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Hague Visby Rules Apply to Misdelivery

Maritime law firm [Hill Dickinson](#) has highlighted a case in which the United Kingdom Supreme Court confirmed that a Hague Visby Rules time bar applies to misdelivery claims.

The case is *Fimbank Plc v KCH Shipping Co Ltd (Giant Ace)* [2024] UKSC 38 in which the Supreme Court decision is of broad relevance in the shipping industry, as the Hague Visby Rules (and Hague Rules) are commonly contractually incorporated into bills of lading, charterparties and other contracts of affreightment, whether through standard form contracts or clauses or otherwise. The Rules may also be compulsorily applicable.

Misdelivery is additionally a common claim in circumstances where financing is secured by cargo and such security is sought to be enforced.

The appellant was a bank which financed the purchase of coal cargo by its customer. The respondent was the demise charterer of the vessel that carried the cargo. The demise charterer was also the contractual carrier under the bills of lading issued for the cargo.

The bank claimed it took security by way of a pledge over the bills of lading issued for the cargo. When the bank was unable to collect payment for the cargo or for the financing it provided for the purchase of the cargo, it sought to claim against the demise charterer. It alleged that the demise charterer misdelivered the cargo.

The bills of lading were on the 1994 Congenbill form and incorporated the Hague Visby Rules.

The bank commenced arbitration against the demise charterer more than one year after the cargo was delivered or should have been delivered under Article III Rule 6 of the Hague Visby Rules. Under Article III Rule 6, which contains the time bar provision, it was provided that the carrier will be discharged from “all liability whatsoever in respect of the goods” unless suit is brought within one year of the delivery of the goods or the date when they should have been delivered (ie, suit brought after one year from this time would be time-barred).

In the Court of Appeal, the demise charterer argued that the one-year time bar did apply to the bank’s claim for misdelivery. The bank argued that it did not. The Court below had held in favour of the demise charterer. The Court of Appeal also held in favour of the demise charterer.

The bank sought permission to appeal to the Supreme Court, which was granted.

Article II of the Hague Visby Rules, read with Article I(b), I(e) and Article III Rule 8, provide that the contractual carrier under the bill of lading is subject to certain (minimum) responsibilities and liabilities, and certain (maximum) rights and immunities set out in the Rules (maximum because, should the rights and immunities increase, it necessarily follows that the responsibilities and liabilities decrease, which is prohibited by Article III Rule 8).

Article III Rule 6 contains the time bar provision.

The bank argued that because the period of responsibility under the Hague Visby Rules was limited to the period between the commencement of loading and the completion of discharge, the time bar equally relates and relates only to breaches of duty which occur during that period of responsibility.

The bank also referred to the *travaux préparatoires* (a record of the deliberations of the drafters of the Hague Rules) and argued that the drafters intended to create a regime that applied to, and only to, the period beginning with loading and ending with discharge.

The demise charterer disagreed and provided further reasons as to why the time bar would cover breaches outside the period of responsibility.

The Supreme Court first considered whether Article III Rule 6 of the Hague Rules (the predecessor to the Hague Visby Rules) would apply to claims for misdelivery. It did so by extensively considering various sources and methods of interpretation, being:

1. the ordinary meaning of the provision;
2. the context of the provision;
3. the object and purpose of the provision;
4. the *travaux préparatoires* relating to the provision;
5. the English authorities on the provision;
6. case law from other relevant jurisdictions on the provision; and
7. textbooks and commentaries.

The Supreme Court held that the Article III Rule 6 time bar in the Hague Rules did apply to breaches of duty by the contractual carrier which occurred after discharge but before or at the time of delivery, including misdelivery.

The Supreme Court then held that the Hague Visby time bar applied in the same way as did the Hague Rules.

The Supreme Court also dismissed a subsidiary argument by the bank that clause 2(c) of the Congenbill form of the bills of lading disapplied the provisions of the Hague Visby Rules (including the time bar in Article III Rule 6) to events occurring after discharge was completed.

The appeal was dismissed.

Hill Dickinson welcomes the decision. The Supreme Court has made it clear that the position is the same under both Hague Rules and Hague Visby Rules, it comments.

This decision highlights the importance for claimants making claims for misdelivery to pay close attention to the time bars under either set of Rules (if the Rules apply), and to promptly commence claims, to avoid having their claims time-barred.

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