

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between)	
	)	Case: 20090311-2-XXXL-MR-OTH
UIIA Motor Carrier)	
Appellant, and	)	DECISION
	)	May 5, 2009
UIIA Equipment Provider)	
Respondent.)	

FACTS: Motor Carrier (MC) received two maintenance and repair invoices from Equipment Provider (EP).

Invoice MI08640790 dated 11-07-08 for “rebill for side panel cut, rail bent, and box returned dirty”. Back-up to invoice indicated “Estimate of Repairs”. Outbound TIR from VIT-NIT at 12:56 on 10-10-08 reported no damage. Inbound TIR from VIT-NIT at 12:23 on 10-13-08 reported “M&R Exceptions: Front/Side Panels”.

Invoice MI08640800 dated 11-07-08 for “rebill for damage to side panel, and 2 locking bar guilds”. Back-up to invoice indicated “Estimate of Repairs”. Outbound TIR from VIT-NIT at 16:47 on 9-04-08 reported no damage. Inbound TIR from VIT-NIT at 10:21 on 9-08-08 reported “M&R Exceptions: Front/Side Panels”.

BASIS OF CLAIM: MC asserts that the proper repair invoice required in the UIIA Section E.3.a.1) was not furnished. An estimate was furnished which is in conflict with this provision. Items not shown as damaged on the inbound TIR were charged on the invoice. The age of the container indicates the damage is probably old damage and was not shown on the outbound TIR and probably should not have been on the inbound TIR.

DISCUSSION: UIIA Section E.3.a.1) requires the EP to provide a copy of the actual repair bill and to include factual documentation supporting the Provider’s determination that the MC is responsible when billing for damage to equipment. The EP failed to meet both requirements. The inbound TIR fails to describe any damage to the container and the EP did not prove the repair was made.

DECISION: Based on the fact the EP failed to comply with the invoicing requirements specified in the UIIA, the panel unanimously finds in favor of the MC. The EP is not entitled to receive compensation for either repair invoice.

DAVID MANNING
Motor Carrier Member

PATRICK VALENTINE
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between)	
	)	Case 20090615-1-XXXO-MR-TRSF
UIIA Motor Carrier)	
Appellant, and	)	DECISION
	)	July 31, 2009
UIIA Equipment Provider)	
Respondent.)	

FACTS: Equipment Provider (EP) invoiced Motor Carrier (MC) for five “flat spot” tires on a chassis after the chassis was terminated at UP in Marion, AR.

Invoice STNR001104 dated 5-14-09 indicated labor and parts for “flat spots on LRO, RRI, RRO, LRI, and RFO”. The outbound TIR from Infinity in West Memphis at 16:59 on 3-20-09 reported no damage. The inbound TIR at UP Marion at 16:55 on 3-20-09 reported “Damage will not be reported on ingate or outgate receipts. Defects will be captured on recorded images”. The recorded images provided clearly showed the RFO tire had slid flat damage.

BASIS OF CLAIM: MC asserts that wording on UP TIR is not consistent with language required by UIIA, there was no documentation proving the repair had been made because the attached document showed “estimate” and did not show the vendor’s name, and the recorded images did not clearly substantiate all damages reflected on the invoice.

DISCUSSION: While the language on the UP TIR is not verbatim the language cited in the UIIA Section D.2.c. the UP language clearly communicates the message that defects will be captured on recorded images instead of written on the TIR. The repair invoice submitted as back-up by the EP is sufficient to prove the repairs were made. The only damage that can be observed from the recorded images provided is to the RFO tire. The recorded images clearly show this tire has slid flat damage.

DECISION: The panel unanimously finds in favor of the MC for four of the five tires invoiced because EP failed to provide the factual documentation as required under Section E.3.a.(1) indicating that damage was recorded at the time of interchange as required under D.2. of the UIIA. The panel unanimously finds in favor of the EP for the cost of replacing the RFO tire because proof of damage was recorded at the time of interchange as required by Section D.2.. Based on the invoice the amount for the RFO tire is \$00.00

DAVID MANNING
Motor Carrier Member

PATRICK VALENTINE
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between)	
	)	Case 20090803-1-XXXE-MR-TRSF
UIIA Motor Carrier)	
Appellant, and	)	DECISION
	)	September 23, 2009
UIIA Equipment Provider)	
Respondent.)	

FACTS: Equipment Provider (EP) invoiced Motor Carrier (MC) repairs. Damages were to two tires that EP invoiced as damaged from being slid flat. MC maintains that the damage to the tires was a preexisting condition that was not noted on the gate out.

BASIS OF CLAIM: Invoice 855096117A was issued in the amount of \$00.00 by the EP and tendered to the MC. MC contests the invoice, providing a statement that says the MC's driver had seen the damage prior to the gate out and was told that the gate cameras would pick up the damage. No handwritten notation of the damage was made prior to the gate out. MC asks that on the basis of the alleged statements made by Driver Assistance personnel about the AGS photo capability that the invoice be cancelled.

DISCUSSION: The DRP reviewed the documents provided by the EP and MC. The gate out photos do not seem to indicate any existing damages to the tires. EP provided the following statement: "According to our M&R department invoice 855096117A 06/26/09 \$00.00 is due for payment.

Reason: " I have attached the 2 LS views for this gate. There is nothing clear cut from this outgate photo that Flexi-van Leasing may take as evidence of prior damage to re-bill the rail road for slid flat tires. The determination of carrier responsibility stands for the LIR and LOR tires on this invoice."

The EP had noted other physical damage, the cost of which under the rules of Exhibit B to the UIIA was borne by the EP. On the same TIR the EP noted the damaged tires, which were invoiced to the MC.

From what we can see from the data provided the unit was signed out clean, and damages that were noted were memorialized on the gate in TIR. The TIR was signed by both the driver and gate operator. No notations that the damage was preexisting were made at the time of the in gate exchange.

As the EP has no specific tire related language in its addenda, the panel draws upon the UIIA for governing language.

3. Damage to Equipment

Motor Carrier shall pay to Provider the reasonable and customary costs to repair damages done to Equipment during Motor Carrier's possession.

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 11/05/08]**

4. Tires

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 7/25/07]**

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

8.b. states Any tire with excessive wear (2/32nds or less thread depth), visually observable bump, or knot apparently related to tread or sidewall separation.

Upon review of the documentation provided, and the language governing such transactions found in the UIIA it appears that the EP has performed in accordance with the agreement.

DECISION: The panel unanimously finds in favor of the EP in the matter of Invoice 855096117A, the EP has provided sufficient data to support its invoice to the MC. The documentation provided by the MC did not provide any reason to doubt that the damage as recorded on the in gate TIR was other than as it was described and invoice.

The Panel unanimously agrees that the invoice in the amount of \$00.00 is to be paid by the MC to the EP, and that the costs of this Appeal are to be borne by the MC.

DAVID MANNING
Motor Carrier Member

PATRICK VALENTINE
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between)	
	)	Case 20090903-1-XXXV-MR-OTH
UIIA Motor Carrier)	
Appellant, and	)	DECISION
	)	November 11, 2009
UIIA Equipment Provider)	
Respondent.)	

FACTS: The MC disputed six M&R invoices in this case. Each invoice involved a loaded import container received from UMS-Miami with the empty returned to Miami Container Repair. The EP utilized Newport Systems to invoice the MC.

In each instance, Miami Container Repair provided an inbound inspection with the notation, "This is a gate receipt only. Equipment pending damage inspection." The inbound inspection provided to the driver had no damage noted. A subsequent copy, provided by the EP, listed the damage which was invoiced to the MC.

BASIS OF CLAIM: MC asserts that the UIIA requires the damages to be recorded while the driver is present.

DISCUSSION: The MC is correct in its assertion. 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. EP clearly failed to comply with this requirement. Additionally, Section E.3.a.1). requires the EP to provide proof the MC is responsible for the damage when EP invoices MC for damage. Since the damage was not recorded at the time of interchange, there is no proof the equipment was damaged at the time the MC returned it to the EP.

DECISION: The panel unanimously finds in favor of the MC on all six invoices being disputed. Based on Sections D.2.a. and E.3.a.1.

EP shall be responsible for the \$50 administrative fee.

DAVID MANNING
Motor Carrier Member

PATRICK VALENTINE
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

In the Dispute Between)	
)	
)	
UIIA Motor Carrier	)	Case Number: 20100325-2-XXXH-MR-OTH
Appellant, and)	
)	
UIIA Equipment Provider	)	Date of Decision: 08/09/2010
Respondent)	

UNDISPUTED FACTS: Motor Carrier (MC) out-gated the unit at the City of Industry terminal in Los Angeles, CA on 11/10/2009 at 8:42 and in-gated the unit at the Los Angeles terminal on the same day at 15:43.

Invoice R44456, that was invoiced on a rebill 010031, in the amount of \$00.00 indicated the job code 4622- Side Post, Cond.: 1-Replace w/new, Defect: 14-Cut, Torn, Location: LSR. The out-gate EIR/J1 reported no damage. The in-gate EIR indicated the following: Broken Posts – Left Center, Broken Posts – Left Center and the in-gate J1 indicated: Job Code Description: 4622 SidePost, Location: LSC Left Side Center, Why Made: 03 Broken.

ISSUE: MC asserts that when comparing the in-gate J1 with the invoice description of the damages, the damages are not related. MC also asserts that when they handled this unit 4 months prior, the out-gate J1 shows extensive damages to the posts on the LR and LC. The MC feels that they are being charged for damages that already exist on the unit. EP asserts the repairs reported made by the trailer vendor were for a why made code of “Cut/Torn” and that the “Cut/Torn” is interchangeable with a why made code of “Broken” under the UIIA. “Broken” was the why made code reported on the in-gate J1. The out-gate J1 was clean.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. UIIA provision E.3.a.1 states, that 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 Providers’ determination that the MC is responsible. The MC claims that the damage reported on the EP’s invoice are not related. The panel finds that the EP did not meet the requirements of UIIA provision E.3.a.1 for valid invoicing.

UIIA PROVISIONS RELIED UPON BY DISPUTE RESOLUTION PANEL:

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 panel unanimously finds in favor of the MC.

CASE REVIEWED AND DECIDED BY:

JEFF LANG
Motor Carrier Member

JANICE SCHAUB
Rail Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

In the Dispute Between)	
)	
UIIA Motor Carrier	)	Case Number: 20101201-1-XXXP-MR-OTH
)	
Appellant, and)	
)	
UIIA Equipment Provider	)	Date of Decision: 02/25/2011
Respondent)	

UNDISPUTED FACTS: The Motor Carrier (MC) received a maintenance and repair invoice from the Equipment Provider (EP) dated 11/09/2010 for repairs that were done to the landing leg on the chassis. The outgate EIR shows that the chassis was picked up at the UP yard in IL (a non AGS gate facility) with no remarks or damages noted. The ingate EIR from the EP's rail facility indicated "Damage is captured on Recorded Images", images were provided for review.

Invoice JMS91743 (Bill Number) 3DM8557, in the amount of \$00.00 indicated the job code as: 3163 – Landing Leg, Non, Cond: Replace w/new, Defect 02-Bent, Location: LS.

ISSUE: MC asserts that this damage was preexisting & feels that they should not have been charged for damage they did not cause.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. Under provision E.3.a. of the UIIA (November 18, 2010), "Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession." The EP's ingate EIR shows a recorded image of the damage noted in EP's invoice. Therefore, under this provision the MC is responsible for the damage noted in Invoice JMS91743.

UIIA PROVISIONS RELIED UPON BY DISPUTE RESOLUTION PANEL:

The panel relied upon the following provisions from the UIIA (November 18, 2010) to make its decision:

E. Equipment Interchange... 3. Damage 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]**

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

CASE REVIEWED AND DECIDED BY:

ROBERT CURRY
Motor Carrier

JAMES FITZGERALD
Rail Carrier

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

BINDING ARBITRATION PANEL REVIEW AND DECISION

In the Dispute Between)	
)	
)	
UIIA Motor Carrier	)	Case Number: 20110528-2-XXXR-MR-OTH
Appellant, and)	
)	
UIIA Equipment Provider	)	Date of Decision: August 15, 2011
Respondent)	

UNDISPUTED FACTS: The outgate EIR states that the MC outgated a unit at the Seagirt Marine Terminal on 04/21/2011, and notes: "0247: Damaged Bent: left bottom rail."

According to the repair invoice: "Holiday OT Service, 4/22/2011, [MC] called with gen oolg 103369 was leaking fuel so they shut it off to stop the leak. Inspect unit to find that genset was hit in front and the impact caused the fuel filter to push against the injection pump and get punctured. I straightened the front cover, replaced the fuel filter and a piece of the fuel line."

On 04/26/2011 the equipment was returned to Picorp, Inc. and the ingate EIR showed no notation of damage.

The EP sent the Motor Carrier invoice number 147242 from Multimarine Services, Inc., in the amount of \$337.38 for repairs to the genset.

Pictures were provided for review, but they were not taken at an AGS gate facility.

ISSUE: The MC argues that the front of the genset did not appear to show any real damage. MC feels that the genset was damaged before it was put on the container and that it started leaking fuel when they picked it up. MC is basing their claim on Section H.2 of the UII Agreement.

EP states that they have consulted their MNR and they reviewed the pictures of the genset and they confirmed the damages were done by thy MC.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. Under UIIA, Section E.3.a., the "Motor Carrier shall pay to Provider the reasonable and customary costs for repairs Damages done to the Equipment during Motor Carrier's possession." In this case, the damage to the genset was not noted on the out-gate EIR. The in-gate EIR showed no damage because the repair was made before the MC in-gated the equipment. Therefore, the damage occurred while the equipment was in the MC's possession, and the MC is responsible for the repairs invoiced.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

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

E. Equipment Use....3 Damage of 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]

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

CASE REVIEWED AND DECIDED BY:

VAL NOEL
Motor Carrier Member

MIKE WILSON
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

BINDING ARBITRATION PANEL REVIEW AND DECISION

In the Dispute Between)	
)	
)	
UIIA Motor Carrier	)	Case Number: 20110624-5-XXXP-MR-TR
Appellant, and)	
)	
UIIA Equipment Provider	)	Date of Decision: 10/20/2011
Respondent)	

UNDISPUTED FACTS: The Motor Carrier (MC) received the following two M & R invoices from the Equipment Provider (EP) on June 7, 2011 for tire damage:

Invoice 1 – Invoice 177190, dated May 17, 2011 in the amount of \$00.00 indicated damage as 1116-Radial Tire, 3-Replace, 14-Cut, Torn, Location: ROF.

Invoice 2 – Invoice 177313, dated May 17, 2011 in the amount of \$00.00 indicated damage as 1115 –Bias Tire, 3-Replace, 34-Slid Flat, Location: LOR and 1509-Tube, Replace w/new, 01-Associated With, Location: LOR.

The two invoices' ingate EIRs noted "Damage is Captured on Recorded Images" (CSX Bedford Park – AGS facility). The outgate EIRs taken at CSX Chicago 59 Terminal noted no damage.

ISSUE: Both invoices involved a repositioning of the unit from CSX 59th Street to CSX Bedford Park. MC indicates that CSX 59th Street is not an AGS location and the terminal will not allow the driver to write up scrape/scuff marks on tires out-gating. MC argues that the charges received on the two invoices were for old wear and tear (scuff marks) on the tires and that they only had the equipment in their possession for 35 minutes so could not have caused the wear and tear. MC indicates that both chassis were repaired one week after the MC in-gated the equipment so there is no way to determine if the chassis may have been damaged after it was in-gated to CSX by some other persons in the rail yard. MC argues that the damage invoiced is not consistent with the types of damage for which a MC may be responsible under Section D.3.d.1., D.3.d.3 and Exhibit C of the UIIA.

EP believes charges are justified as invoiced. Units were both out-gated from CSX 59th Street Chicago with no damages listed on the out-gate EIRs, however both were in-gated with damages as shown on AGS images (included as part of case). EP states that no other moves were made by these chassis prior to the repair dates. EP states that MC requested recorded images pertaining to the prior out-gate and in-gate move for these units, however EP declined request since prior moves involved another MC company and did not pertain to charges being invoiced.

EP argues that both invoices are correct under the UIIA Section D.3.d.(1) and Exhibit A. The EP also claims that the MC violated Federal Motor Carrier Safety Regulation 49 C.F.R. § 392.7.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. The panel finds as follows:

Invoice 1 – The panel members split on the resolution of Invoice 1. The rail panel member believed that the EP provided enough evidence to support the damage invoiced because the outbound J1 did not contain any notation that damage was present on tire. Section VI, Item C, of the EP's Addendum requires the MC

to inspect and to note on the EIR any damage to equipment prior to taking the equipment out of the facility. The EP provided images from the ingating of the equipment showing a cut tire to prove the damage invoiced. If the damage was present on the chassis prior to outgate, the MC failed to follow the EP's instructions to report the damage prior to outgate. Although this may be a common practice for cross-town MCs, it does not comply with the EP's policy and Federal Motor Carrier Safety Regulation 49 C.F.R. § 392.7(b) requiring a pre-trip inspection of intermodal equipment.

The MC panel member agreed with the rail panel member's points, but did not believe the ingate AGS image clearly demonstrated the invoiced damage. The image depicts a defect, but does not conclusively show that the tire is cut through one or more plies of fabric, the description of tire damage listed in Exhibit C of the UIIA as a MC responsibility. Therefore the MC panel member found the MC could not be held responsible for Invoice 1 under UIIA section E.3.a.(1).

Because these two modal panel members were unable to agree to a resolution of Invoice 1, the third panel member was brought in under Exhibit D to the UIIA. The third panel member reviewed the evidence and found that the AGS image did not illustrate the damage stated in this invoice and, therefore, did not prove the MC was responsible for the invoice under Section E.3.a.(1).

Invoice 2 – The Panel finds that under UIIA section D.3.d.1, the EP provided sufficient evidence to support the damage described on Invoice 2.

PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

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

Section E.3.a.(1):

"To be valid, invoices must detail the repairs done; include a copy of the factual 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 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."

D. Equipment Interchange... 3. Equipment Condition...

"d. 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:

Invoice 1 – The majority of the panel finds in favor of the MC.

Invoice 2 – The panel unanimously finds in favor of the EP.

CASE REVIEWED AND DECIDED BY:

DAVE MANNING
Motor Carrier Member

BARRY D. MICHAELS
Rail Carrier Member

PATRICK VALENTINE
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

BINDING ARBITRATION PANEL REVIEW AND DECISION

In the Dispute Between)	
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)	
UIIA Motor Carrier)	Case Number: 20110712-6-XXXP-MR-OTH
Appellant, and)	
)	
UIIA Equipment Provider)	Date of Decision: 10/24/11
Respondent)	

UNDISPUTED FACTS: The Motor Carrier (MC) received an M&R invoice from the Equipment Provider (EP) on a unit that was outgated at the Union Pacific (UP) Global 2 facility and ingated at the CSX Bedford Park facility.

Invoice BP05021104, dated 05/02/2011, in the amount of \$00.00, stated the following: "Job Code: 3350-DOTUnder-rideGuard/3354 DOTBumperUPright/3354 DOTBumperUpright, Cond: 1-Replace w/new/8-Straighten/8Straighten, Defect: 02-Bent, Locations: R/RR/LR."

The UP Global & CSX Bedford Park facilities are both AGS equipped. The EIR's noted "Damage is captured on Recorded Images". All images have been provided for review.

ISSUE: MC disputes the invoice stating that the ingate and outgate EIR/AGS images show the same damage. The MC is basing their dispute on Section D.2.a and Section D.3.d of the UIIA as stated below:

Section 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 return the Equipment to the Provider in the same condition, reasonable Wear and Tear excepted.

EP declined the dispute arguing that if the invoiced damage existed when the motor outgated the equipment, then the MC failed to inspect the equipment before outgating it in compliance with federal motor carrier safety rule 49 C.F.R. 392.7(b) and as required Section D.3.a and Exhibit A of the UIIA.

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.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. The panel reviewed the images and determined that the damage on the ingate and outgate appeared to be the same. Under section E.3.a of the UIIA, the motor carrier is only responsible for damages done to the equipment during the motor carrier's possession. In this case, there is no other evidence that supports that the damage was done during the motor carrier's possession.

PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

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

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]**

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

CASE REVIEWED AND DECIDED BY:

KEVIN LHOTAK
Motor Carrier Member

GERRY BISAILLON
Rail Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

BINDING ARBITRATION PANEL REVIEW AND DECISION

In the Dispute Between)	
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)	
UIIA Motor Carrier,)	Case Number: 20111011-2-XXXI-MR-OTH
Appellant, and)	
)	
UIIA Equipment Provider,)	Date of Decision: 03/12/2012
Respondent)	

UNDISPUTED FACTS: The Motor Carrier (MC) received five maintenance and repair invoices from the Equipment Provider (EP) that show the following:

Invoice 1 - Invoice C174102 (Bill Number) 3EH8508 is dated 08/02/2011 for the amount of \$00.00. The repair description states:

“Job Code: 3350-DOT Under-ride Guard, Cond: 8-Straighten, Defect: 02-Bent, Location: R.”

The out-gate EIR at the UP Global 2 and the in-gate EIR at the CSX Bedford Park facility noted “Damage is captured on recorded images.” Images have been provided for review.

Invoice 2 – Invoice C170064 (Bill Number) 3EH8568 is dated 08/09/2011 for the amount of \$00.00. The repair description states:

“Job Codes: 3354-DOT Bumper Upright, Cond: 8-Straighten, Defect: 02-Bent Location: RR;
Job Codes: 3354-DOT Bumper Upright, Cond: 8-Straighten, Defect: 02-Bent Location: LR.”

The out-gate EIR at the BNSF facility and the in-gate EIR at the CSX Bedford Park facility noted “Damage is captured on recorded images.” Images have been provided for review.

Invoice 3 – Invoice C175450 (Bill Number) 3EH8724 is dated 08/23/2011 for the amount of \$00.00. The repair description states:

“Job Code: 3355-DOT Bumper Horizon, Cond: 1- Replace w/new, Defect: 02-Bent, Location: R;
Job Code: 3354-DOT Bumper Upright, Cond: 1-Replace w/new, Defect: 02-Bent, Location: RR; and
Job Code: 3354-DOT Bumper Upright, Cond: 8-Straighten, Defect: 02-Bent, Location: LR.”

The out-gate EIR at the BNSF facility and the in-gate EIR at the CSX Bedford Park facility noted “Damage is captured on recorded images.” Images have been provided for review.

Invoice 4 – Invoice C174175 (Bill Number) 3EH8568 is dated 08/09/2011 for the amount of \$00.00. The repair description states:

“Job Codes: 3355-DOT Bumper Horizon, Cond: 1-Replace w/new, Defect: 03-Broken, Location: R
Job Code: 3354-DOT Bumper Upright, Cond: 1-Replace w/new, Defect: 02-Bent, Location: RR
Job Code: 3354-DOT Bumper Upright, Cond: 8-Straighten, Defect: 02-Bent, Location: LR.”

The out-gate EIR at the CSX Chicago 59th facility indicated no damage and shows the Carrier as: Pacer Cartage. The in-gate EIR at the CSX Bedford Park facility noted “Damage is captured on recorded

images.” Images have been provided for review. Carrier name on the ingate EIR shows as the MC disputing the invoice (C&K Trucking).

Invoice 5 – Invoice C173081 (Bill Number) 3EH8568 id date 08/09/2011 for the amount of \$00.00. The repair description states:

“Job Code: 3163-Landing Leg Non-Gea, Cond: 1-Replace w/new, Defect: 02-Bent, Location: LS;
Job Code: 3144 Landing Leg Mounting, Cond: 1-Replace w/new, Defect: 02-Bent, Location: LS;
Job Code: 3183-Crossshaft/Timing Bar, Cond: 1-Replace w/new, Defect: 02-Bent, Location: U
Job Code: 3121-Landing Leg Cross Cha., Cond: 1-Replace w/new, Defect: 02-Bent, Location: U.”

The out-gate EIR at the CP Railway indicated no damage. The in-gate EIR at the CSX Bedford Park facility noted “Damage is captured on recorded images.” Images have been provided for review.

ISSUE:

Invoices 1, 2 & 3 – The MC disputes these invoices stating that the out-gate AGS images display the same damage caught on the in-gate AGS images from the CSX Bedford Park facility. The MC is basing their claim on Section D.3.d.1, Exhibit B & C of the UIIA and VI.C of the EP’s addendum to the UIIA on all three invoices.

The EP responded to the dispute stating per Exhibit A of the UIIA the motor carrier is required to do a pre-trip inspection of the equipment prior to use, which includes the ICC Bumper. EP argues that the DOT bumpers on all three units clearly show bent under frame and that the MC is in violation of FMCSA regulations. EP also argues that the driver should have had the units fixed prior to out-gating the equipment. The EP is declining the MC’s dispute per Section D.3.a and Exhibit A of the UIIA, Section VI.C of the EP’s addendum to the UIIA as well as AAR Intermodal Interchange Rules Appendix B, B15. DOT Override Guard.

Invoice 4 – The MC disputes the fact that they out-gated this unit and stated that another MC company did. The MC is basing their dispute on Section F.3 of the UIIA and also H.1 of the UIIA since they feel that the EP did not respond to their dispute within the required timeframe.

The EP responded to the MC’s dispute by stating that the unit was ingated by their company as shown on the in-gate EIR.

Invoice 5 – The MC disputes this invoice due the fact that the landing legs were in the raised position which means there was no apparent issue with the landing gear. In addition, the MC argues that the EP did not respond to their dispute within the required timeframe under Section H.1 of the UIIA.

The EP responded to the MC’s dispute by stating that it is the MC’s responsibility to inspect the equipment before outgate. EP argues that the landing legs should be in a 90 degree position and that the AGS gate photo clearly shows that the landing leg is bent. EP is declining the MC’s dispute per Exhibit A of the UIIA.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. The panel finds as follows:

Invoice 1 – The first two panel members disagreed over the interpretation of UIIA E.3.a.1 regarding the Equipment Provider’s obligation to provide factual documentation that the MC is responsible for the damage being billed. Therefore, the third panel member was brought in under Exhibit D to the UIIA. Under provision E.3.a.1 of the UIIA (April 14, 2011), the Provider is required to submit along with its invoice, factual documentation supporting its determination that the Motor Carrier is responsible for the damage. The third panel member reviewed both AGS images presented with this case and finds that the images depict that the condition of the equipment was the same both at the time of out-gate and subsequent in-gate. Therefore, the third panel member finds that the Equipment Provider did not satisfy the language under UIIA E.3.a.1.

Invoice 2 – 5 The panel members find that the Equipment Provider failed to respond to the MC's dispute within the timeline established under Section H.1 of the UIIA.

PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

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

E. Equipment Interchange....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]**

AND

H. Default Dispute Resolution and Binding Arbitration Processes:

1. In absence of a dispute resolution process contained in the Provider's Addendum **that establishes timeframes for signatories to the Agreement to dispute invoices and respond to the dispute with respect to per diem or maintenance and repair invoices**, the following **default** dispute resolution process will apply:

Invoiced Party shall advise **Invoicing Party** in writing of any disputed items on invoices within 30 days of the receipt of such invoice(s). **Invoicing Party** will respond in writing to such disputed items within 30 days of receipt of **Invoiced Party's** notice. **The Invoiced Party will have 15 days from the date of the Invoicing Party's response to either pay the claim(s) or seek arbitration.** Such disputes do not constitute valid grounds for withholding or delaying payments of undisputed charges as required by the Terms of this Agreement. **[Revised 04/14/11]**

DECISION:

Invoice 1 – The majority of the panel finds in favor of the MC.

Invoice 2 - 5 – The panel unanimously finds in favor of the MC.

CASE REVIEWED AND DECIDED BY:

BARRY D. MICHAELS
Rail Carrier Member

DAVE MANNING
Motor Carrier Member

PAT VALENTINE
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

BINDING ARBITRATION PANEL REVIEW AND DECISION

In the Dispute Between)	
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)	
UIIA Motor Carrier)	Case Number: 20111013-8-XXXP-MR-TR
Appellant, and)	
)	
UIIA Equipment Provider)	Date of Decision: 01/17/2012
Respondent)	

UNDISPUTED FACTS: The Motor Carrier (MC) received three M & R invoices from the Equipment Provider (EP) on August 30, 2011 for tire damage.

Invoice 1 - Invoice 190710 is dated July 21, 2011, for the amount of \$00.00. The repair description states: "Job Code: 1116-Radial Tire, Cond: 3-Replace, Defect: 14-Cut, Torn, Location: LOF".

Invoice 2 - Invoice 192766 is dated July 6, 2011 in the amount of \$00.00. The repair description states: "Job Code: 1116-Radial Tire, Cond: 3-Replace, Defect: 34-Slid Flat, Location: ROR."

Invoice 3 - Invoice 192238 is dated June 28, 2011 in the amount of \$00.00. The repair description states: "Job Code: 1115-Bias Tire, Cond: 3-Replace, Defect: 34-Slid Flat, Locations: LOF" and "Job Code: 1115-Bias Tire, Cond: 3-Replace, Defect: 34-Slid Flat, Locations: ROR."

The three invoices were for equipment out-gated from non-AGS gate facilities (CP Railway and NS 47th). The out-gate EIRs report no damage. The in-gate EIRs on all three invoices noted "Damage is Captured on Recorded Images" (CSX Bedford Park – AGS facility). All AGS images have been provided for review.

ISSUE: The MC reports that all three moves involved repositioning of the units from one facility to another (crosstown moves). MC argues that the charges received on all three invoices were for old wear and tear. The MC argues that because the units were in their possession for under 40 minutes per move, there would have been no way they could have caused old wear and tear to the units as shown on the AGS gate images. The MC points out that these chassis were repaired a week after in-gate and that the one unit was repaired 41 days after in-gate. The MC argues that because the AGS images do not show the tire damage, and because there were no "tread depth" readings noted on the driver's ingate or on any of the repair bills, the evidence does not support the type of damage it may be liable for under Section D.3.d. (1), D.3.d. (3) and Exhibit C of the UIIA.

EP believes charges are justified as invoiced. Units were out-gated with no damages listed on the out-gate EIRs, however both were in-gated with damages as shown on AGS images (included as part of case). EP declined the challenge to all three invoices based on Section D.3.a. (1), D.3.d (1), G.11 and Exhibit C of the UIIA. EP also states that MC violated DOT FMCSR 392.7(b).

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. After reviewing the in-gate AGS image provided, the panel finds as follows:

Invoice 1 – The first two panel members were unable to agree upon what the evidence showed, therefore, the third panel member was brought in under Exhibit D to the UIIA. Under provision E.3.a. of the UIIA (April 14, 2011), "Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages

done to Equipment during Motor Carrier's possession." The third panel reviewed the in-gate AGS image and found that the image clearly indicates that the tire is cut.

Invoice 2 – The first two panel members were unable to agree upon what the evidence showed, therefore, the third panel member was brought in under Exhibit D to the UIIA. Under provision E.3.a. of the UIIA (April 14, 2011), "Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession." The third panel reviewed the in-gate AGS image and found that image clearly indicates the slid flat damage and considerable tread depth difference.

Invoice 3 – The first two panel members were unable to agree upon what the evidence showed, therefore, the third panel member was brought in under Exhibit D to the UIIA. Under provision E.3.a. of the UIIA (April 14, 2011), "Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession." The third panel reviewed the in-gate AGS image and found that the image of the left outside front tire clearly indicates the slid flat tire damage and significant tread depth difference. However, the AGS image of the right outside rear tire does not clearly indicate evidence of significant slid flat damage and therefore does not satisfy provision E.3.a of the UIIA.

In addition, at the time of possession drivers are required to perform a pre-trip inspection. If these were pre-existing damages, then the drivers should have had the tires repaired or chassis replaced prior to departure from the terminal. The argument of "no tread depth measurement" at an AGS gate is irrelevant because tread depth measurements are not taken at non-AGS gates either.

PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

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

E. Equipment Interchange....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]**

DECISION:

Invoice 1 and 2 – The majority of the panel finds in favor of the EP.

Invoice 3 – The majority of the panel finds in favor of the EP in part. The panel finds that the MC is not liable for the "ROR" damages described in Invoice 3.

CASE REVIEWED AND DECIDED BY:

VAL NOEL
Motor Carrier Member

JANICE SCHAUB
Rail Carrier Member

MIKE WILSON
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

BINDING ARBITRATION PANEL REVIEW AND DECISION

In the Dispute Between)	
)	
UIIA Motor Carrier	)	Case Number: 20120821-3-XXXX-MR-OTH
Appellant, and)	
)	
UIIA Equipment Provider	)	Date of Decision: 11/12/2012
Respondent)	

UNDISPUTED FACTS: The Equipment Provider (EP) sent the Motor Carrier (MC) a Maintenance & Repair invoice in the amount of \$00.00 and dated 08/02/12.

Invoice 074337 shows the following repair: "Repair Type: Replace/Replace, Damage: Missing/Lost, Component: Marker Lights – ID Lights, Location: CF1N, Damage: Slid Flat, Component: Recap Tire."

The out-gate EIR from Unlimited CY indicated no damage. The in-gate EIR indicated the following: "Container Comments: lof sf llt ms llt bo, Chassis Comments: lof sf llt ms llt bo." A place for driver notation is provided at the bottom of the EIR. The EIR also states "list of damage codes and corresponding descriptions is available, see signs at our gate or go to www.imsdepot.com."

ISSUE: The MC disputes the invoice stating that Unlimited and Integrated Marine Services (IMS) forbid drivers the right to make notations on any interchange. The MC feels that because Unlimited and IMS did not allow them to record the physical condition of the equipment at the time of interchange they should not be responsible for the damages. The MC is basing their dispute on Section D.2.a. of the UIIA.

GCCP responded on behalf of the EP by stating, if the unit has damage that is DOT legal and is not requiring to be repaired, the unit will not be repaired. GCCP states that they have a procedure in place where the MC is provided the means to notate the damage upon their pre-trip inspection prior to out-gating. That procedure is as follows:

- Notify GCCP M&R upon their pre-trip inspection prior to outgating.
- An e-mail may be sent to gccp.houston@ccmpool.com referencing the chassis number, the outgate facility and a specific list of damages prior to outgate.
- Once that e-mail is received GCCP M&R will advise the MC to see the repair vendor. If the repair vendor determines damages need repair they will make the necessary repairs.
- If the damages are determined to be DOT legal, then the MC will be advised to proceed with outgate and to keep that e-mail as their notations on the outgate interchange.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. Under UIIA, Section D.3., the MC "will return the Equipment to the Provider in the same condition, reasonable Wear and Tear expected." At the time of out-gate the EIR listed no damages and was signed by the MC's driver. Although the EIR process outlined by GCCP in their comments is not consistent with Section D.2.a, the panel determined that the out-gate EIR has a remarks space where the MC's driver could have recorded the damages. Furthermore, when the equipment was in-gated the driver again had the opportunity to dispute the notations, but did not. The panel finds that the MC has failed to comply with

Section D.3.d. of the UIIA and that the EP satisfied its requirements for billing under Section E.3.a.(1). The MC is responsible for the damage listed on Invoice 074337.

Note the panel requests that GCCP also be notified that their current EIR process needs to be modified to be consistent with Section D.2.a. of the UIIA.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (June 10, 2012) to make its decision:

D. Equipment Interchange....3. Equipment Condition

d. Motor Carrier will return the Equipment to the Provider in the same condition, reasonable Wear and Tear excepted.

E. Equipment Use....3. Damage of 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 panel unanimously finds in favor of the EP.

CASE REVIEWED AND DECIDED BY:

DAVE MANNING
Motor Carrier Member

AL SMERALDO
Ocean Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

BINDING ARBITRATION PANEL REVIEW AND DECISION

In the Dispute Between)	
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)	
UIIA Motor Carrier)	Case Number: 20120822-4-XXXX-TRSF
Appellant, and)	
)	
UIIA Equipment Provider)	Date of Decision: 11/08/2012
Respondent)	

UNDISPUTED FACTS: The Equipment Provider (EP) sent the Motor Carrier (MC) a Maintenance & Repair invoice in the amount of \$00.00 dated 07/26/2012.

Invoice 072994 listed the following repair: "Repair Type: Replace, Damage: Slid Flat, Component: Recap Tire, Location: CLIF/CLOF".

The out-gate EIR from Bayport Container Terminal listed no damage. The in-gate EIR indicated the following: "Container Comments/Chassis Comments: lif sf lof sf res 2 lts 1 lt brkn 1 fmclif sf lof sf res 2 lts 1 lt brkn 1 fmcs a exp and r mf to short". A notation is listed at the bottom of the EIR that states "list of damage codes and corresponding descriptions is available, see signs at our gate or go to www.imsdepot.com."

ISSUE: The MC disputes the invoice stating that Integrated Marine Services (IMS) forbids drivers the right to make notations on any interchange. The MC feels that because they are not allowed to notate the physical condition of the equipment at the time of interchange they should not be responsible for the damages. The MC is basing their dispute on Section D.2.a. of the UIIA.

GCCP responded on behalf of the EP by stating, if the unit has damage that is DOT legal and is not requiring to be repaired, the unit will not be repaired. GCCP confirms that they do have a procedure in place where the MC is provided the means to notate the damage in the form of an e-mail notification sent to GCCP M&R upon their pre-trip inspection prior to out-gating the facility, which shows as follows:

- An e-mail may be sent to gccp.houston@ccmpool.com referencing the chassis number, the outgate facility and a specific list of damages prior to outgate.
- Once that e-mail is received GCCP M&R will advise the MC to see the repair vendor. If the repair vendor determines damages need repair they will make the necessary repairs.
- If the damages are determined to be DOT legal, then the MC will be advised to proceed with outgate and to keep that e-mail as their notations on an outgate interchange.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. Under UIIA, Section E.3.a.1, the EP must "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 this case, the EP presented an out-gate EIR which does not reflect the drivers' name nor does it provide a place for the driver to notate damages. Therefore, the EP failed to comply with Section E.3.a.1 of the UIIA by providing factual documentation to supports its invoice. In addition, the panel finds that the GCCP's pre-trip inspection procedure is inconsistent with the requirements under UIIA, Section D.2.a.

Note the panel requests that GCCP also be advised that their current EIR process needs to be modified to be consistent with Section D.2.a. of the UIIA.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (June 10, 2012) to make its decision:

E. Equipment Use....3 Damage of 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]**

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 MC.

CASE REVIEWED AND DECIDED BY:

DAVE MANNING
Motor Carrier Member

AL SMERALDO
Ocean Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

BINDING ARBITRATION PANEL REVIEW AND DECISION

In the Dispute Between)	
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UIIA Motor Carrier)	Case Number: 20120822-5-XXXX-TR
Appellant, and)	
)	
UIIA Equipment Provider)	Date of Decision: 11/12/12
Respondent)	

UNDISPUTED FACTS: The Equipment Provider (EP) sent the Motor Carrier (MC) a Maintenance & Repair invoice in the amount of \$00.00 and dated 08/02/2012.

Invoice 074347 listed the following: "Repair Type: Replace, Damage: Cut, Component: Recap Tire, Location: CROF."

The out-gate EIR from UP Englewood indicated no damage. The in-gate EIR indicated the following: "Remarks: ROF Cut."

ISSUE: The MC disputes the invoice stating that UP and Empire Truck Lines forbid drivers the right to make notations on any interchange. The MC feels that the EP cannot charge for damages because they were not allowed to record the physical condition of the equipment at the time of interchange. The MC is basing their dispute on Section D.2.a. of the UIIA.

GCCP responded on behalf of the EP by stating, if the unit has damage that is DOT legal and is not requiring to be repaired, the unit will not be repaired. GCCP states that they have a procedure in place where the MC is provided the means to notate the damage upon their pre-trip inspection prior to out-gating. That procedure is as follows:

- Notify GCCP M&R upon their pre-trip inspection prior to outgating.
- An e-mail may be sent to gccp.houston@ccmpool.com referencing the chassis number, the outgate facility and a specific list of damages prior to outgate.
- Once that e-mail is received GCCP M&R will advise the MC to see the repair vendor. If the repair vendor determines damages need repair they will make the necessary repairs.
- If the damages are determined to be DOT legal, then the MC will be advised to proceed with outgate and to keep that e-mail as their notations on the outgate interchange.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. Although, the GCCP EIR process outlined above is not consistent with Section D.2.a. of the UIIA, the panel found after further investigation that the UP Englewood facility does in fact allow MCs the ability to notate damage on the outgate EIR. Consequently, the driver would have had the ability to notate the condition of the equipment at the time of interchange as provided under Section D.2.a., however the out-gate EIR showed no damage being reported by the driver. In addition, the in-gate EIR provided to the driver showed the notation of ROF cut, so the MC's driver also had the opportunity to dispute the damage at the time of in-gate. Therefore, the panel finds that the MC failed to comply with Section D.3.d of the UIIA, which states that the MC "will return the Equipment to the Provider in the same condition, reasonable Wear and Tear

expected.” In addition, the panel determined that the EP satisfied its requirements for billing under Section E.3.a.(1). Consequently, the MC is responsible for the damage listed in Invoice No. 074347.

Note the panel requests that GCCP also be advised that their current EIR process needs to be modified to be consistent with Section D.2.a. of the UIIA.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (June 10, 2012) to make its decision:

D. Equipment Interchange....3. Equipment Condition

d. Motor Carrier will return the Equipment to the Provider in the same condition, reasonable Wear and Tear excepted.

E. Equipment Use....3. Damage of 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 panel unanimously finds in favor of the EP.

CASE REVIEWED AND DECIDED BY:

DAVE MANNING
Motor Carrier Member

AL SMERALDO
Ocean Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

BINDING ARBITRATION PANEL REVIEW AND DECISION

In the Dispute Between)	
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UIIA Motor Carrier)	Case Number: 20120829-3-XXXI-MR-OTH
Appellant, and)	
)	
UIIA Equipment Provider)	Date of Decision: 2/1/2013
Respondent)	

UNDISPUTED FACTS: The Equipment Provider (EP) sent the Motor Carrier (MC) a Maintenance & Repair invoice number 270795, dated 06/01/2012, in the amount of \$205.00. The invoice stated "1290-Tire Disposal Fee and 1116-Radial Tire, Cond.: 7-Labor Only and 3-Replace, Defect 13-Run Flat (listed twice), Loc: LIR (listed twice)."

The J1 out-gate EIR, dated 05/23/2012, lists the MC's name and notes no damage. The in-gate EIR submitted by the MC, dated 05/23/2012, states that MC Transportation in-gated the unit on 05/23/2012 at the Kansas City Southern facility and notes no damage.

ISSUE: The MC disputes that it was the handling carrier at the time the damage occurred. The MC argues that the in-gate EIR shows no damage to the unit and, therefore, they feel they were released from responsibility for the unit. The MC argues they were not in possession of the unit on the date of the service by EBS, 5/29/2012 and that the EP did not provide an out-gate record demonstrating otherwise. The MC is basing their dispute on section E.3.a.(1) of the UIIA.

The EP responded, "This dispute stems from the issue of a street interchange. The challenge associated with allocating damage responsibility with street interchanges has long been an issue discussed at the UIIA IIEC. At one time, language was proposed to address street interchanges, but was voted down. As a result, the damage assessment still goes to the out-gate carrier and states as much in the UP Addendum to the UIIA, Rule 7.B. to which MC has agreed to and signed. In both cases, MC was the out-gating carrier."

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. The first two panel members were unable to agree upon what the evidence showed. A third panel member was brought in under Exhibit D to the UIIA. The MC out-gated the equipment on 05/23/2012 with no damage recorded on the EIR. On the same day the MC in-gated the equipment at a KCS facility where the in-gate interchange documentation showed no damage. The EIR interchange documentation presented in the case provided sufficient evidence that the MC was not in possession of the equipment at the time the damage occurred. There was no subsequent out-gate EIR provided by the Responding Party indicating that MC had out-gated the equipment after 5/23/2012. Because the EP did not provide sufficient factual documentation to support its determination that the MC was responsible for the charges, the third panel member finds in favor of the MC based on Section E.3.a.(1). If there had been no clean in-gate EIR documentation presented in this case then the EP's addendum would have been applied, but the interchange documentation presented in this case clearly shows that the MC was not in the possession of the equipment at the time the damage occurred.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

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

E.3.a.(1) – Damage to Equipment

- 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.

DECISION: The majority of the panel finds in favor of the MC.

CASE REVIEWED AND DECIDED BY:

ROBERT CURRY
Motor Carrier Member

JAMES FITZGERALD
Rail Carrier Member

DICK DESIMON
Ocean Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

BINDING ARBITRATION PANEL REVIEW AND DECISION

In the Dispute Between)	
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)	
UIIA Motor Carrier,)	Case Number: 20121001-7-XXXF-MR-OTH
Appellant, and)	
)	
UIIA Equipment Provider,)	Date of Decision: 03/04/2013
Respondent)	

UNDISPUTED FACTS: The Equipment Provider (EP) sent the Motor Carrier (MC) a Maintenance & Repair (M&R) Invoice NJ-08-12-323, dated 07/09/2012, in the amount of \$00.00. The invoice described the following: "This container was returned damaged as noted(R/Bottom Panel Cut) & was repaired as shown."

The out-gate EIR from the Maher Terminals indicated the following: "Inspection: Right Side Panel Bent Usable, Left Bottom Rail Bent Usable, Left Side Panel Bent Usable, Rear Top Header Bent Usable, Front Panel Bent Usable, Roof Bent Usable." The in-gate EIR from the Columbia Container yard noted the following handwritten notation: "Comp. PAA, Loc. RBON, DMG: CU (there was another notation under DMG but was scratched out), REP.: GW, Damage Description: Minor."

ISSUE: The MC feels that the damage was properly recorded on out-gate, but the notation that was made by the Columbia Container Yard on in-gate was crossed out and changed to "CU". The MC believes that the original notation was a "bent panel", but then changed to "cut". The MC bases their dispute on Exhibit C of the UIIA.

The EP responded by stating "No additional response added/needed."

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. The panel finds in favor of the EP. Under provision E.3.a of the UIIA "the Motor Carrier shall pay to Provider the reasonable and customary cost to repair damages done to the Equipment during Motor Carrier's possession." The evidence shows that when the equipment was out-gated the EIR noted no "cut" damage, on the other hand, when the equipment was in-gated, the EIR document noted "CU" damage. In addition, at the time of out-gate the MC had the opportunity to reject the equipment or refuse the interchanges as written as allowed under provision D.2.a: "The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Image taken at the time of Interchange." Therefore, the MC is responsible for the damage listed in invoice NJ-08-12-323.

PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (June 10, 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]**

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 panel unanimously finds in favor of the EP.

CASE REVIEWED AND DECIDED BY:

FRED HUENNEKENS
Motor Carrier Member

ROBERT CANNIZZARO
Ocean Carrier Member

**UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT
BINDING ARBITRATION PANEL REVIEW AND DECISION**

In the Dispute Between)	
)	
)	
UIIA Motor Carrier,	)	Case Number: 20121106-1-XXXR-MR-OTH
Appellant, and)	
)	
UIIA Equipment Provider,)	
Respondent	)	Date of Decision: 03/15/2013
)	

UNDISPUTED FACTS: A third-party vendor, EBS on behalf of the Equipment Provider (EP) sent an invoice to the Motor Carrier (MC) for roadside repair for tire damage. Invoice 292738, dated 10/25/2012, in the amount of \$00.00. On the first page of the invoice the "Directions/Comments" states the following: "Called in for 1 tire//JAT Mike on site advised that rim split and wedged in between hub has to go back to shop to get other truck with jack to lift unit to replace tire 1845//JAT rim blew half wheel was smoking cut hole in break shoe. Cutting off tire rim hub chaining up and moving down to RT 30 to safer location sending pics and est 2007//JAT unit needs hub brake shoes drum and one tire//JAT pics in email awaiting est in the morning//JAT 10-22-12 TT vndr Mike, will fwd pics, estimate./Jac.TT Chris @ MC @ 816 he said hold off on making the repairs/amn//sent estimate/TAA gave the vendor approval/TAA." A second comment is found on page two of the invoice stating the following: "Tech estimated repairs, back to the unit, replaced wheel hub, bearings, brake drum, brake shoe, wheel seal, axle nuts, tire, rim, checked operation."

The Motor Carrier (MC) out-gated the unit at the Union Pacific Global 4 facility on 10/21/2012 at 15:39. The same day at 16:49 a call was placed by the MC to the Emergency Breakdown Service (EBS) stating that they had a tire blowout.

The AGS gate images and additional photos of the tires have been provided by the MC and EP for review.

ISSUE: The MC asserts that this tire damage was not caused by impact and that the tire was an inside tire, the outside tire was fine and showed no signs of impact. The MC stated that the rim had blown apart due to rust and also bent the brakes and hub. The MC is basing their dispute on Section E.4.b of the UIIA.

The EP responded to the MC's dispute stating that the LIR tire failed as a result of being severely cut and destroyed by impact damage. The EP stated that the photos show that the LIR rim is badly dented and gouged and that the rim came apart after the damage occurred. The EP also stated that the LR hub assembly is badly damaged, dented and sustained a 4 inch-hole through the assembly. The EP asserts that this damage could have only occurred by the chassis coming into contact with a foreign object and causing significant impact damage to the hub. The EP believes that the damage sustained is the result of driver abuse and therefore is not reimbursable in accordance to the UIIA.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. The panel finds that based on the images that show rust and wear combined with the location of the damage on the equipment, the EP did not satisfy their obligation under provision E.3.a.1) of the UIIA. Furthermore, it is common practice for roadside repair vendors, such as EBS, to determine the cause and responsibility for

the repairs they perform. There is nothing listed in the comments provided by EBS regarding this repair that would indicate that the MC caused the damage to this equipment.

PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (June 10, 2012) to make its decision:

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 panel unanimously finds in favor of the MC.

CASE REVIEWED AND DECIDED BY:

FRED HUENNEKENS
Motor Carrier Member

ROBERT CANNIZZARO
Ocean Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

BINDING ARBITRATION PANEL REVIEW AND DECISION

In the Dispute Between)	
)	
)	
UIIA Motor Carrier	)	Case Number: 20130204-2-XXXJ-MR-OTH
Appellant, and)	
)	
UIIA Equipment Provider)	
	)	Date of Decision: 04/22/2013
Respondent)	

UNDISPUTED FACTS: The Equipment Provider sent the Motor Carrier (MC) an invoice for Maintenance & Repair.

Invoice T170268, dated 09/14/2012 and for the amount of \$00.00, stated the following: "M & R on containers, New York-Polaris Con." The back-up documentation to the invoice is a "Repair Estimate." The Repair Estimate identified the following as the MC's responsibility: "Replace Front Top Rail, Replace Front Header Pan, Straighten Front Panel, Section Roof, Straighten Roof, Straighten Locking Bars." The following items were identified as not being the MC's responsibility: "Str/Weld R/S Panels, STR/WELD L/S Panels."

The equipment was out-gated at the Port Newark Container Terminal (PNCT) facility on 07/12/2012, and the EIR stated the following: "13094: Damage in hold. Do not reuse. Do not return GATU8667339 to PNCT; 0247: Damage pushing out: right side/left side." The in-gate EIR dated 07/17/2012 noted the following under Container Damage: "Front Header Right Outer Panel RT Upper ISO Panel LFT Upper ISO Door Bar Left DB2N BT GS2."

Pictures were provided by the MC, but PNCT is not an AGS gate facility.

ISSUE: The MC argues to the fact that they did not damage the unit by hitting an overpass and believes that the "old container" was damaged by a container handling machine at the pier. The MC is basing their dispute on E.3.a .1) of the UIIA.

There were no comments received from the EP regarding this case.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. The panel finds in favor of the Motor Carrier. The EP failed to comply with the timeframe prescribed under provision H.1. of the UIIA. In addition, the panel requested proof of repairs from the EP. The EP failed to respond and therefore did not satisfy the requirements of provision E.3.a.1) of the UIIA.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (June 10, 2012) to make its decision:

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]**

H. Default Dispute Resolution and Binding Arbitration Processes

1. In absence of a dispute resolution process contained in the Provider's Addendum that establishes timeframes for signatories to the Agreement to dispute invoices and respond to the dispute with respect to Per Diem or maintenance and repair invoices, the following default dispute resolution process will apply:

Invoiced Party shall advise Invoicing Party in writing of any disputed items on invoices within 30 days of the receipt of such invoice(s). Invoicing Party will respond in writing to such disputed items within 30 days of receipt of Invoiced Party's notice. The Invoiced Party will have 15 days from the date of the Invoicing Party's response to either pay the claim(s) or seek arbitration. Such disputes do not constitute valid grounds for withholding or delaying payments of undisputed charges as required by the Terms of this Agreement. **[Revised 04/14/11]**

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

CASE REVIEWED AND DECIDED BY:

DAVE MANNING
Motor Carrier Member

AL SMERALDO
Ocean Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

BINDING ARBITRATION PANEL REVIEW AND DECISION

In the Dispute Between)	
)	
)	
UIIA Motor Carrier	)	Case Number: 20130226-1-XXA-MR-OTH
Appellant, and)	
)	
UIIA Equipment Provider)	
Respondent	)	Date of Decision: 04/25/2013

UNDISPUTED FACTS: The Equipment Provider (EP) sent the Motor Carrier (MC) an invoice for Maintenance & Repair.

Invoice 11390840, dated 02/07/2013 and in the amount of \$00.00, stated the following: "BSIU-221360-9, Rebill for Heavy Damages to Right and Left Rails and Panels. Returned to VIT on 1/15/2013."

The back-up documentation to the invoice is an "Estimate of Repairs." The Estimate of Repairs stated the following: "Rail-Assembly, Broken/Split; Rail-Assembly, Broken/Split; Panel-Steel Corrugated, Bent; Panel-Steel Corrugated, Bent; Panel-Steel Corrugated, Broken/Split; Header Extension, Bent, Straighten; Ventilator Assembly, Remove for Access, Remove and Refit; Cargo Secure Device Assembly, Broken/Split; Panel -Steel Corrugated, Misaligned, Re-align." After each one of the descriptions listed on the Estimate of Repairs it states "Material is not specified." Comments listed on the Estimate of Repairs listed "Container was low bridged."

The equipment was out-gated at the Norfolk International Terminals (NIT) facility on 01/14/13 at 16:20. The out-gate EIR notes no damage. The NIT in-gate EIR dated 01/15/2013 at 14:42 recorded the following: "M&R Exceptions: Rail/Corner Posts".

The EP provided a copy of the survey report performed by CMC on 01/17/2013, along with the survey photos.

ISSUE: The MC feels that they are being invoiced for "old" damage to a container that they had in their possession for less than 24 hours. The MC argues the statement on the survey report that states that the unit was "low bridged". The MC asserts that the images clearly show rust around the damage & that the damage was on both side rails, not the top rail. The MC is basing their dispute on D.3.d and E.3.a.1) of the UIIA.

The EP declines the MC's dispute based on the following reasons:

- No damage was noted on the out-gate EIR;
- The survey report found to have signs of "low bridge" damage, as also noted on the repair estimate;
- The in-gate EIR indicated Rail/Corner Post damage; and
- The EP feels that the damage is from impact to the top/front area of the unit.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. The panel finds in favor of the Equipment Provider. When the equipment was out-gated the EIR noted no damage. However, at the time the equipment was in-gated the EIR reported damage. The images submitted in

this case appear to be old damage. However, the MC's driver had the opportunity to dispute the damage at the time of in-gate but did not. Consequently, the MC failed to comply with provision D.3.d of the UIIA and the invoice provided by the EP does satisfy the language in provision E.3.a.1) of the UIIA.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (November 12, 2012) to make its decision:

D. Equipment Interchange....3 Equipment Condition

- d. Motor Carrier will return the Equipment to the 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]**

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 panel unanimously finds in favor of the EP.

CASE REVIEWED AND DECIDED BY:

DAVE MANNING
Motor Carrier Member

AL SMERALDO
Ocean Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

BINDING ARBITRATION PANEL REVIEW AND DECISION

In the Dispute Between)	
)	
)	
UIIA Motor Carrier	)	Case Number: 20130306-1-XXXM-MR-OTH
Appellant, and)	
)	
UIIA Equipment Provider)	
Respondent	)	Date of Decision: 05/03/2013

UNDISPUTED FACTS: The Equipment Provider sent the Motor Carrier (MC) a Maintenance & Repair invoice.

Invoice 11453140, dated 02/20/2013 in the amount of \$00.00, stated the following: "UACU-535671-1; Rebill for damages to flooring."

The out-gate EIR shows that the unit was picked up at the Georgia Ports Authority (GPA) on 10/30/2012 with the following damage noted: "0247: Damaged LFO: tire has a flat spot; 0000:lfi spot." The in-gate EIR dated 11/03/2012 noted the following: "0361: Take container UACU5356711 to yard position TP07007; 0247: Damaged Floor: has a hole. 0000:hole in floor."

Pictures were provided by the EP, but GPA is not an AGS gate facility.

ISSUE: The MC argues that the repairs to the floor are a result of normal wear and tear and not damage. The MC states that because the unit was sealed there was no way to note preexisting damage to the floor on out-gate. The MC believes that the floor had previously been repaired in the same area making it weaker than normal, based on the images that were provided to them by the EP. The MC is basing their dispute on Exhibit B of the UIIA and the AAR Rules Section G.

The EP responded to the MC's dispute by stating that the damage to the floor was a result of impact/abuse by the MC. The EP stated that the photos that were provided shows proof that the damage was from impact and was not a result of normal wear and tear.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. The panel finds in favor of the Motor Carrier. At the time of out-gate the container was under load and no inspection of the floor was done. Therefore, there is no supporting evidence that confirms that the MC is responsible for damages as required in E.3.a.1) of the UIIA. In addition, Section D.3.d (3) of the UIIA states that Sections B, F & G of the AAR Intermodal Interchange Rules will be utilized as the controlling document for disputes arising in connection with classification of wear and tear. Section G.88. of the AAR Rules identifies that repairs to the floor are the responsibility of the EP.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (November 12, 2012) to make its decision:

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]**

D. Equipment Interchange....3 Equipment Condition

- d. Motor Carrier will return the Equipment to the Provider in the same condition, reasonable Wear and Tear excepted.
- 3) In any disputes arising in connection with classification of Wear and Tear, the Association of American Railroads TOFC/COFC Interchange Rules, Sections B, G, and F, shall be the controlling document.

AAR Intermodal Interchange Rules

**SECTION G
ORDINARY MAINTENANCE**

88. Owner Responsibility

Repairs, renewals, or replacement of the following components shall be at the expense of the unit owner, except where directly associated with a component with Section F damage:

* * * *

- q. Floor or decking

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

CASE REVIEWED AND DECIDED BY:

DAVE MANNING
Motor Carrier Member

AL SMERALDO
Ocean Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

BINDING ARBITRATION PANEL REVIEW AND DECISION

In the Dispute Between)	
)	
)	
UIIA Motor Carrier,	)	Case Number: 20130517-2-XXXP-MR-OTH
Appellant, and)	
)	
UIIA Equipment Provider,	)	Date of Decision: 07/25/2013
Respondent)	

UNDISPUTED FACTS: The Equipment Provider (EP) sent the Motor Carrier (MC) a Maintenance & Repair invoice L57776, dated 12/28/2012, in the amount of \$00.00. The invoice stated the following: "Job Code: 4622-SidePost (listed twice); Cond.: 1-Replace w/new and the other showed H-Overlay, Defect: 03-Broken (listed twice), Loc: RSC (listed twice)."

The out-gate EIR shows that the unit was picked up at the Norfolk Southern Morrisville, Pennsylvania yard (non-AGS) on 11/25/12 with no damage noted. The in-gate EIR dated 11/29/2012 shows that the unit was in-gated at the same location noting the following damage: "Job codes: 0 no defects and 4622 SidePost listed twice; Locations: C Complete Trailer Rig, LSC Left Side Center and RSC Right Side Center; Why Made codes: 91 No, 14 Cut and Torn listed twice; Qty: 1, 2 and 5."

A prior in-gate EIR (from another company), dated 11/21/2012 was provided by the MC that showed the following damage: "Cat: Door Gasket, Side Panel and Side Post (listed twice); Loc: RR, RSC (listed twice) and RSF; Qty. 1, 5 (listed twice) and 2; RSN: Loose, Cut/Torn (listed twice) and Broken."

ISSUE: The MC disputes the invoice stating that the damage on their in-gate EIR is the same damage that was noted on the prior in-gate from a different company. The MC also stated that the repair invoice was never provided by the EP showing that the repairs had been made to the unit. The MC believes that the damage was pre-existing due to the prior in-gate showing the same damage they are being billed for. The MC is basing their dispute on Section E.3 of the UIIA.

The EP responded to the MC's dispute stating that the out-gate reported no damage & the in-gate reported damage. The EP contends that if Damage was pre-existing the MC has the obligation to report the damage at the time of out-gate.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. The panel finds in favor of the Motor Carrier. When the equipment was out-gated the EIR noted no damage. At the time the equipment was in-gated the EIR reported damage. However, the in-gate EIR describes the damage as "Cut/Torn" and the repair invoice states a description of "Broken." The repair detail on the invoice does not match the damage described in the in-gate EIR. Therefore, the EP failed to satisfy the requirements under provision E.3.a.1 of the UIIA.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (November 12, 2012) to make its decision:

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 panel unanimously finds in favor of the MC.

CASE REVIEWED AND DECIDED BY:

FRED HUENNEKENS
Motor Carrier Member

JANICE SCHAUB
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)

Case Number: **20130905-3-XXXP-MR-OTH**

Date of Decision: 12/02/2013

UNDISPUTED FACTS: The Equipment Provider (EP) sent the Motor Carrier (MC) an invoice on 08/13/2013 that included the repair estimate cost, container details (manufactured date & CSC plate number) and "Current D.V. of \$00.00 (Repairable)." A second invoice number 7222724 (repair invoice) dated 08/27/2013, in the amount of \$00.00 was sent to the EP by Mason Dixon Intermodal indicating the following floor repairs:

Replace #2 LS Floor Board 4x8FT o FPP BL2MN BR RP	Replace #2 LS Floor Board 4x8FT o FPP BL2MN BR RP
Replace #2 RS Floor Board 4x8FT o FPP BR2N BR RP	Replace #3 LS Floor Board 4x8FT o FPP BL3N BR RP
Replace #3 RS Floor Board 4x8FT o FPP BR3N BR RP	Section #4 LS Floor Board 4x4FT o FPP BL4N HO SN

The out-gate EIR shows that the MC out-gated a sealed unit from the CSX rail facility in Detroit on 07/29/13 with no damage noted. The in-gate EIR from Mason Dixon Intermodal, dated 07/30/2013 stated the following floor damage: "Repl 4X8 plywood floor" was listed 3 times together with the descriptions listed above on the repair invoice.

Pictures have been provided by the EP and the MC for review. However, neither CSX nor Mason Dixon Intermodal is an AGS gate facility.

ISSUE: The MC's dispute is based on the following reasons:

- The MC states that they out-gated the container as a loaded, sealed shipment, with no way to inspect the condition of the floor, or note any potential pre-existing damage on the outbound TIR.
- Exhibit A of the UIIA sets forth the items that are the MC's responsibility to visually & audibly check prior to the use of the equipment, but has no mention of checking the container's floor, especially when it is a sealed unit.
- The MC believes that the floor was too weak to handle normal unloading practices and that the damage was caused by normal wear and tear.
- The MC stated that the EP only supplied them with a repair "estimate" as the supporting documentation to the invoice. The actual repair invoice from Mason Dixon was not supplied to them until the MC formally requested it from the EP.

The MC is basing their dispute on the following Sections of the UIIA: D.3.a(1), D.3.d(3), E.1, E.3.a(1), Exhibit A & Exhibit C of the UIIA.

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

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. The panel finds in favor of the Motor Carrier. When the container was out-gated, the container was loaded and sealed. Therefore, the MC was in no position to inspect the floor prior to out-gate. No supporting evidence has been presented to confirm that

the MC is responsible for the damage as prescribed under E.3.a. 1) of the UIIA. Provision D.3.d (3) of the UIIA states that Section B, F & G of the AAR Intermodal Interchange Rules will be utilized as the controlling document for disputes arising in connection with classification of wear and tear. Section G.88 of the AAR Rules identifies that repairs to the floor are the responsibility of the EP.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (November 12, 2012) to make its decision:

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]**

D. Equipment Interchange....3 Equipment Condition

- d. Motor Carrier will return the Equipment to the Provider in the same condition, reasonable Wear and Tear excepted.

3) In any disputes arising in connection with classification of Wear and Tear, the Association of American Railroads TOFC/COFC Interchange Rules, Sections B, G, and F, shall be the controlling document.

AAR Intermodal Interchange Rules

SECTION G ORDINARY MAINTENANCE

88. Owner Responsibility

Repairs, renewals, or replacement of the following components shall be at the expense of the unit owner, except where directly associated with a component with Section F damage:

* * * *

- q. Floor or decking

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

CASE REVIEWED AND DECIDED BY:

KEVIN LHOTAK
Motor Carrier Member

NIEL DESMOND
Ocean Carrier Member

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

Date of Decision: 10/23/2013

Based on the prior decision case 20130306-1-XXXM-MR-OTH & its applicability to this current claim, at the time of outgate the container was under load and no inspection of the floor was done. Therefore, there is no supporting evidence that confirms that the MC is responsible for damages as required in E.3.a.(1) of the UIIA. In addition, Section D.3.d (3) of the UIIA states that Sections B, F & G of the AAR Intermodal Interchange Rules will be utilized as the controlling document for disputes arising in connection with classification of wear and tear. Section G.88. of the AAR Rules identifies that repairs to the floor are the responsibility of the EP.

PROVISION PRIOR & CURRENT CLAIM DECISION BASED ON:

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]**

D. Equipment Interchange....3 Equipment Condition

- d. Motor Carrier will return the Equipment to the Provider in the same condition, reasonable Wear and Tear excepted.

3) In any disputes arising in connection with classification of Wear and Tear, the Association of American Railroads TOFC/COFC Interchange Rules, Sections B, G, and F, shall be the controlling document.

AAR Intermodal Interchange Rules

**SECTION G
ORDINARY MAINTENANCE**

88. Owner Responsibility

Repairs, renewals, or replacement of the following components shall be at the expense of the unit owner, except where directly associated with a component with Section F damage:

* * * *

- q. Floor or decking

DECISION: Found in favor of the MC.

Based on Exhibit D, Item 8 previous case decision 20130306-1-XXXM-MR-OTH

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

In the Dispute Between)	
)	
)	
UIIA Motor Carrier	)	Case Number: 20140115-12-XXXP-MR-TR
Appellant, and)	
)	
UIIA Equipment Provider	)	Date of Decision: 4/28/2014
Respondent)	

UNDISPUTED FACTS: The Equipment Provider (EP) sent the Motor Carrier (MC) a maintenance and repair invoice 3GN5294 dated 12/17/2013 in the amount of \$00.00 stating the following: " Repair Job: 1115-Bias tire, Condition: 1-Replace w/New, Why Made: 34-Slid Flat, Repair Location: LOF-Left Outside Front, Responsibility: D."

The out-gate J1 shows that this MC out-gated the unit at the CSX Bedford Park on 11/12/2013. The in-gate J1 shows that this MC in-gated the unit at the Union Pacific (UP)–Global II facility on 11/12/2013. Both facilities are AGS equipped and both the CSX out-gate at Bedford Park on 11/12/13 and the UP in-gate at UP Global II on 11/12/13 showed a clean out-gate and in-gate respectively. Recorded images have been provided.

EP provided a second in-gate EIR showing the SCAC code of another Motor Carrier company (NTPC), that in-gated the unit at the CSX Bedford Park on 11/19/2013.

ISSUE: The MC disputes the invoice stating that this was a cross-town move that was dispatched to the MC by UP to pick up the unit at CSX Bedford Park and to drop it at the Union Pacific Global II facility. The MC argues that the EP is providing them with an in-gate of another MC in-gating the unit back into CSX with damages noted. However, the MC feels that they were released from the equipment when they in-gated the unit at the Union Pacific yard. The MC is basing their dispute on Section E.3.a.(1) of the UIIA.

The EP declined the MC's dispute stating that the MC out-gated the unit at the CSX Bedford Park facility with no damage listed on EIR. The Unit was in-gated at the CSX Bedford Park facility with slid flat damage noted to the LOF tire. Therefore, the EP believes that the out-gating MC should be charged for damage to LOF tire per Section E.1 of the UIIA.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. The panel finds in favor of the MC. This case involves a cross-town move. The MC provided sufficient supporting documentation to support that they closed out their "interchange period" when they delivered the equipment to UP Global 2. This was substantiated by the MC providing a clean in-gate Equipment Interchange Receipt confirming the condition of the equipment at the time of in-gate to UP Global 2 facility. Consequently, the panel finds that the EP did not provide sufficient factual documentation to supports its determination that the MC was responsible for the charges in accordance with Section E.3.a.(1).

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (August 26, 2013) to make its decision:

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 panel unanimously finds in favor of the MC.

CASE REVIEWED AND DECIDED BY:

KEVIN LHOTAK
Motor Carrier Member

GERRY BISAILLON
Rail Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

In the Dispute Between)	
)	
)	
UIIA Motor Carrier	)	Case Number: 20140326-1-XXXV-MR-OTH/D8
Appellant, and)	
)	
UIIA Equipment Provider	)	Date of Decision: July 15, 2014
Respondent)	

UNDISPUTED FACTS: The Equipment Provider (EP) sent the Motor Carrier (MC) a Maintenance & Repair invoice number THNYC1300029, dated 12/11/2013, in the amount of \$00.00 for the repairs to two side panels.

The out-gate Trailer Interchange Receipt from New York Container Terminal (NYCT), dated 12/02/2013 stated the following: "Left top side rail & RTS –Bent, Fork lift pockets – Cut & Bent. The in-gate EIR, same terminal as out-gate (NYCT), listed the following damage: R/Side Panel/Int. Panel: Cut. R/Side Panel/Int. Panel: Bent."

ISSUE: The MC argues the fact that the EP originally billed them to the wrong address and therefore they did not receive the invoice until 96 days after the date of the invoice, which was March 17th. The MC attempted to dispute the invoice with the EP, but was advised by the EP that they were outside of the 30 day timeframe established under *Section III. Method of Dispute Resolution* contained in the EP's addendum to the UIIA, which requires the MC to dispute charges within 30 days from receipt of such invoice(s). MC is basing their dispute on G.14.b of the UIIA.

The EP responded to the MC's dispute stating that the MC should have provided change of address information via US mail to EP so that the information would have been updated in the EP's main address field within their internal system. The EP indicates that to assume that change of address information is updated via electronic means violates G.14.b., which states, "Notices required under this Agreement from Motor Carrier to Provider, or from Provider to Motor Carrier, shall be in writing and sent via e-mail, by confirmed facsimile or by first class mail, postage paid, and properly addressed". As the main address field was not updated in the EP's internal system, it can only be concluded that this was not the case. The EP believes the address mishap was a result of the failure of the MC to provide the address change to the EP via mail.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. The panel finds in favor of the MC. The evidence shows that the MC had timely notified IANA of the change of address as prescribed under provision G.14.b. of the UIIA. The EP's failure to amend their records resulted in sending the invoice to an incorrect address and failing to serve the invoice in a timely manner. In addition, the panel finds that the EP failed to fulfill its duty to supply the necessary documentation to support the invoice as required under E.3.a.1. of the UIIA.

PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (August 26, 2013) to make its decision:

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]**

G. General Terms

14. Notices:

b. Notices required under this Agreement from Motor Carrier to Provider, or from Provider to Motor Carrier, shall be in writing and sent via e-mail, by confirmed facsimile or by first class mail, postage paid, and properly addressed to IANA. Alternatively, such written Notice can be personally served, sent by registered or certified mail, postage prepaid, or by a national overnight courier or delivery service, properly addressed to the individual shown in the UIIA subscriber record. Either Party, at any time, may change its address by written Notice to IANA via e-mail, fax or mail. The earlier of (1) the date of receipt or (2) three days after the date such written Notice is given in accordance with this Paragraph shall constitute the initial date of Notice in computing the elapsed time as specified in any Notice requirement in this Agreement. **[Revised 05/12/10]**

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

CASE REVIEWED AND DECIDED BY:

AL SMERALDO
Rail Carrier Member

DAVE MANNING
Motor Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

In the Dispute Between)	
)	
UIIA Motor Carrier	)	Case Number: 20140805-7-XXXI-MR-OTH
Appellant, and)	
)	
UIIA Equipment Provider	)	Date of Decision: 11/03/2014
Respondent)	

UNDISPUTED FACTS: The Equipment Provider (EP) sent the Motor Carrier (MC) a maintenance and repair invoice 734729, dated 07/15/2014, in the amount of \$00.00. The invoice showed the following repairs: "Steel Top Rail; Steel left Side Panel Repair; Admin Charge." The Work Order provided to the MC with a copy of the invoice shows the following:

HRS/ QTY	RATE/ PRICE	LABOR	PARTS	TASK / PART DESCRIPTION
3.40	\$82.00	\$278.80		Rail, Top Side, Sect 48 INH - Bent [Left]
4	\$6.19		\$24.76	Rail Top Hyundai/Jindo HD - 2 3/8" Sq. Tubing Per Foot (310005)
.50	\$82.00	\$41.00		Panel, Left Side, Str 48 INH - Bent [P03]
1.60	\$82.00	\$131.20		Panel, Left Side, Ins 36x12 CMT - Cut [P03]
3	\$6.57		\$19.71	Panel Section (Per Sq. Foot - Incl. Labor For Fabrication) (319011)
1.00	\$82.00	\$82.00		Panel, Left Side, Str 48 CMT - Bent [P04]
1.20	\$82.00	\$98.40		Panel, Left Side, Ins 24x12 CMT - Cut [P06]
2	\$6.57		\$13.14	Panel Section (Per Sq. Foot - Incl. Labor For Fabrication) (319011)
1.00	\$82.00	\$82.00		Panel, Left Side, Ins 12x12 CMT - Cut [P07]
1	\$6.57		\$6.57	Panel Section (Per Sq. Foot - Incl. Labor For Fabrication) (319011)
		\$713.40	\$64.18	
Total Units Repaired: 1				

The Work Order also stated that the unit was surveyed by AGF on 6/4/14, and that images from that survey have been provided for review.

The out-gate EIR from Maher Terminals noted the following inspection: "Right bottom rail dent usable, Right corner post dent usable, Right top rail dent usable, Right side panel dent usable, Left bottom rail dent usable, Left corner post dent usable, Left top rail dent usable, Left side panel dent usable."

The in-gate EIR from Ironbound Intermodal facility noted the following: "stfi is pnls cut is top rail cut heavy."

ISSUE: The MC disputes that the out-gate damages are consistent with the in-gate damages. The MC feels that the out-gating clerk wrote up the damages as being "bent" and not "cut". The EIR displays the damage as "left top rail dent" and "left side panel dent". The in-gating clerk listed it as "cut to left side panel and top rail." The MC feels that this is the same damage caught on the in-gate EIR as on the out-gate EIR. The MC is basing their dispute on Section D.3.d. (1) and Exhibit C of the UIIA.

The EP responded to the MC's dispute by stating that the out-gate inspection from Maher terminals shows "usable dents," 14 days later the unit was in-gated at the Ironbound Intermodal facility with MAJOR

damage and "CUTS". The EP stated that they sent a marine surveyor AGF to Ironbound and that AGF submitted photos of the 48" cut in the side of the container. Those photos were then supplied to the MC as part of the supporting documentation that was sent as backup to the invoice.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. The panel finds in favor of the Equipment Provider. When the equipment was out-gated the EIR had the following remarks "Right bottom rail dent usable, Right corner post dent usable, Right top rail dent usable, Right side panel dent usable, Left bottom rail dent usable, Left corner post dent usable, Left top rail dent usable, Left side panel dent usable." At the time of out-gate the MC's driver had the opportunity to review and dispute the damage on the EIR, but did not do so. When the equipment was in-gated the EIR reported a "cut to left side panel and top rail." Consequently, the MC failed to comply with provision D.3.d of the UIIA, and the invoice provided by the EP satisfies provision E.3.a.(1) of the UIIA.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (February 10, 2014) to make its decision:

D. Equipment Interchange....3 Equipment Condition

- d. Motor Carrier will return the Equipment to the 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]**

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 panel unanimously finds in favor of the EP.

CASE REVIEWED AND DECIDED BY:

JEFFREY LANG
Motor Carrier Member

DAVE DALY
Ocean Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

In the Dispute Between

UIIA Motor Carrier
Appellant, and

UIIA Equipment Provider
Respondent

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)

Case Number: **20150414-4-XXXC-MROTH**

Date of Decision: 11/24/2015

The motor carrier disputes the following repair invoices:

	Invoice #	Container #	Inv. Date	Amount	Facility	Outgated	Ingated
1	MR1503000512001	HMCU9109522	3/3/15	\$00.00	Maher/Columbia Container	2/13/15	2/18/15
2	MR1503000015001	EISU1706500	3/2/15	\$00.00	Maher/Columbia Container	2/6/15	2/11/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Sections D.3.d (1) of the UIIA due to the unit being a sealed unit, which the Motor Carrier indicates precluded it from being able to inspect the floor damage.

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

There was no response received from Equipment Provider on this claim.

DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties. The Motor Carrier panel member indicated that the Motor Carrier was unable to inspect the interior of the containers at the time of out-gate because the containers associated with both invoices were sealed. Consequently, the Motor Carrier had no way to report any interior damage at the time of out-gate. In addition, the Motor Carrier panel member believes the Equipment Provider failed to provide the necessary documentation to demonstrate that the Motor Carrier was liable for the damages outlined in Section E.3.a.1 of the UIIA. The Ocean Carrier panel member finds in favor of the Motor Carrier and believes the charges should be waived due to the fact that the existing wear and tear to the floor weakened it and prevented normal forklift operations.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (January 26, 2015) to make its decision:

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]**

D. Equipment Interchange....3 Equipment Condition

- d. Motor Carrier will return the Equipment to the Provider in the same condition, reasonable Wear and Tear excepted.

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

CASE REVIEWED AND DECIDED BY:

ROBERT CURRY
Motor Carrier Member

DAVE DALY
Ocean Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

In the Dispute Between)
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)
UIIA Motor Carrier) Case Number: **20150508-1-XXXXR-MR-OTH**
Appellant, and)
)
UIIA Equipment Provider) Date of Decision: 09/01/2015
Respondent)

The motor carrier disputes the following invoice:

Invoice	Invoice #	Inv. Date	Amount
1	CHS9150598909T	5/14/2015	\$00.00

MOTOR CARRIER BASIS OF DISPUTE:

The Motor Carrier basis of dispute is that the Equipment Provider is billing for pre-existing damage. The Motor Carrier stated that prior to moving the container and chassis the driver conducted a routine inspection of the equipment. In doing so, the driver noticed damage to the chassis with a taillight out and a slit on the side of the container. The driver confirmed the damages noted with another driver and a port representative that was driving by, prior to moving the damaged container and chassis. The driver pulled the container forward and preceded to the M&R site to inform the M&R representative that the container was damaged. The M&R representative informed the driver to call dispatch and request a replacement container. However, the M&R representative advised the driver that he had just backed this container into the slot and that the driver caused the damage when the container was being pulled out. The Motor Carrier is basing its dispute on Section D.3.a (1) & E.3.a.(1) of the UIIA.

Equipment Provider did not respond to the Motor Carrier's dispute.

DISCUSSION:

The Motor Carrier believes it is not responsible for the invoice since the damage was pre-existing and their driver followed the correct protocol on identifying the damages, prior to moving the container off the facility.

DECISION:

The panel reviewed all documents and evidence submitted by the parties. The panel finds in favor of the Motor Carrier. Provision E.3.a.1) of the UIIA recites that "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 this case, while the actual repair bill was submitted, the Equipment Provider failed to provide factual documentation to support their determination that the Motor Carrier is responsible for the damage listed in these invoices.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (January 26, 2015) to make its decision:

D. Equipment 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]**

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 panel unanimously finds in favor of the Motor Carrier.

CASE REVIEWED AND DECIDED BY:

KEVIN LHOTAK
Motor Carrier Member

JAMES MICHALSKI
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

Case Number: **20151013-21-XXXP-MR-OTH**

Date of Decision: 02/08/2016

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

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

Inv	Invoice #	Chassis #	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	3JJ5449	UMXU246209	9/22/15	\$00.00	UP Yard Center/CSX Bedford Park	8/26/15	8/26/15	9/22/15	9/23/15	10/1/15	10/13/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section D.3.d of the UIIA. The Motor Carrier stated it is being billed for corner post damage for a cross-town move. The Motor Carrier outgated the equipment from the UP Yard Center facility (non-AGS) to CSX Bedford Park (AGS). The Motor Carrier reported that the unit was in its possession for 32 minutes. The Motor Carrier believes any damage would be reasonable wear and tear to the unit. The Motor Carrier argues that the AGS image provided by the Equipment Provider shows no damage/cuts or tears, only reasonable wear and tear. The Motor Carrier believes that if there was damage at the ingate, the EP would then J2 the damage back to the origin railroad. The Motor Carrier stated it returned the unit to EP in the same condition as it was received, reasonable wear and tear accepted. The Motor Carrier noted that the Equipment Provider did not provide proof that the damage was caused by the Motor Carrier.

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

The Equipment Provider did not respond to the arbitration claim. The Equipment Provider did respond to the Motor Carrier's initial dispute stating that since the Motor Carrier was unable to prove that the damage was pre-existing at the time of outgate from the UP facility, the Equipment Provider believes the Motor Carrier is responsible for the charges as billed.

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 states that the UIIA does not include any exceptions from reporting damage prior to interchange based on the length or type of movement involving the equipment. In addition, the time that the equipment was in the possession of the Motor Carrier, or the fact that this was a cross-town move, is not material to the damage issue. There is also no mechanism included in the UIIA for billing a third party for damage to equipment. The Motor panel member noted that the Equipment Provider's invoice referenced the following damage:

- "Why Made" description is "14 – Cut, Torn"
- "Repair Location" is listed as "LF – Left Front"
- The "Repair Job" is described as "4750 – Cornerpost – Steel"

The Motor Carrier panel member states that after reviewing the image included in the case file as well as the two separate images provided by the Equipment Provider, he did not see any damage that could be considered anything other than normal wear and tear. The Rail Carrier panel member stated that he is in agreement that the length of time and/or type of move is irrelevant in this case. In addition, the Rail panel member found that the photos show nothing more than normal wear and tear.

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

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 panel unanimously finds in favor of the Motor Carrier.

CASE REVIEWED AND DECIDED BY:

FRED HUENNEKENS
Motor Carrier Member

TIM WILLIAMS
Rail Carrier Member

The Equipment Provider argues that if a Motor Carrier has no liability for the condition of the flooring upon empty return, provided that it took possession of the container while it was sealed, that the Motor Carrier or their customers could cause damages to the interior of the container without having any liability for those damages. The Equipment Provider argues that a Motor Carrier could use the container for purposes not intended by the Equipment Provider, cause damage during that use, and then return the container with no way for the Equipment Provider to recover the costs of the repairs.

In addition, the Equipment Provider does not agree that an AGS images needed to be provided with the invoice in accordance with Section E.3.a.(1) since the damage being billed is to the inside of the container versus the outside. The Equipment Provider agrees that the damage related to the billing would not have been visible on the AGS image.

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 notes that the unit was removed under a seal number and, further, that AGS cannot detect floor damage prior to outgating a unit. Therefore, the Motor Carrier could not verify any floor damage prior to outgate, nor could the seal number be broken to inspect a floor with a loaded container. The Motor Carrier panel member states that while he does not believe all of the UIIA sections cited by the Motor Carrier apply, he does feel that Motor Carrier cannot be held responsible for the damage because the unit was under seal and not visible to the Motor Carrier until empty.

The Ocean Carrier panel member also found in favor of the Motor Carrier. The Ocean Carrier panel member agreed that the damages related to the claim would not have been visible on the AGS image(s), nor could the Motor Carrier conduct a proper inspection to determine if the damage was pre-existing. In addition, the Ocean Carrier panel member states that the Equipment Provider failed to provide sufficient factual document required by Section E.3.a(1) of the UIIA.

Also, to address the EP's comments regarding the MC not notifying them of the damage to the floor after it was empty and prior to ingating the unit, there is nothing outlined in the UIIA or EP's addendum that requires the MC to do so.

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]**

3. Equipment Condition

- d. 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]**

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]**

Exhibit A to UIIA - As referenced in Sections D.3.a.1 and F.4.b.

The following list sets forth those items, which the Motor Carrier has responsibility for visually or audibly checking prior to use of the 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 limitation of any federal or state legal requirements applicable to Motor Carrier with respect to use or operation of Equipment. [Revised 1/17/05]

Exhibit B to UIIA - Equipment Owners Responsibility

Floor or decking

Exhibit C to UIIA

Interior

Interior not free of dunnage, bracing and/or debris

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

Case Number: **20160527-3-XXXG-MR-OTH**

Date of Decision: 10/03/2016

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	6978	MEDU6662352	05/13/16	PNCT/APM Newark	4/27/16	4/28/16	5/13/16	5/26/16	5/26/16	5/27/16

The Motor Carrier's basis of dispute is Section D.2.a of the UIIA. The Motor Carrier submitted its basis and narrative relating to the initial dispute of the charges as its supporting documentation for this claim. The Motor Carrier stated that the damage shown in the picture is the same damage noted on the outgate. The language on the outgate was "damaged old marks and dents: right side and left side", which appears to accurately describe the damage shown in the photo. The Motor Carrier stated that a reasonable person outgating the container with that damage would accept the description on the outgate as accurate and would not have asked for a different description. Therefore, the Motor Carrier feels they are not responsible for this invoice

The Equipment Provider provided its response to the claim stating that the damage was not the same on both EIRs. The outgate EIR stated "0247: Damaged old marks and dents: right side/left side." The Equipment Provider noted that this type of notation is seen on many occasions and that it does not pursue any claims for minor wear and tear. However, the Equipment Provider indicated that is not the case in regards to the invoice billed to the Motor Carrier. The ingate EIR states "0247:CC: Pushed In New dmg., 0247: RST

Hole New dmg”, which is clearly not the same damage as what is shown on the outgate EIR documentation. Therefore, the Equipment Provider feels that the invoice is valid and due.

DISCUSSION:

The Motor Carrier submitted its basis and narrative relating to the initial dispute of the charges as its supporting documentation for this claim. The Motor Carrier reported that the damage shown in the picture is the same damage noted on the outgate. The Equipment Provider argues that the damage noted is clearly not the same on both EIR's.

DECISION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the photographic evidence and the identical repair codes listed on both EIR's, the Motor Carrier panel member found in favor of the Motor Carrier. The Motor panel member commented that the photos do not appear to show new damage. In addition, the Motor panel member noted that it is not reasonable to expect a driver to see the same damage as shown in the close up photo provided by the Equipment Provider. At the time of outgate, the driver saw old marks and dents which were noted on the EIR. The Motor panel member stated that Section D.2.a applies in this case, which states in part, “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 Motor Carrier did describe the damage and it was recorded on the EIR; both terminals used the same code to identify the damage. In addition, the Motor Carrier panel member contacted the PNCT facility to inquire about the use of the code. The terminal confirmed that 0247 is used to describe minor damage and that a cut or hole would be considered major damage and recorded differently on the EIR. The Motor Carrier panel member indicated that it is hard to understand how the same code can mean minor damage at one terminal and major damage at another.

The Ocean Carrier panel member found in favor of the Equipment Provider. The Ocean panel member commented that while the photos have elements of oxidation, this is not necessarily evidence that supports the Motor Carrier's position since the photos were taken eight days after the equipment was ingated. In addition, the Ocean panel member agrees with the Equipment Provider's assessment that the damage noted on the EIRs is not the same. The Ocean Carrier panel member also contacted the PNCT facility and inquired as to their use of code “0247 Damaged old marks and dents: right side/left side”. The terminal confirmed the same information that had been provided to the Motor Carrier panel member that the 0247 code would not have been used to document the damage shown in the exterior pictures. PNCT noted that this condition would have been noted as major damage versus old marks and dents. Additionally, nothing in the documentation provided suggests what the driver did or did not see. Based upon this and PNCT's response, along with Section D.2.a. and E.3.a.(1) of the Agreement, the Ocean panel member believes the Motor Carrier should be held responsible for the damage.

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 Rail Carrier panel member found in favor of the Motor Carrier. The Rail panel member stated that he does not believe the damage could have been caused by the Motor Carrier. The damage looks “old” and appears to have been caused by a downward force more like a crane type of damage rather than something a Motor Carrier could do on the street. The Rail panel member does not believe that the factual documentation submitted by the Equipment Provider sufficiently proves that the damage was caused during the interchange period while the equipment was in the Motor Carrier’s possession. The Motor Carrier recorded the condition of the equipment at outgate from a driver’s vantage point since the container was loaded versus when the equipment ingated and the gate personnel had the advantage of capturing the condition of the equipment from an internal vantage point. The Rail panel member’s decision is rendered based on the evidence presented and in accordance with Section D.2.a. and E.3.a.(1) of the UIIA.

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]**

E. Damage to Equipment

E.3.a.(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 Motor Carrier.

CASE REVIEWED AND DECIDED BY:

TIM WILLIAMS
Rail Carrier Member

FRED HUENNEKENS
Motor Carrier Member

ROBERT CANNIZZARO
Ocean Carrier Member

In the Dispute Between

UIIA MC,
Appellant, and

UIIA EP,
Respondent

Case Number: **20160803-23-XXXI-MR-OTH**

Date of Decision: 11/29/16

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	281322811	UMXU255763	6/14/16	City of Industry/UP-LA	3/2/16	3/4/16	6/14/16	6/29/16	7/27/16	8/3/16
2	281180490	UMXU255763	06/06/16	City of Industry/UP-LA	3/2/16	3/4/16	6/06/16	6/29/16	7/27/16	8/3/16

The Motor Carrier's basis of dispute is Section E.3.a.(1) of the UIIA. The Motor Carrier disputed Invoice 1 stating that after reviewing all the AGS gate images provided by the Equipment Provider, they do not see any damage to the container at the time of ingate. Motor Carrier also stated that the Equipment Provider did not provide images depicting the condition of the equipment at the time the Motor Carrier returned the equipment. For Invoice 2, the Motor Carrier declined payment stating that the billing on this unit is a duplication of Invoice 1 and there are no images to support the charges. The Motor Carrier feels that the reference to the damages noted on the invoices are conflicting and believes that if the repairs were made in City of Industry, they would not be repeated when the container reached Canal Street.

The Equipment Provider responded to the Motor Carrier's dispute stating that the container ingated at its East LA ramp with both LSF and LSC damages. The Equipment Provider states the unit was partially repaired at City of Industry, and the remaining repairs were performed at Canal St. Therefore, the Equipment Provider issued invoices to the Motor Carrier for both repairs for which the Equipment Provider feels the Motor Carrier is responsible. The Equipment Provider acknowledges that it did agree to cancel \$00.00 for damages to LSF that were repaired at Canal St, although it is clear from the images that the repair was valid. The Equipment Provider feels that the remaining amount of \$00.00 is valid and due.

DISCUSSION:

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

1. The billing was issued in accordance with the Equipment Provider's addendum;
2. Nothing in the UIIA or the Equipment Provider's addendum requires that all repairs be made at one time; and
3. The photos provided show that the various repairs performed were not duplicate repairs.

The Motor Carrier panel member agreed with the Rail Carrier panel member's findings. The Motor Carrier panel member also stated that there was photographic evidence of the damage and that the Motor Carrier was billed within 120 days for both repairs.

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:

EP's COMPANY Addendum to the UIIA – Exhibit 2 to EP's Addendum to the UIIA, Procedures for Repairs Performed on RR Equipment and Invoicing Instructions

- 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 panel unanimously finds in favor of the Equipment Provider.

CASE REVIEWED AND DECIDED BY:

CLIFF CREECH
Rail Carrier Member

JEFFREY LANG
Motor Carrier Member

In the Dispute Between)	
)	
)	
UIIA Motor Carrier,)	Case Number: 20160913-24-XXXI-MR-OTH
Appellant, and)	
)	
UIIA Equipment Provider,)	Date of Decision: 02/01/2017
Respondent)	

Invoice	Invoice #	Chassis ID #	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	282353298	UPHZ137138	8/12/16	City of Industry/LA	6/18/16	6/21/16	8/12/16	8/16/16	9/7/16	9/13/16

The Motor Carrier's basis of dispute is Section E.3.a.(1) of the UIIA. The Motor Carrier disputes the invoice stating that there was no visible damage on the ingate photos/videos to support the damages billed. Therefore, the Motor Carrier feels they should not be charged.

The Equipment Provider responded to the claim stating that the AGS images provided show a clear picture of the damage to the underride guard and, therefore, the invoice is valid as charged. The Equipment Provider noted that the clean ingate image provided by the Motor Carrier as part of its supporting documentation was for a completely different chassis and container so is not applicable to this arbitration case.

After careful review of all documents and the evidence submitted by the parties, the panel finds in favor of the Equipment Provider. The Rail Carrier panel member noted that the damage to the underride guard is clearly visible on the ingate image, contradicting the Motor Carrier's assertion that "there was no visible damage on the ingate photos/videos to support the damages billed". The Rail Carrier panel member also noted that no evidence was provided by the Motor Carrier that indicated the damage was pre-existing on the prior outgate.

The Motor Carrier panel member also found in favor of the Equipment Provider noting that the slight bend in the ICC bumper was not notated by the originating Motor Carrier on the outgate, but the condition was captured on the AGS ingate image when the same Motor Carrier returned the equipment.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (June 13, 2016) to make its decision:

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 panel unanimously finds in favor of the Equipment Provider.

CASE REVIEWED AND DECIDED BY:

CHAD PETERSON
Rail Carrier Member

KEVIN LHOTAK
Motor Carrier Member

- By accepting the equipment at interchange, the Motor Carrier is confirming the inspection has been performed in accordance with items in Exhibit A to the UIIA agreement.
- Damage found at the ingate (UP- ELA) was not notated on the outgate EIR, and is therefore the responsibility of the Motor Carrier in accordance with section 7.A. of the Equipment Provider's addendum.
- The repair of the DOT Under Ride Guard was made consistent with the acceptable repair standards.

The Equipment Provider believes the invoice is valid as billed.

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 commented that while there was no outgate interchange documentation presented in the case, the Motor Carrier does not argue that they noted damage when they removed the equipment from the UP LATC terminal. In addition, there is a left side AGS image of the equipment when it was returned to the UP ELA terminal that shows the right side under guard bent forward beneath the equipment. There are also images of the right under guard taken after the equipment was interchanged that show the under guard was bent more than 3" permitted by DOT regulations. The Motor Carrier panel member noted that Section 7.A., paragraph 3 of the Equipment Provider's Addendum to the UIIA states 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 Motor Carrier panel member believes the AGS images and post interchange image supplied by the Equipment Provider meets the requirement of UIIA Section E.3.a. (1) of the UIIA and Section 7.A. of the Equipment Provider's Addendum.

The Rail Carrier panel member also found in favor of the Equipment Provider noting that there was a clean outgate J1 and visible damage to the bumper on the ingate image. The Rail Carrier panel member stated it is the responsibility of the Motor Carrier to do a pre-trip inspection, notate any damage discovered at the time of interchange on the equipment interchange documentation and, if applicable, get the chassis repaired or flipped to another chassis before outgate.

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:

UNION PACIFIC RAILROAD COMPANY Addendum to the UIIA – Section 7.A. – Equipment Interchange Receipts: Gate Inspections.

- A. At time of in-gate, UPRR's gatehouse operator will document the time of Interchange and other information on UPRR'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 UPRR's gatehouse operator will be presumed to have been caused by the Motor Carrier that Interchanged the Equipment to UPRR 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 UPRR's gate house operator.

At an AGS gate, any damage to Equipment discovered by UPRR's gatehouse operator or brought to UPRR's later attention, including but not limited to any subsequent inspection by UPRR or another railroad, will be presumed to have been caused by the Motor Carrier that Interchanged the Equipment to UPRR 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 UPRR's gatehouse operator or brought to UPRR's later attention. The damage brought to UPRR's later attention must be captured on an AGS image.

D. Equipment 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]**

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]**

Exhibit C to the UIIA - (Added to UIIA on 07/25/07, Last Revised 09/19/16)

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

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

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:

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]**
- 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]**

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

CASE REVIEWED AND DECIDED BY:

CHAD PETERSON
Rail Carrier Member

KEVIN LHOTAK
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 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

**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: **20170425-24-XXXF-MR-OTH**

Date of Decision: 01/17/2018

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	285757447	UPHZ136054	2/28/2017	Los Angeles (ELA)Non-AGS/LATC - AGS	1/23/17	1/29/17	2/28/17	3/13/17	4/10/17	4/25/17

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Exhibit B of the UIIA. The Motor Carrier feels that because the invoice was for a "total" leg replacement and not just a repair (i.e. missing crank handle or bent leg) it should fall back on the Equipment Owner, not the Motor Carrier. The Motor Carrier also noted that the roadside repair vendor, Emergency Breakdown Services, had sent the Equipment Provider an estimate asking for permission to proceed with the repair and noted that it was an internal failure with the landing legs. According to the UIIA Exhibit B, interior landing gear components are the Equipment Owner's responsibility. Therefore, the Motor Carrier believes it should not be held responsible for the invoice.

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

The Equipment Provider responded to the claim stating that the outgate photos showed no evidence of bent chassis leg issues restricting the landing gear mobility. The Equipment Provider noted that the landing gear was fully retracted into the leg shaft indicating no functional impairment. Additionally, inspection of landing gear to ensure it is able to go up and down prior to acceptance of the equipment for interchange is the responsibility of the Motor Carrier under Exhibit A of the UIIA. The Equipment Provider indicated that the pre-repair photos from the roadside service vendor showed visibly bent legs on both sides of the chassis. The Equipment Provider believes this is likely the result of damage to the

landing legs from hitting an object while moving. Although the roadside repair vendor did secure approval prior to completing the repair, the notation of an internal failure did not mention the cause of the failure, which the Equipment Provider believes is the damage to the legs as shown by the displacement photos. Therefore, the Equipment Provider feels that this invoice should stand as billed.

DECISION:

After careful review of all documents and the evidence submitted by the parties, the two modal panel members were unable to reach a consensus in the case. The Rail panel member found in favor of the Motor Carrier indicating that the ingate AGS images provided did not show damage to either landing leg in comparison to the outgate images. The Rail panel member also noted that there was no new impact marks on the landing legs and the sand shoes appeared to be intact matching the outgate image. The Motor Carrier panel member found a split decision in the case, noting that the images presented clearly only showed damage to one leg. The Motor Carrier panel member did not believe based on the evidence that a full leg assembly replacement was necessary. Consequently, the Motor Carrier panel member indicated that the Motor Carrier should only be responsible for half of the invoice, which totaled \$00.00.

In accordance with Exhibit D of the UIIA, in the event that the arbitrators from the involved modes are unable to agree on a resolution of the dispute, the case is sent to the senior arbitration panel for final determination, which consists of the longest tenured IIEC member or alternate from each mode. The senior arbitration panel reviewed the case and supporting documentation and found in favor of the Motor Carrier for the full amount of the invoice. It was the consensus of all three senior arbitration panel members that in accordance with Section E.3.a.(1) the images presented in the case did not provide sufficient factual documentation to prove that the damage was caused by the Motor Carrier as well as that the repair of a full landing gear replacement was necessary.

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:

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 senior arbitration panel unanimously finds in favor of the Motor Carrier.

CASE REVIEWED AND DECIDED BY:

DAVE MANNING
Motor Carrier Member

AL SMERALDO
Ocean 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 Motor Carrier accepted a chassis that, in their words, had a bumper where "the bend is very slight and would not affect the functionality of the chassis". The Equipment Provider advised that, upon return, "the DOT Underride Guard is bent more severely, and is now past the 3" limit, and is DOT condemnable and needs repair". The images provided illustrate a change in the condition of the bumper.
- The chassis had non-condemnable wear and tear at the time of interchange to the Motor Carrier, but was interchanged back to the Equipment Provider with condemnable damage.
- The Motor Carrier further mentions the "discrepancies that we see between checkers upon ingate and outgate". It should be noted the Motor Carrier has the opportunity and responsibility to verify the condition of the equipment upon receipt and not rely on the checkers.
- The party causing damage to equipment to the extent that the equipment is no longer serviceable is responsible for the cost of repair.
- It is apparent from the pictures and case facts that excessive damage was sustained while the equipment was in the Motor Carrier's possession.

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

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 to be charged both accepted and returned the Equipment. **[Revised 09/01/09]**

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

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

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

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

CASE REVIEWED AND DECIDED BY:

GORDON GRAHAM
Rail Carrier Member

KEVIN LHOTAK
Motor 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

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

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 in reviewing the outgate photos, it does appear as if the section that was later repaired was not damaged prior to outgate. Therefore, the damage appears to have happened while in possession of the Motor Carrier.

The Rail Carrier panel member agreed commenting since visual evidence provided shows no damage on the rod/keeper at the outgate and damaged in the pre-repair photo, the damage appears to have occurred while the unit was in the possession of the Motor Carrier.

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:

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) A Provider will determine the Motor Carrier that it will invoice for Damage to Equipment that occurred during the Interchange Period. **[Revised 01/01/18]**

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

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:

CHRIS GILTZ
Motor Carrier Member

WILLIAM TRAUB
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

Regarding the Motor Carrier's argument that a bud wheel cannot be slid flat, the Equipment Provider believes this is not an accurate statement. The Equipment Provider stated that there are many factors that can cause a single slid flat (i.e. unequal tread depths, different tire pressures, etc.). The Equipment Provider indicated that for the unit in question, both tires on the same wheel set were slid flat (RIR and ROR) and both were replaced. The Motor Carrier was only billed for the ROR tire as the photographic evidence of the slid fat at the ingate on the RIR tire was not clear enough to hold the Motor Carrier responsible for this repair. The Equipment Provider also noted that the gate technology used at this facility was photographic evidence at ingate and manual reporting at the outgate. The method of reporting defects does not have to be the same at both points of the interchange. This was previously upheld by a prior arbitration decision (20161117-1-XXXV-MR-TR). In addition, tread depth of a tire has never been a required measurement at the time of interchange.

For the reasons identified above, the Equipment Provider believes the invoice is valid and should stand as billed.

DECISION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the Rail Carrier panel member found in favor of the Equipment Provider stating that based upon the evidence submitted it is her assessment that the unit was in good working order at the time of outgate. The IEP presented a reference noting that the unit had a pre-trip inspection 2 days prior to outgate by the carrier indicating that the unit did have some attention to the basic components of the unit. This process would be validated by the drivers required level one inspection with the clerk. The only real documentation that is present is a clean outgate and visible damage at ingate.

The Motor Carrier panel member found in favor of the Motor Carrier noting the IEP's responses to the potential root causes are speculative in nature, with numerous "what if's" that weren't identified and that could have been a result of faulty maintained equipment. In addition, there is no evidence that the driver used his trolley brake to override the ABS system. Such deliberate and negligent action by the driver would have resulted in slid flats to multiple sets of wheels and tires. There is no such photographic evidence that was submitted that indicates that slid flats were present to any other set of tires on this chassis. Because of such reasoning, the tires could have been in this condition and undetectable to the driver during his pre-trip inspection due to slid flat being in direct contact with the ground, as well as the time of day (2:49 am), or a failure within the ABS system.

In addition, in cases where a slid flat tired is identified, it would be prudent and expected, in this panel member's opinion, that the IEP immediately perform a download of the ECU and include that with the invoice as supporting documentation. It is not equitable to find the Motor Carrier at fault exclusively on the EIR documentation provided due to the speculations surrounding the potential causes of a single slid flat, as well as previous concerns raised by Motor Carriers regarding "split gate" operations and the lack of tread depth measurements at both the ingate and outgate despite there being no current language within the UIIA requiring such measurements to be taken.

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 Equipment Provider. It was the consensus of the senior arbitration panel members that the Equipment Provider did in fact properly document and identify the repairs billed. There were no previous indications that there were brake issues and therefore, the senior panel members find that the tire repair bill meets the definition for a slid flat tire in accordance with Exhibit C of the UIIA. Exhibit C states, "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". The senior panel members agreed that the Equipment Provider complied with providing the documentation and images to support their billing.

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:

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]**

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]**

Exhibit B to UIIA, Provider Responsibility (added to UIIA on 07/25/07, Last Revised 10/01/18)

Brake adjustments on trailers or chassis (1)

Brake and brake component repairs (2)

Tires and Tubes, renewals, repairs or replacement

A repair made to any item listed in Exhibit B is the responsibility of the Provider unless the repair made is a result of damage that occurred during the Interchange Period.

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

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.

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 Equipment Provider.

CASE REVIEWED AND DECIDED BY:

LaVERSIA (ELLE) SPENCER
Rail Carrier Modal Panel Member

ROBERT LOYA
Motor Carrier Modal Panel Member

DAVE MANNING
Motor Carrier Senior DRP Panel Member

GORDON GRAHAM
Rail Carrier Senior DRP Panel Member

AL SMERALDO
Ocean Carrier Senior DRP Panel Member

In the Dispute Between

Case Number: **20190725-1-XXXF-MR-TRSF**

Date of Decision: 01/28/2020

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	301114582	UMXU254616	6/14/2019	UP City of Industry/UP Commerce	5/13/19	5/15/19	6/14/19	6/24/19	7/23/19	7/25/19

The Motor Carrier's basis of dispute is Section D.2.d. of the UIIA. The Motor Carrier was invoiced for slid flat tire damage. The Motor Carrier believes the slid flat was caused by normal wear and tear and not driver abuse. If the slid flat was a result of driver abuse, both tires on the same axle would be slid flat. The Motor Carrier believes that the slid flat could be a result of uneven tread wear, which is not the Motor Carrier's responsibility. The Motor Carrier also stated that the tire was barely visible in the images provided by the Equipment Provider. Consequently, the Motor Carrier does not believe there is sufficient evidence to hold them responsible for this invoice.

The Equipment Provider responded to the claim stating that they have documented numerous ways in which a single slid flat tire can appear on a chassis. The Equipment Provider also stated that the Motor Carrier's assertion that a single slid flat is a mechanical impossibility is inaccurate. The pre-repair photos indicate that there was a slid flat on both right tires (inside & outside). However, the carrier was only billed for the damage visible on the tire at ingate. Therefore, the Equipment Provider feels that based on the documentation, they consider this invoice to be valid and shall stand.

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 stating that the photos did not provide sufficient evidence to support a slid flat or that they showed there is enough tread missing to call it a slid flat.

The Rail panel member found in favor of the Equipment Provider stating the Equipment Provider provided evidence that both tires on the same axle were replaced and met the definition of slid flat. In looking at a close-up image of the slid flat on the subject tire pre-repair, the same pattern is evident on the close-up image provided at IG (specifically the oval pattern of the slid flat and the tread deformation within the slid flat). While portions of the IG image are blurred by light reflection, the image provides sufficient evidence that the slid flat on the subject tire upon repair also existed upon IG by the Motor Carrier.

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 Equipment Provider did not provide sufficient evidence to support that the Motor Carrier was responsible for the damage. The senior arbitration panel noted there was no documentation showing that the slid flat tire met the definition of a slid flat in accordance with Exhibit C of the UIIA. Exhibit C states, "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". Although photos were provided, there was not adequate proof of the 4/32nd differential and that the remaining tire tread was less than 2/32nds. Therefore the senior arbitration panel agreed 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.

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:

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]**

4. Tires

- 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]**

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

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.

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:

KEVIN LHOTAK
Motor Carrier Modal Panel Member

GORDON GRAHAM
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

In the Dispute Between

Case Number: **20190828-1-XXXB-MR-TR**

Date of Decision: 11/14/2019

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	DR000004304	TGBU565645	8/16/19	GPA/XPO	4/1/19	4/8/19	8/16/19	8/23/19	8/26/19	8/28/19

The Motor Carrier's basis of dispute is Exhibit C of the UIIA. The Motor Carrier stated that they filed an email dispute with the Equipment Provider's third-party billing vendor, South Atlantic Consolidated Chassis Pool (SACP), noting non-compliance of Exhibit C to the UIIA - Tire Damage is listed as "SLID FLAT damage to tire and/or tube-removal of 4/32 of tread or rubber when compared to the remaining tread." Therefore, the Motor Carrier believes that because the invoice repair documentation does not match the damage described on the in-gate EIR as SLID FLAT vs LOW TREAD/SLID/BUBBLE and SLID, that they should not be held responsible for the invoice.

The Equipment Provider's third-party billing vendor, South Atlantic Consolidated Chassis Pool, LLC (SACP), responded on their behalf stating that they believe the invoice to be correct due to the following:

- SACP stated that the Motor Carrier outgated the unit with no issues and ingated the unit with damages noted to the LIF/LOF tires, noted as "SLID".
- Section D.2.a of the UIIA 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 physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange."
- SACP feels that MC accepted the slid flat damages to the tires since the driver did not dispute the terminology used on the ingate EIR nor did they reach out to the local M&R Pool staff for dispute/assistance.
- SACP feels that based on Section E.4. of the UIIA, the Motor Carrier is responsible for repairing damage to tires during the time the equipment is in their possession. If the MC chooses not to repair the damage, the MC is responsible for reimbursing the Provider for the replacement of said repairs, as long as

the damage recorded on the inbound inspection was sufficient to document the damage as the Motor Carrier's responsibility as described in Exhibit C of the UIIA.

- SACP stated that there are prior arbitration rulings that address that the term "Flat Spot" is not appropriate terminology as it could be a result of uneven tread wear. However, these decisions do not address that the term "Slid" is not appropriate terminology for "Slid Flat" tire damage.
- "Slid" identifies that the tire was "Slid" across the ground and is sufficient terminology that enough tread was removed to meet the UIIA "Slid Flat" requirements, supported by the M&R vendor's replacement of the tires for slid flat tire damage.
- SACP feels that the Motor Carrier is responsible for the LIF/LOF slid flat tires, as notated on the ingate interchange and was accepted by their driver.

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 stating both the Motor Carrier and the Equipment Provider's arguments center around the terminology used on the ingate interchange receipt. The Motor Carrier argues that Slid is not interchangeable with Slid Flat. The Equipment Provider argues that Slid is interchangeable with Slid Flat. Part of the response from the Equipment Provider contains previous DRP cases where it was ruled that Flat Spot was not interchangeable for Slid Flat. Those cases refer to the fact that there is no definition for Flat Spot in the UIIA as the basis for finding in favor of the Motor Carrier. The Motor Carrier panel member stated that that same logic applies in this case; that there is no definition for Slid, so it is not interchangeable with Slid Flat. The Ocean Carrier panel member found in favor of the Equipment Provider noting the ingate EIR clearly notates damage to the LIF and LOF tires noting 'SLID' to indicate the tires had been drug across the pavement to the point of removing substantial tread. The omission of the word 'FLAT' after describing the tires as 'SLID' does not release the Motor Carrier from responsibility on semantics. In addition, the driver signed the EIR accepting the notated damages without comment at time of interchange.

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 DRP panel members that the Equipment Provider did not sufficiently provide the factual documentation in accordance with Section E.3.a.(2) to support that the Motor Carrier was responsible for the repair bill. In addition, the panel noted the terminology used on the repair documentation was not clear and the term "Slid" is not a proper defined term for "Slid Flat" in accordance with Exhibit C of the UIIA. It was the consensus of the group that a tire can be "slid" without being "slid flat" and since sufficient supporting documentation showing evidence of the tread depth was not presented in this case, the Equipment Provider failed to meet their obligation under Section E.3.a.(2).

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:

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)

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.

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:

CHRIS GILTZ
Motor Carrier Modal Panel Member

RONNIE ARMSTRONG
Ocean Carrier Modal Panel Member

DAVE MANNING
Motor Carrier Senior DRP Panel Member

AL SMERALDO
Ocean Carrier Senior DRP Panel Member

WILLIAM TRAUB
Rail 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: **20200701-7-XXA-MR-OTH**

Date of Decision: **August 24, 2020**

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	306960070	EMHU 652984	5/28/2020	Global 2/Global 2	5/12/2020	5/15/2020	5/28/2020	5/29/2020	6/27/2020	7/1/2020

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier is basing its dispute on Section D.3.e. and E.3.a.(2) of the UIIA. The Motor Carrier disputed the charges with the Equipment Provider, which included providing the outgate AGS image that the Motor Carrier believes proves the damage being billed was pre-existing. The MC also disputes the fact that the invoice indicated that the damage was noted as "RSF" (right side front) when in fact the damage was on the "LSF" (left side front). However, the Equipment Provider did not accept or agree that the damage was pre-existing and felt that the invoice was valid regardless of the typo on the invoice. The Motor Carrier feels that they returned the equipment in the same condition, reasonable wear and tear excepted and believes that they are not responsible for the charges being billed.

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

The Equipment Provider responded to the claim indicating that when their M&R managers reviewed the dispute, the AGS gate images did show that the repair code used identified the wrong side of the unit for the repair. The M&R managers reviewed the left side of the unit via the AGS gate image and found that there was additional damage to the unit (three panel cuts at same location as per the repair photos) that only showed on the ingate images. Apart from the location coding error, the Equipment Provider feels that 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, both panel members thought while there appears to be new damage to the container upon ingate, the ingate picture is of a higher resolution and the damage on the outgate is not clearly visible. Furthermore, the Motor Carrier had a valid point that any potential damage to the loaded container would have been extremely difficult to recognize from ground level. The supposed damage after outgate coincidentally occurred on and just behind a recently patched area. The more recent damage was consistent with the previous damage and the previous damage appeared to be patched with caulking rather than a new sheet. It was the panel's opinion, that a repair vendor would go ahead and address all cuts and not leave unpatched holes, further supporting the fact that damage occurred after the initial patch, but that cannot be confirmed with the information or pictures provided. However, the Equipment Provider did see it sufficient to caulk the prior holes, rather than completely replacing the sheet metal, so the Motor Carrier should be expected to be responsible for similar repairs, but not for new sheet metal that addresses the prior damage. The panel members indicated that had the initial damage been properly repaired, it is also possible that the increased structural integrity would have prevented the alleged new damage. Based on the specific circumstances surrounding the case and the supporting documentation presented by both parties, the panel rendered a split decision. Both panel members agreed that the Equipment Provider should be held responsible for 75% of the disputed charges and the Motor Carrier held responsible for 25% of the charges.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (January 20, 2020) to make its decision:

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 for a split decision in this case. The Equipment Provider is responsible for \$00.00 (75% of disputed charges) and the Motor Carrier is responsible for the remaining balance of \$00.00 (25% of total charges).

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: **20200930-2-XXXS-MR-OTH**

Date of Decision: 11/10/2020

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	308305815	EMHU642363	8/14/20	UP Global 4/UP Global 4	7/16/20	7/16/20	8/14/20	8/20/20	9/18/20	9/30/20

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's dispute is based on Section D.3.e. and E.3.a. of the UIIA. The Motor Carrier disputed the charges with the Equipment Provider, which included providing the outgate AGS image 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 and felt that the invoice was valid. The Motor Carrier feels that they returned the equipment in the same condition, reasonable wear and tear excepted, and believes that they are not responsible for the charges being billed.

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 original dispute of the charges. The Equipment Provider believes that the driver would have been able to see the damage from outside of the container and feels that the driver should have noted it on the outgate EIR if they felt that the damage was old damage.

DISCUSSION:

The panel carefully reviewed all documents and evidence submitted by the parties. The Equipment Provider's denial of the Motor Carrier's dispute was based on the belief that the Motor Carrier's driver should have seen and reported the damage at outgate. After review of the invoice and corresponding pictures, it also appears that the invoiced "SIDE PANEL STEEL" for \$00.00 was repaired, not replaced. The pictures at outgate are not of high enough resolution to see tears, but dents are visible. The outgate images indicate pre-existing damage to the unit. The pictures taken at the time of repair show rust around holes of the repaired areas and the rust is dark, flaky and aged, not congruent with flash rusting from a recent damage. The pictures appear to be taken while the repair was underway as fresh grinder marks surround the damage, signifying repair personnel were cleaning the area. The pictures also show the repair was made with a black sealant. In addition, given the location of the subtle damage on the unit, and the fact that the unit was loaded would have made it very difficult for the Motor Carrier's driver to have detected the damage and report it upon outgate. The panel members agree that the damage was pre-existing old damage, and the repairs made were not consistent with the invoiced repairs.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (January 20, 2020) to make its decision:

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.

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

DECISION:

The panel unanimously finds in favor of the Motor Carrier based on the facts that the damage was pre-existing old damage and the repairs made were not consistent with the invoiced repairs.

CASE REVIEWED AND DECIDED BY:

BEN BANKS
Motor Carrier Panel Member

MIKE PAGEL
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: **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: **20210405-1-XXXL-MR-OTH**

Date of Decision: 06/29/2021

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

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.

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

CASE – 20220715-2-XXXM-MR-TR Moving Party: /Responding Party:

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

	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	3TF5160	DDRZ815939	6/3/2022	Worcester CSX	3/2/2022	3/10/2022	6/13/2022	7/1/2022	7/1/2022	7/15/2022
2	3TF5161	DDTZ301101	6/3/2022	Springfield CSX	3/3/2022	3/3/2022	6/13/2022	7/1/2022	7/1/2022	7/15/2022

MOTOR CARRIER'S DISPUTE

The Motor Carrier is basing its dispute on Sections E.3.a.(2) and Exhibit C of the UIIA. The Motor Carrier received two invoices for slid flat tire damage from the Equipment Provider. The Motor Carrier indicates that images of the inbound chassis and tires were attached with the invoices but you cannot accurately determine the tread depth from the images provided. The Motor Carrier believes that the Equipment Provider has not provided sufficient evidence in accordance with E.3.a.(2) and Exhibit C of the UIIA to prove the slid flat damage to the tires.

Note: On Invoice 2, the Motor Carrier did not dispute the slid flat damage on the ROR tire so is only disputing the repair charges for the slid flat damage to RIR tire.

EQUIPMENT PROVIDER'S RESPONSE

The Equipment Provider responded to the claim stating that for Invoice 3TF5160, the Motor Carrier outgated the unit from the CSX Worcester ramp on March 3, 2022 with no damage noted on the outgate. The Motor Carrier ingated the unit on March 10, 2022 to the same location with slid flat tire damage to the LIF tire. For the second invoice 3TF5161, the Motor Carrier outgated the unit on March 3, 2022 from the Springfield CSX facility with no damage noted on the outgate. The same chassis and container (empty) were returned that same day with slid flat tire damage to the ROR and RIR tires. The Equipment Provider noted that both facilities provide Motor Carriers the opportunity to record damage on the EIRs as described in Section D.2.a. and D.2.b. of the UIIA. Both the Springfield and Worcester terminals record ingate images only. The Equipment Provider also noted that the Motor Carrier is claiming that the Supplement to Exhibit C is a requirement. The Equipment Provider believes that the Supplement to Exhibit C was established and adopted for road service repairs to prevent the driver from having to retain, secure and return the bad tire/casing to the terminal. It does not apply to on terminal repairs. Based on this information the Equipment Provider believes the invoices are valid as billed.

DISCUSSION

After careful review of all documents and evidence submitted by the parties, the two modal members that originally reviewed the case reached the following conclusions:

Invoice 3TF5160

The Motor Carrier panel member found that the evidence provided by the Invoicing Party appeared as though the extent of tread damage changed between the date of in-gate and the date of repair. When combined with the lengthy delays of 1-2 months before repairs took place, this is a point of concern. For example, chassis DDRZ815939 showed steel cord in the repair photo from April 14, 2022, yet no steel cord is visible in the in-gate photo from March 10, 2022.

In accordance with Sections E.3.a. and E.3.a.(1) of the Agreement, the Motor Carrier is only responsible for equipment damage “that occurred during the Interchange Period.” Based upon the evidence provided by the Invoicing Party, it is not clear that the entirety of the damage took place during the Interchange Period. While some minor flat-spotting is visible in the in-gate photos of the chassis, it does not appear sufficient to meet the definition of a slid flat damage, as specified in Exhibit C to the Agreement, and the Invoicing Party has failed to provide evidence to substantiate otherwise. Therefore, the Motor Carrier panel member found that the Motor Carrier should not be responsible for the repair billing.

The Rail panel member concurred that the Motor Carrier should not be responsible for the billing under Invoice 3TF5160 stating that the Moving Party accepted the chassis and noted no damage upon receipt. Chassis was returned with a visible skid flat of indeterminate depth to the LIF tire and no corresponding damage to the LOF tire. It is unclear as to when the damage was caused (there is no damage to the LOF tire) and the depth of tread removed is also unclear.

Invoice 3TF5161

On this specific invoice the Motor Carrier was only disputing the charges of \$00.00 associated with the slid flat damage to the RIR tire. The Motor Carrier did not dispute the slid flat damage to the ROR tire. The Motor Carrier panel member's determination on this invoice was in favor of the Motor Carrier. The Motor panel member did not believe the Equipment Provider provided sufficient factual documentation as required under Section E.3.a(2) to support the billing of the slid flat tire damage to the RIR tire.

The Rail panel member rendered its decision in favor of the Equipment Provider for the slid flat tire damage on the RIR tire, stating that the Motor Carrier accepted the chassis with no damage and the unit was returned with visible slid flat damage to both the ROR and RIR tires. The Rail panel member noted that the ingate photo does provide evidence of the damage, but not the depth of the damage. The repair photo shows damage to a similar area and having areas of no remaining tread visible (evidenced by the lack of light reflecting off the grooves in certain areas). Therefore, the Rail panel member believes that the Equipment Provider billing is valid as billed.

In accordance with Exhibit D, Item D.3. of the UIIA, when the two modal arbitration panel members are unable to reach a consensus on the case decision, the claim is forwarded to the senior arbitration panel to make the final determination in the case. In this instance, the senior panel only rendered its decision on Invoice 3TF5161 as it relates to the slid flat damage to the RIR tire. Upon review of the case, including all documents and evidence received, the senior arbitration panel rendered its decision in favor of the Motor Carrier. The senior panel indicated that there is a degree of uncertainty regarding slid flat damage on the RIR tire based on the ingate image provided by the Equipment Provider. In accordance with Section E.3.a.(2), the Equipment Provider did not furnish clear factual documentation that proved there was definitive slid flat tire damage based on the criteria in Exhibit C of the UIIA.

The senior panel also wanted the following information notated in this case decision:

- 1) The Motor Carrier incorrectly referenced the Supplement to Exhibit C in this claim since this supplement is only applicable to roadside repairs. Exhibit C would be applicable in this case versus the supplement to this exhibit.
- 2) Equipment Providers should ensure that the images they provide with billings clearly exhibit the damage being invoiced.
- 3) Motor Carriers should make sure that they document the condition of the equipment on the outgate EIR documentation, including any damage present at the time of Interchange.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANELS:

The arbitration panels relied upon the following provisions to make their decisions:

Section E.3. Equipment Damage, Items E.3.a., E.3.a(1) and E.3.a.(2)

- 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) A Provider will determine the Motor Carrier that it will invoice for Damage to Equipment that occurred during the Interchange Period. **[Revised 01/01/18]**
 - 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.

Exhibit C to UIIA - (Added to UIIA on 07/25/07, Last Revised 05/22/19)

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.

DECISION

The modal panel members rendered the decision on Invoice 3TF5160 finding that the Motor Carrier is not responsible for the charges billed (\$00.00) as the Equipment Provider did not provide sufficient documentation to support the invoice in accordance with Section E.3.a.(2). In addition, it was not clear that the damage occurred during the interchange period as set forth in Sections E.3.a. and E.3.a.(1).

The senior arbitration panel rendered the decision on Invoice 3TF5161 finding that the Motor Carrier is not responsible for the charges associated with the slid flat tire damage to the RIR tire in the amount of \$00.00. The senior panel members did not believe the EP furnished clear factual documentation as required in Section E.3.a.(2) that proved there was definitive slid flat tire damage based on the criteria in Exhibit C of the UIIA. The Motor Carrier's responsibility under this invoice is only for the slid flat tire damage to the ROR for the same amount of \$00.00.

CASE REVIEWED AND DECIDED BY:

Case Initially Reviewed by Modal Arbitration Panel (Invoice 3TF5160 only)

Matt Sciascia, Motor Carrier Panel Member
Gordon Graham, Rail Carrier Panel Member

Case Reviewed and Decided by the Senior Arbitration Panel (Invoice 3TF5161 Only)

Kevin Lhotak, Senior Motor Carrier Panel Member
Al Smeraldo, Senior Ocean Carrier Panel Member
Jeff Chapman, Senior Rail Carrier Panel Member

CASE –20220908-1-XXXM-MR-TRSF Moving Party: /Responding Party:

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

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*	3TH5901	DDRZ 567801	8/31/22	---	---	---	---	9/2/22	---	---
2	3TH5575	DDRZ 830696	8/16/22	CSX Detroit	3/01/22	7/30/22	8/16/22	8/17/22	8/22/22	9/6/22
3	3TH5473	NSPZ 136724	8/12/22	CSX Detroit	5/23/22	5/24/22	8/12/22	8/17/22	8/22/22	9/6/22

*Invoice 1 was resolved between the parties.

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier is basing its dispute on Section E.4.c., Exhibit C, and the Supplement to Exhibit C of the UIIA. The Motor Carrier's basis of the dispute is that the Equipment Provider did not provide photos that reasonably supported the disputed invoices as per the definition of Slid Flat Damage in Exhibit C of the UIIA. The Motor Carrier states that it cannot be expected to pay tire charges for a slid flat tire damage that does not have measurable tread depth listed. The Motor Carrier states that the photos initially provided may show differences in shading on the sidewall and tread, but they do not confirm removal of tread or rubber to 2/32 inches or less, nor do they confirm that the unaffected tread depth is more than 4/32 inches. The Motor Carrier further states that the Supplement to Exhibit C of the UIIA does not state that it exclusively pertains to off-terminal or road service repairs, as contested by the Equipment Provider. Based on the above information and the supporting documentation provided, the Motor Carrier believes it should not be held liable for the two slid flat tire invoice repairs.

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

The Equipment Provider responded to the Motor Carrier's claim stating that it appears that the Motor Carrier is not disputing the damage to the tires but the process in which they are receiving the invoices. The Equipment Provider further states that it contacted IANA and provided additional photos to IANA to verify that the Equipment Provider supplied all required information in responding to the claim. The Equipment Provider received the following response from IANA:

"The UIIA does not address the specific documentation that must be provided with the repair billing other than a copy of the repair bill and if this is not available then documentation containing the specific items outlined in E.3.a.(2) that ties the documentation to the invoice would be required. Please note however that E.3.a.(2) also states that the Equipment Provider will provide factual documentation that supports why they believe the Motor Carrier is responsible for the repair. Absent such evidence or if the Motor Carrier feels that the Equipment Provider has not provided sufficient evidence to support the billing, then they can dispute the billing with the Equipment Provider. Should there be no resolution with the Equipment Provider, the Motor Carrier would then have the option to take the matter to binding arbitration. If submitted for arbitration, then the arbitration panel would render its decision on the responsibility of the charges based on the evidence presented by both parties and the terms/conditions of the UIIA."

Therefore, the Equipment Provider stands on its position that all required information set forth in Section E.4.c., Exhibit C, and the Supplement to Exhibit C of the UIIA was provided to the Motor Carrier on the initial invoice and both invoices should stand.

DISCUSSION:

After careful review of all documents and 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 bases its dispute on Exhibit C and the Supplement to Exhibit C of the UIIA. While Exhibit C is applicable to the Motor Carrier's responsibility for tire damage, the Supplement to Exhibit C of the UIIA was intended to provide Motor Carriers with an alternative to returning the physical tire carcass when tire repair or replacement is needed. The Supplement to Exhibit C outlines the photographic evidence and tire marking criteria to be followed. This evidence is used to validate invoices submitted by Motor Carriers to Equipment Providers, however, it is not required of Equipment Providers to submit invoices to Motor Carriers.

Photographic evidence of the tires upon ingate was available but not provided by the Equipment Provider with the initial invoice. The photos were provided after the Motor Carrier disputed the invoices. According to Section E.3.a.(2) of the UIIA, "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 factual documentation supporting the Provider's determination that the Motor Carrier is responsible." Section E.3.a.(2) goes on to state "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."

Recorded Images of the ingate were available, and the Equipment Provider used those images to depict the condition of the equipment upon ingate, but the photographs were not initially provided to the Motor Carrier. The invoices as initially provided were not in compliance with Section E.3.a.(2) of the UIIA. If recorded images are available, they must be provided to the invoiced party for validation. While the initial invoices were not in compliance with Section E.3.a.(2) of the UIIA, photographs were later provided that met the criteria needed for valid invoicing. The photographs clearly show flat spot damage to 2/32 inches of remaining tread depth or less on the tires in both disputed invoices. Therefore, the panel finds in favor of the Equipment Provider.

*Note the arbitration panel also finds it important that this information is timely communicated to the Equipment Provider and Motor Carrier on future invoices.

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 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]**

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]**

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

Supplement to Exhibit C of the UIIA

DECISION:

Based upon the supporting documents and evidence submitted, both panel members unanimously find in favor of the Equipment Provider on both of the disputed invoices. The Motor Carrier is responsible for repair invoices 3TH5575 and 3TH5473 in this dispute.

CASE REVIEWED AND DECIDED BY:

BEN BANKS
Motor Carrier Panel Member

ALBERT PEREZ
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

**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: **20220928-1-XXXT-MR-OTH**

Date of Decision: **May 23, 2023**

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Invoice	Invoice #	Container #	Inv. Date	Amount	Facility	Outgated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	322105309	UMXU245923	09/23/2022	xxx	Global 2	08/09/2022	9/14/2022	9/16/2022	09/22/2022	09/28/2022

MOTOR CARRIER'S BASIS OF DISPUTE

The Motor Carrier dispute is based on Section E.3.a. in that they are being billed for damage that did not happen while in their possession. The Motor Carrier states it pulled the loaded and sealed unit out of the Global 2 ramp on August 19, 2022. The Motor Carrier indicates that once the unit was opened and unloaded the doors would not close due to the lock rod being bent. The right rod locks did not function properly so the Motor Carrier notified FYX per the Equipment Provider's instructions and the unit was repaired and then billed to the Motor Carrier. The Motor Carrier states they provided the outgate J-1 showing the doors sealed and locked, but did notice when zooming in on the rod locks that it looked like the locks were bent outwards and were strained at the bottom insert points. The Motor Carrier believes that the functionality of the rod locks with a closed/sealed/loaded unit is not something that the driver would be able to know or be able to check as this is not part of their roadability check list. Therefore, the Motor Carrier believes that because they could not check the function of the lock rods on a closed/sealed/loaded unit, they should not be held responsible for the repairs.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE

The Equipment Provider responded to the claim stating the following:

The Equipment Provider stated that the unit outgated with the doors in the locked and sealed position, indicating the lock rods and lock rod cams were not bent and able to be properly secured while on the terminal. The Equipment Provider attached the outgate photo of the doors showing them locked and sealed as well as the over the road invoice and photos showing the lock rod was severely bent.

Since this container had no visible signs of damage in the interchange photographs, the Equipment Provider states it is a clear defect identified and repaired over the road and a bent lock-rod is considered a damage repair. Therefore, the Equipment Provider believes that this is the Motor Carrier's responsibility, and the invoice is valid as billed.

DISCUSSION

The panel carefully reviewed all documents and information provided by the parties. The Rail panel member indicated that the photo of the damaged rod provided by the Equipment Provider shows significant damage consistent with an outward force on the rod (such as may occur from shifting cargo rather than what may occur from forcing a door closed with a misaligned handle). The degree of damage to the rod is such that securing the door would be extremely challenging, if at all possible, consistent with the damage occurring after the door was closed. The outgate image provided shows signs of strain on the subject rod, supporting the position that the damage to the rod occurred post-loading and pre-terminal departure. The balance of the evidence provided supports the Motor Carrier's position that the damage to the rod occurred prior to its receipt in interchange.

The Motor Carrier panel member concurred with the Rail panel member's finding. Consequently, the panel finds the claim 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:

E. 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]**

DECISION

The panel unanimously finds in favor of the Motor Carrier based on Section E.3.a. of the UIIA since the evidence presented does not support that the damage occurred during the Motor Carrier's possession of the equipment. The Motor Carrier is not responsible for the charges billed. The invoice should be cancelled and the binding arbitration filing fees should be reimbursed to the Motor Carrier as the prevailing party in this claim.

CASE REVIEWED AND DECIDED BY

GORDON GRAHAM
Rail Carrier Panel Member

MATTHEW SCIASCIA
Motor Carrier 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: **20211005-1-XXXC-MR**

Date of Decision: April 18, 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	315079029	TSFZ 569485	08/13/2021	Global 4/47 th St. Chicago	06/21/21	06/21/21	08/28/21	09/22/21	10/01/21	10/05/21

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier is basing its dispute on Section E.3.a.(2) of the UIIA. The Motor Carrier received an invoice from the Equipment Provider totaling \$00.00, with job code descriptions 5685 – Dry Run (\$00.00) and 5688 Dispatch Fee (\$0.00). The Motor Carrier stated the charge was excessive based on the job code and requested back up from the EP to support the charge. The MC was provided with three generic pages with a copy of the invoice without detail from the Equipment Provider. No backup documentation was provided to justify the charges the Motor Carrier was billed. When the Motor Carrier disputed the invoice with the Equipment Provider requesting proper backup documentation, the Equipment Provider stated, “all items used in approving over the road repairs is provided with the bill as required by the UIIA, we have no other backup to provide.” However, the Motor Carrier argues that when the claim was submitted under the binding arbitration process in the UIIA, none of the evidence that the Equipment Provider provided in its response to the claim was provided to the Motor Carrier for review when they originally requested the information in its initial dispute of the invoice. Therefore, the Motor Carrier feels that the Equipment Provider did not comply with Section E.3.a.(2) of the UIIA based on the fact that the Equipment Provider did not provide sufficient supporting documentation to support the invoice when it was originally billed to the Motor Carrier. The Motor Carrier believes it is not responsible for the charges billed.

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

The Equipment Provider responded to the claim stating "Our contention is that this happened during the interchange period pursuant to UIIA F.4.a. which is below. Also, this was not a dry run as stipulated by the [Motor Carrier]".

Section F.4.a of the UIIA states:

Subject to the exceptions set forth in Subsection (b) below, Motor Carrier agrees to defend, hold harmless and fully indemnify the Indemnitees (without regard to whether the Indemnitees' liability is vicarious, implied in law, or as a result of the fault or negligence of the Indemnitees), against any and all claims, suits, loss, damage or liability, for bodily injury, death and/or property damage (other than cargo loss, damage, or delay unrelated to a commercial motor vehicle accident involving the Motor Carrier or theft of the cargo during the Interchange Period), including reasonable attorney fees and costs incurred in the defense against a claim or suit, or incurred because of the wrongful failure to defend against a claim or suit, or in enforcing subsection F.4 (collectively, the "Damages"), caused by or resulting from the Motor Carrier's: use or maintenance of the Equipment during an Interchange Period; and/or presence on the Facility Operator's premises. **[Revised 10/01/18]**

The Equipment Provider added in its response to the claim "The job code Dry Run was used as there is no set job code for roadside assistance/roadside flip".

In response to the claim, the Equipment Provider provided the detailed invoice from DCLI / Wes Kochel, Inc. along with multiple photo images of the roadside flip. For these reasons, the Equipment Provider feels the damage to the chassis is the responsibility of the Motor Carrier.

DISCUSSION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the Motor Carrier received an invoice from the Equipment Provider for a "dry run" for \$00.00. The Motor Carrier requested but did not receive clarification about the repair service and supporting documentation from the Equipment Provider for the service to the chassis. After the Motor Carrier filed the arbitration claim, the Equipment Provider clarified that the service was not a "dry run" and provided supporting documentation with a detailed invoice of the service on the chassis and photo images of the roadside flip.

The panel's opinion is that the Equipment Provider provided the required documentation under Section E.3.a.(2) of the UIIA and therefore finds the Motor Carrier shall pay the invoiced amount. However, the panel finds that this arbitration could have been avoided had the Equipment Provider provided the supporting documentation when the Motor Carrier requested it at the beginning of the dispute. Therefore, the panel finds that the Equipment Provider shall reimburse the Motor Carrier for the UIIA arbitration filing fee 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 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]**

Section F.4. Indemnity, Item F.4.a.

Subject to the exceptions set forth in Subsection (b) below, Motor Carrier agrees to defend, hold harmless and fully indemnify the Indemnitees (without regard to whether the Indemnitees' liability is vicarious, implied in law, or as a result of the fault or negligence of the Indemnitees), against any and all claims, suits, loss, damage or liability, for bodily injury, death and/or property damage (other than cargo loss, damage, or delay unrelated to a commercial motor vehicle accident involving the Motor Carrier or theft of the cargo during the Interchange Period), including reasonable attorney fees and costs incurred in the defense against a claim or suit, or incurred because of the wrongful failure to defend against a claim or suit, or in enforcing subsection F.4 (collectively, the "Damages"), caused by or resulting from the Motor Carrier's: use or maintenance of the Equipment during an Interchange Period; and/or presence on the Facility Operator's premises. **[Revised 10/01/18]**

DECISION:

The panel finds in favor of the Equipment Provider for the disputed charges of \$00.00. The Motor Carrier is responsible for paying the \$00.00 invoice. The Equipment Provider will reimburse the Motor Carrier for the \$00.00 arbitration filing fee since the arbitration claim could have been avoided if the proper documentation had been provided to the Motor Carrier when they initially disputed the charges.

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: **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.

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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, **Manchester Motor Freight**

Appellant, and

UIIA EP, **CSX Intermodal Terminals, Inc.**

Respondent.

Case Number: **20230322-6-MNCM-MR-TR**

Date of Decision: 08/16/2023

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	3UB5391	LSFZ536162	2/16/2023	Worcester	12/28/22	12/29/22	2/16/23	3/8/23	3/20/23	3/22/23
2	3UA5574	DDRZ959353	1/31/23	Springfield	12/14/22	12/19/22	1/31/23	2/13/23	2/13/23 or 3/14/23	3/22/23

***Note: Invoice 3UB5388 under this claim was resolved between the parties and removed from the claim. For Invoice 3UA5574, the panel will need to determine when the 15-day clock started for the MC to submit the claim. MC believes there was on-going discussion and actual clock for submitting arbitration claim started on 3/14/23.**

MOTOR CARRIER'S BASIS OF DISPUTE

The Motor Carrier dispute is based on Sections E.3.a(2), E.4.c., and Exhibit C of the UIIA, in that Motor Carrier is being charged for the repair of slid flat tires that it did not cause. For invoice 3UB5391, the Motor Carrier was invoiced for slid flat on the LOR in the amount of \$00.00. The Motor Carrier does not believe the images provided by the Equipment Provider clearly evidence that there is a slid flat on the tire based on definition of slid flat in Exhibit C of the UIIA. The image does not show a clear flat spot that is less than 2/32 inches of tread. The Motor Carrier indicates that it believes the images show a tire that is completely roadworthy. In support of this fact, the Motor Carrier indicates that this chassis was used by another Motor Carrier after it was ingated on December 29, 2022. The unit was outgated again on January 3, 2023 from CSX Worcester and returned to the CSX Springfield terminal on January 5, 2023. After the ingate, the chassis was utilized three additional times before the repair took place on January 31, 2023. Consequently, the Motor Carrier believes that the Equipment Provider did not provide sufficient factual documentation to support its invoice and that the slid flat does not meet the definition set forth Exhibit C so the invoice should be cancelled.

For invoice 3UA5574, the Motor Carrier was invoiced for slid flat on LOR in the amount of \$00.00. The Motor Carrier does not believe the images provided by the Equipment Provider clearly evidence that there is a slid flat on the tire based on the definition of slid flat in Exhibit C of the UIIA. The picture shows existing tread grooves and tread blocks and does not show a clear slid flat less than 2/32 inches of tread. Motor Carrier believes the

tire is roadworthy and supporting this is the fact that the chassis was used by another Motor Carrier after it was ingated on December 19, 2022. The unit was outgated again on December 21, 2022 and returned on December 28, 2022, which is the last time it was used before the repair was done. Consequently, the Motor Carrier believes that the Equipment Provider did not provide sufficient factual documentation to support its invoice and that the slid flat does not meet the definition set forth Exhibit C so the invoice should be cancelled. Additionally, on this specific invoice, the Motor Carrier believes there was on-going discussion with the Equipment Provider related to this dispute and that the Equipment Provider's response to start the 15-day timeclock for submitting the claim for arbitration did not start until the e-mail from the Equipment Provider, dated March 14, 2023.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE

The Equipment Provider states that, for invoice 3UB5391, the Motor Carrier indicated that this invoice was for a slid flat on the LOR, which is incorrect. The invoice is for the LIR. The Equipment Provider also disagrees with the Motor Carrier's opinion that the chassis was roadable since it was used several times after the Motor Carrier returned it. This is an incorrect assumption. Just because a chassis has a defect, that does not mean that a driver will not still pull the chassis. The Equipment Provider believes this invoice is valid as billed as the Motor Carrier returned the tire with slid flat tire damage as evidenced by the images provided and the definition of slid flat in Exhibit C.

For invoice 3UA5574, the Equipment Provider states that the Motor Carrier indicated that this invoice was for a slid flat on the LOR, which is incorrect. The invoice is for the ROR. The Equipment Provider also disagrees with the Motor Carrier's opinion that the chassis was roadable since it was used several times after they returned it. This is an incorrect assumption. Just because a chassis has a defect, does not mean that a driver will not still pull the chassis. The Equipment Provider also noted that there were two slid flat tires (RIR/ROR) and the Motor Carrier was only billed for the ROR because Equipment Provider did not have the photo evidence on the RIR tire. The images provided show the slid flat spot in relation to the writing on the tire, both on the ingate photos as well as the repair photos. There is also a second point of reference on the rim, where it looks like some sort of debris. This can also be seen in one of the ingate photos and in two of the repair photos. The Equipment Provider indicated that it helps to identify the slid flat spot. The Equipment Provider believes this invoice is valid as billed as the Motor Carrier returned the tire with slid flat tire damage as evidenced by the images provided and the definition of slid flat in Exhibit C.

DISCUSSION

The panel has carefully reviewed all documents and evidence submitted by the parties. While slid flat damage is apparent on photos provided for both invoices, they have markings of "0/32". While tire depth is difficult to determine from photos, one can conclusively confirm that both tires still have remaining tread left. Additionally, both replaced tires have significant normal wear, apparently close to the requirements in Exhibit C of more than 4/32". Finally, as the Motor Carrier pointed out, both chassis were utilized multiple times after ingate, so the damage did not prevent the intended use of the equipment and thus does not constitute damage as defined in the UIIA. The Equipment Provider disagrees. However, if the Equipment Provider has evidence that damage exists, it is prudent that the Equipment Provider address the known issues timely. It did not do so in this instance. Therefore, the panel find 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:

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]**

4. Tires

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]**

Exhibit C of the UIIA – Tires – Slid Flat Damage

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.

DECISION

The panel finds in favor of the Motor Carrier based on Section E.4.c and Exhibit C of the UIIA. The chassis were used multiple times after ingate and the photos are not conclusive enough to confirm "Slid Flat Damage" as identified in Exhibit C. Therefore, the invoices are not valid under Section E.3.a.(2) and the Motor Carrier is not responsible for the charges billed.

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