"Paramount" means "paramount": contracting out of the Hague Rules time-bar (or not)

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In ***The Alion (Tanga Pharmaceuticals Plastics Limited and others v Emirates Shipping Line FZE*** [2025] EWHC 368 (Comm)), handed down today, the Commercial Court rejected an attempt by a carrier to rely on contractual terms imposing a shorter time-bar than Article III.6 of the Hague Rules, even though the Rules were only applicable by contractual incorporation.

Benjamin Coffer and **Caleb Kirton** appeared for the successful Claimants, instructed by Mark Lloyd, Freddie Mehlig and Samantha Butler at Kennedys.

Mr Justice Bright held that the incorporation of the Hague Rules by a clause paramount indicated that the parties intended claims falling within the Hague Rules to be governed by the one-year time bar in Article III.6, and for that time-bar to prevail over any provisions inconsistent with it.

The judgment provides important guidance on the approach to be taken where the Rules are incorporated contractually into a bill of lading. It emphasises the "well-known and legally recognised" effect of a clause paramount as a term giving precedence to the Hague Rules over any other inconsistent provisions in the bill.

The claim arose out of a main engine failure on the vessel "ALION", which gave rise to claims for a salvage indemnity and particular average. The claims were issued within the usual one-year Hague Rules period, but not served for a further year due to difficulties effecting service on the carrier in Dubai.

The carrier's standard bill of lading terms contractually incorporated the Hague Rules by a clause paramount in Clause 2. However, the carrier sought to rely on the provisions of another clause in the standard terms which provided that:

» (a) Claims for 'charges' and 'expenses' and for anything 'other than for loss or damage to goods' would be time-barred if not notified, fully documented, within 20 days of delivery (the '**20-day Provision**').

» (b) Claims, including for loss or damage to goods, would, in any event, be time-barred if suit was not brought within one year of delivery, with 'brought' being defined to mean 'actually served and/or jurisdiction obtained over' the carrier or vessel within that period (the **'Service Provision'**).

Relying on these provisions, the carrier applied for summary judgment on the basis that the claims had not been notified within 20 days or served within one-year.

It was common ground that where the Hague Rules apply only as a matter of contract, the parties are able to modify them, by agreeing to do so: ***Dairy Containers Ltd v Tasman Orient Line CV (The 'Tasman Discoverer")*** [2004] UKPC 22, at [16].

However, the Judge accepted that clear words would be required to agree a shorter time-bar than Article III.6, applying ***MUR Shipping BV v RTI Ltd*** [2024] UKSC 18, per Lord Hamblen and Lord Burrows at [43].

Applying those principles, Mr Justice Bright held that these provisions were not intended to prevail over the Hague Rules in cases to which the Hague Rules apply. An important factor was the parties' use of the term "clause paramount" to describe the incorporation of the Rules. There was nothing in the language of clause 18 to indicate that it was intended to prevail over clause 2, and the anti-repugnancy provision in Article III.8 of the Hague Rules.

An interesting nuance was the carrier's argument that the Service Provision did not engage the anti-repugnancy provision in Article III.8 of the Hague Rules at all. The carrier argued that a provision stipulating when suit is to be considered to have been brought is not one that relieves the carrier from liability or lessens liability within the meaning of Article III.8, because Article III.6 does not contain any express statement as to what constitutes the bringing of suit.

The carrier pointed out that different jurisdictions take differing approaches to the commencement of suit, according to their respective law and procedure. In particular, in many common law countries, suit is brought when the claim form (or equivalent) is issued; whereas in many civil law countries, suit is brought upon service. On that basis, the carrier argued that there was nothing offensive to the Hague Rules about a deeming provision which effectively assimilated the position to that which would in any event obtain in many other countries.

The Judge rejected that argument, pointing that if it were acceptable in principle to stipulate that suit is only considered to have been brought in the event of service/jurisdiction being obtained, it is not obvious why it would not also be acceptable to stipulate for other events that are unlikely to occur within a year, or at all – e.g. (the Judge's examples) "suit shall not be considered to have been brought unless pigs fly, or England win the World Cup".

The Judge also rejected the carrier's argument that the 20-day Provision was applicable to the salvage indemnity claim. The carrier had argued that a salvage indemnity claim is not a claim for loss or damage to goods, inviting the Court to prefer the analysis of Burton J in ***The Limnos*** [2008] EWHC 1036 (Comm) to the more recent judgment of Sir Nigel Teare in ***The Thorco Lineage*** [2023] EWHC 26 (Comm).

Bright J endorsed Sir Nigel's reasoning, which he described (correctly, your writers submit) as "entirely compelling". He also specifically agreed with the obiter comments of Sir Nigel in The Thorco Lineage that a maritime lien is (in the words of Bright J) "a specific kind of damage that is sustained by the goods in question (rather than merely inflicting economic damage on their owner)".

Benjamin Coffer

"He is particularly good in understanding the mind of the judges and the arbitrators and is very persuasive, cutting to the core of the issue." (Legal 500, 2025)

Ben has a busy practice focused on shipping, insurance and commodities. He is recognised by the market as a stand-out junior and is ranked in Tier 1 by both Chambers & Partners (Shipping) and the Legal 500 (Shipping & Commodities). He was named Shipping Junior of the Year 2019 at the Chambers & Partners Bar Awards and was shortlisted in 2020 (Legal 500), 2022 (Chambers & Partners) and 2023 (Chambers & Partners). He is also recognised by the directories as a leading junior in Commodities and Insurance. Most recently, Ben was featured in Doyle's Guide for Maritime, Shipping & Transport Law.

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Caleb Kirton

Caleb accepts instructions, led and unled, in all of Chambers' core areas and beyond, having joined Quadrant after successfully completing pupillage in October 2023.

Before commencing practice, Caleb experienced the full spectrum of commercial disputes through a unique combination of prestigious positions, making him especially well-placed to assist as junior counsel. Caleb served as a Judicial Assistant in both the Court of Appeal and Supreme Court, where he worked first-hand with senior judges in determining appeals on the most difficult legal questions.

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