BLANK ROME MARITIME

OCTOBER 2017 ■ NO. 4

MAINBRACE

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NOTE FROM THE MARITIME INDUSTRY TEAM

BY RICHARD V. SINGLETON II

RICHARD V. SINGLETON II
PARTNER

Large sectors of the maritime industry—especially offshore—remain in the doldrums, but it nonetheless has been a busy few months for our Blank Rome Maritime group. Our Washington, D.C., maritime attorneys have been occupied with numerous regulatory, Jones Act, and white collar criminal matters. They also continue to devote substantial time working with our Blank Rome Government Relations partners trying to discern and advise our clients on the direction that the Trump administration will likely take with respect to maritime, environmental, and regulatory policy. Our New York office has been occupied with a number of maritime casualties, including the recent collision involving the United States Navy vessel *John McCain,* and a steady flow of insolvency matters/questions. And our Houston office, notwithstanding being closed for five-and-a-half days as a result of Hurricane Harvey, has been so busy that it has enlisted assistance from attorneys in our other offices. Fortunately, with more than 60 attorneys in Blank Rome's Maritime Industry Team who are located throughout our Houston, New York, Washington, D.C., and Philadelphia offices, we have the resources to meet our clients' needs.

The last couple of months have also seen an unprecedented onslaught of extreme weather events and related damage. Our thoughts and prayers remain with the residents of Houston, Florida, Puerto Rico, and the Caribbean who have suffered so much as a result of hurricanes Harvey, Irma, and Maria. We wish them all a safe, complete, and speedy recovery.

Looking forward, the fall is always a busy time for maritime industry conferences and meetings, and this fall is no exception with many of our attorneys travelling to participate. Just to mention a few, our marine corporate/finance attorneys Brett Esber, Tony Salgado, and Humera Ahmed attended the Capital Link Forum in New York; John Kimball attended the International Congress of Maritime Arbitrators in Copenhagen; Tom Belknap and Richard Singleton, who serves as senior vice chair of the International Bar Association ("IBA") Maritime Committee, attended IBA's Annual Meeting in Sydney, chairing one maritime committee session and presenting in another; Jeremy Herschaft presented at the International Association of Young Lawyers Seminar in Bilbao; and John Kimball and Richard Singleton will be presenting seminars in Seoul and Tokyo in conjunction with the Korea Ship Owners Association and the Japan Shipping Exchange.

These are just a handful of our maritime events and speaking engagements; for a complete list, or to learn more about these events, please click here. If we are in your city for one of these events, please let us know. We hope to have a chance to visit with you!

Cyber Risk Management Guidelines for the Maritime Industry

BY KATE B. BELMONT AND JARED ZOLA

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The summer of 2017 has been noteworthy for developments in maritime cybersecurity and cyber risk management. Major global cyber attacks from the WannaCry attack to the NotPetya attack, including mass GPS spoofing attacks in the Black Sea, have significantly affected the maritime industry, leaving no doubt of the importance of cybersecurity and cyber risk management. While the maritime industry remains largely unregulated in this area, the United States Coast Guard ("USCG"), the International Maritime Organization ("IMO"), and various industry working groups continue to provide guidance to the industry on cyber risk management, creating a new standard of care and practice in the maritime industry.

Significant Regulatory Initiatives

One of the most significant developments in maritime cyber risk management has been the IMO's approval of Resolution MSC.428(98), *Maritime Cyber Risk Management in Safety Management Systems.* After careful consideration, on June 16, 2017, at the 98th session of the Maritime Safety Committee, the IMO approved the resolution on *Maritime Cyber Risk Management in Safety Management Systems,* which affirms that approved safety management systems should take cyber risk management into account in accordance with the objectives and requirements of the International Safety Management Code. Although not a regulatory requirement, through the resolution IMO member states are encouraged to appropriately address cyber risks in safety management systems no later than the first annual verification of the company's Document of Compliance after January 1, 2021.

The USCG has also been actively monitoring and addressing the need for cyber risk management through its cyber security initiative. On July 12, 2017, the USCG issued a draft Navigation and Vessel Inspection Circular ("NVIC") addressing cyber risks (NVIC 05-17; *Guidelines for Addressing Cyber Risks at Maritime Transportation Security Act (MTSA) Regulated Facilities).* The USCG draft NVIC is helpful as it will serve as policy guidance once finalized, but it is not binding on the industry. That said, it could be a precursor to a regulatory initiative in the future. The comment period on the draft NVIC has been extended until October 11, 2017. Accordingly, as it could have a long-lasting and significant impact, industry representatives are encouraged to comment on the draft.

Industry Working Group Guidelines

Shortly after the approval of the IMO Resolution, the industry working group, comprised of the Baltic and International Maritime Council ("BIMCO"), Cruise Lines International Association ("CLIA"), International Chamber of Shipping ("ICS"), International Association of Dry Cargo Shipowners ("INTERCARGO"), International Association of Independent Tanker Owners ("INTERTANKO"), International Union of Maritime Insurance ("IUMI"), and Oil Companies International Marine Forum ("OCIMF"), released the second edition of *The Guidelines on Cyber Security Onboard Ships* ("the Guidelines"). Building on the first edition that was released in January 2016, the second version is more comprehensive, includes information on insurance issues, and is aligned with the recommendations given in the IMO's guidelines.

> ► The competitiveness of the cyber insurance market, along with insurers having the desire to increase their respective market share in this rapidly growing area, means that many insurers are more receptive to negotiation and customization than with regard to other types of insurance.

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Cyber Risk Management Guidelines for the Maritime Industry
(continued from page 2)

In addressing cyber risk management, the Guidelines provide the following framework:

- identify the roles and responsibilities of users, key personnel, and management, both ashore and onboard;
- identify the systems, assets, data, and capabilities, which, if disrupted, could pose risks to the ship's operations and safety;
- implement technical measures to protect against a cyber incident and ensure continuity of operations—this may include configuration of networks, access control to networks and systems, communication and boundary defense, and the use of protection and detection software; and
- implement activities to prepare for and respond to cyber incidents.

(*See The Guidelines on Cyber Security Onboard Ships,* produced and supported by BIMCO, CLIA, ICS, INTERCARGO, INTERANKO, OCIMF, and IUMI at 3.)

The Guidelines accurately note that approaches to cyber security and cyber risk management will be company and ship-specific, but all players in the maritime industry should be guided by appropriate standards and requirements of relevant national regulations. Effective cyber risk management requires a holistic, flexible approach that addresses each company's specific needs, requirements, and capabilities.

Cyber Insurance

OVERVIEW OF LIABILITY

Additionally, and most notably, the Guidelines address insurance issues relating to losses suffered from a cyber incident. The inclusion of this chapter is significant. For several years, the question of whether losses from a cyber incident would be covered by insurance has been discussed and debated. In the second version of *The Guidelines for Cyber Security Onboard Ships,* in addressing loss from a cyber incident,

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Blank Rome Associate Kate B. Belmont authored the chapter, "Maritime Cyber Security: The Unavoidable Wave of Change," in *Issues in Maritime Cyber Security,* edited by Joseph DiRenzo III, Nicole K. Drumhiller, and Fred S. Roberts (2017, Westphalia Press, an imprint of the Policy Studies Organization).

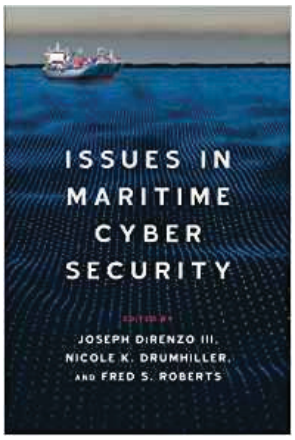
ABOUT THE BOOK:

The world relies on maritime commerce to move exceptionally large portions of goods, services, and people. Collectively, this effort comprises the Maritime Transportation System ("MTS"). Cyber networks, and the infrastructure they control, are a major component of this daunting multifaceted enterprise.

The impact of the cyber element on the international MTS is significant. The need for all stakeholders in both government (at all levels) and private industry to be involved in cyber security is more significant than ever as the use of the MTS continues to grow.

This pioneering book is beneficial to a variety of audiences, as a text book in courses looking at risk analysis, national security, cyber threats, or maritime policy; as a source of research problems ranging from the technical area to policy; and for practitioners in government and the private sector interested in a clear explanation of the array of cyber risks and potential cyber defense issues impacting the maritime community.

To learn more or to purchase *Issues in Maritime Cyber Security,* please click here.



it is made clear that all companies should be able to demonstrate that they have acted with reasonable care in their approach to managing cyber risk. Although cyber security in the maritime industry is currently unregulated, companies must be proactive in addressing cyber risk as suggested by the IMO, USCG, and various industry working groups. Maritime companies can no longer claim ignorance in addressing cyber risk management.

Regarding liability for a cyber incident, the second version of the Guidelines introduces a general overview of potential cover for liability. The following guidance is offered:

- It is recommended to contact the P&I Club for detailed information about cover provided to shipowners and charterers in respect of liability to third parties (and related expenses) arising from the operation of ships.
- An incident caused, for example, by the malfunction of a ship's navigation or mechanical systems because of a criminal act or accidental cyber attack, does not in and of itself give rise to any exclusion of normal P&I cover.
- It should be noted that many losses, which could arise from a cyber incident, are not in the nature of third-party liabilities arising from the operation of the ship. For example, financial loss caused by ransomware, or costs of rebuilding scrambled data, would not be identified in the coverage.
- Normal cover, in respect of liabilities, is subject to a war risk exclusion, and cyber incidents in the context of a war or terror risk will not normally be covered.

(*See The Guidelines on Cyber Security Onboard Ships,* produced and supported by BIMCO, CLIA, ICS, INTERCARGO, INTERANKO, OCIMF, and IUMI at 36.)

In addressing cyber risk management, companies are encouraged to speak with their insurers and brokers in advance of a cyber attack or breach to discuss what cyber incidents their policies cover. It should also be determined whether additional, non-marine insurance cover is available for certain losses that may arise from a cyber attack or data breach, such as fines resulting from a data loss or compromised personally identifiable information ("PII"), or penalties that might result from equipment failure.

CYBER INSURANCE MARKET

Purchasing cyber coverage is not like purchasing other types of insurance. The cyber market does not feature standard industry forms that are universally adopted by insurers. Instead, insurance companies in the cyber insurance market have developed their own idiosyncratic cyber products, which vary widely both in their terms and the coverage being offered. Purchasers should carefully analyze the terms, conditions, and exclusions of a cyber policy, rather than assume that the use of similar labels suggests an equivalence across different insurance policies. Cyber policies that appear to offer the same types of coverage can vary greatly when analyzing the fine print.

The lack of uniformity presents leverage when purchasing cyber insurance, and the maritime industry should take note. The competitiveness of the cyber insurance market, along with insurers having the desire to increase their respective market share in this rapidly growing area, means that many insurers are more receptive to negotiation and customization than with regard to other types of insurance. Shipowners, operators, and all players in the maritime industry should utilize the unique nature of the cyber insurance market at this time. Working with attorneys and insurers that specialize in cyber security and cyber insurance can help develop a product that provides appropriate coverage, specific to each company's needs.

Planning Ahead

For those shipowners and operators who choose to disregard industry guidance, proceed with caution. To protect itself from even greater losses, a company must show it has acted with reasonable care in managing cyber risk and mitigating such damages, which includes having the proper cyber insurance. Additionally, shipowners and operators might face issues of unseaworthiness if their vessels are not protected, riddled with viruses, and vulnerable to cyber attacks. In dealing with several public cyber attacks and significant financial losses, the summer of 2017 has been a transformative one for the maritime industry. Cyber attacks are real, and the maritime industry is vulnerable. Ports, shipping companies, and any players in the maritime industry that wish to stay competitive must address cyber risk management as outlined by the IMO, USCG, and various industry working groups. ◻

Recent Hurricanes Wreak Havoc, Produce Bipartisan Congressional Support and Trump Jones Act Waivers

BY C.J. ZANE, ALAN RUBIN, AND JOAN M. BONDAREFF

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As we are putting this issue of *Mainbrace* to bed, our thoughts are with the residents of Puerto Rico, Texas, and Florida who are still recovering from the rarest of U.S. tragedies—three major hurricanes to directly hit U.S. land within a month. These disasters brought unique opportunities for neighbors to help one another and for bipartisanship in Congress, including a new deal with President Trump. The crisis in Puerto Rico is ongoing, and we can only project the funds needed to rebuild the island's fragile infrastructure—from ports to roads, bridges, and the electric grid.

Hurricane Harvey Aftermath

Houston is the fourth largest city in the United States, and also the country's oil and gas capital. Harvey is considered a "once-in-a-1,000-year" storm, with an estimated 50,000 to 100,000 homes and buildings flooded in its aftermath. But, as we know, these events are becoming more frequent—think of Katrina, Super Storm Sandy, and now, Hurricanes Irma and Maria.

Texas Gulf Coast refineries provide nearly one-third of the nation's oil and gas capabilities. At one point during the storm, 20 percent of the country's refining capacity was offline. At this time, nine refineries in the region remain shut down, while seven others have begun the process of restarting operations.

Additionally, at least one chemical plant in East Texas closed and experienced internal explosions due to flooding and the inability to keep its chemicals refrigerated at safe levels. Transit restrictions remain in place for the Houston Ship Channel, as well as the ports of Beaumont/Port Arthur and Corpus Christi. The ports of Brownsville and Freeport, Texas, are fully open.

Residents are assessing home damage and counting their blessings if they have adequate flood insurance.

Hurricane Irma Aftermath

Hurricane Irma came ashore as a Category 4 hurricane in the Florida Keys on September 10, 2017, and headed to the west coast cities of Naples and St. Petersburg. Due to the size of Irma, all of Florida was affected by hurricane-strength winds, flooding rain, and storm surges. Power has been restored to most of Florida, but the assessment of the long-term uncompensated damage is just beginning.

The burden these storms have put on FEMA is tremendous, but, to its credit, Congress has come to FEMA's aid and provided initial disaster relief of $15 billion. President Trump promptly signed the bill into law after reaching an unusual deal with the two Democratic leaders, Senator Chuck Schumer (D-NY) and Congresswoman Nancy Pelosi (D-CA), to attach a short-term provision lifting the debt ceiling to the relief bill, and a short-term Continuing Resolution ("CR") to fund the federal government until December 8. This is just the first tranche of what will be further supplemental appropriations to handle recovery efforts in those states and territories affected by the hurricanes.

At the request of the Pentagon, Acting DHS Secretary Elaine Duke granted a temporary waiver of the Jones Act for cargo coming into Texas and Florida. This waiver has now expired.

Congress Responds to Harvey and Irma and Begins to Tackle Maria

This article describes what initial steps Congress has taken in response to the hurricanes, recognizing that more recovery aid will have to be forthcoming. Preliminary estimates peg Harvey's wrath somewhere in the range of $90 to $180 billion. A similar figure may be used for the damage caused by Hurricane Irma.

Congress returned to work from the August recess on September 5, 2017. Members were already facing a plethora of difficult issues to resolve before the end of the fiscal year, including raising the debt ceiling; funding the government for FY2018, which began on October 1; and reauthorizing critical programs such as the National Flood Insurance Program ("NFIP"). Adding Hurricane Harvey and Irma relief on top of this agenda was particularly challenging.

President Trump had threatened, before Harvey, to shut down the government if funding for his "border wall" with Mexico was not included in the FY2018 budget. House bill H.R. 3219 contains $1.6 billion for the wall. Due to the damage from the hurricanes and the funds required for recovery, it is very likely that President Trump and Congress will put the debate over funding for the wall aside until at least December 8, when the current short-term CR funding bill expires, in order to prioritize Harvey, Irma, and Maria relief. For a change, a divided Congress seems to be united in an effort to provide necessary relief instead of falling on political swords.

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Recent Hurricanes Wreak Havoc, Produce Bipartisan Congressional Support and Trump Jones Act Waivers (continued from page 6)

On September 8, 2017, President Trump signed into law H.R. 601, which provides $15.3 billion for disaster relief. As mentioned above, the bill also includes a CR providing funding for the federal government at 2017 rates through December 8, 2017, and raises the debt ceiling limits through to that date. Further discussions are ongoing with the Democratic leaders—to the chagrin of the Republican Caucus—to raise the debt ceiling on a permanent basis. Only four Texas members voted against the bill, due to the provision that lifted the debt ceiling without offsetting cuts to the federal budget.

Included in the emergency funding is $7.4 billion in emergency supplemental funding for FEMA's Disaster Relief Fund, $450 million for the Small Business Administration's ("SBA") disaster loans, and $7.4 billion for the U.S. Department of Housing and Urban Development's ("HUD") Community Development Block Grant ("CDBG") Program for housing and other related purposes. Given the enormous size of the recovery and relief estimates, this is easily seen as a down payment for further supplemental appropriation bills.

Another critical issue facing Congress is what to do about flood insurance—in particular, the National Flood Insurance Program ("NFIP") whose authorization would have expired on September 30, and which is currently $25 billion in debt. Although five out of six residents in Houston do not have flood insurance, and 40 percent are living in flood-prone zones in Florida, those who do will depend on the reauthorization and extension of the NFIP for reimbursement. Even before the recent hurricanes struck, Congress was divided over how to restructure the NFIP. Some members wanted to include private insurers in the mix, while others wanted to limit flood insurance in certain areas prone to repeated flooding. But, post-Harvey, it is likely that a straight reauthorization of the current NFIP without serious restructuring will occur, leaving further reforms for a later day. The supplemental appropriation bill, above, also extended the NFIP until December 8, leaving more significant improvements to a later day.

By December 8, Congress will have to either provide funding for the government for the rest of FY2018 (likely in an "Omnibus" package), or pass another temporary, short-term CR on or before that date to allow themselves more time to pass an Omnibus appropriations bill for the balance of FY2018. It remains to be seen whether Congress will continue to slash budgets for programs that could mitigate the impact of future hurricanes.

The Trump administration's proposed FY2018 budget called for reduced funding of FEMA and related programs (*e.g.,* the Coast Guard, National Oceanic and Atmospheric Administration, National Weather Service, Chemical Safety Board, CDBG Program, etc.), and we anticipate that these cuts will be seriously reconsidered in light of Harvey, Irma, and Maria. It's easier to slash federal budgets when everything is going well, but in the face of this natural emergency, allowing coastal states to use Coastal Zone Management Act ("CZMA") money, for example, to build resiliency plans makes a lot more sense. Who can argue now against full funding for FEMA? Or against the Coast Guard whose personnel, boats, and helicopters alone rescued 6,000 residents from rooftops and flooded homes in Houston? Or against HUD's CDBG Program? Or against small business loans from the SBA? Likely, only a few diehard members of the House Freedom Caucus will try to hold the line on increasing federal spending and deficits.

Following the passage of an immediate Hurricane Harvey and Irma relief package, Congress will have to turn to longer-term issues facing Texas, Louisiana, Florida, and other regions hard-hit by Harvey, Irma, and Maria. These include rebuilding ports and critical infrastructure, providing short-term housing, creating new ways to expedite small business and home rebuilding loans, and, perhaps, providing funding for FEMA to have its own fleet of small boats.

Puerto Rico Devastated by Hurricane Maria, President Trump and Congress Respond

On September 20, 2017, Puerto Rico took the full brunt of Category 4 Hurricane Maria, and the entire island is presently without power and water. The governor of Puerto Rico is said to be in discussions with House Speaker Ryan for immediate aid, especially to rebuild the power grid. House Minority Leader Pelosi has called on the Navy to bring supplies to the island, and USNS *Comfort* is now steaming towards the island. A three-star army general has been put in charge of the relief efforts.

Under pressure from certain members of Congress and the governor of Puerto Rico, on September 28, 2017, the secretary of homeland security waived the Jones Act for the transportation of all products into Puerto Rico for 20 days. Others like Senator John McCain (R-AZ) are calling for a permanent waiver. Ironically, most containers brought to Puerto Rico by U.S.-flag vessels are still sitting on the docks at the port because the distribution system throughout the island is non-existent.

In the meantime, Congress has passed new legislation granting tax relief to taxpayers in all areas affected by the three hurricanes. A proposal to allow private insurers to be part of the NFIP was left on the cutting-room floor after Senate opposition. Puerto Rico will be able to use some of the FEMA funds provided earlier for Florida and Texas. A new request from the White House for Puerto Rico relief is expected later this month.

What Happens Next

Today, we're overwhelmed by stories about tragic loss of life, overcrowded shelters, closed hospitals, nursing home losses, the courage of survivors, the thousands of water rescues, neighbors helping neighbors, residents of nearby states helping Texans and Floridians, and first responders and engineers trying to get to Puerto Rico to do what they can to rebuild the island's infrastructure. Once the flood waters recede, Congress will turn to longer-term issues to help the recovery process, including preparing an aid package to help businesses get back to work, building stronger levees, restructuring the NFIP, and cleaning up polluted rivers and ship channels. Even some residents and officials in Houston are debating whether to rebuild in the same areas that flooded in Harvey and previous floods. Florida will have to assess whether the new building codes imposed after Hurricane Andrew withstood the power of Irma. How to rebuild the infrastructure and electric grid in Puerto Rico to enable the quickest recovery and withstand future storms will be top priorities for Congress and the private sector to address. ◻

Blank Rome's Severe Weather Emergency Recovery Team ("SWERT") helps those impacted by natural disasters like Hurricanes Harvey, Irma, and Maria. We are an interdisciplinary group with decades of experience helping companies and individuals recover from severe weather events. Our team includes insurance recovery, labor and employment, government contracts, environmental, and energy attorneys, as well as government relations professionals with extensive experience in disaster recovery.

Learn more:
www.blankrome.com/SWERT

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Regulatory Stalemate in the Trump Era

BY SEAN T. PRIBYL, JONATHAN K. WALDRON, AND JOAN M. BONDAREFF

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In the lead up to the general election, then-candidate Donald Trump often repeated campaign promises to massively cut federal regulations that he viewed as stifling to business growth and killing jobs. True to his word, in his first 200 days of office, President Trump has generally delivered on his promise to stymie new federal regulations, including those impacting the maritime industry. Put simply, the pace of regulatory activity has dropped to historic lows in the first six months of the Trump administration. We analyze here whether this is good or bad for the maritime industry.

Two of President Trump's initial actions following his inauguration were targeted at deregulation. Specifically, President Trump issued two important directives upon taking office. First, he issued a Presidential Memorandum that imposed a regulatory freeze on all pending regulatory actions and agency policy documents that had not yet gone into effect as of January 20, 2017. Next, President Trump issued Executive Order ("E.O.") 13771 of January 30, 2017 that attempted to offset the number and cost of new regulations under a "two-for-one" regulatory scheme requiring executive branch agencies to repeal two rules for every new one issued. Public interest groups have challenged the constitutionality of this order, as we discuss below. Furthermore, in February 2017, President Trump tasked each federal agency to form a Regulatory Reform Task Force to evaluate existing regulations and make recommendations on repealing, replacing, or modifying unnecessary regulations—a task respective agencies have undertaken.

On August 15, 2017, President Trump signed an E.O. with the intention of streamlining the federal environmental infrastructure permitting process. The aim is to make construction of infrastructure projects for transportation, water, and other purposes in an environmentally sensitive manner. The order implements a "One Federal Decision" policy for major infrastructure projects with a designated lead federal agency on respective projects. This of course comes as the Trump administration has yet to release a formal infrastructure proposal.

Admittedly, the regulatory process can be complex and time-consuming and may involve months or years of review, public comment, and revision. But, regulations also serve an important function by allowing stakeholders to understand the legal conditions under which they may operate. Rulemaking can also serve as a key measurement of how a White House shapes policy. While some business models thrive on reduced regulations, businesses also rely on the certainty of regulations to effectively run their enterprises and on which they can rely for investment. In either case, tracking the regulatory trends is a critical function to operating in the maritime industry, and the current administration is no exception.

Congressional Review Act Repeals Obama-Era Regulations

In the early months of his presidency, President Trump relied on the Congressional Review Act ("CRA") to repeal 14 rules that former President Obama had finalized at the end of his term. For example, Congress repealed the Obama regulation banning discharges of mining waste into adjacent waters under the so-called "Stream Protection Rule," but by three votes narrowly missed repealing the Department of the Interior's methane waste final rule governing venting, flaring, and leaks of natural gas.

Essentially, the CRA provides expedited procedures for Congress to reject regulatory rules. The CRA authorizes congressional lawmakers for 60 legislative days to undo regulations enacted by the executive branch without the risk of filibuster or the need for hearings and committee votes. Once a regulation has been repealed under the CRA, the

(continued on page 11)

Regulatory Stalemate in the Trump Era (continued from page 10)

CRA forbids agencies from reissuing rules that are substantially the same as any rule overturned under the law, unless Congress subsequently passes a new law and reauthorizes the rule. Prior to President Trump, the CRA had only successfully been used once. On May 11, 2017, the window closed to pursue deregulation quickly under the CRA.

Forecast of New Maritime Industry Regulations

In response to President Trump's policy directions, federal agencies have been working to implement President Trump's regulatory mandates as they look for rules to eliminate. This is proving to be a daunting task. In fact, as a collateral effect, agencies are spending an inordinate amount of time performing this work, which is taking away from other duties and responsibilities. To our knowledge, no agency has successfully repealed two regulations in order to create a new one, perhaps because agencies undergo public comment before action is taken, which takes a long time.

► In the first six months of the Trump administration, the Office of Information and Regulatory Affairs ("OIRA") reviewed 67 regulatory actions, such as notices, proposals, and final rules. Compare that with the first Obama administration, in which OIRA reviewed 216 actions under the same timeframe.

The result has been almost a total lack of any significant federal regulation in the first six months since President Trump took office, as agency rulemaking has stalled to an almost total standstill. To illustrate, in the first six months of the Trump administration, the Office of Information and Regulatory Affairs ("OIRA") reviewed 67 regulatory actions, such as notices, proposals, and final rules. Compare that with the first Obama administration, in which OIRA reviewed 216 actions under the same timeframe. In fact, in its first six months, the Trump administration pulled or suspended more than 800 regulations, including those related to "Claims Procedures Under the Oil Pollution Act of 1990" and "Tank Vessel Response Plans for Hazardous Substances." This included 19 regulations with an economic impact of $100 million or more.

Even though President Trump pushed for the "two-for-one" regulatory action as a means to remove outdated rules, his decision may be creating barriers to new, and potentially beneficial, regulations. Also, public interest groups filed a complaint against President Trump challenging the "two-for-one" rule, claiming that it is unconstitutional. The case is *Public Citizen Inc. et al. v. Donald Trump et al.,* case number 1:17-cv-00253, in the U.S. District Court for the District of Columbia. We are closely monitoring the outcome.

OIRA, under its new director, former George Mason associate law professor Neomi Rao, is the principal office that will decide the fate of new agency regulations. Following is a preview of agency regulatory action items.

Maritime Agency Initiatives

Several maritime and environmental agencies released their respective semiannual regulatory agendas that indicate the summary of current and projected significant rulemakings, existing regulations, and completed agency actions. Significant regulatory actions are defined as "those that have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities."

U.S. COAST GUARD

Among its semi-annual regulatory agenda, the Coast Guard included the following proposed rules (assuming the agency can overcome the "two-for-one" hurdle): a proposal for seafarers' access to maritime facilities; a proposal regarding the numbering of undocumented barges; continuation of a longstanding effort to revise the Coast Guard's Outer Continental Shelf regulations; and a proposal for the implementation of 2010 and 2012 legislation regarding commercial fishing vessels. At least two federal advisory committees, the National Maritime Security Advisory Committee ("NMSAC") and Navigation Safety Advisory Committee ("NAVSAC"), have already begun work to provide input to the Coast Guard in support of its regulatory reform effort. Given the amount of time and resources the Coast Guard is dedicating to comply with the White House's regulatory policies, the maritime industry should likely expect that in the near-term the Coast Guard will continue to operate under current or reduced regulations as opposed to any newly developed regulations.

CUSTOMS AND BORDER PROTECTION ("CBP")

CBP's semi-annual regulatory agenda includes limited examples of significant regulatory activity beyond a proposal regarding importer security filing and additional carrier requirements. Notable, though, is what's not included in the CBP version: any action on interpreting the Jones Act for oil and gas activities on the Outer Continental Shelf. On May 10, 2017, CBP withdrew a controversial proposal that would have upended decades of precedence in the offshore oil and gas industry. Announced in the final days of the Obama administration, the proposal would have done away with decades of exemptions by CBP that allowed international maritime companies and their crews to perform work in the Gulf and not be subject to the restrictions of the Jones Act. These companies are now urging CBP to undertake a rulemaking to eliminate the uncertainty of the proposed and final CBP notices.

MARITIME ADMINISTRATION ("MARAD")

MARAD reported no significant rules, although MARAD continues to develop several rules, such as those related to the Marine Highway Corridor Expansion, American Fisheries Act, and a subchapter update to the National Shipping Authority Regulations.

Also, the Maritime Security Program Extension rulemaking would implement the requirements of the 2013 National Defense Authorization Act ("NDAA"). According to OIRA, the NDAA: "(1) extended the sunset date of the Maritime Security Program ("MSP") to September 30, 2025; (2) directed MARAD to offer to extend existing MSP operating agreements to current MSP participants before an open competition; (3) authorized periodic stipend increases; and, (4) prioritized awarding of new MSP contracts according to Department of Defense priorities." This proposed action would bring the MSP up-to-date by modernizing the current implementing regulations. MARAD is also seeking public comments on Title XI Obligation Guarantees under 46 CFR Part 298. The information to be collected will be used to evaluate an applicant's project and capabilities, make the required determinations, and administer any agreements executed upon approval of loan guarantees.

We wonder what existing MARAD rules the new administrator, Retired Navy Rear Admiral Mark Buzby, will repeal in order to issue the new regulations at no additional cost? In other words, whether MARAD has to repeal two existing regulations to implement the NDAA amendments remains to be seen.

ENVIRONMENTAL PROTECTION AGENCY ("EPA")

In February, President Trump directed EPA Administrator Scott Pruitt to review the definition of "Waters of the United States" through the rulemaking process, a step viewed as moving towards complete removal of the rule. The "Waters of the United States" rule is an Obama-era regulation that allowed the EPA to extend its authority over small bodies of water, such as streams and wetlands. Critics argued the rule would give the federal government excessive authority over bodies of water that were too small and insignificant.

On July 27, 2017, the U.S. Army Corps of Engineers and the EPA proposed amendments to the regulatory definition of "Waters of the United States." That rulemaking was open for public comment until the extended date of September 27, 2017.

Conclusions

At the 200-day mark, the pace of regulatory activity under the current administration has dipped to historic lows. This was presumably the intent of the "two-for-one" E.O. For some in the maritime industry, this comes as a welcome relief, but for others, the lack of regulations may be viewed as an impediment to investment, innovation, and improvements in public safety. Stakeholders should continue to monitor current regulatory rulemaking impacting the maritime sector and seek opportunities to comment on shaping those regulations.

And now, in the aftermath of powerful hurricanes, the Trump administration has been forced to issue an extended Jones Act waiver. These storms may even force a rethinking of the repeal of executive orders dealing with climate change and flood control in disaster-prone areas. We are continuing to monitor and will report on these developments, and have issued a Jones Act advisory on that waiver extension. ◻

This article was first published in Maritime Executive. Reprinted with permission.

Blank Rome Launches New Blogs

Blank Rome Workplace, launched by the Firm's **Labor & Employment** practice, offers insight and analysis on emerging employment issues ranging from new regulatory developments to litigation and enforcement trends, and provides timely updates and practical advice to clients, outside counsel, and human resource executives.

Learn more:
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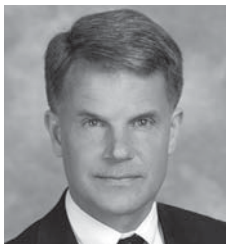
Energy and Environmental Trends Watch, launched by Blank Rome's **Energy** and **Environmental** teams, provides insight and analysis on the latest developments in energy and environmental law, navigating ongoing industry developments as well as environmental activism efforts, and identifies issues and cases that will help readers better understand the ever-changing energy and environmental landscape.

Learn more:
energytrendswatch.com

Enforcement in the United States of Foreign Judgments that Incorporate Monetary "Penalty" Provisions

BY W. CAMERON BEARD



W. CAMERON BEARD
PARTNER

While the United States is a party to an international convention on the enforcement of foreign arbitral awards,[1] it is not a party to any similar instrument regarding the enforcement of foreign court judgments. Nevertheless, foreign court judgments providing civil as opposed to criminal relief can be enforced in the United States, generally pursuant to the laws of individual states where judgment enforcement is sought. State statutes allow for enforcement of most final foreign court judgments awarding money damages, subject to certain basic requirements not relevant to the discussion here. And, while such statutes generally do not address foreign court judgments awarding equitable as opposed to monetary relief, equitable remedies may still be enforceable in the United States under principles of international comity incorporated in the various states' common law.

An open question, however, is whether a foreign judgment awarding a monetary "penalty" or similar remedy can be enforced. While the general rule is that foreign penal laws cannot be enforced in the United States,[2] the reality is that there may be situations where arguably penal remedies can in fact be successfully recovered in the context of a civil enforcement proceeding in the United States. Such quasi-penal remedies include so-called "astreinte" or similar coercive remedies, most often granted by courts in civil law countries.[3]

> ► While the general rule is that foreign penal laws cannot be enforced in the United States, the reality is that there may be situations where arguably penal remedies can in fact be successfully recovered in the context of a civil enforcement proceeding in the United States.

Astreinte and Similar Remedies

Judges in many civil law countries may be empowered to impose coercive remedies, intended to encourage a party to perform or refrain from actions specified in the judgment. For example, a foreign civil law judgment may require one party to transfer possessions of property to another party or to terminate certain activities by a date certain, with a per diem charge or "penalty" to be paid for every day thereafter during which the defendant fails to comply.[4] And, from time to time, parties in possession of a foreign judgment that includes an astreinte or similar remedy have sought to enforce their judgments in the United States. The degree of success such parties have achieved has been varied, but certain trends in recent case law can be discerned, and those trends suggest that it may be possible to enforce astreinte remedies under appropriate circumstances.

In an important case issued in 2016, the United States Court of Appeals for the Ninth Circuit reversed the decision of the trial court and ordered enforcement of an astreinte remedy included in a judgment entered by a French court.[5] In that case, the plaintiff's French judgment prohibited the defendant from using certain copyrighted material and entitled the plaintiff to payment of a specified sum, or astreinte, for every day that the defendant continued to use the copyrighted material after a specified date. Of particular interest is that the U.S. court enforced the astreinte as a "money judgment" under the applicable California state foreign money judgment statute, rejecting the argument that the remedy constituted an unenforceable penalty.

Applying California state law, the federal appellate court held that whether a remedy constitutes an unenforceable penalty must be determined by an analysis of whether the remedy serves primarily to "punish an offense against the public justice of the state" or instead serves to "afford a private remedy to a person injured by [a] wrongful act." Recognizing that an astreinte remedy can be considered something of a hybrid penal/civil remedy, the court found it to be enforceable in the case before it because the astreinte was intended to compensate the complaining party for the violation of its copyright by the defendant. Among the factors relied upon by the court was the fact that the astreinte was payable to the complaining party rather than to the state, and that the

(continued on page 15)

Enforcement in the United States of Foreign Judgments that Incorporate Monetary "Penalty" Provisions **(continued from page 14)**

remedy was awarded in the context of a civil rather than criminal proceeding. The court distinguished the astreinte remedy before it from an astreinte remedy that the same court had refused to enforce in a case decided a decade earlier,[6] noting that the astreinte in the earlier case had been payable to the French government for violations of a French penal law prohibiting the exhibition of Nazi emblems, and thus had been intended to protect the public good rather than to enforce a private right.

Enforcement: Factors for Consideration

Current case law suggest that whether an astreinte or similar remedy can be enforced in the United States will turn on numerous factors. First, it must be stressed, as mentioned above, that enforcement of foreign court money judgments (as opposed to foreign arbitral awards) is governed not by U.S. federal law, but by the law of the state where the judgment is to be enforced, and both enforcement statutes and common law jurisprudence may vary significantly from state to state. Second, as the decisions discussed above suggest, the facts will have to be examined carefully in order to determine whether the remedy granted in a particular case can best be characterized as civil or penal in nature. Third, pertinent state enforcement statutes, as well as common law principles, generally allow for enforcement only of "final judgments," and a judgment calling for a per diem payment may not be considered final before the foreign court has "liquidated" the penalty or reduced it to a sum certain. Stated differently, it may or may not be possible to convince a state court in the United States itself to perform the calculations necessary to reduce the astreinte to a specific and final sum. Indeed, in order for the foreign judgment to be deemed final, not only may prior liquidation of the astreinte by the court abroad be required, but, depending on the legal system in place in the foreign country, it may also be a prerequisite that appellate relief in the foreign country have been either denied or waived.[7]

Conclusion

Ultimately, whether a foreign court judgment including an astreinte or similar coercive remedy can be enforced in the United States is a question that will depend on the location within the United States where enforcement is sought, the facts of the given case, and the status of that case before the foreign court. Accordingly, before seeking enforcement of such a foreign judgment, it is strongly recommended that advice be taken from competent U.S. counsel. ◻

1. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, codified in United States law at 9 U.S.C. § 201 et seq.
2. Under the "penal law rule," U.S. courts will not enforce the penal laws of a foreign country. A related and well-known principle is the so-called "revenue rule," which bars enforcement in the United States of a foreign country's tax laws. See discussion of both the penal law rule and the revenue rule in *United States v. Federative Rep. of Brazil,* 748 F.3d 86, 91-93 (2d Cir. 2014).
3. "Astreinte" is the term used for such remedies in various civil law systems, but there are similar remedies under different names under other civil law systems. For example, the Dutch remedy is referred to as "dwangsom."
4. The nature of such remedies is discussed in, for example, D. Lewinsohn-Zamir, *Do the Right Thing: Indirect Remedies in Private Law,* 94 B.U.L Rev. 55, 66-68 (2014).
5. *De Fontbrune v. Wofsy,* 2016 U.S. App. LEXIS 20416 (9th Cir. 2016).
6. *Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme,* 433 F.3d 1199 (9th Cir. 2006).
7. An Arizona federal court, applying Arizona common law in a case decided before Arizona's adoption of a foreign money judgment enforcement statute, enforced a judgment that included 416,000 Euros in penalties relating to the defendant's failure to transfer a trademark over an extended period during which penalties of 1,000 Euros per day had accrued. The court stressed that the total sum awarded was determined in a French court proceeding, and that the time to appeal had expired, thereby rendering the award final. *S.A.R.L. Aquatonic–Laboratoires PBE v. Marie Katelle, Inc.,* No. 06-640, 2007 U.S. Dist LEXIS 40468 (D. Ariz. June 1, 2007). It is interesting to note that while this case did treat the issue of finality in some detail, the question of whether the monetary judgment constituted an unenforceable penalty apparently was not addressed.

Blank Rome Announcements

JEREMY A. HERSCHAFT
PARTNER

Jeremy Herschaft Appointed Vice President of AIJA Transport Law Commission

Blank Rome Partner Jeremy Herschaft has been appointed as a vice president of the International Association of Young Lawyers ("AIJA") Transport Law Commission for a three-year term.

Mr. Herschaft will serve in the vice president position along with Cherry Almeida of Alius Law (Rotterdam) and Lucas Marques of Kincaid (Rio de Janeiro), and all three will support incoming Transport Law Commission President Javier Zabala of Meana Green Maura & Co. (Bilbao).

Through his role, Mr. Herschaft spoke on the panel "Maritime Credits and Liens vs International Insolvencies—Digesting the Latest Judicial Resolutions Throughout the E.U. and the U.S." at the AIJA seminar, *Navigating Through Troubled Waters; Current Trends in International Maritime and Energy Insolvencies,* held September 28-30 in Bilbao, Spain. For more information on his panel, please click here.

Blank Rome Named 2017 "Best Law Firm for Women" by *Working Mother*

Blank Rome LLP was named one of the 2017 Best Law Firms for Women by *Working Mother* magazine, marking the second year that the Firm has been recognized for its commitment to creating one of the best women-friendly workplaces in the United States.

Working Mother's annual list honors 50 U.S. law firms for their policies in the advancement of women, notably with regards to key factors such as female representation, flexibility, paid-time off and leaves of absence, leadership, and compensation and advancement, as well as the development and retention of women. To learn more, please visit www.workingmother.com.

Blank Rome is proud to receive this recognition, honoring the Firm's longstanding history of commitment to diversity and inclusion. Through the Firm's Women's Forum, diversity programs, industry initiatives, and professional and personal development offerings—including mentoring opportunities and alternative work arrangements—Blank Rome is actively engaged in fostering the next generation of female leaders at the Firm, helping them to succeed and grow both at Blank Rome and within their local communities.

FCPA under the New Administration

BY MAYLING C. BLANCO, CARLOS F. ORTIZ, SHAWN M. WRIGHT, AND ARIEL S. GLASNER

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The single most frequently asked question by our international clients over the past several months is whether there will be changes in white collar prosecution priorities under the new administration, specifically with respect to the Foreign Corrupt Practices Act ("FCPA"). The FCPA, which criminalizes the payment of bribes to foreign officials around the world, has been subject to enforcement trends and scrutiny during its 40-year history. Prior to 2005, there were few notable prosecutions. However, over the past 12 years, the law has garnered much attention given the unparalleled increase in the number of prosecutions and the headline-grabbing monetary amounts of the settlements. This trend has straddled administrations from both sides of the aisle.

Of course, it is nearly impossible to answer the question posed directly with any degree of certainty. Venturing to do so would require reading tea leaves. However, there are certain indicia and reasoning that can guide our understanding of the direction that the new administration may be heading in.

The Tone from the Top

For months, many doubted whether the new Attorney General for the Department of Justice ("DOJ" or the "Department"), Jeff Sessions, would abandon the prosecution of white collar crimes, such as the FCPA, in favor of other crimes—drugs, immigration, violent crimes—that took a central role in the election rhetoric. This public perception was not lost on the attorney general, and he laid that fear to rest with his remarks at the Ethics and Compliance Initiative's Annual Conference on April 24, 2017. Attorney General Sessions stated that he wanted "to make clear…that under [his] leadership, the Department of Justice remain[ed] committed to enforcing all the laws. That includes laws regarding corporate misconduct, fraud, foreign corruption, and other types of white-collar crime. He acknowledged that this would be the case, despite his efforts to strengthen the DOJ's focus on traditional crimes.

The attorney general went on to specifically identify FCPA enforcement efforts as "critical" to the Department. He recognized that corruption in the form of bribes to foreign officials "harms free competition, distorts prices, and often leads to substandard products and services coming into this country." He further noted that it "increases the cost of doing business, and hurts honest companies that don't

pay these bribes." He stated that he "wants to create an even playing field for law-abiding companies[,]" which "should succeed because they provide superior products and services, not because they have paid off the right people." To this end, he declared that the DOJ "will continue to strongly enforce the FCPA and other anti-corruption laws."

The attorney general also made clear that the prosecutorial approach in pursuing FCPA matters would not deviate in any major way with that of his predecessors, in at least two respects. First, the DOJ will continue to emphasize the importance of holding individuals accountable for misconduct. In other words, prosecutors will continue adhering to what is commonly known as the "Yates Memo" and, towards that end, will continue to work with international law enforcement to prosecute individuals.

Second, the DOJ will continue to consider some of the same previously identified factors when making charging decisions. These factors include evaluating the quality of a company's compliance program and valuing companies that choose to do the right thing on their own accord. In determining the appropriate fines to impose, these factors include taking into account the company's efforts to self-disclose, cooperate, and accept responsibility. In all, Attorney General Sessions confirmed that there would be no major departures from the way the prior administration pursued FCPA matters. Indeed, it will be interesting to see how prosecutors will apply the recently issued "Sessions Memo"—requiring prosecutors to pursue the most "readily provable" offense—to FCPA matters.

Any doubts of the DOJ's commitment should have been dispelled by the statements of the Acting Principal Deputy Assistant Attorney General, Trevor N. McFadden. At two compliance-related events, he made efforts to "dispel [the] myth" surrounding white collar prosecuting priorities. McFadden unequivocally declared that the Department "continues to vigorously enforce the FCPA…motivated as ever by the importance of ensuring a fair playing field for honest corporations."

The appointment of Jay Clayton to head the Securities and Exchange Commission ("SEC") has not yet resulted in as clear a mandate. Mr. Clayton is a well-respected Wall Street lawyer and is no stranger to the FCPA. In 2010, he was involved in representing ENI, S.p.A., an Italian oil group, in settling a FCPA matter with the SEC.[1] On the other hand, Mr. Clayton also publicly expressed reservations on the law. In 2011, he assisted in drafting an article for the New York City Bar Association, "The FCPA and Its Impact on International Business Transactions: Should Anything Be Done to Minimize the Consequences of the U.S.'s Unique Position on Combating Offshore Corruption?" The article noted that companies have become increasingly wary of purchasing businesses with potential costly liabilities due to FCPA violations. The article further noted that companies not subject to the law's reach have reservations about entering into transactions that would bring the company within the FCPA's jurisdictional reach. Mr. Clayton has not made any recent public statements regarding the FCPA, and it is difficult to say how these six-year-old views may impact his policies as chairman.

Money Talks and Pro-America

Last year was a near record-setting year for the FCPA, both in terms of number of actions brought and total dollar amounts secured through settlements. In 2016, there were 29 SEC and 25 DOJ enforcement actions.[2] Only 2010 was more prolific, with 33 DOJ and 23 SEC enforcement matters.[3] Also in 2016, over $2.4 billion was paid in fines and penalties

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FCPA under the New Administration (continued from page 18)

for FCPA violations.[4] The total amount of sanctions recovered was slightly greater, at $2.6 billion, in 2008.[5] Numbers like these are difficult for anyone to ignore.

The FCPA also may be more aligned in certain respects with the new administration's agenda. The law has a broad jurisdictional reach, and businesses, including foreign businesses, that fall within its jurisdiction must conduct business by the same ethical standards as U.S. companies. Indeed, all but one of the top FCPA settlements have been with non-U.S. corporations.[6] FCPA penalties paid by foreign companies have been significantly higher than those paid by U.S. companies.[7] This data suggests that foreign companies bear a higher FCPA-enforcement burden than their American counterparts.

> ► The DOJ has publicized that international law enforcement cooperation is increasing. Not only does this cooperation make it more likely that wrongful conduct will come to the attention of U.S. authorities, but it also facilitates investigations and prosecutions. FCPA violations are becoming low-hanging fruit for the DOJ.

Wheels Set in Motion

Over the past few years, the DOJ has taken steps that will continue to encourage and increase FCPA prosecutions. First, the Fraud Section's one-year "Pilot Program" has been extended. (See our previous Blank Rome white collar advisory on this program here.) The program is intended to motivate companies and individuals to voluntarily disclose their FCPA violations. McFadden has announced that the "program will continue in full force" pending "a final decision regarding its permanence."

Second, the size of the FCPA Unit has significantly increased in the past several years. After the announcement of the Pilot Program, in April 2016, the Fraud Unit doubled the size of its FCPA-dedicated prosecutors and created teams of special FBI agents focused solely on FCPA matters. Those agents, McFadden confirmed, are working on "numerous significant investigations." Additional resources are provided by the U.S. Attorney's Offices across the country, which are actively working on these cases alongside the Fraud Unit.

Third, more so now than ever before, FCPA enforcement has led to a growing, global wave of anti-corruption laws. Mexico and France have recently instituted anti-bribery systems and have pledged to root out offenders. Even though some of these countries' laws and enforcement systems are in their infancy, international cooperation among foreign prosecutorial authorities makes it more likely that corrupt activity will come to the attention of U.S. prosecutors.

Finally, the DOJ has publicized that international law enforcement cooperation is increasing. Not only does this cooperation make it more likely that wrongful conduct will come to the attention of U.S. authorities, but it also facilitates investigations and prosecutions. FCPA violations are becoming low-hanging fruit for the DOJ.

More than Tea Leaves

Despite the new administration's focus on prosecution of domestic crime, the DOJ remains heavily invested in the aggressive prosecution of FCPA violations on both the corporate and individual levels, and corporations must ensure that their compliance programs and measures are active and effective. ◘

This article was first published in the July 2017 edition of Blank Rome's White Collar Watch.

1. *See* http://www.marketwatch.com/story/new-sec-chief-may-have-interest-in-reforming-foreign-bribery-enforcement-2017-01-04.
2. *See* http://fcpa.stanford.edu/statistics-analytics.html.
3. *Id.*
4. *See* http://fcpa.stanford.edu/chart-penalties.html.
5. *Id.*
6. *See* http://fcpa.stanford.edu/statistics-top-ten.html.
7. *See* http://www.fcpablog.com/blog/2015/1/23/paper-the-fcpa-is-a-new-international-business-tax-on-non-us.html.

Fintech Alert: Marine Insurance Embraces Blockchain Technology

BY KEITH B. LETOURNEAU AND LAUREN B. WILGUS

KEITH B. LETOURNEAU
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As we previously discussed in our March 2017 issue of *Mainbrace,* blockchain technology is continuing to proliferate throughout all aspects of industry, including shipping, with Hyundai Merchant Marine ("HMM") recently completing its first pilot voyage from the South Korean port of Busan to the Chinese port of Qingdao employing blockchain technology. HMM used secure paperless processes from shipment booking to cargo delivery, and assessed the feasibility of employing blockchain-enabled-reefer containers combined with Internet-of-Things ("IoT") technologies. Now, blockchain technology is being deployed for the first time in one of the oldest branches of international commerce: the marine insurance sector.

Six industry participants, including AP Moller-Maersk, Microsoft, Acord, MS Amlin, Willis Tower Watson, and XL Catlin, collaborated with Ernst & Young and software security firm Guardtime to launch the world's first blockchain-based platform for the marine insurance industry. The new platform, which will go live in 2018, reportedly will include the ability to create and maintain asset data for multiple parties; link data to policy contracts; receive and act upon information that results in pricing or business process changes (employing smart-contract technology); connect client assets, transactions, and payments; and capture and validate up-to-date first notification and loss data. The new platform will be deployed in the marine insurance industry in 2018, before being rolled out to the wider insurance market.

Blockchain technology provides a decentralized ledger system that allows peer-to-peer transactions that bypass centralized intermediaries while securely recording financial transactions across the ledger in multiple places at once. Put simply, it creates an immutable transactional record across multiple organizations and individuals, in a form not subject to tampering. Blockchain will now be used to capture information on individual vessels, global risks, and exposures, and will be integrated into marine insurance policies and contracts.

The proliferation continues. ◘

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BLANK ROME LLP
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Blank Rome was founded in 1946 in Philadelphia by a small group of entrepreneurial corporate and commercial lawyers. Now, more than seventy years later, Blank Rome has grown to be annually ranked in the Am Law 100 and is among the fastest growing law firms in the country, with over 600 attorneys serving businesses and organizations ranging from *Fortune* 500 companies to start-up entities around the globe.

With 13 offices located in key markets across the United States and in Shanghai, Blank Rome advises clients on all aspects of their businesses, including:

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Risk Management Tools for Maritime Companies

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Blank Rome Maritime has developed a flexible, fixed-fee Compliance Review Program to help maritime companies mitigate the escalating risks in the maritime regulatory environment. The program provides concrete, practical guidance tailored to your operations to strengthen your regulatory compliance systems and minimize the risk of your company becoming an enforcement statistic. **To learn how the Compliance Review Program can help your company, please visit www.blankrome.com/compliancereviewprogram.**

MARITIME CYBERSECURITY REVIEW PROGRAM

Blank Rome provides a comprehensive solution for protecting your company's property and reputation from the unprecedented cybersecurity challenges present in today's global digital economy. Our multidisciplinary team of leading cybersecurity and data privacy professionals advises clients on the potential consequences of cybersecurity threats and how to implement comprehensive measures for mitigating cyber risks, prepare customized strategy and action plans, and provide ongoing support and maintenance to promote cybersecurity and cyber risk management awareness. Blank Rome's maritime cyber risk management team has the capability to address cybersecurity issues associated with both land-based systems and systems on-board ships, including the implementation of the *Guidelines on Cyber Security Onboard Ships* and the *IMO Guidelines on Maritime Cyber Risk Management in Safety Management Systems.* **To learn how Blank Rome's Maritime Cyber Risk Management Program can help your company, please visit www.blankrome.com/cybersecurity or contact Kate B. Belmont (KBelmont@BlankRome.com, 212.885.5075).**

TRADE SANCTIONS AND EXPORT COMPLIANCE REVIEW PROGRAM

Blank Rome's Trade Sanctions and Export Compliance Review Program ensures that companies in the maritime, transportation, offshore, and commodities fields do not fall afoul of U.S. trade law requirements. U.S. requirements for trading with Iran, Cuba, Russia, Syria, and other hotspots change rapidly, and U.S. limits on banking and financial services, and restrictions on exports of U.S. goods, software, and technology, impact our shipping and energy clients daily. Our team will review and update our clients' internal policies and procedures for complying with these rules on a fixed-fee basis. When needed, our trade team brings extensive experience in compliance audits and planning, investigations and enforcement matters, and government relations, tailored to provide practical and businesslike solutions for shipping, trading, and energy clients worldwide. **To learn how the Trade Sanctions and Export Compliance Review Program can help your company, please visit www.blankromemaritime.com or contact Matthew J. Thomas (MThomas@BlankRome.com, 202.772.5971).**

BLANK ROME MARITIME

Blank Rome's Maritime Industry Team

Our maritime industry team is comprised of practice-focused subcommittees from across many of the Firm's offices, with attorneys who have extensive capabilities and experience in the maritime industry and beyond, effectively complementing Blank Rome Maritime's client cases and transactions.

Maritime Emergency Response Team ("MERT")

We are on call 24 / 7 / 365

In the event of an incident, please contact any of our MERT members listed in **red** below.

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