



The Uniform Intermodal Interchange and Premises Access Agreement (UIIA): A Primer and an Invitation

The Federal Maritime Commission (“FMC”) described in its December 3, 2018 Fact Finding Investigation No. 28 Final Report (“Conditions and Practices Relating to Detention, Demurrage, and Free Time in International Oceanborne Commerce”) (the “Report”) various operational challenges regarding detention and demurrage practices that face both the providers and the commercial users of international transportation and logistics services.

As set forth in the following overview, the Intermodal Association of North American (“IANA”) has successfully strived to address a number of these challenges through the administration of the Uniform Intermodal Interchange and Facilities Access Agreement (“UIIA”) and the deployment of various related services.

Consequently, as the FMC continues its examination of industry practices related to detention, demurrage, and free time, the Agency may benefit from IANA’s experience with the UIIA in the following ways.

- *Transparent, Standardized Definitions of Industry Terminology.*
- *Clear, Simplified, and Accessible Billing Practices and a Standard Dispute Resolution Process.*
- *Guidance Regarding Evidence Relevant to Resolving Disputes.*

What Is IANA?

IANA is North America’s leading industry trade association representing the combined interests of the intermodal freight industry. IANA’s membership roster of over 1,000 corporate members includes steamship lines, intermodal and over-the-road motor carriers, railroads (Class I, short-line and regional), stacktrain operators, port authorities, intermodal marketing and logistics companies, and suppliers to the industry such as equipment manufacturers, intermodal leasing companies, and consulting firms. IANA’s associate (non-voting) members include shippers, academic institutions, government entities, and non-profit associations.

IANA was formed in 1991 by virtue of a combination of three separate trade associations. The Intermodal Marketing Association represented transportation intermediaries who were establishing business relationships with railroads and motor carriers at the time. The National Railroad Intermodal Association provided a forum for railroads and their suppliers to meet. Finally, the Intermodal Transportation Association offered an organization where all three modes (ocean, rail, and motor carrier) could come together to address common industry operating issues.

IANA’s mission is to promote the growth of efficient intermodal freight transportation through innovation, education, and dialogue. In furtherance of its mission, IANA maintains standing committees devoted to safety, operations, and maintenance and repair practices. IANA also administers the UIIA and offers a wide variety of value-added business services and programs relating to operations, maintenance, risk

management, safety, and security. These services are intended to promote intermodal productivity and operating efficiencies through the development and implementation of safe, uniform industry processes and procedures governing the interchange of intermodal equipment among ocean carriers, railroads, and motor carriers.

What Is The UIIA?

The UIIA is a uniform industry agreement that governs the interchange of intermodal equipment (*e.g.*, intermodal containers, chassis, trailers, etc.) among ocean carriers, rail carriers, and motor carriers. A copy of the current version of the UIIA is attached as Exhibit 1 and can be downloaded by the public at <http://www.uiia.org/assets/documents/newuiia-Home.pdf>. The purpose of the UIIA is to promote intermodal productivity and operating efficiencies through uniform industry processes and procedures. The UIIA is used by almost all of the world's ocean carriers who berth in the United States as well as by all major railroads in the United States. Several equipment leasing companies also participate in the Agreement. Therefore, motor carriers who wish to do business with ocean or rail carriers and specific equipment leasing companies typically become "signatories" to the UIIA.

Who Created and Currently Maintains The UIIA?

In 1973, a task force of representatives of the Association of American Railroads, the Equipment Interchange Association (a former affiliate of the American Trucking Associations), and the Steamship Operators Intermodal Committee formed a joint task force under the auspices of the Office of Facilitation in the U.S. Department of Transportation and the Maritime Administration in the Department of Commerce to draft a uniform agreement for the interchange of trailers, containers, and related equipment used in intermodal surface transportation. This uniform agreement was submitted to the Department of Justice for a business review which resulted in the approval of the agreement as a standard industry contract known as the UIIA. Up until that point, ocean carriers and rail carriers largely used their own individual interchange agreements. For obvious antitrust reasons, the UIIA is precluded from including any economic or commercial terms between the parties.

Since 1991, the UIIA has been administered by IANA. In the more than forty-five (45) years since the UIIA was developed, it has undergone many changes. For instance, efforts were taken in 1993 to re-assess the value and continuing vitality of the UIIA in the rapidly evolving intermodal industry. IANA task force members met with both participating and non-participating railroads and ocean carriers from across the country in order to evaluate the current value of the UIIA and its future worth to the industry. Current participants were asked how the UIIA could be improved to meet their evolving requirements. Non-participants were queried about the barriers to their involvement in the hopes that IANA's task force could address them. Based on this feedback, the latest general framework for the UIIA was adopted in 1996.

Modifications to the UIIA are made on a periodic basis. Some of these modifications result from participants' experience under the UIIA. Others result from industry changes themselves. For instance, deregulation changed the industry in ways that required revisions to the UIIA. Likewise, operational changes—such as the fact that the railroads and steamship lines no longer own much of the intermodal equipment in question but, rather, have sold much of that equipment to equipment leasing companies—have driven other revisions. The last modifications to the UIIA were effective as recently as October 1, 2018.

The Intermodal Interchange Executive Committee ("IIEC") is one of IANA's standing committees and is charged with administering, interpreting, and periodically modifying the UIIA. The IIEC consists of a minimum

of two representatives from each mode (*i.e.*, ocean, rail, and motor carrier) and one representative from the equipment leasing industry. The IIEC is chaired by the President of IANA. IIEC members are drawn exclusively from companies who are signatories to the UIIA. The proceedings of the IIEC are confidential.

IANA has also developed a wide variety of other products associated with the UIIA and having similar industry benefits as the UIIA. (See <http://www.uiia.org/>)

Who Are The Participants to The UIIA?

Ocean carriers, rail carriers, motor carriers, and equipment leasing companies can each be “participants” to the UIIA.

Motor carriers who wish to become participants to the UIIA must complete an application. The application process requires that the motor carrier complete a “Participating Party Agreement” signature page, obtain a Standard Alpha Carrier Code from the National Motor Freight Traffic Association if the motor carrier does not already have one, submit proof of insurance required under the UIIA, and show proof of operating authority.

Equipment providers (*e.g.*, ocean carriers, rail carriers, and equipment leasing companies) who wish to become participants to the UIIA must also complete an application. The application process for equipment providers requires that an equipment provider also complete a “Participating Party Agreement” signature page, and complete a provider Addendum that outlines the provider’s free time, user charges, and other commercial terms that are not able to be included in the UIIA.

How Does The UIIA Define “Per Diem”?

Section B.22 of the UIIA defines “Per Diem” as a “charge to be paid when Intermodal Equipment is not returned by the end of the allowable free time to its origin or to another location, as specified by the Provider, or at the discretion of Provider, is Interchanged to another Motor Carrier.” Equipment providers identify, in their respective addenda to the UIIA, the number of free days awarded to a motor carrier and the accompanying daily charge for failure to return equipment after the free days have expired. In other words, “Per Diem” is a detention charge for failing to return containers or chassis as required by the party who provided the containers or chassis in the first place.

In August 2018, for the avoidance of doubt, a sentence was added to the definition of “Per Diem” to make clear that the term “Per Diem” is synonymous with the term “detention.” The UIIA now expressly memorializes what the intermodal industry has long believed to be the case: that “a charge meeting the foregoing description [in B.22] constitutes Per Diem under this Agreement whether or not it is referred to as Per Diem, a detention charge, or otherwise.” IANA has found the foregoing definition to be clear, useful, and widely accepted by the intermodal industry.

What Uniform Billing Practices Are Established By The UIIA?

Section E.6 of the UIIA establishes uniform billing practices for Per Diem and Ocean Demurrage.¹

¹ Section B.26 of the UIIA defines “Storage/Ocean Demurrage” as a “charge to be paid when intermodal Equipment is stored on property.” The UIIA requires parties to follow the same invoicing practices for Ocean Demurrage as for Per Diem. However, Ocean Demurrage is not subject to the dispute resolution described in the following section.

Under the UIIA, equipment providers are obligated to invoice for Per Diem and Ocean Demurrage within sixty (60) days from the date on which equipment is returned to the equipment provider by the motor carrier. If the equipment provider fails to do so, the equipment provider forfeits its right to collect such charges. However, if the provider does issue an invoice but inadvertently invoices the incorrect party, the equipment provider may invoice the proper party as long as: (a) it does so within thirty (30) days from the date that the incorrect party disputes the charges and (b) the date of the correct invoice does not exceed ninety (90) days from the date that the equipment in question was returned. The equipment provider is also required to provide documentation supporting its invoice.

Motor carriers are, in turn, granted a thirty (30) day period to dispute an equipment provider's invoice. Motor carriers are likewise required to participate in any dispute resolution mechanism described in a given equipment provider's addendum to the UIIA. Should a provider not spell out a dispute resolution process in its addendum, the UIIA includes a default process which is followed by the parties.

The uniform processes above provide transparency, efficiency, and predictability for the intermodal industry.

How Does The UIIA Help Parties Resolve Per Diem Disputes?

Since 2008, the UIIA has contained an alternative dispute resolution procedure ("DRP") aimed at addressing disputes that arise with respect to Per Diem invoices (as well as equipment use/rental charges and maintenance and repair invoices). Absent a consensual settlement, parties are entitled to submit these disputes to a two-member arbitration panel consisting of IIEC members drawn from the two involved modes. These members must have at least five (5) years of operating experience involving gate interchanges, yard procedures, loading and unloading, the operation of container yards, and the like. In the event that the two members cannot reach an agreement as to the outcome of the dispute, then a final decision is rendered by a majority of a senior panel consisting of the longest tenured IIEC member or alternate member from each mode, as determined by the Chairperson. This ensures that those having the deepest and most extensive familiarity with the industry (and the UIIA and the DRP in particular) will resolve the dispute fairly.

Most arbitrations are based exclusively upon the written submissions of the parties. However, the arbitrators have the discretion to convene conference calls with the parties in dispute. The proceedings and submissions of the DRP are confidential, but the decisions themselves are public (with the names of the participants and any dollar amounts are redacted). Decisions can be reviewed at http://www.uiia.org/about/drp_decisions.php.

Once a DRP has been initiated with respect to a claim, no suspension, cancellation, termination, or any type of interruption of the motor carrier's interchange privileges may occur on the basis of that dispute. However, an equipment provider can still suspend, cancel, or terminate a motor carrier's interchange privileges for reasons not related to the disputed claim.

Over 789 cases have been submitted under the DRP since its inclusion in the UIIA. Of the cases submitted, 513 were appropriate for submission under the DRP, of which 324 of those cases resulted in an issued decision. (The balance of the cases were settled pending arbitration and others remain pending at present.) In these cases, the motor carrier prevailed 47% of the time, the equipment provider prevailed 40% of the time, and 13% involved a split decision of some sort. The DRP itself is described in detail in Exhibit D to the UIIA.

In addition to helping parties impartially resolve day-to-day Per Diem disputes, the UIIA and IANA have materially benefitted the industry at large when significant, market-shaping events give rise to Per Diem disputes. Two such examples are described below.

Labor Disruptions

One consequence of the labor disruptions on the West Coast in late 2014 and early 2015 was that motor carriers were unable to return containers and chassis to the designated return locations at the ports in a timely fashion. Notwithstanding that inability to return equipment to the ports in a timely fashion, ocean carriers imposed Per Diem charges on motor carriers for failing to return the equipment before expiration of the “free days” awarded under the UIIA and the ocean carrier’s addendum. These Per Diem disputes, in turn, led to the commencement of DRP cases.

The primary legal issue involved in the DRP cases involving West Coast congestion was whether or not the congestion amounted to a “force majeure” under Section G.12 of the UIIA, excusing the motor carrier from its usual obligation to pay Per Diem. During the DRP proceedings, motor carriers were often unable to provide evidence that they had in fact tried to return equipment on a certain date and time and had been turned away. Moreover, equipment providers maintained that they kept regular business hours, accepted many containers and chassis, and maintained no control over the marine terminal operators.

Ultimately, a total of 137 cases were submitted to IANA involving Per Diem disputes relating in some fashion to congestion on the West Coast. 17 of the 137 cases were rejected outright as either being untimely (9 were outside the established 30-day timeframe for a motor carrier to dispute Per Diem charges initially, and 8 were outside the 15-day timeframe for motor carriers to submit claims to the DRP). 37 of the 137 claims were resolved by the parties prior to a decision issuing from the arbitrators. This resulted in 83 decisions on the merits. 43 of those decisions were rendered in favor of the equipment provider for the original invoiced amounts, 26 were rendered in favor of the equipment provider for a modified amount, and 14 were rendered in favor of the motor carrier.

Even though motor carriers were not uniformly pleased with the outcome in all of these cases, the UIIA’s DRP process provided a clear, fair, and accessible dispute resolution process for industry stakeholders.

The Hanjin Bankruptcy

Hanjin Shipping Co., Ltd. (“Hanjin”) was a participant to the UIIA. The Hanjin Chapter 15 bankruptcy in 2016 created a concern similar to what faced motor carriers during the West Coast congestion of 2014-2015. Pursuant to Section E.1.b of the UIIA, Hanjin had an obligation to accept the return of equipment. However, vast numbers of containers and chassis were not being accepted for return, and Hanjin did not notify motor carriers of any alternative return locations. Similarly, many motor carriers maintained that, pursuant to Section G.12, Hanjin created a force majeure exempting motor carriers from having any obligation to pay Per Diem since the ability to return the containers and chassis to Hanjin was beyond the control of the motor carrier.

As a result, many motor carriers expressed concerns that Hanjin or its Foreign Representative would attempt to collect Per Diem charges from motor carriers for their failure to return equipment even though neither Hanjin nor marine terminal operators were accepting the return of such equipment. Consequently, on the same day that Hanjin filed its Chapter 15 petition, IANA issued preliminary guidance to motor carriers.

Motor carriers were advised to create a factual record of any unsuccessful attempt to return or pick-up Hanjin equipment so that motor carriers would have evidence available in any future Per Diem dispute. Specifically, motor carriers were reminded to:

- Retain copies of any and all notices, bulletins, or other advisories identifying changes to a facility's policy as it relates to Hanjin equipment.
- Maintain copies of any and all documentation (*i.e.*, e-mail communications with facilities, turn-away tickets, rejection slips, etc.) that demonstrate a motor carrier's unsuccessful attempts to return or pick-up specific Hanjin equipment.
- Create a log of any verbal communications that a motor carrier's driver or dispatch office may have with a facility regarding the inability to return or pick-up Hanjin equipment. The log should include 1) the date and time of attempted return or pick-up; 2) the name and contact information of the person with whom the driver or dispatcher spoke at the facility; and 3) the response of the facility when the motor carrier attempted to return or pick-up Hanjin equipment.

Furthermore, as Hanjin's bankruptcy continued to unfold in the United States, IANA sought an order from the Court to establish that Hanjin could not charge Per Diem when equipment could not be returned due to Hanjin's bankruptcy.

IANA informed the Court that great uncertainty existed in the intermodal market as to whether Hanjin or the Foreign Representative would attempt to collect Per Diem from motor carriers and others with respect to the thousands of units of intermodal equipment that could not be returned or picked up but that, otherwise, would be accruing massive Per Diem each and every day. The uncertainty regarding this issue was contributing to inconsistent and inefficient business planning, particularly with respect to empty containers (and unused chassis). IANA noted that preventing Hanjin from collecting Per Diem for this equipment would bring clarity to the marketplace and permit parties to begin making sound business decisions.

In short, Hanjin's financial distress threatened to create a wave of new Per Diem disputes that would be subject to the DRP. As indicated above, the West Coast port congestion in 2014-2015 created well over 100 DRP disputes alone. Fortunately, in response to IANA's filing, Hanjin agreed that it would not charge detention on containers or chassis that could not be returned. The Court embodied this principle in an order on October 4, 2016. Consequently, the Court held that no detention charges or chassis use charges could be assessed by Hanjin on containers or chassis under the UIIA, thereby eliminating future Per Diem disputes under the DRP involving Hanjin.

Conclusion

The UIIA has played and will continue to play a key role in the development and expansion of the intermodal market. Among other things, the UIIA permits parties to manage detention and demurrage in a predictable way and to respond effectively to significant industry-wide events (*e.g.*, labor controversies, steamship line bankruptcies, etc.) that can have a domino-like effect upon equipment utilization and upon parties' relative exposure to detention and demurrage. Consequently, in the course of implementing the recommendations contained in its 2018 Fact Finding Investigation No. 28 Final Report, the FMC may benefit from IANA's experience with the UIIA in several ways. For instance:

- *Transparent, Standardized Language.* As described above, the UIIA's definition of Per Diem is clearly transparent and standardized. It has proven workable and acceptable to the intermodal industry as a whole for decades.
- *Clear, Simplified, and Accessible Billing Practices and Dispute Resolution Process.* Once again, the UIIA sets forth a straightforward method for invoicing Per Diem and Ocean Demurrage as well an efficient and inexpensive mechanism for resolving Per Diem disputes.
- *Guidance Regarding Evidence Relevant to Resolving Disputes.* Naturally, the IIEC members who arbitrate DRP cases have developed expertise evaluating Per Diem disputes and possess seasoned insight regarding the types of evidence that they find most relevant and persuasive to resolving disputes related to detention.

While beneficial cargo owners are not currently participants of the UIIA, it is the hope of IANA that the FMC may draw constructive lessons from the Association's experience with the UIIA that could help to structure solutions for the entire shipping community.

Joni Casey, the current President and Chief Executive Officer of IANA, has served as Chairperson of the IIEC for 20 years. She and the Association staff would be delighted to serve as a resource to the FMC and or to any Innovation Team in whatever way is deemed helpful and appropriate.