TIME BAR UNDER ARTICLE III, RULE 6 OF THE HAGUE RULES AND THE HAGUE-VISBY RULES IN THE LIGHT OF FIMBANK PLC v KCH SHIPPING CO LTD (THE SUPREME COURT, UK), 2024

The Supreme Court of the United Kingdom
FIMBank Plc v KCH Shipping Co Ltd (the "Giant Ace") [2024] UKSC 38
Justices: Lord Hodge (Deputy President), Lord Sales, Lord Hamblen, Lord Leggatt and Lord Richards
Judgment given on 13 November 2024
[Case Review]

This review examines the issue of the time bar under Article III, Rule 6 of the Hague Rules and the Hague-Visby Rules and the analysis and arguments given in FIMBank Plc v KCH Shipping Co Ltd ("The Giant Ace"). *The claimant bank, which was the assignee/pledgee of the bills of lading under English law, claimed damages caused by the carrier's misdelivery of the cargo after discharge and commenced arbitration proceedings against the carrier in London. The carrier claimed that the bank's claim was time-barred as its action was outside the one-year time-bar period under the Hague Rules and the Hague-Visby Rules. The issues before the tribunal and the courts were whether Article III, Rule 6 of the Hague Rules and the Hague-Visby Rules applied to claims for misdelivery of cargo after discharge and whether the terms of the bill of lading set aside the time-bar rule in cases that occur after discharge. The bank argued inter alia that the time-bar rule did not apply to its claim for misdelivery of cargo, which took place after discharge. The bank's arguments referred to the ordinary meaning and context of Article III, Rule 6, the object and purpose of the said Rule, the* travaux préparatoires, *English authorities and textbooks. This paper analyses the arguments presented by the claimant bank and the reasons given by the arbitration tribunal and English courts for not accepting them.*

1. INTRODUCTION

One hundred years after the adoption of the Hague Rules in 1924, a particular set of issues related to the time bar was finally resolved in the case of FIMBank Plc (the "Bank") and KCH Shipping Co Ltd (the "Carrier"). The case concerned a dispute as to whether the Bank's claim for damages was time-barred.[1] The dispute

[1] See https://www.supremecourt.uk/cases/uksc-2023-0085 (accessed 1 March 2026).

arose in connection with the carriage of 85,510 metric tons of steam coal by the Carrier from Indonesia to a number of Indian ports. Trafigura Group Pte, a company incorporated in Singapore, sold the cargo to Farlin Energy & Commodities FZE of the UAE, which then on-sold it to various other buyers. The Bank financed Farlin's purchase of the cargo, and as security the Bank was granted (among other things) a pledge of 13 bills of lading all governed by English law.[2] The Bank enforced the pledge and became the holder of the bills of lading and was entitled to take any legal action it deemed fit to recover its financial loss pursuant to the Carriage of Goods by Sea Act 1992. In spite of its efforts, the Bank failed to collect payment for the cargo. It claimed damages from the Carrier for misdelivery of the cargo in April 2018 to persons who were not entitled to receive it without presentation of the original bills of lading and, by doing so, committing a breach of the contract of carriage. (The proceedings that followed did not refer to any letters of indemnity that might have been provided to the Carrier in order to deliver the cargo without presentation of the original bills of lading.)

The Carrier argued that the Bank's claim was time-barred.

2. PROCEEDINGS

2.1. Arbitration

The Bank, a legitimate holder of the bills of lading, initiated arbitration proceedings in London against the Carrier on 24 April 2020, i.e. far beyond the 12-month time-bar period under Article III, Rule 6 of the Hague-Visby Rules.

The Tribunal (Julia Dias QC, Sir Bernard Eder and Timothy Young QC) focused, *inter alia*, on the following preliminary issues:

(i) whether Article III, Rule 6 of the Hague Rules[3] or the Hague-Visby Rules[4] applies in principle where delivery of the cargo occurs only after discharge; and

(ii) whether the claim was time-barred.

In September 2021, the Tribunal decided both issues in the affirmative.

---

[2] The Hague-Visby Rules consist of the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading ("Hague Rules") as amended by the Protocol signed at Brussels in 1968 enacted in the United Kingdom by the Carriage of Goods by Sea Act 1971.

[3] See http://www.admiraltylawguide.com/conven/haguerules1924.html (accessed 1 March 2026).

[4] Article III, Rule 6 of the Hague-Visby Rules reads as follows: "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." See https://www.eurorijn.com/files/hvr.pdf (accessed 1 March 2026).

2.2. The High Court of Justice

The Bank applied to the High Court of Justice for leave to appeal, which was granted on the grounds of two legal issues:

(i) whether Article III, Rule 6 of the Hague-Visby Rules applies to claims for misdelivery of cargo after discharge; and

(ii) whether Clause 2(c) of the 1994 Congenbill form disapplies the Hague-Visby Rules to the period after discharge.

In dealing with the two issues, in September 2022 the High Court of Justice (King's Bench Division) (Sir William Blair) agreed with the Tribunal's arguments that: "…the contract of carriage covered by a bill of lading applies before loading, before the goods pass over the ship's rail, and persists after the goods pass over the ship's rail until right and true delivery. Delivery is contemplated by the Rules, even if not identified by name otherwise than in Art. III, r 6. Thus Art. II stipulates the carrier's 'custody' obligation, which is replicated in Art. III, r. 2 in the form of the carrier's obligation to 'keep' and 'care for' the goods. Such an obligation of 'custody' is naturally capable in the normal course of persisting after discharge, and is thus an obligation squarely within the ambit of the Rules".[5]

The Bank's case was that the one-year time bar which applies to claims against carriers does not apply to claims for misdelivery after discharge, arguing that the Hague-Visby Rules make no reference to misdelivery, and that Clause 2(c) of the 1994 Congenbill bills of lading sets aside their application.

The Bank further argued that: "The case of FIMBank is straightforward, namely that the 'period of responsibility' under the Hague-Visby Rules and, it follows, the immunities including the time bar, end when the goods are discharged from the ship – the right reading of the Rules is that the Rules including Art. III r. 6 do not on their wording apply to or confer immunities in respect of any events after discharge…"[6]

Neither the Tribunal nor the High Court of Justice accepted the Bank's argument in respect of Rule 6. The High Court of Justice particularly emphasised the wide language of Article III, Rule 6 of the Hague-Visby Rules: "The carrier and the ship shall in any event be discharged from all liability whatsoever in respect

[5] *FIMBank Plc (Appellant) v KCH Shipping Co Ltd (Respondent)*, 28 September 2022 [2022] EWHC 2400 (Comm); [2023] 1 All ER (Comm) 736; [2023] 1 Lloyd's Rep 381, KBD.

[6] Royal Courts of Justice, *FIMBank p.l.c. v KCH Shipping Co., Ltd*, [2022] EWHC 2400 (Comm), CL-2021-000563, 28 September 2022, para. 16, https://www.quadrantchambers.com/sites/default/files/2022-09/fimbank_v_kch_shipping_judgment_approved_judgment.pdf (accessed 1 March 2026).

of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered."

The words in bold do not exist in the language of Article III, Rule 6 of the Hague Rules, which indicates the desire for a wider application of the time-bar rule. A number of changes to the Hague Rules were agreed in the 1968 Protocol, the most important of which for this case were the amendments in bold to Article III, Rule 6.

The High Court of Justice also agreed with the Tribunal that Clause 2(c) of the 1994 Congenbill did not set aside the Hague-Visby Rules time bar for the period after discharge. While the Tribunal held that the time bar under Article III, Rule 6 applies to misdelivery after discharge, the Tribunal also found that Clause 2(c) of the 1994 Congenbill form does not present a relevant obstacle. This is because under Article III, Rule 8[7] of the Hague Rules, any agreement in a contract of carriage (such as a bill of lading) relieving the carrier from liability for loss or damage to the goods, other than in accordance with the Rules, shall be null and void and of no effect.

In conclusion, since the Bank did not initiate any suit within the meaning of Article III, Rule 6 within the prescribed time period, it was decided that the Bank's claim was time-barred, irrespective of whether (mis)delivery occurred after discharge as a matter of fact. The appeal was dismissed. Nevertheless, the Judge granted leave to appeal from his decision to the Court of Appeal.

2.3. The Court of Appeal

In April 2023, the case went to the Court of Appeal (Lord Justice Males, Lord Justice Popplewell and Lord Justice Nugee).

The Bank's argument was that the Hague-Visby Rules govern carriage of goods by sea as defined in Articles I and II, i.e. from the loading of cargo on board the ship up to and including discharge, not after the carrier has completed his duty to discharge the cargo on shore.

The Bank further argued that the time-bar provision under Article III, Rule 6 of the Hague-Visby Rules applies to any damage occurring during the period of the carrier's responsibility, which does not go beyond the discharge of the cargo.

Lord Justice Males of the Court of Appeal stated as follows: "Article III, rule 6 is the only provision in the Rules which refers to 'delivery' as distinct from

[7] See http://www.admiraltylawguide.com/conven/haguerules1924.html (accessed 1 March 2026).

discharge. It was common ground between the parties that, as explained by Lord Hobhouse in "The Berge Sisar" [2001] UKHL 17, [2002] 2 AC 205 at [36], discharge and delivery are distinct aspects of the international carriage of goods. While discharge is a physical operation to remove the cargo from the ship, delivery is a legal concept involving a full transfer of possession of the goods by the carrier to the receiver. Discharge and delivery may therefore occur at different times".[8]

The Carrier's position was that: "… even if the Rules as a whole do not apply, the time bar in Article III, rule 6 does apply up to and including delivery and therefore applies to a claim for misdelivery of the cargo after discharge".[9]

The period of responsibility defined in the Hague and the Hague-Visby Rules is the period between the commencement of loading and the completion of discharge. In some instances, the Rules may nonetheless impose liability and obligations before loading (for example, to ensure the vessel is seaworthy) and/or beyond discharge of the cargo, and may persist up to delivery of the cargo (for example, in this case of misdelivery). As to the issue of whether Article III, Rule 6 of the Hague-Visby Rules applies to a claim for misdelivery occurring after completion of the discharge of the cargo, the Court of Appeal accepted the Bank's argument that Article III, Rule 6 of the Hague Rules[10] did not apply to misdelivery after discharge. This is so because Article III, Rule 6 cannot be interpreted outside the scope of the rest of the Hague Rules. The Rules in Article II govern the contract of carriage.[11]

However, the Court of Appeal held that Article III, Rule 6 of the Hague-Visby Rules did apply to misdelivery after the completion of discharge of the cargo.

As to the issue of whether Clause 2(c) of the 1994 Congenbill form sets aside the time bar under Article III, Rule 6, the Court of Appeal held that it did not.

The Court of Appeal dismissed the Bank's appeal.

Upon the Bank's application, the Supreme Court granted permission to appeal.

---

8 *FIMBank plc v KCH Shipping Co Ltd*, 24 May 2023 [2023] EWCA Civ 569; [2023] Bus LR 1464; [2024] 1 All ER 502; [2023] 2 All ER (Comm) 775; [2023] 2 Lloyd's Rep 457, CA (Males, Popplewell, Nugee LJJ), para. 30.

9 *Ibid*., para. 19.

10 Article III, Rule 6 of the Hague Rules: "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 when the goods should have been delivered".

11 Article II of the Hague Rules: "Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth".

2.4. The Supreme Court

In November 2024, the Supreme Court (Lord Hodge, Lord Sales, Lord Hamblen, Lord Leggatt and Lord Richards) expressed the view that although the period of the carrier's responsibility defined in the Hague and the Hague-Visby Rules is the period between the commencement of loading and the completion of discharge, in certain cases the Rules may impose on the carrier liability and obligations even before loading (e.g. Article III, Rule 1(a) where it is bound to exercise due diligence to make the ship seaworthy) and/or beyond discharge of the cargo up to delivery of the cargo (e.g. misdelivery). This view is contrary to the Bank's submission that the period of the carrier's responsibility under the Rules is limited to the period between the commencement of loading and the completion of discharge. The Bank further argued that the time-bar rule accordingly applies only to breaches of contract for carriage occurring during the said period, and therefore does not apply to misdelivery.

In order to decide whether Article III, Rule 6 applies to claims for misdelivery, the following was taken into consideration when interpreting the Rule:

2.4.1. Ordinary Meaning of the Terms of the Conventions

"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."[12]

"International conventions should in general be interpreted by reference to broad and general principles of interpretation rather than any narrower domestic law principles."[13]

Words indicating wide application of the terms of Article III, Rule 6 of both the Hague Rules and/or the Hague-Visby Rules are listed below:

1) "in any event": the time bar applies in any and every case, without any particular limitation.
2) "all liability"/"all liability whatsoever": broader use indicates not only liabilities arising under the Rules but also any other liabilities arising under the contract or tort.

[12] See https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (accessed 1 March 2026).

[13] *Alize 1954 v Allianz Elementar Versicherungs AG* (The CMA CGM Libra) [2021] UKSC 51, para. 34, https://supremecourt.uk/uploads/uksc_2020_0071_judgment_772c8b5f47.pdf (accessed 1 March 2026).

3) "in respect of loss or damage"/"in respect of the goods": this language indicates that the damage relates not only to the carried goods but also to financial loss related to the carried goods.
4) "discharged from all liability"/"all liability whatsoever" indicate absolute discharge with no exception, which leads to the absolute finality of any claim whatsoever, which is the main purpose of the time-bar provision under Article III, Rule 6.

It is worth mentioning here the arguments of Sir David Foxton in the case of "The Alhani":

1) "The words 'in any event' are wide, and, in the context of Article IV, Rule 5 of the Hague Rules, the courts have emphasised their width, and rejected arguments that they are insufficient to apply to particular types of breach."[14]
2) "The words 'all liability' are equally wide … Taken together, the words 'in any event' and 'all liability in respect of loss or damage' are clearly wide enough to encompass liability for delivering the goods to someone not entitled to take delivery of the same."[15]
3) "… the object of finality which it has been held that Article III, Rule 6 was intended to achieve … would be seriously undermined if the rule did not apply to misdelivery claims."[16]

2.4.2. Context

The Bank's arguments may be summarised as follows:

1) Since the period of the carrier's responsibility under the Rules (definition of the carriage of goods) is limited only to the period between the loading and completion of discharge, the time bar equally relates only to breaches of the carrier's duty during that period of responsibility.
2) Under Article I of the Rules, a contract of carriage by sea covers the period from loading the cargo on board the ship until the time when the goods are discharged from the ship.
3) Under Article II of the Rules, the carrier's responsibilities and liabilities, as well as its rights and immunities, refer only to the loading, handling, stowage,

[14] *Deep Sea Maritime Ltd v Monjasa A/S* [2018] EWHC 1495 (Comm); [2018] Bus LR 1552, para. 42, https://essexcourt.com/wp-content/uploads/2018/07/The-Alhani-Final-Note.pdf (accessed 1 March 2026).

[15] *Ibid*., para. 46.

[16] *Ibid*., para. 48.

carriage, custody, care, and discharge of the goods. They do not go beyond the loading or discharge of the goods.

The Supreme Court did not agree with the Bank's arguments for the following reasons:

1) Article III, Rule 6 deals with events taking place after discharge, up to delivery and at delivery, such as misdelivery.
2) Equally, the carrier's liabilities and responsibilities arise before loading the cargo, when it is required to issue bills of lading for the cargo received and held in its custody before loading the same on board the ship.
3) Pursuant to Article III, Rule 1, the carrier is required to make sure that the ship is seaworthy even before the voyage, which represents the carrier's liabilities occurring prior to loading.

In the context of the time-bar regulation under Article III, Rule 6, the Supreme Court emphasised the importance of the distinction between delivery and discharge. Delivery of goods (physical transfer of the goods from the carrier's possession to the possession of the receiver) to the person entitled to receive them in accordance with their description (quantity and quality), as stated in the bills of lading, is a key point in every contract for the carriage of goods by sea, as it represents evidence of performance of the contract.

2.4.3. Object and Purpose

The object and purpose of the time-bar provision in the Rules is to ensure finality. Upon expiry of the 12-month time-bar period, when the carrier is discharged from any liability whatsoever in respect of the goods, provided that no suit is commenced against the carrier within that period, the carrier's accounts in respect of that carriage can be closed. The Supreme Court emphasised the importance of finality which equally applies to all related claims, whether arising from breach of the Rules, breach of the contract of carriage of goods, or in tort.

2.4.4. The English Authorities

The Supreme Court analysed a number of English court cases, which were all referred to in these proceedings. The cases include:[17]

1) *Aries Tanker Corp. v Total Transport* Ltd [1977] 1 WLR 185 ("The Aries") (the House of Lords): "…time bar under Article III, Rule 6 leads to absolute discharge of liability".

[17] See https://www.supremecourt.uk/cases/uksc-2023-0085 (accessed 1 March 2026).

2) *The New York Star* [1981] 1 WLR 138, 145: "…'delivery' in relation to the time bar provision is directed towards the carrier's obligations as bailee of the goods". Article III, Rule 6 covers post-discharge misdelivery claims.
3) *Deep Sea Maritime Ltd v Monjasa A/S [2018] ("The Alhani")*: Taking into consideration the language "in any event", "all liability" and "finality", it was held that Article III, Rule 6 applies to misdelivery claims. The time-bar provision is not limited in its application to breaches of the Hague Rules obligations. It applies to all breaches of the carrier's duty, including the tort of negligence occurring within the period of the carrier's responsibility.

2.4.5. Travaux Préparatoires

As a supplementary means of interpretation of the Hague Rules, the Bank further referred to the history and development of the use of the words "discharge" and "delivery" from the phrase "subsequent to the unloading from the ship"; "subsequent to the discharge from the ship on which the goods are carried by sea" in Article VII, in 1921. The CMI Conference in 1922 used the language "subsequent to delivery from the ship". The word "delivery" was used to mean "delivery from the ship" as opposed to delivery at a later point, and "subsequent to discharge". The First Plenary Session of the CMI sub-committee in October 1923 defined "carriage of goods" in Article I(e) of the Hague Rules as covering the period from the time the goods are loaded on to the time they are discharged from the ship.[18] The Bank's argument was that throughout the *travaux* the intention had always been that the scope and purpose of the Rules governed the carrier's liability only for the period while the goods are carried at sea, i.e. from loading to discharge. The Supreme Court did not agree with the Bank's submission, arguing that although Article II of the Rules defines the period of the carrier's responsibility (loading, handling, stowage, carriage, custody, care and discharge of such goods), the wider context of the Hague Rules, including Article III, Rule 6, applies outside the said period of the carrier's responsibility. In that respect, the Supreme Court disagreed with the Court of Appeal which held that the Hague Rules do not allow for the time-bar rule to apply to misdelivery.

In the *travaux préparatoires,* the Supreme Court further referred to:

1) The session of the sub-committee appointed in 1959 by the CMI where it was noted that the Hague Rules time bar applied to wrongful delivery claims.
2) The Opening Plenary Session of 10 June 1963, where it was noted that the time bar applies not only as regards loss or damage but in other respects as well.

[18] *Ibid*., paras. 68-71.

3) The Final Plenary Session (14 June 1963) where the present text of Article III, Rule 6 was defined with its wide meaning to include claims for wrongful delivery.

The Supreme Court decided that the amendments made to the original wording of Article III, Rule 6 throughout history were intended to cover claims for misdelivery. For the reasons stated above, including references to a number of English court cases and relevant textbooks, the Supreme Court held that both the Hague Rules and the Hague-Visby Rules time bars apply to claims for misdelivery occurring after discharge. As to the issue of whether Clause 2(c) of the 1994 Congenbill form of bill of lading sets aside the application of the time-bar provision in Article III, Rule 6 of the Hague-Visby Rules to events occurring after the completion of discharge, the Supreme Court agreed with the Court of Appeal's view that: (i) the Clause does not have any reference to either the Hague Rules or to the Hague-Visby Rules; and (ii) the purpose of that Clause is not to prevent the Carrier from relying on an applicable time bar and to increase, rather than reduce, the Carrier's liability. The Supreme Court dismissed the appeal.

3. CONCLUSION

It seems that the English Supreme Court has finally clarified the legal position of the parties to a contract of carriage of goods by sea governed by the Hague and the Hague-Visby Rules as to the carrier's liability for wrong delivery or misdelivery after the discharge of cargo. In spite of the carrier's liabilities defined in Article III, Rule 2, its liability extends in time to before loading and after the completion of discharge.

The 12-month time bar of Article III, Rule 6 of the Hague and Hague-Visby Rules applies not only to the carrier's liability after discharge up to the delivery of cargo, but also to any and all claims for breach of the carrier's duty arising either under the contract or from negligence in tort.

This decision is highly important for the shipping industry, including shippers, charterers, insurers, and financiers.

Zoran Tasić, LLM

Sažetak:

ZASTARA NA TEMELJU ČLANKA III. STAVKA 6. HAŠKIH I HAŠKO-VISBYJSKIH PRAVILA U SVJETLU SPORA IZMEĐU FIMBANK PLC I KCH SHIPPING CO LTD (VRHOVNI SUD UJEDINJENOG KRALJEVSTVA), 2024.

Vrhovni sud Ujedinjenog Kraljevstva
FIMBank Plc protiv KCH Shipping Co Ltd (the "Giant Ace") [2024] UKSC 38
presuda od 13. studenog 2024.

Ovaj se prikaz bavi zastarom prema članku III. stavku 6. Haških i Haško-Visbyjskih pravila te analizom i argumentima iznesenima u predmetu FIMBank Plc protiv KCH Shipping Co Ltd ("The Giant Ace"). *Banka tužiteljica bila je cesionar/založni vjerovnik iz teretnica prema engleskom pravu. Tražila je od prijevoznika naknadu štete uzrokovane pogrešnom isporukom tereta nakon iskrcaja te je protiv njega pokrenula arbitražni postupak u Londonu. Prijevoznik je tvrdio da je zahtjev banke zastario jer je tužba podnesena nakon isteka jednogodišnjeg zastarnog roka prema Haškim i Haško-Visbyjskim pravilima. Pitanja pred arbitražom i sudovima bila su: primjenjuje li se članak III. stavak 6. Haških i Haško-Visbyjskih pravila na tužbene zahtjeve zbog pogrešne isporuke tereta nakon iskrcaja te jesu li odredbe teretnice ukinule primjenu pravila o zastari u slučajevima nastalim nakon iskrcaja. Banka je, među ostalim, tvrdila kako se pravilo o zastari ne primjenjuje na njezin zahtjev za naknadu štete nastale zbog pogrešne isporuke tereta nakon iskrcaja. U svojim se argumentima pozivala na uobičajeno tumačenje i kontekst članka III. stavka 6., njegov smisao i svrhu,* travaux préparatoires, *englesku sudsku praksu te relevantnu literaturu. Ovaj prikaz analizira argumente koje je iznijela banka tužiteljica, kao i razloge zbog kojih ih nisu prihvatili arbitražni sud i engleski sudovi.*