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UK Judgment on London Market's Standard Insurance Sanctions Clause

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US Sanctions Do Not Relieve Insurers of Obligation to Pay Qualifying Claims

On 12 October 2018, the UK Commercial Court handed down its judgment in *Mamancochet Mining Ltd v Aegis Managing Agency Ltd & Others* [2018] EWHC 2643 (Comm).

This case related to a claim brought against a number of insurers, including Aegis, for payment under a marine cargo policy relating to the theft of steel billets from an Iranian port in late 2012. The defendant underwriters sought to rely on the standard London market sanctions exclusion clause which provided that:

"No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, law or regulations of the European Union, United Kingdom or United States of America".

In its judgment, the Court considered both the construction of the sanctions exclusion clause along with the application of US Sanctions relating to Iran. In particular, the Court held that:

- Defendants are liable to pay insurance claim under a marine insurance contract (covering the theft of shipments of steel billets).
- This is because payment of such a claim would not "*expose*" the underwriters to EU or US sanctions on Iran if paid out before 4 November 2018, being the end date of the so-called "wind-down period" for the re-imposed US Iran sanctions following the US decision to withdraw its participation in the Joint Comprehensive Plan of Action ("JCPOA").

- The Court rejected the notion that being exposed to a risk of sanctions was sufficient to rely on the clause. As Mr. Justice Teare noted in his judgment, the clause did not refer to the "risk" of exposure to such sanctions. Instead, the clause referred to a payment that would expose the insurer(s) to any sanction. Mr. Justice Teare said that "exposure" to sanctions meant that the payment had to breach sanctions as opposed to exposing insurers to a real risk of breach.
- In any event, the Court found that on the plain-word meaning of the wind-down provisions introduced into the US Iranian Transactions & Sanctions Regulations 31 C.F.R Part 560, payment of the claim would not be prohibited by the US until 11:59pm on 4 November 2018 EST (as it would be consistent with the lifting of sanctions under the JCPOA), and so would not expose the Defendants to sanction.

The Court did not reach a concluded view on the Claimant's argument that reliance on the sanctions clause would breach Council Regulation (EC) 2271/96, as amended (the "**Blocking Regulation**"). The Blocking Regulation prohibits EU persons, EU entities including EU subsidiaries of non-EU companies (such as EU subsidiaries of US parent companies), EU residents and EU nationals based outside of the EU from complying with the US measures referred to in the Blocking Regulation, which include the US Iranian sanctions. It requires EU persons to notify the European Commission of any effects on their economic or financial interests caused by a blocked measure and prevents the enforcement and/or recognition of any judgment or decision of a non-EU authority that gives effect to a blocked measure. However, by way of obiter, the Court commented that it saw a considerable degree of force in the Defendants' argument that the Blocking Regulation was not engaged where the insurer's liability to pay a claim is suspended under a sanctions clause because the insurer is not "complying" with a third country's prohibition but is simply relying upon the terms of the policy to resist payment.

The judgment provides useful clarification in relation to the interpretation of sanctions exclusion clauses in the London insurance market. In light of the judgment, it is likely that the wording of the existing standard exclusion clause may not considered broad enough to encompass secondary sanctions exposure, meaning that insurers may need to review their sanctions exclusion wording on a case-by-case basis to manage secondary sanctions, especially secondary US sanctions, risk exposure.

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