



# Time Bars – the Hague-Visby Rules and Misdelivery Claims

A recent Commercial Court appeal case has upheld an arbitration tribunal decision that found that the time bar in Article III Rule 6 of the Hague Visby Rules does apply to misdelivery claims after the discharge of cargo (FIMBank Plc v KCH Shipping Co Ltd [2022] EWHC 2400(Comm)).

Article III rule(6) of the Hague Visby Rules (“HVR”) states that any claim in relation to the carriage of goods by sea will be time-barred unless proceedings have been commenced by the claimant within one year of their delivery or the date on when they should have been delivered.

In the appeal, FIMBank PLC was the holder of the bills of lading, which had been issued on the CONGENBILL form, which incorporates the Hague-Visby Rules.

Their cargo had been discharged from the vessel against letters of indemnity for the release of cargo without production of the original bills of lading and the cargo was misdelivered to the wrong party.

Unfortunately, FIMBANK commenced arbitration proceedings against the wrong party. Proceedings were started against, Mirae Wise SA. who as it transpired were the bareboat charterers rather than the owners. The correct party to have started arbitration against was KCH Shipping Co Ltd “KCH”.

On realising the error FIMBANK commenced a claim against KCH but the arbitration was started after one year from the date of delivery had lapsed.

FIMBank argued the claim was not subject to the time bar under Article III rule (6) of the HVR on the basis that:

1. Delivery took place after the discharge of cargo and therefore the time bar was not relevant;
2. The time bar did not apply to claims for misdelivery occurring after discharge, because they only governed the carrier’s obligation in the carriage of goods by sea, and therefore did not apply once the cargo had been discharged; and
3. That the provisions of the CONGENBILL disapplied the HVR, by stating that “*The Carrier shall in no case be responsible for loss and damage to the cargo[...] prior to loading into and after discharging from the Vessel.*”

The Tribunal had found that the time bar in Article III rule (6) of the HVR did apply to claims relating to the misdelivery of cargo occurring after discharge and the CONGENBILL form did not dis-apply the HVR for the period following discharge.

## The Court's Decision

The Commercial Court upheld the tribunal's decision by reviewing the construction and objectives of Article III rule (6), confirming that the HVR do apply to claims for misdelivery of cargo.

The objective of the rule was to achieve finality and to enable the ship owner to clear their books.

Additionally, the Court found that the tribunal was correct in stating that the bills of lading contained an implied term that the parties had intended to extend the application of the HVR to apply after 'actual' discharge and after delivery of the cargo has taken place.

It was also established that the provisions of the CONGENBILL did not expressly disapply the HVR and therefore they continued to take effect.

## Key take away

- The time bar under Article III rule 6 of the HVR is far-reaching and may not be limited by stages or by a perceived exclusion. If the parties wish to exclude the continued application of the HVR after discharge (and thereby stop the time bar continuing after 'actual' discharge) this needs to be expressly excluded by way of contract, which in this case would have been under the CONGENBILL; and
- Parties should, as always, be mindful of chains of ownership in charter parties and ask questions to ensure that their claims are being made against the correct parties.

For further information, please contact our specialist [shipping and logistics lawyers](#) by emailing [online.enquiries@la-law.com](mailto:online.enquiries@la-law.com).