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To: Transport Industry Operators

Suit in HVR

According to the Hague-Visby Rules, the carrier shall be discharged of all liability in respect of the cargoes unless suit is brought within one year of their delivery or the date when they should have been delivered. The English High Court issued a Judgment on 22nd July 2025 explaining the meaning of "suit". [2025 EWHC 1878 (Comm)]

Pedregal Maritime ("the Shipowner") was the owner of the vessel Taikoo Brilliance ("the Vessel") and the carrier. Batavia Eximp ("the Holder") was the holder of four bills of lading issued by the Shipowner ("the Bills") in respect of a cargo of timber comprising 36,934 JAS CBM of New Zealand Pine Logs ("the Cargo"). The Cargo was carried on the Vessel from New Zealand to Kandla, India. The Vessel arrived at Kandla. The Cargo was discharged, commencing 16th September 2019. But the Bills were not available at Kandla. Discharge took place to one or more third parties without production of the Bills and against a letter of indemnity provided to the Shipowner by the charterer of the Vessel. The Holder alleged cargo misdelivery by the Shipowner.

By an arbitration clause in the Bills, it was agreed that any dispute would be referred to arbitration. On 18th August 2020, the Holder issued a writ in the High Court of Singapore for the arrest of the Navios Koyo, a sister ship of the Vessel ("the Singaporean Proceedings"). Arrest of the sister ship was effected on 18th September 2020. Security was provided for her release, and she was released on 25th September 2020.

The Shipowner applied for a stay of the Singaporean Proceedings in favour of the arbitration clause in the Bills. A stay was granted on 20th December 2020, a decision later confirmed by the Singapore High Court on 15th March 2021 and by the Singapore Court of Appeal on 19th October 2021.

The arbitration proceedings were not commenced by the Holder until 22nd or 24th December 2020, that is, more than a year after the delivery, or alleged misdelivery, of the Cargo. The hearing in the arbitration commenced on 18th May 2022. The Shipowner argued that the Holder's claim was time-barred pursuant to Article III,6 of the Hague-Visby Rules. The Arbitrator decided that the time bar in Article III,6 did apply. The Award in the arbitration was issued on 16th February 2023.

On 26th June 2023, the English High Court granted permission to appeal under section 69 of the Arbitration Act 1996 to the Holder on the questions of law. The question of law concerned the requirements of the Hague-Visby Rules.

Article III,6 of the Hague-Visby Rules provides:

…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…

The first question was whether the Singaporean Proceedings constituted "suit" for the purposes of Article III,6. The Holder pointed out that the Singaporean Proceedings were to be taken as validly brought.

The purpose of the Article in question is "to achieve finality and to enable accounts and books to be closed": see The Giant Ace at [84]. Lord Hamblen drew attention to these authorities as examples:

> "…
> (1) ".... to provide for the discharge of these claims after 12 months meets an obvious commercial need, namely, to allow shipowners, after that period, to clear their books" - per Lord Wilberforce in The Aries [1977] 1 WLR 185] at p 188.
> (2) "The inference that the one-year time bar was intended to apply to all claims arising out of the carriage (or miscarriage) of goods by sea under bills subject to the ... Rules is in my judgment strengthened by the consideration that article III, para 6 is, like any time bar, intended to achieve finality and, in this case, enable the shipowner to clear his books" - per Bingham LJ in Cia Portorafti Commerciale SA v Ultramar Panama Inc [1990] 3 All ER 967 ("The Captain Gregos") at pp 973 j to 974 a."

The Singaporean Proceedings were for security; a determination on the merits of the Holder's claim for misdelivery would require arbitration. The Holder made the point that if arrest was to be sought in Singapore then a substantive claim had to be asserted under the procedure there. But the English High Court was of the view that the proceedings remained proceedings for security. They would not decide the claim.

The English High Court recognised that the ordinary meaning of the word "suit" was capable of extending to validly brought proceedings for security. However, the English High Court did not accept that proceedings for security were within the ordinary meaning of the word in the context and in the light of the object and purpose of the treaty provision. Those show that "suit" for the purposes of Article III, 6 means proceedings that can decide the claim; the Shipowner was correct in its argument that if time was to stop running it was substantive proceedings that were required, that is, proceedings to establish liability.

The Holder argued that this interpretation involved "an unjustified gloss on the text". The English High Court was of the view that it was faithful to the text in its context and in the light of the object and purpose of the treaty provision. The passage of a year with no action on the merits does clear the books. If substantive proceedings were commenced within the year, then the English High Court accepted there remained a risk of delay after that. However, the parties enjoyed the certainty that there was a claim and it was underway, towards finality and clearing the books.

The Holder argued that a carrier who knew that the holder of a bill of lading was seeking security through proceedings knew that it was not safe to close its books. That was true, knowledge that substantive proceedings on the merits were or might be intended to come at some future point did not clear the books. Also true was that there might be steps open to the carrier if, having sought security, claimants delayed in bringing substantive proceedings (the example of the carrier applying

to set aside the order for security given). But those steps would be additional steps, required before the books would be closer to being cleared.

On the Holder's analysis, the carrier was required to leave its books open for an indefinite period of time, simply by security being sought and without the certainty that there would be substantive proceedings. In the English High Court's opinion, that was uncommercial, when the context of the words of the treaty provision is commercial.

The English High Court concluded that the Shipowner succeeded on the question of law.

Please feel free to contact us if you have any questions or if you would like to have a copy of the Judgment.

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