

PORT CONGESTION, A HTA LEGAL REVIEW

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UIIA Arbitration – DO's

- Hire an attorney to assist your company with drafting the arbitration brief;
- Contest the arbitration process itself and reserve your rights: two courts have held that the UIIA arbitration language is unenforceable because it is unconscionable.
- Contest the arbitration process if under commercial duress, i.e. facing a lockout;
- Read the most current version of the UIIA and applicable Equipment Provider Addendum;

UIIA Arbitration – DO's

- Submit disputed per diem invoices with your best supporting evidence that the return and termination of the equipment within the free time was out of or beyond your control;
- Provide the arbitrator with any evidence that establishes that return and termination of the equipment within the free time was impossible or at the very least extremely difficult;
- Provide the arbitrator with a clear written explanation of why it was so impossible or extremely difficult to achieve return and termination of the equipment with the free time and cross-reference the explanation with the evidence, i.e. The terminal closed early and without notice. Exhibit A – an e-mail from the terminal [date];

UIIA Arbitration – DO's

- Provide evidence that establishes the total hourly difference in turn times before October 2014 as compared to the dates around the last free day connected to the disputed per diem invoice;
- Provide evidence that this problem is common to all terminals in a commercial zone, i.e. POLA and POLB;
- Provide evidence that the per diem invoice is in violation of CA Business and Professions Code § 22928; i.e. gate closed, labor disruption period, diverted container with less than 48 hours notice, the container is not available (closed part of terminal);
- Evidence means: E-mails, declarations from the driver or dispatcher with personal knowledge of what happened, responses from SSL, notification from SSL, GPS showing the turn/queue times, announcements on congestion and slowdown from PMA, announcements on lack of equipment from ILWU, etc.

UIIA Arbitration – DO NOT's

- File an arbitration brief without consulting your own attorney;
- File an arbitration brief without objecting to the arbitration process and reserving your rights;
- File an arbitration brief without evidence that is attached to your brief;
- File an arbitration brief without a clear written explanation of why the *per diem* invoice is a violation of the UIIA, California law, etc.;

CHANGE TO THE UIIA

- HTA has spoken to ATA and CTA and together the parties are working on a strategic approach to changing the UIIA.

FMC – Letter Opinion

- HTA has spoken to the FMC’s point person Rebecca Fennaman and Deputy General Counsel, Tyler Wood.
 - i. “A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.” 46 U.S.C. § 41102(c) (former Section 10(d)(1)).

Container-by-Container Example

An example of this unreasonable practice is [CONTAINER#], received under VOCC bill lading no. XXX. [CONTAINER#] was received by the LMC at [TERMINAL#1] on [DATE] according to the Equipment Interchange Report [copy of EIR please]. Thereafter, the VOCC/MOT made changes to the return instructions from TERMINAL#1 to the SATTELITE on [DATE] (E-mail attached). However, SATTELITE was NOT accepting Empties without a booking, i.e. a dual transaction. (Evidence?) Under California's Business & Professions Code section 22928 the SATTELITE was closed. The VOCC's Equipment requirements are beyond the control of the LMC. The VOCC's Equipment requirements made timely return of [CONTAINER#] impossible. The LMC does not control the booking or arrival of containers. In this case, the LMC had no Equipment or appointment at [TERMINAL#2] and as a result the [CONTAINER#] and chassis could not be returned within the free time. (Declaration of HTA member).

“Proposed” HTA Congestion Legal Tool Box

- Draft talking points for VOCC negotiation;
- Draft forms for documenting violations – evidence;
- Draft forms for UIIA arbitration;
- Collect case law and briefs related to per diem, and
- Collect MTO and VOCC/EP tariffs.

Additional “Proposed” HTA Cooperation

- Centralize fact gathering for FMC Shipping Act violations and UIIA arbitration claims. This will create a uniform practice, increase efficiency and save money, and
- Centralize per diem invoice auditing to compare rates against tariff and filings of EP with UIIA.

Legal information

- ▶ This presentation provides information about the law designed to help readers address their own legal needs. But legal information is not the same as legal advice -- the application of law to an individual's specific circumstances. Although we go to great lengths to make sure our information is accurate and useful, we recommend you consult a lawyer if you want professional assurance that our information, and your interpretation of it, is appropriate to your particular situation.

Questions

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