The application of Hague Rules time limits to charterparty claims

It is not uncommon for the Hague or Hague-Visby Rules to be incorporated into charterparties through the use of a Clause Paramount. This can give rise to a number of issues of interpretation concerning exactly how those rules (designed primarily for incorporation into bills of lading for the carriage of cargo) should be applied in the quite different context of a charterparty.

One of the most significant areas of uncertainty in this respect is the application of the one year time bar for claims contained in the Hague Rules. Of the many and varied disputes that may arise under a charterparty, to which, if any, does the one year Hague Rules time limit apply?

Article III Rule 6 of the Hague Rules states:

“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 on when the goods should have been delivered” [emphasis added].

So the question arises, what degree of connection of the dispute with the actual carriage of cargo must exist in order for the one year time limit to apply under a charterparty?
The decisions of the Courts on this issue have shown this question to be one of some difficulty and one from which it is hard to distil principles of general application given the fact-specific nature of the disputes. For example, in *The Standard Ardour* [1988], a claim was brought by vessel owners for unpaid hire. The charterers put in a defence and counterclaim premised on an alleged failure of the owners to provide a vessel properly equipped to measure the quantities of cargo loaded so that disputes and delays arose at the loading port over discrepancies between the ship and shore figures. Owners said that the counterclaim was time barred under Article III rule 6 of US COGSA. Saville J rejected that argument:

“The fact that the bills of lading the subject matter of the claim can be said to relate to the goods does not mean to my mind that the claim relates, or at least sufficiently relates, to the goods. There is simply no loss or damage to or of or in connection with the goods...

*It seems to me, therefore, that as a matter of construction, that is to say as a matter of trying to ascertain the intentions of the parties from the words they have chosen to use, they can only have intended the time limit to apply to claims for loss or damage relating to the goods carried or perhaps to be carried. Only in such cases can the time limit be applied, for only in those cases can “the goods” be identified.”*

By contrast, in *The Ot Sonja* [1993], the limitation was said to apply. In that case, claims were advanced for financial loss due to delay in loading the cargo and expenses for extra tank cleaning and pumping of the cargo. The claims were held to be loss or damage which were sufficiently related to goods and therefore time barred under Section 3(6) of U.S. COGSA. The Judge noted:

“Where, as is alleged here, goods destined for the vessel were not loaded due to the delay, it seems to me that any resulting loss or damage is manifestly “in relation to goods”, seeing that, adopting Mr. Justice Devlin’s test in the Adamastos case, it arises in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods. Moreover, there is no difficulty in determining the terminus a quo of the time limit, since it will begin to run from the date from which the goods ought to have been delivered, assuming the loading obligation had been fulfilled.”

Similarly, in *The Stolt Sydness* [1997], there were delays in delivery of the cargo which resulted in the shippers having to buy in substitute cargo and the claims for financial loss arising were held to be sufficiently related to goods.

One of the clearer attempts to establish some generally applicable principles can be accredited to Colman J in *The Marinor* [1996] where he noted:

“… where there is incorporation by general words into a time charter of legislation enacting the Hague Rules or Hague-Visby Rules, the shipowners will be entitled to rely on the protection of the time bar against claims for breach of any of the terms of the charter, even if not co-extensive with obligations under the rules, provided that (i) those claims assert (a) a liability involving physical loss of or damage to goods or (b) a liability for financial loss sustained in relation to goods and (ii) the goods in question were either shipped or were intended to be shipped pursuant to the charter.”

All of which brings us to the most recent relevant decision in *The Alhani* [2018] concerning misdelivery claims where a shipowner has delivered the cargo to a third party without production of the bill of lading. The Judge held that Article III Rule 6 was capable of applying to misdelivery claims and was not limited in its application to breaches of the Hague Rules obligations. The time limit was held to apply to breaches of the shipowner’s obligations which “occur during the period of Hague Rules responsibility” and which have a “sufficient nexus with identifiable goods carried or to be carried”. There was certainly no “settled understanding” from the case law or in practice that Article III Rule 6 does not apply to misdelivery claims.
As the decision in *The Alhani* makes clear, shipowners should be careful not to overlook the potential of relying on Article III Rule 6 time limits in defence of claims that extend beyond what might be considered to be the traditional scope of cargo claims that may normally arise under bills of lading. From charterers' perspective the Judge interestingly noted that while the Article III Rule 6 time bar has come to be seen as a provision benefiting the shipowner, this was not the position when the Hague Rules were agreed: indeed the time of suit provisions were seen as "the cargo interests' other big victory" at the Hague Conference, their effect being seen as guaranteeing a claimant a full year in which to bring suit. In a modern context however, the one year time bar might justifiably be seen as a potential trap for charterers who may not fully appreciate the extent of the scope of Article III Rule 6 under a charterparty and charterers should take care to consider this issue at the earliest possible stage.

When considering such issues it is important to remember that the language of the Hague and Hague-Visby rules will be interpreted by reference to the charterparty as a whole and the intentions and knowledge of the particular parties at the time the contract was made. As a result there are inevitably cases that will fall into 'grey' areas and this is illustrated in the case law, which does not always present straightforward answers in relation to this issue. However, it is clear that this is an area of law that should not be overlooked by shipowners when considering lines of defence in charterparty claims - or charterers when contemplating the timely commencement of proceedings - where there is a chance of "sufficient nexus" between those claims and the goods carried or intended to be carried.