

In the Dispute Between

Case Number: **20190212-4-XXXC-PD**

Date of Decision: 05/09/2019

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	190000177367P	TCLU5663869	1/23/19	Garden City Terminal	11/20/18	12/6/18	1/23/19	1/24/19	2/5/19	2/12/19
2	190000177369P	MEDUSA025684	1/23/19	Garden City Terminal	11/19/18	12/3/18	1/23/19	1/24/19	2/5/19	

The Motor Carrier's basis of dispute is Exhibit B of the UIIA. The Motor Carrier stated that the two containers involved were import containers that were street turned within its contracted free time with the Equipment Provider to be loaded for an export booking. However, the Motor Carrier states that when the containers were being loaded, the floor broke due to faulty equipment. The inspections were complete on the container before loading and the Motor Carrier indicates that it could not have foreseen the floor breaking. Therefore, because of the faulty equipment the Motor Carrier feels that the containers should be treated as any other empty faulty container and no charges should be applicable once the empty is returned to the terminal.

The Equipment Provider responded to the claim by referring to their addendum to the UIIA, Section 2: Lost, Stolen or Destroyed Equipment. The Equipment Provider uses Section 2 of their addendum as part of their process on stopping the per diem clock on damaged equipment. The Equipment Provider stated that as soon as they are notified in writing of any damage to a container they stop the per diem clock that same day. Therefore, the Equipment Provider feels that the invoices are valid and should stand.

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 noted the Motor Carrier's argument that the Equipment Provider is responsible for the flooring damage pursuant to Exhibit B of the UIIA is accurate. The Equipment Provider cited Section 2: Lost, Stolen Or Destroyed Equipment to their Addendum as a basis for their claim. Since this was a flooring repair, this section would not apply. Therefore, it is reasonable to assume that the Motor Carrier should not be penalized due to damage that is the responsibility of the Equipment Provider.

The Ocean Carrier panel member agreed with the finding stating that floor damage caused from a forklift or other internal force would not fall under the Motor Carrier's responsibility.

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:

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

Axles
Batteries, broken
Battery box covers
Brake adjustments on trailers or chassis (1)
Brake and brake component repairs (2)
Container or Closed Trailer, roof bows
Container or Trailer, caulking/sealing of existing patches & seams
Container or Trailer, interior lining and interior posts
Container securement device handles
Conspicuity treatment
Dolly axle, wheels and sand shoes
Dolly crank handle, replacement
Door locking bar handles and tie-backs
Electrical connector socket, cleaning, adjustment and replacement
Fasteners, component, bolts, rivets, welds
Floor or decking (3)
Gladhands, replacement or repair
Hub assembly due to insufficient lubrication
Inspections, FMCSA and BIT
Landing gear, interior components and operating cross shaft
Lift pads
Lights
Manifest box

Markings, initial and number
Mud flaps and brackets
Refrigeration/Heating unit repairs including cabinet doors
Registration papers, application
Roll-up doors
Safety latches
Side doors
Sign boards
Sliding Tandem removable locking bars
Tank container components
Tires and Tubes, renewals, repairs or replacement
Trailer/Chassis locking assemblies
Trailer crossmembers, Damage (4)
Vehicle license plates, application

- (1) Not equipped with automatic slack adjusters
- (2) Except servicing due to accumulation of ice and snow
- (3) Damage caused during cargo loading/unloading operations excluded from Motor Carrier responsibility.
- (4) Damage to the first three crossmembers located behind the grid section of trailers not originally equipped with grid extension plate.

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.

Equipment Providers Addendum to the Uniform Intermodal Interchange and Facilities Access Agreement

2. LOST, STOLEN OR DESTROYED EQUIPMENT

Settlement for lost or stolen or destroyed equipment shall be depreciated replacement value as stated in settlement for lost, Section E.2.a. and E.2.b. of the UIIA Uniform Intermodal Interchange and Facilities Access Agreement.

Motor Carrier will immediately notify Provider of any Loss, Stolen or Destroyed Equipment. Until such notice is received in writing, along with the appropriate documents (i.e. police reports), use charges shall continue to accrue. Once Equipment Provider invoices Motor Carrier for such equipment, settlement will be made within thirty days. After thirty days, if settlement has not been accomplished, use charges will resume retroactive to date of notification by the Motor Carrier of the loss.

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

CASE REVIEWED AND DECIDED BY:

CHRIS GILTZ
Motor Carrier Member

TIM AMES
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: **20190311-1-XXA-MR/PD**

Date of Decision: 06/12/2019

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	8300047258	ZCXU8451947	4/27/18	GPA/GPA	4/16/18	4/17/18	5/25/18	5/31/18	3/6/19	3/11/19

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Exhibits B & C of the UIIA and Section 8 of the Equipment Provider's addendum to the UIIA. The Motor Carrier initially disputed the invoice with the Equipment Provider on 5/31/18 stating that Exhibit B to the UIIA shows that repairs to flooring or decking are the responsibility of the Equipment Provider unless a result of damage that occurred during the interchange period. The Motor Carrier noted that the unit was a sealed and loaded container so there was no way for the driver to inspect the floor of the container prior to outgating the equipment. Therefore, the Motor Carrier does not believe it is responsible for the floor repairs.

The Motor Carrier stated that the Equipment Provider did not respond to their original dispute submitted on 5/31/18 until almost 10 months later on 3/6/19, which was outside of the 30-day timeframe outlined in the Equipment Provider's addendum. The Equipment Provider's addendum states that it will respond to disputes within 30 days of receipt of the Motor Carrier's dispute. The Motor Carrier only became aware that their original dispute was not accepted when the Equipment provider withheld payment on a valid drayage invoice that the Motor Carrier had sent. In addition, the Motor Carrier noted that the Equipment Provider only sent a repair estimate versus the actual repair invoice as required under the UIIA.

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

The Equipment Provider responded to the claim stating that the Motor Carrier did not pursue arbitration until eight months after the invoice was issued so was not within the specified time frame set forth in the UIIA. The Equipment Provider indicates that it did not consider the 5/31/18 email from the Motor Carrier as a dispute of the charges but rather confusion about deciphering Exhibits B and C of the UIIA. The Equipment Provider also noted

that the Motor Carrier states that they thought the invoice had been cancelled but Equipment Provider's monthly statements starting in May 2018 and sent throughout the year showed the invoice valid and collectible. Therefore, the Equipment Provider feels that the invoice is valid and due.

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 found in favor of the Motor Carrier based on the fact that this interchange involved a sealed container, which the Motor Carrier would not have had the opportunity to inspect at outgate so there is no way to prove that the damage was caused during their possession. In addition, Exhibit B identifies floors as the Equipment Owner's responsibility unless there is evidence that the damage was caused by the negligence of the Motor Carrier.

The Ocean Carrier panel member agreed with the finding for the reasons set forth above and also noted that past rulings have been in favor of Equipment Provider only when the damage is documented as being caused from the outside, i.e., a rock, board, etc. coming up through the floor. All interior floor damage caused from wear and tear, forklift, etc. is the responsibility of the Equipment Provider.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

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

D. Equipment Interchange

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. **[Revised 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]**

Exhibit B to UIIA, Equipment Owners Responsibility (added to UIIA on 07/25/07, Last Revised 4/20/09)

Repairs made to any item listed in Exhibit B that were a result of damage and not normal Wear and Tear, are the responsibility of the Motor Carrier.

Floor or decking

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

CASE REVIEWED AND DECIDED BY:

BEN BANKS
Motor Carrier Member

TIM AMES
Ocean Carrier Member

In the Dispute Between

Case Number: **20191002-3-XXXR-PD**

Date of Decision: **January 2, 2020**

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	PF1910002102	DFSU6645612	10/01/2019	GPA/GCT	9/19/19	9/25/19	10/1/19	10/2/19	10/2/19	10/2/19
2	PF1910002538	NAPZ8004414	10/1/19	GPA/GCT	9/19/19	9/25/19	10/1/19	10/2/19	10/2/19	

The Motor Carrier's basis of dispute are Sections D.1 and D.3 of the UIIA. The Equipment Provider billed the Motor Carrier two (2) separate per diem invoices, one for the container (\$00.00) & one for the chassis (\$00.00). However, the Motor Carrier feels they should not be held responsible for the per diem invoices as the container was unsuitable for its anticipated use. The Motor Carrier stated that the container was inspected prior to exiting the terminal and no damage was found. When the warehouse proceeded to load the first bundle of lumber in the container, they found the floor cracking. The customer immediately stopped loading the container and notified the Motor Carrier that they rejected the container due to weak flooring and safety concerns. The Motor Carrier stated that they notified the Equipment Provider of the customer's rejection of the container along with the reason, including pictures of the container. The Motor Carrier indicated that the Equipment Provider instructed them to return the container, which was done. The Motor Carrier received the two per diem invoices on October 1st and disputed them on October 2nd. The Motor Carrier does not believe they should be responsible for any charges due to the condition of the equipment at the time it was released by the Equipment Provider.

The Equipment Provider responded to the claim stating that the container was damaged during loading operation at the customer, while the container was under the Motor Carrier's interchange. Therefore, the Equipment Provider feels that the invoice is valid and should stand based on Section E.3.a. and Evergreen addendum Section 2.c. and 3.e.

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 noted that per D.3.b of the UIIA, the Motor Carrier must conduct pre-trip inspection as set forth in Exhibit A. Exhibit A states that "Pre-Trip inspection does not include the responsibility to identify 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." Additionally, the floor is not one of the 16 items specified for the Motor Carrier to visually check prior to interchange. Furthermore, Exhibit B(3) clearly states "Damage caused during cargo loading/unloading operations excluded from Motor Carrier's responsibility." The equipment clearly had a weak floor that was damaged at time of loading with the forklift. The Motor Carrier returned the container within a reasonable time frame after receiving disposition from Evergreen on Friday, September 20th at 5:17 pm and returned the empty on Monday, September 23rd.

The Ocean Carrier panel member agreed stating the action taken by the Motor Carrier was appropriate and within very reasonable timeframes with adequate communication. The damage occurred during the loading operation and the weak condition of the floor is not something that could have been determined through a visual inspection. Additionally, based on the photos it is evident that the damage did not occur due to the forklift driver entering the container at too high of a rate of speed, but rather points to a weak floor by the fact that the sagging and eventual full failure occurred further inside the container.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (July 1, 2019) to make its decision:

D. Equipment Interchange

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]**

Exhibit A to UIIA, Motor Carrier Pre-Trip Inspection, As referenced in Sections D.3.b. and F.4.b. (Added to UIIA 1/17/08, Last Revised 05/22/19)

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 (“DOT 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 above Motor Carrier Pre-Trip Inspection does not include the responsibility to identify 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.
[Revised 10/01/18]

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

- (3) Damage caused during cargo loading/unloading operations excluded from Motor Carrier responsibility.

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

CASE REVIEWED AND DECIDED BY:

DAVE HENSAL
Motor Carrier Member

LEO IMPERIAL
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: **20220809-3-XXXN-PD**

Date of Decision: 01/30/2023

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	H238164B	CFQU888189/ TSFZ536761	6/30/2022	Fairburn CSX/Atlanta	5/24/2022	5/26/2022	7/6/2022	7/15/2022	7/27/2022	8/9/2022
2	H238169B	CFQU217614/ NSFZ131960	6/30/2022	Fairburn CSX/Atlanta	5/18/2022	5/19/2022	7/6/2022	7/15/2022	7/27/2022	8/9/2022

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier is basing its dispute regarding two repair invoices on Sections D.2.a. and D.3.e. of the UIIA. The Motor Carrier's dispute and basis for arbitration for each invoice is as follows:

Invoice H238164B

The Motor Carrier states that it was billed for an expired FMCSA inspection and damage to four tires that were not notated on the ingate EIR but are notated on the CGI as "worn". The Motor Carrier further states that no damage to the unit was notated on the ingate EIR on May 26, 2022. The Motor Carrier believes that all of these items are wear and tear issues that are not the Motor Carrier's responsibility in accordance with Section D.3.e. and Exhibit B of the UIIA.

Invoice H238169B

The Motor Carrier states that it was billed for an expired FMCSA inspection, landing gear, sand shoe repair, and two tires that are not noted on the ingate EIR but were notated on the ConGlobal estimate as "worn". The Motor Carrier is disputing a partial amount of this invoice in the amount of \$00.00. The Motor Carrier states that it accepts responsibility for the RIR tire damage that was noted on the ingate EIR documentation. The repair costs for the RIR tire damage totaled \$00.00 (\$00.00+ \$00.00itemized damage listed on the repair invoice). The Motor Carrier believes all other items on the invoice are the Equipment Provider's responsibility based on the fact that the FMCSA and worn tires should be considered wear and tear, and the sand shoe damage is not notated on the ingate EIR. Therefore, the Motor Carrier believes it is only responsible for \$00.00 of the invoice based on Section D.3.e. and Exhibit B of the UIIA.

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

The Equipment Provider did not respond to the binding arbitration claim, but did respond to the Motor Carrier's initial dispute of the charges on the two invoices as follows:

The Equipment Provider responded to the Motor Carrier's initial dispute of both invoices Nos. H238164B and H238169B. The Equipment Provider states that the issue regarding both invoices is that both units were terminated with an expired FMCSA inspection and in order to bring the units back into FMCSA compliance, the tires needed to be replaced. Since each unit was terminated with the expired FMCSA inspection, the Equipment Provider states that any and all costs associated to bring each unit back into compliance is the responsibility of the Motor Carrier. The Equipment Provider's position is that it considers an FMCSA tag not to be a good-ordered unit. To place a unit in a bad ordered status requires the Motor Carrier to terminate equipment in good-ordered status at the Equipment Provider's facilities.

The Equipment Provider states that with respect to Invoice H238169B only, it did not mention the repair related to the landing gear and sand shoe repair. Those repairs were not in the Equipment Provider's response nor in the Motor Carrier's initial dispute of the charges based on the documentation provided.

DISCUSSION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based on the supporting documents and evidence submitted, there is no evidence or comments on the ingate EIR's to both units noting that the equipment was terminated in a condition, other than normal wear and tear.

Specifically, the equipment referenced in invoice H238164B was ingated with no damage. The equipment referenced in invoice H238169B was ingated with damage noted only to the RIR tire. The Motor Carrier references Section D.2.a. of the UIIA and agreed to pay \$00.00 for the RIR tire damage noted. The amount of damage to the RIR tire being \$00.00 for the tire, \$00.00 for labor, and \$00.00 for an administrative fee as noted in the detailed breakdown of the charges.

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. **[Revised 05/12/10]**

The Equipment Provider contends that the equipment must be ingated in good order, and an expired FMCSA inspection is not considered good order. Therefore, the Equipment Provider believes the Motor Carrier must pay for the inspection as well as any repairs that were made as a result of the inspection.

Exhibit B of the UIIA explicitly puts the responsibility for FMCSA inspections on the Equipment Provider. The Equipment Provider's demand that the Motor Carrier pay for an FMCSA inspection as well as damage not noted on the ingate of the units violates both Sections D.2.a., D.3.e., and Exhibit B of the UIIA.

The panel concurs on the submitted evidence and finds in favor of the Motor Carrier in this dispute. Invoice H238164B is denied in full and invoice H238169B is reduced to \$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]**

- 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 \$00 per unit per Interchange Period. Provider may, in its Addendum, adopt a different threshold amount as long as that amount is greater than \$00 and applies to both Motor Carrier and Provider. **[Revised 07/25/07]**

Exhibit B to UIIA – Inspections, FMCSA and BIT

DECISION:

The panel unanimously finds in favor of the Motor Carrier. The Equipment Provider's Invoice H238164B is denied in full. The Motor Carrier is responsible for \$00.00 of Invoice H238169B for repair of the RIR tire damage - \$00.00 for the tire, \$00.00 for labor, and \$00.00 for an administrative fee as detailed on the invoice.

CASE REVIEWED AND DECIDED BY:

CHRIS GILTZ
Motor Carrier Panel Member

RONNIE ARMSTRONG
Ocean Carrier Panel Member