

When it's time to pay up

Metro Group collects from truckers what's owed to ocean carriers.

NEW YORK

The interchange of equipment between ocean carriers and trucking companies works on a compensation basis. A carrier providing a shipping container for a trucker may allow some period of uncompensated use — generally known as “free time” — and thereafter impose use charges.

In that situation, the carrier bills the trucker or consignee a per diem charge, also known as a detention charge, until the container is returned to the carrier.

This is a lockstep process. Ocean carriers are legally obligated to collect all charges for equipment use under their tariffs and service contracts. Truckers are obligated to pay detention charges.

That's how it is supposed to work, under the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA), a pact signed by most carriers and truckers that governs intermodal exchange services.

In a troubling trend for ocean carriers, some truckers are holding back on returning containers and paying the detention charges they fairly owe.

“There are rare situations where a container isn't returned at all or is damaged. That becomes a loss, for which the ocean carrier files an insurance claim against the trucker and its insurance company,” said Marcus L. Arky, an attorney and principal with Metro Group Maritime in New York, a company which collects detention charges for ocean carrier clients.

“In most cases, however, the ocean carrier will get its container back. The question is the money owed for the length of time the container has been held,” Arky said. “Most truckers do pay detention charges promptly. Enough don't, though, for carriers to need a collector on the outside, which is our role.”

Arky pointed out it isn't just smaller truckers that stall on paying their detention bills.

“Even well-established trucking companies have rigged it so, by deferring per diem payment of what they owe carriers, that they sometimes have the equivalent of a \$10,000, or even higher, monthly line of credit with an ocean carrier,” he noted.



“If you think of a trucker using an ocean carrier as a revolving line of credit ... then we are loan officers who basically call in that trucker's loan.”

Marcus L. Arky
attorney and principal,
Metro Group Maritime

“That hurts steamship lines for two reasons. They are not banks. They also need their containers back on time, and on an orderly basis.”

Carriers have the option of withdrawing their business from errant truckers, but they often prefer not to do so if they have come to depend significantly on a particular trucker.

In fact, some carriers are so needy for truckers — given the current driver and rig shortage — that they will go on using one that owes as much as \$200,000 in detention charges.

“There are not too many unpaid \$200,000

bills out there, but there are plenty of unpaid \$5,000 bills,” Arky noted. The average trucker in arrears “probably owes between \$5,000 and \$10,000 for detention charges,” he said.

The usual procedure is for a trucker to pay the carrier for any per diem delay charges, and then for a consignee to reimburse the trucker.

If a consignee doesn't pay the trucker promptly, the trucker — depending on his cash flow — may hold off paying the ocean carrier until the consignee eventually pays him.

“We don't know all of the accounting or back deals of the trucker, but that is a very common scenario,” Arky said.

No one disputes that the practical implementation of trucking agreements can be chaotic. “There are a lot of disputes. Some are legitimate, because mistakes have been made on recording a container's days in and days out,” he told *American Shipper*. “There's also a lot of nonsense going on, with people using other people's interchange agreements.”

Some truckers, generally smaller operators, resort to interesting shenanigans. In one recent case that came Metro Group's way, two truckers who were brothers swapped credentials.

“The ‘bad’ brother had been shut out by the ocean carrier from having run up a large unpaid bill. The ‘good’ brother was still looked on with favor by the carrier. So, the ‘bad’ brother used the ‘good’ brother's credentials to take the containers out and then created havoc again by not returning them in time,” Arky explained.

There's always the question, who is really at fault for making the container late?

“Still, it is the trucker's responsibility to police his consignee customers, who are also customers of the steamship line,” Arky said. “There are overlapping relationships, which is why the issue of detention charges can be confusing.

“For the most part, when it's a merchant haulage situation, the trucker is responsible. He knows when he dropped off the container, for example, at a consignee's facility. Even if he's not called back after a certain amount of time, the trucker knows that the container is still likely in that facility,” Arky said.

Third-Party Relief. Metro Group comes into the picture in this way: a typical ocean carrier has in place an equipment control division to monitor what happens with the carrier's containers when they are given over to truckers.

“Steamship lines behave differently. Some carriers have one central credit

manager overseeing freight and equipment use," he noted.

Other carriers have a credit and finance department for freight, and another such unit for dealing with miscellaneous charges to truckers.

When the carrier's own control unit can't obtain any resolution in having per diem or detention charges paid, it is increasingly common for the carrier to hire a company such as Metro Group to collect detention debt as a third party.

In U.S. business culture, "once a bill is referred to a third party, everyone understands that the ante has gone up and no one is messing around," Arky explained.

Metro Group's fee, according to its Web site (www.mgmus.com), is on a sliding scale between 22 percent and 33 percent of what is collected.

For many carriers, this is "found money." Many have become very cynical about ever recovering on their own from certain truckers.

"A lot of what we do is resolving disputes and cutting through red tape. Most often, the trucker is ultimately getting the money owed from the consignee," Arky said.

"Some of our carrier clients want us to contact the consignees, the ultimate customers. Sometimes they don't want us to contact a consignee — only the trucker," he said.

"We behave as a very polite enforcer of the interchange agreement," he noted.

Most truckers that owe detention charges do pay eventually. "They know they can't go on forever using the carrier as a bank — even though some of them will try to prolong doing that for a useful interim period, depending on their cash flow," Arky said.

"If you think of a trucker using an ocean carrier as a revolving line of credit ... then we are loan officers who basically call in that trucker's loan," he said.

"Carriers tell us that our collection services also augment the truckers' understanding that they must return the containers in time," he added.

Carrier Perspective. Anthony Scholey, collection controller for OOCL in Oak Brook, Ill., has relied on Metro Group for help with collections for more than five years.

"We forward to them what we consider uncollectible debts, meaning that our office can't collect them," he said.

Metro Group's niche role is very useful to OOCL, Scholey confirmed. "Their people understand maritime laws, which can be very confusing at times."

Carriers turn to a firm such as Metro

Group to collect truckers' debts, because "it gets to a point where you've attempted to do all that you can," he said. "You need a third party to take steps your company can't, including proceeding to litigation if necessary."

Don Politi, director of credit collection for Hapag-Lloyd in Piscataway, N.J., said his company has used Metro Group for the past two years in the areas of per diem and maintenance repair.

"They supplement our own collection efforts. If we can't collect, then Metro Group takes that one step beyond and puts their third-party influence into the collection. They do a very nice job of it," Politi said.

"We give them bills to collect and they get paid to collect them. However they do that is fine with me. We don't set standards for how they do it, but I think they must be the experts at that," he said.

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It also helps that "they know generally-accepted transportation terminology and ways of doing business," he said. "If you use a collection agency that doesn't specialize in the industry, then you are back to square one in explaining the basics. I don't have to explain anything to Metro Group."

Zim American Integrated Shipping Services, based in Norfolk, Va., has used Metro Group's services for about two years.

"First, we implemented new procedures to recover per diem charges owed to Zim," said Moshe Moallem, the carrier's senior vice president and chief financial officer. "Then, we asked Metro Group to come on board and help us to go after those debts.

"They've done a very good job, and are very insistent in the way they collect debts. Yet they aren't doing it in an aggressive way. They use their brains, which is important in order not to ruin a relationship with the truckers we use," Moallem said. "Ruining that relationship doesn't serve

our business."

He praised Metro Group for its ability to close most debt cases without resorting to courts. "Mostly, they convince the other side to pay. At the end of the day, we stay in a good relationship with our vendors," he said.

"To work with a collection company, you can send them a file and say 'collect the money for me.' But then, many things can fall through the cracks." For example, "a trucker may try to play between the collection company and the ocean carrier," Moallem said.

"They've also trained our people to collect better. On the other hand, we've shared our know-how and knowledge with them. The coordination has been excellent," he said.

Sugar, Then Spice. Metro Group's carrier clients allow its investigators "to see all pertinent billing documents, so we are on the same page with the carrier," Arky explained.

Asked how long carriers generally wait for a bill to be paid before bringing in a collector, Arky replied, "that varies. It can be anywhere from 60 days to a year."

When assigned a debt to recover, Metro Group starts by sending the errant trucking company a demand letter, along with copies of the ocean carrier's invoices.

About 10 percent of the time, "the response to our demand letter is a check in the mail, settling what the trucker owes," Arky said.

If the collection ritual goes beyond that point, "it becomes essentially a very serious dance — everyone knows their roles.

"If a demand letter doesn't work, we get on the phone, back and forth with the trucker. Sugar works better than spice. We try to resolve the matter by using persistent, amicable means, and then see that prompt payment is made. Usually, we can do that even if the dispute has been a serious one.

"If there is disagreement over the amount owed, we'll look over the accounts, working as auditors. On occasion, we may find an error in accounting from the steamship line," Arky said.

If a trucker can't pay the full amount owed, Metro Group will set up a monthly payment plan and monitor it.

Metro Group has the ability to litigate around the country, but only about 5 percent of its per diem claims will result in a lawsuit against the trucker for nonpayment.

The UIIA agreement also includes a protocol for mediation to be used, as well as litigation, to ensure detention charges are paid. ■