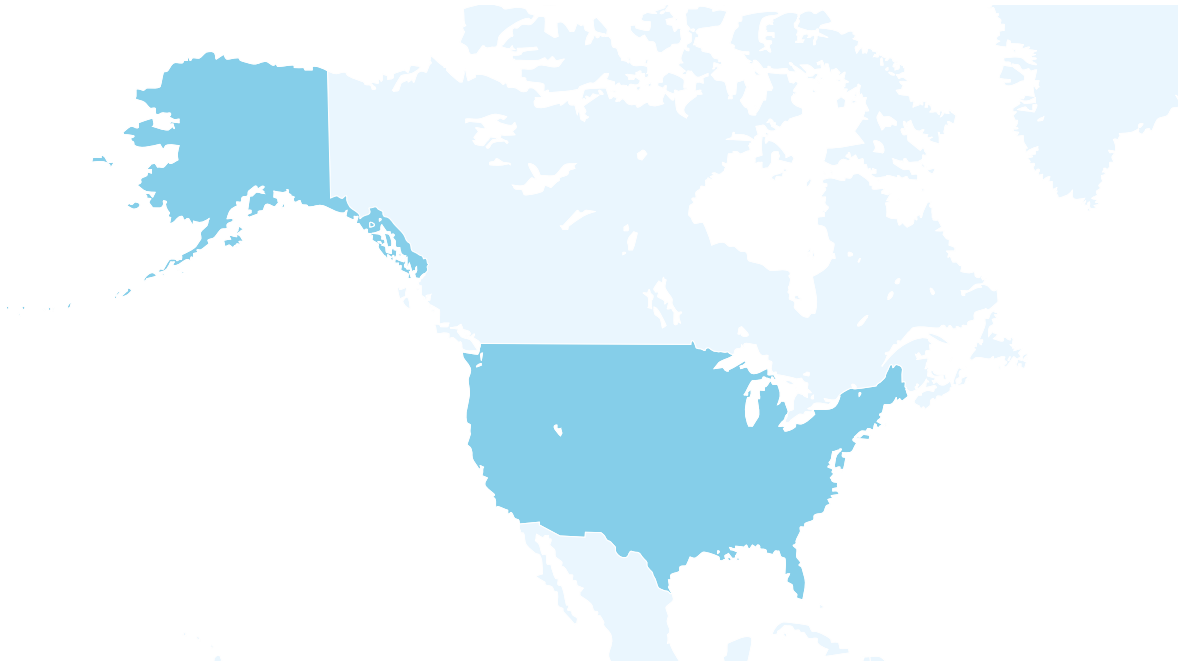
The Jones Act does not prohibit foreign flag vessels from calling on one or more coastwise points, so long as the vessel does not transport merchandise between coastwise points. Transportation of merchandise between coastwise points must be accomplished by a coastwise-qualified vessel unless the 'continuity of the voyage' is broken. This requires showing that there is no intent that the laden merchandise will return to the United States.

What is merchandise?

Merchandise is broadly defined as 'goods, wares, and chattels of every description, and includes merchandise the importation of which is prohibited[2]'. This definition includes 'valueless materials or any dredged material regardless of whether it has commercial value[3]'. Merchandise does not include equipment or supplies of the vessel, which include anything 'necessary and appropriate for the navigation, operation and maintenance of the vessel and for the comfort and safety of the persons on board[4]'.

Additionally, there are some instances where merchandise is sufficiently altered as to become a new and different product. The transportation of such items, such as blended chemicals or bulk products, is not subject to the Jones Act.[5]

The US Coast Guard (USCG) makes determinations as to a vessel's eligibility for the Jones Act trade, whereas US Customs and Border Protection (CBP) enforces the Jones Act.



Waivers

Under applicable law, two types of Jones Act waivers exist, both of which require a demonstration that the waiver is needed 'in the interest of national defense'. The first is requested by the Secretary of Defense and is granted automatically by the Secretary of Homeland Security (DHS).[6] The other may be granted at the discretion of the Secretary of DHS, only if the Administrator of the Maritime Administration (MARAD) first determines that no coastwise-qualified vessels are available and capable of providing the proposed transportation.[7]

In September 2017, in response to Hurricanes Harvey, Irma and Maria, the Secretary of DHS issued a series of waivers at the request of the Secretary of Defense, allowing the carriage of cargo by foreign flagged vessels in the Gulf region and to and from Puerto Rico. Similar waivers have been granted following other significant weather events, as well as after oil spills such as the *Exxon Valdez* or drawdowns of the US strategic petroleum reserve after which energy supplies were affected. Historically, however, these type of waivers have been issued under the second type of waiver process (ie by the Secretary of DHS after a MARAD determination).

Enforcement and penalties

CBP issues rulings at the request of parties seeking confirmation as to whether a contemplated transportation complies with the coastwise laws, which are publicly available to search.[8] Basic tenets of compliance with coastwise laws can be gleaned from reviewing prior CBP rulings, but it is advisable to seek a ruling or advice of counsel if there is any question as to whether the proposed activities will comply with the Jones Act.

The penalty for violating the Jones Act generally is forfeiture of the relevant merchandise, or an amount equal to the value of such merchandise or the actual cost of transportation, whichever is greater.[9] The penalty may be recovered from any person transporting the merchandise, or causing it to be transported, including the importer, consignee, master, vessel agent or vessel owner/operator. Such penalties may be mitigated upon application to CBP and explanation of extenuating circumstances.

Club cover for breaches of US Jones Act?

Generally speaking, a member who is penalised for breach of the Jones Act would not be entitled to a reimbursement from the club. Members are obliged to comply with applicable local laws as a condition of cover. A member cannot seek reimbursement from the club for liabilities which have been incurred owing to the member's privity or willful misconduct. If the member is involved in some extraordinary event, necessitating unscheduled cargo operations which turn out to fall foul of the Jones Act, the member could submit their claims to the board for consideration pursuant to the sue & labour, omnibus or discretionary fines rules. Where there is any doubt, members are encouraged to contact the New York team for guidance.

1 Coastwise points is defined to encompass all inland waters and the US points on the Great Lakes, all points in the US territorial sea and points on the Outer Continental Shelf, such as wells, platforms and anchored vessels.
2 19 USC. §1401(c)
3 46 USC. § 55110
4 HQ 115356 (22 May 2001)
5 See 19 CFR 4.80b(a)
6 46 USC. § 501(a)
7 46 USC. § 501(b)
8 https://rulings.cbp.gov/home
9 46 USC. § 55102(c)

Rights of non-US seafarers under US law

We, in the New York office are frequently asked whether a non-US seafarer who suffers an injury or illness in a US port may bring a claim in the US.

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The relevant factors

US general maritime law and the personal injury provision of the Jones Act (presently codified at 46 USC 30104)[1] give a seaman the right to recover:

1. maintenance and cure
2. damages based on unseaworthiness, and damages due to the negligence of the employer or a co-worker.

Traditionally, US courts look to the following eight factors, which are weighed in each case, with all being relevant but no single one being determinative. Having said that, in general numbers 3, 4, 6 and 8 are the key factors:

1. Place of the wrongful act
2. Law of the flag
3. Allegiance or domicile of the injured seaman
4. Allegiance of the defendant shipowner
5. Place where the contract of employment was made
6. Inaccessibility of the foreign forum
7. Law of the forum
8. Shipowner's 'base of operations'

More recently, courts also look carefully at the employment contract and any choice of law/forum clause it may contain in light of factors 5, 6 and 7.

In particular, if the employment contract includes an arbitration clause, a US court is even more likely to dismiss and/or stay any action in the US pending the outcome of the foreign arbitration.

Other limitations

The factors above apply to non-US seafarers, not to passengers, longshore workers or any other person on board. Different considerations apply in those cases.

By statute, non-US seafarers working in the offshore oil and gas industry in foreign countries may not bring an action in US court contending that US law applies.

1 The Jones Act was enacted in 1920 and covers a wide range of maritime issues, including restricting coastwise trading in the US to US built/flag ships. See the article by Blank Rome on page 4 of this bulletin. The Jones Act (at 46 USC 30104) contains a simple provision giving a seafarer a right of recovery against the seafarer's employer: 'A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer.'

Examples

Since the factors are applied flexibly in each case, some examples are helpful.

	Details	Case
Not subject to US law	Danish citizen who signed employment contract in New York which called for application of Danish law, Danish flag ship, injured in Cuban waters.	*Lauritzen v. Larsen*, 345 U.S. 571 (1953).
	Spanish citizen who signed employment contract in Spain which called for application of Spanish law, Spanish flag ship, injured in US waters.	*Romero v. Int'l Terminal Operating Co.*, 358 U.S. 354 (1959).
Subject to US law	Greek citizen, with employment contract signed in Greece which called for application of Greek law before a court in Greece, injured in New Orleans, but the shipowning company was owned by a US resident with offices in New York and New Orleans, and entire income was earned in trade between US and non-US ports. In this case, the court introduced the eighth factor, base of operations, and found that the purposes of the Jones Act could be too easily frustrated if the US-based employer, earning its entire revenue in trade to and from the US, were not subject to the Jones Act.	*Hellenic Lines Ltd v. Rhoditis*, 398 U.S. 306 (1970).
	Filipino citizen, with employment contract signed in the Philippines which called for application of Filipino law and arbitration in the Philippines, injured in New Orleans, Liberian flag ship/Liberian corporation, but with an office in the US. Importantly, the employment agreement, by requiring arbitration, allowed the shipowner to remove the case from state court to federal court.	*Francisco v. Stolt Achievement*, 293 F.3d 270 (5th Cir. 2002)

Advantages under US law of an arbitration clause

Obviously, a member has to take into consideration many factors in deciding whether to agree to arbitration in its employment contracts with seafarers, including the costs, the experience of the arbitrators and the opportunities for review in the arbitral forum, not just to minimise the risk of being subject to suit in the US. Also, US courts have enforced choice of law/forum clauses alone, eg *Marinechance Shipping Ltd v. Sebastian*, 143 F.3d 216 (5th Cir. 1998), regarding Filipino choice of law and forum clause in a Filipino seafarer's contract. At a minimum, the employment contract should contain a choice of law clause as well as a choice of forum clause reasonably related to the seafarer's residence.

Best practice: Include a choice of law and forum (preferably arbitration) clause in all seafarer employment contracts, not just a choice of law clause.

However, there is an important advantage under US law if the employment contract contains an arbitration clause. In such a case, the contract is subject to the United Nations Convention on the Enforcement and Recognition of Foreign Arbitration Awards (Convention). As a result:

- If a suit is filed in state court, the shipowner will be allowed to remove the case to federal court (*Stolt Achievement*, above).
- The US court will stay the US action pending the outcome of the arbitration, eg *Lindo v. NCL (Bahamas) Ltd*, 652 F.3d 1257 (11 Cir. 2011).
- Once the foreign arbitration panel issues its ruling, the US court will enforce the award absent a showing by the seafarer that the award violates the 'public policy' of the US under the Convention, an extremely high burden, eg *Asignacion v. Rickmers Genoa Schiffahrtsgesellschaft mbh & Cie KG*, 783 F.3d 1010 (5th Cir. 2015).

Conclusion

If a non-US seafarer employed on a non-US ship is injured in a US port, it is likely that the claim will not be subject to US law. However, each case is determined on its own facts. The New York office is able to offer advice and assistance in all such cases.

Members may rest assured that club cover will respond to their legal liabilities wherever they arise. As such, if a non-US member finds themselves defending a new claim in US jurisdiction, the New York team will be here to assist and club cover will respond.

When armed guards are required for foreign crewmembers in the US

The club is frequently contacted by members regarding situations in US ports when the United States Coast Guard (USCG) has required the shipowner to hire armed guards. Members often have questions as to why the services of an armed guard are necessary.

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Introduction

The most common situations in which armed guards are required include:

- to accompany a crewmember who is receiving medical treatment in the US
- to escort stowaways or a crewmember out of the US who is deemed at risk for deserting
- to guard the ship when Customs and Border Protection (CBP) deems the crew are at high risk for desertion.

Governmental authorities

When dealing with foreign crewmember issues in the US, members should be aware of the three main governmental authorities typically involved: USCG, CBP, and Immigrations and Customs Enforcement (ICE). In conjunction with ICE and CBP, USCG enforces US immigration laws and determines if ships are in compliance with US security and immigration regulations. As such, a situation that begins as an exercise of border control falling within the realm of CBP can develop into a security case, thereby involving USCG and ICE.

Medical treatment

In the event of a crewmember requiring medical treatment in the US following an injury or illness, the shipowner must submit CBP forms I-94 and I-259, as well as evidence of a medical condition to CBP, on the crewmember's behalf, so that the crewmember might receive conditional landing rights (commonly referred to as 'shore leave'). The conditional landing permit is required for crew to come onto US soil to receive medical treatment (commonly referred to as 'medical parole'). If granted, CBP, in its discretion, can require that the crewmember be accompanied by an armed guard while in the hospital and during recovery. The responsibility for the resulting expenses associated with armed guards falls on the shipowner.

Illegal immigrants

Illegal immigrants on commercial ships commonly fall into three categories: deserters, absconders and stowaways.

A **deserter** is a crewmember who has been granted conditional landing status by CBP but departs the ship with no intention of returning to the ship or exiting the US within the bounds of the visa on which they were permitted to enter.

An **absconder** is a crewmember who has been refused a landing permit and departs the ship without permission.

A **stowaway** is a person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person and who is detected on board the ship after it has departed from a port, or in the cargo while unloading it in the port of arrival, and is reported as a stowaway by the master to the appropriate authorities.[1]

1 The Convention on Facilitation of International Maritime Traffic, 1965, as amended, (The FAL Convention),

Deserter
In the case of a deserter, CBP typically does not take any additional action aside from the initial investigation of the incident because, essentially, CBP has already determined that the crewmember deserter poses an acceptable risk to the US. Even if the ship in question has a recent history or pattern of deserters, subsequent USCG action is normally not warranted, aside from notifying CBP of the pattern. Because the deserter received a landing permit and CBP determined the crewmember should be permitted to land, the crewmember does not pose a security risk to the US.

However, if the shipowner has a significant pattern of desertion, USCG and CBP will classify the ship as an 'elevated security risk'. USCG policy allows a captain of the port (COTP) to require crew security plans for a 12-month period. During that time, the ship may be required to have armed guards each time it is in a US port. If a deserter is later located by CBP or ICE, the responsibility for the cost to house the crewmember during proceedings, repatriate the crewmember to his home country and any other related expenses falls on the shipowner.

Absconder
In regards to an absconder, USCG and CBP have entered into a Memorandum of Agreement Regarding the Detention of Certain High-Risk Crewmembers, which came into force in 2014. The purpose of the Memorandum is to provide guidance to shipowners and define the roles that CBP and the USCG play in the case of an absconder. Some of the information is considered sensitive security information and is not released to the public. The procedures do, however, explain that CBP gathers intelligence on ships and crewmembers prior to entering US ports, and flags particular ships or crewmembers that may warrant additional security measures. It also lists 25 countries that require additional security screening and potentially additional monitoring. If a crewmember bears the nationality of one of these countries, CBP may order the master to detain the crewmember on board the ship, place the ship under armed guard and require other appropriate security measures. USCG has stated that it has discretion to modify security measures and may consider alternatives offered by the shipowner.

Also, if a shipowner has a significant pattern of absconders in the US, CBP has discretion to order ships associated with the shipowner to employ armed guards while in US ports, even if there are no crewmembers on board who are considered high risk under the standard operating procedures.

Armed guards
In the circumstances described above, CBP can approve or reject the proposed armed guard services chosen by the shipowner. Since armed guards are not usually state or local law enforcement officers, CBP requires certain identifying information for screening purposes. In the club's experience, the local agent will be the best resource for finding suitable guards. In regards to cost, most security guard companies charge anywhere from $45 to $100 an hour. These costs can add up, especially if the crewmember remains in the US for an extended amount of time (eg while recovering from a surgical procedure).

How P&I cover responds
P&I cover can respond to a shipowner's liability at law or under certain approved contracts in respect of death of or injury to crewmembers. Yet it is often unclear to what extent cover would respond to crewmember immigration incidents. The key often lies in whether the expense is classified as operational in nature. The costs for armed guards relating to the security and repatriation of stowaways, deserters and absconders may be covered. On the other hand, the cost of armed guards ordered by CBP to safeguard the crew due to homeland security risks is not recoverable under P&I club rules as this is considered an operational cost. Thus, if a ship is ordered under armed guard due to a high-risk crewmember or because the shipowner has a history of absconders or deserters, these costs would not be covered. On the other hand, if a crewmember needs medical treatment and CBP orders an armed guard to accompany the crewmember, the cost of these services would be recoverable.

US sanctions: The changing landscape

This article provides a brief overview of the recent sanctions imposed upon North Korea, with an emphasis on how such sanctions impact the maritime community.

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Introduction

The United States sanctions regime is currently in a state of flux. Since January 2016, the US has lifted its secondary sanctions against Iran[1] and revoked the sanctions programmes against Sudan and Myanmar. While some sanctions programmes have been relieved, that does not mean that sanctions are not still playing a key role in US foreign policy. In the past year, sanctions have been ramped up against Russia, North Korea and Venezuela. In particular, the tension over North Korea's nuclear programme and testing of ballistic missiles has occasioned a substantial increase in sanctions designed to cripple the North Korean economy and bring about a change in that country's current belligerent stance.

Sanctions against North Korea

The current sanctions against North Korea are largely found in a series of Executive Orders (EOs), but are also contained in United Nations Security Council Resolutions and in the Countering America's Adversaries Through Sanctions Act. With respect to the maritime industry, the current North Korean sanctions prohibit the following activities:

1) the importation into the United States, directly or indirectly, of any goods, services or technology from North Korea[2]
2) the registering of a vessel in North Korea, or the owning, leasing, operating or insuring of a vessel flagged by North Korea[3]
3) the exportation or re-exportation, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, services or technology to North Korea[4]
4) the exportation of certain commodities (including but not limited to coal, lead, iron ore, lead ore, seafood and textiles) from North Korea[5]
5) the provision of any services, including transportation services, to the Government of North Korea, officials of the Government of North Korea, the Workers' Party of Korea, officials of the Workers' Party of Korea, and numerous other individuals and entities that have been designated to the US Specially Designated Nationals List (SDN List).[6]

In addition, EO 13810 also imposes what is colloquially known as a '180 day rule' for all vessels calling at ports in North Korea. Under this rule, no vessel in which a foreign person has an interest that has called into a port in North Korea or engaged in a ship-to-ship transfer with a vessel that has called into a North Korean port in the previous 180 days may call at a port in the United States.

Please be advised that this article is not, and is not intended to be, a comprehensive analysis of all sanctions against North Korea.

Impact on shipping

While the majority of North Korean sanctions have been aimed at disrupting a wide variety of industries in North Korea, including shipping, the recent action issued by the US Office of Foreign Asset Control (OFAC) on 23 February 2018 is unique in that it is aimed directly at the shipping industry. This action was issued by OFAC to address the problem of North Korean shipping entities, and others, engaging in 'deceptive practices' to avoid the ramifications of US sanctions. Such deceptive practices include physically altering vessel identification (including IMO numbers), engaging in unauthorised ship-to-ship transfers, falsifying vessel or cargo documents, and disabling or manipulating vessel AIS systems. In an effort to dissuade shipping companies from aiding or abetting North Korean entities in engaging in such practices, OFAC designated 55 entities and vessels to the SDN List,[7] which means that all US persons are prohibited from any dealings with those entities or vessels. It is anticipated that any additional shipping companies or vessels that are found to have assisted or engaged in any deceptive practice will also be added to the SDN List.

Also on 23 February, Reuters reported that the US is negotiating with key Asian allies over coordinated efforts to combat North Korean evasion of sanctions. The plans reportedly call for increased tracking, stepped-up inspections and possible seizures of vessels in Asia-Pacific waters suspected of violating sanctions against North Korea. As of the end of February, US authorities had declined to comment on the reported plans to expand the interception of suspected vessels or on reports that US Coast Guard officials might be deployed to Asia-Pacific waters to participate in vessel interdictions and inspections.

While the US authorities were quiet on the possibility of increased efforts to halt sanctions evasion, there is no question that it is a high priority. On 23 February, the Treasury Department issued a North Korea Sanctions Advisory.[8] The advisory explains in some detail the deceptive shipping practices employed by North Korea to evade sanctions and lists suggested risk mitigation steps which shipowners can employ to ensure that they are not engaging in prohibited activities or dealing with entities or vessels on the US SDN List. Any shipowner trading near North Korea should review this advisory.

UN resolutions

In addition to this serious stance taken by the US, the UN is also aggressively enforcing its resolutions restricting trade with North Korea. On 30 March, the UN designated 27 vessels and 21 companies for their involvement in smuggling coal and oil in and out of North Korea. Under the latest UN designations, 13 vessels are subject to asset freezes and are prohibited from entry into ports of all UN member states, while another 12 are prohibited from port entry and are also subject to de-flagging by their flag states.

Conclusion

In sum, shipping companies should be very cautious when doing business with any entity that either is or may be connected in any way with North Korea. As this article goes to press, President Trump has accepted an offer to meet with Kim Jong-un, the leader of North Korea, possibly in June 2018. Although he has expressed hope that the meeting may result in an agreement that will resolve the issues over North Korea's nuclear programme, President Trump also stated on 28 March that 'unfortunately, maximum sanctions and pressure must be maintained at all cost' against North Korea in the meantime.

Given the potential upcoming meeting between President Trump and Mr Kim, it seems likely that OFAC will seek to strictly enforce all North Korean sanctions in order to place maximum pressure on the current North Korean regime leading up to any meeting. Accordingly, the advice of counsel should be sought in any situation in which the US sanctions against North Korea may be implicated.

Sanctions and club cover

By way of reminder to the club's members, the basic position is that club cover will not be prejudiced as long as no sanctions are breached. However, members should note that even in circumstances where they may not breach sanctions applicable to themselves, club cover may be prejudiced if any of the following sanctions are breached, as per the definition in the club's rules: UN, EU, UK, USA, the place of incorporation or domicile of the member or the ship's flag state.

The principal rules to note are:

- Rule 17.2(5): Club cover for any ship will cease automatically if this is employed in any trade/voyage which will expose the club to the risk of any adverse action or if such insurance is or becomes unlawful.
- Rule 4.8: No claim is recoverable if, eg it arises out of an unlawful trade or if it is unlawful to provide insurance for this (or if the Board determines that the trade was imprudent/improper).
- Rule 6.22: To the extent that the club is unable to recover any claim from reinsurers (or pooling partners in respect of poolable cover) due to any sanction, prohibition or adverse action, then any reimbursement from the club will be similarly reduced. This includes any failure or delay in recovery by the club caused by the reinsurers (or pooling partners) making payment into blocked accounts.

1 It should, however, be kept in mind that the primary sanctions against Iran affecting US persons remain in place and that non-US persons are still prohibited from dealing with Iranian entities on the US Specially Designated Nationals List or from involving the US financial system in any Iranian transactions.
2 EO 13570, dated 18 April 2011.
3 EO 13466, dated 6 June 2008.
4 EO 13722, dated 18 March 2016.
5 UN Security Council Resolution No 2371, dated 5 August 2017; UN Security Council Resolution No 2375, dated 11 September 2017.
6 EO 13551, dated 1 September 2010; EO 13687, dated 6 January 2015; EO 13722, dated 18 March 2016; Countering America's Adversaries Through Sanctions Act, 115 PL 44, 131 Stat. 886, 2017 Enacted HR 3364, 115 Enacted HR 3364; EO 13810, dated 17 September 2017.
7 A complete list of all shipping companies and vessels added to the SDN List through this action is available at: https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20180223.aspx.
8 The Advisory can be found at: https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/dprk_vessel_advisory_02232018.pdf

The team

Eddy Morland
Head of Division
Eddy Morland heads up the UK & Americas division. He joined Charles Taylor in 2006 as a claims executive working in London and then the New York office before joining the underwriting team in London in 2011. Before finding P&I, Eddy spent a year working as a barrister and kitesurfing in Gibraltar. Eddy enjoys the opportunity that P&I gives him to find solutions through working with the many interesting and talented people throughout the shipping and insurance industries.

Leanne O'Loughlin
President/Regional Claims Director
Leanne O'Loughlin joined Charles Taylor as a claims executive in 2010 working first with the Mediterranean division, before transferring to Offshore. She read law at Trinity College Dublin and practised law in her native Dublin until 2010. Leanne is qualified as a New York attorney, an Irish solicitor and an English solicitor. In 2013, Leanne was seconded to the New York office where she is currently the President/Regional Claims Director. Leanne loves the world of P&I as she believes it has made it possible to apply her legal background to a truly international career.

Hannah Morris
Underwriting Director
Hannah Morris is an Underwriting Director in the UK & Americas division. Hannah joined Charles Taylor in January 2017 after eight years working at a large London broker within its P&I department. She specialises in traders' and charterers' accounts, and frequently travels to the US. Hannah completed her ACII in 2010.

LeRoy Lambert
General Counsel
LeRoy Lambert is General Counsel after serving as President and Regional Claims Director from 2009 until 2018. From 1984-2009, LeRoy practised maritime law at Healy & Baillie and then Blank Rome, and was consistently recognised as a leader in maritime law by Chambers and other legal publications. He is a co-author of *Voyage Charters* (4th ed 2014), author of numerous articles, and a frequent speaker/panelist at maritime conferences and seminars. After 34 years of maritime claims, LeRoy can often be heard exclaiming 'You can't make it up'.

Rebecca Hamra
Claims Director
Rebecca Hamra is a Claims Director in the New York office. Rebecca is a graduate of Millsaps College in Mississippi with a degree in English literature and holds a Juris Doctor from Tulane University, specialising in maritime law. She was admitted to the New York Bar in 2012. Rebecca joined Charles Taylor in 2011 as a claims executive. She was promoted to Senior Claims Executive in 2015 and to Claims Director in 2017. She also completed the International Group's P&I Qualification in 2016. She values the opportunity her job gives her to travel and work with colleagues around the world.

Clément Lehembre
Claims Executive
After studying contract and maritime law in Lille and Lyon, Clément Lehembre began his career in Paris as a marine broker in 2009, and later developed his experience by working with marine insurers as a claims executive in cargo and logistics, and then as a cargo underwriter. In 2017, Clement joined Charles Taylor in the New York office as a claims executive.

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Charles Taylor