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INSURANCE PAYOUTS WOULD NOT EXPOSE INSURERS TO BREACH OF US SANCTIONS AGAINST IRAN DURING WINDING-DOWN PERIOD

Mamancochet Mining Ltd v Aegis Managing Agency Ltd & ors [2018] EWHC 2643 (Comm)

Introduction

By a decision handed down on 12 October 2018 in *Mamancochet Mining Ltd v Aegis Managing Agency Ltd* [2018] EWHC 2643 (Comm), the English Commercial Court held that US sanctions imposed against Iran did not have the effect of prohibiting US-owned or controlled foreign entities from making payments of valid claims under a marine insurance policy containing an exclusion clause. The US sanctions (which at that time were yet to take full effect) allowed a winding down of transactions, including insurance activities, before their full entry into force.

Background

Cargo worth approximately US\$3.8 million was stolen from an Iranian warehouse and was consigned by an Iranian national.

As a result of an assignment, the claimant assured was assigned the benefit of the underlying marine cargo insurance policy. The policy contained an exclusion clause which provided that a payment under the policy would not be made if payment “*would expose the (re)insurer to any sanction, prohibition or restriction under the United Nations resolutions or the trade or economic sanctions, law or regulations of the European Union, United Kingdom or the United States of America*”. Although at the time of the issuance of the policy, there were no applicable EU or US sanctions, by the time the claimant brought its claim in March 2013 under the policy (against 11 defendants, 9 of which were US-owned or controlled foreign entities for these purposes) there were EU and US sanctions against Iran in force as of October 2012. By virtue of the Joint Comprehensive Plan of Action (“JCPOA”) agreed between Iran, the UN and the EU, those sanctions were lifted in 2015/2016, but the USA decided to re-impose sanctions in June 2018. The re-imposed US sanctions regime allowed for a winding down period that expired at 23:59 on 4 November 2018. Issues arose as to whether payment by the insurers under the policy would expose them to a breach of US and/or EU sanctions against Iran and as to the proper interpretation of the exclusion clause.

Decision

The Commercial Court (Teare J) gave judgment for the claimant.

Teare J held that the phrase “*expose the (re)insurer to any sanction*” required that the insurer would need to establish that any payment of a claim under the policy would amount to prohibited conduct under the applicable laws because a sanction could not be lawfully applied unless there was conduct that was prohibited. Teare J rejected the defendant insurers’ contention that all that was required was to demonstrate a risk that the responsible agency might conclude that there was prohibited conduct, even when there might not be as a matter of law. Teare J held that it would require clear words to establish a common intention between the parties that an insurer would not pay out on otherwise valid claims because of a mere risk that a sanction might be incurred, without any need to demonstrate a legal prohibition on the payment.

Teare J held that payment of the insurance claim would not expose the defendants to either US or EU sanctions. The October 2012 sanctions prohibited entities owned or controlled by a US person and established outside the USA from engaging in transactions with Iran that would be prohibited if they had been engaged in by a US person. Payment of the claim at the time the claim was made was thus prohibited and would have exposed the defendants to sanctions. By virtue of a general licence issued by the US Office of Foreign Assets Control on 16 January 2016, payment of the underlying claim in sterling would not have been prohibited. However, that general licence was revoked on 27 June 2018, although it allowed a winding down of transactions with Iran which, it was reasonably clear, was intended to authorise for a limited period that which had previously been prohibited. As the insurance claim payment had previously been prohibited, it followed that those payments were authorised by the winding down provision. Accordingly, until 23:59 EST on 4 November 2018, the defendants could make a payment of the insurance claim that was not prohibited and would not expose the defendants to US sanctions. EU sanctions did not prohibit the insurance at the time of the policy’s issuance and the previous prohibition on providing financial assistance to exports of cargoes from Iran had been lifted with the JCPOA – EU law would not prevent the payment of the claim.

Concluding Remarks

The judgment provides an important consideration of the impact of sanctions against Iran upon commercial transactions and the legal issues that can arise for companies and individuals that are giving close consideration to how sanctions affect their operations.