

Circular Ref: 2020/0010
Date: 24 September 2020

Inclusion of Hague or Hague-Visby Rules in the Charterparty - Take Advantage

In most charterparty, for any claim the usual time bar is 6 years pursuant to *Limitation Act 1980*. However, if by the incorporation of Clause Paramount in the charterparty, *Hague or Hague-Visby Rules* are incorporated, the issue of Time bar becomes very tricky. This issue cannot be ignored by managers and maritime lawyers. Let us understand this issue step by step.

Article III Rule 6 of the Hague/Hague-Visby Rules states:

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date on when the goods should have been delivered [emphasis added].

This means this Article III Rule 6 is included in the charterparty. Accordingly, for a few matters, the time bar for charterers to sue the ship owners will be one year. This means charterers or operators should exercise caution to avoid falling foul of time bar issues and it also means ship owners could take advantage of this.

But what are the claims that could be considered for which time bar will be one year. This is a bit troublesome and there have been contradictory decision. However, an attempt was made in the case of *The Marinor [1996]* where Colman J he noted:

... where there is incorporation by general words into a time charter of legislation enacting the Hague Rules or Hague-Visby Rules, the shipowners will be entitled to rely on the protection of the time bar against claims for breach of any of the terms of the charter, even if not co-extensive with obligations under the rules, provided that (i) those claims assert (a) a liability involving physical loss of or damage to goods or (b) a liability for financial loss sustained in relation to goods and (ii) the goods in question were either shipped or were intended to be shipped pursuant to the charter.

Therefore the three conditions should be considered in depth to decide the issue of time bar. In a recent case of *The Alhani [2018]* concerning misdelivery claims where a shipowner has delivered the cargo to a third party without production of the bill of lading. The judge held that Article III Rule 6 was capable of applying to misdelivery claims and was not limited in its application to breaches of the Hague or Hague-Visby Rules obligations. This case shows that the case of time bar is complicated in such cases.

FDD department of ALCO advice to Andrew Liu's clients is:

- a) There are lots of grey areas and this aspect needs to be analysed.
- b) FDD department has resolved many time bar issues for various clients including conducting a few arbitrations.

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk

Andrew Liu & Co. Ltd