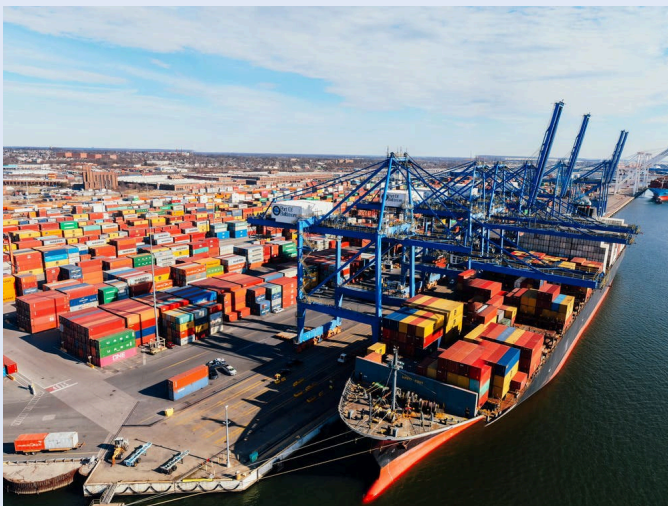




## Time and time again for demurrage claims

What time zone counts for the purposes of calculating time bars in demurrage claims? [William Stansfield](#), Senior Associate at CJC, considers the recent English High Court decision in *The Maria*.

The decision in *The Maria* [2021] EWHC 2565 (Comm) raises a short but important question of when time starts to count for the purpose of the demurrage time bar clause in the Shellvoy 3 charterparty form. In this case, the clause had been amended to require notification of a demurrage claim within 30 days "after completion of discharge", failing which the claim would become time barred.



### The facts

Discharge of the relevant cargo at Long Beach (California, USA) completed late in the evening of 24 December 2019 (Christmas Eve) local time. It was therefore 25 December 2019 (Christmas Day) in Europe, where both the owners (IMC Shipping Co Pte Ltd) (the "Owners") and charterers (Pan Ocean Co. Ltd) (the "Charterers") were based.

The demurrage claim was notified to Charterers on 24 January 2020.

### The issue

The dispute concerned which time zone should be used to determine the date of completion of discharge. The options were:

- Local time in California;
- The time zone of the recipient of the notice (i.e., Charterers), which was Spanish time;
- Time zone of the giver of the notice (i.e., Owners), which was Belgium time; or
- GMT, on the basis that the charterparty was governed by English law.

If the first approach was to be used, the claim was time barred. If the second, third or fourth approach was to be used, the claim was notified in time.

### Discussion

As ever with these sorts of cases, the issue is ultimately one of interpretation of the applicable contract terms. The Court agreed with the Owners that the commercial purpose of the clause was to achieve timely notification of a claim, and the Court expressed the view (although it did not decide the point) that the notice should be received by the Charterers by the end of its day in their own time zone.

However, in the Court's view, the event which started the notification period (namely, discharge) is an event that has occurred in a particular place in its own time zone. Consequently, discharge completed on 24 December 2019, and on the basis of the Court's comments described in the paragraph above,

the claims notification should have been received by 23 January 2020 in Charterers' time zone.

Owners' claim notification of 24 January 2020 was therefore sent a day too late, and Owners' claim was accordingly time barred.

### **CJC Perspective**

1. At first, the decision seems somewhat unfair on the Owners given that both the Owners and the Charterers were based in Europe, and for them, discharge did complete on 25 December 2019 European time. However, as the Court noted:

*“The use of local time at the place of discharge gives rise to a single, clear and easily ascertainable date and time of completion of discharge. It tends to promote certainty and reduce the risk of confusion”.*

2. The Court also noted that the date of discharge of the cargo is significant not only for the purposes of notification of demurrage claims, but also for other purposes. For example, it represents the end of the contractual service to the shipper, ends the running of laytime / demurrage, and is (generally) the starting point for the time limit under the Hague or Hague-Visby Rules for claims. It would be unnatural and illogical for there to be more than one date of discharge, used for different purposes. It would also be unsatisfactory if the commencement of the 1-year limitation period for cargo claims under the Hague/Hague-Visby Rules was determined by reference to the place of receipt for any (potential) demurrage claim.
3. In coming to this conclusion, the Court rejected the analogy with time charterparty anti-technicality notices, for which there is some persuasive authority to suggest that the grace period is calculated by reference to time zone where payment is to be made.
4. The case serves as a useful reminder of the need to comply with contractual time bar provisions and the consequences that arise from a failure to do so. If there is doubt as to the scope of a time bar provision then legal advice should be sought. Notifying claims early as opposed to at the last minute before the deadline might help reduce the risk of a claim becoming time barred.

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