UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between	)	
	)	Case 20081216-1-XXXL-MR-OTH
UIIA Motor Carrier	)	
Appellant, and	)	DECISION
	)	January 26, 2009
UIIA Equipment Provider	)	
Respondent.	)	

FACTS: Motor Carrier (MC) interchanged a sealed import container belonging to Equipment Provider (EP) from the Seagirt Marine Terminal at 10:33 AM on September 24, 2008. The outbound TIR reported … "Damaged Dent: Front Panel" and cargo weight of 11,293 lbs.

MC returned the container empty to Seagirt Marine Terminal at 14:25 on September 30, 2008. The inbound TIR reported …"Damaged Broken: Floor"

EP issued an invoice for the purported cost of repairing the damages noted on the empty ingate inspection in the amount of $00.00. The invoice included the cost of repairing the cross member, as well as, the floor. There is no evidence that the container has, in fact, been repaired and that the invoice accurately reflected the cost of that estimate.

BASIS OF CLAIM: MC asserts that all of the damage appears to be old with heavy rust evidenced by photos, that the cargo weight was only 11,293 lbs, and there was no mention of cross member damage on the return interchange.

DISCUSSION: Nothing in Exhibit A of the UIIA indicates the driver is responsible for inspecting the floor or cross members prior to interchanging the equipment. Exhibit B of the UIIA identifies the floor as the responsibility of the EP unless the result of damage by the MC. The photos indicate heavy corrosion on the cross members and no evidence of damaged caused by the MC.

While it is possible that the floor was damaged by the consignee while unloading the container, the light cargo weight indicates that the floor probably failed from normal wear and tear.

DECISION: Based on Exhibit A and Exhibit B of the UIIA, the panel unanimously finds in favor of the MC. EP shall not be entitled to recover the actual costs of repair from MC. EP shall bear the costs of appeal.

DAVID MANNING
Motor Carrier Member

PATRICK VALENTINE
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between	)	
	)	Case 20090203-1-XXXI-MR-OTH
UIIA Motor Carrier	)	
Appellant, and	)	DECISION
	)	April 8, 2009
UIIA Equipment Provider	)	
Respondent.	)	

FACTS:

1. Sealed outbound loaded container from New York Container Terminal on October 2, 2008 at 11:06.
2. No notations of defects on outgate TIR.
3. Empty container returned to New York Container Terminal on October 3, 2008 at 13:42.
4. Notation of “A” Damage on ingate TIR showing: “SAE Plugs, Lights: Inoperative”.
5. Citation for “airlines chafing or kinking (air lines tied together)” issued to MC on 10-03-08 at 10:05 requiring appearance on 12-04-08 at 9:30.
6. Citation for “fail to secure load from loss (defective locking pin) issued to MC on 10-03-08 at 10:05 requiring appearance on 12-04-08 at 9:30.
7. Staten Island Towing Service invoice for “storage and services rendered” dated 10-03-08 paid by MC for $00.00.
8. Edgar Road Garage invoice dated 10-03-08 for “Road service to breakdown location, check and tie up airline, escort unit to Howland Hook SI” paid by MC for $00.00.
9. Letter from Edward Petrini, Safety & Compliance at MC, to John Dunn, Equipment Manager at EP, advising court date rescheduled for 1-20-09 at 9:00 and attorney is required for appearance and asking for EP assistance.
10. New York Container Terminal repair invoice dated 10-04-08 indicating left front twist lock was replaced and air lines were secured. Total cost $00.00.
11. Letter from Matthew Pavis, attorney hired by MC, dated 1-21-09 stating the court accepted a plea for disorderly conduct and assessed a fine of $00.00.

BASIS OF CLAIM:

MC asserts that the failure to properly maintain a chassis in safe operating condition has resulted in fines, towing charges and attorney costs that are the responsibility of EP. Pursuant to the UIIA Agreement Exhibit B, Equipment owners are responsible for normal wear and tear including “Trailer/chassis locking assemblies, safety latches, container securement handles, brake adjustments and brake component repairs”. MC, as a motor carrier was responsible pursuant to the UIIA Agreement Exhibit A, for “Brake air leaks and proper pressurization only” and “Twist locks are engaged and secured”.

DISCUSSION:

1. Exhibit A requires the motor carrier to check that twist locks and safety latches are engaged and properly secured but Exhibit A, by reference, applies to Section D.3.a.1 which requires the MC to conduct a pre-trip inspection prior to departing and Section F.4.b. which references Indemnity.

2. It is a common occurrence for the safety latches on twist locks similar to the ones on this chassis to be secured upon inspection but due to bouncing and vibration from normal operation to become unsecured.

3. Additionally, whether or not the safety latch is “secure” is a matter of opinion and open to interpretation. In this case, both the driver and the NYCT maintenance personnel determined the safety latches were secure. The roadside inspector determined they were not. This also is a common occurrence.

4. It is likely that this whole issue simply resulted from an overzealous roadside inspector which is a hazard both the MC and EP must accept.

5. EP states NYCT’s maintenance personnel found no defect in the twist lock but were instructed to replace the left, front.

6. Citation is for defective locking pin but no location is specified.

7. Edgar Road Garage applied plastic ties to the twist locks to secure. There is no requirement of MC to apply plastic ties to secure.

8. Section D.3.d.1. clearly places the responsibility for the repair and or replacement of the air hoses and twist lock/security latches with the EP.

DECISION:

1. Based on the UIIA, the responsibility for repairing the air lines and twist locks/security latches rests with the EP. The EP paid the cost for the repairs.

2. Based on the UIIA, the MC does not have recourse against the EP for costs, other than repair costs, the MC incurs due to normal wear and tear defects.

3. The safety latch on this chassis needs to be redesigned. This type of safety latch is susceptible to citations as issued in this case due to its design.

The panel unanimously finds in favor of the EP. MC's request that EP reimburse them for total costs of $00.00 is denied.

DAVE MANNING
Motor Carrier Member

PATRICK VALENTINE
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between	)	
	)	Case 20090414-1-XXXT-MR-OTH
UIIA Motor Carrier	)	
Appellant, and	)	DECISION
	)	May 5, 2009
UIIA Equipment Provider	)	
Respondent.	)	

FACTS: Motor Carrier (MC) received loaded import container from Equipment Provider (EP) from NS St Louis at 07:40 on 1-07-09. The outbound TIR records no damage.

MC returned empty container to EP at ContainerPort Group in St Louis on 1-07-09. The inbound TIR reported "RF corner post dented in 1 7/16 inches – replace, RS panel #11 bent in & starting to kink – str 12 inch by 48 inch".

EP invoice MR09CH104 dated 2-23-09 indicated "charges for major damage to corner post done while in MC possession".

BASIS OF CLAIM: MC asserts Exhibit A of UIIA does not require driver to inspect for dents of any kind. MC admits Exhibit C states MC is responsible for items bent where proper operation and function of the unit is impaired. MC asserts rail would not allow MC to note the bent corner post.

EP asserts the dent in the corner post prohibited the unit from further legal and proper use because it could not support the original stacking weight as it was originally rated for 50,000 PSI.

DISCUSSION: The pictures provided substantiated that there was a significant dent in the right front corner post which could affect the proper use and function of the container. This dent would have been readily visible to the driver while performing the walk around inspection required in UIIA Exhibit A. It is obvious the damage could be caused by a MC. MC has the responsibility to document damage that exists on equipment at the time of the outbound interchange. This is the best protection against damage noted on the inbound interchange.

DECISION: Because the damage was enough to affect the proper operation and function of the container, the damage would have been readily visible to the driver, and the damage could be caused by impact while in the possession of the MC, the panel unanimously finds in favor of the EP. EP is entitled to receive reimbursement for the damaged equipment.

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 MC,	)	Case Number: **20151113-24-XXXP-MR-OTH**
Appellant, and	)	
	)	
UIIA EP,	)	Date of Decision: 7/18/2016
Respondent	)	

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Inv	Invoice #	Chassis #	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	3JK5321	TSFZ557901	10/16/15	UP Global 1/CSX Bedford Park	9/13/15	9/13/15	10/16/15	10/21/15	10/29/15	11/13/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Sections D.2.a and D.3.d of the UIIA. The Motor Carrier states it is being billed for landing leg damage for a cross-town move. The Motor Carrier outgated the equipment from the UP Global 1 facility (AGS) to CSX Bedford Park (AGS). The Motor Carrier reports that the unit was in its possession for only twenty-nine (29) minutes and, therefore, believes any damage would be pre-existing and/or reasonable wear and tear to the unit. The Motor Carrier argues that the AGS image provided by the Equipment Provider shows that the damage already existed prior to outgating the unit and, further, that both AGS images are consistent and show the same damage. The Motor Carrier believes that if there was damage at the ingate, the CSX would then J2 the damage back to the origin railroad (UP). The Motor Carrier states this was a direct interchange from UP to CSX. The Motor Carrier believes it returned the unit to CSX in the same condition as it was received, reasonable wear and tear accepted, in accordance with Section D.3.d. The Motor Carrier does not believe that the Equipment Provider has provided proof that the damage was caused by the Motor Carrier.

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

The Equipment Provider responded by stating that the Motor Carrier is required to fully inspect the unit for damage prior to terminal departure and noted that no damage was reported. The Equipment Provider argues that Exhibit A, Item 4 to the UIIA assigns the Motor Carrier responsibility for visually or audibly checking to ensure that the landing legs are in a 90 degree angle and that they are in good working order prior to leaving the gate. The Equipment Provider feels that if the pre-trip inspection had been properly completed, pre-existing landing leg damage could have been addressed via repair or switching out the chassis prior to departure. The Equipment Provider feels that the Motor Carrier is responsible for the charges as billed since it failed to do a proper pre-trip inspection.

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 equipment was in its possession for only twenty-nine (29) minutes. The Motor Carrier states that AGS images show that the damage existed prior to outgating. The Motor Carrier believes it returned the equipment to the Equipment Provider in the same condition as it was received, reasonable wear and tear excepted, in accordance with the UIIA.

The Equipment Provider argued that Exhibit A, Item 4 to the UIIA assigns the Motor Carrier responsibility for visually or audibly checking to ensure that the landing legs are in a 90 degree angle and that they are in good working order prior to leaving the gate. The Equipment Provider believes the charges are valid as invoiced.

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 damage to the landing gear was documented on the outgate EIR from the UP. Therefore, the damage could not have taken place while in the Motor Carrier's possession.

The Rail Carrier panel member found in favor of the Equipment Provider. The Rail panel member observed that the Motor Carrier's position that the damages they were billed for were present before the interchange period misses the critical point, i.e., the Motor Carrier's acceptance of the chassis with landing legs that did not meet the UIIA pre-trip requirement to be "in a 90 degree position" allowed an unsafe chassis to be operated on public roads, violating the terms of the UIIA and the Equipment Provider's Addendum.

Because the modal members could not reach a consensus, the third panel member was brought in to render the final decision pursuant to Exhibit D3 of the UIIA.

The Ocean Carrier panel member found in favor of the Motor Carrier. The Ocean panel member noted that although he fully understands the Equipment Provider's position in this matter, the question at hand is to determine the party responsible for the damage. The Ocean Carrier panel noted that while the Motor Carrier has an obligation to perform a pre-inspection of the equipment for the

safety and the well-being of our public road system, the AGS images provided by the Equipment Provider clearly show that the damage associated with the billing existed prior to the out-gate. Consequently, the damage to the landing legs was not done while in the Motor Carrier's possession. The Ocean Carrier panel member stated that although case was found in the Motor Carrier's favor, that a stern warning should be issued to the Motor Carrier that their drivers must do a more thorough pre-inspection of equipment before accepting it for interchange.

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:

EP's Addendum to the UIIA – Section VI. General Purpose Equipment, C. Equipment Inspection

Motor Carrier shall inspect General Purpose Equipment prior to leaving the Terminal in accordance with Section D(3) of the UIIA. Motor Carriers shall not interchange equipment that possesses a visible and audible roadability defect. Damage to General Purpose Equipment must be noted on the outbound Equipment Interchange Receipt at manned gates prior to Motor Carrier leaving the Terminal. Motor Carrier will not be held responsible for damages noted on the Equipment Interchange Receipt. If such damage prevents the Motor Carrier from taking the General Purpose Equipment out of the Terminal, the Motor Carrier will notify the CSXIT Terminal Manager and/or CSXIT repair contractor that a repair is required. Upon completion of repairs the Motor Carrier will be notified of General Purpose Equipment availability.

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]**

Exhibit A of the UIIA

4. Landing Legs (Check that Landing legs are in 90 degree position and they move up and down properly.)

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

CASE REVIEWED AND DECIDED BY:

THOMAS BARATTINI
Ocean Carrier Member

JEFFREY LANG
Motor Carrier Member

CLIFF CREECH
Rail Carrier Member

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

In the Dispute Between	)	
	)	
	)	
UIIA MC,	)	Case Number: **20161026-13-XXXH-MR-OTH**
Appellant, and	)	
	)	
UIIA EP,	)	Date of Decision: 01/03/2017
Respondent	)	

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	282895645	UPHZ130188	09/14/16	UP Los Angeles/City of Industry	7/5/16	7/5/16	09/14/16	09/20/16	10/14/16	10/25/16

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Sections D.3., E.3.a.(1) and Exhibit B of the UIIA. The Motor Carrier disputed the invoice stating that the photos provided for repair bills continue to be inconclusive for the damages being billed. The Motor Carrier believes that in all three pictures provided, there does not appear to be significant damage that would indicate that the landing gear was bent while under their interchange. Furthermore, the Motor Carrier stated that when pictures were requested from a previous move that their company made on the same unit, their request was ignored. The Motor Carrier feels that if they had a previous picture to compare the landing gear to, they might be able to determine whether there was actual damage. It is the Motor Carrier's opinion that the Equipment Provider should have provided the additional information when requested.

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

The Equipment Provider responded to the claim stating that it is the Motor Carrier's responsibility to conduct a thorough pre-trip inspection to detect and notate equipment condition prior to acceptance per D.3 of the UIIA Agreement (as well as 49CFR Section 392.7). Any damage not notated on the outgate is presumed to have occurred while in the possession of the Motor Carrier during the interchange period. The outgate on July 5, 2016 by this Motor Carrier had no damages notated at all. The unit ingated ELA on the same day and the AGS images reflected the damage. The Equipment Provider stated it is visible that the legs were not perpendicular to the base of the chassis, as well as the DOT underride guard was bent beyond DOT limits. The Equipment Provider also stated that if the Motor Carrier handled the exact same equipment earlier within the timeframe, they would have had the ability to pull the images for this unit.

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 stated that the photographic evidence supplied by the Equipment Provider documents the damages being billed for. In addition, the Motor Carrier panel member noted that the Motor Carrier failed to provide an interchange receipt showing the damage was reported at the time the equipment was outgated.

The Rail Carrier panel member also found in favor of the Equipment Provider stating it is the responsibility of the Motor Carrier to write up any damage discovered upon outgate, specifically at a manual outgate.

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 Receipt

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 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, Item 4 – Landing Legs

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

4. Landing Legs (Check that Landing legs are in 90 degree position and they move up and down properly.)

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

CASE REVIEWED AND DECIDED BY:

TIM WILLIAMS
Rail Carrier Member

FRED HUENNEKENS
Motor Carrier Member

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

In the Dispute Between	)	
	)	
	)	
UIIA MC,	)	Case Number: **20180226-1-XXXA-MR-OTH**
Appellant, and	)	
	)	
UIIA EP,	)	Date of Decision: 05/09/2018
Respondent	)	

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	MR1802002337001	EGHU9026101	02/23/18	Maher Terminals/Maher Terminals	1/18/18	1/25/18	2/23/18	2/26/18	2/26/18	2/26/18
2	B01648	EGHU9026101	02/02/18	Motor Carrier's invoice to EP for reimbursement of the 1st repair that was made to the floor so that the container could be unloaded.						

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Sections D.3.a. (1), D.3.d., E.1., E.3.a. (1), Exhibit A & Exhibit C of the UIIA. The Motor Carrier' is basing its dispute on the following reasons:

- The Motor Carrier states that it 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 EIR.
- Exhibit A of the UIIA sets forth the items that are the Motor Carrier's responsibility to visually or 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.
- Customer partially unloaded the cargo when forklift penetrated the weakened plywood floor. Motor Carrier contacted Equipment Provider and was advised to repair the damage and provide invoice for review and reimbursement.

- 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

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

In the Dispute Between	)	
	)	
	)	
UIIA MC,	)	Case Number: **20171124-37-XXXP-MR-TR**
Appellant, and	)	
	)	
UIIA EP,	)	Date of Decision: 01/31/2018
Respondent	)	

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	289573669	TSXZ906129	10/03/17	Global 1/Global 4	6/27/17	7/28/17	10/03/17	10/12/17	11/10/17	11/24/17
2	289679299		10/09/17	Dolton/Global 2	7/19/17	7/24/17	10/09/17	10/12/17	11/10/17	11/24/17

MOTOR CARRIER'S BASIS OF DISPUTE:

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

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

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

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

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

DECISION:

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

- Invoice 1 - The LIR tire is concave. It definitely appears to be flat. Additionally, a close examination of the LOR tire visible on TSXZ 906129 G4 INGATE FULL - Invoice 1 AGS gate image shows that the outside tire was noticeably scuffed or scrapped. That suggests the tires impacted something. No damage was listed on the outgate interchange from CP for either the LIR or LOR tires. The LIR tire was flat when it arrived at the rail. As a result, the Motor Carrier is responsible for the damage.

- Invoice 2 - There is no damage listed on the outgate interchange from CP. The Equipment Provider has provided ingate images of the LOF tire that shows the tire was cut across several treads. The Equipment Provider provided post ingate images of the tire that clearly show the tread was cut through more than one plies of fabric at the shoulder. This meets the requirement for Motor Carrier responsibility listed in Exhibit C. In addition, Section 7.A paragraph 3 of the Equipment Provider's Addendum to the UIIA provides that any damage discovered after the equipment is interchanged will be considered the responsibility of the Motor Carrier provided the damage was captured on an AGS image at the time of interchange. Both panel members believe the AGS images and post interchange image supplied by the EP meet the requirement of UIIA Section E.3. (a) and EP's Addendum Section 7.A.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

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

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

7. EQUIPMENT INTERCHANGE RECEIPTS: GATE INSPECTIONS.

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

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

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

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

D. Equipment Interchange

2. Equipment Interchange Receipts

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

3. Equipment Condition

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

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

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

E. Equipment Use

3. Damage to Equipment

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

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

4. Tires

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

Exhibit A to UIIA

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

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

Exhibit C to UIIA

Motor Carrier Responsibility During the Interchange Period

Tires

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

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

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

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

Run Flat damage to tire and/or tube

Missing Tire, tube or rim

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

CASE REVIEWED AND DECIDED BY:

FRED HUENNEKENS
Motor Carrier Member

TIM WILLIAMS
Rail Carrier Member

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

In the Dispute Between	)	
	)	
	)	
UIIA MC, **Centera Transport, Inc.,**	)	Case Number: **20210915-49-CNRP-MR-TR**
	)	
Appellant, and	)	
	)	
UIIA EP, **Union Pacific Railroad Company,**	)	Date of Decision: **March 14, 2022**
	)	
Respondent.	)	

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

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

MOTOR CARRIER'S BASIS OF DISPUTE:

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

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

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

DISCUSSION:

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

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

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

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

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

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

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

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

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

Exhibit A to UIIA, Motor Carrier Pre-Trip Inspection

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

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

DECISION:

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

CASE REVIEWED AND DECIDED BY:

PETER SCHNEIDER
Motor Carrier Panel Member

GORDON GRAHAM
Rail Panel Member

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

In the Dispute Between	)	
	)	
	)	
UIIA MC,	)	Case Number: **20230330-60-XXXP-MR-TR**
	)	
Appellant, and	)	
	)	Date of Decision: 07/21/2023
UIIA EP,	)	
	)	
Respondent.	)	

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