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Cargo Claims – Getting a Move on

[Bills of lading](#) claims often contain relatively short time limits in which to bring legal proceedings. In the absence of an agreement between the parties to a dispute to extend the time in which to commence legal proceedings, cargo interests need to ensure that they issue and then prosecute a cargo claim in a timely fashion.

The English Courts generally have a hands on approach to ensuring that legal proceedings move through the system as efficiently as possible. There are procedural timetables and requirements placed upon a claimant who brings a claim before the Court, to ensure that those legal proceedings do not sit in abeyance for an extensive period of time, without steps being taken to prosecute the claim.

There are some anomalies to that, as a recent case High Court case indicates. In *Alba Exotic Fruit SH PK the MSC Mediterranean Company S.A.*, the cargo claimant, Alba, had issued legal proceedings against MSC in relation to a cargo claim to a consignment of bananas delivered in Albania in May 2013. Alba claimed losses of just under USD150,000 to the bananas.

The bill of lading required Alba to commence legal proceedings within one year of the date of the delivery of the goods. Alba started legal proceedings in the English Court in April 2014 and then served those proceedings on MSC. In response, MSC denied liability and filed a counterclaim for the costs of destroying the cargo as well as ancillary charges. At that stage, under the English Court procedural rules, Alba ought to have applied to the Court for a Case Management Conference to be fixed. This is a hearing before the Court to agree the balance of the procedural timetable, with a view to getting the final hearing in place and the case ruled upon.

Alba, for reasons which are not known, did not apply for a Case Management Conference but instead, served a Reply and Defence to Counterclaim setting out its position on the cross claim from MSC. This was in 2014. Thereafter, there was no further action taken by Alba. No action was taken to obtain a Case Management Conference.

In 2018, Alba informed MSC that it had changed its solicitors and they applied to amend the original claim that had been filed. This was met by a request from MSC to provide security for its costs in having to deal with the issue. As a matter of course, security for costs are not generally ordered in the English High Court. MSC then made an application to the Courts for particular documents in the possession of Alba, which resulted in a hearing being fixed.

At that hearing, the Judge, taking control of the procedure on the case (which is something that would ordinarily happen at the Case Management Conference), suggested to MSC that the appropriate course of action was for them to issue an application to strike out Albas' claim rather than pursuing its application for extra paperwork. A claim was then lodged by MSC to strike out Albas' claim.

There are several grounds on which a claim can be struck out. The first of these is that a claim can be struck out if there has been an inordinate and excusable delay, and as a result of that delay there has been a substantial risk that a fair trial would not be possible. The second ground for applying to strike out a claim, is that there has been an intentional and contumelious delay involving a complete and total disregard of the rules of the court, with full awareness of the consequence and grounds that the claimant who started the proceedings made an intentional decision not to progress the claim.

The Judge who heard the application decided that a delay of four years and seven months in applying for a Case Management Conference was inordinate and was not excusable. However, MSC had failed to show that they had been prejudiced by the delay and that a fair trial was no longer possible. The result of that, was the Judge decided not to strike the claim out. However, he decided that Alba needed to be penalised for failing to prosecute the claim and he ordered that Alba should provide security for costs to MSC for defending the claim in the sum of GBP100,000.