

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between)	
	)	Case: 20081107-2-XXXF-MR-OTH
UIIA Motor Carrier)	
Appellant, and	)	DECISION
	)	January 8, 2009
UIIA Equipment Provider)	
Respondent.)	

FACTS: MC interchanged a sealed import container belonging to EP from the Maher Main Terminal at 10:26 AM on August 4, 2008.

The outbound TIR reported dents identified as “usable” to the right bottom rail, the right side panel, the left bottom rail and the left side panel. The outbound TIR bore the BOLD notation that ... “any TIR discrepancies must be reported prior to exit”.

MC returned the container empty to a Maher terminal at 9:36 am on August 27, 2008 which resulted in the following inspection remarks ...” left door, Acep, Csc Bent Major, Acep, Csc Dent Major, Header Bent Major, Header Dent Major, Left top rail bent Major, Left Corner Post Bent Major, Left Door, Acep, Csc Hole Major.”

EP issued a “Repair Estimate” for the container purporting to represent the cost of repairing the damages noted on the empty ingate inspection in the amount of \$00.00. There is no evidence that the container has, in fact, been repaired and that the “estimate” accurately reflected the cost of that estimate.

BASIS OF CLAIM: MC asserts that the damage claimed was more likely done during vessel unloading and that it should not be penalized for its driver’s failure to notate all of the damages at the time of loaded outgate. MC does not appeal based on the fact that only an “estimate” supports EP’s claim. Likewise MC does not contest that the estimated repairs underlying the estimate were repairs relating to the damages noted on the empty ingate TIR.

MC introduces no evidence to support its sole contention on appeal, that “... *the equipment has impact damage from above, most likely caused by an object being swung into it during the loading or offloading from a vessel. Based on the nature of the damage it would not be possible for us to have damaged the container without causing additional damage to the rear of the container and/or chassis.*”

MC admits that its driver failed to get proper notifications to all of the damage at the time of the loaded outgate inspection.

DISCUSSION: The loaded outgate TIR reflects damage notations of substance which suggests that the MC driver participated in an outgate inspection. That argues against the top header being damaged at the time of that inspection being done. The notation on the Maher TIR reminds drivers to get all exceptions noted. Presumably, a professional driver would know to do so.

The 23 day possession suggests that the load was dropped for unloading and later picked up for return. There is no evidence before the panel from the consignee as to the condition of the container upon receipt or discharge. Good evidence would have been a letter from the consignee that the equipment was damaged at the time of delivery. Clearly some evidence from the consignee as to the equipment condition should have been provided by MC.

While it may in fact be true that the damage complained of was caused during a vessel load or unload, the fact remains that, if so, MC failed to obtain that notation on the outgate TIR. The UIIA gives motor carriers the right to disagree with the outgate notations and to perform a complete inspection before accomplishing the interchange. Under the UIIA, motor carriers are fully responsible for their drivers failure to perform TIR inspections thereby protecting the motor carrier's interests.

DECISION: Based upon the "clean" loaded outgate, MC had the burden to produce evidence disproving that the damage was done during its possession. It only produced speculation that it was more likely to occur during unloading. Speculation is not evidence. The panel members can easily imagine circumstances during a trucking or cargo unloading operation that might cause the type of damage claimed.

The panel unanimously finds in favor of the EP. EP shall be entitled to recover the actual costs of repair from MC upon the presentation of an invoice accompanied by evidence that the damages were actually repaired in the amount of the invoice. MC shall bear its costs of appeal.

GREG P. STEFFLRE
Motor Carrier Member

SCOTT SMITH
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between)	
	)	Case 20081204-1-XXXN-MR-OTH
UIIA Motor Carrier)	
Appellant, and	)	DECISION
	)	January 29, 2008
UIIA Equipment Provider)	
Respondent.)	

FACTS: Motor Carrier (MC) interchanged a sealed import container belonging to Equipment Provider (EP) from the Maher Terminal at 9:24 AM on September 24, 2008.

The outbound TIR reported the following inspection remarks: "Right bottom rail dent usable. Right side panel dent usable, left bottom rail dent usable, left side panel dent usable, roof dent usable."

MC returned the container empty to Maher Terminal at 13:37 on September 24, 2008 which resulted in the following inspection remarks: "right side panel cut minor".

EP issued an Invoice in the amount of \$00.00 to straighten/weld cut in right panel-steel corrugated. A "Repair Estimate" for the container purporting to represent the cost of repairing the damages noted on the empty ingate inspection was included as back-up to the Invoice. There was no evidence that the container had, in fact, been repaired and that the "estimate" accurately reflected the cost of that estimate. Upon request, EP provided a copy of a repair invoice from Columbia Container Service showing the container number, the authorization code (which is also shown on the repair estimate), and the amount for the repair to confirm that the repairs have been made.

BASIS OF CLAIM: MC asserts that the damage was just not noted by its driver on the outbound TIR. MC does not appeal based on the fact that only an "estimate" supports EP's claim. Likewise MC does not contest that the estimated repairs underlying the estimate were repairs relating to the damages noted on the empty ingate TIR.

MC admits that its driver failed to get proper notification of the damage at the time of the loaded outgate inspection.

DISCUSSION: The loaded outgate TIR reflects notations of dents to both sides, both bottom rails and the roof which suggests that the MC driver participated in an outgate inspection.

While it is clear that both the driver and gate inspector noted the box had previous damage (dents), the description of dent is normal wear and tear where as the description of cut is damage for which the MC is responsible. As the MC stated, the same driver handled the entire move on the same day which means the driver should have been aware of the difference in the notation of dent on the outbound TIR vs. the notation of cut on the inbound TIR.

DECISION: Based upon the notation of dent on the outbound inspection and the notation of cut on the inbound inspection, we find that the MC is responsible for the actual cost to repair the cut.

The panel unanimously finds in favor of the EP. EP shall be entitled to recover the actual costs of repair from MC. MC shall bear its costs of appeal.

DAVID MANNING
Motor Carrier Member

PATRICK VALENTINE
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between)	
	)	Case 20090225-1-XXXX-MR-OTH
UIIA Motor Carrier)	
Appellant, and	)	DECISION
	)	April 17, 2009
UIIA Equipment Provider)	
Respondent.)	

FACTS: Motor Carrier (MC) interchanged a sealed import container belonging to Equipment Provider (EP) from VIT-PMT at 8:40 on 10-17-08. The outbound TIR had no notation of damage.

MC returned the container empty to VIT-PMT at 15:04 on 10-17-08. The inbound TIR had the following inspection remarks ..."Rail/Corner Posts, Front/Side Panels, Floors/Interior/Dunnage."

EP issued an invoice for repairs totaling \$00.00. The invoice included repairs to roof and bottom rail in the amount of \$00.00 that were not noted on the inbound inspection.

BASIS OF CLAIM: MC asserts that the damage claimed was more likely done by a top loader or spreader bar and that it should not be penalized for its driver's failure to notate the damages at the time of loaded outgate. MC does not appeal the charge for repairs to items not noted on the inbound inspection.

Pictures of the damaged areas were provided.

DISCUSSION: Although the MC driver failed to notate the damage on the inspection, the pictures provided validate the MC claim that the damage could not have been done by the MC. There was distinct evidence of impact at the top of the top rail and under the bottom rail. There is no conceivable way the MC could have caused the damage recorded in the pictures.

DECISION: Based on the picture evidence provided, the panel unanimously finds in favor of the MC. EP is not entitled to recover \$00.00 from MC.

DAVID MANNING
Motor Carrier Member

PATRICK VALENTINE
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between)	
	)	Case 20090309-1-XXS-MR-OTH
UIIA Motor Carrier)	
Appellant, and	)	DECISION
	)	May 4, 2009
UIIA Equipment Provider)	
Respondent.)	

FACTS: Motor Carrier (MC) interchanged nine different sealed containers belonging to Equipment Provider (EP) from various facilities in Southern California.

1. MR2008090028 invoice for container outgated from UPLA on 7-01-08 with no defects noted on outgate. Ingate to Pacer LB Metro on 7-03-08 with notation of "top RS 4' cut". Repair invoice for repair of bent and cut/torn to RC of side panel.
2. MR2008090531 invoice for container outgated from UPLA on 7-18-08 with no defects noted on outgate. Ingate to Pacer LB Metro on 7-21-08 with notation of "Top RS cut, ROR wore out, LOR flat spot". Repair invoice for bent and cut/torn RC side panel.
3. MR2009011298 invoice for container outgated from UPCI on 11-28-08 with no defects noted on outgate. Ingate to Pacer LB Metro on 12-08-08 with notation of "3 cuts top LS". Repair invoice for bent and cut/torn LF side panel.
4. MR2009020294 invoice for container outgated from UPCI on 1-12-09 with notation of "4 left rear panels bent and bent rear bumper". Ingate to Pacer LB Metro on 1-12-09 with notation of "about 2.5 foot cut LS panel". Repair invoice for bent and cut/torn LF side panel.
5. MR2009011298 invoice for container outgated from UPLA on 11-18-08 with no defects noted on outgate. Ingate to Pacer LB Metro on 11-20-08 with notation of "2'cut left top rear". Repair invoice for bent and cut/torn LC side panel.
6. MR2009011298 invoice for container outgated from UPLA on 11-26-08 with no defects noted on outgate. Ingate to Pacer LB Metro on 12-01-08 with notation of "5 cuts top RS panel". Repair invoice for bent and cut/torn RC side panel.
7. MR2009020012 invoice for container outgated from UPLA on 12-13-08 with no defects noted on outgate. Ingate to UPCI on 12-18-08 with notation "broken bumper – rear". Repair invoice for bent R DOT bumper assembly.

8. MR2008120137 invoice for container outgated from UPLA on 10-01-08 with no notation of defects noted on outgate. Ingate to Pacer LB Metro on 10-27-08 with notation “bent door rods, broken door hinge”. Repair invoice for 4 bent RR door hinges.
9. MR2009011457 invoice for container outgated from BNSFSB on 9-3-08 with no notation of defects noted on outgate. Ingate to UPLA on 9-09-08 with notation “bent bumper – rear, bent bolster – front”.

BASIS OF CLAIM: MC asserts that the damage claimed in issues 1-6 above was more likely done during top handling activities since there is no evidence of collision and that it should not be penalized for its driver’s failure to notate all of the damages at the time of loaded outgate. MC also asserts that the charge for “bent” is not appropriate because “bent” is not noted on ingate. MC asserts in issue 7 that the proper notation at ingate is cut or torn not broken. MC asserts in issue 8 that because the unit was received with a sealed load there was no way to note preexisting damage to the hinges. MC also asserts that hinges are not identified in Exhibit B or C of the UIIA. MC asserts in issue 9 that there is no evidence to prove the bend made the unit unserviceable. Also MC asserts that chassis was moved 450 miles in more than 2 months before the repair was made.

DISCUSSION: On steel containers, the proper way to repair a cut is to first straighten the metal and then weld it. The charges to repair the bent panels were associated with the repair of the cut (issues 1-6).

On issue 7, it is clear from the ingate notation that the bumper required repairs.

On issue 8, MC provided internal documents indicating the driver reported the door would not close and was unsafe to drive before departing the customer’s facility. MC also advised customer that door was damaged. Based on container being dropped at customer clean and when picked up door damage was identified the MC should not be held responsible for the damage.

On issue 9, EP failed to provide proof the repairs were required and that the unit was not serviceable. In-gate interchange document showed “bent bolster – front”, however, no evidence was presented to conclude that the bent bolster impaired proper operation or function of the unit. Therefore, MC should not be held responsible for the damage.

DECISION: On issues 1-7, the panel unanimously finds in favor of the EP. MC is responsible for paying the charges.

On issues 8-9, the panel unanimously finds in favor of the MC. EP is not entitled to reimbursement for these charges.

DAVID MANNING
Motor Carrier Member

BEN SHELTON
Rail Carrier Member

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between)	
	)	Case 20090311-1-XXXL-MR-OTH
UIIA Motor Carrier)	
Appellant, and	)	DECISION
	)	May 5, 2009
UIIA Equipment Provider)	
Respondent.)	

FACTS: Motor Carrier (MC) interchanged a sealed import container belonging to Equipment Provider (EP) from the GPA Savannah at 12:45 on 9-19-08. The outbound TIR reported no defects.

MC returned the container empty to GPA Savannah at 15:07 on 9-22-08. The inbound TIR reported no defects.

EP issued repair invoice number MI08886760 on 1-26-09 for “rebill for container returned dirty. Steam clean”.

BASIS OF CLAIM: MC asserts that the failure of EP’s agent to note the container was dirty at the time of interchange makes the EP claim null and void.

DISCUSSION: Steam clean was done on 9-30-08 at 08:32. EP provided statement and documentation indicating the container was steam cleaned at the request of another motor carrier prior to that motor carrier outgating the container at 09:35 on 9-30-08. Containers are steam cleaned many times to satisfy a specific shipper’s requirement.

DECISION: Based upon the inbound TIR that reported no defects and the fact the steam clean was performed at the request of another motor carrier, the EP failed to prove the MC is responsible for the “dirty” container.

The panel unanimously finds in favor of the MC. The EP is not entitled to receive compensation for the steam clean.

DAVID MANNING
Motor Carrier Member

PATRICK VALENTINE
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between)	
	)	Case: 20090409-1-XXXS-MR-OTH
UIIA Motor Carrier)	
Appellant, and	)	DECISION
	)	June 16, 2009
UIIA Equipment Provider)	
Respondent.)	

FACTS: Motor Carrier (MC) interchanged an empty reefer container belonging to Equipment Provider (EP) from the GPA Savannah at 11:19 on 8-06-08. The outbound TIR reported "0247:Damaged RFI: tire is worn".

MC returned the loaded reefer container to GPA Savannah at 14:08 on 8-08-08. The inbound TIR reported no damage and a temperature of -4.

EP forwarded Poseidon Forwarding Company cargo claim # 511-536547 and EP invoice USLS20081100016 for lost/stolen genset to MC in letter to MC dated 11-19-08.

BASIS OF CLAIM: MC asserts that the GPA gate document shows receipt of the container with no damage noted and subsequent record shows location and status of container as normal.

DISCUSSION: The only issue that will be addressed in this decision is the invoice for the lost/stolen genset as cargo liability is not addressed in the UIIA and thus is not included as a topic allowed for the Dispute Resolution Process under the UIIA.

EP provided a copy of a survey performed by Palmetto Marine on 8-12-08. Under the conclusion the report states "It appears that the genset while attached to the chassis was impacted as the frame has asphalt imbedded into it. The genset was hit so hard that it was pushed backward on the chassis frame and the genset cooling fan assembly was crushed on the chassis cross member, causing the genset to shut down automatically to prevent it from overheating. This initiated a chain of events that ultimately compromised the container load of chicken wing parts."

EP also provided a copy of a repair estimate for the genset. The estimated cost of repair exceeded the DV thus the EP invoiced MC the DV amount.

EP provided a history of the temperatures recorded by the genset. This report shows the SupAir at -14 and the RetAir at -8 at 14:00 which was consistent with the earlier temperatures recorded that day. The report also showed the SupAir at -8 and the RetAir

at -4 at 15:00 which is after the ingate time of 14:08. The report indicated the temperatures continued to increase after 15:00 until at 22:00 the SupAir showed -5 and the RetAir showed 4. Based on this report, the temperature did not begin to climb until after the unit was ingated by MC.

MC provided screen print from GPA system showing SALBRECH created the EIR at 14:19 on 8-08. MC also provided screen print from GPA showing SALBRECH showed the unit "ONPOWER" at 14:19 on 8-08.

The process at GPA is for gate clerk to send the driver to a specific location for a reefer mechanic to record the ingate temperature. The reefer mechanic will refuse the unit if it is not at the proper temperature. The inbound TIR is not issued until after the reefer mechanic records the ingate temperature.

It appears very likely that the damage to the genset recorded by Palmetto Marine on 8-12 occurred after the MC interchanged the equipment to EP at GPA.

DECISION: Based upon the inbound TIR which recorded no damage to the genset and the temperature readings that indicated the temperature didn't begin to climb until well after the time of ingate, the EP failed to provide proof that the MC caused the damage.

The panel unanimously finds in favor of the MC regarding the claim for the genset. The EP is not entitled to receive compensation for the genset. EP shall bear the cost of the arbitration.

DAVID MANNING
Motor Carrier Member

PATRICK VALENTINE
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between)	
	)	Case: 20090828-1-XXXX-MR-OTH
UIIA Motor Carrier)	
Appellant, and	)	DECISION
	)	October 29, 2009
UIIA Equipment Provider)	
Respondent.)	

FACTS: The MC disputed three M&R invoices in this case. Invoice 3509771 dated 8-19-09 was for corner post repair. The loaded container with a clean outbound TIR was interchanged from International Transportation Service, Inc on 6-01-09 at 11:24 and returned empty to International Cargo Equipment, Inc in Wilmington, CA on 6-01-09 at 13:25 with a notation on the inbound TIR of a bent right rear corner post.

Invoice 3509769 dated 8-19-09 was for corner post repair. The loaded container with a clean outbound TIR was interchanged from International Transportation Services, Inc. on 5-26-09 at 10:51 and returned empty to International Cargo Equipment, Inc. in Wilmington, CA on 5-27-09 at 9:42 with a notation on the inbound TIR of a bent right side top rail and a bent left side top rail.

Invoice 3509744 dated 8-11-09 was for a steel left side panel repair. The loaded container with a clean outbound TIR was interchanged from Pacific Container Terminal/PMS on 5-26-09 at 16:39 and returned empty to International Cargo Equipment, Inc. in Wilmington, CA on 5-27-09 at 10:30 with a notation on the inbound TIR of a cut on the left side panel.

BASIS OF CLAIM: MC asserts that it does not believe its driver was responsible for the damage primarily due the short duration of the interchange.

DISCUSSION: Section D.2.a. of the UIIA requires that at the time of interchange the Parties execute an EIR which describes the Equipment and any Damage observable at that time. The inbound TIRs indicate that the MC driver was present when the damage was recorded and by signing the TIR the MC driver indicated agreement with the Damage recorded. The length of time the unit is interchanged has no bearing on determining responsibility under the UIIA.

Invoice 3509769 is for corner post repair yet there is no recorded damage to the corner post on the inbound TIR as required by Section D.2.a.

DECISION: Based on Section D.2.a. the panel unanimously finds in favor of the EP on invoices 3509771 and 3509744 as the damage was properly recorded and the invoices match the damage recorded. The panel unanimously finds in favor of the MC on invoice 3509769 as the damage recorded on the TIR did not match the damage invoiced.

MC and EP shall equally share the responsibility for the \$50 administrative fee.

DAVID MANNING
Motor Carrier Member

PATRICK VALENTINE
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between)	
	)	Case 20091120-1-XXXP-MR-TR
UIIA Motor Carrier)	
Appellant, and	)	DECISION
	)	January 27, 2010
UIIA Equipment Provider)	
Respondent.)	

FACTS: Flexi-Van on behalf of UIIA Equipment Provider (EP) invoiced Motor Carrier (MC) “flat spot” tires on 3 chassis after the equipment was terminated at Integrated Industries in Cannahon, IL.

Invoice 138099016A for \$00.00 to replace LIF, RIF on LPCZ 404246 tires due to Slid Flat damage.

When the unit was outgated from BNSF Logistics Park Chicago on 7/16/09 at 03:45 the driver declared that the unit had no damage as evidenced by the EIR. The notation on the ingate at Integrated Industries on 7/20/09 indicated “FHWA Exp; (1)LIF Tire Slid; (2)ICC LS Bent; (3)ROF Tire Slid; (4)RIF Tire Slid.”

Invoice 138099028A for \$00.00 to replace ROR tire on LPCZ 404224 due to Slid Flat damage. When the unit was outgated from BNSF Logistics Park Chicago on 7/29/09 at 07:45 the driver declared that the unit had no damage as evidenced by the EIR. The notation on the ingate at Integrated Industries on 8/3/09 indicated “ROR Tire Slid.”

Invoice 07010922 for \$00.00 to replace LIR, LOR on MSCZ 434886 due to Slid Flat Damage. When the unit was outgated from BNSF Logistics Park Chicago on 6/25/09 at 07:39 the driver declared that the unit had no damage as evidenced by the EIR. The notation on the ingate at Integrated Industries on 7/1/09 indicated LIR, LOR Tire Slid.

BASIS OF CLAIM: MC asserts that since outgate was at a facility with AGS gates and that the damage which was invoiced was not visible on the AGS image that it can not be proved that the damage did not exist when the units went outgate.

DISCUSSION: On outgate EIR’s for all 3 chassis/container units the drivers declared that the unit did not have damage as evidenced by the EIR. The ingate EIR’s all contained notations for the same damage billed for on the repair invoices. Section D.2.a. of the UIIA states that at the time of interchange, the Parties shall execute an EIR

which shall describe the Equipment and any damage observable at that time. The physical condition of the Equipment may be described by either Party within the EIR or via recorded images taken at the time of Interchange. The panel confirmed that the BNSF Logistics Park Chicago AGS facility does have a process in place that provides the ability for the driver to notate damage on the outgate EIR should the driver indicate that damage is present at the time of outgate. If driver indicates damage is present, the console operator at the facility would notate the damage if it could be seen on the recorded image. If the damage is not visible by the console operator on the recorded image, the driver would be instructed to proceed to the quick stop area at the facility for inspection and repair by a mechanic, or if necessary a flip.

DECISION: The majority of the panel found in favor of the EP for all three invoices based on Section D.2.a. of the UIIA. The \$50 administrative fee for the arbitration of this case will be borne by the Motor Carrier.

Based on the invoices received and the repair detail provided EP is due the following amounts:

LPCZ 404246: \$00.00

LPCZ 404224: \$00.00

Invoice 855099500R: \$00.00

JEFF LANG
Motor Carrier Member

MIKE WILSON
Water Carrier Member

JAMES FITZGERALD
Rail Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

BINDING ARBITRATION PANEL REVIEW AND DECISION

In the Dispute Between

UIIA Motor Carrier,
Appellant, and

UIIA Equipment Provider,
Respondent

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Case Number: **20120204-1-XXXJ-MR-OTH**

Date of Decision: 04/03/2012

UNDISPUTED FACTS: The Equipment Provider (EP) sent the Motor Carrier (MC) a maintenance and repair invoice for repairs to a unit that was out-gated at the PNCT terminal on 10/31/2011 and in-gated at PNCT empty depot on 11/01/2011.

Invoice T136439, for "M&R on containers," was dated 01/30/2012 in the amount of \$00.00. The accompanying American Maritime Services Repair Estimate details the repairs needed.

The out-gate EIR at the PNCT indicated no damage. The in-gate EIR at the PNCT empty depot indicated the following: "Front Corner Post Right FB4N BT RP; Front Corner Post Left FB1N BT RP; Front Left Lower Midd FB2N BT GS". Images have been provided for review, but both facilities were not AGS equipped.

ISSUE: The MC argues that the unit had old damage and that their driver reported the damage to the out lane inspector. But the damage was not noted on the final EIR, and the MC was told there was nothing it could do. The MC stated that when they in-gated the unit the damages were written up as major damage. The MC feels that they could not have caused the damage to this unit and that the damage was old (pre-existing) and feels it should not have been charged. The MC is basing its claim on Section D.2 of the UIIA.

The EP responded to the dispute by submitting previous EIR's on the unit. The EP believes charges are justified as invoiced.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. The panel finds that the MC failed to comply with requirements under provision D.2.a of the UIIA to record the damage noted at that time. At the time the MC took possession of the equipment the out-gate EIR notes no damage. When the MC in-gated the equipment, the in-gate EIR documented damages. Therefore, the MC is responsible for the damage listed in invoice T136439.

PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (April 14, 2011) to make its decision:

D. Equipment Interchange....2. Equipment Interchange Receipts

- a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the

Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

DECISION: The panel unanimously finds in favor of the EP.

CASE REVIEWED AND DECIDED BY:

JEFFREY LANG
Motor Carrier Member

DAVE DALY
Water Carrier Member

BINDING ARBITRATION PANEL REVIEW AND DECISION

Date of Decision: 5/16/2012

D. Equipment Interchange....2. Equipment Interchange Receipts

a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

DECISION: The panel unanimously finds in favor of the EP.

CASE REVIEWED AND DECIDED BY:

FRED HUENNEKENS
Motor Carrier Member

JANICE L. SCHAUB
Rail Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

BINDING ARBITRATION PANEL REVIEW AND DECISION

In the Dispute Between)	
)	
UIIA MC	)	Case Number: 20120420-3-XXXI-MR-OTH
Appellant, and)	
)	
UIIA EP	)	Date of Decision: 07/13/2012
Respondent)	

UNDISPUTED FACTS: The Equipment Provider (EP) sent the Motor Carrier a maintenance and repair invoice for repairs made to a unit that was in-gated at Global Terminals (non-AGS gate facility) in New Jersey on 01/13/2012. Invoice No. 731720, dated 03/27/2012, in the amount of \$____, stated "Description: Steel Right Side Panel Repair." The out-gate EIR indicated no damage. The in-gate EIR indicated: The following equipment is interchanged in good condition EXCEPT as noted. Container: **Damage B**, 1. 320 Dent Panel (1), 2. 32A Bent Panel – 1ft D. Chassis: **Damage C** 1. 999Z(Damage C).

ISSUE: The MC argues that they are not responsible for the damage based on the fact that the out-gate facility operator neglected to record the old (pre-existing) damage. The MC is basing their claim on Section D.2 of the UIIA.

The EP responded to the dispute by submitting survey pictures for review, but no comments were received.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. The panel finds that the MC failed its responsibility to record the damage on the out-gate EIR. Consequently, the MC failed to comply with requirements under provision D.2.a of the UIIA and its found liable for the damage listed in invoice 731720.

PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (January 17, 2012) to make its decision:

D. Equipment Interchange....2. Equipment Interchange Receipts

a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

DECISION: The panel unanimously finds in favor of the EP.

CASE REVIEWED AND DECIDED BY:

DAVE MANNING
Motor Carrier Member

MATTHEW SMURR
Water Carrier Member

In the Dispute Between

Case Number: **20150408-1-XXXM-MR-OTH**

Date of Decision: 01/29/2016

Invoice	Invoice #	Inv. Date	Amount	Facility Outgate/ Ingate	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	3JC5417	3/20/15	\$00.00	CSX Cincinnati/CSX Cincinnati	2/10/15	2/10/15	3/20/15	3/23/15	3/24/15	3/25/15

The Motor Carrier's basis of dispute is Section E.3.a.(1) of the UIIA. The Motor Carrier reports that the Equipment Provider is billing for pre-existing damage that happened at the Equipment Provider's facility during the scope of chassis stacking and unstacking. The Motor Carrier does not believe that the Equipment Provider provided sufficient factual documentation, in accordance with Section E.3.a.(1), to support the charges. The Motor Carrier states that its driver outgated the empty unit from the CSX Cincinnati ramp and drove twenty-six (26) miles to its customer to live load the unit. Upon completion, the driver returned the unit back to the same CSX facility. The Motor Carrier reports it had the equipment in its possession for a total of 2 hours and 14 minutes. The Motor Carrier states that when the unit was ingated, the inspector found that the sub-frame of the chassis was bent. The Motor Carrier believes that it is impossible for its driver to have caused this damage in the short amount of time the unit was out.

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of the UIIA. The Motor Carrier also included as part of its supporting documents another invoice received from this Equipment Provider at the same facility that shows similar damage as is in this arbitration claim. The Motor Carrier states that the invoice shows a pattern of “operational issues” at the facility leading to the cause of this type of chassis damage, and is not caused by the Motor Carrier.

As additional evidence, the Motor Carrier provided two prior arbitration cases that, although the damage is different, shows that a Motor Carrier can be exonerated from damages if the evidence shows that the damages could have in no way been caused by the Motor Carrier.

EQUIPMENT PROVIDER’S RESPONSE TO MOTOR CARRIER’S DISPUTE:

The Equipment Provider responded stating that it believes the invoice is valid as billed. The Equipment Provider reports that it rebilled the outbound Motor Carrier for the cost of a damaged sub-frame assembly which is supported by Sections D.2.a., D.3.a.(1), D.3.d. and E.3.a.(1) of the UIIA. The Equipment Provider states that the Motor Carrier had the opportunity to fully inspect the unit for damage prior to departing the terminal; however, no damage was reported. The Equipment Provider states that the Motor Carrier has no evidence to back up its assumption that the damage occurred as a result of stacking or mishandling of the chassis on the terminal. The Equipment Provider reports that the chassis sub-frame had “accordion” damage, which is indicative of the slider assembly being adjusted in an abrupt manner against the frame stops. Sliders are adjusted by drivers only. Neither the Equipment Provider nor vendor personnel adjust slider assemblies on the Equipment Provider’s terminals. The Equipment Provider contends that this type of damage cannot happen during a stacking or unstacking event or normal terminal operations.

With regard to the Motor Carrier’s argument that it did not have possession of the unit long enough for this type of damage to occur, the Equipment Provider indicated that damage to the sub-frame by improperly adjusting the slider assembly does not require the unit to be moved beyond the length of the adjustment desired. Additionally, Exhibit A, Item 2 to the UIIA assigns the Motor Carrier the responsibility for visually or audibly checking slider pins prior to use. If this inspection is performed properly, any pre-existing sub-frame or slider damage would be noted.

As to the validity of the invoice, the Equipment Provider states that under Section E.3.a.(1) documentation containing the repair vendor’s name, repair date, location and control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable in lieu of the actual repair invoice when not available. The Equipment Provider reports that its billing system requires vendors to electronically enter invoice data that meets all UIIA requirements. In addition, Section E.3.a.(1) does not require invoices to be accompanied with images, unless the unit was interchanged at an AGS facility. CSX Cincinnati is a manned gate and not an AGS facility.

As to the Motor Carrier’s reference to previous panel decisions, the Equipment Provider states that the cited cases involve damage to the top of a loaded container that was not visible due to the loaded condition of the container. The Equipment Provider argues that if the damage billed was pre-existing, the Motor Carrier should have been able to see it when picking up the unit. The Equipment Provider believes that the previous panel decisions cited by the Motor Carrier are not applicable to this claim.

In response to the Motor Carrier's claim that there was a pattern of operational issues at the facility, the Equipment Provider indicated that from the images, it can be clearly seen that the sub-frames on both units have "accordion" damage consistent with improper adjustment of the chassis slider assembly. The Equipment Provider states that this type of damage could have been easily seen by the driver at outgate and, if present, should have been notated.

DISCUSSION:

After careful review of all documents and the evidence submitted by the parties, the panel finds that the Motor Carrier did not follow Sections D.2.a, D.3.d of the UIIA. The Motor panel member stated that while he does not believe the Motor Carrier could have created this type of damage, pursuant to Section D.3.a. of the UIIA, the Motor Carrier is required to perform a pre-trip inspection and report any damages at the time of outgate. If no damage is reported, the responsibility falls upon the Motor Carrier. The Rail panel member observed that both the Motor Carrier and the Equipment Provider have various obligations when performing an interchange and that the entire interchange process relies upon both properly performing their respective obligations. The Rail panel member stated that the Motor Carrier needed to report and document any pre-existing damage on the outgate J-1. In this instance, if there was pre-existing damage, the Motor Carrier failed to report it on the outgate J-1. As such, the unit is presumed to be damage free, and any damage found on ingate is presumed to have occurred during the interchange period while in the Motor Carrier's control. The Rail panel member also noted that the prior arbitration cases submitted by the Motor Carrier to support its case are irrelevant based on the fact that the damage in this case was easily visible to the driver from standing beside the tandem chassis wheels and looking at the slider assembly.

For the reasons stated above, the panel unanimously finds in favor of the Equipment Provider.

DECISION:

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (June 8, 2015) to make its decision:

- D. Equipment Interchange
 - 2. Equipment Interchange Receipts
 - a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

3. Equipment Condition

- a. Motor Carrier will return the Equipment to the Provider in the same condition, reasonable Wear and Tear excepted.
 - 1) The responsibility for the repair and/or replacement of equipment items during the Interchange Period are listed in Exhibits B and C of this Agreement. **[Revised 07/25/07]**

DECISION: The panel unanimously finds in favor of the Equipment Provider.

CASE REVIEWED AND DECIDED BY:

GERRY BISAILLON
Rail Carrier Member

ROBERT A. CURRY
Motor Carrier Member

**UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT
DISPUTE RESOLUTION PANEL REVIEW AND DECISION**

In the Dispute Between

UIIA MC,
Appellant, and

UIIA EP,
Respondent

Case Number: **20150824-2-XXXT-MR-OTH**

Date of Decision: 01/29/2016

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Invoice	Invoice #	Container #	Inv. Date	Amount	Facility	Outgated	Ingated
1	PHX15-7100800	TRLU7100800	8/3/2015	00.00	Ports America Group/ConGlobal	6/3/2015	6/3/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor carrier's initial dispute of the charges related to Section D.3.d.(1) (Equipment Condition) and Exhibits A, B and C of the UIIA. The Motor Carrier stated that the container was sealed at the time of interchange. Therefore, the driver was unable to determine if the flooring was damaged prior to outgate. The Motor Carrier stated that the Equipment Provider invoiced them for interior steam cleaning of oil; however, the Motor Carrier noted that the nature of the cargo (furniture) could not have left oil stains on the container floor and/or walls. Based upon this fact, the Motor Carrier believes it is apparent that any damage was pre-existing and/or caused by normal wear and tear. In addition, the Motor Carrier reported that when it returned the empty container to ConGlobal Industries (EP's depot), the ingate EIR contained the statement, "subject to further inspection". The Motor Carrier noted that this type of disclaimer is not acceptable under the UIIA, as the Motor Carrier was not made aware of the damage at the time of interchange.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider did not respond to the arbitration claim. However, the Equipment Provider responded to the Motor Carrier's initial dispute of the charges, stating that they released a sound unit that was accepted in good order by the Motor Carrier. The Equipment Provider believes that unless the Motor Carrier can provide proof of the existing damage, the charges are valid.

DISCUSSION:

After careful review of all documents and the evidence submitted by the parties, the panel finds that Section D.2.a. was not followed which states, *“At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted.”* The panel members noted that no damage was reported by the Equipment Provider upon the ingate of the unit. For this reason, the panel finds that the Motor Carrier was not billed in accordance with the terms of the UIIA and, therefore, unanimously finds in favor of the Motor Carrier.

DECISION:

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (June 8, 2015) to make its decision:

D. Equipment Interchange

2. Equipment Interchange Receipts

- a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

DECISION: The panel unanimously finds in favor of the Motor Carrier.

CASE REVIEWED AND DECIDED BY:

DAVE DALY
Ocean Carrier Member

ROBERT CURRY
Motor Carrier Member

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider indicated that after review of the case files associated with the DRP claim, that it determined that sufficient photographic evidence existed for only on one of the two tires invoiced. As such the EP agreed to modify the invoice from \$434.30 to \$217.15. In regards to the charges billed for the one tire, the EP responded as follows:

- Photos - The Equipment Provider stated that their system works on an unique "visit id" that ties images directly to the J-1 gate transaction. The Equipment Provider noted that the fact these images are available as part of the J-1 process through the Intermodal Equipment Events (IEE) system proves that they are the actual images from the gate transaction. The Equipment Provider also reported that they included a chassis right side image that shows some of the scrapes, scuffs, and unique characteristics of the chassis in the tire photo match exactly the uniqueness of the chassis in the chassis right side image. The Equipment Provider stated undeniable that the tires belong to the chassis in question.
- Damage/Inspection at Ingate – The Equipment Provider responded by stating the CCIB would not perform an inspection unless it was a manual gate. The Equipment Provider reported that the AGS process captures damage on recorded images for later review and invoicing. The Equipment Provider stated further that in the event a unit is a cross-town move, then the Motor Carrier is required to advise the Equipment Provider as such and to provide documentation from the other railroad. If the documentation is "clean" on the outgate and "dirty" on the ingate at UPRR, then the UIIA process applies making the Motor Carrier responsible for the damages.
- Removal of 4/32 of tread/reasonable wear and tear - The Equipment Provider reported that it is possible to see that the tread depth in the slid flat spot is 0/32" from the photo provided. The photo show the tread is smooth with the surrounding tire, and as such constitutes damage. The Equipment Provider also stated that slid flat condition removing more the 4/32" of tread when compared to the remaining tire is a damage condition, and not wear and tear and referenced UIIA Exhibit C which states the Motor Carrier has responsibility when *"slid flat damage to tire and/or tube – removal of 4/32 of tread or rubber when compared to the remaining tread."*
- Possession of Unit for sixty-six (66) minutes - The Equipment Provider argues that the time element is irrelevant in that it takes less than thirty (30) seconds to generate a slid flat condition. The Equipment Provider stated that if the condition pre-existed at the facility ramp, then the driver should have never interchanged the equipment, but should have taken the unit to roadability at the facility for repair. The Equipment Provider stated that either the driver did not perform a pre-trip, did not adequately inspect the tires at the time of pick up, or chose not to take it to roadability for repairs. The Equipment Provider further stated that taking the unit to roadability prior to outgating would have removed the Motor Carrier's responsibility if the condition existed prior to outgate.

For the reasons stated above, the Equipment Provider believes the Motor Carrier is responsible for the charges.

DISCUSSION:

After careful review of all documents and the evidence submitted by the parties, the panel finds that the Motor Carrier did not follow Sections D.2.a, D.3.d and E.4.a. of the UIIA. The panel stated that the Motor Carrier was invoiced in accordance with the UIIA and the Equipment Provider's addendum. The Rail panel member also stated that the fact that Motor Carrier was on public roads for only sixty-six (66) minutes does not relieve the Motor Carrier of its obligation to inspect the equipment. The panel does not believe the Motor Carrier provided sufficient evidence to support its case and therefore responsible for the adjusted invoice in the amount of \$00.00.

DECISION:

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (June 8, 2015) to make its decision:

- D. Equipment Interchange
 - 2. Equipment Interchange Receipts
 - a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**
 - 3. Equipment Condition
 - a. Motor Carrier will return the Equipment to the Provider in the same condition, reasonable Wear and Tear excepted.
 - 1) The responsibility for the repair and/or replacement of equipment items during the Interchange Period are listed in Exhibits B and C of this Agreement. **[Revised 07/25/07]**
 - 2) Motor Carrier and Provider will not issue an invoice for repair items equal to or less than \$50 per unit per Interchange Period. Provider may, in its Addendum, adopt a different threshold amount as long as that amount is greater than \$50 and applies to both Motor Carrier and Provider. **[Revised 07/25/07]**

E. Equipment Use

4. Tires

- a. Repair of Damage to tires during Motor Carrier's possession is the sole responsibility of Motor Carrier, based on prevailing reasonable and customary repair costs and equipment use. **[Revised 09/01/09]**

DECISION: The panel finds in favor of the Equipment Provider for the adjusted invoice in the amount of \$00.00.

CASE REVIEWED AND DECIDED BY:

CLIFF CREECH
Rail Carrier Member

JEFFREY LANG
Motor Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT DISPUTE RESOLUTION PANEL REVIEW AND DECISION

In the Dispute Between

UIIA MC,
Appellant, and

UIIA EP,
Respondent

Case Number: **20151204-1-XXXR-MR-OTH**

Date of Decision: 03/21/2016

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Below is a summary of the invoices being disputed under this arbitration claim:

Inv	Invoice #	Container #	Inv. Date	Amount	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	254776	TCLU5723340	11/17/15	\$0.00	Maher Terminals/ Columbia Container	8/27/15	8/27/15	11/17/15	11/18/15	11/19/15	12/4/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section D.3.d of the UIIA. The Motor Carrier states it is being billed for corner post damage to a container. The Motor Carrier reports that the unit was outgated from the Maher terminals facility (non-AGS) and ingated at Columbia Container yard (non-AGS) on August 27, 2015. The Motor Carrier stated that their driver noticed the dent on the corner post and had the terminal operator note it on the outgate EIR; however, the terminal operator noted it as "dented, but useable". The Motor Carrier stated that when they ingated the unit to Columbia Container yard the same day, the facility wrote it up as major damage. The Motor Carrier argues that the images provided by the Equipment Provider shows that the container had rust on it. The Motor Carrier believes that the damage already existed prior to outgate. The Motor Carrier believes it returned the unit to the Equipment Provider in the same condition as it was received, reasonable wear and tear accepted. The Motor Carrier does not believe that the Equipment Provider has provided proof that the damage was caused by the Motor Carrier.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded to the claim stating that they issued the invoice in accordance with the terms of the UIIA. The Equipment Provider stated that the EIRs indicated that the subject container was released from Maher terminal with the notation of "Dent usable" at "Right bottom rail", "Right side rail", "Left bottom rail" and "Left side Panel" - all of above mentioned are Minor damages. However, upon return of the empty to the Columbia Container Service there was new Major damage at "Corner post assembly" with "Broken/cut". The Equipment Provider states that they dispatched a professional surveyor (CMC Intl.) to inspect the container and confirmed the damage would be classified as "major damage". The Equipment Provider proceeded at this point to approve and pay for the repairs.

The Equipment Provider also stated that their UIIA addendum states: "In the event Interchanged Equipment is damaged after being received by Motor Carrier, the Motor Carrier shall, to the satisfaction of the Provider, repair and restore the same, at its own cost and expense, to the same condition as when delivered, ordinary Wear and Tear excepted. For the purposes of this subparagraph, damage shall include but is not limited to repairs or maintenance necessitated by improper use or abuse of the Equipment. In the event Motor Carrier does not repair said Equipment, Provider will cause the repair to be performed and Motor Carrier shall promptly pay Provider for the repairs upon receipt of Provider's invoice."

The Equipment Provider believes they addressed the issues raised by the Motor Carrier by clarifying that the dispute is not for the difference between major or minor damage on the outgate and ingate EIR. The Equipment Provider states there was no notation for the damage of the corner post on the outgate EIR. The Equipment Provider believes that Maher terminal marks "Minor" damage on EIRs to judge if the container is or is not roadworthy. The Equipment Provider noted that Maher also clearly reminds Motor Carriers to report any discrepancy before leaving the gate.

DISCUSSION:

After careful review of all documents and the evidence submitted by the parties, the panel finds in favor of the Motor Carrier. The Ocean Carrier panel member states that the corner post dent was noted on the outgate as needed and, further, that Maher's classification of "Minor" or "Major" is not relevant to the EIR process but instead is used for its own processes with labor. The Motor Carrier panel member agrees with the Ocean Carrier panel member; that the dent on the corner post was noted at outgate as necessary.

DECISION:

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (June 8, 2015) to make its decision:

YANGMING MARINE TRANSPORT Addendum to the UIIA – Section I. Maintenance and Repair –

2. In the event Interchanged Equipment is damaged after being received by Motor Carrier, the Motor Carrier shall, to the satisfaction of the Provider, repair and restore the same, at its own cost and expense, to the same condition as when delivered, ordinary Wear and Tear excepted. For the purposes of this subparagraph, damage shall include but is not limited to repairs or maintenance necessitated by improper use or abuse of the Equipment. In the event Motor Carrier does not repair said Equipment, Provider will cause the repair to be performed and Motor Carrier shall promptly pay Provider for the repairs upon receipt of Provider's invoice.

D. Equipment Interchange

2. Equipment Interchange Receipts

- a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

3. Equipment Condition

- a. Motor Carrier will return the Equipment to the Provider in the same condition, reasonable Wear and Tear excepted.
 - 1) The responsibility for the repair and/or replacement of equipment items during the Interchange Period are listed in Exhibits B and C of this Agreement. **[Revised 07/25/07]**
 - 2) Motor Carrier and Provider will not issue an invoice for repair items equal to or less than \$50 per unit per Interchange Period. Provider may, in its Addendum, adopt a different threshold amount as long as that amount is greater than \$50 and applies to both Motor Carrier and Provider. **[Revised 07/25/07]**

DECISION: The panel unanimously finds in favor of the Motor Carrier.

CASE REVIEWED AND DECIDED BY:

DAVE DALY
Ocean Carrier Member

ROBERT A. CURRY
Motor Carrier Member

In the Dispute Between

UIIA MC,
Appellant, and

UIIA EP,
Respondent

Case Number: **20160615-12-XXXT-MR-OTH**

Date of Decision: 10/05/2016

Inv	Invoice #	Container #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	USASCCQGMS2597	UACU8085681	5/31/16	South FL Container Terminal (SFCT)	SFCT	SFCT	6/3/16	6/9/16	6/9/16	6/15/16

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section D.2.a of the UIIA. The Motor Carrier believes that the damage billed by the Equipment Provider was pre-existing when the Motor Carrier outgated the unit. The Motor Carrier stated that it is their drivers practice to not ask for a secondary inspection or make any notations if they see the damage is marked "old" on the EIR, which is what occurred in this case.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded by stating that if the damage was pre-existing the Motor Carrier had the opportunity to report the damage and have it noted on the EIR at the time of outgate. The Equipment Provider believes the invoice is valid as billed, based upon the following:

- Outgate EIR indicated no damage
- Ingate EIR indicated damaged RIGHT: Side is pushed out
- The terminal manager advises that there is no designation between old damage and new damage per terminal policy

DISCUSSION:

After careful review of all documents and the evidence submitted by the parties, the panel finds in favor of the Motor Carrier. The Motor Carrier panel member commented that while the ingate indicates “old damage” that designation does not create sufficient factual documentation to prove that the Motor Carrier damaged the container. The Ocean Carrier panel member also found in favor of the Motor Carrier, but believe both parties are aware

of the shortcomings of the terminal's system, which results in the "old damage" designation on the EIR and that it is the responsibility of both the Equipment Provider and the Motor Carrier to work together in the future to find a resolution to this problem versus continuing to bring this same issue to arbitration.

Based on the evidence presented in the case, the panel finds that the Equipment Provider did not provide sufficient factual documentation to prove the Motor Carrier was responsible for the repair pursuant to Section E.3.a.(1) of the UIIA.

DECISION:

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (February 8, 2016) to make its decision:

- D. Equipment Interchange
 - 2. Equipment Interchange Receipts
 - a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

DECISION: The panel unanimously finds in favor of the Motor Carrier.

CASE REVIEWED AND DECIDED BY:

JEFFREY LANG
Motor Carrier Member

THOMAS BARATTINI
Ocean Carrier Member

In the Dispute Between

UIIA MC,
Appellant, and

UIIA EP,
Respondent

Case Number: **20160728-3-XXXG-MR-TR**

Date of Decision: 11/29/2016

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Invoice	Invoice #	Container #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	375620	375620	05/10/16	Ports America – New Orleans/Ports America-New Orleans	11/30/15	12/08/15	06/07/2016	06/21/16		7/28/16

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Sections E.3.a.(1) and E.3.c(2) of the UIIA. The Motor Carrier received an invoice from the Equipment Provider for slid flat damage to five (5) different tires. The Motor Carrier outgated the equipment from Ports America in New Orleans, Louisiana on November 30, 2015 and ingated the equipment to the same location on December 8, 2015. The Motor Carrier requested that the Equipment Provider provide the images documenting the condition of the equipment at the time it was outgated and ingated where there was an AGS system in place. The Motor Carrier stated that the Ports America facility in New Orleans is unique because both the in and out gates are equipped with an AGS system, but the ingate is also manned by gate personnel. The Motor Carrier stated that after its dispute of the charges based on no images being provided, that there was continued communication between the Motor Carrier and the chassis pool on behalf of the Equipment Provider. The Motor Carrier believes that their request for images was left open ended, which is when they filed for binding arbitration. The Motor Carrier feels that if the Equipment Provider cannot provide the necessary images in accordance with Section E.3.a.(1) and that the invoice in question is not valid.

The Motor Carrier also originally argued that the invoice was received outside of the 120 calendar day timeframe due to CCM's server IP address being reported by the Motor Carrier's mail service provider as rated 100% spam. This caused the spam filter of the Motor Carrier's mail service provider to reject the emails from the chassis pool on behalf of the Equipment Provider.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

Gulf Consolidated Chassis Pool (GCCP) responded on behalf of the Equipment Provider stating while photos of the interchange into the facility may be available, Ports America is considered a manned gate and photos are not utilized as supporting documentation for damage invoicing. The condition

of the equipment is notated on the EIR upon ingate. In addition, the EIR does not meet the UIIA D.2.c. requirement for an AGS gate facility, which requires the wording "Damage is captured on Recorded Images" to be printed on the EIR.

The Port's process at the time of ingate is the Motor Carrier has the ability to dispute the damages noted on the EIR immediately. A second level inspection is performed by the M&R vendor. If in agreement, the M&R vendor will notate driver's EIR copy and initial. If the M&R vendor does not agree, the Motor Carrier has an additional level of immediate dispute by requesting a GCCP inspector to review the damages. If both the M&R vendor and GCCP inspector agree the damages exist, the EIR is not updated.

Therefore, on this particular chassis the Motor Carrier had the chassis in its possession from November 30, 2015 to December 8, 2015 with several ingates into Ports America. The prior ingate of November 30, 2015 was noted as clean. This clean interchange, along with Ports America's procedure for tagging damaged chassis upon ingate, supports that this damage happened during the Motor Carrier's interchange between the dates of November 30, 2015 to December 8, 2015 and that the photos are unnecessary to support that the damages were not pre-existing.

In addition, the Equipment Provider does not believe the Motor Carrier met timeline for requesting arbitration within 15 days of denial of the dispute, which the Equipment Provider believes was provided to the Motor Carrier on June 30, 2016.

DISCUSSION:

After careful review of all documents and the evidence submitted by the parties, the panel finds in favor of the Equipment Provider. The Motor Carrier panel member based his decision upon the following:

1. The Equipment Provider met the requirements of Section E.3.a.(1) by providing a copy of the actual repair bill that was their basis for invoicing the Motor Carrier. The Equipment Provider also provided the interchange receipts from 11/30/15 and 12/08/16 that represent the factual documentation supporting their determination that the MC was responsible for the damage;
2. The Equipment Provider met the requirements of D.2.a and D.2.b by permitting the Motor Carrier's driver to report damage, have it noted on the outgate interchange and obtain a copy of the interchange receipt;
3. The chassis was manually inspected when it entered on November 30, 2015, and no damage was reported;
4. The chassis was hooked to the Motor Carrier's truck the entire time it was in the terminal on November 30, 2015;
5. The Motor Carrier's driver did not report any damage when exiting the terminal on November 30, 2015; and
6. Damage was reported during the manual inspection of the equipment when it was returned to the terminal by the Motor Carrier on December 8, 2015.

The Ocean Carrier panel member agreed with the Motor Carrier panel member's findings for the same reasons stated above.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (February 8, 2016) to make its decision:

- D. Equipment Interchange
 - 2. Equipment Interchange Receipts
 - a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**
 - b. Each Party shall be entitled to receive a copy and/or an electronic receipt equivalent of the Equipment Interchange Receipt as described in D.2.a above without charge
- E. Equipment Use
 - 3. Damage to Equipment
 - a. Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession. **[Revised 09/01/09]**
 - 1. To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of AGS gate transactions such documentation must include images depicting the condition of the Equipment at the time the Motor Carrier to be charged both accepted and returned the Equipment. **[Revised 09/01/09]**
 - c. Parties shall invoice repair costs no later than the following timeframes: If Parties are not invoiced within the established timeframes, the right of the Invoicing Party to recover such charges will be lost: **[Revised 01/26/15]**
 - 1. Standard Gate System (manned): Invoices for repair of Damages must be issued no later than 165 calendar days from the date of Interchange at the time the Damage was documented.

2. AGS Gate System (unmanned): Invoices for repair of Damages must be issued no later than 120 calendar days from the date of Interchange at the time the Damage was documented.

DECISION: The panel unanimously finds in favor of the Equipment Provider.

CASE REVIEWED AND DECIDED BY:

FRED HUENNEKENS
Motor Carrier Member

ROBERT CANNIZZARO
Ocean Carrier Member

**UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT
DISPUTE RESOLUTION PANEL REVIEW AND DECISION**

In the Dispute Between

UIIA MC,
Appellant, and

UIIA EP,
Respondent

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Case Number: **20161117-1-XXXV-MR-TR**

Date of Decision: 04/26/2017

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Invoice	Invoice #	Equipment #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	3KK5017	NSPZ148649	10/03/16	LATC-Manual/ELA-AGS	9/13/16	9/15/16	10/03/16	10/05/16	10/28/16	11/4/16

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section E.3.a.(1) of the UIIA. The Motor Carrier stated that the charge being disputed was generated by CSX from AGS images taken when the equipment was returned to the CSX terminal (ingate). The Motor Carrier requested copies of the images taken when the same equipment was removed from the terminal (outgate). The Equipment Provider failed to provide those outgate images. As a result, the Motor Carrier believes the Equipment Provider has not complied with the last sentence in Section E.3.a.(1) and therefore the invoice is invalid. The Motor Carrier states that there is nothing in the UIIA that defines the split gate operation that is being used by CSX or provides any type of exemption from the repair billing documentation requirements for AGS transactions under E.3.a.(1).

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded to the Motor Carrier's dispute stating that the Motor Carrier cites UIIA paragraph E.3.a.(1) as justification for their case which states, "In the case of AGS gate transactions such documentation must include images depicting the condition of the Equipment at the time the Motor Carrier to be charged both accepted and returned the Equipment." The Equipment Provider believes that this provision indicates that if you have an AGS (photo imaging system) capable gate then images must be provided, but the key term in the provision is "transactions". The Equipment Provider argues that Section E.3.a.(1) defines a single interchange transaction, not multiple transactions. The Motor Carrier's opinion that interchanges during the ingate and outgate process must be the same process (either both imagery inspections or both manual inspections), is not supported by UIIA paragraph D.2.a.

DECISION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence, the Motor Carrier panel member finds in favor of the Motor Carrier. The Motor Carrier panel member commented that It appears as though the outgate receipt does note "damage is captured on recorded images at AGS locations", however no outgate image was provided by the Equipment Provider. In addition, the UIIA states in the case of AGS gate transactions, the documentation for a repair bill needs to include images from when the equipment was both accepted and returned. The Equipment Provider did not include images from the outgate interchange of the equipment.

The Rail Carrier panel member finds in favor of the Equipment Provider. The Rail Carrier panel member observed the following:

- The language in the UIIA addresses the documentation requirements at the time of interchange. It does not address the terminal design, nor set the expectation that the style of outgate must exactly match the style of ingate. It does specifically address the discrete event of the interchange.
- It is contrary to industry standards and normal operating practices to believe, or to set the expectation that, the style of outgate must exactly match the style of ingate. To require all Equipment Providers to institute one singular style of gate in order to be able to comply with the Motor Carrier's interpretation of E.3.d is not practical or even possible.
- An Equipment Provider has complied with the requirements under the UIIA, provided it supplied documentation that is consistent with the type of gate operation at the time of the interchange. In this case, the outgate EIR was provided for a manual gate operation with no damages notated. The ingate EIR was AGS and the Equipment Provider provided supporting documentation (in the form of images) depicting the damage. The language in the UIIA states, "In the case of an AGS gate transactions..." it does not state that In order to invoice Motor Carrier both ingate and outgate must be AGS and the repair bill needs to have both outgate and ingate images attached.

Because the modal members could not reach a consensus, the third panel member was brought in to render the final decision pursuant to Exhibit D 3. Of the UIIA.

The Ocean Carrier panel member also finds in favor of the Equipment Provider. The Ocean panel member stated that the UIIA does not specify that the same type of EIR (manual vs AGS) must be issued for moves either in and out of the same terminal or for moves between terminals. Section D.2.a. of the UIIA simply specifies that a valid EIR must occur whenever there is an interchange. CSX issued a valid EIR for both the outgate and ingate and the trucker was given the chance to record any damage on the outgate EIR. Section E.3.a.(1) does not preclude having an AGS gate transaction combined with a manual gate transaction.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (September 19, 2016) to make its decision:

D. Equipment Interchange

2. Equipment Interchange Receipts

- a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

E. Equipment Use

3. Damage to Equipment

- a. Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession. **[Revised 09/01/09]**
 - 1) To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of AGS gate transactions such documentation must include images depicting the condition of the Equipment at the time the Motor Carrier to be charged both accepted and returned the Equipment. **[Revised 09/01/09]**

DECISION: The majority of the panel finds in favor of the Equipment Provider.

CASE REVIEWED AND DECIDED BY:

ABBY ECKERT
Ocean Carrier Member

GERRY BISAILLON
Rail Carrier Member

ROBERT A. CURRY, JR.
Motor Carrier Member

DECISION:

After careful review of all documents and the evidence submitted by the parties, the panel unanimously finds in favor of the Equipment Provider. The Motor Carrier panel member noted that the Motor Carrier raised two issues regarding the charges being disputed in this case: 1) The first is that the Equipment Provider did not bill them within the time frame required by the UIIA; and 2) The second issue is that the damage was noted on the outgate interchange, and represents old damage.

As to issue 1, the Motor Carrier panel member stated that it is clear from the documentation that the Equipment Provider did invoice the Motor Carrier within the time frame required by the UIIA and noted that the Equipment Provider provided copies of the email messages sent to the Motor Carrier on May 25, 2017. The email addresses were confirmed. The Ocean Carrier panel member agreed that invoicing was timely in accordance with the Agreement.

As to Issue 2, the Ocean Carrier panel member argued in favor of the Equipment Provider stating that his position is not about specificity, but rather alignment based on the following observations regarding the interchange documentation:

The outgate has three codes	The ingate has three codes
1. Right Side Panel Bent – Usable 2. Left Side Panel Bent – Usable 3. Front Panel Bent - Usable	A. Left Whole/Panel Assembly/Bent B. Front Whole/Panel Assembly Bent C. Front Whole/Corner Post Assembly/Bent

The Ocean Carrier panel member in comparison of the outgate and ingate interchange documents noted that if A on the ingate EIR aligns with 2 (Left Side Panel Bent – Usable vs. Left Whole/Panel Assembly/Bent) on the outgate EIR and B on the ingate aligns with 3 on the outgate (Front Panel Bent – Usable vs. Front Whole/Panel Assembly/Bent), then these are quite similar in their specificity. The Ocean Carrier indicated that the fact that the entries left, which are 1 on the outgate EIR and C on the ingate EIR, which reads “Right Side Panel Bent – Usable and Front Whole/Corner Post Assembly/Bent” respectively does not add up, but not because one document is overly generic. Both contain specific information as to where the damage was found. Interchanges are typically clear in delineating between panels and corner posts. The Ocean Carrier panel member indicated that the Agreement states that the Equipment Provider must document damage invoices with evidence, which has been done in this case. The Motor Carrier panel member agreed with this assessment also finding in favor of the Equipment Provider.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (May 1, 2017) to make its decision:

D. Equipment Interchange

2. Equipment Interchange Receipts

- a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time

of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

3. Equipment Condition

a. Warranty: WHILE PARTIES MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE FITNESS OF THE EQUIPMENT, THEY RECOGNIZE AND AFFIRM THEIR RESPONSIBILITIES UNDER THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS.

1) Motor Carriers will conduct a pre-trip inspection prior to departing with interchanged Equipment that will include those items set forth in Exhibit A to this Agreement. **[Revised 01/17/05]**

d. Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[06/13/16]**

1) The responsibility for the repair and/or replacement of equipment items during the Interchange Period are listed in Exhibits B and C of this Agreement. **[Revised 07/25/07]**

2) Motor Carrier and Provider will not issue an invoice for repair items equal to or less than \$50 per unit per Interchange Period. Provider may, in its Addendum, adopt a different threshold amount as long as that amount is greater than \$50 and applies to both Motor Carrier and Provider. **[Revised 07/25/07]**

E. Equipment Use

a. Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession. **[Revised 09/01/09]**

1) To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of AGS gate the Equipment at the time the Motor Carrier to be charged both accepted and returned the Equipment. **[Revised 09/01/09]**

c. Parties shall invoice repair costs no later than the following timeframes: If Parties are not invoiced within the established timeframes, the right of the Invoicing Party to recover such charges will be lost: **[Revised 01/26/15]**

1) Standard Gate System (manned) or Interchange between Motor Carriers: Invoices for repair of Damages must be issued no later than 165 calendar days from the date of Interchange at the time the Damage was documented. **[Revised 06/13/16]**

- 2) AGS Gate System (unmanned): Invoices for repair of Damages must be issued no later than 120 calendar days from the date of Interchange at the time the Damage was documented.
- 3) Invoices for repairs made during the Interchange Period must be issued no later than 90 calendar days from the date of the repair. Provider may, in its Addendum, adopt a shorter billing timeframe, which is no less than 45 days, and applies to both the Motor Carrier and Provider. **[Revised 01/26/15]**
- 4) The above timeframes shall not apply with respect to any Equipment that has been placed on hold at the request of any of the Parties because the Equipment was involved in an incident that could give rise to a claim or litigation. The applicable timeframe shall begin to run from the date on which all Parties agree to release the Equipment for repair. In the event that the circumstances referred to in this situation arise and a hold is placed by Provider, upon receiving notice of the damage, the Provider will give notice to the interchanging MC that such damages have occurred and that a hold has been placed on the repair. Failure to give such notice within 45 days of the Equipment being placed on hold will void the right of the Provider to invoice for such repairs. **[Revised 08/26/13]**

DECISION: The panel unanimously finds in favor of the Equipment Provider.

CASE REVIEWED AND DECIDED BY:

FRED HUENNEKENS
Motor Carrier Member

ROBERT CANNIZZARO
Ocean Carrier Member

later. The Motor Carrier also stated that the tread depth cannot be determined from the images provided. Therefore, the Motor Carrier feels they should not be held liable for this tire replacement

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded to the claim stating that after their review of both invoices, it believes that the Motor Carrier is responsible for damages in both cases. Under the UIIA, the outgates provided in both were clean. The ingates in both show damage. It is completely irrelevant if it was a cross-town move. The Motor Carrier attempted to point towards AAR billing between railroads. That is also irrelevant under the UIIA. No where in the UIIA does it point towards an extrinsic agreement between other parties. This invoice, and this damage is subject to the UIIA. There is no J2 billing process under the UIIA. The Equipment Provider added that had the Motor Carrier provided definitive proof that this damage was pre-existing, then the invoice would be removed from the Motor Carrier's account. Consequently, the Equipment Provider believes charges are valid as billed.

DECISION:

After careful review of all documents and the evidence submitted by the parties, the panel unanimously finds in favor of the Equipment Provider. The Motor Carrier panel member stated that a part of the dispute raised by the Motor Carrier is that these were cross-town moves and any damage should be considered normal wear and tear. The UIIA does not include any exceptions from reporting damage prior to interchange based on the type of movement involving the equipment. The fact that these were cross-town moves is not material to the damage issue involving either disputed invoice. In addition, the Motor Carrier panel member noted:

- INVOICE #1 - HGIU 504372/TSFZ 568814 - There is no damage listed on the outgate interchange from NS. The Equipment Provider provided an ingate image of the LIF tire that shows something may have punctured the tread when the equipment was returned to UP Global 4. The Equipment Provider provided a post ingate close up image of the tire that clearly shows a bolt has punctured the tread in the same location as the damage visible on the ingate image.
- Section 7.A paragraph 3 of the Equipment Provider's Addendum to the UIIA provides that any damage discovered after the equipment is interchanged will be considered the responsibility of the Motor Carrier provided the damage was captured on an AGS image at the time of interchange. The AGS images and post interchange image supplied by the Equipment Provider meet the requirement of UIIA Section E.3.(a) and UP Addendum Section 7.A.
- The Motor Carrier panel member also noted that circumstances regarding this invoice are similar to the decision reached in Case 20161125-15-DNNH-MR-OTH-UP.
- INVOICE #2 - HGIU 509624/NSFZ 131131 - There is no damage listed on the outgate interchange from NS. The Equipment Provider provided ingate images of the LOF tire that shows the side wall of the tire was cut. The AGS images supplied by the Equipment Provider meet the requirement of UIIA Section E.3.(a).

The Rail Carrier panel member agreed with the finding for the Equipment Provider adding:

- Invoice 1 - TSFZ 568814 – There was no outgate damage notated and clear damage (bolt in tread) on ingate photos. Combined with the repair picture, the bolt location was exactly the same as in the ingate photos.
- Invoice 2 - NSFZ 131131 - There was no outgate damage notated and clear damage (cut in tire) on ingate photo.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (January 1, 2017) to make its decision:

EQUIPMENT PROVIDERS ADDENDUM TO THE UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

7. EQUIPMENT INTERCHANGE RECEIPTS: GATE INSPECTIONS.

- A. At time of ingate, EP's gatehouse operator will document the time of Interchange and other information on EP's J-1 report or in an electronic data format, including, if applicable, any Equipment damage noted by the gatehouse operator. When the gatehouse operator has completed the inspection, the gatehouse operator will give the J-1, or a similar receipt to the Motor Carrier's driver. If a J-1 report is used, both the gatehouse operator and the Motor Carrier's driver will sign the J-1. If, however, a receipt from an electronic data format is prepared, neither the gatehouse operator nor the Motor Carrier's driver will sign the receipt that is given to the Motor Carrier's driver. The J-1 report or the printed receipt from an electronic device will serve as the "Equipment Interchange Receipt".

At a manual gate, any damage to Equipment discovered by EP's gatehouse operator will be presumed to have been caused by the Motor Carrier that Interchanged the Equipment to EP at the time of ingate and the Motor Carrier will be liable for all such damage unless the Party with access to the prior outgate EIR or outgate Recorded Image provides a copy of this documentation identifying the damage discovered by UPRR's gate house operator.

At an AGS gate, any damage to Equipment discovered by EP's gatehouse operator or brought to EP's later attention, including but not limited to any subsequent inspection by EP or another railroad, will be presumed to have been caused by the Motor Carrier that Interchanged the Equipment to EP at the time of ingate and the Motor Carrier will be liable for all such damage unless the Party with access to the prior outgate EIR or outgate Recorded Image provides a copy of this documentation identifying the damage discovered by EP's gatehouse operator or brought to UPRR's later attention. The damage brought to EP's later attention must be captured on an AGS image.

D. Equipment Interchange

2. Equipment Interchange Receipts

- a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**
- c. If Recorded Images are taken at the time of Interchange, Damage will not be reported on ingate or outgate EIR. The words "Damage is captured on Recorded Images" will be printed on the Equipment Interchange Receipt. All such Recorded Images will be made available for each Party for a period of 1 year from Interchange without charge. **[Revised 11/12/12]**

3. Equipment Condition

- a. Warranty: WHILE PARTIES MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE FITNESS OF THE EQUIPMENT, THEY RECOGNIZE AND AFFIRM THEIR RESPONSIBILITIES UNDER THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS.
 - 1) Motor Carriers will conduct a pre-trip inspection prior to departing with interchanged Equipment that will include those items set forth in Exhibit A to this Agreement. **[Revised 01/17/05]**
- d. Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[06/13/16]**
 - 1) The responsibility for the repair and/or replacement of equipment items during the Interchange Period are listed in Exhibits B and C of this Agreement. **[Revised 07/25/07]**
 - 2) Motor Carrier and Provider will not issue an invoice for repair items equal to or less than \$50 per unit per Interchange Period. Provider may, in its Addendum, adopt a different threshold amount as long as that amount is greater than \$50 and applies to both Motor Carrier and Provider. **[Revised 07/25/07]**

E. Equipment Use

4. Tires

- a. Repair of Damage to tires during Motor Carrier's possession is the sole responsibility of Motor Carrier, based on prevailing reasonable and customary repair costs and equipment use. **[Revised 09/01/09]**

Exhibit C to UIIA

Motor Carrier Responsibility During the Interchange Period

Tires

Tire has body ply or belt material exposed through the tread or sidewall

Tire shoulder and/or tread cut/punctured through one or more plies of fabric when such injury is larger than 1/4"

Slid Flat Damage to tire and/or tube - removal of tread or rubber to 2/32 inches of remaining tread depth or less in the affected area (flat spot) while the remaining unaffected tread depth is more than 4/32 inches

Run Flat damage to tire and/or tube

Missing Tire, tube or rim

DECISION: The panel unanimously finds in favor of the Equipment Provider.

CASE REVIEWED AND DECIDED BY:

FRED HUENNEKENS
Motor Carrier Member

TIM WILLIAMS
Rail Carrier Member

DECISION:

After careful review of all documents and the evidence submitted by the parties, the panel unanimously finds in favor of the Equipment Provider. The Motor Carrier panel member commented that it is not clear from the information in the case file that the Motor Carrier understood the repair charge being billed to them by the Equipment Provider on invoice 289464926, but also noted that their dispute isn't really applicable to the damage being billed. The Motor Carrier panel member further stated:

- There is no damage listed on the outgate interchange from City of Industry, CA.
- The Motor Carrier referenced a bent landing gear in their dispute of the charges billed by the Equipment Provider on invoice 289464926, but the damage actually being billed is related to a bent under ride guard.
- The Equipment Provider has provided an ingate image that clearly shows the ICC bumper is bent more than the 3". This meets the requirement of UIIA Section E.3. (a)(1).

The Rail Carrier panel member agreed stating that there was no damages reported on outgate, but clear damage on ingate on bumper, meeting all requirements of UIIA.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (May 1, 2017) to make its decision:

D. Equipment Interchange

2. Equipment Interchange Receipts

- a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

3. Equipment Condition

- a. **Warranty: WHILE PARTIES MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE FITNESS OF THE EQUIPMENT, THEY RECOGNIZE AND AFFIRM THEIR RESPONSIBILITIES UNDER THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS.**

- 1) Motor Carriers will conduct a pre-trip inspection prior to departing with

interchanged Equipment that will include those items set forth in Exhibit A to this Agreement. **[Revised 01/17/05]**

E. Equipment Use

3. Damage to Equipment

- a. Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession. **[Revised 09/01/09]**
 - 1) To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of AGS gate transactions such documentation must include images depicting the condition of the Equipment at the time the Motor Carrier. **[Revised 09/01/09]**

Exhibit C to UIIA

Motor Carrier Responsibility During the Interchange Period

Bent (where proper operation or function of unit is impaired)

Metal door, gate, sheet, post, crossmember, brace or support
DOT Under Ride Guard

DECISION: The panel unanimously finds in favor of the Equipment Provider.

CASE REVIEWED AND DECIDED BY:

FRED HUENNEKENS
Motor Carrier Member

TIM WILLIAMS
Rail Carrier Member

In the Dispute Between

Case Number: **20171124-37-XXXP-MR-TR**

Date of Decision: 01/31/2018

Invoice	Invoice #	Container #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	289573669	TSXZ906129	10/03/17	Global 1/Global 4	6/27/17	7/28/17	10/03/17	10/12/17	11/10/17	11/24/17
2	289679299		10/09/17	Dolton/Global 2	7/19/17	7/24/17	10/09/17	10/12/17	11/10/17	11/24/17

The Motor Carrier's basis of dispute is Sections D.2.a. and D.3.d of the UIIA. The Equipment Provider furnished ingate images of the tire for Invoice 1; however the Motor Carrier does not believe the images depicted any damage or a run flat of the LIR tire. The images provided only showed shadows and glares making it impossible to accurately assess the tire tread depth on the provided AGS images. The Motor Carrier believes that the unit was returned in the same condition as when it was outgated, reasonable wear and tear excepted. The Motor Carrier also stated that on Invoice 2 the AGS images provided from the Equipment Provider do not depict a cut spotted to 0/32 inches and the tread depth of the tire cannot be determined. As with the first invoice, the Motor Carrier believes the equipment associated with Invoice 2 was also returned to the Equipment Provider in the same condition as when it was outgated, reasonable wear and tear excepted.

The Equipment Provider responded to the claim stating that the Motor Carrier is required to perform a thorough inspection of the unit prior to accepting for interchange. The Equipment Provider noted that according to the documentation associated with Invoice 1, the unit outgated with no damage notated. The unit then ingated with a concave tire, which is an indication of a flat condition. The Equipment Provider also indicated that the pre-repair photos show the tubing of the tire shredded inside. In accordance with Exhibit A, Item 8.a., the Equipment Provider indicated that the Motor Carrier

is to check for under inflation of tires (among other items) prior to accepting the unit for interchange. The Equipment Provider added that Exhibit C of the UIIA includes damage to a run flat tire and/or tube during the interchange period as the Motor Carrier's responsibility. Consequently, the Equipment Provider believes Invoice 1 should stand.

In regards to Invoice 2, the Equipment Provider noted that there was a typographical error on the outgate interchange documentation in regards to the alpha portion of the equipment identification number. The outgate references NSFZ for the chassis ID and it should be NSPZ as evidenced by the AGS images. The Equipment Provider believes this invoice is also valid as billed as both the AGS tire images and the pre-repair photo show that the tire suffered a major injury cutting through numerous treads exceeding well beyond a 1/4 inch. If the Motor Carrier alleges the condition was pre-existing, then it should have discovered the damage during its pre-trip inspection and corrected the condition prior to departing the ramp.

DECISION:

After careful review of all documents and the evidence submitted by the parties, the panel unanimously finds in favor of the Equipment Provider for the following reasons:

- Invoice 1 - The LIR tire is concave. It definitely appears to be flat. Additionally, a close examination of the LOR tire visible on TSXZ 906129 G4 INGATE FULL - Invoice 1 AGS gate image shows that the outside tire was noticeably scuffed or scrapped. That suggests the tires impacted something. No damage was listed on the outgate interchange from CP for either the LIR or LOR tires. The LIR tire was flat when it arrived at the rail. As a result, the Motor Carrier is responsible for the damage.
- Invoice 2 - There is no damage listed on the outgate interchange from CP. The Equipment Provider has provided ingate images of the LOF tire that shows the tire was cut across several treads. The Equipment Provider provided post ingate images of the tire that clearly show the tread was cut through more than one plies of fabric at the shoulder. This meets the requirement for Motor Carrier responsibility listed in Exhibit C. In addition, Section 7.A paragraph 3 of the Equipment Provider's Addendum to the UIIA provides that any damage discovered after the equipment is interchanged will be considered the responsibility of the Motor Carrier provided the damage was captured on an AGS image at the time of interchange. Both panel members believe the AGS images and post interchange image supplied by the EP meet the requirement of UIIA Section E.3. (a) and EP's Addendum Section 7.A.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (May 1, 2017) to make its decision:

UIIA EQUIPMENT PROVIDERS ADDENDUM TO THE UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

7. EQUIPMENT INTERCHANGE RECEIPTS: GATE INSPECTIONS.

- A. At time of in-gate, the rails gatehouse operator will document the time of Interchange and other information on EP's J-1 report or in an electronic data format, including, if applicable, any Equipment damage noted by the gatehouse operator. When the gatehouse operator has completed the inspection, the gatehouse operator will give the J-1, or a similar receipt to the Motor Carrier's driver. If a J-1 report is used, both the gatehouse operator and the Motor Carrier's driver will sign the J-1. If, however, a receipt from an electronic data format is

prepared, neither the gatehouse operator nor the Motor Carrier's driver will sign the receipt that is given to the Motor Carrier's driver. The J-1 report or the printed receipt from an electronic device will serve as the "Equipment Interchange Receipt".

At a manual gate, any damage to Equipment discovered by EP's gatehouse operator will be presumed to have been caused by the Motor Carrier that Interchanged the Equipment to EP at the time of in-gate and the Motor Carrier will be liable for all such damage unless the Party with access to the prior out-gate EIR or out-gate Recorded Image provides a copy of this documentation identifying the damage discovered by EP's gate house operator.

At an AGS gate, any damage to Equipment discovered by EP's gatehouse operator or brought to EP's later attention, including but not limited to any subsequent inspection by EP or another railroad, will be presumed to have been caused by the Motor Carrier that Interchanged the Equipment to EP at the time of in-gate and the Motor Carrier will be liable for all such damage unless the Party with access to the prior out-gate EIR or out-gate Recorded Image provides a copy of this documentation identifying the damage discovered by EP's gatehouse operator or brought to EP's later attention. The damage brought to EP's later attention must be captured on an AGS image.

D. Equipment Interchange

2. Equipment Interchange Receipts

- a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

3. Equipment Condition

- d. Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[06/13/16]**
 - 1) The responsibility for the repair and/or replacement of equipment items during the Interchange Period are listed in Exhibits B and C of this Agreement. **[Revised 07/25/07]**
 - 2) Motor Carrier and Provider will not issue an invoice for repair items equal to or less than \$50 per unit per Interchange Period. Provider may, in its Addendum, adopt a different threshold amount as long as that amount is greater than \$50 and applies to both Motor Carrier and Provider. **[Revised 07/25/07]**

E. Equipment Use

3. Damage to Equipment

- a. Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession. **[Revised 09/01/09]**
 - 1) To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of AGS gate transactions such documentation must include images depicting the condition of the Equipment at the time the Motor Carrier to be charged both accepted and returned the Equipment. **[Revised 09/01/09]**

4. Tires

- a. Repair of Damage to tires during Motor Carrier's possession is the sole responsibility of Motor Carrier, based on prevailing reasonable and customary repair costs and equipment use. **[Revised 09/01/09]**

Exhibit A to UIIA

- 8. Tires (Check that the following conditions are **not** present.)
 - a. Tire is flat, underinflated or has noticeable (e.g., can be heard or felt) leak.
 - b. Any tire with excessive wear (2/32nds or less thread depth), visually observable bump, or knot apparently related to tread or sidewall separation.
 - c. Tire is mounted or inflated so that it comes in contact with any part of the vehicle. (This includes any tire contacting its mate in a dual set.)
 - d. Seventy-five percent or more of the tread width is loose or missing in excess of 12 inches (30cm) in circumference.

Exhibit C to UIIA

Motor Carrier Responsibility During the Interchange Period

Tires

Tire has body ply or belt material exposed through the tread or sidewall

Tire shoulder and/or tread cut/punctured through one or more plies of fabric when such injury is larger than 1/4"

Slid Flat Damage to tire and/or tube - removal of tread or rubber to 2/32 inches of remaining tread depth or less

in the affected area (flat spot) while the remaining unaffected tread depth is more than 4/32 inches

Run Flat damage to tire and/or tube

Missing Tire, tube or rim

DECISION: The panel unanimously finds in favor of the Equipment Provider.

CASE REVIEWED AND DECIDED BY:

FRED HUENNEKENS
Motor Carrier Member

TIM WILLIAMS
Rail Carrier Member

possession of the equipment. Therefore, the Equipment Provider feels that based on the documentation available this container left PNCT in good order so the Motor Carrier is responsible for the damage identified on the ingate interchange.

DECISION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the Motor Carrier panel member found in favor of the Motor Carrier due to lack of documentation from the Equipment Provider to substantiate the repairs and further stating there was no proof supplied that the damage was done prior to the outgate other than the unsubstantiated claim that it was done while being loaded or unloaded from the vessel. The Ocean Carrier panel member found in favor of the Equipment Provider citing Section D.2.a of the UIIA and noting that the Motor Carrier had a responsibility to notate damage and record it on the interchange documentation.

Because the modal members could not reach a consensus, the senior DRP panel was brought in to render the final decision pursuant to Exhibit D.3 of the UIIA.

Upon review of the information submitted with the claim, the senior arbitration panel found the case in favor of the Motor Carrier, but solely based on the fact that the Equipment Provider provided a repair estimate versus the actual repair bill as required under Section E.3.a. (1). The panel stated that it was important to note in this decision that if the Equipment Provider had provided the necessary documentation to support its invoice the case would have been found in its favor. The Motor Carrier's assertion that the damage was pre-existing does not remove its obligation under Section D.2. to notate the damage on the outgate EIR prior to accepting the equipment for interchange.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (September 16, 2017) to make its decision:

D. Equipment Interchange

2. Equipment Interchange Receipts

- a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**
- b. Use of electronic EIRs requires that the Provider or the Facility Operator provide an electronic system whereby the Motor Carrier may describe electronically, the condition of the Equipment at the time of Interchange, without substantially burdening the Motor Carrier's use of electronic EIRs at the same Premises, and that this information be incorporated as part of the electronic EIR. **[Revised 09/16/17]**

- c. Each Party shall be entitled to receive a copy and/or an electronic receipt equivalent of the Equipment Interchange Receipt as described in D.2.a above without charge. **[Revised 11/12/12]**
- d. If Recorded Images are taken at the time of Interchange, Damage will not be reported on ingate or outgate EIR. The words "Damage is captured on Recorded Images" will be printed on the Equipment Interchange Receipt. All such Recorded Images will be made available for each Party for a period of 1 year from Interchange without charge. **[Revised 11/12/12]**

E. Equipment Use

3. Damage to Equipment

- a. Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession. **[Revised 09/01/09]**
 - 1) To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of an AGS gate transaction such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 09/16/17]**

DECISION: The senior DRP panel unanimously finds in favor of the Motor Carrier.

CASE REVIEWED AND DECIDED BY:

GERRY BISAILLON
Rail Senior DRP Panel Member

DAVE MANNING
Motor Carrier Senior DRP Panel Member

AL SMERALDO
Ocean Carrier Senior DRP Panel Member

- After customer completed the unloading of cargo, the remaining portion of the container floor continued to breakdown. Motor Carrier returned to the container to the Equipment Provider as instructed.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded to the Motor Carrier's dispute stating that it is clear negligence on the Motor Carrier's part for not protecting the equipment while in the Motor Carrier's possession. Section D.3.d. of the UIIA states, "Motor Carrier will return the Equipment to the Provider in the same condition, reasonable Wear and Tear excepted". Equipment Provider believes that this was not a case of normal wear and tear & that the Motor Carrier is responsible for the invoice.

DECISION:

After careful review of all documents and the evidence submitted by the parties, the panel unanimously finds in favor of the Motor Carrier. The Motor Carrier panel member indicated that the Motor Carrier was unable to inspect the interior of the container at the time of outgate because the container was sealed. Consequently, the Motor Carrier had no way to report any interior damage at the time of outgate. The Ocean Carrier panel member also finds in favor of the Motor Carrier noting that the container was sealed; therefore, the Motor Carrier could not perform an inspection of the floor at the time of outgate.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (January 1, 2018) to make its decision:

D. Equipment Interchange

2. Equipment Interchange Receipts

- a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange.

3. Equipment Condition

- a. Warranty: **WHILE PARTIES MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE FITNESS OF THE EQUIPMENT, THEY RECOGNIZE AND AFFIRM THEIR RESPONSIBILITIES UNDER THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS.**

- 1) Motor Carriers will conduct a pre-trip inspection prior to departing with interchanged Equipment that will include those items set forth in Exhibit A to this Agreement. **[Revised 01/17/05]**

- d. Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[06/13/16]**
 - 1) The responsibility for the repair and/or replacement of equipment items during the Interchange Period are listed in Exhibits B and C of this Agreement. **[Revised 07/25/07]**

E. Equipment Use

3. Damage to Equipment

- a. Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession. **[Revised 09/01/09]**

EXHIBIT A TO UIIA

As referenced in Sections D.3.a.1 and F.4.b. **(Added to UIIA 1/17/08)**

The following list sets forth those items, which the Motor Carrier has responsibility for visually or audibly checking prior to use of the Equipment:

- 1. Chassis Twist Locks and Safety Latches – (Check that twist locks and safety latches are engaged and properly secured.)
- 2. Slider Pins – (Check that slider pins are engaged for all sliding chassis.)
- 3. Bolsters (Check that bolsters are not bent and the container can be secured properly.)
- 4. Landing Legs (Check that Landing legs are in 90 degree position and they move up and down properly.)
- 5. Sand Shoes (Check that sand shoes or dolly wheels are attached to landing legs and secure.)
- 6. Crank Handles (Check that handle is attached, secure and operable to move landing legs up and down.)
- 7. Mud Flaps – (Check that mud flaps are whole and properly secured.)
- 8. Tires (Check that the following conditions are **not** present.)
 - a. Tire is flat, underinflated or has noticeable (e.g., can be heard or felt) leak.
 - b. Any tire with excessive wear (2/32nds or less thread depth), visually observable bump, or knot apparently related to tread or sidewall separation.
 - c. Tire is mounted or inflated so that it comes in contact with any part of the vehicle. (This includes any tire contacting its mate in a dual set.)

- d. Seventy-five percent or more of the tread width is loose or missing in excess of 12 inches (30cm) in circumference.
- 9. Rims (Check that rims are not cracked and/or bent.)
- 10. Rear Underride Guard ("ICC Bumper") (Check that Guard is in place and not bent under the frame.)
- 11. Electrical Wiring/Lights – (Check that lights are in working order.)
- 12. Reflectors/Conspicuity Treatments (Check for reflector lenses and presence of conspicuity tape or bar on the 3 visual sides of the chassis.)
- 13. Brake Lines, Including Air Hoses and Glad Hands – (Check for audible air leaks and proper pressurization only.)
- 14. Current License Plate (Check to see that it is affixed to equipment.)
- 15. Proper Display of Hazardous Cargo Placards, In Accordance with Shipping Papers
- 16. Display of Current Non-expired Federal Placards or Stickers (Check to see that it is affixed to equipment.)

The foregoing list does not include latent defects unless caused by or resulting from the negligent or intentional acts or omissions of the Motor Carrier, its agents, employees, vendors or subcontractors during the Interchange Period. The foregoing list is without imitation of any federal or state legal requirements applicable to Motor Carrier with respect to use or operation of Equipment. **[Revised 1/17/05]**

EXHIBIT C TO UIIA (Added to UIIA on 07/25/07, Last Revised 09/19/16)

Motor Carrier Responsibility During the Interchange Period

Tires

Tire has body ply or belt material exposed through the tread or sidewall

Tire shoulder and/or tread cut/punctured through one or more plies of fabric when such injury is larger than 1/4".

Slid Flat Damage to tire and/or tube - removal of tread or rubber to 2/32 inches of remaining tread depth or less in the affected area (flat spot) while the remaining unaffected tread depth is more than 4/32 inches.

Run Flat damage to tire and/or tube

Missing Tire, tube or rim

Removable Items

Missing chains, binders and cables

Missing tarpaulins and securements

Missing tarpaulins bows
Missing rear header bar
Missing bulkhead

Cut or Torn (through the thickness of metal)

Metal door, gate, sheet, post, crossmember, brace or support
DOT Under Ride Guard

Bent (where proper operation or function of unit is impaired)

Metal door, gate, sheet, post, crossmember, brace or support
DOT Under Ride Guard

Missing Items

DOT Under Ride Guard
Door or Gate
Removable side or section
Refrigeration unit parts

Interior

Interior not free of dunnage, bracing and/or debris
Contamination

Other

Correction of temporary repairs

Citations

Citations may be rebilled from the owner to the user of the equipment

The foregoing list does not include Defects as defined in Section B, Definitions of Terms.

DECISION: The panel unanimously finds in favor of the Motor Carrier.

CASE REVIEWED AND DECIDED BY:

KEVIN LHOTAK
Motor Carrier Member

JIM MICHALSKI
Ocean Carrier Member

In the Dispute Between

UIIA EP,
Respondent

Date of Decision: 01/31/2018

Invoice	Invoice #	Container #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	289573669	TSXZ906129	10/03/17	Global 1/Global 4	6/27/17	7/28/17	10/03/17	10/12/17	11/10/17	11/24/17
2	289679299		10/09/17	Dolton/Global 2	7/19/17	7/24/17	10/09/17	10/12/17	11/10/17	11/24/17

The Motor Carrier's basis of dispute is Sections D.2.a. and D.3.d of the UIIA. The Equipment Provider furnished ingate images of the tire for Invoice 1; however the Motor Carrier does not believe the images depicted any damage or a run flat of the LIR tire. The images provided only showed shadows and glares making it impossible to accurately assess the tire tread depth on the provided AGS images. The Motor Carrier believes that the unit was returned in the same condition as when it was outgated, reasonable wear and tear excepted. The Motor Carrier also stated that on Invoice 2 the AGS images provided from the Equipment Provider do not depict a cut spotted to 0/32 inches and the tread depth of the tire cannot be determined. As with the first invoice, the Motor Carrier believes the equipment associated with Invoice 2 was also returned to the Equipment Provider in the same condition as when it was outgated, reasonable wear and tear excepted.

The Equipment Provider responded to the claim stating that the Motor Carrier is required to perform a thorough inspection of the unit prior to accepting for interchange. The Equipment Provider noted that according to the documentation associated with Invoice 1, the unit outgated with no damage notated. The unit then ingated with a concave tire, which is an indication of a flat condition. The Equipment Provider also indicated that the pre-repair photos show the tubing of the tire shredded inside. In accordance with Exhibit A, Item 8.a., the Equipment Provider indicated that the Motor Carrier

is to check for under inflation of tires (among other items) prior to accepting the unit for interchange. The Equipment Provider added that Exhibit C of the UIIA includes damage to a run flat tire and/or tube during the interchange period as the Motor Carrier's responsibility. Consequently, the Equipment Provider believes Invoice 1 should stand.

In regards to Invoice 2, the Equipment Provider noted that there was a typographical error on the outgate interchange documentation in regards to the alpha portion of the equipment identification number. The outgate references NSFZ for the chassis ID and it should be NSPZ as evidenced by the AGS images. The Equipment Provider believes this invoice is also valid as billed as both the AGS tire images and the pre-repair photo show that the tire suffered a major injury cutting through numerous treads exceeding well beyond a 1/4 inch. If the Motor Carrier alleges the condition was pre-existing, then it should have discovered the damage during its pre-trip inspection and corrected the condition prior to departing the ramp.

DECISION:

After careful review of all documents and the evidence submitted by the parties, the panel unanimously finds in favor of the Equipment Provider for the following reasons:

- Invoice 1 - The LIR tire is concave. It definitely appears to be flat. Additionally, a close examination of the LOR tire visible on TSXZ 906129 G4 INGATE FULL - Invoice 1 AGS gate image shows that the outside tire was noticeably scuffed or scrapped. That suggests the tires impacted something. No damage was listed on the outgate interchange from CP for either the LIR or LOR tires. The LIR tire was flat when it arrived at the rail. As a result, the Motor Carrier is responsible for the damage.
- Invoice 2 - There is no damage listed on the outgate interchange from CP. The Equipment Provider has provided ingate images of the LOF tire that shows the tire was cut across several treads. The Equipment Provider provided post ingate images of the tire that clearly show the tread was cut through more than one plies of fabric at the shoulder. This meets the requirement for Motor Carrier responsibility listed in Exhibit C. In addition, Section 7.A paragraph 3 of the Equipment Provider's Addendum to the UIIA provides that any damage discovered after the equipment is interchanged will be considered the responsibility of the Motor Carrier provided the damage was captured on an AGS image at the time of interchange. Both panel members believe the AGS images and post interchange image supplied by the EP meet the requirement of UIIA Section E.3. (a) and EP's Addendum Section 7.A.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (May 1, 2017) to make its decision:

UIIA EQUIPMENT PROVIDERS ADDENDUM TO THE UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

7. EQUIPMENT INTERCHANGE RECEIPTS: GATE INSPECTIONS.

- A. At time of in-gate, the rails gatehouse operator will document the time of Interchange and other information on EP's J-1 report or in an electronic data format, including, if applicable, any Equipment damage noted by the gatehouse operator. When the gatehouse operator has completed the inspection, the gatehouse operator will give the J-1, or a similar receipt to the Motor Carrier's driver. If a J-1 report is used, both the gatehouse operator and the Motor Carrier's driver will sign the J-1. If, however, a receipt from an electronic data format is

prepared, neither the gatehouse operator nor the Motor Carrier's driver will sign the receipt that is given to the Motor Carrier's driver. The J-1 report or the printed receipt from an electronic device will serve as the "Equipment Interchange Receipt".

At a manual gate, any damage to Equipment discovered by EP's gatehouse operator will be presumed to have been caused by the Motor Carrier that Interchanged the Equipment to EP at the time of in-gate and the Motor Carrier will be liable for all such damage unless the Party with access to the prior out-gate EIR or out-gate Recorded Image provides a copy of this documentation identifying the damage discovered by EP's gate house operator.

At an AGS gate, any damage to Equipment discovered by EP's gatehouse operator or brought to EP's later attention, including but not limited to any subsequent inspection by EP or another railroad, will be presumed to have been caused by the Motor Carrier that Interchanged the Equipment to EP at the time of in-gate and the Motor Carrier will be liable for all such damage unless the Party with access to the prior out-gate EIR or out-gate Recorded Image provides a copy of this documentation identifying the damage discovered by EP's gatehouse operator or brought to EP's later attention. The damage brought to EP's later attention must be captured on an AGS image.

D. Equipment Interchange

2. Equipment Interchange Receipts

- a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

3. Equipment Condition

- d. Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[06/13/16]**
 - 1) The responsibility for the repair and/or replacement of equipment items during the Interchange Period are listed in Exhibits B and C of this Agreement. **[Revised 07/25/07]**
 - 2) Motor Carrier and Provider will not issue an invoice for repair items equal to or less than \$50 per unit per Interchange Period. Provider may, in its Addendum, adopt a different threshold amount as long as that amount is greater than \$50 and applies to both Motor Carrier and Provider. **[Revised 07/25/07]**

E. Equipment Use

3. Damage to Equipment

- a. Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession. **[Revised 09/01/09]**
 - 1) To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of AGS gate transactions such documentation must include images depicting the condition of the Equipment at the time the Motor Carrier to be charged both accepted and returned the Equipment. **[Revised 09/01/09]**

4. Tires

- a. Repair of Damage to tires during Motor Carrier's possession is the sole responsibility of Motor Carrier, based on prevailing reasonable and customary repair costs and equipment use. **[Revised 09/01/09]**

Exhibit A to UIIA

- 8. Tires (Check that the following conditions are **not** present.)
 - a. Tire is flat, underinflated or has noticeable (e.g., can be heard or felt) leak.
 - b. Any tire with excessive wear (2/32nds or less thread depth), visually observable bump, or knot apparently related to tread or sidewall separation.
 - c. Tire is mounted or inflated so that it comes in contact with any part of the vehicle. (This includes any tire contacting its mate in a dual set.)
 - d. Seventy-five percent or more of the tread width is loose or missing in excess of 12 inches (30cm) in circumference.

Exhibit C to UIIA

Motor Carrier Responsibility During the Interchange Period

Tires

Tire has body ply or belt material exposed through the tread or sidewall

Tire shoulder and/or tread cut/punctured through one or more plies of fabric when such injury is larger than 1/4"

Slid Flat Damage to tire and/or tube - removal of tread or rubber to 2/32 inches of remaining tread depth or less

in the affected area (flat spot) while the remaining unaffected tread depth is more than 4/32 inches

Run Flat damage to tire and/or tube

Missing Tire, tube or rim

DECISION: The panel unanimously finds in favor of the Equipment Provider.

CASE REVIEWED AND DECIDED BY:

FRED HUENNEKENS
Motor Carrier Member

TIM WILLIAMS
Rail Carrier Member

DECISION:

After careful review of all documents and the evidence submitted by the parties, the panel unanimously finds in favor of the Equipment Provider. The panel noted the following:

- The outgate interchange executed on 12/19/17 does not contain any type of damage notation. It was a clean outgate interchange. The ingate interchange executed on 12/21/17 does include a notation that the equipment was damaged.
- The Motor Carrier argued that the damage description listed on the ingate interchange does not sufficiently describe the damage. The Motor Carrier further argues that its driver was not allowed to make any notation on the ingate interchange concerning the damage being reported by the terminal operator. The Motor Carrier contends these are both violations of UIIA Section D.2.a.
- The Equipment Provider states that the damage notation was clearly visible on the ingate interchange which the driver signed. The Equipment Provider also states that the driver had the opportunity to challenge the initial inspection performed on the equipment, and request a second inspection of the equipment. The Equipment Provider noted that no second inspection was requested on this equipment, and provided the terminals internal log as evidence to support their position.
- The evidence confirms that the Motor Carrier did have the opportunity to request a second inspection. The driver could have had additional information describing the damage added to the interchange. The Equipment Provider did comply with Section D.2.a of the UIIA regarding the damage listed on the ingate interchange receipt as well as Section E.3.a.(1) regarding invoicing the Motor Carrier for equipment repairs.
- The container interchanged out under a clean interchange and in with damage notated.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (September 16, 2017) to make its decision:

D. Equipment Interchange

2. Equipment Interchange Receipts

- a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

3. Equipment Condition

- d. Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[06/13/16]**

- 1) The responsibility for the repair and/or replacement of equipment items during the Interchange

Period are listed in Exhibits B and C of this Agreement. **[Revised 07/25/07]**

- 2) Motor Carrier and Provider will not issue an invoice for repair items equal to or less than \$50 per unit per Interchange Period. Provider may, in its Addendum, adopt a different threshold amount as long as that amount is greater than \$50 and applies to both Motor Carrier and Provider. **[Revised 07/25/07]**

E. Equipment Use

3. Damage to Equipment

- a. Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession. **[Revised 09/01/09]**
 - 1) To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of an AGS gate transaction such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 09/16/17]**

DECISION: The panel unanimously finds in favor of the Equipment Provider.

CASE REVIEWED AND DECIDED BY:

FRED HUENNEKENS
Motor Carrier Member

ROBERT CANNIZZARO
Ocean Carrier Member

DECISION:

After careful review of all documents and the evidence submitted by the parties, the panel unanimously finds in favor of the Equipment Provider. The Motor Carrier panel member commented that it is not clear from the information in the case file that the Motor Carrier understood the repair charge being billed to them by the Equipment Provider on invoice 289464926, but also noted that their dispute isn't really applicable to the damage being billed. The Motor Carrier panel member further stated:

- There is no damage listed on the outgate interchange from City of Industry, CA.
- The Motor Carrier referenced a bent landing gear in their dispute of the charges billed by the Equipment Provider on invoice 289464926, but the damage actually being billed is related to a bent under ride guard.
- The Equipment Provider has provided an ingate image that clearly shows the ICC bumper is bent more than the 3". This meets the requirement of UIIA Section E.3. (a)(1).

The Rail Carrier panel member agreed stating that there was no damages reported on outgate, but clear damage on ingate on bumper, meeting all requirements of UIIA.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (May 1, 2017) to make its decision:

D. Equipment Interchange

2. Equipment Interchange Receipts

- a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

3. Equipment Condition

- a. **Warranty: WHILE PARTIES MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE FITNESS OF THE EQUIPMENT, THEY RECOGNIZE AND AFFIRM THEIR RESPONSIBILITIES UNDER THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS.**

- 1) Motor Carriers will conduct a pre-trip inspection prior to departing with

interchanged Equipment that will include those items set forth in Exhibit A to this Agreement. **[Revised 01/17/05]**

E. Equipment Use

3. Damage to Equipment

- a. Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession. **[Revised 09/01/09]**
 - 1) To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of AGS gate transactions such documentation must include images depicting the condition of the Equipment at the time the Motor Carrier. **[Revised 09/01/09]**

Exhibit C to UIIA

Motor Carrier Responsibility During the Interchange Period

Bent (where proper operation or function of unit is impaired)

Metal door, gate, sheet, post, crossmember, brace or support
DOT Under Ride Guard

DECISION: The panel unanimously finds in favor of the Equipment Provider.

CASE REVIEWED AND DECIDED BY:

FRED HUENNEKENS
Motor Carrier Member

TIM WILLIAMS
Rail Carrier Member

In the Dispute Between

Case Number: **20190607-43-XXXP-MR-TR**

Date of Decision: 02/11/2020

Invoice	Invoice #	Container #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	299561470	TSFZ551517	3/28/19	CP Schiller Park/UP Global 1	2/21/19	2/21/19	3/28/19	4/24/19	5/23/19	6/7/19
2	300028477	EMHU270791	4/23/19	CP Schiller Park/UP Global 2	2/23/19	1/13/19	4/23/19	4/24/19	5/23/19	6/7/19

The Motor Carrier is disputing two repair invoices. The basis of the disputes are related to Section D.2.a., D.3.d. and E.3.a.(2) of the UIIA. For **Invoice 1**, the Motor Carrier states that this was a crosstown move from CP Schiller Park (non-AGS facility) to UP Global 1 (AGS facility). The Equipment Provider issued an invoice for cut/torn tire on the LOF. The Motor Carrier does not believe the AGS image provided by the Equipment Provider shows the damage being billed. The AGS image is not marked where there is a supposed cut/tear to the tire. The Motor Carrier argues that for a repair invoice to be valid it must detail the repairs done and also include factual documentation supporting the Equipment Provider's determination that the Motor Carrier is responsible for the repair. The Motor Carrier believes the invoice is not valid as there was not sufficient evidence provided to prove the tire was cut/torn and the Motor Carrier believes the equipment was returned in the same condition it was received reasonable wear and tear excepted.

For **Invoice 2**, the Motor Carrier states that this was also a crosstown move that outgated at a non-AGS facility and ingated at an AGS facility. The Equipment Provider issued an invoice for LSC cut/torn container. The Motor Carrier argues that the damage was pre-existing and they returned the equipment to the Equipment Provider in the same condition it was received, reasonable wear and tear excepted. The Motor Carrier also presented

a previous J1 in-gate receipt that showed a different Motor Carrier ingating the same equipment at a Norfolk Southern yard with the same damage written up. The Motor Carrier believes they are not responsible for the charges based on D.3.d. of the UIIA.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded to the claim regarding both invoices. For **Invoice 1**, the Equipment Provider stated that the fact that this involved a crosstown move is irrelevant as the UIIA is the contractual agreement between the Motor Carrier in possession of the unit reported under their interchange with the Equipment Provider. The Equipment Provider stated that the unit outgated with no tire damage noted and ingated on the same day with the tire visibly off the rim. A review of the pre-repair photos contributed the damage to the root cause of a cut torn tire, which the Motor Carrier was billed for. Consequently, the Equipment Provider believes that Invoice 1 is valid as billed.

For **Invoice 2**, the Equipment Provider stated that the unit outgated with no damage reported. The unit ingated Global 2 with visible cuts near the top of the container's LSC. If this condition was present at outgate, Section D.2.a. states that the Motor Carrier shall report the condition of the equipment at the time of interchange. There was no outgate documentation provided containing the LSC panel damage notation. The Equipment Provider indicated that the previous J1 that the Motor Carrier provided was a repair that took place as a result of additional damage detected at the Global 2 ingate over three and half months earlier on 9/27/18. The Equipment Provider indicated that they inspected the container on 11/9/18 and no repairable damage was detected at that time. Since the unit outgated with a clean EIR and ingated with damage noted, the Equipment Provider believes that Invoice 2 is also correct as billed.

DECISION:

Invoice 1 - #299561470

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the Motor Carrier panel member found in favor of the Motor Carrier stating that pursuant to Section E.3.a.(2) of the UIIA, the photographic evidence is very unclear and does not show a cut/torn tire for which the Motor Carrier was invoiced. Based on the evidence submitted there is not enough factual information to support the charge back to the Motor Carrier. The Rail Carrier panel member disagreed finding in favor of the Equipment Provider noting the EQ owner's documentation does support a repair for cut/torn; it does clearly show that the tire bead is off the rim indicating damage.

Because the modal members could not reach a consensus, the senior DRP panel was brought in to render the final decision on Invoice 1 pursuant to Exhibit D.3 of the UIIA.

Based on the documentation presented, the senior arbitration panel members rendered the decision in favor of the Motor Carrier on **invoice 1** for the full amount. It was the consensus of all three senior arbitration panel members that the images provided did not provide evidence of a cut/torn tire. Therefore, the senior arbitration agreed that the Equipment Provider did not comply with Section E.3.a.(2) by providing sufficient documentation to support the repair being billed.

Invoice 2 - #300028477 - After careful review of all documents and the evidence submitted by the parties, the modal panel members unanimously find in favor of the Equipment Provider. The Motor Carrier panel member noted that the Motor Carrier did not report any damage at time of outgate. Per section D.2.a. of the UIIA, any observable damage must be reported at time of interchange. At the time of ingate there was reportable damage.

Even if the Motor Carrier did not cause the damage, unfortunately they are still held responsible to report damage at time of outgate. The Rail Carrier panel member agreed stating that the application of photos showing that a defect in the same area prior to this transaction does not automatically equal pre-existing condition. It is correct that the EP failed to follow the rules in place to seek J2 coverage for this invoice. However, that is an agreement between railroads and is outside UIIA. Consequently, based solely on the terms of the UIIA and the lack of evidence to sufficiently prove the damage condition was pre-existing, I find in favor of the Equipment Provider. .

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2018) to make its decision:

D. Equipment Interchange

2. Equipment Interchange Receipts

- a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

3. Equipment Condition

- d. Motor Carrier will reinspect and recertify the Equipment if the existing inspection will expire prior to the Motor Carrier's return of the Equipment to the Provider. This provision is only applicable to the Provider of the Chassis. **[Revised 06/08/15]**

E. Equipment Use

3. Damage to Equipment

- a. Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession. **[Revised 09/01/09]**
 - 2) To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of a gate transaction using Recorded Images such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 10/01/18]**

Exhibit C to UIIA, Motor Carrier Responsibility during the Interchange Period (Added to UIIA on 07/25/07, Last Revised 10/01/18)

Tires

Tire sidewall, shoulder and/or tread cut/punctured/damaged exposing belt material

Slid Flat Damage to tire and/or tube - removal of tread or rubber to 2/32 inches of remaining tread depth or less in the affected area (flat spot) while the remaining unaffected tread depth is more than 4/32 inches.

Run Flat Damage to tire and/or tube

Missing Tire, tube or rim

EXHIBIT D TO THE UIIA, BINDING ARBITRATION PROCESS GUIDELINES (Added to UIIA on 8/1/08) (Last Revised 09/16/17)

3. A two-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IIEC member from each mode involved in the dispute. In the event that the arbitrators from the involved modes cannot agree on a resolution of this dispute, a decision will be rendered by a majority of a senior panel consisting of the longest tenured IIEC member or alternate from each mode, as determined by the Chairperson. **[Revised 09/16/17]**

DECISION: **Invoice 1 - #299561470** - The Senior DRP Panel unanimously finds in favor of the Motor Carrier.

Invoice 2 - #300028477 - The panel unanimously finds in favor of the Equipment Provider.

CASE REVIEWED AND DECIDED BY:

DAVE HENSAL
Motor Carrier Modal Panel Member

JEREMY LASKOS
Rail Carrier Modal Panel Member

DAVE MANNING
Motor Carrier Senior DRP Panel Member

AL SMERALDO
Ocean Carrier Senior DRP Panel Member

BILL TRAUB
Rail Carrier Senior DRP Panel Member

clearly identified the true nature of the damage, it would be impossible to notate the full damage until the tire was dismounted. The Equipment Provider operated with due diligence and provided the correct and updated information as soon as possible. There is no dispute as to who caused the damage as the Motor Carrier did have the chassis out under their interchange at the time of damage.

The Motor Carrier panel member found in favor of the Motor Carrier noting that If additional damage is discovered at the time of repair that is different than the damage noted on the original ingate EIR, it is not unrealistic to expect there be physical visual proof of the additional damage. Since there's additional cost being charged/assessed to the Motor Carrier and there's a change in the damage description to a legally binding EIR, then it's reasonable that supporting evidence of the new damage be provided to justify the additional expense and change to the EIR. The Motor Carrier is only responsible for the damages noted on the original EIR.

Because the modal members could not reach a consensus, the senior DRP panel was brought in to render the final decision pursuant to Exhibit D.3 of the UIIA.

Upon review of the information submitted with the claim, the senior arbitration panel found the case in favor of the Motor Carrier. It was the consensus of all three senior arbitration panel members that the supporting documentation that the Equipment Provider submitted did not validate the charges billed. They noted that the work order does not match the details of the inspection report and associated paperwork is not clear in supporting the damage being billed. The senior panel members agreed that the Equipment Provider did not comply with Section E.3.a.(2) by providing sufficient documentation to support the damage being billed.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2018) to make its decision:

D. Equipment Interchange

2. Equipment Interchange Receipts

- a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

E. Equipment Use

3. Damage to Equipment

- a. Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession. **[Revised 09/01/09]**

- 2) To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of a gate transaction using Recorded Images such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 10/01/18]**

Exhibit C to UIIA, Motor Carrier Responsibility during the Interchange Period (Added to UIIA on 07/25/07, Last Revised 10/01/18)

Tires

Tire sidewall, shoulder and/or tread cut/punctured/damaged exposing belt material

Slid Flat Damage to tire and/or tube - removal of tread or rubber to 2/32 inches of remaining tread depth or less in the affected area (flat spot) while the remaining unaffected tread depth is more than 4/32 inches.

Run Flat Damage to tire and/or tube

Missing Tire, tube or rim

EXHIBIT D TO THE UIIA, BINDING ARBITRATION PROCESS GUIDELINES (Added to UIIA on 8/1/08) (Last Revised 09/16/17)

3. A two-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IIEC member from each mode involved in the dispute. In the event that the arbitrators from the involved modes cannot agree on a resolution of this dispute, a decision will be rendered by a majority of a senior panel consisting of the longest tenured IIEC member or alternate from each mode, as determined by the Chairperson. **[Revised 09/16/17]**

DECISION: The Senior DRP Panel unanimously finds in favor of the Motor Carrier.

CASE REVIEWED AND DECIDED BY:

TIM AMES
Ocean Carrier Modal Panel Member

ROBERT LOYA
Motor Carrier Modal Panel Member

DAVE MANNING

Motor Carrier Senior DRP Panel Member

AL SMERALDO

Ocean Carrier Senior DRP Panel Member

BILL TRAUB

Rail Carrier Senior DRP Panel Member

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of the dispute are related to Section D.2.a., D.3.d. and E.3.a.(2) of the UIIA. The Motor Carrier states that these were all crosstown moves from CP Schiller Park (non-AGS facility) to UP Global 1 (AGS facility). The Motor Carrier disputed the charges with the Equipment Provider, which included providing previous J1s and repair bills from other railroads that the Motor Carrier believes proves the damage being billed was pre-existing. However, the Equipment Provider did not accept or agree that the damage was pre-existing. The Motor Carrier feels that they returned the equipment in the same condition, reasonable wear and tear expected and believes that they are not responsible for the charges based on D.3.d. of the UIIA.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider did not respond to the claim but did respond to the Motor Carrier's initial dispute stating that their process to investigate damages is as follows: 1) When they receive an invoice from another railroad for any type of damage, they check the outgate J1 for damages notated by the driver, since the drivers are responsible for notating their own damage, 2) If nothing is noted on the outgate J1, then the bill gets sent out to the specific trucking company that outgated the unit. Therefore, the Equipment Provider believes that they followed these processes and that the invoices are valid as billed.

DECISION:

After careful review of all documents and the evidence submitted by the parties, the modal panel members unanimously found as follows:

- Invoice 18001111549 - Both the Rail Carrier panel member and Motor Carrier panel member find in favor of the Equipment Provider. Both panel members agreed noting that the Motor Carrier claims the damage was pre-existing based on a gate receipt from an interchange 63 days prior. A determination cannot be made off of the prior gate receipt when A) this much time has elapsed, B) no photos were provided to compare damage, and C) no repair history was provided to determine if this was new or existing damage.
- Invoice 180011547 - Both the Rail Carrier panel member and Motor Carrier panel member find in favor of the Equipment Provider. Both panel members agreed noting the Motor Carrier claims the damage was pre-existing based off of an AGS photo from an interchange 3 days prior. However, the photo provided does not include required information in the image (UIIA Agreement B. 25. Recorded Images: A date and time stamped electronic image, which depicts the physical condition of the equipment.). In addition, there were no photos of the ingate interchange to the UP on 6/24 for comparison.
- Invoice 1800111552 - Both the Rail Carrier panel member and Motor Carrier panel member find in favor of the Equipment Provider. Both panel members agreed noting the Motor Carrier claims the damage was pre-existing based on a gate receipt from an interchange 87 days prior. A determination cannot be made off of the prior gate receipt when A) this much time has elapsed, B) no photos were provided to compare damage, and C) no repair history was provided to determine if this was new or existing damage.
- Invoice 1800111553 - Both the Rail Carrier panel member and Motor Carrier panel member find in favor of the Motor Carrier. Both panel members agree that the additional photos requested, and provided, prove pre-existing damage.

- Invoice 1800111554 - Both the Rail Carrier panel member and Motor Carrier panel member find in favor of the Equipment Provider. Both panel members agreed noting the Motor Carrier claims the damage was pre-existing based off of an AGS photo from an interchange 155 days prior. The photo provided was inconclusive of damage and an ingate photo to the UP on 6/22/19 was not provided for comparison.
- Invoice 1800111551 - Both the Rail Carrier panel member and Motor Carrier panel member find in favor of the Equipment Provider. Both panel members agreed noting the Motor Carrier claims the damage was pre-existing based off of an AGS photo from an interchange 6 days prior. However, the photo provided was inconclusive of damage and does not include required information (UIIA Agreement B. 25. Recorded Images: A date and time stamped electronic image, which depicts the physical condition of the equipment.)
- Invoice 1800111550 - Both the Rail Carrier panel member and Motor Carrier panel member find in favor of the Equipment Provider. Both panel members agreed the additional photos requested, and provided, do not prove pre-existing damage.
- Invoice 1800111546 - Both the Rail Carrier panel member and Motor Carrier panel member find in favor of the Equipment Provider. Both panel members agreed noting an ingate photo was provided on an interchange 81 days prior. The photo provided is inconclusive of damage and there was not a photo provided from the ingate to the UP on 8/13/19 for comparison.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (May 22, 2019) to make its decision:

B. Definition of Terms

25. Recorded Image: A date and time stamped electronic image, which depicts the physical condition of the Equipment. **[Revised 04/11/07]**

D. Equipment Interchange

2. Equipment Interchange Receipts
 - a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

D. Equipment Condition

3.
 - e. Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted.

E. Equipment Use

3. Damage to Equipment

- a. Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession. **[Revised 09/01/09]**
 - 2) To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of a gate transaction using Recorded Images such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 10/01/18]**

DECISION: Invoices (1) 1800111549, (2) 1800111547, (3) 1800111552, (5) 1800111554, (6) 1800111551, (7) 1800111550 and (8) 1800111546 - The panel unanimously finds in favor of the Equipment Provider.

Invoice (4) 1800111553 - The panel unanimously finds in favor of the Motor Carrier.

CASE REVIEWED AND DECIDED BY:

TIM MOORE
Rail Carrier Modal Panel Member

CHRIS GILTZ
Motor Carrier Modal Panel Member

**UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT
DISPUTE RESOLUTION PANEL REVIEW AND DECISION**

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent.

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Case Number: **20201214-3-XXXM-MR-OTH**

Date of Decision: 03/08/2021

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Invoice	Invoice #	Container #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	3RM6010	UMXU 256629	11/30/20	CSX 59 th /CSX Bedford Park	09/08/20	09/22/20	12/01/20	12/04/20	12/04/20	12/14/20

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier is basing its dispute on Sections D.2.a, D.3.b., D.3.e., and E.3.a.(2) of the UIIA. The Equipment Provider is invoicing the Motor Carrier for container damage, that the Motor Carrier believes was pre-existing. The Motor Carrier stated that they requested the out-gate AGS gate images from the Equipment Provider, but the Equipment Provider told the Motor Carrier that they could not be produced. The Motor Carrier believes that because the invoice included a J1 that states, "Damage is captured on recorded images at AGS Gates," the Equipment Provider should be able to provide the images. The Motor Carrier also stated that they do not believe that it is possible for the driver to have caused this type of damage and still arrive on time at the customer. The Motor Carrier stated that their customer is about 90 minutes away from the facility, and the customer's security camera shows the driver arriving about 90 minutes from the time noted on the out-gate EIR. The Motor Carrier feels that the damage was pre-existing, and they returned the equipment to the Equipment Provider in the same condition it was received, reasonable wear and tear excepted. Therefore, the Motor Carrier believes they are not responsible for the charges on the invoice based on Section E.3.a.(2) of the UIIA.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded to the claim stating that there are two methods for outgating a unit at their rail facilities. The driver can elect to use the mobile application, or the driver can use the Self-Service Kiosk (SSK). The Equipment Provider stated that drivers can note damage prior to outgate on their own using either method with no intervention necessary from a railyard employee or representative. The unit outgated at a non-AGS facility which does not record images at outgate but provides the Motor Carrier the ability to record electronically the condition of the equipment at the time of interchange. The Equipment Provider stated in this case there was no damage noted at outgate, and the driver elected to use the SSK to outgate the unit. The Equipment Provider also stated that the unit ingated in Baltimore, MD without damage, departed the gate at Chicago 59th Street with no documented damage noted on the EIR, and returned to Bedford Park damaged in violation of Section D.3.e. of the UIIA. It is the driver's responsibility to report any damage to the unit. The Equipment Provider believes that the language at the bottom of the J1 is consistent with UIIA guidance in Section D.2.b. and stated that they only have three terminals that are equipped with outgate AGS systems (Bedford Park, Columbus, and Northwest Ohio). Therefore, the Equipment Provider feels that the invoice should stand.

DISCUSSION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the panel members concur that pursuant to Section D.3.b of the UIIA, Motor Carrier drivers are required to conduct a pre-trip inspection prior to departing with interchanged equipment, and pursuant to Section D.2.a, any damage observed to the equipment shall be noted on an Equipment Interchange Receipt. Damage to this unit is clearly visible. If the damage was a pre-existing condition as the Motor Carrier suggests, then it should have been detected on the pre-trip inspection and noted on the interchange receipt. The allegation that damage could not have happened while the unit was in possession of the Motor Carrier because of the timing of the cargo delivery is relatively baseless since the damage could have occurred at any point during the 14 days between when the unit was out-gated on 9/8/2020 and when it was in-gated on 9/22/2020. Given the facts presented in the case, both panel members agree that the Motor Carrier is responsible for the container damage and the repair charges of \$00.00.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (May 1, 2020) to make its decision:

Section D.2. Equipment Interchange Receipts, Item D.2.a.

At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

Section D.2. Equipment Interchange Receipts, Item D.2.b.

Use of electronic EIRs requires that the Provider or the Facility Operator provide an electronic system whereby the Motor Carrier may describe electronically, the condition of the Equipment at the time of Interchange, without substantially burdening the Motor Carrier's use of electronic EIRs at the same Premises, and that this information be incorporated as part of the electronic EIR. **[Revised 09/16/17]**

Section D.3. Equipment Condition, Item D.3.b.

Motor Carriers will conduct a pre-trip inspection prior to departing with interchanged Equipment that will include those items set forth in Exhibit A **[Item 8 Tires]** to this Agreement. **[Item Re-numbered 10/01/18]**

Section D.3. Equipment Condition, Item D.3.e.

Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[Revised 06/13/16]**

Section E.3. Damage to Equipment, Item E.3.a.(2)

To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of a gate transaction using Recorded Images such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 10/01/18]**

DECISION:

The panel unanimously finds in favor of the Equipment Provider. The Motor Carrier is responsible for the container damage and repair invoice in the amount of \$00.00.

CASE REVIEWED AND DECIDED BY:

BEN BANKS
Motor Carrier Panel Member

MIKE PAGEL
Rail Panel Member

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent

Case Number: **20201211-46-XXXP-MR-TR**

Date of Decision: 03/08/2021

Invoice	Invoice #	Equipment #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
2	309205451	NSPZ154406	10/01/20	Global 1/Fox Run	08/05/20	08/06/20	10/01/20	10/29/20	11/26/20	12/11/20

Note: originally there were two invoices submitted by the MC on this case, but the EP canceled invoice 1.

The Motor Carrier is basing its dispute on Sections D.2.a., D.3.b., D.3.e. and E.3.a.(2) of the UIIA. The Motor Carrier stated that this was a UPS unit dispatched to the Motor Carrier by UPS from the UPS Cach Yard (non-AGS facility) to UP/ Global 1 (AGS facility) on 08/06/2020. Equipment Provider issued an invoice to the Motor Carrier for a right outer front (ROF) radial tire, that was listed as cut/torn. The Motor Carrier argues that because this was a UPS move, the Equipment Provider should be billing UPS directly, not the Motor Carrier, and that the Motor Carrier is simply the agent for the Equipment Provider. The Motor Carrier states that the unit originated from a UPS facility, and the Motor Carrier had no way of notating the condition of the tire prior to leaving the UPS yard. The Motor Carrier feels that they returned the equipment to the Equipment Provider in the same condition it was received, reasonable wear and tear excepted. Therefore, the Motor Carrier believes they are not responsible for the charges based on Section D.3.e. of the UIIA.

The Equipment Provider responded to the Motor Carrier's claim stating that on 8/5/2020, NSPZ154406 was out-gated at Fox Run with no damage notated on the J1 interchange document. The equipment subsequently in-gated at Global 1 on 8/6/2020. Upon in-gate, there was a clear cut to the ROF tire, captured on the AGS images. The Equipment Provider's addendum to the UIIA clearly states that the in-gating carrier is responsible for

any damage found on the equipment unless it was identified as pre-existing. In this case, the Equipment Provider feels it has provided clear evidence that the ROF tire on chassis was damaged during the interchange period the Motor Carrier was in possession of the equipment and that it has followed all the requirements under the UIIA.

In addition, the Equipment Provider provided the following language as outlined in their Addendum to the UIIA:

Equipment Provider's Addendum to the Uniform Intermodal Interchange and Facilities Access Agreement:

Section 7.A, Paragraph 3

At an AGS gate, any damage to Equipment discovered by EP's gatehouse operator or brought to EP's later attention, including but not limited to any subsequent inspection by EP's or another railroad, will be presumed to have been caused by the Motor Carrier that Interchanged the Equipment to EP's at the time of in-gate and the Motor Carrier will be liable for all such damage unless the Party with access to the prior out-gate EIR or out-gate Recorded Image provides a copy of this documentation identifying the damage discovered by EP's gatehouse operator or brought to EP's later attention. The damage brought to EP's later attention must be captured on an AGS image.

DISCUSSION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, both panel members' opinion is that pursuant to Section D.3.b of the UIIA, Motor Carrier drivers are required to conduct a pre-trip inspection prior to departing with the interchanged equipment. If the tire damage was a pre-existing condition, the Motor Carrier's driver should have noticed it during the inspection and should not have pulled the equipment from the yard without properly noting the damage, as required in Section D.2.a of the UIIA. Given the apparent severity of the damage to the tire, which does not appear to be roadworthy, and thus should not have been pulled from the yard without being repaired first. Once the driver pulls the equipment from the yard, he assumes responsibility for it. If it was a pre-existing condition on the tire, and there was no opportunity to report it or repair it, the driver should not have accepted the unit. For these reasons, both panel members agree that the Motor Carrier is responsible for the tire repair charges as shown in Invoice No. 309205451 for \$00.00.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (May 1, 2020) to make its decision:

Section D.2. Equipment Interchange Receipts, Item D.2.a.

At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange.

[Revised 05/12/10]

Section D.3. Equipment Condition, Item D.3.b.

Motor Carriers will conduct a pre-trip inspection prior to departing with interchanged Equipment that will include those items set forth in Exhibit A [Item 8 Tires] to this Agreement. [Item Re-numbered 10/01/18]

Section E.3. Damage to Equipment, Item E.3.a.(2)

To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of a gate transaction using Recorded Images such documentation must include images depicting the condition of the Equipment at the time of that Interchange. [Revised 10/01/18]

DECISION:

The panel unanimously finds in favor of the Equipment Provider. The Motor Carrier is responsible for the repair invoice in the amount of \$00.00.

CASE REVIEWED AND DECIDED BY:

BEN BANKS
Motor Carrier Panel Member

MIKE PAGEL
Rail Panel Member

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent.

Case Number: **20210106-47-XXXP-MR-TR**

Date of Decision: 03/17/2021

Invoice	Invoice #	Equipment #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	310084211	NSFZ 133139	11/16/20	Global 4/Global 2	8/18/20	8/29/20	11/16/20	11/23/20	12/22/20	1/6/21
2	309971731	TSFZ 556223	11/10/20	Global 4/Global 2	7/17/20	8/4/20	11/10/20	11/30/20	12/29/20	

The Motor Carrier is basing its dispute on Sections D.2.a., D.3.e., E.3.a.(2) and Exhibit C to UIIA. The Motor Carrier received two maintenance and repair invoices from the Equipment Provider billing the Motor Carrier for slid flat tires. The disputes are as follows:

Invoice 1 - The Motor Carrier stated that this was a cross-town move dispatched to them by Norfolk Southern (NS). The Equipment Provider provided an ingate AGS image billing the Motor Carrier for a slid flat tire. However, the Motor Carrier argues that the unit was repaired over six weeks after the ingate date, and the documentation provided by the Equipment Provider did not furnish adequate proof that there was a 4/32nd differential in the tire, and the remaining tire tread was less than 2/32nds at the time of ingate. Therefore, the Motor Carrier believes that the Equipment Provider did not comply with Section E.3.a.(2) of the UIIA by providing adequate factual documentation to support the damage billed. In addition, the Motor Carrier stated that they provided a prior ingate J1 at NS Calumet from 08-07-2020 showing tire damages with a different Motor Carrier ingating this chassis prior to it being in their possession. Therefore, the Motor Carrier feels that the unit was returned in the same condition it was when outgated, reasonable wear and tear excepted.

Invoice 2 - The Motor Carrier stated that this was also a cross-town move dispatched to them by Canadian Pacific (CP). The Equipment Provider provided an ingate AGS image billing the Motor Carrier for a slid flat tire. However, the Motor Carrier argues the fact that the unit was repaired over two months after the ingate date, and the documentation provided by the Equipment Provider did not provide adequate proof of the 4/32nd differential in the tire and that the remaining tire tread was less than 2/32nds at the time of ingate. Therefore, the Motor Carrier believes that the Equipment Provider did not comply with Section E.3.a.(2) of the UIIA by providing adequate factual documentation to support the damage billed.

Based on the above information and the supporting documentation provided, the Motor Carrier feels they should not be held liable for the two (2) slid flat tire invoice repairs.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded to the claim regarding both invoices, as follows:

Invoice 1 - The Equipment Provider stated that the J1 provided by the Motor Carrier did not illustrate that the damage existed when outgated from the Norfolk Southern rail facility. The Equipment Provider also stated that if damage was not visible on the outgate from the evidence provided, it does fall on the responsibility of the Motor Carrier. The Equipment Provider provided the following language as outlined in their Addendum to the UIIA and believes that Invoice 1 is valid as billed.

Equipment Provider's Addendum to the Uniform Intermodal Interchange and Facilities Access Agreement:

Section 7.A, Paragraph 3

At an AGS gate, any damage to Equipment discovered by EP's gatehouse operator or brought to EP's later attention, including but not limited to any subsequent inspection by the EP or another railroad, will be presumed to have been caused by the Motor Carrier that Interchanged the Equipment to the EP at the time of in-gate and the Motor Carrier will be liable for all such damage unless the Party with access to the prior out-gate EIR or out-gate Recorded Image provides a copy of this documentation identifying the damage discovered by EP's gatehouse operator or brought to EP's later attention. The damage brought to EP's later attention must be captured on an AGS image.

Invoice 2 - The Equipment Provider stated that the Motor Carrier is claiming that they did not provide the appropriate items required in the Supplement to Exhibit C of the UIIA, which the Equipment Provider believes is only required to be provided for roadside repairs. The Equipment Provider stated that the repairs that are being billed to the Motor Carrier are from an on-terminal repair. The Equipment Provider also stated that they provided the appropriate documentation to the Motor Carrier for this on-terminal repair. Therefore, the Equipment Provider believes that Invoice 2 should stand. The Equipment Provider quoted the following language as outlined under Section E.4. of the UIIA.

Section E.4. Tires

- a. Repair of Damage to tires during Motor Carrier's possession is the sole responsibility of Motor Carrier, based on prevailing reasonable and customary repair costs and equipment use. **[Revised 09/01/09]**
- b. Repair of tires unrelated to Damage occurring during Motor Carrier's possession is the sole responsibility of the Provider, based on prevailing reasonable and customary repair costs and equipment use. **[Revised 09/01/09]**

- c. Photographic evidence shall be used for tire repair responsibility assignment. Photos of the tire will be produced by the road service provider based upon the stipulated criteria set forth in the Supplement to Exhibit C, Tire Marking and Photo Requirements of the UIIA. **[Added 08/01/18]**
- d. A Provider cannot require the Motor Carrier to return the physical carcass of a tire. **[Added 08/01/18]**

DISCUSSION:

After careful review of all documents and the evidence submitted by the parties, the panel finds in favor of the Equipment Provider. The Motor Carrier is disputing two invoices from the Equipment Provider for slid flat tires. The Motor Carrier panel member indicates that in both instances, the Motor Carrier references the fact that these were cross-town moves and implies that there is a different standard for charging damages on cross-town moves. In fact, the UIIA does not distinguish between cross-town moves and any other type of interchange. The Motor Carrier is required to ensure that damages are notated on outgate interchanges. The rail panel member commented further that there is not a different standard for cross-towns, tread depth measurements are not a requirement, and slid flat tires are not normal wear and tear but are considered damage.

In both instances the Motor Carrier references Exhibit C to the UIIA. The section of Exhibit C for tires being referenced is shown in bold below. The Motor Carrier references the photos and claims the photos do not meet the criteria shown below. The panel thought the photos actually are clear enough and do appear to meet the slid flat criteria.

Exhibit C to UIIA, Tires: Slid Flat Damage to tire and/or tube - removal of tread or rubber to 2/32 inches of remaining tread depth or less in the affected area (flat spot) while the remaining unaffected tread depth is more than 4/32 inches.

In both instances the Motor Carrier also references Exhibit C to the UIIA with the requirements for tread depth measurements shown in bold below. However, tread depth measurements are part of the Supplement to Exhibit C of the UIIA and are required for road repair vendors as it relates to over-the-road repairs. This is not applicable for on-terminal repairs.

Supplement to Exhibit C of the UIIA: Tread Depth measurements for slick tread (09) and slid flat (34)

In both instances the Motor Carrier references that its dispute is based on section D.2.a. and D.3.d. of the UIIA with the phrase “reasonable wear and tear excepted.” (The correct reference to the UIIA is Section D.3.e.) The UIIA clearly references slid flat tires as outside “reasonable wear and tear,” and Exhibit C states that slid flat tires are the Motor Carrier’s responsibility.

Finally, for invoice 310084211, the Motor Carrier provides a previous interchange showing tire damage from another carrier. That interchange shows damage to five tires including the one billed for a slid flat tire on this invoice. However, all five tires show cut / torn and not slid flat. It does not support the Motor Carrier’s claim that the damage they were billed on invoice 310084211 is the same damage noted on the previous interchange provided.

The rail panel member added that the Equipment Provider provided all the required documentation including the invoice and photos at the ingate. Even though tread depth measurements are not a requirement, it is clear in the photos that the slid flat spot was at or below 2/32nds because the affected area was smooth, and the remaining tread was more than 4/32nds. The evidence the Motor Carrier provided did not support its claim of pre-existing damage.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (May 1, 2020) to make its decision:

Section D.2. Equipment Interchange Receipts, Item D.2.a.

At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

Section D.3. Equipment Condition, Item D.3.e.

Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[Revised 06/13/16]**

Section E.3. Damage to Equipment, Item E.3.a.(2)

To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of a gate transaction using Recorded Images such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 10/01/18]**

Exhibit C to UIIA, Tires

Tire sidewall, shoulder and/or tread cut/punctured/damaged exposing belt material

Slid Flat Damage to tire and/or tube - removal of tread or rubber to 2/32 inches of remaining tread depth or less in the affected area (flat spot) while the remaining unaffected tread depth is more than 4/32 inches.

Run Flat Damage to tire and/or tube

Missing Tire, tube or rim

Section E.4. Tires, Item E.4.a-d

- a. Repair of Damage to tires during Motor Carrier's possession is the sole responsibility of Motor Carrier, based on prevailing reasonable and customary repair costs and equipment use. **[Revised 09/01/09]**

- b. Repair of tires unrelated to Damage occurring during Motor Carrier's possession is the sole responsibility of the Provider, based on prevailing reasonable and customary repair costs and equipment use. **[Revised 09/01/09]**
- c. Photographic evidence shall be used for tire repair responsibility assignment. Photos of the tire will be produced by the road service provider based upon the stipulated criteria set forth in the Supplement to Exhibit C, Tire Marking and Photo Requirements of the UIIA. **[Added 08/01/18]**
- d. A Provider cannot require the Motor Carrier to return the physical carcass of a tire. **[Added 08/01/18]**

Supplement to Exhibit C of the UIIA: Tread Depth measurements for slick tread (09) and slid flat (34)

DECISION:

Based upon the supporting documents and evidence submitted, both panel members unanimously find in favor of the Equipment Provider on both invoices. The Motor Carrier is responsible for both repair invoices in this dispute.

CASE REVIEWED AND DECIDED BY:

CHRIS GILTZ
Motor Carrier Panel Member

TIM MOORE
Rail Panel Member

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent.

Case Number: **20210129-48-XXXP-MR-OTH**

Date of Decision: 03/30/2021

Invoice	Invoice #	Equipment #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	310605579	EMHU644029	12/14/2020	Global 2/Global1	10/20/20	11/4/20	12/14/20	12/17/20	1/15/21	1/29/21

Note: originally there were three invoices submitted by the MC on this case, but the EP canceled two invoices.

The Motor Carrier is basing its dispute on Section D.2.a. and D.3.e of the UIIA. The Motor Carrier disputed the invoice stating that this was a cross-town move dispatched to them by Norfolk Southern (NS). The unit out-gated at the NS 47th (NON-AGS gate facility) and in-gated at the UP/Global 2 (AGS gate facility) on 11/04/2020. The Equipment Provider provided in-gate AGS images from UP/Global 2 showing LSC and LSF bent/cut/torn container. The Motor Carrier in turn also disputed the invoice for the damage to the container. The Motor Carrier provided the Equipment Provider with copies of a previous AGS gate image from 07/28/2020 showing a different Motor Carrier in-gating at a Norfolk Southern yard with the same exact damage shown on the AGS image provided by the Equipment Provider, proving damage was pre-existing. The Motor Carrier stated that the Equipment Provider declined the dispute. The Motor Carrier feels that the container was returned in the same condition that it was taken out, reasonable wear and tear expected, pursuant to Section D.3.e of the UIIA. Therefore, the Motor Carrier believes they are not responsible for the charges on the invoice

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded to the Motor Carrier's claim stating that they issued the invoice to the Motor Carrier on 12/14/2020. Subsequently, the Motor Carrier submitted a dispute on 12/17/2020. The Equipment Provider stated that the Motor Carrier's dispute questioned the prior history of the unit being disputed due to a J2 cross-town process. However, the Equipment Provider stated that the unit was found with LSC and LSF damage, which was not notated on departure from the NS 47th facility. The Equipment Provider points out that its Addendum to the UIIA clearly states that the in-gating carrier is responsible for any damage found on the equipment unless it was identified as pre-existing. The Equipment Provider stated that the old AGS image provided by the Motor Carrier referenced on 07/28/2020 shows different damage than the damage found and billed for on the invoice as shown on the AGS images. In this case, the Equipment Provider believes it has provided clear evidence that the unit was damaged during the interchange period, and it has followed all the requirements under the UIIA.

DISCUSSION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the panel members' opinion is that the damage on the NS in-gate dated 07/28/20 is not the same damage as noted on the UP ingate dated 11/04/2020. The Equipment Provider panel member bases the decision on the damage to the side post on the 11/04/2020 UP in-gate that is not present on the 07/28/2020 NS in-gate. Both panel members agree that the Motor Carrier has the right to return the equipment in the same condition that it was picked up, normal wear and tear accepted. However, the damage to the container when returned to the Equipment Provider is not considered normal wear and tear. The Motor Carrier has not proved its case that the damage on the container was pre-existing damage.

In addition to the information above, the Motor Carrier argues that cross-town moves should be handled differently than other interchanges. The Motor Carrier panel member states that there is no difference between cross-town moves and other interchanges specified in the UIIA.

Based on the facts presented in the case, both panel members agree that the Motor Carrier is responsible for the container damage and the repair charges.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (May 1, 2020) to make its decision:

Section D.2. Equipment Interchange Receipts, Item D.2.a.

At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange.
[Revised 05/12/10]

Section D.3. Equipment Condition, Item D.3.e

Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[Revised 06/13/16]**

DECISION:

The panel unanimously finds in favor of the Equipment Provider. The Motor Carrier is responsible for the container damage and repair invoice in the amount of \$00.00.

CASE REVIEWED AND DECIDED BY:

CHRIS GILTZ
Motor Carrier Panel Member

TIM MOORE
Rail Panel Member

**UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT
DISPUTE RESOLUTION PANEL REVIEW AND DECISION**

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent.

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Case Number: **20210405-1-XXXL-MR-OTH**

Date of Decision: 06/29/2021

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Invoice	Invoice #	Container #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	127090	SEGU4559676	03/10/21	Equipment Storage Service/UP	11/13/20	11/16/20	3/10/21	3/18/21	3/21/21	04/05/21

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier is basing its dispute on Sections D.3.e. and E.3.a. of the UIIA. The Motor Carrier outgated the container from Equipment Storage Service on 11/13/2020 and ingated the container three (3) days later to Union Pacific (Wilmer, TX) on 11/16/2020. The Motor Carrier contends that the container facility failed to document damage upon outgate, and the Motor Carrier believes that the damage was pre-existing. The Motor Carrier believes that the amount of rust at the top corner of the container as well as the amount of rust oxidation are evidence of prior damage. Therefore, the Motor Carrier feels they should not be held liable for the invoice amount.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded to the claim stating that it issued the invoice according to the terms of the UIIA. The EIR indicated that the container was released from Equipment Storage Service in good condition but was returned with damage. The Equipment Provider noted that according to its Addendum to the UIIA, paragraph 2, Maintenance and Repair, the Motor Carrier shall repair and restore the damaged equipment in its possession, at its own cost and expense, or the Equipment Provider will cause the repair to be performed, and the Motor Carrier shall promptly

pay the Equipment Provider for the repairs upon receipt of the Equipment Provider's invoice. Therefore, the Equipment Provider feels that the damage is the responsibility of the Motor Carrier, and the invoice should stand.

DISCUSSION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the panel members find that the Motor Carrier and Equipment Provider agreed that the damage existed on the equipment at ingate interchange. The Motor Carrier advised that it was pre-existing damage, however, there were no notations of any damage on the outgate interchange. Under UIIA Sections D.2.a. and D.2.b., the Equipment Interchange Receipt (EIR) “shall describe the Equipment and any Damage observable thereon at the time of interchange, reasonable Wear and Tear excepted” (Section D.2.a). The panel members agree with the Equipment Provider that the Motor Carrier should have notated the existing damage on the EIR at the time they outgated the equipment. Therefore, the panel finds in favor of the Equipment Provider.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (May 1, 2020) to make its decision:

Section D.2. Equipment Interchange Receipts, Item D.2.a.

At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

Section D.2. Equipment Interchange Receipts, Item D.2.b.

Use of electronic EIRs requires that the Provider or the Facility Operator provide an electronic system whereby the Motor Carrier may describe electronically, the condition of the Equipment at the time of Interchange, without substantially burdening the Motor Carrier's use of electronic EIRs at the same Premises, and that this information be incorporated as part of the electronic EIR. **[Revised 09/16/17]**

Section D.3. Equipment Condition, Item D.3.e.

Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[Revised 06/13/16]**

Section E.3. Damage to Equipment, Item E.3.a.(2)

To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to

the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of a gate transaction using Recorded Images such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 10/01/18]**

DECISION:

The panel unanimously finds in favor of the Equipment Provider. The Motor Carrier is responsible for the equipment damage and repair invoice in the amount of \$00.00.

CASE REVIEWED AND DECIDED BY:

JORDAN HUNT
Motor Carrier Panel Member

TIM AMES
Ocean Carrier Panel Member

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent.

Case Number: **20210701-8-XXXA-MR-OTH**

Date of Decision: October 25, 2021

Invoice	Invoice #	Container #	Inv. Date	Amount	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	3SF5730	UMXU259969	6/29/21	\$xxx	59 th St Chicago/CSX 71 st Street	3/26/2021	3/30/21	6/30/21	7/1/21	7/1/21	7/1/21

The Motor Carrier's basis of the dispute is Section D.2.a. of the UIIA. The Motor Carrier pulled a loaded container out of the Equipment Provider's facility on 59th Street Chicago on March 26, 2021, and delivered the unit reloaded to 71st Street on March 30, 2021. The Motor Carrier believes that the Equipment Provider is billing them for old damage. The Motor Carrier disputed the charges showing the ingate photos with what it believes to be rusted old damage. The Motor Carrier states that it only had the container for a few days, and the damage did not occur while the equipment was in its possession. The Motor Carrier also states that the Equipment Provider sent a fresh photo of the container indicating it was provided from the repair vendor. The Motor Carrier contends that the photo the Equipment Provider provided did not reflect what the container looked like when it was ingated. The Motor Carrier sent the Equipment Provider a blown-up photo of the ingate from the Equipment Provider's AGS system. The Motor Carrier further adds that the Equipment Provider stated that further discussion about the dispute would be non-productive and advised the Motor Carrier to seek arbitration. The Motor Carrier believes it is being billed for pre-existing damage and it should not be responsible for the charges billed.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded to the claim indicating that supporting documentation confirms that no damage was noted on the outgate interchange in Bedford Park. The Equipment Provider also noted that the unit was repaired and rebilled to the Motor Carrier within the established billing timeframe set forth under the UIIA. After researching to determine the responsible party for the damage, the Equipment Provider states that the Motor Carrier was the first company to return the unit with damage. Previous ingates did not reflect the damage to the left side. The Equipment Provider stated that the outgate facility is a non-AGS location so the Motor Carrier should have notated the condition of the equipment at the time of interchange on the equipment interchange receipt if the damage was pre-existing. Consequently, the Equipment Provider believes the invoice is valid as billed.

DISCUSSION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the panel members concur that the AGS photo evidence clearly indicates the side panel damage to container UMXU259969 upon ingate at Bedford Park. The Motor Carrier that had possession of the container during the interchange period, the Motor Carrier, did not notate any damage upon outgate at 59th St, therefore, the Motor Carrier is responsible for the damage in accordance with Sections D.2.a. and D.3.e. of the UIIA. Furthermore, the Equipment Provider provided photo evidence of the repair and a previous interchange AGS image indicating no damage in an effort to avoid this arbitration. The fact that there is rust evident in the repair photo indicating that the damage was not "fresh" is inconsequential since the repair took place approximately 2 months after the damage was reported, allowing sufficient time for rust to develop. The repair and invoice were submitted within the timelines allowed by the UIIA. Accordingly, the panel members rule in favor of the Equipment Provider.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (May 1, 2020) to make its decision:

Section D.2. Equipment Interchange Receipts, Item D.2.a.

At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

Section D.3. Equipment Condition, Item D.3.e.

Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[Revised 06/13/16]**

DECISION:

The panel unanimously finds in favor of the Equipment Provider. The Motor Carrier is responsible for the container damage and repair invoice in the amount of \$xxx.

CASE REVIEWED AND DECIDED BY:

JORDAN HUNT
Motor Carrier Panel Member

JEFF CHAPMAN
Rail Panel Member

**UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT
DISPUTE RESOLUTION PANEL REVIEW AND DECISION**

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent.

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Case Number: **20220926-57-XXXP-MR-OTH**

Date of Decision: 04/10/2023

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

	Invoice #	Unit #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	1230126749/ NOTDV2C3S4	DDRZ909603	8/18/22	CP/NS	6/02/22	6/02/22	8/18/22	9/08/22	9/12/22	9/26/22

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier is basing its dispute on Sections D.2.a., D.3.e. and E.3.a.(2) of the UIIA. The Motor Carrier received an invoice for slid flat tire damage. Motor Carrier disputed the charges based on the fact that the damage being billed could not be seen on the ingate AGS image provided by the Equipment Provider. The Equipment Provider disagreed with the Motor Carrier indicating that the damage was visible in the image. Although a photo was provided, the Motor Carrier does not believe the Equipment Provider provided adequate proof of the damage at the time of ingate. The Motor Carrier believes the Equipment Provider did not comply with Section E.3.a.(2) of the UIIA by providing adequate factual documentation to support the damage billed. In addition, the Motor Carrier argues that because this was a cross-town move there would be reasonable wear and tear expected to the tire. Therefore, the Motor Carrier believes it is not responsible for the damage and the charges billed.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded to the claim stating that the Motor Carrier did not provide an outgate J1 from CP Bensenville at the time of dispute, therefore the Equipment Provider was unaware of the condition of the equipment prior to ingating NS. The Motor Carrier provided an outgate receipt from CP Bensenville in the arbitration package, which was not presented at the time of the Motor Carrier's initial dispute on September 8, 2022. The

receipt shows that no damage was noted on the outgate. A clean outgate from CP Bensenville and a dirty ingate at NS proves that the Motor Carrier is responsible for the damage that occurred during the interchange period as described in Section E.3.a. of the UIIA and in the Equipment Provider's Addendum to UIIA, Section IV.B.b.1. Accordingly, the Equipment Provider believes the Motor Carrier is responsible for the damage noted at ingate.

In addition, the Equipment Provider also states that in the Motor Carrier's arbitration package the Motor Carrier stated no damage can be seen on the ingate image, however, it is not a valid reason for this dispute. The damage can be seen on the ingate image. A yellow arrow was placed on the image to indicate the damage. Therefore, the Equipment Provider believes the invoices are due as billed.

DISCUSSION:

The panel carefully reviewed all documents and evidence submitted by the parties. This case has one invoice for a run flat between the Motor Carrier and the Equipment Provider. The panel has determined that the run flat is visibly seen in the picture and the tire is off the bead. There is no recorded damage on the outgate from CP Bensenville, however in the ingate at NS it shows a run flat. Based on the provisions in Sections D.2.a., D.3.e., and E.3.a.(2) of the UIIA and the Equipment Provider's Addendum to UIIA, the panel concludes that the Motor Carrier is responsible for the damage to the tire and must pay the invoice in dispute in the amount of \$00.00.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (April 23, 2021) to make its decision:

Section D.2. Equipment Interchange Receipts, Item D.2.a.

At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

Section D.3. Equipment Condition, Item D.3.e.

Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[06/13/16]**

Section E.3. Damage to Equipment, Item E.3.a.(2)

To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of a gate transaction using Recorded Images such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 10/01/18]**

Equipment Provider's Addendum to UIIA Section IV.B.b.1

b. On Terminal Repairs

1. The in-gating Motor Carrier will be responsible for repairs to damage noted either at the manned gate or in recorded images at AGS gates.

DECISION:

The panel unanimously finds in favor of the Equipment Provider. The Motor Carrier is responsible for the repair of the damage to the tire in the amount of \$00.00.

CASE REVIEWED AND DECIDED BY:

PETER SCHNEIDER
Motor Carrier Panel Member

JEFFREY CHAPMAN
Rail Panel Member

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent.

Case Number: **20210129-48-XXXP-MR-OTH**

Date of Decision: 03/30/2021

Invoice	Invoice #	Equipment #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	310605579	EMHU644029	12/14/2020	Global 2/Global1	10/20/20	11/4/20	12/14/20	12/17/20	1/15/21	1/29/21

Note: originally there were three invoices submitted by the MC on this case, but the EP canceled two invoices.

The Motor Carrier is basing its dispute on Section D.2.a. and D.3.e of the UIIA. The Motor Carrier disputed the invoice stating that this was a cross-town move dispatched to them by Norfolk Southern (NS). The unit out-gated at the NS 47th (NON-AGS gate facility) and in-gated at the UP/Global 2 (AGS gate facility) on 11/04/2020. The Equipment Provider provided in-gate AGS images from UP/Global 2 showing LSC and LSF bent/cut/torn container. The Motor Carrier in turn also disputed the invoice for the damage to the container. The Motor Carrier provided the Equipment Provider with copies of a previous AGS gate image from 07/28/2020 showing a different Motor Carrier in-gating at a Norfolk Southern yard with the same exact damage shown on the AGS image provided by the Equipment Provider, proving damage was pre-existing. The Motor Carrier stated that the Equipment Provider declined the dispute. The Motor Carrier feels that the container was returned in the same condition that it was taken out, reasonable wear and tear expected, pursuant to Section D.3.e of the UIIA. Therefore, the Motor Carrier believes they are not responsible for the charges on the invoice

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded to the Motor Carrier's claim stating that they issued the invoice to the Motor Carrier on 12/14/2020. Subsequently, the Motor Carrier submitted a dispute on 12/17/2020. The Equipment Provider stated that the Motor Carrier's dispute questioned the prior history of the unit being disputed due to a J2 cross-town process. However, the Equipment Provider stated that the unit was found with LSC and LSF damage, which was not notated on departure from the NS 47th facility. The Equipment Provider points out that its Addendum to the UIIA clearly states that the in-gating carrier is responsible for any damage found on the equipment unless it was identified as pre-existing. The Equipment Provider stated that the old AGS image provided by the Motor Carrier referenced on 07/28/2020 shows different damage than the damage found and billed for on the invoice as shown on the AGS images. In this case, the Equipment Provider believes it has provided clear evidence that the unit was damaged during the interchange period, and it has followed all the requirements under the UIIA.

DISCUSSION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the panel members' opinion is that the damage on the NS in-gate dated 07/28/20 is not the same damage as noted on the UP ingate dated 11/04/2020. The Equipment Provider panel member bases the decision on the damage to the side post on the 11/04/2020 UP in-gate that is not present on the 07/28/2020 NS in-gate. Both panel members agree that the Motor Carrier has the right to return the equipment in the same condition that it was picked up, normal wear and tear accepted. However, the damage to the container when returned to the Equipment Provider is not considered normal wear and tear. The Motor Carrier has not proved its case that the damage on the container was pre-existing damage.

In addition to the information above, the Motor Carrier argues that cross-town moves should be handled differently than other interchanges. The Motor Carrier panel member states that there is no difference between cross-town moves and other interchanges specified in the UIIA.

Based on the facts presented in the case, both panel members agree that the Motor Carrier is responsible for the container damage and the repair charges.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (May 1, 2020) to make its decision:

Section D.2. Equipment Interchange Receipts, Item D.2.a.

At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange.
[Revised 05/12/10]

Section D.3. Equipment Condition, Item D.3.e

Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[Revised 06/13/16]**

DECISION:

The panel unanimously finds in favor of the Equipment Provider. The Motor Carrier is responsible for the container damage and repair invoice in the amount of \$00.00.

CASE REVIEWED AND DECIDED BY:

CHRIS GILTZ
Motor Carrier Panel Member

TIM MOORE
Rail Panel Member

In the Dispute Between

Case Number: **20210915-49-CNRP-MR-TR**

Appellant, and

UIIA EP, **Union Pacific Railroad Company,**

Date of Decision: **March 14, 2022**

Respondent.

Invoice	Invoice #	Equipment #	Inv. Date	Amount	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	314820614	LSFZ 531385	07/30/2021	\$179.80	Yard Center-Dolton /Global 2	05/12/21	05/26/21	07/30/21	08/02/21	08/31/21	09/15/21

The Motor Carrier is basing its dispute on Sections D.2.a., D.3.e, E.4.a., Exhibit A and Exhibit C of the UIIA. The Motor Carrier disputed the invoice stating that it was a cross-town move dispatched to the Motor Carrier by Norfolk Southern (NS). The unit outgated at the NS 49th (AGS gate facility) and ingated at the UP/Global 2 (AGS gate facility) on 05/26/21. The Equipment Provider provided ingate AGS images from UP/Global 2 showing a “U” shaped line/mark, LOF cut/torn tire. The Motor Carrier disputed the invoice by providing the Equipment Provider copies of a previous AGS gate image from the same day, 05/26/2021 at 3:00 am, with a different Motor Carrier ingating at a Norfolk Southern yard. The Motor Carrier believes it is the same exact damage shown on the AGS image provided by the Equipment Provider proving it was pre-existing damage. However, the Motor Carrier stated that the Equipment Provider declined its dispute stating that the Motor Carrier did not prove pre-existing tire damage. The Motor Carrier feels that the unit was returned in the same condition it was taken out, reasonable wear and tear excepted, pursuant to Section D.3.e of the UIIA. Therefore, the Motor Carrier believes it is not responsible for the charges on the invoice.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider did not respond to the Motor Carrier's claim, but it responded to the Motor Carrier's dispute stating, "a cut in the shape of "U" or "L" can be seen on the ingate photo without proof [of] pre-existing damage". Therefore, the Equipment Provider feels that the damage is the responsibility of the Motor Carrier, and the invoice should stand.

DISCUSSION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the panel's opinion is that the Equipment Provider provided evidence that the LOF tire on the photograph image LSFZ 531385 was ingated to UP-G2 on May 26, 2021 by the Motor Carrier with a cut however, the photograph image showing the condition of LSFZ 531385 outgating from NS 49th Street on May 26, 2021 was dark and therefore inconclusive. The Motor Carrier provided clear photograph evidence that the LOF tire on LSFZ 531385 had the same cut earlier the same day at 3:00 am on May 26, 2021. The panel agrees that the evidence of the photograph image provided by the Motor Carrier supports its claim of pre-existing damage pursuant to Section D.2.a. and D.3.e. of the UIIA. Therefore, the Motor Carrier should not be held responsible for the tire damage.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (April 23, 2021) to make its decision:

Section D.2. Equipment Interchange Receipts, Item D.2.a.

At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

Section D.3. Equipment Condition, Item D.3.e.

Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[Revised 06/13/16]**

Section E.4. Tires, Item E.4.a.

Repair of Damage to tires during Motor Carrier's possession is the sole responsibility of Motor Carrier, based on prevailing reasonable and customary repair costs and equipment use. **[Revised 09/01/09]**

Exhibit A to UIIA, Motor Carrier Pre-Trip Inspection

Exhibit C to UIIA Tire Marking and Photo Requirements/Criteria (Added 08/01/18)

**Supplement to Exhibit C of the UIIA: Tire Marking and Photo Requirements/Criteria
(Added 08/01/18)**

DECISION:

The panel unanimously finds in favor of the Motor Carrier. The Motor Carrier is not responsible for the repair of pre-existing damage to the tire and the repair invoice in the amount of \$179.80.

CASE REVIEWED AND DECIDED BY:

PETER SCHNEIDER
Motor Carrier Panel Member

GORDON GRAHAM
Rail Panel Member

**UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT
DISPUTE RESOLUTION PANEL REVIEW AND DECISION**

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent.

Case Number: **20220422-50-XXXP-MR-TR**

Date of Decision: 10/20/2022

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Invoice	Invoice #	Equipment #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	318677628	DDRZ 601727	03/08/22	CP Schiller Park / UP Global 2	01/08/22	01/08/22	03/08/22	03/14/22	04/08/22	04/22/22

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier is basing its dispute on Sections D.2.a., D.3.e. and E.3.a.(2) of the UIIA. The Motor Carrier disputed the invoice stating that it was a cross-town move dispatched to the Motor Carrier by CP Rail (CP). The unit out-gated at the CP Schiller Park (non-AGS gate facility) and in-gated at the UP/Global 2 (AGS gate facility) on 01/08/2022. The Motor Carrier stated that the Equipment Provider did not provide the in-gate AGS image at UP/Global 2 showing the damages claimed. Therefore, the Motor Carrier believes that because the Equipment Provider was unable to provide proof of damage at time of ingate they would be unable to determine if the unit was returned in the same condition when it was outgated, reasonable wear and tear excepted, pursuant to Section D.3.e. of the UIIA. Therefore, the Motor Carrier believes it is not responsible for the charges on the invoice.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider did not respond to the DRP submission, but it did respond to the Motor Carrier's initial dispute stating the Motor Carrier is to send the J2 showing the damage previously documented to intermodalbilling@up.com.

DISCUSSION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the panel's opinion is that the Equipment Provider did not provide proof of damage to the unit at the time of interchange to the UPRR. The Motor Carrier provided screenshots showing that the AGS gate images provided by the Equipment Provider were not available.

The Rail panel member noted that if this is a cross-town move, the Equipment Provider should seek a J2 and rebill CP Rail for the damage. The Equipment Provider does not take possession of the unit until the time of interchange and if the damage occurred prior to ingate, then the unit would still be under the possession of CP. The CP at that point would be responsible to determine if damage was pre-existing or happened after outgate and rebill the appropriate party.

The Equipment Provider did not respond to this DRP submission, but in an earlier response to the Motor Carrier, the Equipment Provider stated that the Motor Carrier is responsible for supplying previous interchanges showing that the damage was pre-existing. However, the Motor Carrier panel member indicated it is not the responsibility of the Motor Carrier to provide that information under the UIIA. Without any additional information from the Equipment Provider, the panel finds that the Equipment Provider did not meet the requirements of Section E.3.a.(2) of the UIIA. Therefore, the panel finds in favor of the Motor Carrier.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (April 23, 2021) to make its decision:

Section D.2. Equipment Interchange Receipts, Item D.2.a.

At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

Section D.3.e. Equipment Condition

Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[06/13/16]**

Section E.3. Damage to Equipment, Item E.3.a.(2)

To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to

the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of a gate transaction using Recorded Images such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 10/01/18]**

DECISION:

The panel unanimously finds in favor of the Motor Carrier. The Motor Carrier is not responsible for the repair of the pre-existing damage and the repair invoice in the amount of \$00.00.

CASE REVIEWED AND DECIDED BY:

CHRIS GILTZ
Motor Carrier Panel Member

TIM MOORE
Rail Panel Member

**UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT
DISPUTE RESOLUTION PANEL REVIEW AND DECISION**

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent.

Case Number: **20220623-51-XXXP-MR-OTH**

Date of Decision: 10/31/2022

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Invoice	Invoice #	Equipment #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	1111091099	TSFZ548160	04/21/22	NS Landers/ NS Landers	2/13/22	2/18/22	04/21/22	05/20/22	06/09/22	06/23/22

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier is basing its dispute on Sections D.2.a., D.3.e., and E.3.a.(2) of the UIIA. The Motor Carrier disputed the invoice stating that the Equipment Provider provided the in-gate AGS image at NS Landers showing damage to the landing leg. The Motor Carrier stated that they provided the out-gate AGS image at UP/Global4 showing the same damage [was noted] to the landing leg. The Motor Carrier further said that the AGS image was identical to NS Landers AGS image. The Motor Carrier stated that the Equipment Provider declined their dispute stating that the Motor Carrier was responsible for all damages, even pre-existing damage that is brought into the Norfolk Southern facility. The Motor Carrier states that the damages were documented on the out-gate EIR from UP, therefore, the Motor Carrier feels that the damage did not happen while it was in its possession. The Motor Carrier states that the unit was roadworthy and safe to cross town. Pursuant to Section D.3.e. of the UIIA, the Motor Carrier believes that the unit was returned in the same condition as it was when it was taken out, reasonable wear and tear excepted. Therefore, the Motor Carrier believes it is not responsible for the damage and the charges on the invoice.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded to the claim stating that the Motor Carrier asserted that the claim is based on a violation of Section D of the UIIA. The Equipment Provider asserts that the dispute is declined based on the Equipment Provider's Addendum to the UIIA, Section IV.B.b.1. The Equipment Provider states that the Motor Carrier uses various reasons for its dispute in this matter as follows:

1. 5/20/2022 - "Unit out-gated UP/Global4 (AGS facility), drivers are unable to write up damages at out-gate due to it being an AGS yard. Union Pacific is not providing us with the out-gate AGS images. This is out of [Motor Carrier]'s control. Please advise." Equipment Provider provided the email address uiiaissues@uiia.org to assist Motor Carrier with obtaining images from another Equipment Provider's facility.
2. Motor Carrier emailed Equipment Provider on 6/10/2022 stating that they re-reviewed the images and saw that it was not just a missing sandshoe, but a damaged landing leg, but they would pay the invoice (email was provided for review).
3. Motor Carrier emailed again on 6/10 that they were not responsible for damage per UIIA 3.D.d.
4. Motor Carrier emailed on 6/13 to give Equipment Provider one last chance to resolve dispute in Motor Carrier's favor.
5. Motor Carrier replied via email to Equipment Provider on 6/13 and did not refute Equipment Provider's Addendum IV.B.b.1, but also stated that IV.B.a. of the Addendum was relevant, which it is not as that provision is for road service.
6. Motor Carrier stated in 6/23 email that the invoice was sent to UIIA for arbitration.

The Equipment Provider's stance is that it has fairly applied their Addendum provision in Section IV.B.b.1 in declining this dispute.

DISCUSSION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the panel agrees that this dispute centers around whether the applicable Section of the governing UIIA Agreement or the Equipment Provider's Addendum should prevail. Both parties appear to agree that the ingate condition of the unit was the same as the outgate condition and the AGS images appear to support that information.

The Motor Carrier cites to Section D.3.d. of the UIIA, however that Section's identification is D 3 e.:

Section D.3.e. Equipment Condition

- e. Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[06/13/16]**

The Equipment Provider cites to its Addendum, Section IV.B.b.1. - Determining Responsible Party, which states:

b. On Terminal Repairs

1. The in-gating Motor Carrier will be responsible for repairs to damage noted either at the manned gate or in recorded images at AGS gates.

The Equipment Provider further goes on to state:

“Centera’s point about this being pre-existing damage that they pulled from one terminal owned by UP and eventually ingating this to another terminal not owned by the UP is a reason why these interchange rules exists [sic].” Otherwise Centera can just transfer bad equipment to other terminals and unfairly shift liability of who repairs the equipment. Centera has a responsibility, as outlined in the UIIA and by federal requirements, to pre-trip their equipment for good working condition free of visible defects. The fact they claim they found outgate pictures proving pre-existing damage only further puts into question their ability to follow the processes put into place to protect all parties.”

The Equipment Provider’s position appears to be that the condition of the equipment at time of outgate has no bearing. They reserve the right to hold the Motor Carrier accountable for all damages at time of ingate. One would have to assume that position would mean Motor Carriers would be responsible for any dents or scratches or cuts to a container received at ingate regardless of whether those damages existed at time of outgate. This would completely change the way damages to equipment have been assigned. Traditionally damages noted at outgate are not charged to the Motor Carrier. The Equipment Provider also states the Motor Carrier is responsible for inspecting the equipment prior to outgating and should have caught the issue. While correct, that does not transfer existing damages from the Equipment Provider to the Motor Carrier.

The panel concurs that the main points in this dispute are first, that the unit was returned in the same condition it was picked up. Second, the language that Equipment Provider has in its Addendum conflicts with the base agreement of the UIIA, and the base agreement should prevail. For these reasons, the panel finds in favor of the Motor Carrier.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (April 23, 2021) to make its decision:

Section D.2. Equipment Interchange Receipts, Item D.2.a.

At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange.
[Revised 05/12/10]

Section D.3. Equipment Condition, Item D.3.e.

Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[06/13/16]**

Section E.3. Damage to Equipment, Item E.3.a.(2)

To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of a gate transaction using Recorded Images such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 10/01/18]**

DECISION:

The panel unanimously finds in favor of the Motor Carrier. The Motor Carrier is not responsible for the damages and repair of the pre-existing damage to the unit in the amount of \$00.00.

CASE REVIEWED AND DECIDED BY:

CHRIS GILTZ
Motor Carrier Panel Member

TIM MOORE
Rail Panel Member

**UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT
DISPUTE RESOLUTION PANEL REVIEW AND DECISION**

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent.

Case Number: **20220712-XXX53-P-MR-OTH**

Date of Decision: 10/20/2022

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Invoice	Invoice #	Equipment #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	320121334	NSPZ 144075	05/25/22	CP Rail / UP Global 2	02/28/22	02/28/22	05/25/22	06/2/22	06/27/22	07/12/22

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier is basing its dispute on Sections D.2.a., D.3.e., and E.3.a.(2) of the UIIA. The Motor Carrier disputed the invoice stating that the unit out-gated at the CP/Schiller Park (non-AGS facility) and in-gated at UP/Global 2 (AGS facility) on 02/28/2022. The Motor Carrier stated that the Equipment Provider originally did not provide the ingate AGS image at UP/Global 2 showing damages so the Motor Carrier disputed the invoice stating that the invoice is not in accordance with UIIA rules. The Motor Carrier stated that the Equipment Provider denied the dispute and attached a blown up AGS image of just the chassis leg. The Motor Carrier claims that the image is too dark to see any kind of damage to the chassis leg or the RSC main frame. The Motor Carrier also stated that the Equipment Provider's website showed "no available images" of damage to the unit. Therefore, the Motor Carrier believes that the unit was taken out and brought back in the same condition, reasonable wear and tear excepted, and they are not responsible for the damage repairs.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider did not respond to the DRP submission, but it did respond to the Motor Carrier's initial dispute providing the Motor Carrier with a copy of the AGS image & repair photos.

DISCUSSION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the panel concurs that there is no damage to the chassis leg noted on the outgate of the unit. However, the additional AGS image provided to the panel by the Equipment Provider does show the right leg bent in the backward position which supports the Equipment Provider's invoice. If it was pre-existing damage, it would have been easily visible by the driver doing a proper pre-trip inspection and the damage corrected prior to outgate or noted on the outgate interchange receipt. Without proof of damage when the unit was picked up, it can only be assumed the damage occurred after it departed the CP Rail gate. For these reasons, the panel finds in favor of the Equipment Provider.

The Motor Carrier panel member points out that the Equipment Provider should be notified that there appears to be some type of system issue. The image the Equipment Provider provided to the Motor Carrier was different from what was provided to the arbitration panel when requested. The original image provided to the Motor Carrier was not valid for the purposes of backing up their damage claim. The Equipment Provider should resolve this issue as it relates to future billings.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (April 23, 2021) to make its decision:

Section D.2. Equipment Interchange Receipts, Item D.2.a.

At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

Section D.3. Equipment Condition, Item D.3.e.

Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[06/13/16]**

Section E.3. Damage to Equipment, Item E.3.a.(2)

To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to

the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of a gate transaction using Recorded Images such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 10/01/18]**

DECISION:

The panel unanimously finds in favor of the Equipment Provider based on Section D.2.a. of the UIIA. The Motor Carrier is responsible for payment of the damage repair invoice in the amount of \$00.00.

CASE REVIEWED AND DECIDED BY:

CHRIS GILTZ
Motor Carrier Panel Member

TIM MOORE
Rail Panel Member

**UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT
DISPUTE RESOLUTION PANEL REVIEW AND DECISION**

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent.

Case Number: **20230202-58-XXXP-MR-TR**

Date of Decision: 05/01/2023

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Invoice	Invoice #	Equipment #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	324119041	LSFZ 530742	12/29/22	NS 63 rd / UP Global 2	11/25/22	11/25/22	12/29/22	01/03/23	01/21/23	02/02/23

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier is basing its dispute on Sections D.2.a., D.3.e. and E.3.a.(2) of the UIIA. The Motor Carrier disputed invoice 324119041 stating that it was a cross-town move dispatched to the Motor Carrier by Norfolk Southern (NS). The unit outgated at NS 63rd (NON-AGS facility) and ingated at UP/Global 2 (AGS facility) on November 25, 2022. The Motor Carrier states that the Equipment Provider did not provide an ingate AGS image at UP/Global 2 showing the damages, therefore the Motor Carrier disputed the invoice stating the "bill is not in accordance with UIIA rules". The Equipment Provider denied the dispute stating that the attached photos showed damage on ingate, however, the Motor Carrier stated that the Equipment Provider did not attach any photos to review said damage. The Motor Carrier stated that the unit was taken out and brought back in the same condition, reasonable wear and tear excepted. Therefore, the Motor Carrier believes that because the Equipment Provider was unable to provide proof of damage at the time of ingate, the Motor Carrier was unable to determine if the unit was returned in the same condition as when it was outgated, reasonable wear and tear excepted, pursuant to Section D.3.e. of the UIIA. Therefore, the Motor Carrier believes it is not responsible for the damage charges on the invoice.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded to the claim agreeing with the Motor Carrier that it appeared that the Equipment Provider's system failed to attach the AGS images to the invoice. The Equipment Provider furnished the images as part of its response to the arbitration claim and advised the Motor Carrier that they escalated the issue to their IT department to investigate why the image upload failed and would confirm the outcome of the investigation once received. However, the Equipment Provider did not provide results of why the image upload failed. The Equipment Provider stated that they provided the email address to the Motor Carrier in the dispute denial comment advising where evidence of pre-existing damage could be sent for the Equipment Provider to review. However, the Equipment Provider stated it did not receive any emails from the Motor Carrier providing evidence that the damage was pre-existing. The Equipment Provider also stated it did not receive any emails from the Motor Carrier advising them that the supporting documentation was not attached to the invoice. The Equipment Provider believes they could have been advised via email, and the technical issue could have been investigated at the time of the Motor Carrier's request. The Equipment Provider noted that in reviewing the documentation provided by the Motor Carrier, it does not appear that the driver noted any damage on the outgate J1 from NS Chicago 63rd Street ramp on 11/25/2022, therefore a J2 would not be applicable.

DISCUSSION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the panel believes the Motor Carrier is responsible for the damage as the ingate photo clearly shows a huge cut on the ROF tire. The NS gate receipt outgate states at the bottom of the form that the "Driver certifies that he/she has completed a pre-trip inspection of the chassis/trailer in accordance with 49 CFR 392.7 and the Uniform Intermodal Interchange Agreement and found it to be in good working order." Based on the ingate photo, it is difficult for a driver to miss such a big cut on an outside tire.

The Motor Carrier is disputing the invoice based upon not receiving the photos within the time period allowed under Section E.3.a.(2) of the UIIA, however, the timelines for invoicing and disputes were all met. A technical issue with providing photos would not negate the invoicing and responding to a dispute in a timely manner. When notified of the issue with the links to the photo, the Equipment Provider provided a "Recorded images taken at the time of Interchange." as required under Section D.2.a. of the UIIA. The UIIA does not specify any particular time period for the recorded image to be provided. A reasonable standard applied to this dispute is that the delay in providing the image did not impact the Motor Carrier's ability to dispute the invoice. Therefore, the panel finds in favor of the Equipment Provider.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (July 20, 2022) to make its decision:

Section D.2. Equipment Interchange Receipts, Item D.2.a.

At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange.

[Revised 05/12/10]

Section D.3. Equipment Condition, Item D.3.e.

Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[06/13/16]**

Section E.3. Damage to Equipment, Item E.3.a.(2)

2) To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of a gate transaction using Recorded Images such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 10/01/18]**

DECISION:

The panel unanimously finds in favor of the Equipment Provider based on Sections D.2.a. and E.3.a.(2) of the UIIA. The Motor Carrier is responsible for payment of the damage repair invoice in the amount of \$00.00.

CASE REVIEWED AND DECIDED BY:

CHRIS GILTZ
Motor Carrier Panel Member

TIM MOORE
Rail Panel Member

**UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT
DISPUTE RESOLUTION PANEL REVIEW AND DECISION**

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent.

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Case Number: **20230216-59-XXXP-MR-OTH**

Date of Decision: 05/01/2023

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Invoice	Invoice #	Equipment #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	324322438	EMHU648265	01/11/23	NS 47th /UP Global 2	09/21/22	10/28/22	01/11/23	02/02/23	02/16/23

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier is basing its dispute on Sections D.2.a., D.3.e. and E.3.a.(2) of the UIIA. The unit outgated NS 47th (AGS facility) and ingated UP/Global 2 (AGS facility) on 10/28/2022. The Motor Carrier disputed the invoice stating that it was a cross-town move dispatched to the Motor Carrier by Norfolk Southern (NS). The Motor Carrier stated that NS provided the only outgate picture available from NS 47th (AGS) showing cuts to the Left Side Rear (LSR), and the Equipment Provider provided an ingate picture showing additional cuts to the LSR. However, the Motor Carrier states that the damage could not be seen on the outgate picture provided by the Equipment Provider due to a large black line going through the image. The Motor Carrier stated they requested additional outgate photos, but the Equipment Provider was unable to provide the photos.

The Motor Carrier believes that if the Equipment Provider would have properly sent a J2 to NS after the unit ingated UP, which the Motor Carrier states is the proper procedure/protocol for cross-town units, the proper party, NS, would have been responsible for the damages. The Motor Carrier feels they should not be responsible for distorted AGS images from the origin railroad. The Motor Carrier further states that the drivers are not permitted to document damages at AGS gates. AGS is supposed to document all damages in the "Recorded Images" taken at the time of interchange.

Therefore, the Motor Carrier believes that because the Equipment Provider was unable to provide proof of damage at time of ingate, the Equipment Provider was unable to determine if the unit was returned in the same condition when it was outgated, reasonable wear and tear excepted, pursuant to Section D.3.e. of the UIIA. Therefore, the Motor Carrier believes it is not responsible for the charges on the invoice.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded to the claim stating that the unit outgated from Union Pacific on September 21, 2022 at 19:09 (7:09 pm) from Global 1 with no damage to the left side of the container. The unit ingated on October 28, 2022 at 13:47 (1:47 pm) to Global 2 with visible cuts to the panel. The photo provided to the Equipment Provider from the Motor Carrier does not have a date, time, or location on the photo and there is no damage visible to the container. The Equipment Provider stated that they cannot issue a J2 to NS when the photo provided to Union Pacific does not show any damage to the container and does not have a date, time, or location on the image. The Motor Carrier interchanged the container to the Equipment Provider with damages outside of normal wear and tear conditions with no proof of it being pre-existing. Therefore, the Equipment Provider stands by its decision that the Motor Carrier has not provided documentation showing the damage was pre-existing, therefore the invoice is valid.

DISCUSSION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the panel based its decision on Section D.2.d. of the UIIA. The panel believes and has decided that the AGS technology did not allow for observable damage and the outgate image provided was inadequate. The outgate image was distorted and the words "Damage is captured on Recorded Images" was not indicated on the interchange receipt. Section D.2.d. of the UIIA states "If Recorded Images are taken at the time of Interchange, Damage will not be reported on ingate or outgate EIR. The words "Damage is captured on Recorded Images" will be printed on the Equipment Interchange Receipt." Since the outgate image was inadequate, the panel finds in favor of the Motor Carrier.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (July 20, 2022) to make its decision:

Section D.2. Equipment Interchange Receipts, Item D.2.a.

- a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

Section D.2. Equipment Interchange Receipts, Item D.2.d.

- d. If Recorded Images are taken at the time of Interchange, Damage will not be reported on ingate or outgate EIR. The words "Damage is captured on Recorded Images" will be printed on the Equipment Interchange Receipt. All such Recorded Images will be made available for each Party for a period of 1 year from Interchange without charge. **[Revised 11/12/12]**

Section D.3. Equipment Condition, Item D.3.e.

- e. Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[06/13/16]**

Section E.3. Damage to Equipment, Item E.3.a.(2)

2) To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of a gate transaction using Recorded Images such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 10/01/18]**

DECISION:

The panel unanimously finds in favor of the Motor Carrier based on Section D.2.d. The Motor Carrier is not responsible for payment of the damage repair invoice in the amount of \$00.00.

CASE REVIEWED AND DECIDED BY:

BEN BANKS
Motor Carrier Panel Member

STEVEN CHAVEZ
Rail Panel Member

**UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT
DISPUTE RESOLUTION PANEL REVIEW AND DECISION**

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent.

Case Number: **20230330-60-XXXP-MR-TR**

Date of Decision: 07/21/2023

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

	Invoice Number	Unit #	Invoice Date	Facility	Outgated	Ingated	Date MC Rec'd Invoice	Date MC Disputed Invoice	Date EP Responded only confirmed receipt of dispute	Date Notice of Intent Received
1	324689031	HGIU645450/ NSPZ146935	2/1/23	Global 4/ Global 2	1/20/23	1/20/23	2/1/23	2/16/23	3/15/23	3/30/23
2	324937048	HGIU523208/ TSFZ910572	2/15/23	Global 2	12/28/22	12/28/22	2/15/23	2/16/23	3/15/23	3/30/23

MOTOR CARRIER'S BASIS OF DISPUTE

The Motor Carrier is basing its dispute on Sections D.2.a., D.3.e., and E.3.a.(2) of the UIIA. The Motor Carrier indicates both invoices are from a cross-town move dispatched to the Motor Carrier by Norfolk Southern. For invoice 324689031, the unit outgated NS 47th Street (AGS facility) and ingated UP/Global 2 (AGS facility) on January 20, 2023. The Equipment Provider did not provide ingate AGS images at UP/Global 2 showing damages with its invoice. Motor Carrier disputed charges, indicating the billing did not comply with Section E.3.a.(2). The Equipment Provider denied the dispute stating that the attached photo showed the damage being billed. The AGS photo later provided by the Equipment Provider still did not show damage was present at ingate. The Motor Carrier believes the unit was returned in the same condition as it was outgated, reasonable wear and tear excepted, and that no damage can be seen on the ingate AGS image. The Motor Carrier responded to the Equipment Provider's additional comments in this claim stating that once the ingate AGS image was provided to it by the Equipment Provider it was able to compare the outgate and ingate AGS images. Unfortunately, the NS outgate was darkened at the bottom of the picture so the Motor Carrier was unable to see the mark on the sidewall. The Motor Carrier indicated that it would have sent this to the Equipment Provider, but the Equipment Provider does not respond to its emails in a timely manner and the Motor Carrier stated that they would have missed their window to submit the claim for arbitration. The Motor Carrier also notes that the first picture provided could be from a totally different chassis or taken any time after the ingate so therefore they believe this photo is invalid. The Motor Carrier states that, based on Section D.2.d., the AGS technology did not allow for observable damage and the

outgate image provided was inadequate. The outgate image was not clear and did not have the terminology “Damage is captured on Recorded Images” on the interchange receipt as required.

For invoice 324937048, the unit outgated NSCAL (Non-AGS facility) and ingated UP/Global 2 (AGS facility) on December 28, 2022. The Equipment Provider did not provide ingate AGS images at UP/Global 2 showing damages with the invoice. The Motor Carrier disputed charges, stating the billing did not comply with Section E.3.a.(2). The AGS photo later provided by the Equipment Provider still did not show damage was present at ingate. The Motor Carrier believes the unit was returned in the same condition as it was outgated, reasonable wear and tear excepted, and that no damage can be seen on the ingate AGS image. The Motor Carrier noted that the proper procedure should be that the Equipment Provider J2 any and all damages back to the origin railroad (NS). However, because the Equipment Provider’s system can’t differentiate between a cross-town and any other interchange, the Equipment Provider sends the invoice to the Motor Carrier rather than the proper party responsible for the billing.

EQUIPMENT PROVIDER’S RESPONSE TO MOTOR CARRIER’S DISPUTE

For invoice 324689031, the Equipment Provider indicates that the Motor Carrier disputed this invoice for not having ingate images included with the invoice and for being a cross-town move. The Equipment Provider attached the ingate image showing the tire off the rim and cut on the side wall to the invoice. The Motor Carrier was directed to provide documentation showing the damage was pre-existing, however no email was received. The Equipment Provider also notes that the images the Motor Carrier provided with the arbitration claim do not clearly show the damage was pre-existing and the Equipment Provider believes the Motor Carrier is responsible for the charges as billed. The Equipment Provider also responded to the Motor Carrier’s additional comments, stating that the first photo provided is the repair photo where you can see the marking of NSPZ126935 on the tire and the date of January 27, 2023 which is the chassis that was repaired and the repaired date. The Equipment Provider is not required to furnish the repair photo, however, it was provided to show that the damage on the ingate matches the damage requiring repair to the tire. The damage is clearly visible on the ingate and would have been clearly visible during the Motor Carrier’s pre-trip inspection. The Motor Carrier’s reasoning of Section D.2.d. does not negate the Motor Carrier’s responsibility under the pre-trip inspection to check specific items visually and audibly regarding tires. The Motor Carrier failed to do a proper pre-trip inspection and outgated the equipment in a damaged condition in violation of FMCSA 392.7.

For invoice 324937048, the Equipment Provider indicates that the Motor Carrier disputed this invoice for not having ingate photos attached. The AGS ingate image was attached showing the slid flat tire damage that matches the repair photos. There were no additional communications from the Motor Carrier providing any evidence showing that the damage was pre-existing. The Equipment Provider concluded that the damage was visible on ingate and the outgate provided by the Motor Carrier from NS stating there was no damage noted by the driver and deemed the Motor Carrier responsible for the damaged tire. The Equipment Provider also added, based on Motor Carrier’s additional comments, that the Motor Carrier is required to do a pre-trip inspection under Exhibit A of the UIIA. The Motor Carrier is responsible to ensure the equipment is in a safe operating condition. Failure to conduct a proper pre-trip inspection and to have damage or defects repaired prior to outgating the equipment is a violation of FMCSA 392.7. The ingate images clearly showed in this case a slid area identical to the repair photos.

DISCUSSION

The panel has carefully reviewed all documents and evidence submitted by the parties. The Motor Carrier Panel member indicated that, as the Motor Carrier points out, the Equipment Provider did not initially provide copies of the Recorded Images in accordance with UIIA Section D.2.a. However, the Equipment Provider provided the images at a later date to justify the repair invoices. While the facility where the Motor Carrier outgated the equipment may not have provided adequate photographs, the Motor Carrier is required to perform a pre-trip inspection in accordance with UIIA Section D.3.b., inspecting items addressed in Exhibit A to the UIIA. Tire damage, as identified in this claim, is specified for review in Exhibit A. As the Motor Carrier outgated the equipment without noting the corresponding damage, the Motor Carrier either failed to adequately perform a pre-trip

inspection (and thereby assumed responsibility for any non-compliant damages) or damaged the equipment in its possession. In addition, the photos provided by the Equipment Provider make the damage appear recent in nature. The Rail panel member concurred and stated that the AGS image also shows the cut tire and a time stamp and the ingate images show damaged tires. Had the Equipment Provider not provided photos supporting the claim at a later date, these invoices would not be in accordance with the UIIA. However, since they were later provided and the damage identified in the pictures is consistent with the invoices, the panel finds in favor of the Equipment Provider.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL

The panel relied upon the following provisions from the UIIA (July 20, 2022) to make its decision:

D. Equipment Interchange

2. Equipment Interchange Receipts

a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10].**

3. Equipment Condition

b. Motor Carriers will conduct a pre-trip inspection prior to departing with interchanged Equipment that will include those items set forth in Exhibit A to this Agreement. **[Item Re-numbered 10/01/18]**

e. Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[06/13/16]**

E. Equipment Use

3. Damage to Equipment

a. Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession. **[Revised 09/01/09]**

2) To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of a gate transaction using Recorded Images such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 10/01/18]**

Exhibit A of the UIIA – Item 8

8. Tires (Check that the following conditions are not present.)

- a. Tire is flat, underinflated or has noticeable (e.g., can be heard or felt) leak.
- b. Any tire with excessive wear (2/32nds or less thread depth), visually observable bump, or knot apparently related to tread or sidewall separation.
- c. Tire is mounted or inflated so that it comes in contact with any part of the vehicle. (This includes any tire contacting its mate in a dual set.)
- d. Seventy-five percent or more of the tread width is loose or missing in excess of 12 inches (30cm) in circumference.

DECISION

The panel unanimously finds in favor of the Equipment Provider based on the evidence and supporting documentation presented in the case. Although the Equipment Provider did not initially provide copies of the recorded images, it provided the images at a later date that reflected the damage billed. Additionally, since the Motor Carrier outgated the equipment without noting the corresponding damage, the Motor Carrier either failed to adequately perform a pre-trip inspection as required under Section D.3.a. of the UIIA or damaged the equipment while it was in its possession. Therefore, the Motor Carrier is responsible for the payment of the disputed invoices.

CASE REVIEWED AND DECIDED BY

BEN BANKS

Motor Carrier Panel Member

STEVEN CHAVEZ

Rail Panel Member