Neutral Citation Number: [2025] EWHC 2033 (Comm)

Case No: CL-2023-000137

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Rolls Building
Fetter Lane
London
EC4A 1NL

Before:

MRS JUSTICE COCKERILL DBE

- -

Between:

CETO SHIPPING CORPORATION

Claimant

- and -

SAVORY SHIPPING INC

Defendant

- -
- -

Chris Smith KC and Caleb Kirton (instructed by **Stephenson Harwood LLP**) for the **Claimant**
Oliver Caplin KC and Eliza Bond (instructed by **Waterson Hicks**) for the **Defendant**

Hearing date: 13,14,15,19,20,21 May 2025

- -

APPROVED JUDGMENT

This judgment was handed down remotely by the judge and circulated to the parties' representatives by email. The date and time for hand-down is deemed to be Thursday 31 July 2025 at 10:30am

Mrs Justice Cockerill:

INTRODUCTION

1. This is the trial of a dispute relating to whether Savory Shipping Inc ("Savory"), the owner of the vessel Victor I (the "Vessel"), was obliged to transfer title in that Vessel to Ceto Shipping Corporation ("Ceto"), on the expiry of a bareboat charterparty dated 28 February 2019 ("the BBC") between the parties.

2. The BBC was unusual, in that it provided that Savory was obliged to transfer title to the Vessel on expiry of the charter term - so long as there were no sums due and owing: (a) to Savory under the BBC; (b) to the Vessel's managers under the existing management agreement with vessel managers Delfi S.A. ("Delfi") ("the Management Agreement").

3. Savory refused to transfer title to Ceto on the expiry of the charter. Its case was and is that sums were due and owing from Ceto both under the BBC and the Management Agreement and so the obligation to transfer does not arise.

4. Ceto contends that this is wrong. It says that:

    1) All hire and other sums directly due to Savory had been paid by Ceto and that the claims on which Savory relies are ones which do not fall within the ambit of the relevant clause. In particular it says that the fact that various third parties had claims in respect of goods and services supplied to the Vessel, and the Vessel had been arrested in respect of some of those claims, is irrelevant.

    2) There are no sums outstanding under the Management Agreement either. That hinges in large measure on whether Ceto validly terminated that agreement in May 2020 on two grounds: (a) a failure to properly document and account for sums charged to Ceto in respect of additional war risk premium; (b) a failure to comply with Ceto's orders to perform a particular sub-charter ("the Imperium Charter"). This latter point raises questions of sanctions risks.

BACKGROUND

The US Sanctions background

5. In this case the sanctions regimes imposed by the US *vis a vis* both Iran and Venezuela are in focus. Both are now well known and of relatively long standing.

Iran

6. A comprehensive sanctions regime had been promulgated via the powers set out in the International Emergency Economic Powers Act ("IEEPA"). Pursuant to IEEPA, in 2018 the President authorised the Secretary of State by Executive Order 13846 ("EO 13846") to impose sanctions on individuals who knowingly

engaged in a significant transaction for the purchase, acquisition, sale, transport, or marketing of oil or petroleum products from Iran. EO 13846 also authorised the imposition of blocking sanctions on those who had materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of the National Iranian Oil Company (the "NIOC") or the Naftiran Intertrade Company (the "NICO"). As set out in an Office of Foreign Assets Control ("OFAC") Advisory to the Maritime Petroleum Shipping Community dated 4 September 2019, individuals who engage in such activities were (and are) at "*serious risk of being targeted by the United States for sanctions, regardless of the location or nationality of those engaging in such activities*".

Venezuela

7. With respect to Venezuela, since January 2019, Venezuela's state-owned oil company, the Petróleos de Venezuela, S.A. ("PDVSA"), had been sanctioned under Executive Order 13850 ("EO 13850"). This followed a determination by Secretary Mnuchin pursuant to EO 13850 that persons operating in the oil sector of the Venezuelan economy may be subject to sanctions. Equally, EO 13850 gave OFAC the power to make designations against persons responsible for or complicit in, or having directly or indirectly engaged in, any transaction or series of transactions involving deceptive practices or corruption and the Government of Venezuela or programmes administered by the Government of Venezuela.

The US Sanctions Regime (1) Primary Sanctions

8. US trade sanctions can be categorised as either primary or secondary sanctions.

9. Primary sanctions are sanctions which are applicable to persons or transactions with a nexus to US jurisdiction, i.e. those involving a US person, US origin products, activity in US territory, transactions with an entity that is owned or controlled by a US person.

10. Similarly, there are blocking sanctions in place which prohibit US persons from dealing in blocked property of a specially designated national. Blocking sanctions apply to property within the United States or that may come within the position or control of any United States persons.

11. Non-US persons can potentially violate primary sanctions if they engage in a transaction with a sanctioned person that has a nexus to the US.

12. Primary sanctions are in place in relation to Iran. In addition, numerous Iranian individuals and entities are the subject of blocking sanctions.

13. For Venezuela, unlike Iran, there is no comprehensive Venezuelan trade embargo. Instead, the US has put in place a number of asset blocking and trade sanctions on the Venezuelan government and certain specifically identified sectors of the Venezuelan economy, individuals and entities.

14. Again, US primary sanctions in relation to Venezuela only apply to US persons.

The US Sanctions Regime (2) Secondary Sanctions and their Enforcement in relation to Iran

15. Secondary sanctions are punitive measures that can be imposed on non-US persons based on their support for or dealings with sanctioned persons, countries or activities. As a general rule of thumb, secondary sanctions are usually imposed where a non-US person has knowingly engaged in a "significant" transaction or provided financial, material or technological support, or goods and services, in support of a sanctioned person or entity. If a non-US person engages in conduct of this sort that creates a risk of that person being designated by the US authorities.

16. In relation to US sanctions on Iran, EO 13846 provides that individuals or entities are at risk of being designated if they:

    1) Have materially assisted, or provided financial, material or technological support for, or goods or services in support of, any person whose property and interests in property are blocked. Both the NIOC and the National Iranian Oil Products Distribution Company ("NIOPDC") were subject to blocking sanctions. Material assistance for these purposes involves direct interactions with a "Specially Defined National" ("SDN"), such as supply or payments, with entities operating one degree of separation away from this not usually being targeted;

    2) Are owned, controlled by or have acted on behalf of any person whose property and interests in property are blocked;

    3) Operate in a designated sector of the Iranian economy. Whilst the Iranian shipping sector is a designated sector, OFAC has clarified that this only extends to vessels flying the Iranian flag or which are owned, controlled, chartered or operated by the government of Iran. The Iranian oil sector was a designated sector, though the petroleum sector was, as at April 2020, not a designated sector.

17. On the question of the extent to which the above tools have been used to designate/impose secondary sanctions on ship owners or other entities involved in the carriage of Iranian oil, the experts are agreed that a report of the Congressional Research Service published in 2022 is a reliable resource for evaluating this.

18. At the time (i.e. April/May 2020), OFAC had designated entities which had provided a direct benefit to, or had direct interactions with, Iran sanctioned entities such as NIOC. For instance, brokers, dealers and purchasers who had provided a direct benefit (e.g. a payment) to Iranian sanctioned entities had been designated by OFAC. In this context, the risk of designation was heightened where the relevant entity had been involved in fraudulent conduct.

19. In addition, vessel owners involved with the Islamic Revolutionary Guard Corp ("IRGC") involving the supply to Syria or Hezbollah had been designated. Further, the masters of five ships that were under the control of the Islamic Republic of Iran Shipping Lines and the National Iranian Tanker Company

(both sanctioned entities), and whose vessels delivered gasoline to Venezuela, had sanctions imposed on them in 2020.

20. In relation to EO 13846, a limited number of non-US persons had been designated at the time the Imperium Charter was due to be performed:

    1) In July 2019, a Chinese stated-owned entity along with its chief executive was designated for knowingly purchasing oil from Iran;

    2) In September 2019, six Chinese companies were designated for engaging in a significant transaction for the transport of oil from Iran;

    3) In March 2020, seven entities (one South African company, and six Hong Kong based companies) were designated for knowingly engaging in a significant transaction for the purpose, sale and transport of petrochemical products from Iran.

21. As can be seen, all of the above designations were, with the sole exception of the South African company, against Asian entities. Of the companies designated, most of them were closely linked to the shipment of the oil itself (i.e. brokers or traders) and/or were fronts for SDNs.

22. It is common ground that as at April/May 2020, no companies had been designated for shipments of Iranian oil to Venezuela.

The US Sanctions Regime (3) Secondary Sanctions and their Enforcement in relation to Venezuela

23. Whilst there are no secondary sanctions in place in relation to Venezuela, OFAC is authorised to designate non-US entities or individuals if they behave in like conduct to that identified above, in relation to Venezuela.

24. Both the oil sector of Venezuela and PDVSA have been identified as subjects of the aforementioned measures. US sanctions in relation to both Venezuela generally and to PDVSA only apply to oil and not to other similar products like gasoline.

25. At the relevant time, OFAC had designated various vessels and entities in relation to the shipping of oil of Venezuelan origin produced by PDVSA with four companies and nine vessels sanctioned in April 2019.

26. In April 2020 US authorities made statements designed to explain to traders that the United States viewed exports of gasoline to Venezuela as sanctionable, warning traders not to undertake those trades. This led to a gasoline supply crisis in Venezuela in 2020.

27. However, no designations had been issued against non-US persons shipping oil or gasoline into Venezuela and/or to PDVSA.

The Contracts

28. Ceto is a Liberian registered company with its registered address at 80 Broad Street, Monrovia, Liberia (an address well known to all shipping litigators) as the address of the LISCR Trust Company, which acts as the exclusive registered agent for all Liberian non-resident corporate entities. Ceto is owned by Ms Mahdieh Sanchouli a resident of the United Arab Emirates ("UAE") and an experienced trader in the shipping and oil and gas trading sectors. She has previously featured in a number of cases before this court, and it is fair to say that she has suffered criticism at the hands of a number of judges, (including myself)[1].

29. On 28 February 2019, Ceto and Savory concluded the BBC under which Ceto chartered the Vessel for a 36-month period. The BBC provided that, on its expiry, and so long as Ceto had fulfilled its contractual obligations, Savory was to transfer title to the Vessel to Ceto. A summary of the relevant terms of the BBC (and other relevant agreements) was very helpfully agreed between the parties and forms the Appendix to this judgment.

30. On the same date, there were meetings involving Ms Sanchouli's associates Dr Rajabieslami and Mr Forouhar, for Ceto and Mr Gialozoglou, Mr Grigoriou, for Savory as well as a broker, Mr Saeid Rafati. Following those meetings Ceto also agreed a Technical and Crew Management Agreement with Opera SA ("Opera"), ("the Opera Agreement") under which Opera became the Vessel's crew and technical managers.

31. On or around 29 February, however, it was agreed by Ceto and Savory, that Delfi would be substituted as managers in place of Opera as Delfi had more of an operating presence in the Gulf. This change was effected by the operation of a Rescission and Release Agreement between Ceto and Opera (the "RRA") and a new management agreement was drawn up giving effect to this (the "Management Agreement").

32. Savory, Delfi and Opera all form part of what may loosely be called the IMS group of companies, which are beneficially owned and controlled by Captain Gialozoglou or members of his family. Captain Gialozoglou was reluctant in his oral evidence to agree to the existence of such a group, but its existence has been acknowledged in previous proceedings involving associated companies, and ultimately Captain Gialozoglou broadly accepted the existence of such a group of related companies with common interests and in respect of which he would make decisions after consulting his family.

33. Delfi owed Ceto various specific duties under the Management Agreement. For present purposes, the most important ones were to arrange and employ the

[1] Integral Petroleum SA v (1) Petrogat and (2) Sanchouli and Ors [2021] EWHC 1365, [2021] BPIR 1458, Integral Petroleum SA v (1) Petrogat FZE and (2) Sanchouli and Ors [2023] EWHC 44 (Comm), Ceto Shipping Corporation v Savory Shipping Inc [2023] EWHC 2995 (Comm) Rajabieslami v Tariverdi [2024] EWHC 1030 (Comm)

Vessel's crew and to arrange and conclude various insurance policies in relation to the Vessel on Ceto's behalf.

Voyages between March 2019 and October 2019

34. The Vessel was delivered under the BBC on 23 March 2019, with the contractual period running until midnight on 31 March 2022.

35. After delivery into the charter service, the Vessel was used to carry cargoes of Iranian oil between Iran and the UAE between March and October 2019. The attempted or completed voyages were (i) Bandar Abbas to Hamriyah (2–16 April 2019), (ii) Bandar Abbas to Fujairah (17 April–13 September 2019) and (iii) an attempted voyage from Bandar Abbas in September 2019. These trades were at Ceto's instigation. They emanated from Ms Sanchouli's contacts in Iran; at the same time they proceeded with the full knowledge and participation of Delfi.

36. For these voyages, two sets of cargo documents were issued: one showing that the Vessel loaded in Iran, the other that it loaded in Iraq. By way of example of how the Vessel was traded in this period:

    1) On 29 March 2019, the Vessel was ordered to Bandar Abbas Outer Port Limits ("OPL") and advised that its loading laycan there was 30-31 March;

    2) The Vessel anchored at Bandar Abbas OPL on 30 March, tendering its Notice of Readiness at 12:00 LT, and, between 21:30 LT on 31 March and 06:54 LT on 2nd April, loaded 45,792.078 MT of fuel oil. A bill of lading was issued which showed the NIOC as the shipper, which was stamped by NIOPDC, and which was signed and stamped by the Master of the Vessel;

    3) On 2 April 2019, the Vessel was ordered to OPL Hamriyah, where it arrived on 3 April, tendering its Notice of Readiness ("NOR") on 6 April and completing discharge between 14-16 April. On 6 April, the Master requested that all cargo documents be amended or issued to reflect the loading port as Basrah, Iraq, drafts of which were supplied the same day and signed by the Master on 9 April, with Delfi's approval. The relevant documents meant to evidence loading at Basrah included a Port Clearance Certificate, Exit Permit, IMO Crew List, Slops Report, Inspection Certificate, NOR, Statement of Facts / Time Log, OBQ Report, Ullage Report, Master's Receipts for Documents and Sample, Certificates of Origin and Quantity, Cargo Manifest and Bill of Lading.

October – December 2019

37. Issues began to arise between Ceto, Savory, and Delfi concerning the performance of the BBC and the Management Agreement. On 3 October 2019, Savory wrote to Ceto withdrawing the Vessel from the BBC on the basis of outstanding hire payments and management fees. In response to this, on 4 December 2019, Ceto arrested the Vessel at Khor Fakkan, UAE.

38. The parties were, however, able to resolve their differences, and agreed to reinstate the BBC and to vary its terms by way of an Addendum to the BBC ("the Addendum"). For present purposes, the Addendum varied the BBC by, *inter alia*, adding Iran to the list of restricted trading areas and by amending Clause 39 of the BBC. Clause 39 was the provision that contained the obligation to transfer title to the Vessel on the expiry of the BBC and which set out the conditions Ceto had to fulfil in order to trigger that obligation. In the original formula it provided for sale "*provided that the Charterers have fulfilled their obligations under this Charter*".

39. The Addendum formula, which lies at the heart of this dispute, was as follows:

> "39.1 Purchase and Sale obligations
>
> On expiration of this charter, and provided that the Charterers have paid all hire and any other sums due under this Charter and provided that the Charterers have also paid all management fees and any other sums due under the Management Agreement to Delfi, it is agreed that Owners will sell the Vessel to Charterers for no further consideration, that title to the Vessel will automatically transfer to Charterers and Charterers will automatically be required to purchase and will be deemed to have purchased the Vessel. The sale will be in accordance with the MOA appended to this contract.
>
> 39.2 Purchase Option
>
> Notwithstanding any provisions in this Charter, the Charterers shall have the option to purchase the Vessel on and an "as is where is" basis with everything belonging to her any item prior to the expiration of the Charter period by giving the owners 28 days' notice in writing ("Notice to Exercise Option") together with payment to the Owners of the following:
>
> (i) all outstanding Charter hire and any other amounts due under this Charter;
>
> (ii) all amounts that would be due under the Charter at the expiry of the Notice to Exercise Option; and
>
> (iii) the balance of the Purchase Price of USD12,976,880, as to which (i) the Down Payment of USD5,000,000 and (ii) any Charter Hire paid under this Charter shall be credited to this figure.
>
> Provided that Charterers have also paid all management fees and any other sums due under the Management to Delfi."

Trading January – March 2020

40. After the Addendum, and despite the alteration to the BBC's trading limits, there was no actual change to the Vessel's trading pattern and the Vessel continued to load cargoes of Iranian oil and to carry them within the area of the Middle East. Thus the five voyages undertaken in this period were:

    1) Kharg Island, Iran to Basrah (10–21 January 2020);

    2) Basrah to Fujairah (24 January–4 February 2020);

    3) Basrah to Fujairah (7–25 February 2020);

    4) Basrah to Fujairah (1–7 March 2020);

    5) Basrah to Fujairah (17–26 March 2020).

41. For these voyages, either duplicate cargo documents were issued for both Iran and Iraq, or the cargo was carried under a NIOC issued Bill of Lading. By way of example:

    1) For the 10 January cargo, the Vessel arrived at Kharg Island in Iran, tendering its NOR on 12 January and, between 13–14 January, loaded 38,463 MT of South Pars Condensate by ship-to-ship transfer ("STS") with the MT Destiny;

    2) Various original cargo documents for Iran were issued, and the cargo was carried under a NIOC-issued Bill of Lading. Separate documents evidencing operations at Basrah were created;

    3) On 16 January, the Vessel arrived at Basrah OPL, where the MT Black Panther came alongside. Discharge by STS commenced on 17 January but was suspended until 21 January due to bad weather, when discharge was completed.

The Imperium Charter (April – mid May 2020)

42. The Vessel was, from January 2020 onwards, under time charter from Ceto to a company called Maddox Energy Limited. On its face that time charter was for six months. However, on 1 April 2020 Ceto chartered the Vessel to Imperium DMCC, for the carriage of gasoline from Sohar OPL to Trinidad and Tobago OPL. The relationship between this charter and the Maddox charter is unclear.

43. It is common ground that the Gasoline was of Iranian origin. The trade, somehow, involved NIOPDC. Savory says, by extension, it also therefore involved NIOC and the IRGC, but that point was not suggested to be material.

44. It also apparently involved a gentleman called Alex Saab. Alex Saab is a Colombian businessman who has been sanctioned by the US since July 2019 as a result of what was said to be orchestrating a corruption network in Venezuela and his involvement with President Maduro. Alex Saab was subsequently, in July 2021, also sanctioned in the UK. Both NIOPDC and Alex Saab continue to

be included in the US SDN list. Alex Saab also continues to be sanctioned in the UK to this date. Perhaps unsurprisingly, the tenor of the evidence about Alex Saab was that he was "a risky guy". It appears that he was the person behind Imperium – certainly by the time the charter had been in effect for some weeks Ms Sanchouli equated Imperium with Alex Saab.

45. The Imperium Charter was arranged by a long-time business partner and friend of Ms Sanchouli, Dr Rajabieslami. It seems likely that a voyage to Venezuela was contemplated from the start; thus Clause 15 of the Imperium Charter specifically provided that cargo documents could be switched "*so as to assure no trace of Iran in the new set of documents. . .*". The Vessel was, separately, informed that its next cargo would be Gasoline RON 87, which required a tank-cleaning operation between 2–4 April, before it was ordered to Sohar OPL.

46. On 2 April, the Vessel was asked for its bunker capacity and told to calculate the bunkers required for a voyage from Sohar to El Palito, Venezuela. On 2 April, on behalf of Ceto "Captain John" (who was either Mr Ali Mohammadi of Petrogat, or Dr Rajabieslami), ordered the Vessel to OPL Sohar so as to undertake an STS of Gasoline from the m/t Venice 1.

47. On 4 April, the Vessel was ordered to Khor Fakkan OPL, on the UAE's eastern coast, and then to Sharjah Khalid port (also in the UAE) instead of Sohar to perform STS loading operations with the MT Venice I. The Vessel arrived there and tendered its NOR on 5 April.

48. Due to the COVID-19 situation at Khor Fakkan, however, an STS could not be undertaken, and the Vessel was rerouted to Sharjah Khalid Port, on the UAE's western coast, where it arrived and tendered its NOR on 7 April.

49. The Vessel eventually loaded 34,610.27 MT of cargo between 8–10 April via STS. On 9 April, the Master (copying in Delfi) asked:

> "For the sake of good order, Please answer/confirm the following queries;
>
> 1.Vsl next port/disport after loading Sharjah for port clearance purpose?
> 2.Confirm vsl will pass via Cape of Good Hope/NOT via Suez canal (if next port confirmed to Venezuela) ?
> 3.Pls advise Charterer name and type of charter party (time/voyage-For bunker statement purpose in Khorfakkan) ?
> 4.Pls confirm bunker quantities to be delivered at K'fan?
>
> 5.Planned re-bunkering at South african ports on her way to Venezuela?
>
> Awaiting your confirmation."

50. Ceto ordered the Vessel to either Port of Spain, Trinidad and Tobago ("T&T") or OPL El Palito. The Master asked whether the destination was Port of Spain, T&T, or El Palito, and Ceto clarified that it should be for either Port of Spain or El Palito OPL (but not El Palito port itself - which is in Venezuela and would be

in breach of the contractual terms). As designating OPL was not permitted, though, the port clearance was arranged solely for Port of Spain.

51. On 16 April, Imperium sent an email to agents Yacht International, Ceto and the Master containing documentary instructions for the cargo documents that had to be issued and signed. The instructions to Yacht and the Master included "discharge port" of "El Palito, Venezuela" (and not just the OPL of that port).

52. "Captain John" immediately responded "*Reference to iraqi documents pls deliver one set for master we need keep documents onboard . pls for destination only put port of Spain in Trinidad or elpalito opl we can not show venezuela.*".

53. On 17 April, Yacht International sent draft cargo documents to the Master with Port of Spain listed as the destination.

54. On or around 18 April, a draft Bill of Lading to the order of Imperium SA DMCC was prepared, which identified Port of Spain as the discharge port. Like the Vessel's previous voyages, Ceto instructed its local agents, Yacht International, to prepare parallel Iraqi cargo documents in line with drafts provided to them. Delfi and the Vessel were copied in to this correspondence.

55. On 27 April, Imperium also asked for the cargo documents to be signed and issued. On 28 April, Ceto asked the Master if the cargo documents had been signed but it appears that no reply was received. A further request to this effect was sent by Ceto on 2 May. Later that same day, the Master enquired whether the draft Bill of Lading had been sent "to shipowners (Delfi SA)" and, if so, whether they had approved the same. The Master explained that *"Once B/L approved from my shipowners & once I received greenlight to sign, I will send letter of authorization agent to sign on master's behalf."*

56. In response, and still during the course of 2 May, Ceto duly forwarded copies of these documents to Delfi for confirmation and signature.

57. Subsequently, on 4 May, Imperium ordered the Vessel to "sail away immediately" for Suez, but no action was taken. Ceto contends that it was clear by this point in time that the crew and/or Master were refusing to perform the voyage.

58. On or around 10 May 2020, Dr Rajabieslami spoke with Captain Gialozoglou about the standoff. Ceto contended that in that conversation, Captain Gialozoglou offered to allow the Vessel to proceed to T&T if he was paid US$1,000,000. Savory and Captain Gialozoglou denied this.

59. On 12 May Ceto sent a letter via email to Delfi, which is addressed to Savory and Opera and requested (a) that the Imperium Charter be performed per its/Imperium's instructions by proceeding to T&T and (b) that Delfi provide certain insurance documents which it had previously requested – dealt with separately below. Ceto complained that the Master had refused to sign the cargo documents and sail to T&T, which it said was the intended destination. This was the first in a series of communications in which Ceto sent letters to Savory and

Opera relating to the Opera Agreement and the Charter (apparently in the mistaken belief that Opera was the Vessel's manager).

60. On 13 May, Ceto again chased Savory's approval of the cargo documents sent on 2 May and their local agents requested a sailing schedule.

61. That day, Delfi/Savory replied to Ceto's emails, stating that they refused to perform the Imperium Charter:

> "Dear Sirs,
>
> 1. in response to your letter please note that we have clearly advised you verbaly on many occasions that the vessel cannot proceed to this voyage with an iranian cargo (Venice I) to Venezuela delivery via sts? you are fully aware that apart BB exclusions there are pandi hull insurance in restrictions place followed US sactions . we have invited you to settle outstanding balance , take over the vessel and perform any voyage you wish.
>
> 2. onwers cannot take such risks and for once more we invite you to take over the vessel bring this matter to an end. we invite you to withdraw your letter within 24 hours , avoiding owners proceed in High Court seeking declarations ref cargo origin and destination.
>
> 3. additionaly ,please consult with your charter (Maddox) who has a dept of a compromised settlement euro 230k from another charter and who was to settle via Victor lialbilities avoiding again taking steps against cargo/bunkers."

62. Ceto responded that the destination was T&T not Venezuela, relying on the present state of the draft cargo documents "*Regarding trading area of vessel , Definitely port of Spain OPL in Trinidad is allowed Area in Our BB and it does not mean Venezuela. You can refer to the requested BL and cargo manifest on board vessel as supporting documents for vessel 's destination. No-one can interpret or judge in advance that vessel destination is Venezuela.*" It sought to draw similarities between the intended voyage and that of three other vessels, the Bella, the Bering, and the Luna (of which more will be read later).

63. On 15 May 2020, Imperium proposed (with "charter@imssa.gr" copied) two options. The first was that US$4,900,000 was paid by Ceto and Imperium, "*SAVORY SHIPPING and CETO SHIPPING shall immediately fulfill UAE-Venezuela voyage*". The second was that charterers terminate the Imperium Charter and discharge cargo via STS.

64. Delfi responded to Ceto's email that it was factually apparent that the Gasoline was due to be delivered into Venezuela, and "*we cannot take the risk to be part of this chain of this carriage to destination. Therefore if you maintain to perfom this voyage we invite you once more to take over the vessel and effect any voyages under your own name and risk.*" They also stated with respect to

AWRP, "*please note that we have clearly provided with supporting documentation.*"

65. Ceto responded by a further letter on 15 May, addressed to Savory and Opera. It denied the destination of the Gasoline was Venezuela, relied again on the voyages alleged to be occurring for the Bella, Bering and Luna, and denied that Savory/Opera had any rights to prevent the voyage taking place even if the Gasoline's destination was Venezuela. They also asked for further AWRP documents, in particular contracts with, and invoices issued by, underwriters – this again reiterated that the orders to perform the voyage were lawful and called on Delfi to give the necessary instructions to the crew.

The Four Vessels (January – early May 2020)

66. One of the arguments made by Ceto in its 15 May letter (and relied on at trial by Ceto) was that Captain Gialozoglou/IMS were, at that very moment in time, engaged in carrying other consignments of Iranian gasoline to Venezuela on vessels owned by it/Captain Gialozoglou. These vessels were the m/ts Bella, Bering, Luna and another called Pandi ("the Four Vessels").

67. Ceto says that the facts surrounding the Four Vessels (in concert with the Vessel's own earlier trading history ex Iran) mean that those in control of Delfi could not have formed a view at the relevant time that to perform the Imperium Charter (i.e. the carriage of Iranian oil to Venezuela) would have exposed the Vessel to US economic sanctions and/or otherwise been hazardous or contrary to applicable laws.

68. Savory did not take issue with the existence of the Four Vessels charters, or the fact that they were carrying consignments of Iranian gasoline. However, there were issues as to whether the true destination was known to Captain Gialozoglou and whether, as Savory contended, the cargo documents for the Four Vessels only ever referred to discharge in T&T, and the underlying charters were for carriage to the Caribbean.

69. Savory also says that what did ultimately happen to the Four Vessels adds weight to its own case on sanctions risk.

<u>The Four Vessels Charters</u>

70. The Four Vessels were chartered in April/May 2020 by a company called Mobin International Ltd ("Mobin"). A Mr Madanipour was behind Mobin. Mr Madanipour is on the SDN list, has been imprisoned in Iran and a number of other colourful stories attach to him.

71. The cargoes loaded on the Four Vessels were of Iranian origin. If Captain Gialozoglou did not know this for a fact he had a very good basis for inferring it, and I find that he did infer it.

72. Part of the picture here is the charter concluded in January 2020 for the Pandi. That provided for that vessel to load gasoline in Bandar Abbas and carry it to Hamriyah, UAE for freight in the sum of US$630,000. While that January

charter was not one of the Four Vessel Charters, the actual cargo loaded on this charter voyage was later transshipped and was the cargo loaded on the Bella Four Vessels Charter - so the origin of that cargo at least was known for sure to Captain Gialozoglou. Given that and given the close relation between the four charters it seems fair to conclude that Captain Gialozoglou inferred that the other cargoes were also Iranian cargoes.

The destination of the Four Vessels

73. The next question is what Captain Gialozoglou knew about the destinations of the cargoes. Each of the charters listed the intended voyages as being from Port Khalid to the Caribbean. Cargoes were loaded on the Four Vessels between 17 April and 15 May. Bills of lading were issued for each of the Four Vessels detailing T&T as the destination.

74. Ceto says that the intent to discharge in Venezuela is evident from high charter rates (in that the Pandi charter rate was US$4,500,000 and the others US$3,750,000 and US$4,000,000) and what it submits is evidence of addenda to the Four Vessels Charterparties.

75. This latter submission arises from a document produced very close to trial by Mr Madanipour which was said to be an Addendum for the Pandi (the "Pandi Addendum") dated 3 April 2020, and on its face showing discharge in Caracas. Its authenticity is the subject of dispute, and the circumstances in which it came to be before the court are not entirely satisfactory: Mr Madanipour apparently told Ms Sanchouli that he could provide her with documents relating to the Four Vessels and subsequently did so. The native format documents were not provided and nor did Mr Madanipour give a statement or attend to give evidence. The document first seems to have emerged in June 2020 – by which time, as we shall see, the Four Vessels had gone silent; thus there may or may not have been a reason to gild the lily at this point. Similarly, payment of hire in accordance with the alleged addendum could equally be representative of a genuine document, or of "retrofitting" the addendum.

76. There is at the same time some evidence which is consistent with it being an authentic document. In the first place on its face it dovetails with the charter amount and the April correspondence positing a long voyage for the Pandi leading to its substitution out of the charter because of its hull condition. Secondly the terms are credibly "owner friendly". Ceto also relied on some evidence relating to the Bella namely (i) the way that Bella was chartered the same day that the Pandi correspondence raised concerns (ii) the cross reference on the Bella invoice to the January Pandi charter and (iii) the fact of the substitution as indicating a long voyage rather than shifting OPL Hamriyah to Hamriyah itself.

77. There is no direct evidence for the other two of the Four Vessels although there is some evidence for an Addendum dated 19 May for the Luna via the reference to one in the invoice and the increase in freight which that invoice reflects. As regards those vessels Ceto simply says that in circumstances where Mr Madanipour and Mobin, on the one hand, and Captain Gialozoglou, on the other hand, thought it appropriate to include addenda specifically providing for the

position under two of the four vessel charters, it is likely that they would have done so for the other two vessels as well.

78. A further point relied on was that on 20 May Mobin instructed one of the Four Vessels to proceed to a location with co-ordinates in Venezuelan territorial waters and nominated a Venezuelan shipping agency for discharge.

79. At worst, Ceto submitted the evidence indicated that IMS/Savory/Delfi knew and were happy with the Four Vessels going to Venezuela.

80. As to this, while Mr Smith KC wove the pieces of this argument together with considerable skill, the evidence fell some way short of the claims made for it. The Pandi Addendum raises no more than speculation. It is, as Savory submitted, somewhat odd for such a document to specify a voyage to Caracas, which is a city some distance from the coast and hence does not have port limits (the Pandi Addendum refers to OPL Caracas). It is also suggestive that it appears in a form where it was emailed internally – there is no version which crosses the line to the vessel owning companies. The document was put to Captain Gialozoglou at some speed, and to some extent, because of the way in which it came to be in the documents, shorn of context. In the context of a situation where it is apparent that those involved in the trade of Iranian oil did not hesitate to produce deceptive documents the possibility (alluded to by Captain Gialozoglou) that this document was not genuine either is as much a possibility as that it was genuine.

81. This segues into one aspect of the plentiful disclosure issues between the parties. Ceto contended that the absence of the alleged addenda – and in particular the alleged Pandi Addendum – was the result of a failure by Savory to disclose such documents. It was submitted that such documents should have been disclosed by Savory in this litigation on the basis of DRD issue 5: *"Whether other companies owned or controlled by Mr Gialozoglou and/or other vessels under the same effective control carried out and/or were ordered to undertake voyages with cargo being transported to Venezuela, and what happened subsequent to those orders."*

82. On the face of it that might seem like a powerful point for Ceto. However, it is necessary to recall that this is litigation between Ceto and Savory only, and that the documents of other IMS owned or affiliated companies would not, in the usual course of events, be in Savory's power or control. This point was raised at an earlier stage in the litigation in "reams of correspondence" and as a result Ceto accepted a Model D disclosure search which did not include those companies as custodians. Then it was raised by way of specific disclosure application, and Ceto were ordered to pay an outstanding costs order if they wished to pursue that application; they chose not to do so and that application was struck out. No attempt was made to compel those documents from the vessel owning companies (Captain Gialozoglou) by other means, such as via a letter of request. Accordingly, to the extent I was invited to draw an adverse inference because of the absence of disclosure or use the absence of disclosure as part of the material available to support an inference as to the destination of the Four Vessels and Captain Gialozoglou's knowledge of that, I conclude that to do so would be wrong and contrary to principle.

83. Accordingly, I do not consider that the evidence which is before the court enables me to conclude that it is more likely than not that the Pandi Addendum was genuine. Accordingly, it follows that the inference that there were addenda for each of the Four Vessels charters and that IMS/Savory/Delfi knew and were happy with the Four Vessels going to Venezuela is not one which can properly be made.

The fate of the Four Vessels

84. The next stage is what happened to the Four Vessels. Each of the Four Vessels set out on its voyage.

85. From mid-May onwards (i.e. approximately at the same time the Imperium Charter issues were live), various authorities became involved in the voyages, concerned that they were, either via the cargo's alleged Iranian origin, or its presumed delivery into Venezuela, in breach of US economic sanctions:

    1) On 22 May, the Liberian International Ship & Corporate Registry ("LISCR") (being the Flag State of the Bering and the Bella) made enquiries regarding the origin of the cargo aboard those vessels;

    2) On 24 May, the owners of the Bering and the Bella were contacted by the US Special Representatives for Iran at the US State Department and alerted to the fact that the cargoes being carried by the vessels might be linked to IRGC;

    3) On 28 May, the American P&I Club contacted the managers of the Bella indicating that it had heard that the US Government had concerns that the Bella was transporting Iranian cargo to Venezuela in breach of US sanctions. They asked for comments by return, and an explanation of the circumstances which may have given rise to this concern. They made clear that the Club could not provide any cover in respect of petrochemical cargoes of Iranian origin being traded to Venezuela, and thus that there would automatically be no P&I cover for the voyage;

    4) On 29 May, LISCR gave advance notice of cancellation of the Pandi's registration, to be effective from 12 June;

    5) On 5 June, North P&I ("North") terminated the P&I cover of the Bering and gave a notice of cancellation in respect of the Delfi "fleet";

    6) On 11 June, North terminated the Pandi's P&I cover.

86. The responses are not part of the documentation before me, but it appears that cover was continued, save as to direct cover for Pandi (though the statement of Mr Hicks in the July 2020 proceedings suggests that American P&I Club continued to cover all of the Four Vessels). The submission for Ceto that Delfi must have lied to the clubs appears to be a considerable overreach – there are plainly other possibilities which are equally probable.

87. At about the same time the American P&I Club asked Delfi for written confirmation that the Vessel did not have sanctioned cargo onboard and for full details of the Vessel's trading activity.

88. By 9 June, Mobin had issued notices of claim in relation to each of the Four Vessels: (i) Bering; (ii) Pandi; (iii) Luna; (iv) Bella. On 13 June, the owners of the Four Vessels indicated that they were returning to the Arabian Gulf, and sought to settle the situation with Mobin. On 22 June, the various vessel manager entities sent draft settlement agreements to Mobin. These documents essentially explained that while the vessels had been fixed to transport cargoes of gasoline from the UAE to STS Caribbs/T&T, allegations had been made in transit that the carriage was a breach of US sanctions law. The settlements, effectively wash outs of the charters, envisaged the cargoes being redelivered to Mobin at Hamriyah. Mobin countered.

89. In the meantime, the owners of the Four Vessels approached this Court to obtain (and did obtain) urgent injunctive relief against Mobin and other entities, entitling them to withdraw the Four Vessels from their charters on account of the situation that had developed.

90. On 2 July, the United States Court for the District of Columbia (the "USDC") issued an arrest warrant for the gasoline that was aboard the Four Vessels. The warrant was served on the vessel owning/managing entities. On 1 September the USDC ordered the sale of the cargoes. The owners of the Four Vessels cooperated with the US authorities and forfeited the cargoes to the US Government. Captain Gialozoglou has said that this caused Mr Madanipour to issue death threats to Captain Gialozoglou and his family.

Ceto's Demands in relation to the Vessel's Insurance (March – May 2020)

91. In addition to the dispute relating to the Imperium Charter, a separate issue had arisen between Ceto and Delfi in relation to the additional war risk cover that Delfi had allegedly concluded on Ceto's behalf and for which Delfi was charging Ceto US$72,000 per month. This was an issue which was referred to in Ceto's 15 May 2020 letter and which had been live between the parties for some time.

92. From June 2019 onwards, the Vessel's trading pattern was such that it was almost constantly in need of additional war risk cover. Delfi accordingly purported to arrange such cover and to charge the AWRP to Ceto (the first AWRP invoice is dated 27 June 2019). The amount charged by Delfi for this cover was, from August 2019 onwards, US$72,000 per month.

93. Alongside the correspondence noted above in relation to the Imperium Charter between 1 March and 15 May 2020, Ceto had been corresponding with Delfi requesting that it provide all of the supporting documents in relation to the AWRP Ceto was being charged, including copies of the invoice from the relevant insurance company. Ceto's reason for requesting these documents was that it believed that Delfi was over-charging it for AWRP.

94. Delfi first responded on 3 March 2020 providing Ceto with debit notes from the brokers who had arranged the cover, European Link SA ("European Link").

95. On 6 May Ceto emailed Delfi:

> "We appreciate that your firm is taking care of providing War insurance for Victor 1.
>
> Previously we requested for supporting document for AWR and the only document we received was a debit note from a broker called European Link SA that does not meet our requirement at all.
>
> I will appreciate if you could send us all the invoices issued by insurer (not broker) alongside with copy of the policy started from 01.06.2019 until present."

96. No response was received to this message.

97. On 12 May 2020, Ceto sent an official letter to Delfi again requesting the relevant insurance documents, and making the point that Delfi, as Ceto's agent, was obliged to account for expenditure supposedly incurred on Ceto's behalf. No response was received, and a further chaser was sent on 14 May 2020.

98. Delfi responded later on during the course of 14 May 2020 claiming that it had already supplied the supporting documentation. On 15 May 2020, Ceto wrote back to Delfi stating that it was asking for the original documents for the AWRP and noted that it had still not received them. Ceto sought in particular contracts with, and invoices issued by, underwriters.

The Termination of the Management Agreement

99. On 18 May, Ceto sent a further letter to Savory, giving notice of alleged breaches. The first was an alleged failure, under clause 4 of the Opera Agreement, to provide a crew that would follow Ceto's orders. The second was a failure under clause 5 to account as Ceto's agent for the AWRP expenditure. Ceto asked Opera (not Delfi) to remedy the defaults by 18:00 GMT on 20 May 2020, and asserted contingent termination rights under clause 18.1 of the Opera Agreement.

100. On 20 May, before the deadline, Ceto sent a fourth letter to the Master individually and Opera (again in error), requesting that he comply with all contractual orders issued by it and Imperium by the stipulated deadline. It stated that if the Master did not comply with Ceto's order to sign the cargo documentation Ceto would "*take any and all steps against [him] for his failure to comply with his obligations*".

101. On 21 May 2020, Savory's solicitor, Mr Hicks, asked Ceto to consider the "possible solutions" outlined in Imperium's 15 May email.

102. Neither Delfi nor Savory responded or took any other action. On 21 May, therefore, Ceto sent a fifth letter, (the "Termination Letter") in which it

purported to formally terminate the Management Agreement, pursuant to Clause 18.1 thereof and/or at common law. Whether and to what extent this purported termination was effective to terminate the Management Agreement is a legal issue in dispute.

103. Ceto instructed that the Vessel sail to Khor Fakkan, where the crew was to disembark for repatriation, and that all information be shared for a smooth transition. By reply on 22 May, Delfi made clear that it, and not Opera, was the manager. It nevertheless addressed Ceto's concerns. It denied all of the alleged breaches and contested the validity of Ceto's termination.

Events Post-Termination

104. In the meantime, Ceto set about trying to have the crew of the Vessel removed and replaced, steps which Delfi did not accept were open to Ceto. Ceto refused to accept Delfi was the manager cf. Opera. On 23 May it unilaterally nominated Universal Marine Shipmanagement LLC ("Universal") as the new manager to replace Delfi, and informed Delfi of this by letter the same day. Savory refused to accept that the Management Agreement had been terminated and, in any event, objected to Universal (including, on 1 July, reiterating a request for their credentials and references).

105. On 31 May Ceto chased Opera (incorrectly) for information about the Vessel's insurances to assist in the desired changeover to Universal.

106. On 31 May, Ceto asked the Vessel not to send updates to Imperium anymore, explaining that it was "important". On 1 June Delfi sent Ceto a routine invoice for charter hire, management fees, and AWRP. Ceto responded refusing to pay the management fees on the basis that the Management Agreement had been terminated. Delfi chased. Amongst the Ceto/Delfi impasse, Delfi were contacted on 5 June by the American P&I Club (the Vessel's P&I insurer). They asked for information regarding the Vessel's trading and its pattern, and followed up on 16 June, having consulted OFAC, seeking confirmation that the Vessel did not have on board any "illicit or sanctioned cargo". Delfi passed the exchanges on to Ceto.

107. The Imperium Charter was never performed.

<u>The change to Saint James as managers</u>

108. On 30 June, in an exercise of pragmatism, Delfi and Savory agreed to accept Ceto's requests for the manager to be changed (not accepting the prior termination had ever been valid or effective). Savory/Delfi asked for: (i) the background and references of the new proposed manager; (ii) the identity of the new insurers and the proposed terms; (iii) required that the new management agreement be based on the Delfi Management Agreement's terms; and (iv) ask for all sums owed to Delfi be paid. These were all entirely professional and reasonable things for Delfi and Savory to have asked for in order to ensure a smooth transition to a new manager who was capable and able to manage the vessel effectively.

109. On 1 July Stephenson Harwood gave further information about the new proposed managers, Universal, a Ukraine based company, and indicated that they (Universal) would be arranging the insurances, and explained the new agreement would be based on the BIMCO 2009 ship management agreement. Waterson Hicks asked for full background details to Universal, including references. They also asked for details of proposed insurances explaining that the current insurances were obtained on a fleet basis, and that Savory would need to approve the terms of any new insurances that Ceto procured, and ensure they provided the same cover. Delfi's and Savory's own research led them to conclude that Universal had neither the credentials nor experience to manage a tanker.

110. By 15 July, Savory was in principle willing for the management of the Vessel being transferred to a company proposed by Ceto called Saint James Shipping Limited ("Saint James"), subject to various conditions which were communicated to Ceto in the following days.

111. Following a teleconference on or around 16 July, Delfi's solicitors, Waterson Hicks, confirmed that Savory would accept a transfer of management to a third company, Saint James, provided certain conditions were met. On 17 July, Delfi confirmed that it did not object to Saint James' management. On 19 July, Ceto rejected Delfi/Savory's proposed conditions in an email which accused Savory of stealing the Vessel. . This prompted Ceto to file a criminal complaint, which led to the Master being questioned ashore by the local police in Sharjah, an experience he shortly thereafter wrote was "terrible and unforgettable". He was kept in jail overnight. There is evidence that Ms Sanchouli was present at and around the interrogation alongside a lawyer from Stephenson Harwood and that she warned/threatened him of the potential for long term imprisonment in the UAE. Following this unpleasant experience the Master signed a document indicating that he would comply with Ceto's orders without caveat. Ms Sanchouli then sent through on 21 July the "orders" that the Master had to including a request that the Imperium charter cargo be discharged by STS. Those in control at Delfi were worried for the Master and crew. Notwithstanding the commercial disagreement that was going on between them and Ceto, they agreed for humanitarian reasons to provide the confirmation Ceto had sought in order to ensure the Master was not kept in custody any longer. Waterson Hicks protested officially to Stephenson Harwood about the situation.

112. In parallel tripartite discussions continued between Savory, Saint James, and Ceto to try and find a way forward. Mr Sam Tariverdi of Saint James wrote to Ceto on 20 July explaining the progress he had made after a meeting with Captain Gialozoglou. Saint James shared future insurance plans with Delfi. Ceto formally requested Saint James to become the Vessel's manager on 22 July.

113. Matters stalled, and Ceto tried a number of times in August to change the crew without Delfi or Savory's permission. By 25 August, the position was that Delfi were waiting for Saint James to be in a position to take over the management of the Vessel, but Saint James were not ready. Delfi continued to provide assistance to Saint James to effect the transfer as soon as the latter was ready.

114. The Gasoline was eventually discharged from the Vessel to Imperium (or possible to Maddox) on 25 July 2020 at Khor Fakkan, via STS to the MT Gulf Mishref.

115. Saint James was, by 3–4 September, ready to assume management. Stephenson Harwood wrote to Delfi and Waterson Hicks to state that they had now been given confirmation by Saint James that they were, as of that point, ready in terms of "*crew and in terms of the technical management of the [Vessel] to take over*". Savory responded explaining that Saint James was not, in fact, ready to take over the management of the Vessel at all. With respect to a change in management: (i) there had been no application to class; and (ii) no application had been made to the flag state. To finalise Saint James' appointment with the Vessel's flag authority (the Liberia Maritime Authority), a letter on Savory's stationery was required (among other items), which Saint James requested on 4 September.

116. Waterson Hicks responded on 11 September, explaining in material part that Savory still awaited sight of a copy of the Saint James/Ceto ship management agreement, along with information about the P&I, H&M, war risks cover, mortgagee interest cover, and flag state documentation. Waterson Hicks also complained about the repeated attempts by Ceto and Saint James to bring new crew aboard before any change of management was agreed.

117. By 25 September, Savory was content with the draft P&I cover with Skuld that had been proposed. But it was not content with the proposal that the Vessel's H&M cover be provided with Russian insurer Ingosstrakh who had only a B rating and, Savory understood, a poor payment history. Savory insisted on the cover being placed in reputable Western markets. It had a right to do so, it said, under clause 43.1.1(v) of the BBC. Neither had Savory received a copy of the proposed management agreement (which was eventually sent the next day. Against that background, Savory contended it had no obligation to issue or sign any documents in relation to the transfer (which was Ceto's complaint).

118. For its part Ceto contended that difficulties with insurance (and hence hand over) were increased by Savory and Delfi. It complained of Delfi's repeated refusal to acknowledge or provide copies of the Vessel's existing policies and the fact that very few, if any, insurers on the Western market were willing to underwrite vessels that were associated with IMS/Captain Gialozoglou. As part of the discussions during this period, Delfi finally provided disclosure of one of the Vessel's insurance policies (the H&M policy). Somewhat remarkably, this revealed that Ceto had not even been named as an insured in this policy. Whilst Delfi moved to rectify this, that rectification only took effect as of 6 November 2020.

119. Further exchanges between the parties took place, on 25 September 2020. Ceto applied to this Court for an order compelling the transfer of management from Delfi to Saint James. That application was heard in November 2020.

120. Meanwhile on 29 September, Savory indicated that it required trading limits excluding Iran and Venezuela to be put into the ship management agreement. It noted that management fees to Delfi of over US$1m were outstanding. It also

noted that Saint James was apparently unwilling to take over the management at that time as Ceto owed it US$700,000. Savory once again rejected Ingosstrakh.

121. By this point the parties' dispute about the manager change had entered this Court via various applications and cross-applications. On 6 October, subject to receiving certain documents from Savory, Saint James confirmed it was ready to take over management. The only issue that prevailed then, by this stage, was the identity of the H&M insurer. Ceto wanted Soglasie, another domestic Russian insurer with a B+ rating about which Savory received negative advice in late October. Savory said they were unacceptable.

122. After a series of hearings before Sir Michael Burton GBE, Ceto went away at the Judge's direction and on 11 October came back with an improved position of insurance from the London market and provided a draft cover note. 20% of the cover was placed with two Russian insurers, United and Euroins. Savory checked the cover with its broker advisers. The cover did not work out.

123. On 11 November 2020 there was a further hearing before Sir Michael Burton. He effectively adjourned the hearing, on terms requiring both sides to take relevant steps. So, Ceto were ordered to provide evidence of any further hull and machinery and war risks insurance proposal by 5pm on 12 November. Savory was ordered by the Court to sign a letter to the flag state and provide Ceto with an ISM declaration. Savory was further restrained from seeking to withdraw the Vessel from the BBC.

124. On 12 November, Ceto approached Savory with a Nordic Hull Club led policy, placed by Cambiasso Risso (who had placed the prior policy for Savory). On 14 November, Savory confirmed its acceptance of the H&M insurance and indicated it would liaise with Saint James to finalise the transfer of management to them. Savory issued the documents required to the Liberian Registry on 16 November. On 22 November 2020 the transfer of management took place.

125. Throughout the period May to November, Delfi had continued to in fact provide its services to the Vessel qua technical manager. In addition to paying the crew wages and bunkers, and the provision of all of the Vessel's mandatory insurances, Delfi also arranged for a surveyor to attend the Vessel and arranged and paid for provisions for the Vessel, including food, water, and medical care for an ill crew member. Between 27 May until 22 November, Delfi also continued to send management invoices to Ceto in the amount of US$1,488,000. This is acknowledged by Ms Sanchouli.

Events between November 2020 and March 2022

126. Following the transfer of management from Delfi to Saint James on 22 November, the Vessel remained (untraded) in Port Rashid until the end of March 2021. Ceto ascribes this to "paperwork issues". The crew were unpaid.

127. Thereafter, until January 2022, the Vessel undertook limited trading under Saint James' management, including:

    1) A voyage charter with Fast Freight Pte in March 2021;

2) A time charter with Hellios Marine Limited between 24 April – 3 July 2021;

3) Two voyage charters with Global Shipping FZE between 1 July and 4 September 2021 and 5 September 2021 to 14 February 2022.

128. On or around 11 March, Ceto learned that the Vessel's crew were on strike – the consequence of a lack of crew wages being paid since around the start of the year. On 25 March 2022, the Vessel arrived in Singapore and the Master requested orders from Ceto. On the same day, the Vessel was arrested for non-payment of crew wages, and Saint James sent the arrest papers to Ceto. Ceto's position is, *inter alia*, that Saint James was responsible for paying the crew, as these sums were included in the management fees paid by Ceto to it.

Expiration of the BBC in April 2022 and Subsequent Events

129. On 31 March 2022, Stephenson Harwood wrote to Waterson Hicks asserting that Ceto had paid all hire and other sums due (it being Ceto's position that no sums were due to Delfi) and seeking confirmation that Savory would transfer title under clause 39.1 of the BBC.

130. At 00:00 LT on 1 April 2022, the BBC expired. Despite further requests by Ceto, Savory did not transfer title to the Vessel. On 1 April, Savory stated that it would not transfer title because, inter alia, early-termination and management fees remained outstanding under the Management Agreement and because the Vessel was under arrest on account of the non-payment of crew wages, a position it maintains. Ceto disputed this, and the parties engaged in extended correspondence. It is, however, agreed that Ceto paid all hire due under the BBC.

131. On 6 April, Savory offered to regularise the situation (and therefore transfer title) if the outstanding payments were made within 48 hours, despite the presence of sums due and owing. This sentiment was reiterated on 7 April. No such payment was made, and on 8 April, Waterson Hicks wrote to Stephenson Harwood informing them that Ceto was in repudiatory breach of the BBC owing to the non-payment of management fees.

The Singapore Proceedings

132. A raft of actions commenced before the Singapore High Court in and around the time the BBC expired. They all relate to liabilities incurred by Ceto to third parties in connection with its operation of the Vessel during the currency of the Charter. These are said by Savory to be sums that Ceto was obliged to pay under clause 10(b) of the Charter and hence sums that were "due" to be paid under the Charter for the purposes of Clause 39 of the Addendum.

133. The Singapore Proceedings were all started as *in rem* claims against the Vessel and Savory (qua its owners). The most pertinent (because the underlying debts/claims are admitted or have been determined to be correct) are:

1) HC/ADM 19/2022: A US$300,000 claim commenced by an *in rem* claim by the crew on 25 March 2022 (before the Charter expired) for unpaid wages from 1 January 2022 onwards (the "Crew Claim");

2) HC/ADM 38/2022: A US$222,000 claim by Arte Bunkering OÜ ("Arte") for 300mt of bunkers supplied to the Vessel on or around 24 February 2022 and which had been due by 26 March 2022 (the "Arte Claim"). Ceto intervened in the claim, which was later advanced by Arte in arbitration against Ceto. Arte's claim has been fully upheld in a Danish arbitration award (the "Award") and has since been successfully registered against Ceto in Singapore. Arte had also commenced an arbitration against Savory for the same sum, which has been stayed;

3) HC/ADM 26/2023: A US$242,133.94 claim by Meck Petroleum DMCC ("Meck") for bunkers supplied to the Vessel on 6 and 26 June 2021, and for which payment had been due on 21 June and 11 July 2021 (the "Meck Claim").

134. On 31 May 2022, Ceto brought a Part 8 claim against Savory (the "Part 8 Claim"). Ceto sought to establish that, under clause 39.1, ownership of the Vessel had automatically vested in it upon the expiry of the BBC, even though the parties were in dispute about the satisfaction of the Conditions. The Part 8 Claim failed. On 21 October 2022, this Court held that, under clause 39.1, there was no duty to transfer title to the Vessel if any sums were, in fact, outstanding under the Management Agreement.

135. On 30 December 2022, pursuant to the action brought by the crew, the Vessel was sold via judicial auction for SGD 15,422,601.00. It is common ground that, under clause 39.1, Ceto will acquire title to these proceeds of sale (which remain deposited in the Singaporean court in the amount of SGD 12,548,035.67, net of crew claim and other costs and expenses) if it is/was entitled to acquire title to the Vessel.

136. These proceedings were commenced by Ceto on 9 March 2023.

THE ISSUES

137. The list of Common Ground and Issues identifies 22 issues between the parties. That is however somewhat deceptive, because the parties agree that there are three main issues in this case, although they categorise and frame them slightly differently. Although the simplicity of Savory's headline summary is tempting, the reality is that the important factual aspects of the case suggest a more detailed formulation.

138. The upshot of the relevant provision in the Addendum was AS both parties agreed) that Savory would sell the Vessel to Ceto at the expiry of the Charter on the terms of the MOA, and that title in the Vessel would automatically transfer to Ceto at that time, if (and only if) the following conditions had been met (the "Conditions"):

1) Ceto had paid all hire due under the Charter ("Condition 1");

2) Ceto had paid "any other sums due under this Charter" ("Condition 2"); and

3) Ceto had paid "all management fees and any other sums due under the Management Agreement to Delfi" ("Condition 3").

139. I conclude that the issues which arise are best summarised thus:

1) Underlying claims and Condition 2: Do the underlying claims or liabilities that arose during the currency of the Charter, and later formed the subject of the Singapore Proceedings, give rise to unpaid "*sums due under this Charter*" by Ceto?

2) Management Agreement and Condition 3: As a result of Ceto's actual or purported termination of the Management Agreement on 21 May 2020, were there sums due and owing under the Management at the expiry of the BBC? This breaks down into the following sub-issues:

a) Firstly, was Ceto entitled to terminate the Management Agreement on account of Delfi's breaches relating to the Vessel's insurance cover?

b) Secondly, was Ceto entitled to terminate the Management Agreement on account of Delfi's refusal to perform the Imperium Charter?

c) Thirdly, was the termination valid under the Management Agreement or at common law? and

d) Fourthly, if the Management Agreement was validly terminated by Ceto, did further sums nonetheless accrue thereunder in favour of Delfi which were unpaid by Ceto as at the expiry of the BBC?

3) If there were any sums due and owing as aforesaid, has Ceto forever lost its right to have title to the Vessel transferred, or can it pay those sums now so as to oblige Savory to transfer title?

THE TRIAL

Witnesses

140. The Court heard evidence from the following witnesses.

Witnesses of Fact

141. For Ceto: Mr Forouhar, Ms Sanchouli and Dr Rajabieslami. All of these witnesses gave their evidence remotely. Mr Forouhar from Stephenson Harwood's offices in Piraeus, Ms Sanchouli from Stephenson Harwood's offices in Dubai and Dr Rajabieslami from NSN Law Firm offices in Istanbul, Turkey.

142. For Savory: Captain Gialozoglou and Mr Grigoriou. Both of these witnesses gave their evidence in person.

143. It is fair to say that this was not a case notable for impressive factual evidence on either side.

1) Ms Sanchouli unfortunately justified the caution which her position as an unrepentant contemnor (previously sentenced to prison for that contempt) naturally might indicate was appropriate. She was often defensive and evasive, giving the impression that she was weighing how much she would confide to the court and how. While I do make allowances for the fact that her English although excellent was not necessarily faultless, and it is possible that matters such as differences in intonation meant that she did not fully understand all the nuances of some questions, she gave the impression that she was giving answers not necessarily by reference to the questions asked, but rather by reference to a prepared set of answers. While the occasions where it could be demonstrated that she was not candid were limited, the flavour of her evidence was not candid or reliable;

2) Dr Rajabieslami was a notably unimpressive witness. He initially presented with a deceptive degree of openness and honesty. However as the cross-examination proceeded it became apparent that in fact his conscience as to giving honest evidence was rather more flexible and that his primary guide has appeared to be what evidence would best serve his own interests. Like Ms Sanchouli he plainly had points he wanted to get across and he was determined to do so without much or any regard to the questions asked. He frequently spoke across Mr Caplin KC, interrupting him before a question was asked. On other occasions when questions were asked he would give a long speech asking why anyone would think such a question was relevant to the issues in this action. His assertion that he was very honest was not remotely credible ;

3) Captain Gialozoglou was a defensive and often unreliable witness. Although some of the questioning of him was conducted at a pace and by reference to previously unseen materials which (in addition to the linguistic element) meant that latitude had to be given for confusion or misunderstanding, he was not always as candid as Savory would wish me to accept.

For all of these witnesses therefore I have considered very carefully which parts of their evidence might not be self-serving and was genuine honest evidence and have generally been reluctant to accept their evidence unless there was support for it elsewhere, preferably in contemporaneous documents.

144. The more credible witnesses were Mr Forouhar and Mr Grigoriou. It was indeed notable that Ceto relied more often on Mr Grigoriou's evidence than they did on that of their own witnesses. Mr Forouhar's evidence had a flavour of caution and worry, which might well have made his evidence unsatisfactory if it had been more important. Mr Grigoriou was a firm and businesslike witness who gave his evidence with quiet confidence and no real hesitation *("No I don't agree on that at all"*). Unlike the Claimants' witnesses he did not evidence any desire to impress the court with his straightforwardness he gave the impression

that his evidence was all a matter of business. Consequently I found his evidence more convincing than the other witnesses and I generally accept his evidence as honest and straightforward. However having said that he also left the impression that it might be the case that if pressed his sense of the truth would tend to be aligned with the interests of his business.

Expert Witnesses

145. There were notionally four categories of expert evidence: (i) US economic sanctions law; (ii) war risks insurance market rates; (iii) Singapore law; (iv) charter market rates.

146. The main issues were US Law and insurance market. The former relates to Condition 3 and specifically whether the shipment of the IRGC/Iranian-origin Gasoline to Venezuela would have placed Savory, Delfi, the Master, the Vessel, its insurers, or the crew at risk of secondary sanctions and related consequences. The evidence is considered in detail below, but the issue between the parties was whether the risk of secondary sanctions was high (Savory) or not (Ceto).

147. The experts in US law were Jason Wright for Ceto and Matthew Thomas for Savory. They both gave evidence remotely from the US. Both experts were helpful clear witnesses, who had co-operated sensibly to produce a very useful joint memorandum. They listened carefully to questions and answered questions at appropriate length. They also made appropriate concessions.

148. As to insurance market, the issue (again arising in the context of Condition 3) is whether Delfi overcharged the Claimant for Additional War Risks Premium ("AWRP") by reference to reasonably obtainable market rates.

149. The insurance broking experts were Peter Mellett for Ceto and Athanasios Karaindros for Savory. Their evidence was given in person over the course of a morning.

150. There was an unfortunate issue as to the experts' joint memorandum in this discipline.

151. Mr Mellett, although his CV was vestigial, was plainly a senior person and was a calm firm witness. He was not easily moved from the positions he had taken and gave his evidence in a laconic manner which sometimes came across as a little uninterested. That impression was reinforced by the evidence that (i) he had deputed the drafting of the joint report to Stephenson Harwood and then had not taken enough time to read the draft of the joint report sent to him, (ii) he had not signed his own report (iii) he used data without fully understanding the makeup of the data set and without checking it, other than by a couple of conversations with Beazley which he did not reference in his report. There was a flavour of disengagement about his evidence overall.

152. I should add that, having heard Mr Mellett and formed this impression, it entirely explains the circumstances which gave rise to concerns on the part of Savory as to whether Ceto's solicitors had interfered with the expert process by producing the draft sent on to Mr Mellett which he then forwarded to Mr

Karaindros. I conclude that they did not do so, but that they were slightly unusually tasked by Mr Mellett with the transcription and formatting of what he considered should go into the joint report.

153. Mr Karaindros was a much younger witness though his fuller CV indicated his experience reaches back to 2006 when he started as a trainee. He was earnest, fluent and precise in giving his evidence. His approach to his evidence was much more hands on and he was able to give firm evidence about how he personally had gone about analysing data for the purposes of his report. One issue highlighted by Ceto was his connections with Savory/other IMS companies – in that as he accepted, he had placed business for a number of them and worked closely with the IMS executives and owners. He was clearly unusually close to the party for whom he was acting and, while this does not disqualify him from acting as an expert, I have scrutinised his evidence particularly closely as a result. Notwithstanding this I found him to be an impressive witness.

154. There were notionally two other areas of expert evidence. On these the position was:

    1) Singapore law: The question was the *in rem* or in *personam* nature of the various claims that make up the Singapore Proceedings. The parties agreed that, in the end, this area of expert evidence is not going to be of relevance in resolving the issues at trial, and so did not intend to call these experts;

    2) Charter market: This relates to the employment that would have been available to the Vessel within the Arabian Gulf between 21 May 2020 and 16 November 2020. It relates to Ceto's allegation that it suffered a "*loss of earnings in the sum of USD 3,780,000*" in that period which it can set off against sums "due" to Delfi so as to extinguish them (Condition 3). Mr Christopher Isherwood (Savory's expert) says that Ceto would have made a loss. Ceto did not adduce an expert report.

Junior Advocacy

155. As this Court expects, both the legal teams had given active consideration to enabling junior counsel to contribute to the oral advocacy. This was an excellent example of how this can be done – counsel of 2022 and 2023 call introduced key witnesses and conducted such examination in chief as was needed. No issue was then taken as to leading counsel conducting re-examination where re-examination was necessary.

156. In addition, as noted in more detail below, many of the issues as to disclosure were addressed on Savory's behalf by Ms Bond. She dealt elegantly and thoroughly with a topic which is always close to the heart of clients and often fails to attract equal attention from judges.

Disclosure

157. Both sides have made determined attacks on the other side's disclosure. Both sides have asked me to draw adverse inferences from the absence of disclosure in certain areas by the other party.

158. Savory argues that the paucity of evidence as to the internal discussions within Ceto and between Ms Sanchouli and her mentor Dr Rajabieslami was concerning to the highest degree. Examples given were the absence of the email by which Ms Sanchouli was originally sent the Imperium Charter, the supposed practice of Ms Sanchouli of deleting WhatsApps which was only suggested very late in the day and the partial disclosure of Dr Rajabieslami's WhatsApps.

159. In turn Ceto says that Savory's disclosure has been "woeful" and that Savory has deliberately withheld documents that are adverse to its case highlighting that Savory has not disclosed: (a) any documents relating to the actual additional war risk cover that was supposedly obtained; (b) any of the numerous documents that exist showing that the Vessel was used to carry Iranian cargoes at all material times up to the termination of the Management Agreement; (c) any voyage orders or communications from the charterers of the Four Vessels; (d) the documents filed at Court in support of the proceedings brought against the charterers of the Four Vessels.

160. Ceto also highlighted various documents which are clearly adverse to Savory's position that Ceto has obtained from third parties (for instance, the documents recently provided to Ceto by the charterer of the Four Vessels).

161. It is fair to say that neither party in this case has covered itself with glory so far as disclosure is concerned. However, given that both sides earnestly tried to persuade me that I should draw adverse inferences against the other side because of defaults in disclosure the specific complaints need to be evaluated to some degree.

162. Dealing first with the Ceto disclosure I am persuaded, thanks to Ms Bond's submissions that it is right to infer that Ceto's disclosure was lacking. Dr Rajabieslami was agreed as a custodian, but it was later disclosed that his files were not searched. The broad response given to explain this (i.e. that he had lost access to his emails when sanctioned) was by some way short of the kind of particularity which would be expected – particularly in the light of the fact that (i) in other litigation after he was sanctioned he did manage to produce quite a lot of disclosure, including emails and (ii) there was one stray email in the disclosure which could only logically have come from one of the email accounts said to be inaccessible. The response that he was not Ceto or within Ceto's control is not satisfactory given that he was agreed as a custodian.

163. That basis for (considerable) concern was only increased when on Day 3 of the trial (i) Ceto disclosed a number of his WhatsApps – no such documents having been previously disclosed (despite them being specifically identified as likely to exist during the course of solicitors' correspondence on the disclosure issues) and (ii) those WhatsApps were manifestly incomplete, given Ms Sanchouli's evidence that she and Dr Rajabieslami were talking via WhatsApp on a daily

basis. I accept Ms Bond's submission that it is inconceivable that there were no messages between them in April and May, particularly as Ms Sanchouli's own evidence was that Dr Rajabieslami in fact sent her the Imperium charter on 10 May.

164. Nor can it be said that Dr Rajabieslami's files were unlikely to yield much of note. He was plainly the primary correspondent of Alex Saab, and he was also in daily contact with Ms Sanchouli, who claimed to have lost all her own end of their WhatsApp correspondence.

165. As for this latter absence there are grounds for concern about this. The Ceto's disclosure statement did not identify the absence of WhatsApp messages or reference the "normal practice" on which Ms Sanchouli relied of deleting WhatsApps on being included on the SDN list. WhatsApps were raised in solicitors' correspondence, but this explanation was not given until April 2025; further that explanation does not cohere well with the existence of a WhatsApp which appears to come from Ms Sanchouli pertaining to Maddox and war risk insurance.

166. As a result, as Ms Bond put it "*the court is left in the unenviable position of not knowing what it doesn't know*."

167. As for Savory's disclosure the issues are similar but slightly and significantly different. As to the Four Vessels they are dealt with in more detail below (see from para 168). However, while that conclusion is that analytically the Four Vessels documents were not in Savory's control the reality is that given that the Four Vessels were all IMS controlled vessels Captain Gialozoglou could perfectly well have produced these documents had he wished to. That was not helpful; but then ultimately Ceto failed to press the disclosure application during the course of which a judge might well have "encouraged" a more co-operative approach or put Captain Gialozoglou in a position where if those documents were not forthcoming adverse inferences could properly be drawn.

168. As for criticisms about lack of email traffic or WhatsApp from Captain Gialozoglou while his evidence is doubtless incredible to some he belongs to a generation where it cannot be taken as a given that a person is a user of email or communication apps and he also has the privilege of being sufficiently affluent that he can delegate a lot of minutiae to others. It may well also be the case that, as an experienced businessman, he is capable of perceiving that there are very real advantages to not leaving a profligate documentary trail of all one's deliberations. Having listened both to his evidence and that of Mr Grigoriou on the subject I do accept their evidence that Captain Gialozoglou operates on a "old school" basis with no email address, and no WhatsApp, and with Mr Grigoriou printing off hard copies for oral discussion and then acting on decisions made.

UNDERLYING CLAIMS AND CONDITION 2

169. By clause 39.1 of the BCC, as amended by the Addendum, Savory was obliged to transfer title to the Vessel if Ceto "*paid all hire and any other sums due*

under this Charter and. . . all management fees and any other sums due under the Management Agreement to Delfi. . ."

170. Savory contends that because, at the date the BBC expired, there were various third parties who had supplied goods and services to the Vessel and who had not been paid for these goods/services, there were thus sums "due" to it from Ceto for the purposes of clause 39.1. Savory relies in particular on three such claims, split into two headings: (i) Crew and (ii) Arte and Meck.

Crew

Submissions

171. The first claim is the only claim that had been formally advanced against the Vessel as at the date the BBC expired: that of the crew for their wages (the "Crew Claim").

172. Savory of course did not at the time have any direct contractual liability to the crew for their wages so as to create an *in personam* claim by the crew against it. Equally, it is common ground between the Singapore law experts that the Crew Claim was, as at the date the BBC expired, solely an *in rem* claim against the Vessel and did not operate *in personam* as against Savory.

173. The issue under this heading is thus reasonably straightforward, namely were sums due from Ceto to Savory under the BBC for the purposes of clause 39.1 by virtue of the fact that as at the date of the BBC's expiry: (a) the crew had a claim for unpaid wages; (b) *in rem* proceedings had been commenced in respect of that claim; and/or (c) the Vessel had been arrested in support of that claim.

174. Savory's case is that the *in rem* claim gave rise to a liability on the part of Ceto under clauses 10(b) and 37 of the BBC, such that there were sums due under clause 39.1. Specifically any unpaid sums that existed at the expiry of the BBC for which Ceto bore responsibility to pay under clause 10(b), were sums "due" under the Charter pursuant to clause 10(b).

175. Ceto resists this saying, in summary:

    1) Clause 37 is a compensatory indemnity, under which Ceto promised to compensate Savory for actual and incurred, not prospective, losses;

    2) Clause 10(b) has to be read consistently with this;

    3) Only clause 37.1.1, not clause 10(b), generates a right to damages;

    4) Even if the Crew Claim could theoretically engage one of the provisions of clause 37.1, clause 37.4 means there is no liability until a demand has been made.

Analysis

176. The starting point is Clause 10(b), which provides:

> "The Charterers shall at their own expenses and by their own procurement man, victual, navigate, operate, supply, fuel and whenever required repair the Vessel during the Charter Party and they shall pay all charges and expenses of every kind and nature whatsoever incidental to their use and operation of the Vessel under this Charter."

177. Thus, Ceto was obliged to pay for (*inter alia*) crew salaries. The question is whether that liability became a sum due for the purposes of the Addendum. In the Part 8 Claim Ceto admitted that if the Singapore Claims were successful it would have responsibility to pay them under clause 10(b) of the Charter, but it has in this case interrogated rigorously whether that results in a "sum due" for present purposes. I conclude that it is, but that the route is not entirely simple.

178. Savory's primary route to this appeared at timse to elide due (at large) with due under the Charter. I accept Ceto's submissions that it is not enough that Ceto was liable to pay the Crew (or Arte or Meck) unless the sum in question became in some way due as between Ceto and Savory. Only thus is the sum due *"under the Charter"*. It is not due under the BBC if it merely arose as a liability to a third party during the currency of the Charter. As Ceto submitted, Clause 10(b) is best seen as a provision allocating responsibility as between Ceto and Savory for the payment of various items of expenditure. It was not intended to have the effect that, as soon as there was a slightly late payment by one of the parties for an item in respect of which they were responsible, that party was to be in breach of charter so as to give rise to an immediate right to damages.

179. I also accept Ceto's argument as to implicit indemnity arising as a result of the obligation to a third party. Savory contended that as soon as a third party obligation is incurred a correlative right arises on the part of Savory to compel Ceto to perform by an order for specific performance – or pay damages in lieu. That also is not sensibly seen as falling within sums due under the BBC – because the primary right would not be for a sum, but for specific performance.

180. The other means whereby Savory contends that a "sum due" would happen is Clause 37 (indemnity). The relevant passages convey a right of indemnity on Savory in respect of:

    1) "*[C]osts, charges, expenses which [Ceto has] agreed to pay under this Charter and which shall be claimed or assessed against or pay by [Savory]. . .*" (37.1.1);

181. "*[L]iabilities. . . or other sanctions of a monetary nature (collectively,* "*Losses") suffered or incurred by [Savory] and arising directly or indirectly during the tenure of this Charter or in relation to this Charter*", (37.1.3).

182. This is in my judgment more fertile ground for the argument. I need go no further than to touch on clause 37.1.1. Savory's submission, that as at 25 March 2022, the crew claim properly fell within clause 37.1.1 as an expense which had been "*claimed…against…the Owners*", appears to be well founded. As at that date there had been an actual claim for wages dating back some months; and that claim had been felt by the Vessel via an *in rem* claim. Although Ceto would

contend that an *in rem* claim is not enough and that Savory's position elides the distinction between claim *in rem* and claim *in personam*, that is in reality an artificial distinction. An *in rem* claim necessarily carries with it (at least contingently) an *in personam* claim, because once an acknowledgement of service is served, the action turns into an action *in personam* against the person who serves that acknowledgement. Inherent in a claim *in rem* therefore is a claim *in personam* against the person who would acknowledge service.

183. While technically Ceto is correct that the correct *in personam* object of such a claim is the bareboat charterer, the lived experience is that because of the greater transparency of information regarding ownership than bareboat charters, even during the currency of a bareboat charter, claims are often addressed to (and felt by) the registered owners. And though it is doubtless true that ideally the way later claims should work is that the problem should be Ceto's in that, if title to the Vessel had been transferred to Ceto on expiry of the BBC, the existence of the Crew Claim (and any other third-party claim that might be asserted against the Vessel) would be against Ceto, the reality is that (i) the Vessel was seized while it was owned by Savory because Ceto had not paid these claims, and (ii) Savory did not get the vessel back.

184. From a drafting and hence contractual construction perspective then the risk of an *in rem* (later *in personam*) claim against the vessel and owners is something which is naturally and commercially covered by this wide wording, which is supplemented by other narrower more focused wording in 37.1.3 which would naturally catch established claims ("*suffered or incurred*").

185. This approach does not fall foul of the discussion in Courtney *Contractual Indemnities* (Hart 2014), at [5–39], [5–44] and [6–23] upon which Ceto relied – drawing a distinction between actual and incurred as opposed to prospective losses and highlighting the need for a loss within the scope of the indemnity to have occurred. This crew claim was an incurred not purely prospective loss, with the teeth of the *in rem* process a perfectly sensible proxy for an actual "suffered" loss when taken in conjunction with what is plainly very wide wording. There is no requirement for a payment for such an indemnity to be triggered. Indeed a requirement for such payment – potentially years later – before the clause could be triggered would be commercially nonsensical, bearing in mind the regime of a clean slate on handover which is plainly envisaged.

186. Accordingly the Crew Claim alone means that the conditionality in Condition 2 was not met. It follows that at the time of the expiry of the BBC Ceto had not paid *"all hire and any other sums due under this Charter"* and the obligation to transfer did not arise. However the Arte and Meck claims are considered for completeness.

Arte and Meck

187. These are two out of a number of claims which "*came out of the woodwork*" at the end of the BBC.

188. Savory says that it had become directly liable to Arte and Meck before the BBC's expiry for unpaid bunkers supplied to the Vessel during the currency of the BBC. Ceto contends that these claims are hopeless - not least because they are unpleaded and no evidence was served on them and Meck's claim against Savory has been discontinued.

189. Of the two claims plainly Arte is the stronger. Clearly an obligation by Ceto to pay Arte arose in respect of bunkers. That obligation arose as early as March 2022. This was an obligation which, as between Savory and Ceto, it was agreed that Ceto was obliged to pay, and did not. As between Savory and Ceto, under clause 10(b) of the BBC, Ceto had sole responsibility to pay relevant sums as they became due either directly to the third parties, or (conceivably) by way of reimbursement to Savory (if it had paid first).

190. As noted above the mere fact of a liability by Ceto would not trigger a liability. However in relation to the Arte claim there is a complication in that a direct claim was asserted by Arte against Savory. Arte commenced arbitration against Savory in relation to the sum, making clear the debt (i.e. liability) had accrued in March 2022. Ceto says that this should be ignored because the claim was bad – as a matter of English Law (which in the absence of evidence is presumed to apply) there was no direct contract concluded on Savory's behalf or with Savory's authority, and the arbitration claim did not occur until later.

191. However, on the face of it Arte's terms – as agreed to by Ceto - contain wide definitions of *"the Buyer"* (clause 1.2 of Arte's terms), and also attempt to hold the registered owner of the vessel to which the bunkers are delivered liable in respect thereof (clause 3.1 of Arte's terms) – and a claim did in fact result. Savory says, and I tend to agree, that if this is not a matter where the Clause 37 indemnity was designed to operate that would be a surprising result. This was after all very precisely a cost, charge, or expense which Ceto had agreed to pay under the BBC and which has been claimed directly against Savory. It is therefore best regarded as falling squarely within the wording of clause 37.1.1.

192. The position as to Meck is different – that is a much later claim in rem (after the expiry of the BBC), and without the direct contractual claim which can be seen in the Arte case. This claim would not be sufficient to trigger a "sum due".

THE MANAGEMENT AGREEMENT AND CONDITION 3

193. The next issue is that created by the fact that Clause 39.2 required that there be no sums "due" under the Management Agreement to Delfi at the expiry of the BBC. While Savory's position is that in fact sums of c.US$2,208,000 in total were due and owing to Delfi at that time, in some senses the maths is irrelevant and the simple question of termination of that agreement is key. That is because if Ceto was not entitled to terminate for breach, the termination was *"for any reason other than default by [Delfi]"*. The consequence of that would be that under Clause 18.5 of the Management Agreement, Delfi became entitled to an early termination fee equal to 90 days' of fees, (US$720,000 or 90xUS$8,000pdpr), and this would itself be a sum that was "due" when the BBC expired.

194. The overall issues under the Management Agreement therefore break down into issues as to whether:

    1) Ceto was entitled to terminate the Management Agreement on account of:

        a) The issues relating to the Vessel's insurance;

        b) Delfi's refusal to perform the Imperium Charter;

    2) If Ceto was entitled to terminate the Management Agreement, whether:

        a) Sums were nonetheless due and owing to Delfi thereunder on the expiry of the BBC;

        b) The purported termination was wrongful/ineffective.

Was Ceto entitled to terminate the Management Agreement (Insurance)?

195. The first key topic is whether Ceto was entitled to terminate the Management Agreement on 21 May 2020 because of defaults relating to insurance.

196. Clause 5 of the Agreement concerned insurance. Delfi was obliged to procure H&M, P&I and annual war risks cover (clauses 5.1 to 5.3). The consequence of this, is that if Delfi was to cease being the manager, the Vessel's insurances would automatically lapse. Delfi was also to procure further ad hoc insurances, including relevantly breach call war cover, but such insurance was to "be at the cost of" Ceto (clause 5.4). Any insurance was to name Delfi as joint assured. Savory argues this was joint with Savory, not Ceto. By clause 5, Ceto was sub-contracting to Delfi its obligation to procure the Vessel's insurances under clause 13(a) of the Charter, which required it ensure Savory was a co-assured with it (Ceto) or Ceto's manager (Delfi). It does not make sense to speak of both Delfi and Ceto as being "joint" assureds because they have (for these purposes) the same interest in the Vessel (i.e. that of the bareboat charterer) cf. Savory (the registered owner).

197. Ceto contends that Delfi owed it (and breached) the following obligations in this context:

    1) An obligation to include Ceto as an insured under any policies of insurance concluded;

    2) An obligation to provide details of the insurance policies concluded by Delfi on behalf of Ceto along with documents in relation to the same (including copies of the policies and any invoices issued by the insurers);

    3) An obligation to ensure that any policy of insurance concluded by Delfi on Ceto's behalf was on reasonable terms and at the best achievable rate.

198. Ceto says each of these would give rise to a right to terminate contractually or at common law and that these rights were exercised on 21 May 2020.

199. Savory denies that Delfi owed the first obligation; and admits the existence of the second of these obligations subject to the documents existing and being within Delfi's control. Thus, it was the third issue which was the main focus, and the subject of expert evidence. Here Savory accepts that any insurance concluded had to be on reasonable terms (though not necessarily at the cheapest rate). There is also embedded within this issue a question as to whether Delfi was entitled to and did charge an uplift for its role such that what it charged Ceto was more than it passed to insurers.

Obligation to obtain insurance naming Ceto?

200. Ceto contends that Clause 13(a) of the BBC expressly obliged Ceto to obtain insurance which protected the interests of both Ceto and Savory, and which covered Ceto and Savory according to those interests (clause 43 was to similar effect). It also says that even in the absence of clause 13 of the BBC, Delfi as manager would obviously be under an obligation to obtain insurance which protected Ceto's interests asking what would be the point of Delfi taking out both P&I and FD&D insurance for the Vessel which did not include Ceto as an insured. It submits that Ceto as the operator of the Vessel is the only party that would be likely to incur liabilities and/or claims which would give rise to a need to make a claim under such insurance. Similarly, in the event of damage to the Vessel, it would be Ceto that would need to make a claim on the Vessel's H&M policy.

201. There is a certain amount of common ground. Savory has pleaded that by virtue of clause 5 of the Management Agreement, Ceto sub-contracted its obligations under clause 13 of the BBC to it. Hence, Delfi was under an obligation to obtain insurance which complied with clause 13 of the BBC.

202. Savory's case is that under Clause 5 of the Agreement Delfi was obliged to procure H&M, P&I and annual war risks cover (clauses 5.1 to 5.3) and also to procure further ad hoc insurances, including breach call war cover, but such insurance was to "be at the cost of" Ceto (clause 5.4). Any insurance was to name Delfi as joint assured. Savory contends that that joint arrangement was joint with Savory, not Ceto. It says that for these purposes Delfi stands in place of Ceto because by clause 5, Ceto was sub-contracting to Delfi its obligation to procure the Vessel's insurances under clause 13(a) of the BBC, which required it ensure Savory was a co-assured with it (Ceto) or Ceto's manager (Delfi).

203. Savory contends that there was no point in both Delfi and Ceto being named and being "joint" assureds because they had (for these purposes) the same interest in the Vessel (i.e. that of the bareboat charterer) while the interest of Savory (the registered owner) was different and distinct.

204. This is a cleverly constructed argument and Mr Caplin KC has done his best to polish it, but it does not appeal. Under clause 13 of the BBC Ceto had to get insurances to protect their interests and those of Savory. Under the Management Agreement Delfi had to obtain insurance to cover various risks and to include itself as joint insured (presumably to facilitate management). That inclusion of itself (particularly given Delfi's role for both parties and its ownership) does not

on its face cover Ceto's interests, unless the insurance procured was explicit on this (citing Delfi as acting for Ceto).

205. While Savory submitted that Ceto would have been able to enforce the policies as an assured qua Delfi's disclosed or undisclosed principal, this on one level sounds like an attractive argument. However, the reality is that the identity of the assured (and its risk history) is obviously material to an insurer. So, while insurance may be obtainable by an agent on behalf of an undisclosed principal, it runs the risk of then being voidable if the principal's identity or risk history is material.

206. This analysis is essentially supported by the reaction of insurers who initially refused to extend the H&M cover to Ceto as a named insured.

Did Delfi earn a profit on any additional insurance it concluded on Ceto's behalf and was it entitled to do so?

207. This part of the case appeared to be something of a side show. While it would be very surprising if Delfi were entitled to earn a profit on any additional insurance which it concluded on Ceto's behalf there actually appeared to be no evidence at all that there was any "overcharging". On the evidence before me Delfi paid all of what it charged to Ceto to the brokers.

Did Delfi breach its obligation to obtain additional War Risk Insurance on reasonable terms and at the best achievable rate?

208. On this Ceto's first argument is that as a necessary part of establishing that it obtained additional war risk cover on reasonable terms and at the best achievable rate, Savory needs to establish the actual amounts that were charged by the underwriters for that cover and thus until Savory has disclosed the underlying documents from the additional war risk insurers, it cannot establish that that insurance was on reasonable terms and at the best achievable rate.

209. There are two reasons why this is not the answer. The first is that it reverses the burden of proof. The second is that there is evidence of what was paid by Ceto and passed on by Delfi – and they match. With or without the insurance policies this *prima facie* demonstrates the premium charged – because there is no other sensible inference as to why the sums would be paid to insurers.

210. The second argument advanced by Ceto is the one which involves a consideration of the evidence of the insurance experts as to prevailing market rates for the period from July 2019 to May 2020. Delfi was charging US$ 72,000 per month. Ceto's expert, Mr Mellett, was of the view that this was significantly in excess of prevailing market rates, and that Ceto should have been paying at most somewhere between US$33,750 to US$42,187.50 per month for AWRP. Indeed, Mr Mellett is of the view that it would be usual for European Link to share some of its brokerage fee with Delfi for such cover, with the result that the sums charged to Delfi should in fact have been between US$27,000 to US$33,750.

211. Mr Karaindros, Savory's expert, is of the view that the sums charged by Delfi were, if one looks at the total sums charged over the relevant period, slightly below the market rate. He says that Ceto paid US$504,000 for the months August 2019, October 2019, November 2019, December 2019, April 2020, June 2020 and August 2020, compared to a total of US$535,865 if Ceto had paid at the prevailing market rates for these months.

212. There are three main reasons for the differences between the experts in this regard. Firstly, the experts differ as to the applicable premium rate for each of the relevant months. The premium charged would have constituted a percentage of the Vessel's value. Mr Mellett was of the view that the market rate for AWRP would have been between 0.2% to 0.25%, whereas Mr Karaindros put the rate at between 0.225% to 0.35%. Secondly, they differ on the level of any no claims bonus that Ceto would have received. Mr Mellett was of the view that Ceto would have been entitled to a 50% bonus, whereas Mr Karaindros suggested a bonus of 25%. Thirdly, they disagreed as to whether any brokerage received by European Link (or Delfi) should have been shared with Ceto so as to reduce the total amount of premium payable.

213. It is fair to say that the expert evidence for both sides had problems. On the one side, Mr Mellett's experience was essentially non-existent – he had no experience in the war risks market and his views appeared to be based on conversations with unidentified others, rather than his own experience of testable research. On the other side Mr Karaindros's links to the Savory camp meant that his evidence required to be closely examined.

214. Overall, the lack of faith which Ceto themselves had in their expert evidence was reflected in their reliance in closing at least equally on the evidence of Mr Grigoriou that he was able to negotiate an initial war risk quotation of 0.3–0.4% down to 0.13%, and that he viewed that this reflected the prevailing market rate for AWRI. However, that evidence while honest and straightforward, was not necessarily of great help to Ceto. It was probably a figure for just ten days – which would extrapolate to a figure (after negotiation down) to approximately US$60,000 per month. Also, this evidence which was plainly an attempt at unassisted recollection some years after the event, does not really advance matters further.

215. For the following reasons I slightly prefer the evidence of Mr Karaindros to that of Mr Mellett:

    1) Mr Mellett's expertise was not in the war risks market, and it as clear that he was to a considerable extent dependent on input and data which had been provided to him;

    2) Mr Karaindros did have more relevant expertise and had taken a proactive and analytical approach to the material;

    3) Mr Mellett was not very clear or able to assist on the contents of the dataset on which he relied;

4) While both made assumptions about where within the range to pitch the market rate, Mr Karaindros took a broadly balanced approach (the middle) whereas Mr Mellett took the end most favourable to the party instructing him.

Did Delfi breach its obligations to provide details of the policies and documents in relation thereto?

216. The factual background to this point is set out above. Ceto continued to request them post-termination of the Management Agreement (in order to ensure that the change of managers did not prejudice the Vessel's insurance cover).

217. Ceto has contended that Delfi was under an obligation to provide the underlying AWRP documents to Ceto and itself had the right to obtain such documents from European Link. This follows from the fact that Delfi was Ceto's agent (as per clause 2 of the Management Agreement) and European Link, as an insurance broker, was Delfi's agent, see *The Law of Insurance Contracts* (Clarke) at [7-1A] and [9-5H], the latter of which states:

> "Insurance intermediaries must give an account not only of money received but of what they have done for their customers. Quite apart from any contract terms on the matter, it is in the nature of the agency relationship that principals (customers) are entitled to full information about the commitments entered into on their behalf. From this it can be inferred that intermediaries have a duty to keep adequate records of these commitments and to disclose those records to a customer on reasonable demand."

218. That principle was not in issue. It follows that Delfi had a right to obtain the relevant documents from European Link.

219. Savory accepts that implied within clause 5 is an obligation to provide, qua Ceto's agent, any documents pertaining to the insurances that were taken out insofar as they were/are available to Delfi. However, it points out that it was only the duty of Delfi "*to produce to the principal upon request…all books, correspondence and documents…under the agent's control relating to the principal's affairs*": *Bowstead & Reynolds on Agency* [6-090]. It says that Delfi could not (and cannot) provide to Ceto that which was not available to it and that it had (and has) provided to Ceto documentation in its control, and insofar as it knows in existence, pertaining to the breach war cover that was placed on its behalf by brokers European Link.

220. This was not really a satisfactory answer. The answer emerged somewhat late in the day – there is no response saying "*We have given you everything we have or can get from the broker*" either at the time or in the pleading. As Mr Smith KC rightly said in closing, it would be "*the simplest thing in the world for Delfi to turn around and say, 'We have asked European Link. They are not giving them to us*'". The case run is also not there in the statements of Savory's witnesses. While Mr Grigoriou did suggest that there was a problem getting documents out of European Link, he accepted that European Link would have had the invoices

and that those invoices should have been provided to Delfi and hence on to Ceto.

221. It essentially follows from that that Delfi was in breach. There should have been and on the balance of probabilities were documents in European Link's hands. Either Savory failed to ask for them, or having asked and been refused, they failed to exercise their rights to obtain these documents, which Ceto had a right to call for and Savory had an obligation to provide.

Termination on account of the insurance issues

222. The remaining question to consider in this context is whether, regardless of whether Ceto's notice of 21 May 2020 was effective to terminate the Management Agreement by reference to the Imperium Charter, the Management Agreement was nonetheless validly terminated on account of the insurance issues (to the extent breaches have been or could be established).

223. Generally, so far as contractual termination is concerned, there was no such termination:

    1) The letter of 21 May 2020 which was the formal Termination Letter referred principally to the Imperium Charter issues. The only insurance issue referred to at all was the supposed failure to account for extra war risk premium received (an allegation which I have concluded was not well founded). Accordingly, there was no contractual termination;

    2) As for the 18 May Notice Letter, while that might be read as directed also to the documentary issues (as well as the allegation of skimming), that letter did not provide for automatic termination upon the expiry of a set period, but rather to a reservation of rights. It could not by itself bring about a termination for the insurance issues;

    3) Further, to the extent that the 21 May Termination Letter is relied on as a follow up to that letter, the breach alleged was one under Clause 5 of the Management Agreement. Such breach was one that triggered termination via clause 18.2(iii) and thus required 10 days' notice before termination to allow Delfi to rectify the alleged clause 5 default. No such notice or remedy period was observed.

224. It therefore follows that to the extent that the termination was (in essence) in respect of insurance issues it would be wrongful.

225. Consequently Ceto has attempted to argue that termination for the insurance issues could be at common law. This argument also lacks force. Ceto might still have had some residual common law rights to terminate the Management Agreement in appropriate circumstances. However:

    1) The breaches alleged do not of their nature present as ones which would be repudiatory. Breaches under clause 5 generally, and these breaches in particular, naturally present rather as intermediate terms;

2) That conclusion is reinforced by the existence of the contractual structure which sets out an express contractual machinery to govern the steps following breach. Termination at common law cannot be used simply to get round the inconveniences of a contractual scheme – particularly where as here the breach was, at least potentially, capable of being cured

226. While Ceto contends that the breach as regards the name on the policy must be a breach going to the root of the contract because Delfi's failure (i) put Ceto in breach of clause 13 of the BBC, (ii) gave right to an immediately exercisable right on the part of Savory to terminate the BBC under clause 28(a)(ii), and (iii) meant that any insured repairs that needed to be performed under clauses 13(a)/43.1.5 of the BBC would have to be funded personally by Ceto, this is manifest reverse engineering where Savory's own case is that Ceto was covered.

227. Nor does Ceto's argument as to repudiation (if the clause was an innominate term) fare better. Ceto contends that Delfi's breach as regards provision of documents and it being named assured was conduct which unequivocally communicated to Ceto that it was unwilling to disclose the documents or information requested. Had Ceto not terminated when it did, this argument might – in due course - have gained some force. However, on the timeline which actually existed, this contention is overambitious.

228. It follows that it was not open to Ceto to terminate for the established breaches regarding insurance (or any other breaches regarding insurance). This therefore cannot provide a basis for justifying the termination of the Management Agreement, and all must turn on the Imperium Charter issues.

229. Before moving to those it is worth adding that as regards the failure to take out insurance in Ceto's name there is an additional argument available to Savory, namely that Delfi would have addressed this issue and/or would have reached an agreement with Ceto. Broadly assisting this submission is the fact that when it was discovered in November 2020 that Ceto was not a party to the H&M/P&I policies, steps were taken to add Ceto to those polices (with this occurring on 6 November 2020). Ceto complains this was not done with retrospective effect — the endorsement to the cover that was issued states that Ceto became a party to the H&M cover as a co-assured "*with effect from 6th November 2020*" and that it would not be covered in respect of any incidents, circumstances or liabilities occurring prior to that point in time. However, the reality is that it indicates that these issues were reparable, and that afforded the contractual time for remedying a breach Savory would probably have done so.

Was Ceto entitled to terminate the Management Agreement on account of the refusal to perform the Imperium Charter?

230. This was the centre of gravity of the trial. The pleaded issues arising under this heading were many and various, summarised as follows:

1) What were Delfi's relevant obligations under the Management Agreement?

2) Was Delfi/IMS involved in the carriage of cargoes of Iranian oil to Venezuela?

3) Did Captain Gialozoglou offer to perform the Imperium Charter in return for a payment of US$1 million?

4) Would the performance of the Imperium Charter have exposed any relevant entity to a risk of sanctions?

5) Did Delfi have a reasonable belief that compliance with Ceto's orders in relation to the Imperium Charter would have exposed it to the risk of sanctions?

6) Could Delfi refuse to comply with Ceto's orders on the basis that to do so would involve breaching the BBC's trading limits?

7) Was Delfi estopped from refusing to perform the Imperium Charter on the grounds that it involved the carriage of Iranian oil?

8) Was Ceto entitled to terminate the Management Agreement on account of Delfi's refusal to perform it and, if so, did it validly terminate that agreement?

231. In terms of the factual issues within this list, some of the disputes ultimately fell away. Thus:

1) One issue on the list of issues was whether the cargo was of Iranian origin. It is now common ground that the Cargo was of Iranian origin;

2) It was also common ground that with the knowledge and participation of all concerned, i.e. Ceto, Delfi, Savory, IMS, and Captain Gialozoglou, the Vessel was engaged at all material times in the loading and carriage of cargoes of Iranian oil:

a) The Vessel was, as Savory knew, acquired by Ceto for the very purpose of carrying cargoes of Iranian origin;

b) From the outset, the Vessel was, with the knowledge and participation of Savory and Delfi, exclusively or predominantly engaged in the loading and carriage of cargoes of Iranian oil (see paragraph 14 above, and the Chronology);

c) Whilst it is true that Savory sought to add Iran to the Vessel's trading restrictions in the BBC when the Addendum was included, the Vessel continued to load cargoes of Iranian oil.

232. Then there is the question of the proposed destination for the Imperium Charter. Again on the List of Issues there is a dispute as to whether the destination was Venezuela. Ceto ultimately accepted that the Cargo was in all probability ultimately bound for Venezuela.

233. Ceto nonetheless contended that any concern about Venezuela was irrelevant because the operative orders at the time Delfi refused to perform the Management Agreement was for the Vessel to proceed to Port of Spain, Trinidad. That is an unrealistic submission. The proposed Imperium Charter was one which was ultimately destined for Venezuela. It seems fairly clear that vessel orders for T&T were and were understood to be no more than cosmetic. Imperium itself on 15 May was quite open about it. That was certainly the effect of the evidence of Ms Sanchouli and Mr Rajabieslami, supported by on the one hand the ample evidence of thinking in relation to Venezuela – including bunkers and documentary instructions for that location and the telling wording "cannot show Venezuela" - and on the other the fact that there seems to have been no underlying basis for any potential discharge in T&T.

234. Finally Mr Grigoriou's evidence was that *"We strongly suspected the cargo was destined for Venezuela in breach of Charterparty and in breach of sanctions"*. That evidence was not challenged in cross examination.

235. On balance not only was the proposed voyage for the Imperium Charter one going to Venezuela, but that was understood by all involved.

236. The remaining issues therefore were as follows:

    1) What were Delfi's relevant obligations under the Management Agreement and specifically was Ceto entitled to terminate the Management Agreement on account of Delfi's refusal to perform it?

    2) Did Delfi have a reasonable belief that compliance with Ceto's orders in relation to the Imperium Charter would have exposed it to the risk of sanctions?

        a) Was Delfi/IMS involved in the carriage of cargoes of Iranian oil to Venezuela?

        b) Did Captain Gialozoglou offer to perform the Imperium Charter in return for a payment of US$1 million?

        c) Would the performance of the Imperium Charter have exposed any relevant entity to a risk of sanctions?

    3) Could Delfi refuse to comply with Ceto's orders on the basis that to do so would involve breaching the BBC's trading limits?

    4) Was Delfi estopped from refusing to perform the Imperium Charter on the grounds that it involved the carriage of Iranian oil?

    5) Did Ceto validly terminate?

237. Although the right of Ceto to terminate is logically the first issue, the centre of gravity of the evidence and arguments was on the sanctions questions; these will accordingly be taken first.

The primary issue: Clause 25 and the "reasonable judgment"

238. On the face of the pleadings, there were then various differences between the parties relating to the scope of Delfi and/or the crew's obligations to comply with Ceto's orders. There were for example issues as to whether Delfi was obliged to procure the Master to comply with Ceto's orders or procure a crew which would comply with Ceto's orders. However, as the case progressed these largely fell away, and by closing the real issue between the parties was whether Delfi had formed a genuine, reasonable belief or judgment that to do so would have exposed the Vessel and its stakeholders to US sanctions. This was an issue arising under clause 25 of the Management Agreement which in essence provided that "*[Delfi] shall not be obliged to comply with the provisions of this Agreement if in the reasonable judgment of [Delfi] it will expose them or their insurers, re-insurers, crew, registered owners, to any sanction … imposed by any State,…*"

239. Ceto accepted that this provision permitted Delfi to refuse to comply with any order which, in Delfi's reasonable judgment, would expose it or one of the named entities to having a sanction imposed on it. But that, it said, begged the question of what needs to be established to prove that a reasonable judgment has been exercised.

240. The legal background to the questions which arise is set out in the judgment of Teare J in *Pacific Basin IHX Ltd v Bulkhandling Handymax AS* [2011] EWHC 2862 (Comm) [2012] 1 CLC 1 at [55]:

> "The effect of that clause is that the Owners must make a judgment. It must be made in good faith; otherwise it would not be a judgment but a device to obtain a financial gain. Further, the judgment reached must be objectively reasonable. An owner who wishes to ensure that his judgment is objectively reasonable will make all necessary enquiries. If he makes no enquiries at all it may be concluded that he did not reach a judgment in good faith. But if he makes those enquiries which he considers sufficient but fails to make all necessary enquiries before reaching his judgment I do not consider that his judgment will on that account be judged unreasonable if in fact it was an objectively reasonable judgment and would have been shown to be so had all necessary enquiries been made."

241. While there was a good deal of common ground as to this, there are a couple of narrow points where there was a different approach between the parties, which were taken because of their potential significance on the evidence in this case. The first relates to whether the enquiries posited by Teare J need to be reasonable in order for there to be an objectively reasonable judgment. Ceto suggested that this was the case. I reject that submission. What matters is whether the judgment was objectively reasonable, not whether the process of reaching it was reasonable or sensible. If an objectively reasonable decision was reached it would not matter if it was reached by a process of unparalleled perfection, sketchy soundings – or indeed *"scissors, paper, stone*".

242. The second point arose out of [40-44] of the same judgment, where the judge indicated that in the context of a *"reasonable judgment .... may be or likely to be"* formulation (there war risks and piracy), something is objectively reasonable if there is a real likelihood/danger or serious possibility of the event. Seriousness of the harm or subjective importance to the relevant party is not a relevant consideration. Ceto says that this passage logically pegs the risk/likelihood factor in this case higher, because the wording is "will expose".

243. As to this, I do not accept the submission that Savory must show that, in performing the Imperium Charter, there was a "virtual certainty" of Delfi/ Savory or the American Club or the Vessel's crew being designated. That is for two reasons. Firstly, the wording here is not a "result" wording (e.g. that the act would result in the imposition of a sanction). Secondly such a level of certainty would seem inapt to civil commercial events. It must be the case that a serious possibility of sanctions resulting would entitle Delfi to reasonably form the view that the vessel was exposed to sanctions.

The submissions

244. The main issues for consideration on the facts therefore are:

    1) Did Delfi make any judgment in good faith?

    2) If so, was that judgment objectively reasonable in the light of the expert evidence on sanctions risk and the factual evidence as to how that decision was taken?

245. It was Ceto's case that neither of these elements is satisfied on the present facts It contended that:

    1) Captain Gialozoglou and IMS were active and willing participants both in the carriage of Iranian oil generally, and the carriage of Iranian cargoes to Venezuela. Evidently therefore, the view formed by IMS (and which must necessarily have been shared by Delfi/Savory) was that the risk of sanctions being imposed was sufficiently small as to be worth running;

    2) Even if Delfi/Savory had formed the view that the performance of the Imperium Charter would have exposed them (or the Vessel/crew) to the imposition of sanctions, that was evidently not the reason for them refusing to perform that charter;

    3) The position adopted by Captain Gialozoglou indicated that Delfi/Savory were willing to perform the Imperium Charter, for the right price.

    4) Accordingly whatever the actual risk was of sanctions being imposed, the existence of that risk was not what was motivating Delfi's decision making and clause 25.1 was accordingly not engaged:

246. Against this Savory contends that the evidence showed that Delfi, and those controlling it, had formed a genuine, reasonable (and, if necessary, correct) belief/judgment, that to procure the Vessel's and/or Master's performance of the

Imperium Charter would have exposed the Vessel and the various stakeholders in it to US sanctions. The order that Ceto was complaining about was that the Master sign a bill of lading concerning Iranian origin Gasoline that was intended by Ceto to conceal the true delivery destination of the product as being Venezuela (as well as the Gasoline's Iranian origin). On that basis, it was (at the very least) reasonable (and in fact unquestionably, right) of Delfi (and those in control of the company) to be concerned because performing the Imperium Charter was a very serious risk. They were therefore under clause 25.1 entitled not to comply with Ceto's order (to the extent that any obligation to comply existed).

What (if anything) was the sanctions risk?

247. The best starting point here is the actual sanctions risk. On this it was Ceto's case that as a matter of US law, the only risk existing was of Savory, Delfi or the Vessel's crew being added to the SDN list, and the risk of this was negligible given the approach of the US authorities as at April/May 2020—this was so both in relation to the fact that the cargo was Iranian gasoline and that it was bound for Venezuela.

248. Ceto submitted that the risk of Delfi, Savory and the crew being designated simply on account of the Cargo being of Iranian origin was very low:

    1) Delfi, Savory, the crew, and the Vessel could not have been designated on account of being owned or controlled by, or to be acting on behalf of, a sanctioned person;

    2) There was no risk of Delfi, Savory or the crew being designated on the basis of operating in the Iranian shipping sector. The Vessel was not Iranian flagged or owned or operated by the Iranian government.

249. It invited me to reject Mr Thomas' evidence that the risk under the Iran regime was very high against the background of the previous approach of the US authorities to sanction direct dealers only and where by April–May 2020, only two non-Iranian ship-owning companies, Sea Charming Shipping Company and COSCO Shipping Tanker (Dalian), had been designated – neither of which were said to be proper comparables as trades to SE Asia and/or involving Asian companies. It also submitted that the Venezuela aspect did not make this "a different kettle of fish" given that:

    1) The Vessel was not going to be carrying the Cargo actually into Venezuela;

    2) None of Delfi, Savory or the crew would, in the course of the performance of the Imperium Charter, have had any direct dealings with PDVSA (or any other entity/individual that had been sanctioned in relation to the Venezuelan oil sector);

    3) The Cargo was gasoline and not oil and therefore was not the subject of sanctions;

4) The performance of the Imperium Charter did not involve the shipping of oil from either PDVSA or Venezuela and no non-US vessel or ship owner had ever been sanctioned for the shipment of oil or gasoline into Venezuela.

250. It was also said that the fate of the Four Vessels (where while the cargoes were seized the only people designated were those who had a direct connection to IRGC) was indicative.

251. Ceto then suggested that, to the extent that there was an appreciable risk of Delfi/Savory being exposed to sanctions if the Imperium Charter were to be performed, this is a risk that existed anyway because of Delfi/IMS' prior dealings with cargoes of Iranian oil and/or their involvement with the Four Vessels.

252. Savory submitted that Mr Thomas's evidence that there was a "*very high*" risk should be preferred, emphasising also that Mr Thomas's evidence was that he would have advised Savory/Delfi that "*the risk was extraordinarily high*".

253. Ultimately while bearing in mind the points raised by Ceto this is an area which largely boils down to which of the experts' evidence is to be preferred. Having heard and seen (albeit remotely) the experts and revisited their transcript I am persuaded that the evidence of Mr Thomas is overall to be preferred.

254. It is never a good start when an expert has not, as Mr Wright frankly admitted, read any of the underlying documents and where there is reason to believe that in terms of checking underlying material reliance has been placed on the work of juniors ("associate support") who are not being called. Thus slipped in an error regarding NIOPDC which he had thought (without checking) to have been on the SDN List in Q2 2020. In fact while it was at all times sanctioned for being a subsidiary of NIOC, it was not specifically sanctioned until October 2020.

255. But more important is the mismatch of experience, which fed into the experts' respective approaches. Mr Wright had no direct experience of advising clients on issues of sanctions risk relating to the movement of gasoline to Venezuela in 2020. He was thus analysing from a slightly cold start and his absence of deeper reading of the underlying materials meant that he approached things in a slightly over-analytical/"siloed" fashion – looking at Iran risk as one topic and Venezuela risk as entirely distinct, while being unwilling to accept (as seemed obvious even without Mr Thomas' emphatic evidence on the subject) that the two were not just linked but intensified each other.

256. Mr Thomas explained that both were "significant priorities", "both of those were important" and that a US Treasury Press release of June 2020 "*highlighted the significance of the intersection 'where they collided'*". In other words both were important, but where the two were in play at the same time risk was increased. While looking backwards one can discern the kind of pattern that Mr Wright relied on and entirely understand while he sees it that was (with emphasis on directly linked entities and in terms of operators, not going beyond Masters), risk is actually judged prospectively (albeit taking into account past facts), not retrospectively. That aspect came over clearly in Mr Thomas' oral

evidence which was redolent of lived experience. That depth of experience and its instinctive recall conveyed itself in the details which he gave of factual situations which shed light on the operation of sanctions over a moving timeline, in his non-verbal reactions to questions (one question was met by something close to a hoot of disbelief) and in the way he segued seamlessly from the discussion of the law and the facts to making his opinion clear ("*just my opinion, but I believe*", "*my opinion, in that instance*").

257. The analysis favoured by Mr Thomas is supported by the more complex factual background highlighted by Mr Caplin KC in cross examination and which did not particularly inform Mr Wright's approach. That included the following factors: the basic fact that the cargo was Iranian Gasoline, that it had links to multiple persons or entities on the SDN List, the destination being Venezuela, the timeline of the US agenda *vis a vis* President Maduro, the use of deceptive shipping practices and the vessel's history of transactions involving sanctioned Iranian oil.

258. While it was said to be inherently unlikely that the performance of the Imperium Charter would have tipped the balance significantly in favour of enforcement action being taken by the US authorities, it is not necessary to prove a "tipping point" at this precise time. In fact, the fact that the US authorities took steps to seize the cargoes on the Four Vessels demonstrated that while the tipping point had already been reached before the time for performance of the Imperium Charter that risk was inchoate but real at the time the decision had to be made.

259. This evidence is also supported by the flavour which conveyed itself from the factual witnesses. All of them effectively agreed that they were operating in a risky environment and that each was making an assessment of how much risk was too much for their own appetite. All of them indicated that this charter, with its particular features, occurring at this moment in time, was such as to be if not "over the line" for them, pretty much at the outer limit of where they would go. So Mr Forouhar indicated that he would have "*stayed away from it*"; "*I would truly try to stop him*", "*I would say no*" because: "*Risk of being sanctioned, risk of being arrested*". For Ms Sanchouli herself the limit was reached in May because of the links with Alex Saab.

260. The aspect of Mr Thomas's evidence which requires some adjustment to be made is that it was quite clear that he is a lawyer – and a cautious one - through and through. This was manifest in his response to questions ("*let me go back and qualify my answer a little bit, Lawyers, it's terrible*" "*respectfully disagree*" and "*sorry, that is an American thing, waiting for the questions*"), and his instinctive precision ("*I don't think it is an either/or*"). In my assessment therefore when Mr Thomas says that "*I would have advised [a client in Delfi/Savory's position] that the risk was extraordinarily high*" that was honest and accurate evidence of what his opinion was and his advice would have been – but it does not necessarily entirely accurately reflect the objective risk. That risk I conclude was high, but the "extraordinarily" reflects a lawyer's caution.

The Risk of Primary Sanctions being breached

261. That being the case, the question of the risk of P&I Club sanctions is not critical.

262. The American Club was the only US entity with even so much as an indirect involvement in the Imperium Charter. As such, the only risk of a breach of US primary sanctions that existed emanated from the presence of the American Club as the Vessel's P&I insurers.

263. Ceto contended that no matter what happened in the performance of the Imperium Charter, there was no question of: NIOC/NIOPDC receiving any compensation from the American Club in the event of loss or damage to the cargo; the American Club transacting with property or interests in property of NIOC/NIOPDC or any other sanctioned entity; the American Club being asked to provide insurance to someone on the SDN list.

264. OFAC has provided guidance to insurers relating to their involvement in or adjacent to the Iranian oil sector and stated that insurers can provide worldwide insurance even if it involves sanctioned jurisdictions. All the insurer needs to do to safeguard itself is state in the policy that they do not cover damage associated with sanctioned jurisdictions, individuals, etc. The cover provided by the American Club did include such an exclusion.

265. On this I accept Mr Thomas's evidence that if full disclosure were made to the Club it is wildly unlikely that it would provide cover; but that if full disclosure were not made (a point not suggested by Savory, but implicitly suggested in fact by Ceto – see paragraph 158) there was a risk that if payments were made in relation to an incident within the scope of cover (e.g. an oil spill) the P&I Club could unwittingly be in breach of sanctions and thus be penalised. That is an identifiable risk, but as is clear from the description as well as from the cross examination by Mr Smith KC on the contingencies inherent in this (e.g. the Club's robust compliance scrutiny) it was not a high risk.

Did Savory make any judgment in good faith that there was a sanctions risk?

266. Ceto submitted that:

    1) Savory made no judgment, but rather operated on the basis of a failure to extract a down payment of US$1 million;

    2) If Savory made any judgment at all it was not based on sanctions risk and was not reasonable.

The US$1 million bonus

267. The first point to deal with is Ceto's contention that Savory's approach was nothing at all to do with a risk assessment, but all to do with an attempt by Captain Gialozoglou to extract a payment of US$1 million for the performance of the Imperium Charter.

268. Ceto's witnesses said this:

1) Dr Rajabieslami's was the only direct evidence on this point. He claimed to be "very firm" on the point;

2) Ms Sanchouli had no first hand information. Her evidence amounted to being told by Dr Rajabieslami of the request; when pressed she said (contrary to his evidence) that Mr Lakin had also told her of it;

3) Mr Forouhar had no first hand information to give. He initially said that he had been told of the demand by Ms Sanchouli. He later when pressed suggested a discussion directly with Captain Gialozoglou in one of his restaurants.

269. As to this evidence I do not regard it as being credible. As I have already indicated neither Dr Rajabieslami or Ms Sanchouli was an impressive or believable witness. The former, as I have noted, presented as a very poor and dishonest witness indeed.

270. Mr Forouhar, though a better witness, was not particularly impressive. However, his evidence, even given the utmost weight, added nothing, and it was quite revealing both in his unwillingness to give evidence about this ("*no, … I didn't have much conversation with Ms Sanchouli.*" *"I cannot recall that, sir… I was not involved…*") his lack of clarity about details – who told him and when and the contradictions in that evidence as to whether he was told by Mr Sanchouli as opposed to Ms Sanchouli and his failure to mention any discussion with Captain Gialozoglou in his witness statement.

271. Added to this slight and shifting account in the witness evidence was the telling absence of any documentary evidence supportive of this point – even in WhatsApp messages. This is a telling absence. In normal circumstances if one had a contract with someone and they refused to perform it unless one gave them a million dollars on the side, the reaction (after shouting at them) would be to send a message expressing outrage, rejection of the proposition – and very probably threatening legal steps. An alternative might involve an internal consultation as to whether to accede to this demand; but again a documentary trail would be expected to result.

272. Overall this story presents as just that: a story confected to provide an alternative narrative and to cast discredit on the other side's main witness. I reject the conclusion which Ceto asks the Court to draw on this point. There was no attempt to gain a bonus of US$ 1 million.

273. That does not of course decide the question as to whether the refusal to perform the Imperium Charter was indeed down to a perceived sanctions risk; however, as both sides noted, it does leave a question. Savory asks: If the refusal was not bonus related, is there any realistic case for saying that it was not sanctions related? Ceto says that the question is: even if there was no specific demand, do the surrounding circumstances not align better with a financial concern, rather than a risk concern?

274. This is therefore the first strand of evidence relied upon in relation to the next question of whether Savory made a judgment based on sanctions risk at all.

Ceto points to correspondence in April and May which is not unequivocally reluctant. Ceto pointed to the following elements:

1) It was made clear to Savory/Delfi on 2 April that a voyage to Venezuela was being contemplated and Savory/Delfi did not immediately cry foul;

2) Savory/Delfi allowed the cargo to be loaded in early April;

3) On multiple occasions thereafter, Ceto and/or Imperium communicated that the Vessel's destination could or would be Venezuela. The responses from the Master were consistent with an intention to perform – for example seeking confirmation if "*any cargo documents. . . will be issued here in Sharjah before departure*", querying BL figures, engaging on bunkering issues;

4) The engagement in May with Imperium's 15 May email.

275. These points obviously require to be considered. However there was clear evidence, persisted in despite robust challenge in cross examination, that Savory did actively consider the sanctions risk. While it did not take legal advice, it did take other steps. Thus there was evidence that Savory did enter into discussions with other shipowner stakeholders in the Greek market as to their information; and from that gained an understanding that the United States was at the time acting to prevent the supply of Gasoline into Venezuela so as to prevent President Maduro's regime from being supported. At the same time Iran itself was becoming more risky, hence the inclusion of it as an exclusion under the Charter when the Addendum was executed. This dovetails with the expert sanctions evidence which pointed up the importance of the timeline – the risks were not static – and this was a bad time in terms of risk, bearing in mind the move to sanction PDVSA in 2019, followed by the sanctioning of vessels and companies in April 2019 and specific warnings given in April 2020.

276. Captain Gialozoglou's evidence was that he would not have gone to Venezuela at that time. The language he used was redolent of a business risk assessment: it was a *"hot point"* and a *"red flag"*. Like the experts he identified the coincidence of two risk points – there were "*two red lights Iranian cargo, and Venezuela. We were not able to afford it*". It was plain that he had considered the consequences: the consequence of being added to the SDN List would have been "*catastrophic*" to Savory.

277. If Captain Gialozoglou had taken advice from someone on Mr Thomas' spectrum in terms of risk assessment he would have heard what his gut and the market was telling him – possibly reinforced somewhat. But even if he had taken US law advice from someone less cautious than Mr Thomas, the advice being to the effect that no one had been sanctioned so far, he was clear that what he had heard and thought meant that his own alarm bells were ringing. He said that he would have been too afraid to go – he was not that "*brave*".

278. And further even Mr Wright's own evidence that there was only a "*low*" risk of secondary sanctions supports the perception that there was a risk of a catastrophic outcome.

279. Does the material upon which Ceto relies detract from that so as to justify a conclusion that Savory did not assess sanctions risk at all? In my judgment it does not. Particularly when one bears in mind the fact that the risk was a moving target. While Ceto repeatedly points out that there was no positive evidence of others being sanctioned at this time, that meant that Savory was in a position where it was having to take a difficult decision with limited information. It had a contract, and it had to justify refusal to perform by reference to an assessment. It may not have taken the optimum course in terms of openness; but that it did not is perfectly understandable. And much of what is relied upon by Ceto as indicating that there was no sanctions consideration is the Master's communications. He of course was not within Captain Gialozoglou's circle of trust and discussion. There is no surprise that, pending instructions otherwise, he should continue to plan as if the voyage were to proceed – operating one might say on the default setting.

280. Accordingly I conclude that the evidence clearly establishes that Savory did make an assessment as to sanctions risk. Given the earlier conclusion as to the extent of that risk it is self-evident that that decision was a reasonable one.

Was the failure to ensure/compel performance a breach of the Management Agreement?

281. This question does not therefore arise – Delfi would only be in breach if there was no reasonable decision as to sanctions risk. Had the answer been otherwise however there remains the question of whether Ceto could terminate the Management Agreement because Delfi (managers) had not ensured/compelled the Vessel to perform.

282. Ceto has variously put its case on these points as being a failure by Delfi to ensure that the Master obeyed orders, or a failure by Delfi to procure an obedient crew. In opening Ceto submitted that given that it was common ground that Delfi was obliged to comply with Ceto's orders in relation to the technical management of the Vessel, and also that the crew were under an obligation to Delfi to obey Ceto's orders it follows from this that Delfi was obliged to ensure that the crew was obliged to comply with Ceto's orders.

283. Savory meanwhile contended that Delfi was not in breach of clause 4 of the Management Agreement by failing to provide a crew that would comply with Ceto's orders or failure to procure that the Master comply with Ceto's orders. Clause 4 did not impose any such obligations.

284. If necessary I would conclude that Savory is right about this. The relevant clause, Clause 4 says "*Crew Management: The Manager shall provide suitably qualified Crew. The provision of such crew management services includes, but is not limited to, the following services. . .*" There is nothing in it about procuring an obedient crew, or compelling the crew (still less the Master) to comply with orders. If the crew were simply recalcitrant Ceto might say the Crew was not suitably qualified and call on Delfi to provide a more willing crew. But this hypothetical illustrates how far from the facts of the case that is. Here there was no issue in reality with the crew. There was an issue with the Master (aligned with Savory). It was therefore an argument apt to be taken in

the context of the BBC. It is not an argument which properly belongs in the Management Agreement.

285. In reality the argument is one which requires the implication of a term into the Management Agreement which is a term which by no means fulfils the requirements for implication. It is not necessary for business efficacy. It does not conform with the parties' objectively ascertainable expectations – particularly in circumstances where Clause 13 of the Management Agreement provided *"the Manager shall not be liable for any acts or omissions of the Crew, even if such acts or omissions are negligent, grossly negligent or wilful, except only to the extent that they are shown to have resulted from a failure by the Manager to discharge their obligations under Clause 4*". Accordingly this (evidence heavy) aspect of the case would fail on the short point of construction, even if it did not fail on the evidence.

The Trading Restrictions in the BBC

286. It follows that this issue becomes even more marginal than it was in argument. Savory also contended that Delfi was entitled to refuse to perform the Imperium Charter (regardless of sanctions risk) on the basis that it would involve infringing the BBC's trading limits.

287. This was, as Mr Caplin pointed out, a very odd argument to be having in that the question of trading limits is really conceptually one which falls within the charterparty. But for present purposes it is necessary to proceed on the basis that the obligation Ceto contends for can be implied into clause 4.

288. If that were the case does it follow that there must also be implied into the agreement terms which give Delfi a right to refuse to perform an obligation which would put Ceto in breach of the Charterparty? I conclude that it does not. There is nothing in the BBC that provides that Delfi is entitled or obliged to police Ceto's compliance with the BBC on Savory's behalf. On the contrary, Delfi, both as Ceto's agent and pursuant to clause 6 of the Management Agreement, owed Ceto a duty to protect and promote its interests. This would normally require favouring the interests of Ceto over those of Savory.

289. Nor is it easy to see how the implication of such a term would be necessary to make the Management Agreement work, or to obviously represent the intentions of the parties.

Was Delfi/Savory estopped from refusing to perform the Imperium Charter?

290. Ceto contended that because the Vessel was used to carry cargoes of Iranian oil both before and after the conclusion of the Addendum with the active and willing participation of both Savory and Delfi there was a common assumption between Ceto, Delfi and Savory that, Ceto was entitled to use the Vessel to carry cargoes of Iranian oil, that Ceto concluded the Imperium Charter and loaded the Cargo in reliance on the aforementioned assumption and that Delfi and/or Savory's attempt to withdraw from the parties' common assumption, clearly caused Ceto to suffer detriment.

291. In the circumstances, Ceto says that in accordance with the principles set out in *Tinkler v Revenue and Customs Commissioners* [2021] UKSC 39, Delfi was estopped under the Management Agreement and/or Savory was estopped under the BBC from refusing to perform the Imperium Charter on the basis that it involved the carriage of a cargo of Iranian oil.

292. This was another argument which, although formally raised, occupied very little oxygen at the hearing. It can be dismissed simply on the basis that the evidence made plain that the risk in this case arose not from the carriage of Iranian oil, per se, but from carriage of Iranian oil to Venezuela. The factual basis for a relevant common assumption is therefore lacking, and this argument fails.

Was Ceto entitled to terminate the Management Agreement on account of Delfi's refusal to perform the Imperium Charter: Conclusion

293. It follows from the conclusion reached above that Savory was entitled to refuse to perform the Imperium Charter and accordingly Delfi was not in breach of the Management Agreement in actioning that refusal.

294. Consequently, the basis of Ceto's termination of the Management Agreement on 21 May 2020 was wrongful and ineffective. Delfi nevertheless, eventually, agreed to the consensual termination and change in manager, effective from 22 November 2020 (when Saint James took over). By doing so it accrued a right to an early termination fee of US$720,000 under clause 18.5 of the Management Agreement – and that sum was therefore due under Clause 39.2 of the Addendum to the BBC.

Counterfactual: validity of Ceto's purported termination

Termination under the Express Provision of the Management Agreement

295. Clause 18.1 of the Management Agreement provided that if either party to the Management Agreement failed to meet their obligations thereunder, the other party could give notice to the party in default requiring them to remedy it with, in the event that the default was not remedied within a reasonable time, the innocent party then being entitled to terminate the agreement with immediate effect. If Ceto had a right to terminate, there are certainly difficulties with the manner in which that was done.

296. This required the breach notified in the Notice Letter to be the same as the breach on which termination was based. In fact the Notice Letter identified failure by Opera to provide a crew that would comply with Ceto's orders whereas the Termination Letter cited failure by Opera to ensure that Master follows Ceto's orders.

297. Further, the 2 days given for what was plainly a difficult and complex situation was manifestly inadequate given that remedying the default would require changing the crew to one that "would" comply with Ceto's orders.

298. As for the point as to the addressing of the letters, had this been of any significance, I would have concluded that this did not stand in the way of a valid

termination. Despite Savory's submissions here by reference to *OG Thomas Amaethyddiaeth CYF v Turner* [2022] EWCA Civ 1446, [2023] P & CR 15, at [57] (Lewison LJ) the letters were addressed to Opera "care of" Delfi; so Delfi were part of the addressing. Further the error was the result of an obvious misidentification: Ms Sanchouli had not been aware of the fact that Delfi had replaced Opera as managers. Further Delfi clearly understood Ceto's notices in this manner given that it responded denying that it was in breach of the Management Agreement and denying that there was any right to terminate that agreement (see Delfi's email of 22 May 2020). Delfi went so far in the latter communication to invite Ceto to withdraw its notice of termination, thus indicating that they had clearly understood it to amount to a purported termination of the Management Agreement to which it was party.

Acceptance of Repudiation

299. Ceto tried to backstop the problems for its termination case via a case in common law repudiation. However as Savory submitted, while Ceto may still have had some residual common law rights to terminate the Management Agreement in appropriate circumstances that cannot be the case where express contractual machinery exists to govern a specific state of affairs, and that rubric has simply not been observed.

Savory's counterfactual: If Ceto had lawfully terminated the Management Agreement, were there, nevertheless, Sums due under that agreement on the BBC's expiry?

300. If the Management Agreement was lawfully terminated because of Delfi's default in its performance thereof, no further sums would accrue to Delfi under the Management Agreement.

301. Savory however contended that in the interim period prior to the appointment of new vessel managers it in fact incurred sums on Ceto's behalf in relation to the Vessel's insurance policies, the wages of the crew, etc.

302. Ceto says that clause 18.5 of the Management Agreement is clear – no management fee is payable at all after the termination of the Management Agreement if that termination is on account of Delfi's default.

303. I would (had it been necessary) have accepted that submission. Savory's argument that the original termination by Ceto did not, could not (and was never intended to) have immediate effect is strained and artificial. While the 20 May notice does not speak of "immediate" termination that is plainly what the structure envisages – warning followed by termination. There is no scope for the Agreement to be "held in limbo" until Saint James were ready. That is not to say that Delfi would not have a quantum meruit claim – but that claim is not under the Management Agreement, and could not therefore save Savory's case if other better arguments had not prevailed.

CAN CETO RESCUE THE RIGHT TO BUY?

304. It will be recalled that clause 39 of the Addendum made the obligation to sell (and the right to buy) conditional on the Ceto having (i) paid all hire and any other sums due under the BBC and (ii) paid all management fees and any other sums due under the Management Agreement to Delfi.

305. Ceto argues that it is nonetheless entitled to pay outstanding sums now and the duty to transfer title then arises. It says that Savory is wrong to say that clause 39.1 imposes a once-and-for-all cut-off. It says that the BBC's purpose, as previously recognised by Savory before Andrew Baker J, was to "*facilitate the eventual sale of the vessel. . .*", such that, if the clause 39.1 duty can be triggered after 1 April 2022, this "*would allow Ceto to settle all sums found due following resolution of any dispute and then take transfer of title*". It also says that Savory's approach means that any unpaid claim for future contingent liabilities on 1 April 2022, whether sound or pursued in good faith or not, would defeat Ceto's right to receive title and that Savory or Delfi could thereby engineer or rely on a spurious claim for damages to negate the duty to transfer title. Equally, it says that Savory's construction of clause 39.1 would allow it to obtain a windfall (in the form of the Vessel and the price that had been paid by Ceto for the same), simply by identifying an entirely trivial amount that was due and had not been settled under the BBC or the Management Agreement as at the expiry of the former. This cannot be right.

306. I conclude that Savory is correct. Clause 39.1 is an "all or nothing" provision: that is the natural wording of the Conditions in clause 39.1. In addition the contractual regime that the parties agreed repeatedly contemplates that if Ceto does not comply with its payment obligations then it will lose both the Vessel and anything it has paid to Savory to that point:

    1) Clauses 45.3.1 and 45.4 of the Charter apprehend that if the BBC is terminated by Savory for a "Termination Event", Owners retain the Vessel, the US$5m initial payment by Ceto, and any charter hire that has been paid. If that was the agreed consequence of a termination by Savory for a default by Ceto's up until expiry, there is no reason that it should be any different at or post-expiry if Ceto defaults of clause 39.1

    2) Clause 13 of the MOA makes clear that if the "Purchase Price" is not paid by Ceto, the MOA can be cancelled and any funds pay up to that point are retained by Savory. So, the MOA, like the Charter, makes clear to Ceto that the cost of its non-performance is to lose both the Vessel and any payments it has made.

307. Ceto's approach requires a very strained construction – indeed a writing in of words, thus: "*On <u>and at any time after</u> expiration of this charter*". There is nothing unfair or uncommercial about the natural reading of the clause so as to compel such a strained construction.

308. As Andrew Baker J recognised in the Part 8 Judgment at [43]: "*as the charter period came to an end, the claimant would have had to take a view, as businesses have to all the time under all manner of contractual arrangements,*

and act at its risk if it chose not to meet a claim it was not content to accept". Ceto chose to take a risk as to what had to be paid, and it got it wrong. But what would be seriously uncommercial would be an approach whereby Ceto could take that risk, get its decision making homework marked by the court, and then redo that decision – with Savory all the time on the hook as to obligation to sell. Indeed the lack of commerciality of this approach is well illustrated by what did happen: Ceto failed to pay crew wages, so the Vessel was arrested and sold to pay those wages – so Savory could not more sell the Vessel now to Ceto than it could fly to the moon.

CONCLUSION

309. Accordingly Ceto's claim fails and Savory is entitled to the declarations sought:

1) At the expiration of the bareboat charterparty dated 28 February 2019, sums were "due" to Delfi within the meaning of clause 39.1 of the Charterparty (as amended), with the consequence that no obligation on Savory Shipping Corporation to transfer to Ceto Shipping Corporation title in the mt "VICTOR 1" (IMO No. 9283722) accrued at that time;

2) At the expiration of the BBC, sums were "due" to Savory within the meaning of clause 39.1 of the BBC (as amended), with the consequence that no obligation on Savory to transfer to Ceto title in the Vessel under that clause accrued at that time;

3) The putative transfer obligation on Savory in clause 39.1 of the BBC (as amended) was only capable of accruing as at the date of the expiration of the BBC, viz 1 April 2022, if the conditions set out therein were met;

4) It being the case that the conditions for transfer set out in clause 39.1 of the BBC (as amended) were not met as at the date of the expiration of the BBC, no obligation on Savory to transfer to Ceto title in the Vessel (or the proceeds from its sale) under clause 39.1 of the BBC (as amended) has accrued, and can now ever accrue.

APPENDIX: KEY CONTRACTUAL PROVISIONS

Bareboat Charter and Additional Clauses

Proforma

Box 20

Trading limits (Cl.6): Worldwide range, always excluding. . . Venezuela. . .

6. Trading Restrictions

The Vessel shall be employed in lawful trades for the carriage of suitable lawful merchandise within the trading limits indicated in Box 20.

The Charterers also undertake not to employ the Vessel or suffer her employment in any trade or business which. . . is otherwise illicit or in carrying illicit or prohibited goods or in any matter whatsoever which may render her liable to condemnation, destruction, seizure or confiscation.

[. . .]

10. Maintenance and Operation

[. . .]

(b) *Operation of the Vessel. The Charterers shall at their own expenses and by their own procurement man, victual, navigate, operate, supply, fuel and whenever required repair the Vessel during the Charter Party and they shall pay all charges and expenses of every kind and nature whatsoever incidental to their use and operation of the Vessel under this Charter. . . The Master, officers and crew of the Vessel shall be the servants of the Charterers for all purposes whatsoever, even if for any reason appointed by the Owners.*

[. . .]

13. Insurance and Repairs

(a) *During the Charter Period the Vessel shall be kept insured by the Charterers at their expense against hull and machinery, war and Protection and indemnity risks (and any risks against which it is compulsory to insure for the operation of the Vessel, including maintaining financial security in accordance with sub- clause*

10(a)(iii)) in such form as the Owners shall in writing approve, which approval shall not be un-reasonably withheld. Such insurances shall be arranged by the Charterers to protect the interests of both the Owners and the Charterers and the mortgagee(s) (if any), and The Charterers shall be at liberty to protect under such insurances the interests of any managers they may appoint. Insurance policies shall cover the Owners and the Charterers according to their respective interests.

[. . .]

23. Contracts of Carriage

(a) *The Charterers are to procure that all documents issued during the Charter Period evidencing the terms and conditions agreed in respect of carriage of goods shall* ***not be issued in the name of the owners, shall identiy*** *[sic]* ***the Charterers as the demise Owners of the Vessel and shall*** *contain a paramount clause. . .*

Additional Clauses:

35. CHARTER PERIOD

35.1 Subject to the terms of this Charter, the period of chartering of the Vessel hereunder (the "Charter Period") shall commence on the Delivery Date and shall terminate on the date which falls 36 months after the Delivery Date.

36. CHARTER HIRE

36.1 The Charterers shall, throughout the Charter Period pay charter hire ("Charter Hire") to the Owners, calculated from the first day of the Charter Period, at the following rates:

Months 1 through 36: USD7,386 per day

36.2 Hire shall be paid continuously throughout the Charter Period.

36.3 The Charterers shall pay hire due to the Owners in accordance with the terms of this Charter punctually, in respect of which time shall be of the essence. The Charter Hire shall be paid 30 days in advance with the first instalment falling due on the Delivery Date. . .

37. INDEMNITY

37.1 Subject to the terms of this Charter, the Charterers agree at all times to indemnify the Owners and hold them harmless and keep the Owners indemnified and held harmless against. . .

37.1.1 Any costs, charges, or expenses which the Charterers have agreed to pay under this Charter and which shall be claimed or assessed against or paid by the Owners;

[. . .]

37.1.3 All losses, costs, charges, expenses, fees, payments, liabilities, penalties, fines, damages or other sanctions of a monetary nature (collectively, "Losses") suffered or incurred by the Owners and arising directly or indirectly during the tenure of this Charter or in relation to the Charter in any manner (except if caused by the wilful misconduct of the Owners) out of the delivery, non delivery, purchase, registration, chartering, sub-chartering, possession, control, fuse, operation, condition, maintenance, repair, replacement, refurbishment, modification, overhaul, insurance, sale or other disposal, return or storage of or loss of or damage to the vessel or otherwise in connection with the Vessel (whether or not in the control of possession of the Charterers) including but not limited to those Losses described in Clause 45.7. . .

[. . .]

37.3 The indemnities contained in this Clause 37, and each other indemnity contained in this Charter, shall survive any termination or other ending of this Charter and any breach of, or repudiation or alleged repudiation by, the Charterers or the Owners of this Charter but the indemnity contained in this Clause 37 hereof shall not apply if and to the extent that the relevant cost, charge, expense or Loss arises as a result of (i) any act, neglect or default of or by any person (other than the Charterers) subsequent to the redelivery of the Vessel to the Owners pursuant to Clause 15 hereof or any other provision of this Charter or. . . (ii) . . .any failure on the part of the Owners to comply with any of the terms of this Charter or the MoA. . .

37.4 All moneys payable by the Charterers under this Clause 37 shall be paid within 1 running Days of demand.

[. . .]

39. TRANSFER OF VESSEL, PURCHASE OPTION AND OPTION TO SELL

39.1 Purchase obligation

On expiration of this charter, and provided that the Charterers have fulfilled their obligations under this Charter, it is agreed that the Charterers will. . . fulfil their obligation to purchase the Vessel. . . [T]he sale will be in accordance with the MoA appended to this contract.

[. . .]

45. OWNERS' RIGHTS ON TERMINATION

45.1 At any time after an Event of Default shall have occurred and be continuing under this Charter of the Charter, as the case may be, the Owners may, by notice to the Charterers immediately, or on such date as the owners shall specify, terminate the Charter, whereupon the Vessel shall no longer be in the possession of the Charterers with the consent of the Owners, and the Charterers shall redelivery the Vessel to the owners in accordance with clause 15.

45.2 On or at any time after termination of the chartering by the Charterers of the Vessel pursuant to clause 45.1 hereof the Owners shall be entitled…to retake possession of the Vessel.

45.3 If the Owners pursuant to clause 45.1 hereof give notice to terminate the chartering by the Charterers of the Vessel, the Charterers shall pay to the Owners on the date of such termination (the "Termination Date") or such later date as the Owners shall specify: -

45.3.1 all hire due and payable, but unpaid under this Charter…

45.3.2 any sums, other than hire, due and payable but unpaid under this Charter…

45.3.3 all costs, expenses, damages and losses incurred by the Owners as a consequence of this Charter having terminated prior to the expiry of the Charter Period…

45.4 Upon termination of the Charter by the Owners following the occurrence of a Termination Event under the Charter, the USD 5,000,000 Down Payment (which was paid on delivery into the Bareboat Charter) together with interest earned shall remain with the Owners. If the Down Payment does not cover their loss, the Owners shall be entitled to claim further compensation for their losses and for all expenses incurred together with interest.

Addendum to the Bareboat Charter

6 Purchase and Sale Obligations

6.1 Clause 39.1 of the Bareboat Charterparty shall be amended as follows:

"39.1 Purchase and Sale obligations

On expiration of this charter, and provided that the Charterers have paid all hire and any other sums due under this Charter and provided that the Charterers have also paid all management fees and any other sums due under the Management Agreement to Delfi, it is agreed that Owners will sell the Vessel to Charterers for no further consideration, that title to the Vessel will automatically

transfer to Charterers and Charterers will automatically be required to purchase and will be deemed to have purchased the Vessel. The sale will be in accordance with the MOA appended to this contract.

39.2 Purchase Option

Notwithstanding any provisions in this Charter, the Charterers shall have the option to purchase the Vessel on and an "as is where is" basis with everything belonging to her any item prior to the expiration of the Charter period by giving the owners 28 days' notice in writing ("Notice to Exercise Option") together with payment to the Owners of the following:

(i) all outstanding Charter hire and any other amounts due under this Charter;

(ii) all amounts that would be due under the Charter at the expiry of the Notice to Exercise Option; and

(iii) the balance of the Purchase Price of USD12,976,880, as to which (i) the Down Payment of USD5,000,000 and (ii) any Charter Hire paid under this Charter shall be credited to this figure.

Provided that Charterers have also paid all management fees and any other sums due under the Management to Delfi."

[. . .]

9 Trading Limits

9.1 Box 20 of the Bareboat Charterparty shall be amended as follows: "Trading limits (Cl. 6): Worldwide range, always excluding war zones, US and US territories, Syria, North Korea, TOC, Papau New Guinea, Australia, New Zealand, Venezuela, Yemen, Israel, Cuba, Iran, ice bound ports."

[. . .]

11. General

[. . .]

11.2 In the case of any conflict between this Addendum, the Bareboat Charterparty and/or the MOA, the terms of this Addendum shall prevail.

[. . .]

11.7 This Addendum, the Bareboat Charterparty and the MOA constitute the entire agreement and there are no oral or other representations

regarding the subject of this Addendum and Agreement that are binding on either party.

Memorandum of Agreement

1. Purchase Price

The Purchase Price is USD 12,000,000. . . (less the 5,000,000 Down Payment and any BB Charter hires already received in accordance with the Bareboat Charter)

Any payment under this contract, shall be made in EURO.

[. . .]

3. Payment

The said Purchase Price shall be paid in full free on bank charges to…

Down payment as described on point 1, shall be lodged and credited into Owners designated bank account within 24 hrs upon signing, in accordance with the terms and conditions.

[. . .]

5. Time and place of delivery and notices

(a) The Vessel shall be delivered and taken over safely afloat at a safe and accessible berth or anchorage at/in Worldwide range in the Sellers' option.

Notice of Readiness shall not be tendered before: on expiration of the Bare Boat Charter.

[. . .]

13. Buyers' default

Should the Purchase Price not be paid in accordance with Clause 3 (Payment), the Sellers have the right to cancel this Agreement in which case any funds received by that time from the Buyers will be considered non refundable.

Should the Sellers fail to give Notice of Readiness by the Cancelling Date or fail to be ready to validly complete a legal transfer as aforesaid they shall make due compensation to the Buyers for their loss…In the event that the Buyers elect to cancel this Agreement thew Down Payment / deposit together with interest earned shall be released to them immediately.

This MOA is an appendix to the Bareboat CharterParty dated 25.02.19 between the Sellers as Owners and the Buyers as Charterers.

Management Agreement

This Agreement is made on this 28th day of February 2019 between:

*A. "**CETO SHIPPING CORPORATION**". . . called the "Charterer", on the one part and*

*B. "**DELFI S.A.**". . . called the "Manager" on the other part.*

(collectively referred to as the "Parties" or individually as a "Party")

*WHEREAS pursuant to a Bareboat Charterparty dated 28th February 2019 between SAVORY SHIPPING INC (the "Registered Owner") and the Charterer, the Registered Owner has let by demise and the Charterer has bareboat chartered the good vessel **"M/T SPIRIT"** with IMO number 9283722 which is registered in the Shipping Registry of Liberia and documented under the laws of Libera (hereinafter called "the Vessel") (hereinafter the "Bareboat Charterparty").*

[. . .]

*2. **AUTHORITY OF THE MANAGER***

Subject to the terms and conditions herein provided, during the period of this Agreement the Manager shall carry out the Management Services in respect of the Vessel as agents for and on behalf of the Charterer. The Manager shall have authority to take such actions as they may from time to time in their absolute discretion consider to be necessary to enable them to perform the Management Services in accordance with sound ship management practice, including but not limited to compliance with all relevant rules and regulations.

[. . .][ie authorising breach of sanctions would be a breach

*3. **SERVICES – TECHNICAL MANAGEMENT***

The Manager shall provide technical management and shall act and do all and / or any of the following acts or things in the name and / or on behalf of the Charterer in all parts of the world…and such management shall include the following services:

3.1 ensuring that the Vessel complies with the requirements of the law of the Flag State. . .

[. . .]

*4. **SERVICES – CREW MANAGEMENT***

The Manager shall provide suitably qualified Crew. The provision of such crew management services includes, but is not limited to, the following services. . .

[. . .]

5. ***INSURANCES***

The Manager shall provide throughout the period of this Agreement:

5.1 hull and machinery insurance;

5.2 protection and indemnity insurance which shall include crew insurance;

5.3 war risks insurance;

5.4 optional insurances may be arranged by the Manager (such as piracy, kidnap and ransom, loss of hire and FD & D) but shall be at the cost of the Charterer;

5.5 The insurances shall name the Manager as joint assured or any other third party designated by the Manager as joint assured;

5.6 The Charterer shall be liable for all applicable deductibles in respect to the insurance covers to be obtained by the Manager in accordance with Clause 6;

5.7 The handling and settlement of all insurance, average salvage and other claims and disputes arising in connection with the Vessel and this Agreement shall be subject to the terms and conditions in Clause 14.

[. . .]

6. ***OBLIGATIONS – MANAGER'S OBLIGATIONS***

6.1 The Manager undertake to use its best endeavours to provide the Management Services as agents for and on behalf of the Charterer in accordance with sound ship management practice and to protect and promote the interests of the Charterer in all matters relating to the provision of services hereunder.

[. . .]

6.3 The Manager, as technical managers, shall procure that the requirements of the Flag State are satisfied. . .

[. . .]

7. ***OBLIGATIONS – CHARTERER'S OBLIGATIONS***

7.1 The Charterer shall pay all sums due to the Manager punctually in accordance with the terms of this Agreement. . .

[. . .]

9. ***MANAGEMENT FEE***

*9.1 The Charterer shall pay to the Manager a daily management fee in the net amount of **USD 8,000**. . . services as Manager under this Agreement, which shall be payable in equal monthly instalments in advance. . .*

[. . .]

*13. **RESPONSIBILITIES***

13.1 Liability to Charterer

[. . .]

(ii) Acts of omissions of the Crew – *Notwithstanding anything that may appear to the contrary in this Agreement, the Manager shall not be liable for any acts or omissions of the Crew, even if such acts or omissions are negligent, grossly negligent or wilful, except only to the extent that they are shown to have resulted from a failure by the Manager to discharge their obligations under Clause 4, in which case their liability shall be limited in accordance with the terms of this Clause 13.*

[. . .]

*16. **COMPLIANCE WITH LAWS AND REGULATIONS***

The parties will not do or permit to be done anything which might cause any breach or infringement of the laws and regulations applicable to the Vessel and/or party hereto.

[. . .]

*17. **DURATION OF THE AGREEMENT***

17.1 This Agreement shall come into effect at the date stated in Clause 1 and shall continue for a period of 36 months after the commencement date of this Agreement.

[. . .]

*18 **TERMINATION***

18.1 Charterer's or Manager's default

If either party fails to meet their obligations under this Agreement, the other party may give notice to the party in default requiring them to remedy it. In the event that the party in default fails to remedy it within a reasonable time to the reasonable satisfaction of the other party, that party shall be entitled to terminate this Agreement with immediate effect by giving notice to the party in default.

18.2 Notwithstanding Sub-clause 18.1

[. . .]

(ii) *If the Charterer proceed with the employment of or continue to employ the Vessel in the carriage of contraband, blockade running, or in any unlawful trade, or on a voyage which in the reasonable opinion of the Manager is unduly hazardous or improper, the Manager may give notice of default to the Charterer, requiring them to remedy it as soon as practically possible. In the event that the Charterer fail to remedy it within a reasonable time to the satisfaction of the Manager, the Manager shall be entitled to terminate the Agreement with immediate effect by notice.*

(iii) *If either party fails to meet their respective obligations under Clause 5 the other party may give notice to the party in default requiring them to remedy it within 10 working days, failing which the other party may terminate this Agreement with immediate effect by giving notice to the party in default.*

[. . .]

18.5 In the event of the termination of this Agreement for any reason other than default by the Manager the management fee payable to the Manager according to the provisions of Clause 9 shall continue to be payable for a further period of ninety (90) days.

18.6 In addition, with regards to the crew management as per Clause 4

[. . .]

(i) *the Charterer shall continue to pay Crew Support Costs during the said further period of the number of ninety (90) days….*

[. . .]

18.7 The termination of this Agreement shall be without prejudice to all rights accrued due between the parties prior to the date of termination.

[. . .]

19. ***LAW AND JURISDICTION***

This Agreement shall be governed and construed in accordance with English law and any dispute arising out of it or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996.

[. . .]

25. ***LEGALITY***

25.1 The Parties shall not be obliged to comply with the provisions of this Agreement if in the reasonable judgment of the Parties it will expose

them or their insurers, re-insurers, crew, registered owners, to any sanction or prohibition or restriction imposed by any State, Supranational or International Governmental Organization.

[. . .]

25.3 Notwithstanding anything in this Clause to the contrary, the Parties shall not be required to do anything which constitutes a violation of the laws and regulations of any State to which wither of them is subject;

25.4 The parties shall not be held liable to indemnify the other party against any and all claims, losses, damage, costs and fines whatsoever suffered by the other party resulting from any breach of warranty and this Clause 25 as aforesaid.