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MS  Amlin

Time's up – a guidance on time bars



Time bars can be found in charter parties and bills of lading, and they provide parties with a specified timeframe during which they can bring a claim. To be more precise, the definition of a time bar is “a specific time period and deadline for the parties to bringing a legal action or filing for arbitration as established by a clause in the contract, law or custom”. In short, after the specified time period lapses, the parties are barred from bringing suit in a court of law or filing for arbitration.

Time bars are a very controversial issue in shipping as a claim can arise years after an incident took place, and this could be further complicated by the different time bars contained in each contract and how they interact with the ones derived from various conventions. With this circular MS Amlin aims to inform both owners and charterers of some of the most common time bars that are applicable to maritime claims under English Law.

Time bar provisions

Starting from the default position, in the event that there is no express time bar clause in the charter party, the time bar under English Law is **six years from the date of the breach of the contract**.¹ This means that contractual claims such as off-hire disputes or unsafe port claims can be lodged up to six years after the event. However, freedom of contract allows parties to agree to deviate from the six-year rule.

In practice, charter parties contain express time bar clauses and sometimes more than one, in order to address different practicalities under the contract. This means that different claims have a different timeframe during which an action has to be brought. For example, a charter party may have a general time bar set at five years, but it could also have a three-month time bar for demurrage claims and a twelve-month time bar for safe port claims.

Time bar clauses are to be interpreted strictly with their precise wording. This means that any ambiguity will go against the party trying to rely on the time bar. In one case,² the time bar clause provided that claims would be time barred three months after “final discharge”. The charter party was terminated by the charterers and the owners indicated the nature of their claim more than three months after the termination by the charterers. The tribunal held that the owners’ claim was not time barred because discharge never took place as the charter party was terminated by the charterers.

“The nature of the time bar clauses is quite draconian and clients, owners and charterers alike, are advised to pay close attention to the wording of the clause.”

A key point to be considered is the action that is required in order to protect the time bar. For example, under the Hague-Visby Rules, one has to commence a suit to protect the time bar; while in a demurrage claim, the time bar is protected with the submission of the required documents. Clients are therefore advised to be alert to the type of claim they are dealing with and the respective required action that protects the time bar.

¹ Section 5 of the Limitation Act 1980

² London Arbitration 10/14

Inter-Club Agreement

The Inter-Club Agreement (ICA) time bar has different stages. The ICA time bar is (usually) to the benefit of the charterer as the ship owner must notify the charterer within two years, whereby the owners get an additional one year after proceedings have been commenced against them by the cargo receiver.

The first stage relates to the notification of claim, which has to be in writing and presented **within 24 months of the date of delivery of the cargo or the date the cargo should have been delivered**. In the event that the Hamburg Rules are applicable this period is 36 months. In case of conflicting time bars, the ICA time bar prevails over any provisions in the charter party.

The second stage is the normal **six-year time bar** which applies to all simple contracts under English Law as per the Limitation Act 1980. This applies from the moment the claim has been properly settled and paid as this is when the cause of action accrued.



ICA: practical example

- The cargo was delivered on 01/01/2010.
- The written notification is submitted on 31/12/2011.
- The claim was properly settled on 01/06/2012.
- Proceedings have to be brought before 01/06/2018,
 - If the proceedings are brought in time, a potentially slow judicial system does not affect the time bar as long as the above steps are followed.
 - If the proceedings are not brought in time, then the claim is time barred.

Hague-Visby Rules

The time bar in the Hague-Visby Rules is relevant for claims under the bill of lading from the cargo receivers or under charter parties that incorporate the Hague-Visby Rules. In both cases, the time bar is **one year from the date of delivery of the goods or of the date when they should have been delivered**. The latter is relevant where no cargo has been delivered, either because there was a contractual reason (e.g. termination/cancellation) or because there was a casualty. Parties can agree to extend the time bar, but they cannot reduce it as it would be contrary to HVR Article III (8).

Charter Parties – the one-year time bar is relevant when the liability involved is related to the loss or damage to the goods carried under the charter party. This would typically arise in the event of breaches of the HVR obligations of seaworthiness which might arise at each port, or duties of care in loading, carrying, caring for and discharging the cargo.

Bills of Lading – the one-year time bar applies automatically to all bills of lading to which the Hague-Visby Rules apply as per HVR Article X if:

- a) the bill of lading is issued in a contracting state; or
- b) the carriage is from a port in a contracting state; or
- c) the contract contained in or evidenced by the bill of lading provides that these Rules, or legislation of any State giving effect to them, are to govern the contract.

In both cases, the time bar also applies where there is an express incorporation with a Clause Paramount.

Demurrage claims

The contractual time bar for demurrage claims (usually 90-days) is something that is more commonly seen in tanker vessel charter parties. The most important aspect of these clauses is the high volume of documentary requirements found in demurrage time bar clauses.³ Such clauses normally provide for a claim to be presented to charterers in writing with all supporting documentation. If such documentation is specified with a list and one document is not presented within the time specified, the claim will be time barred. It is therefore crucial for charterers to present all the documents required by the clause within the time frame, and in the event that there is any doubt clients are advised to contact MS Amlin for assistance.

General Average

There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.⁴ General average is regulated by the York-Antwerp Rules, which stipulate that, subject to any limitation contained in any applicable law, any rights to general average contribution including any rights to claim under general average bonds and guarantees shall be extinguished unless an action is brought by the party claiming such contribution **within a period of one year after the date upon which the general average adjustment is issued.**⁵ However, in no case shall such an action be brought after six years from the date of termination of the common maritime adventure. The rules further underline that these periods may be extended if the parties so agree after the termination of the common maritime adventure. It has to be noted that this rule shall not apply as between the parties to the general average and their respective insurers.

Personal injury or death of passengers

Under the Athens Convention on the Carriage of Passengers and their Luggage by Sea⁶, the time bar is **two years from the date of disembarkation.** If the passenger died before disembarkation, the date is calculated from the day that disembarkation would have taken place. The period can be extended to three years if there are grounds of suspension and interruption of limitation periods in accordance with local law.⁷

³ The recent case of *Tricon Energy Ltd -v- MTM Trading LLC* [2020] EWHC 700 (Comm) confirmed the earlier case of the *M/T Adventure* [2015] EWHC 318 (Comm) pointing out the draconian character and the importance of documentary requirements.

⁴ Rule A.1 of the York-Antwerp Rules

⁵ Article XXIII of the York-Antwerp Rules

⁶ Having the force of law in the UK (Section 183 MSA 1995). In the EU, the Passenger Liability Regulation (PLR) implements the Athens Convention and the 2002 Protocol in EU and EEA member states, with the purpose of creating a single set of rules across the EU/EEA member states governing the liability of carriers to passengers travelling by sea in the event of an accident.

⁷ *Warner v Scapa Flow Charters (Scotland)* [2018] UKSC 52 examined a limited exception under Article 16 paragraph 3 of the Convention, which (with its previous wording) mentioned that the court seized of the case, if there are grounds of suspension and interruption of limitation periods in accordance with its local law, to extend this period up to 3 years from disembarkation. This article has been amended to extend to up to 5 years from disembarkation and up to 3 years from knowledge if the 5-year period is earlier than that.

Conclusion

In this circular, we have provided a brief reference on some of the most common time bars applicable to maritime claims, which we have summarised in the table below for easy reference.

Due to the strict nature of time bars, clients are advised to notify MS Amlin of any claim as soon as possible in order to ensure that the proper action is taken. If a time bar expires, it cannot be reinstated and it is therefore crucial that claims are notified promptly.

A further important point to bear in mind is that clients are advised to grant time extensions whenever they are requested by the other side. It promotes the spirit of co-operation between the parties, assists in avoiding unnecessary legal expenses and affords more time to solve the disputes amicably. Such time extensions, however, should be provided with a careful wording in order to be reciprocal and to be given conditionally to the right to sue and to the claim not having been already time barred.

Claim	Basis	Time bar
General charter party claims	Statute (Section 5 of the Limitation Act 1980.)	6 years from the date of the breach of the contract
Inter-Club Agreement	Contractual Clause (cl.6 of the ICA)	2 years from date of delivery of cargo or date cargo should have been delivered to provide written notification of claim when Hague/Hague-Visby Rules apply and 3 years when the Hamburg Rules apply
Hague-Visby Rules	Statute (Article III para.6 HVR)	1 year from the date of their delivery or of the date when they should have been delivered (extendable by agreement).
Demurrage	Contractual Clause	Depends on the clause. The most common one is 3 months from completion of discharge
Personal injury/death	Statute/Tort Section 11 of the Limitation Act 1980 and Section 12 for death	3 years from negligent act/omission or knowledge thereof if it transpires later. If the injury is fatal, 3 years for the cause of action surviving for the benefit of his estate, from the date of death or the date of the personal representative's knowledge, whichever is the later.
Personal injury/death of passengers	Article 16 of the Athens Convention 1974	2 years from the date of disembarkation of the passenger. In limited circumstances, it may be extended to 5 years from the date of disembarkation and if it is earlier up to 3 years beginning with the date when the claimant knew or ought reasonably to have known of the incident.
General Average	York Antwerp Rules XXIII	1 year after the general adjustment is issued (but within 6 years from the termination of the common maritime adventure)
Collision damage	Statute/Tort Section 190 MSA 1995, Art. 7 Collision Convention 1910	2 years from the date of the casualty

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