

Geographical Deviation Does Not Defeat the One Year Time Bar in the Hague-Visby Rules

Litigation | Litigation & Dispute Resolution | Transportation and Logistics

2 June 2025

In *ETG Commodities Inc. v. Hapag-Lloyd (Canada) Inc.*, 2025 FC 474, the Federal Court of Canada had to consider two issues:

- a. Did a geographical deviation defeat the one-year time bar in the Hague-Visby Rules; and
- b. Was the agent of a carrier entitled to the protection of the terms of the bill of lading issued by the carrier.

ETG Commodities Inc. (“ETG”) sold a cargo of lentils in a number of containers to a buyer in Kolkata, India. It arranged the shipment with the ocean carrier, Hapag Lloyd Akitengesellschaft (“Hapag Lloyd Lines”) through Hapag Lloyd lines’ agent Hapag-Lloyd (Canada) Inc. (“Hapag Canada”).

The port of discharge was subsequently changed to Karachi, Pakistan on agreement, as the transaction with the initial buyer in India fell through. ETG found a new buyer in Pakistan.

The cargo arrived in Kolkata, India on 24 September 2020, and was not delivered to Karachi, Pakistan, the final port of discharge. At the hearing, the representative of Hapag Canada testified by affidavit that the cargo could not be reloaded for carriage to Karachi, due to the failure of ETG or its customers to comply with documentary requirements made by the Indian customs authorities. ETG alleged that as a result of non-delivery it lost the sale of the cargo. ETG’s new buyer terminated the contract of purchase on 27 April 2021.

ETG filed a statement of claim on 24 August 2022.

Hapag Canada brought a summary judgment application in the Federal Court on the basis that the claim was time barred as the action was commenced more than one year after the cargo should have been delivered.

The bills of lading identified Hapag-Lloyd Lines as the carrier and Hapag Canada as the agent (pursuant to a booking confirmation).

Hapag Canada relied on clause 6 of the bills of lading which provided a one-year time limit for commencement of an action.

Hapag Canada also relied on the *Marine Liability Act*, S.C. 2001, c. 6 which incorporates the Hague-Visby Rules as Schedule III. Article III (6) of those Rules imposes a one-year time limit for the commencement of an action as follows:

Subject to paragraph 6bis 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 may, however, be extended if the parties so agree after the cause of action has arisen. [Emphasis added]

Hapag Canada also pled that it was an agent of the carrier, and that Hapag Lloyd Lines should have been a party to the action. Further, Article IV bis (2) provides that all defences under the Rules apply to the servants and agents of the carrier:

2 If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under these

Rules.

ETG argued that the geographical deviation (the goods being delivered to Kolkata rather than to Karachi) amounted to a breach of contract, resulting in a repudiation of the contract, such that it was not bound by the time bar relating to the commencement of the action.

Hapag Canada argued that two UK decisions were instructive and should be followed. In *Parsons Corporation and Others v. C.V. Scheepvaartonderneming ("The Happy Ranger")* [2002] 2 Lloyd's Reports 357 (EWCA, Civ.) the England and Wales Court of Appeal interpreted the words "in any event" found in Article III (6) of the Hague-Visby Rules to "mean what they say. They are unlimited in scope, and I can see no reason for giving them anything other than their natural meaning."

With respect to the second decision, *Fimbank Plc v. KVH Shipping Co Ltd*, [2024] UKSC 38, Hapag Canada argued that the Supreme Court of the United Kingdom found the language of Article III (6) of the Hague Visby Rules was clear and that the one-year time limitation to commence an action for non-delivery of goods applies "no matter the extent of or type of breach of contract or tort". It further submitted that no exception was made for cases involving geographic deviations.

Hapag Canada also relied on Clause 4 of the bills of lading and that as an agent of the carrier it was entitled to the "forbearance of suit" clause which provides:

4. Sub-Contracting and Indemnity

(1) Carrier shall be entitled to sub-contract on any terms whatsoever the whole or any part of the Carriage, including but not limited to loading, unloading, storing and warehousing.

(2) Merchant hereby agrees that no Servants or Agents are or shall be deemed to be liable with respect to the Goods or the Carriage as Carrier, bailee or otherwise, and agrees not to file any claim against any Servant or Agent seeking to impose liability in connection with the Carriage. If any claim is made against any of the Servants or Agents, Merchant shall indemnify Carrier against all consequences thereof. Without prejudice to the foregoing, all rights, exemptions, defenses, and limitations of and exoneration from liability provided by law or by these Terms and Conditions, including the jurisdiction clause, shall be available to every Servant or Agent and Vessel which shall be entitled to enforce same against Merchant.

(3) The provisions of Clause 4(2) shall extend to claims of whatsoever nature against other persons chartering space on the carrying Vessel.

In dealing with the time bar issue, the Court recognized that the estimated sailing time between Kolkata, India and Karachi, Pakistan was 26 days. The cargo should have arrived on or about 26 days after 24 September 2020.

The Court found that the action was time-barred. At issue was whether the time bar was defeated by the geographic deviation from Karachi to Kolkata. The Court found that there was a geographical deviation. The question was then the legal effect of that deviation upon the time bar defence.

The Court noted that geographic deviation as a defence has not been definitively recognized in Canada. It noted "No Canadian court has recognized geographic deviation as a defence to a time limitation in respect of a contract of carriage by water."

The Court found that the one-year time limitation set out in Article III, Rule 6 of the Hague-Visby Rules is to be interpreted broadly and applied generally. The Court found that "[i]n my opinion, the geographic deviation here falls within the meaning of the words 'in any event'. The geographic deviation does not defeat the time bar limitation raised by [Hapag Canada]."

The Court then dealt with the agency issue. The Court found that:

[107] The forbearance of suit clause is clear. It is not uncommon. This Court and the Federal Court of Appeal have upheld such clauses. I see no reason to depart from the jurisprudence of this Court concerning such clauses.

[108] The named Defendant [Hapag Canada] is an agent of [Hapag Lloyd lines]. I agree with the submissions of the Defendant that in these circumstances, Hapag-Lloyd (Canada) Inc. is protected against suit.

The summary judgment was granted and ETG's action was dismissed with costs to Hapag Canada. A PDF version is available for download [here](#).

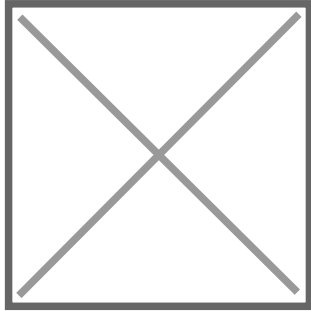
(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

Gardiner Roberts

Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

Author



Rui M. Fernandes

Partner and Co-Chair, Transportation and Logistics Group

416.203.9505

rfernandes@grllp.com

Gardiner Roberts

Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com