

Circular From: ALCO 2026/0041

Date: 15 October 2026

Does arrest for security interrupt the time bar, and how should deck cargo be marked in bills of lading - [2026] EWCA Civ 1158

Can an application to arrest a vessel for security interrupt the time bar under the Hague-Visby Rules? How should the requirement in Article I(c) of the Hague-Visby Rules that cargo be "*stated as being carried on deck and is so carried*." be understood? To what extent must deck cargo be marked and identified in a bill of lading? On these questions, an LMAA tribunal and the English High Court had previously handed down decisions. However, a recently issued Court of Appeal judgment ([2026] EWCA Civ 1158) has overturned the High Court's ruling on the deck cargo issue (while upholding part of the first-instance decision), marking another shift in the case law on deck cargo matters.

Case Background:

Company A (the "Shipowner") is the owner and carrier of the vessel "Taikoo Glory"; Company B (the "Bill of Lading Holder") holds four bills of lading issued by the Shipowner, covering a total of 36,934 JAS cubic meters of New Zealand pine timber (the "Cargo");

The Cargo was carried by the vessel from New Zealand to a port in India; two of the bills of lading stated that part of the cargo was loaded on deck, in quantities of 22,994 pieces and 11,092 pieces respectively;

After the Cargo arrived at the destination port in September 2019, it was released against a letter of indemnity provided by the charterer without presentation of the original bills of lading; the Bill of Lading Holder alleges misdelivery by the Shipowner and claims damages.

Although the bills of lading contained an arbitration clause, the Bill of Lading Holder initially did not commence arbitration. Instead, on 18 August 2020, the Bill of Lading Holder commenced proceedings in the Singapore High Court and applied to arrest a sister vessel (the "Singapore Proceedings"). The vessel was arrested and subsequently released upon provision of security.

The Shipowner successfully applied to stay the Singapore proceedings in favor of arbitration, a decision upheld by the Singapore High Court and the Court of Appeal. Arbitration was eventually commenced in late December 2020, more than one year after the alleged misdelivery.

Main Issues:

I. Do the Singapore Proceedings constitute a "suit" within the meaning of Article III, Rule 6 of the Hague-Visby Rules, thereby interrupting the one-year time bar?

The text of Article III, Rule 6 provides:

"Subject to paragraph 6b is the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period, however, may be extended if the parties so agree after the cause of action has arisen."

II. How should the requirement in Article I(c) of the Hague-Visby Rules that cargo "*by the contract of carriage is stated as being carried on deck and is so carried*" be understood? To what extent must the stowage/identification of deck cargo be indicated in the bill of lading? If the cargo actually carried on deck in this case falls within this definition, it will be treated as an exception to which the Rules' time bar provisions do not apply, i.e., it will not be subject to the one-year limitation period.

The text of Article I(c) provides:

"Article I

In these Rules the following words are employed, with the meanings set out below:

(c) "Goods" includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried."

Parties' Submissions

The Shipowner's main submissions:

The Singapore Proceedings were merely for the purpose of obtaining security and did not constitute proceedings capable of substantively determining the claim; therefore, they do not constitute a "*suit*" within Article III, Rule 6;

The bills of lading should not merely state the quantity but should precisely identify which goods are carried on deck in order to satisfy the requirement of being "*stated as being carried on deck*";

The Bill of Lading Holder's main submissions:

The Singapore Proceedings were lawfully commenced and should be regarded as a "*suit*," thereby interrupting the time bar;

The identification requirement under Article I(c) need not be overly precise; stating the quantity of deck cargo is sufficient in most circumstances;

Tribunal's Award:

On the first issue, the tribunal held that the Bill of Lading Holder's arrest was merely for security and did not constitute a "*suit*." The Shipowner's submission that the claim was time-barred under the one-year limitation in Article III, Rule 6 of the Hague-Visby Rules was upheld. (This conclusion favored the Shipowner.)

On the second issue, the tribunal held that the deck cargo (the two bills of lading stating 22,994 pieces and 11,092 pieces on deck) had been sufficiently noted, and that the time bar applied only to the under-deck cargo, not to the deck cargo (because the latter does not constitute "*goods*" within the definition in Article I(c) of the Hague-Visby Rules). (This conclusion on the deck cargo claim favored the Bill of Lading Holder.)

Both parties subsequently appealed on questions of law under section 69 of the Arbitration Act 1996. In June 2023, the court granted permission to appeal on several questions of law.

First Instance Judgment ([2025] EWHC 1878 (Comm)):

The Shipowner succeeded on the first issue: the Singapore Proceedings did not constitute a "*suit*" within Article III, Rule 6 of the Hague-Visby Rules and did not interrupt the one-year time bar;

The Bill of Lading Holder succeeded on the second issue: the bills of lading in this case had sufficiently clearly stated the deck cargo, meeting the requirements of Article I(c).

On the first issue:

The court distinguished between substantive proceedings (capable of determining liability) and proceedings merely for security. Although the Singapore Proceedings were lawfully commenced and involved the arrest of a sister vessel, they were merely for the purpose of obtaining security and could not determine the substantive issues of the claim; therefore, they did not constitute a "suit" and did not interrupt the one-year time bar.

On the second issue:

The court explained the meaning of "stated as being carried on deck" in Article I(c). Its purpose is to enable the bill of lading holder to determine whether the goods are subject to the Hague-Visby Rules, thereby affecting liability and insurance.

The court rejected the Shipowner's submission that each individual portion of deck cargo must be precisely identified, and instead adopted a pragmatic, commercial standard, holding that whether the statement is sufficiently clear depends on the nature of the goods and the specific circumstances. The tribunal had found the bills of lading sufficiently clear, and the court deferred to that finding.

Court of Appeal Judgment [2026] EWCA Civ 1158:

I. The meaning of "suit": limited to substantive proceedings (first instance upheld, holder's appeal dismissed)

"Suit" in Art. III, r 6 refers only to substantive proceedings to establish liability, and does not include proceedings merely for the purpose of obtaining security. The language of the provision strongly indicates that "suit" refers to substantive litigation/arbitration; the purpose of the time bar provision is to encourage the prompt making and pursuit of substantive claims, not to allow indefinite delay.

II. Art. I(c) "*stated as being carried on deck*": first instance overturned, Shipowner's strict standard adopted

In this case, although the cargo was pine timber, the tribunal and the first instance court both found that: the cargo consisted of timber of different volumes and values, and the bills of lading only stated that 22,994 pieces and 11,092 pieces were carried on deck, without specifying the particular piece numbers or parcel numbers. Both the tribunal and the first instance judge had erroneously adopted an overly lenient standard.

The language of Art. I(c) does not suggest that homogeneous cargo is exempt from the precise identification requirement. Therefore, the Art. I(c) exception was not engaged, and the Hague-Visby Rules applied to all the cargo, including the deck cargo. Since the arbitration was commenced more than one year after delivery (and the arrest did not constitute a "suit"), all claims were time-barred.

Judgment text: *"In order for the Article I(c) exclusion to be engaged in relation to part only of the cargo consigned by a bill of lading consisting of items of differing value, the statement on the bill must specifically identify the cargo to be carried on deck, such as by parcel number or serial number."*

Implications:

I.Regarding interruption of the time bar, this case makes clear that under the Hague-Visby Rules, merely applying for the arrest of a vessel or other property preservation measures cannot interrupt the one-year limitation period. "Suit" in Article III, Rule 6 refers only to substantive proceedings to establish liability, and does not include proceedings merely for the purpose of obtaining security.

To interrupt the time bar under the Hague-Visby Rules, arbitration or litigation must be commenced on the merits of the claim within the one-year period, rather than relying solely on arrest or other security measures.

II.Regarding deck cargo, the Court of Appeal overturned the lenient standards of the tribunal and the first instance court, making clear that: where the cargo under a bill of lading consists of items of differing volumes or values, in order for the Art. I(c) exception to apply, the bill of lading must specifically identify which goods are carried on deck, for example by parcel number or piece number, thereby setting a stricter standard.

To exclude deck cargo from the Rules under Art. I(c) as "stated as being carried on deck," the bill must, where cargo specifications or values differ, precisely identify which goods are stowed on deck, strictly distinguishing deck cargo from under-deck cargo, rather than merely stating quantities.