

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: **20140708-3-XXXN-PD**

Date of Decision: 11/03/2014

FACTS: The Equipment Provider (EP) sent the Motor Carrier (MC) a per diem invoice for a move that took place in May and June 2014. The invoice dated 07/01/2014, in the amount of \$00.00, shows that the MC out-gated the unit on 05/15/2014 and in-gated on 06/02/2014, and that the free time expired on 05/21/2014.

From Period	To Period	Chargeable Days	Currency
05/15/2014 10:07	05/21/2014 10:07	7	USD
05/22/2014 10:07	05/26/2014 10:07	5	USD
05/27/2014 10:07	06/02/2014 12:12	7	USD
Waiver Amount : 0.00		Net Amount (Sum of Gross Amount-Waiver Amount)	

ISSUE: The MC asserts that the EP is in violation of the California State Law – SB 45, which states that the MC cannot be billed for per diem on weekends or holidays. The MC is basing their dispute on Section G.11 of the UIIA.

The EP commented on the claim stating that they believe that CA truckers are not exempt from weekends & holidays due to the terms and conditions of the EP's addendum to the UIIA, in which the MC is a signatory to.

DISCUSSION: The panel reviewed all documents and evidence submitted. The panel finds that the EP failed to comply with Section G.11. Compliance with the Law. The panel was provided with a case precedent rendered by a California court that provided an interpretation of the California statute SB45 as it relates to the ability of an EP to assess per diem on a weekend and/or holiday. Based on the court's interpretation of SB45, an EP is only precluded from assessing per diem charges to a Motor Carrier on a weekend or holiday when the facility is closed. Therefore, the panel finds in favor of the MC. In this case the disputed charges were for dates that were identified as a weekend or holiday, and the specific facility where the interchange took place was not open for business on these dates.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (August 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

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

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)

Case Number: **20140717-4-XXXN-PD**

Date of Decision: 11/21/2014

FACTS: The Equipment Provider (EP) sent the Motor Carrier (MC) a per diem invoice for a move that took place in June 2014. The invoice dated 07/11/2014, in the amount of \$00.00, shows that the MC out-gated the unit on 06/06/2014 and in-gated on 06/18/2014, and that the free time expired on 06/12/2014.

From Period	To Period	Chargeable Days	Currency
06/06/2014 10:58	06/12/2014 10:58	7	USD
06/13/2014 10:58	06/17/2014 10:58	5 <i>Lead day</i>	USD
06/18/2014 10:58	06/18/2014 13:44	1	USD
Waiver Amount : 0.00		Net Amount (Sum of Gross Amount-Waiver Amount)	

ISSUE: The MC asserts that the EP is in violation of the California State Law – SB 45, which states that the MC cannot be billed for per diem on weekends or holidays. The MC is basing their dispute on Section G.11 of the UIIA.

The EP commented on the previous claim (20140708-3-XXXN-PD) stating that they believe that CA truckers are not exempt from weekends & holidays due to the terms and conditions of the EP's addendum to the UIIA, in which the MC is a signatory to.

DISCUSSION: IANA Staff reviewed all documents and evidence submitted by the Moving Party and it has been determined that this issue has already been addressed and resolved in a prior arbitration decision that was rendered by the arbitration panel on case 20140708-3-XXXN-PD. Therefore, in accordance with Exhibit D, Item 8 of the UIIA, if it is determined that the submitted claim has already been addressed and resolved in a prior arbitration decision, then both the Moving and Responding Parties will be provided with the precedent set forth in the former decision and advised that this decision will apply to the submitted claim.

Therefore, both the Moving and Responding Parties were provided with the prior case decision and were advised that the decision applied to the current claim submitted by the Moving Party. Both parties were provided 10 days to provide additional information as to why the precedent decision did not apply to this claim or was in conflict with the Agreement. Due to no response, the Responding Party (EP) agreed with Staff's determination that the prior case decision was the same and therefore, the invoice involved in this claim will need to be adjusted.

Based on the prior decision case 20140708-3-XXXN-PD & its applicability to this current claim, of an EP to assess per diem on a weekend and/or holiday, per California statute SB45. Based on the court's interpretation of SB45, an EP is only precluded from assessing per diem charges to a Motor Carrier on a weekend or holiday when the facility is closed. Therefore, the panel found in favor of the MC. In this case the disputed charges were for dates that were identified as a weekend or holiday, and the specific facility where the interchange took place was not open for business on these dates.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (August 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

DECISION: Found in favor of the MC.

Based on Exhibit D, Item 8 previous case decision 20140708-3-XXXN-PD

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: **20141222-3-XXXX-PD**

Date of Decision: 05/18/2015

MOTOR CARRIER'S DISPUTE

The Motor Carrier disputes the following invoices:

Invoice	Inv. Date	Facility Outgate/Ingate	Outgated	Ingated	Date MC stated they rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
NAIM3057602	11/10/2014	Shippers Transport/PCT	10/17/2014	10/30/2014	12/8/2014	12/8/2014	1/13/2015**	12/22/2014
NAIM3057599	11/10/2014	Shippers Transport/PCT	10/17/2014	10/29/2014	12/8/2014	12/8/2014	1/13/2015**	12/22/2014
NAIM3057581	11/10/2014	Shippers Transport/PCT	10/17/2014	10/29/2014	12/8/2014	12/8/2014	1/13/2015**	12/22/2014
NAIM3057585	11/10/2014	Shippers Transport/PCT	10/17/2014	10/29/2014	12/8/2014	12/8/2014	1/13/2015**	12/22/2014
NAIM3061069	11/12/2014	Shippers Transport/PCT	10/27/2014	11/6/2014	12/8/2014	12/8/2014	1/13/2015**	12/22/2014
NAIM3061048	11/12/2014	TTI/PCT	10/23/2014	11/3/2014	12/8/2014	12/8/2014	1/13/2015**	12/22/2014
NAIM3061058	11/12/2014	Shippers Transport/PCT	10/26/2014	11/7/2014	12/8/2014	12/8/2014	1/13/2015**	12/22/2014
NAIM3061080	11/12/2014	Shippers Transport/Street Turn, Long Beach	10/17/2014	10/30/2014	12/8/2014	12/8/2014	1/13/2015**	12/22/2014
NAIM3061555	11/13/2014	Shippers Transport/PCT	9/18/2014	9/30/2014	12/8/2014	12/8/2014	1/13/2015**	12/22/2014
NAIM3061615	11/13/2014	TTI/TTI	10/23/2014	11/4/2014	12/8/2014	12/8/2014	1/13/2015**	12/22/2014
NAIM3061625	11/13/2014	TTI/TTI	10/23/2014	11/4/2014	12/8/2014	12/8/2014	1/13/2015**	12/22/2014
NAIM3061685	11/13/2014	TTI/TTI	10/22/2014	11/3/2014	12/8/2014	12/8/2014	1/13/2015**	12/22/2014
NAIM3063005	11/14/2014	BNSF Hobart/PCT	9/23/2014	11/6/2014	12/8/2014	12/8/2014	1/13/2015**	12/22/2014
NAIM3075449	11/25/2014	Shippers Transport/ SSA Pier A	10/23/2014	11/18/2014	12/8/2014	12/8/2014	1/13/2015**	12/22/2014
NAIM3075543	11/25/2014	TTI/TTI	11/8/2014	11/18/2014	12/8/2014	12/8/2014	1/13/2015**	12/22/2014
NAIM3079199	11/26/2014	Shippers Transport/TTI	11/9/2014	11/21/2014	12/8/2014	12/8/2014	1/13/2015**	12/22/2014
BLAE0176270*	11/26/2014	Street Turn, Long Beach/ SSA Pier A	11/10/2014	11/20/2014	12/8/2014	12/8/2014	12/9/2014	12/22/2014
BLAE0176268*	11/26/2014	Street Turn, Long Beach/SSA Pier A	11/10/2014	11/20/2014	12/8/2014	12/8/2014	12/9/2014	12/22/2014

Invoice	Inv. Date	Facility Outgate/Ingate	Outgated	Ingated	Date MC stated they rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
NAIM3091239***	12/8/2014	TTI	11/13/2014	12/1/2014	12/8/2014	12/8/2014	1/13/2015**	12/22/2014
NAIM3130229	1/13/2015	TTI/TTI	11/13/2014	12/1/2014	1/13/2015	12/8/2014	1/13/2015**	12/22/2014

*Initial response from EP on 12/9 only included invoices BLAE017270 and BLAE0176268.

**EP Response to remaining invoices disputed on 12/8 was not received until after Notice of Intent Form was received.

***Invoice NAIM3091239 was cancelled and adjusted for Thanksgiving Holiday. Corrected invoice is NAIM3130229 and is included in dispute.

The Motor Carrier basis of dispute is Section G.12. of the UIIA (Force Majeure) due to the port congestion conditions on the West Coast, which the Motor Carrier indicates precluded it from returning the equipment within the specified free time period. The Motor Carrier stated that the essential condition within the Force Majeure clause in the UIIA is that the Motor Carrier is unable to interchange equipment to the Equipment Provider because of causes beyond the Motor Carrier's control. When this condition is met, the Motor Carrier is exempted from the per diem charges during the duration of this condition. The Motor Carrier believes that the conditions caused by the West Coast port congestion met this condition under force majeure. The Motor Carrier also referenced a court decision involving United Arab Shipping and PB Express that it believes supports its belief that the conditions on the West Coast would be considered beyond the Motor Carrier's control [**See Discussion Section on page 2**]. Also included as supporting documentation were several Equipment Providers' tariffs that have been filed with FMC and include force majeure provisions that reference "port congestion" as a form of force majeure. The Motor Carrier stated in its basis that it has the trucks, drivers and logistical system to timely return the containers, but was unable to return the equipment to the port because of terminal closures, re-routing, gate changes/restrictions and extensive backups at the gate that were the result of the port congestion and beyond the Motor Carrier's control.

The Motor Carrier also indicated that the Equipment Provider is not in compliance with the California State regulation SB45, which prohibits intermodal marine Equipment Providers from imposing per diem, detention and demurrage charges under the following conditions: 1) when the intermodal marine terminal or terminal truck gate is closed during posted normal working hours, or during a labor disruption or any other period involving an act of God or any other planned or unplanned action that closes the truck gate, 2) when the intermodal marine terminal decides to divert equipment without 48 hours' electronic or written notification to the Motor Carrier, 3) when a loaded container is not available for pickup when the Motor Carrier arrives at the intermodal marine terminal, and 4) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. The Motor Carrier indicated that one or more of the above conditions existed during the period covered by each of the disputed charges and prevented it from returning the equipment within the specified free time.

The Motor Carrier also provided JOC articles, status updates issued by different equipment providers relating to the port congestion, data relating to turn times being experienced by its company and various other documents that the Motor Carrier believes support its argument that these conditions existed at the port facilities.

EQUIPMENT PROVIDER'S RESPONSE

The Equipment Provider responded that it does not believe the situation on the West Coast is a condition of Force Majeure. Per the UIIA, a Force Majeure situation would be defined as *"In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of **Acts of God, war, insurrections, strikes, fire, flood or any like causes** beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment."* The Equipment Provider argues that "port congestion" cannot be compared to an Act of God, war, insurrections, strikes, fire, or flood. In addition, the Motor Carrier's references to Equipment Providers tariffs should be excluded from the panel's review as these documents are agreements between the Equipment Providers and its customers, not the Motor Carriers. The Equipment Provider indicated that "port congestion" and "force majeure" are recognized as two separate issues.

The Equipment Provider responded with e-mail confirmations from the facilities (TTI, Pier A and PCT) confirming their normal operating hours and dates that these facilities were closed during the interchange period of 9/18/14 through 12/1/14. Based on the responses from the terminals, the Equipment Provider indicated that none of the operating hours associated with these facilities had any impact on the Motor Carrier's ability to return the equipment within the free time period.

The **TTI** terminal normal operating hours are:

1st shift 8:00am – 5:00pm

2nd shift 6:00pm – 3:00am

TTI confirmed it was open during normal business hours from the dates of 09/18/2014 to 12/01/2014. TTI also confirmed that all truckers are provided with gate passes when they check in. Therefore, if the Motor Carrier was turned away, it would just need to provide the gate pass number to prove that it had attempted to return the empties, but was turned away.

Pier A confirmed it does not provide turn away tickets & its normal business hours are as listed below:

Monday thru Friday 0800 – 1700

Monday thru Thursday 1800 – 0300

Pier A also confirmed it was closed on the following dates, outside the normal business hours:

10/02/2014 – stop work meeting

11/6/2014 – stop work meeting

11/27/14 – Thanksgiving Holiday

PCT confirmed that it does not provide turn away tickets and its normal business hours are as listed below:

Monday thru Friday 0800 – 1700

Tuesday thru Friday 1800 – 0300

PCT also confirmed it was closed on the following dates, outside the normal business hours:

10/2/2014 1800 shift

11/6/14 1800 shift

11/11/14 0800 & 1800 shift

11/27/14 0800 – 1800 shift

12/4/14 0800 – 1800 shift

12/24/14 & 12/25/14 0800 shift & 1800 shift

12/31/14 0800 & 1800 shift

PCT noted that it was open some Monday night shifts during this time.

DISCUSSION

The majority of the supporting documentation provided by the Motor Carrier encompasses a wide range of dates of JOC articles discussing the congestion issues on the West Coast, a court decision involving the subject matter of force majeure, individual UIIA Equipment Providers' commercial tariffs, and eModal transmissions

that address conditions at specific facilities as it relates to equipment return. IANA staff went through all of the documentation that was provided and identified the information that is dated between the timeframe of the interchange dates related to the invoices above and for the eModal transmissions that were specific to the facility where the interchange of equipment occurred. This information has been included as part of the primary documentation for this claim. The other supporting documentation is available under Central Desktop under the document titled “ADDL SUPPORTING DOCS” for the panel’s review as well.

Journal of Commerce Articles: The JOC articles included with the claim are dated between 09/18/2014 through 12/01/14 and provide general statements regarding the congestion issues on the West Coast and the overall conditions that existed at the Port of Los Angeles and Port of Long Beach. There were no JOC articles provided by the Motor Carrier that specifically described the conditions at the TTI, Pier A or the PCT facilities, which are the facilities where the equipment associated with the disputed invoices was in-gated. (Please see operating hours provided by these facilities above).

Court Case Referenced by Motor Carrier – United Arab vs PB Express, Inc.: The Motor Carrier submitted a copy of a court case involving UIIA EP, United Arab Shipping and UIIA MC, PB Express, Inc. that was regarding force majeure due to work stoppage of independent contractors hired by the Motor Carrier. The original court decision was found in favor of United Arab Shipping, but was later reversed and found in favor of PB Express. The court determined that the specific situation associated with the work stoppage was beyond the Motor Carrier’s control and therefore force majeure would be applicable.

Equipment Provider’s FMC File Tariff: The Motor Carrier also submitted copies of several Equipment Providers’ tariffs that are on file with the Federal Maritime Commission (FMC). However, these tariffs are considered outside the scope of the UIIA.

eModal E-mail Communications: The Motor Carrier provided copies of e-mail communications from eModal. These communications identified specific conditions at various facilities. On 09/24/2014, an eModal transmission was sent indicating that dual transactions and full pick-ups at SSA - Pier A would be cut off for the remainder of the first shift. On 9/30/2014 & 10/01/2014, an eModal transmission stated PCT would not be receiving empty equipment for EP on 10/1/14 from 1800 – 0300 to 10/2/14. On 10/23/14 at 2:31 p.m., an eModal transmission stated that Pier A would not be accepting empty returns until further notice, however that same afternoon at 4:22 p.m. an updated eModal message was transmitted to Motor Carriers that stated Pier A was receiving all empties again. All other eModal transmissions that were not related to PCT, Pier A or TTI (in-gating facilities) have been included under the document “ADDL SUPPORTING DOCS” and is available through Central Desktop for the panel’s review.

Other Miscellaneous Supporting Documentation: The Motor Carrier also presented as part of its case copies of advisories from two individual Equipment Providers related to the port congestion, information related to several Equipment Providers assessing port congestion surcharges, fact sheets from the Pacific Maritime Association discussing the port congestion issues and also GPS data collected by the Motor Carrier showing truck turn times. This evidence is being presented by the Motor Carrier in support of its basis that conditions existed that were beyond their control, which precluded the Motor Carrier from being able to return the equipment within the specified free time.

As precedent in regards to identifying a situation as falling under the Force Majeure provision of the UIIA, the IIEC has previously indicated that in situations when the facility is open, the applicability of force majeure would need to be determined by each equipment provider on a case by case basis dependent upon the conditions that existed at the specific facility, on a specific date and time, and whether these conditions prevented the pick-up and/or re-delivery of equipment.

In regards to the Motor Carrier’s basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine terminal or terminal truck gate is closed during posted normal working hours, or during a labor disruption or any other period involving an act of God or any other planned or unplanned action that closes the truck gate, 2) when the intermodal marine terminal decides to divert equipment without 48 hours’ electronic or written notification to the Motor Carrier, 3) when a loaded container is not available for pickup when the Motor Carrier arrives at the intermodal marine terminal, and 4) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all parties must comply with all applicable federal, state and local laws, rules and regulations. Evidence presented by the Equipment Provider related to the operating hours for each of the in-gating facilities included specific dates that PIER A and PCT had unplanned closures for work stoppage meetings that would preclude the assessment of per diem charges on these dates under SB45.

DECISION

The panel reviewed all documents and evidence submitted by the parties. The two modal panel members could not reach a consensus on whether the Motor Carrier proved Force Majeure under Section G.12. of the UIIA or that the specific conditions set forth under the California Business and Professions Code Section 22928 (SB45) were met on an overall basis to relieve the Motor Carrier from the per diem charges being disputed under this claim. The Motor Carrier panel member noted that it thought the GPS data provided by the Motor Carrier showed that there was an increase in turn times, which resulted in impacting the Motor Carrier's ability to return the equipment in a timely manner. The Motor Carrier panel member thought this qualified as a condition under Section G.12. and that additional free time should be extended to the Motor Carrier to match the same percentage that its turn times had increased. Since there was no consensus between the modal panel members, the third panel member was brought in to render a decision under Exhibit D to the UIIA.

The third panel member finds in favor of the Equipment Provider with the exclusion of two invoices where an adjustment was prescribed (see chart below). There was not sufficient evidence presented by the Motor Carrier to support that the conditions under Section G.12 Force Majeure were met and precluded the Motor Carrier's ability to redeliver the equipment back to the Equipment Provider within the specified free time. However, the third panel member finds that evidence was presented that showed there were unplanned closures at the PCT and Pier A facilities for work stoppage meetings on the dates of 10/2/14 and 11/6/14. On the date of 10/2 however, the PCT facility was open during its normal posted hours for the first shift from 0800 – 1700, but closed during the second shift from 1800 – 0300. The California State regulation SB45 precluded the assessment of per diem charges to the Motor Carrier during the timeframe the facilities were closed. The third panel member finds that the invoices where the Motor Carrier was charged per diem on the date of 11/6/14 when both PCT and Pier A were closed for both shifts should be adjusted (see chart below).

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

EXHIBIT D TO THE UIIA

3. A three-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IANA member from each mode, i.e. a Motor Carrier, Water Carrier and Railroad. However, the decision will be rendered by the two arbitrators representing the modes involved in the disputed invoice(s). The third appointed arbitrator from the mode not involved in the transaction will act as an alternate, and will render a decision only in the event the arbitrators from the involved modes cannot agree on a resolution of the dispute.

DECISION: A majority of the panel finds in favor of the Equipment Provider with an exception of the following invoices where some adjustments have been applied.

Invoice Number	Ingate Facility	Last Free Day	In-Gate Date	Adjustment	Reason	<u>NEW</u> Amount Owed
NAIM3061058	PCT	11/4/14	11/7/14	\$00.00	PCT Closed on 11/6/14 for both shifts due to work stoppage meeting	\$00.00
NAIM3063005	PCT	9/29/14	11/6/14	1 day @ \$00.00	PCT Closed on 11/6/14 for both shifts due to work stoppage meeting.	\$00.00
NAIM3075449	Pier A	11/11/14	11/18/14	No adjustment (no charge issued by EP for the date of 11/6/14 as it was still within free time period.	PIER A – Closed for both shifts on 11/6/14 for work stoppage meeting.	\$00.00
BLAE0176270	Pier A	11/19/14	11/20/14	No adjustment (no charge issued by EP for the date of 11/6/14 as it was still within free time period.	Pier A – Closed on 11/6/14 for work stoppage meeting.	\$00.00
BLAE0176268	Pier A	11/19/14	11/20/14	No adjustment (no charge issued by EP for the date of 11/6/14 as it was still within free time period.	Pier A – Closed on 11/6/14 for work stoppage meeting.	\$00.00

Total Invoice Adjustments: \$00.00

Note: There were no invoices under this dispute where Pier A was the in-gating facility on the date of 10/2/14, which is the other date that this facility was closed for both shifts.

CASE REVIEWED AND DECIDED BY:

WALTER WATSON
Rail Carrier Member

AL SMERALDO
Ocean 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
Appellant, and

UIIA Equipment Provider
Respondent

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Case Number: **20150122-10-XXXI-PD**

Date of Decision: 06/22/2015

MOTOR CARRIER'S DISPUTE

The Motor Carrier disputes the following invoices:

Invoice	Invoice #	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	BLAI0239460	1/13/15	\$00.00	TTI/TTI	12/2/14	1/6/15	1/13/15	1/21/15	1/22/15	1/22/15
2	BLAI0239464	1/13/15	\$00.00	TTI/TTI	12/12/14	1/6/15	1/13/15	1/21/15	1/22/15	1/22/15
3	BLAI0239692	1/14/15	\$00.00	TTI/TTI	12/13/14	1/7/15	1/14/15	1/21/15	1/22/15	1/22/15
4	BLAI0240020	1/15/15	\$00.00	TTI/TTI	6/30/14	7/21/14	1/15/15	1/21/15	1/22/15	1/22/15
5	BLAI0240022	1/15/15	\$00.00	TTI/TTI	7/8/14	7/29/14	1/15/15	1/21/15	1/22/15	1/22/15
				TTI/TTI	7/9/14	7/30/14				
				TTI/TTI	7/8/14	7/23/14				
6	BLAI0240024	1/15/15	\$00.00	TTI/TTI	7/10/14	7/29/14	1/15/15	1/21/15	1/22/15	1/22/15
7	BLAI0239469	1/13/15	\$00.00	Shippers Transport/SS A	12/12/14	1/6/15	1/13/15	1/21/15	1/22/15	1/22/15
8	BLAI0240199	1/19/15	\$00.00	TTI/TTI	12/15/14	1/12/15	1/19/15	1/21/15	1/22/15	1/22/15

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure) due to port congestion that existed at the Ports of Los Angeles and Long Beach. The Motor Carrier indicates that conditions existed that prevented its ability to return equipment within the specified free time. The Motor Carrier indicated that conditions such as labor issues, closed terminals, early gate closures, closed areas, equipment redirections and non-acceptance of equipment on certain days/shifts have all contributed to the congestion and are issues that were beyond the Motor Carrier's control. Under these situations, delays cannot be avoided by Motor Carriers and therefore the Motor Carrier should not be held responsible for per diem during this timeframe. In addition, the Motor Carrier also argued that the California State regulation SB45 prohibited an Equipment Provider from imposing per diem charges during work stoppages and congested conditions.

EQUIPMENT PROVIDER'S RESPONSE

The Equipment Provider did not submit comments or supporting documentation relating to this arbitration claim.

DISCUSSION

The Motor Carrier submitted as part of its supporting documentation a JOC article that referenced specific Equipment Providers reinstating port congestion surcharges due to the port congestion. The date of the JOC article was prior to the dates associated with the interchange period for the disputed invoices. Although the Equipment Provider did not submit comments to the arbitration claim, it did respond to the Motor Carrier's initial dispute of the charges. The Equipment Provider stated in its initial response to the dispute that the facility was open for business during the interchange dates and therefore it believed the charges billed were valid.

As precedent in regards to identifying a situation as falling under the Force Majeure provision of the UIIA, the IIEC has previously indicated that in situations when the facility is open, the applicability of force majeure would need to be determined by each Equipment Provider on a case by case basis dependent upon the conditions that existed at a specific facility, on a specific date and time, and if these conditions prevented the pick-up and/or re-delivery of equipment.

The Motor Carrier also indicated that the Equipment Provider was not in compliance with the California State regulation SB45, which prohibits intermodal marine Equipment Providers from imposing per diem, detention and demurrage charges under the following conditions: 1) when the intermodal marine terminal or terminal truck gate is closed during posted normal working hours, or during a labor disruption or any other period involving an act of God or any other planned or unplanned action that closes the truck gate, 2) when the intermodal marine terminal decides to divert equipment without 48 hours' electronic or written notification to the Motor Carrier, 3) when a loaded container is not available for pickup when the Motor Carrier arrives at the intermodal marine terminal, and 4) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. The Motor Carrier indicated that one or more of the above conditions existed during the period covered by the disputed charges.

DECISION

The panel reviewed all documents and evidence submitted by the parties. The panel members stated that in previous case precedent it has been established that the Motor Carrier must provide evidence that it was precluded from interchanging equipment based on the force majeure conditions that existed in order to meet the requirements for invoking relief available in Section G.12, Force Majeure of the UIIA. Force Majeure as defined in provision G.12 of the UIIA requires conditions to exist that prevent the Motor Carrier from interchanging equipment. Provision G.12 states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in the Provider's Addendum." SB45 clearly states that in order to qualify for relief, the planned or unplanned action (i.e. Labor disruption) would need to close the truck gate, or that the intermodal marine terminal turns away the Motor Carrier due to congestion. Both provision G.12 of the UIIA and SB45 contemplate the inability to interchange equipment.

In this case, the Motor Carrier failed to present substantial evidence that demonstrated it was subjected to force majeure conditions of severe congestion which prevented the interchange of equipment on the dates of the disputed invoices. Consequently, the panel finds in favor of the EP.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

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

CASE REVIEWED AND DECIDED BY

ROBERT A. CURRY
Motor Carrier Member

DAVID 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

Case Number: **20150125-5-XXXI-PD**

Date of Decision: 10/20/2015

The motor carrier disputes the following invoices:

Invoice	Invoice #	Inv. Date	Amount	Facility	Outgated	Ingated
1	5249299339	1/14/15	\$00.00	Pier A/Pier A	12/11/14	12/30/14
2	5249295833	1/13/15	\$00.00	TTI/TTI	12/18/14	1/2/15
3	5249299340	1/14/15	\$00.00	Pier A/Pier 400	12/1/14	12/30/14
4	5249299338	1/14/15	\$00.00	TTI/TTI	12/16/14	12/29/14
5	5249295831	1/13/15	\$00.00	Pier 400/Pier 400	12/16/14	12/30/14
6	5249295830	1/13/15	\$00.00	Pier 400/Pier 400	12/16/14	12/29/14
7	5249295832	1/13/15	\$00.00	Pier 400/Pier 400	12/18/14	12/29/14
8	5249299337	1/14/15	\$00.00	Pier 400/Pier 400	12/16/14	12/30/14
9	5249295834	1/13/15	\$00.00	Pier 400/Pier 400	12/18/14	12/30/14
10	5249277291	1/7/15	\$00.00	TTI/TTI	12/18/14	12/27/14

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that conditions existed that prevented its ability to return equipment within the specified free time. The Motor Carrier stated that conditions such as labor issues, closed terminals, early gate closures, closed areas, equipment redirections, non-acceptance of equipment on certain days/shifts all contributed to the congestion and were issues that were beyond the Motor Carrier's control. Under these situations, delays could not be avoided by the Motor Carrier and therefore the Motor Carrier should not be held responsible for per diem during this timeframe.

The Motor Carrier submitted as part of its supporting documentation a JOC article that referenced specific Equipment Providers reinstating port congestion surcharges due to port congestion along with two other articles from other publications relating to port congestion. None of these articles were specific to the facilities associated with this dispute.

The Motor Carrier also indicated that the Equipment Provider had not complied with Section G.11. of the UIIA and the California State regulation SB45 that indicates that no per diem can be assessed to the Motor Carrier when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier or during labor disruptions.

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

The Equipment Provider responded that it believes the invoices issued are correct and that more than the existence of a Force Majeure situation must be shown. It must be established that the Motor Carrier was unable (prevented) from returning the equipment. There were no restriction on the dates that these invoices cover.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

In regards to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate., or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations. Based on the supporting documentation provided by the Motor Carrier, there was no evidence presented that these conditions existed and precluded the Motor Carrier from returning the equipment within specified free time.

DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties. Section G.12 of the UIIA states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment." In this case, the Ocean panel member found that the Motor Carrier did not provide the documentation that supported its contention that port congestion prevented it from returning the equipment within the specified free time. After reviewing the evidence, the Motor Carrier panel member requested further information in order to be able to give a complete assessment of the evidence. IANA's staff requested the information from the Motor Carrier, however, no response was received. Consequently, in absence of the Motor Carrier's response to the request for additional information, the Motor Carrier panel member finds in favor of the Equipment Provider as it provided evidence to support the invoiced charges. In addition, neither panel member found evidence to support that the Equipment Provider had not complied with the California State regulation SB45 or Section G.11. Compliance with the Law under the UIIA.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

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

CASE REVIEWED AND DECIDED BY:

KEVIN LHOTAK
Motor Carrier Member

JIM MICHALSKI
Ocean Carrier Member

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

Date of Decision: 10/20/2015

The Equipment Provider provided a response with regard to the three containers (CCLU6283682, CCLU6910437 and DFSU3506640) that were returned by the Motor Carrier to the PCT facility. The Equipment Provider confirmed that PCT was open and accepting empty containers on behalf of the Equipment Provider. There was no response from the Equipment Provider with regard to the containers that were in-gated at the TTI facility. However, the Equipment Provider did adjust the

invoice for the holiday dates that fell during the interchange period and re-issued the adjusted invoice to the Motor Carrier on January 29, 2015.

The Equipment Provider requested that the Motor Carrier provide documentation that it attempted to return the equipment and was turned away. The Motor Carrier, as part of its initial dispute of the charges and in response to the Equipment Provider's request for documentation, provided a narrative that outlined why the Motor Carrier believed that the port congestion issues fell under Section G.12. Force Majeure and that the Equipment Provider was not in compliance with the California Business and Professions Code Section 22928 for the assessment of per diem charges during a labor disruption.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

In regards to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate., or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations.

DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties. The two modal panel members could not agree on whether the conditions outlined by the Motor Carrier and the supporting documents provided met the criteria set forth in Section G.12. The Motor Carrier panel member stated that the HTA turn time data submitted by the Motor Carrier provided a clear indication that the work slowdown had a direct and measurable impact with the Motor Carrier's ability to interchange the equipment. The driver turn time data showed that the turn times in December 2014 were 44% higher than the base line period from October 2013 through August 2014. Using the baseline of 75 minutes against the turn time of 108 minutes in December 2014, which is the time frame associated with the disputed charges, the Motor Carrier panel member believes the free time associated with the disputed charges should be extended by two additional days. Therefore, the original amount of the invoice (\$8,570.00) should be adjusted to \$7,130.00. The Ocean Carrier panel member believes that the Motor Carrier failed to present evidence that supports its claim that its ability to return the equipment was prevented due to force majeure conditions or that it was turned away by the terminal. Therefore, the third panel member was brought in under Exhibit D to the UIIA.

The third panel member has reviewed the evidence provided by the Motor Carrier and Equipment Provider. Section G.12 of the UIIA states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment." While the Motor Carrier did not provide specific evidence of rejection for each returning container or evidence of a force majeure condition on a given day, the HTA data specifically shows an increase in driver turn times. Consequently, the third panel member concurs with the Motor Carrier panel member's decision, in that additional free time should be provided to compensate for the significant turn time increase. Considering the Motor Carrier panel member's recommendation, the Motor Carrier is responsible for the amount of \$7,130 instead of the adjusted EP invoice of \$8,570.

Container	Billable days	New Amount
CCLU3891457	12	\$ 00.00
CCLU4494428	8	\$ 00.00
CCLU4518638	11	\$ 00.00
CCLU6283682	16	\$ 00.00
CCLU6910437	14	\$ 00.00
DFSU3506640	1	\$ 00.00
TOTAL		\$ 00.00

None of the panel members found any evidence that the EP had not complied with the California State regulation SB45 or Section G.11. Compliance With the Law.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

EXHIBIT D TO THE UIIA

3. A three-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IANA member from each mode, i.e. a Motor Carrier, Water Carrier and Railroad. However, the decision will be rendered by the two arbitrators representing the modes involved in the disputed invoice(s). The third appointed arbitrator from the mode not involved in the transaction will act as an alternate, and will render a decision only in the event the arbitrators from the involved modes cannot agree on a resolution of the dispute.

DECISION: A majority of the panel finds in favor of the Equipment Provider in the amount of \$00.00.

CASE REVIEWED AND DECIDED BY:

GERRY BISAILLON
Rail Carrier Member

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

UIIA Motor Carrier,
Appellant, and

UIIA Equipment Provider,
Respondent

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Case Number: **20150130-2-XXXI-PD**

Date of Decision: 05/27/2015

MOTOR CARRIER'S DISPUTE

The Motor Carrier disputes the following invoices:

Invoice	Invoice #	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	2276160	1/6/15	\$00.00	ITS/ITS	12/10/14	12/22/14	1/6/15	1/21/15	1/30/15	1/15/15

Note: The reason the received date of the Notice of Intent is prior to the Equipment Provider's response is that the Motor Carrier submitted the arbitration claim at the same time they initially disputed the charges with the Equipment Provider. The claim was held until the Equipment Provider was provided the established 30 day timeframe to respond to the Motor Carrier's dispute.

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure) due to port congestion that existed at the Ports of Los Angeles and Long Beach. The Motor Carrier indicated that conditions existed that prevented its ability to return equipment within the specified free time. The Motor Carrier indicated that conditions such as labor issues, closed terminals, early gate closures, closed areas, equipment redirections, and non-acceptance of equipment on certain days/shifts have all contributed to the congestion and are issues that were beyond the Motor Carrier's control. Under these situations, delays cannot be avoided by Motor Carriers and therefore the Motor Carrier should not be held responsible for per diem during this timeframe. In addition, the Motor Carrier also argued that California State regulation SB45 prohibited an Equipment Provider from imposing per diem charges during work stoppages and congested conditions.

EQUIPMENT PROVIDER'S RESPONSE

The Equipment Provider responded that even though the terminal was congested during the dates associated with the interchange period, the facility (ITS) was open and receiving empty containers during this timeframe. The Motor Carrier was not charged for the weekend dates of 12/20/14 and 12/21/14.

DISCUSSION

The Motor Carrier submitted its basis of dispute and one JOC article related to the specific Equipment Providers reinstating port congestion surcharges. The date of the JOC article was prior to the dates associated with the interchange period for the disputed invoice.

The Equipment Provider stated that the ITS facility was open and accepting empty equipment on the Equipment Provider's behalf during the interchange period. In addition, the Equipment Provider stated that there was nothing that prevented the Motor Carrier from returning an empty container for 10 days, which was the case with the Motor Carrier's claim.

The Equipment Provider provided the following information regarding the ITS facility:

Normal operating hours for ITS:

Monday – Thursday 0800 to 1630 (Shift 1) and 1700-0230 (Shift 2)

Friday 0800 – 1630 (Shift 1)

Closed on Saturdays and Sundays

Dates ITS facility was closed:

12/10 open 1st shift & 2nd shift

12/11 open 1st shift & 2nd shift

12/12 open 1st shift

12/13 – 12/14 – Closed

12/15 – 12/18 open 1st and 2nd shift

12/19 open 1st shift

12/20 – 12/21 – closed

12/22 open 1st and 2nd shift

Does the ITS Facility provide turn away tickets? Yes, drivers do receive turn around tickets if turned away from the gate.

As precedent in regards to identifying a situation as falling under the Force Majeure provision of the UIIA, the IIEC has previously indicated that in situations when the facility is open, the applicability of force majeure would need to be determined by each Equipment Provider on a case by case

basis dependent upon the conditions that existed at a specific facility, on a specific date and time, and if these conditions prevented the pick-up and/or re-delivery of equipment.

The Motor Carrier also indicated that the Equipment Provider is not in compliance with the California State regulation SB45, which prohibits intermodal marine Equipment Providers from imposing per diem, detention and demurrage charges under the following conditions: 1) when the intermodal marine terminal or terminal truck gate is closed during posted normal working hours, or during a labor disruption or any other period involving an act of God or any other planned or unplanned action that closes the truck gate, 2) when the intermodal marine terminal decides to divert equipment without 48 hours' electronic or written notification to the Motor Carrier, 3) when a loaded container is not available for pickup when the Motor Carrier arrives at the intermodal marine terminal, and 4) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. The Motor Carrier indicated that one or more of the above conditions existed during the period covered by the disputed charges.

DECISION

The panel reviewed all documents and evidence submitted by the parties. The two modal panel members could not agree on whether the conditions outlined by the Motor Carrier and the supporting documents it provided met the criteria set forth in Section G.12., Force Majeure provision, of the UIIA preventing the Motor Carrier from redelivering the equipment to the Equipment Provider within the specified free time. In addition, the two panel members were also unable to reach a consensus on whether the specific conditions under SB45 were met that precluded the Equipment Provider from assessing per diem charges to the Motor Carrier. Therefore, the third panel member was brought in under Exhibit D to the UIIA.

The third panel member stated that UIIA counsel had indicated that while the identification of a work slowdown as a strike is correct and does identify a force majeure condition within Section G.12 of the UIIA, that alone does not meet the requirements for invoking relief available in this section. Force Majeure as defined in Section G.12 of the UIIA requires conditions to exist that prevent the Motor Carrier from interchanging the equipment. Section G.12 states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in the Provider's Addendum." SB45 clearly states that in order to qualify for relief, the planned or unplanned action (i.e. Labor disruption) would need to close the truck gate, or that the intermodal marine terminal turns away a Motor Carrier due to congestion. Both provision G.12 of the UIIA and SB45 contemplate the inability to interchange equipment. The third panel member indicated that the MC did not present evidence that supported its contention that the port congestion prevented it from returning equipment within the specified free time. Therefore, the third panel member 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 (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

EXHIBIT D TO THE UIIA

3. A three-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IANA member from each mode, i.e. a Motor Carrier, Water Carrier and Railroad. However, the decision will be rendered by the two arbitrators representing the modes involved in the disputed invoice(s). The third appointed arbitrator from the mode not involved in the transaction will act as an alternate, and will render a decision only in the event the arbitrators from the involved modes cannot agree on a resolution of the dispute.

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

CASE REVIEWED AND DECIDED BY:

CHAD PETERSON
Rail Carrier Member

JAMES MICHALSKI
Ocean Carrier Member

KEVIN LHOTAK
Motor Carrier Member

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

Date of Decision: 10/06/2015

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier asserts that conditions existed that prevented its ability to return equipment within the specified free time. The Motor Carrier states that conditions such as labor issues, closed terminals, early gate closures, closed areas, equipment redirections and non-acceptance of equipment on certain days or shifts all contributed to the congestion and were issues that were beyond the Motor Carrier's control. Under these situations, delays could not be avoided by Motor Carriers and therefore the Motor Carrier should not be held responsible for per diem during this timeframe. The Motor Carrier also argued that port congestion has been recognized by Equipment Providers, such as the Equipment Provider in this claim, as a form of force majeure. The FMC filed tariffs of many Equipment Providers cite port congestion as a condition of force majeure. The Motor Carrier believes if Equipment Providers can

exempt themselves from liabilities based on force majeure provisions within their own tariffs, then they should not be able to levy charges against a Motor Carrier for delays in returning equipment. The Motor Carrier also referenced the California State regulation SB45 indicating that this law prohibited the Equipment Provider from imposing per diem charges during work stoppages and congested conditions.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER DISPUTE:

The Equipment Provider submitted no comments to the binding arbitration claim. The Equipment Provider provided a partial response to the Motor Carrier's initial dispute of the charges by adjusting and removing some of the original per diem charges contained in one of the two invoices above. An initial adjustments made to Invoice CHS9150188786P totaled \$00.00, leaving the total balance due on adjusted invoice CHS9150215032P as \$00.00. The Equipment Provider then further reduced the invoice at a later date to \$00.00 as the final total owed. The Equipment Provider, however, never addressed the Motor Carrier's basis of dispute, which was force majeure and SB45. The Equipment Provider only stated that the matter was under review by its upper management.

DISCUSSION:

The Motor Carrier submitted as part of its supporting documentation several news article providing general information relating to the port congestion conditions on the West Coast. These articles were dated after the interchange dates associated with the disputed charges. In addition, the Motor Carrier submitted driver turn time data collected by the Harbor Trucking Association for the period of October 2013 through June 2015 showing the average visit time at the various West Coast terminals during this timeframe. The Motor Carrier believes this data provides evidence that the port congestion conditions impacted its ability to return equipment within the allowable free time.

The Equipment Provider provided no comments with the exception of a final response to the initial dispute of the charges stating that the matter was under review by management.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

The Motor Carrier also indicated that the Equipment Provider was not in compliance with the California State regulation SB45, which prohibits intermodal marine Equipment Providers from imposing per diem, detention and demurrage charges under the following conditions: 1) when the intermodal marine terminal or terminal truck gate is closed during posted normal working hours, or during a labor disruption or any other period involving an act of God or any other planned or unplanned action that closes the truck gate, 2) when the intermodal marine terminal decides to divert equipment without 48 hours' electronic or written notification to the Motor Carrier, 3) when a loaded container is not available for pickup when the Motor Carrier arrives at the intermodal marine terminal, and 4) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. The Motor Carrier indicated that one or more of the above conditions existed during the period covered by the disputed charges. Based on the supporting documentation provided by the Motor Carrier, there was no evidence presented that showed the driver attempted to gain access to the facilities associated with these invoices and was turned away or that the work stoppage/labor disruptions closed the gates of the facility.

DECISION:

The panel reviewed all documents and evidence submitted by the parties. The two modal panel members could not agree on whether the conditions outlined by the Motor Carrier and the supporting documents provided met the criteria set forth in Section G.12. The Motor Carrier panel member stated that the driver turn time data presented by the Motor Carrier confirmed that the work slowdown on the West Coast had a direct and measurable impact on the Motor Carrier's ability to timely interchange equipment. The Motor Carrier panel member believes the turn time increased 1.43 higher during the months of October – December 2014, which would result in increasing the free time from 23 to 33 days for Invoice CHS9150669052P (final adjusted invoice). This leaves the amount owed on Invoice CHS9150669052P at \$00. By applying the same methodology to Invoice CHS9150113995P, the adjusted amount owed would be \$00 bringing the total amount owed for the two invoices to \$00. The Ocean Carrier panel member disagreed stating that the Motor Carrier failed to prove what impact the turn times had on the Motor Carrier's ability of returning these specific container timely. Therefore, the third panel member was brought in under Exhibit D to the UIIA.

The third panel member reviewed all documents presented by the Motor Carrier and Equipment Provider. Although, the third panel member recognized that this was a challenging case, Section G.12 of the UIIA states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment." While the third panel member believes that the Motor Carrier should not be completely exempted from the per diem charged, the Equipment Provider did not provide any evidence to reinforce the invoices. Based on the lack of response from the Equipment Provider and the documentation submitted by the Motor Carrier indicating partially reduced terminals/gates, I concur with the Motor Carrier panel member and his application of free time. Consequently, I find in favor of Equipment Provider in the amounts to \$00 and \$00, respectively on Invoice 1 and Invoice 2.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

EXHIBIT D TO THE UIIA

3. A three-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IANA member from each mode, i.e. a Motor Carrier, Water Carrier and Railroad. However, the decision will be rendered by the two arbitrators representing the modes involved in the disputed invoice(s). The third appointed arbitrator from the mode not involved in the transaction will act as an alternate, and will render a decision only in the event the arbitrators from the involved modes cannot agree on a resolution of the dispute.

DECISION: A majority of the panel finds in favor of the Equipment Provider with the condition that the Equipment Provider reduce its outstanding invoice amounts to \$00 and \$00.

CASE REVIEWED AND DECIDED BY:

WALTER WATSON
Rail Carrier Member

JEFFREY LANG
Motor Carrier Member

AL SMERALDO
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

Case Number: **20150210-13-XXXI-PD**

Date of Decision: May 27, 2015

MOTOR CARRIER'S DISPUTE

The Motor Carrier disputes the following invoices:

Invoice	Invoice #	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	STB1638534	1/23/15	\$00.00	WBCT/WBCT	12/19/14	01/12/15	01/23/15	01/23/15	01/30/15	02/10/15
				WBCT/PCT	12/16/14	01/13/15				
2	STB1644626	1/26/15	\$00.00	ITS/ITS	12/30/14	01/14/15	01/26/15	02/04/15	02/05/15	02/10/15
				WBCT/WBCT	12/23/14	01/13/15				
				ITS/WBCT	12/30/14	01/14/15				
				ITS/WBCT	12/30/14	01/14/15				
				ITS/WBCT	01/02/15	01/15/15				
				WBCT/WBCT	12/23/14	01/13/15				
				ITS/ITS	01/06/15	01/13/15				
				ITS/WBCT	12/30/14	01/14/15				
				ITS/PCT	12/30/14	01/15/15				

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure) due to port congestion that existed at the Ports of Los Angeles and Long Beach. The Motor Carrier indicated that conditions existed that prevented its ability to return equipment within the specified free time. The Motor Carrier indicated that conditions such as labor issues, closed terminals, early gate closures, closed areas, equipment redirections, and non-acceptance of equipment on certain days/shifts have all contributed to the congestion and are issues that were beyond the Motor Carrier's control. Under these situations, delays cannot be avoided by Motor Carriers and therefore the Motor Carrier should not be held responsible for per diem during this timeframe. In addition, the Motor Carrier also argued that the California State regulation SB45 prohibited an Equipment Provider from imposing per diem charges during work stoppages and congested conditions.

EQUIPMENT PROVIDER'S RESPONSE

The Equipment Provider responded that the force majeure provision in the UIIA and the California State regulation SB45 were not applicable to the return conditions that existed for the return of EP's equipment associated with the disputed charges. The Equipment Provider indicated that their return locations remained open throughout the interchange periods in question and the Motor Carrier was not prevented from interchanging equipment back to EP.

The Equipment Provider provided several documents as supporting documentation that included:

- 1) Exhibit 2 – Demonstrated consistent empty returns for all EP's empty returns to terminals by day and by week covering the disputed period. In addition, a pivot chart provided showed that the Motor Carrier was able to in and out-gate equipment in a consistent manner during the same contested period.
- 2) Exhibit 3 – List of the known restricted receiving dates by terminal and by day. For the in/out gate terminals being disputed in this case, no restrictions were in place.
- 3) Exhibit 4 – Details listing the disputed invoices and notation that the Equipment Provider's terminals were not restricting empty receipt during this timeframe.
- 4) The Equipment Provider indicated the regular hours for empty receiving at the facilities associated with the disputed charges were – 8am - 4:30 p.m. and 6pm – 2am respectively.
- 5) The Equipment Provider also indicated that a refusal slip (and/or e-mail) would be tendered by a terminal if a Motor Carrier was turned away.

The Equipment Provider further stated that should a Motor Carrier have been restricted from returning the containers by EP at any time, it is the responsibility of the Motor Carrier to provide evidence specific to EP's operations related to this.

DISCUSSION

The Motor Carrier submitted as part of its supporting documentation news articles reporting decisions being made by Equipment Providers based on the port congestion, JOC article reporting that Motor Carriers in Los Angeles and Long Beach were considering filing claims under the UIIA's binding arbitration process for per diem charges billed during the port congestion and another JOC article that referenced specific equipment providers reinstating port congestion surcharges. The dates of all of the articles submitted were either prior to or after the dates associated with the interchange period for the disputed invoices.

The Equipment Provider believes the supporting documentation it submitted provides evidence that the conditions existing at the facilities associated with the disputed charges during the dates of the interchange periods did not preclude/prevent the Motor Carrier from returning the equipment to the Equipment Provider. Consequently, the Equipment Provider believes that the invoices should stand as billed.

As precedent in regards to identifying a situation as falling under the Force Majeure provision of the UIIA, the IIEC has previously indicated that in situations when the facility is open, the applicability of force majeure would need to be determined by each equipment provider on a case by case basis dependent upon the conditions that existed at a specific facility, on a specific date and time, and whether these conditions prevented the pick-up and/or re-delivery of equipment.

The Motor Carrier also indicated that the Equipment Provider was not in compliance with the California State regulation SB45, which prohibits intermodal marine Equipment Providers from imposing per diem, detention and demurrage charges under the following conditions: 1) when the intermodal marine terminal or terminal truck gate is closed during posted normal working hours, or during a labor disruption or any other period involving an act of God or any other planned or unplanned action that closes the truck gate, 2) when the intermodal marine terminal decides to divert equipment without 48 hours' electronic or written notification to the Motor Carrier, 3) when a loaded container is not available for pickup when the Motor Carrier arrives at the intermodal marine terminal, and 4) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. The Motor Carrier indicated that one or more of the above conditions existed during the period covered by the disputed charges.

DECISION

The panel reviewed all documents and evidence submitted by the parties. The two modal panel members could not agree on whether the conditions outlined by the Motor Carrier and the supporting documents it provided met the criteria set forth in Section G.12., Force Majeure provision, of the UIIA preventing the Motor Carrier from redelivering the equipment to the Equipment Provider within the specified free time. In addition, the two panel members were also unable to reach a consensus on whether the specific conditions under SB45 were met that precluded the Equipment Provider from assessing per diem charges to the Motor Carrier. Therefore, the third panel member was brought in under Exhibit D to the UIIA.

The third panel member stated that UIIA counsel had indicated that while the identification of a work slowdown as a strike is correct, and does identify a force majeure condition within Section G.12 of the UIIA, that alone does not meet the requirements for invoking relief available in this section. Force Majeure as defined in Section G.12 of the UIIA requires conditions to exist that prevent the Motor Carrier from interchanging the equipment. Section G.12 states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in the Provider's Addendum." SB45 clearly states that in order to qualify for relief, the planned or unplanned action (i.e. Labor disruption) would need to close the truck gate, or that the intermodal marine terminal turns away a motor carrier due to congestion. Both provision G.12 of the UIIA and SB45 contemplate the inability to interchange equipment. In this case, the Motor Carrier failed to provide evidence that supported its contention that the port congestion prevented it from returning the equipment within the specified free time. Therefore, the third panel member 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 (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

EXHIBIT D TO THE UIIA

3. A three-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IANA member from each mode, i.e. a Motor Carrier, Water Carrier and Railroad. However, the decision will be rendered by the two arbitrators representing the modes involved in the disputed invoice(s). The third appointed arbitrator from the mode not involved in the transaction will act as an alternate, and will render a decision only in the event the arbitrators from the involved modes cannot agree on a resolution of the dispute.

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

CASE REVIEWED AND DECIDED BY:

CHAD PETERSON
Rail Carrier Member

JAMES MICHALSKI
Ocean Carrier Member

KEVIN LHOTAK
Motor 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: **20150210-14-XXXI-PD**

Date of Decision: 6/22/15

MOTOR CARRIER'S DISPUTE

The Motor Carrier disputes the following invoices:

Invoice	Invoice #	Inv. Date	Amount	Facility Outgate/Ingate	Outgated	Ingated	Date MC stated they rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	5249343429	1/27/2015	\$0.00	TTI/TTI	12/19/2014	1/6/2015	1/27/2015	2/5/2015	2/6/2015	2/10/2015
2	5249343428	1/27/2015	\$0.00	SSA/SSA Pier A	12/29/2014	1/9/2015	1/27/2015	2/5/2015	2/7/2015	2/10/2015
3	5249349938	1/28/2015	\$0.00	SSA Pier A/ Pier 400	1/2/2015	1/15/2015	1/28/2015	2/5/2015	2/6/2015	2/10/2015
4	5249349934	1/28/2015	\$0.00	Pier 400/Pier 400	1/7/2015	1/14/2015	1/28/2015	2/5/2015	2/6/2015	2/10/2015
5	5249349937	1/28/2015	\$0.00	TTI/Pier 400	12/30/2014	1/15/2015	1/28/2015	2/5/2015	2/6/2015	2/10/2015
6	5249343432	1/27/2015	\$0.00	Pier 400/Pier 400	12/10/2014	1/6/2015	1/27/2015	2/5/2015	2/7/2015	2/10/2015
7	5249349935	1/28/2015	\$0.00	Pier 400/Pier 400	12/30/2014	1/14/2015	1/28/2015	2/5/2015	2/7/2015	2/10/2015
8	5249349942	1/28/2015	\$0.00	Pier 400/Pier 400	12/31/2014	1/13/2015	1/28/2015	2/5/2015	2/7/2015	2/10/2015
9	5249349943	1/28/2015	\$0.00	Pier 400/Pier 400	1/2/2015	1/15/2015	1/28/2015	2/5/2015	2/7/2015	2/10/2015
10	5249343430	1/27/2015	\$0.00	Pier 400/Pier 400	12/22/2014	1/6/2015	1/27/2015	2/5/2015	2/7/2015	2/10/2015
11	5249343431	1/27/2015	\$0.00	Pier 400/Pier 400	12/22/2014	1/6/2015	1/27/2015	2/5/2015	2/6/2015	2/10/2015
12	5249349940	1/28/2015	\$0.00	TTI/TTI	1/9/2015	1/16/2015	1/28/2015	2/5/2015	2/7/2015	2/10/2015
13	5249349941	1/28/2015	\$0.00	TTI/TTI	1/10/2015	1/16/2015	1/28/2015	2/5/2015	2/7/2015	2/10/2015
14	5249349939	1/28/2015	\$0.00	Pier 400/Pier 400	1/7/2015	1/13/2015	1/28/2015	2/5/2015	2/6/2015	2/10/2015
15	5249349936	1/28/2015	\$00.00	SSA Pier A/ Pier 400	1/8/2015	1/14/2015	1/28/2015	2/5/2015	2/7/2015	2/10/2015

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure) due to port congestion that existed at the Ports of Los Angeles and Long Beach. The Motor Carrier indicates that conditions existed that prevented its ability to return equipment within the specified free time. The Motor Carrier indicated that conditions such as labor issues, closed terminals, early gate closures, closed areas, equipment redirections and non-acceptance of equipment on certain days/shifts have all contributed to the congestion and are issues that were beyond the Motor Carrier's control. Under these situations, delays cannot be avoided by Motor Carriers and therefore the Motor Carrier should not be held responsible for per diem during this timeframe. In addition, the Motor Carrier also argued that the California State regulation SB45 prohibited an Equipment Provider from imposing per diem charges during work stoppages and congested conditions.

EQUIPMENT PROVIDER'S RESPONSE

The Equipment Provider responded that it believes the invoices issued are correct and that more than the existence of a force majeure situation must be shown. It must be established that the Motor Carrier was unable (prevented) from returning the equipment. There were no restrictions on the dates that these invoices covered. The only exception to this would be Invoice 3 (5249343428) and Invoice 1 (5249343429). These two invoices should be adjusted as follows: Invoice 5249343428 did not have 2 days exempted from the invoice and is being adjusted to \$00.00. Invoice 5249343429 did not have 1 day exempted from the invoice and is being adjusted to \$00.00.

To follow is information regarding the hours of operations for the identified facilities related to the disputed invoices during period of 12/10/14 through 1/16/2015:

Pier T – (TTI)

Wednesday, December 31, 2014 - 0700 – 1500 Full Service Gate for all lines (Pierpass TMF) – Front and (Back Ingate Only) – 1700 – Closed

Thursday, January 1, 2015 – 0800 – Closed/1700 – Closed

Friday, January 2, 2015 – 0700 – 1630 – Full Service Gate for all lines (Pierpass TMF) – Front and (Back Ingate Only) – 1700 – Closed

Pier A - SSA

Regular Business Hours – Monday – Friday 8:00 a.m. – 5:00 p.m. /Monday – Thursday – 6:00 p.m. – 2:30 a.m.

Wednesday, December 24th – 0800 – Open until 1400

Wednesday, December 24th – 1800 closed

Thursday, December 25th – Closed

Friday, December 26th – 0800 – Open

Friday, December 26th – 1800 – Closed

Wednesday, December 31st – 0800 Open until 1400

Wednesday, December 31st – 1800 – Closed

Thursday, January 1st – Closed

Friday, January 2nd – 0800 Open

Friday, January 2nd – 1800 – Closed

Pier 400

Monday – Thursday – 1st shift full service gates 0700 – 1700 – (Import delivery ends at 1600)/ 2nd shift – full service gates 1700 – 0230 (Import grounded delivery ends at 0100)

Fridays – 1st shift full service gate 0700 – 1700 (Import Delivery ends at 1530) / 2nd shift wheeled import gates (1700 – 0230)

Saturdays – 1st shift full service gate 0700 – 1600 (Import delivery ends at 1400) (Please check on our Saturday gate schedule as it is subject to change)

Sundays – Closed

Closed on December 25th and January 1st for holidays.

DISCUSSION

The Motor Carrier submitted as part of its supporting documentation a JOC article that referenced specific equipment providers reinstating port congestion surcharges due to the port congestion along with two other articles from other publications relating to port congestion. The date of the JOC article was prior to the dates associated with the interchange period for the disputed invoices and the other two articles were dated after the interchange dates. The only other supporting documentation provided by the Motor Carrier was the narrative regarding the basis of its dispute.

The Equipment Provider believes the supporting documentation it has submitted evidences that the conditions existing at the facilities associated with the disputed charges during the dates of the interchange periods did not preclude/prevent the Motor Carrier from returning the equipment to the Equipment Provider. Consequently, the Equipment Provider believes that the invoices are correct as billed with the exception of the adjustments to Invoice 5249343428 and Invoice .5249343429.

As precedent in regards to identifying a situation as falling under the Force Majeure provision of the UIIA, the IIEC has previously indicated that in situations when the facility is open, the applicability of force majeure would need to be determined by each Equipment Provider on a case by case basis dependent upon the conditions that existed at a specific facility, on a specific date and time, and if these conditions prevented the pick-up and/or re-delivery of equipment.

The Motor Carrier also indicated that the Equipment Provider was not in compliance with the California State regulation SB45, which prohibits intermodal marine Equipment Providers from imposing per diem, detention and demurrage charges under the following conditions: 1) when the intermodal marine terminal or terminal truck gate is closed during posted normal working hours, or during a labor disruption or any other period involving an act of God or any other planned or unplanned action that closes the truck gate, 2) when the intermodal marine terminal decides to divert equipment without 48 hours' electronic or written notification to the Motor Carrier, 3) when a loaded container is not available for pickup when the Motor Carrier arrives at the intermodal marine terminal, and 4) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. The Motor Carrier indicated that one or more of the above conditions existed during the period covered by the disputed charges.

DECISION

The panel reviewed all documents and evidence submitted by the parties. The panel members stated that in previous case precedent it has been established that the Motor Carrier must provide evidence that it was precluded from interchanging equipment based on the force majeure conditions that existed in order to meet the requirements for invoking relief available in Section G.12, Force Majeure of the UIIA. Force Majeure as defined in provision G.12 of the UIIA requires conditions to exist that prevent the Motor Carrier from interchanging equipment. Provision G.12 states: "In the event the Motor Carrier is unable to Interchange

Equipment to Provider within the free time as specified in the Provider's Addendum." SB45 clearly states that in order to qualify for relief, the planned or unplanned action (i.e. Labor disruption) would need to close the truck gate, or that the intermodal marine terminal turns away the Motor Carrier due to congestion. Both provision G.12 of the UIIA and SB45 contemplate the inability to interchange equipment.

In this case, the Motor Carrier failed to present substantial evidence that demonstrated it was subjected to force majeure conditions of severe congestion which prevented the interchange of equipment on the dates of the disputed invoices. Consequently, the panel finds in favor of the EP.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

DECISION: The panel unanimously finds in favor of the Equipment Provider. Invoice 5249343428 and Invoice 5249343428 should be adjusted as identified by the Equipment Provider to \$00 and \$00 respectively.

CASE REVIEWED AND DECIDED BY

ROBERT A. CURRY
Motor Carrier Member

DAVID DALY
Ocean Carrier Member

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

Date of Decision: 11/5/2015

Invoice	Invoice #	Inv. Date	Amount	Facility Outgate/Ingate	Outgated	Ingated
1	PD00127419	1/19/15	\$00.00			
	CCLU3684721			TTI/WBCT	12/23/14	1/15/15
	CCLU4386763			TTI/WBCT	12/23/14	1/13/15
	CCLU6661191			WBCT/WBCT	12/19/14	1/14/15
	DFSU6853679			WBCT/WBCT	12/23/14	1/13/15
	MAGU2154709			STS/PCT	12/17/14	1/15/15
	TEMU7843002			WBCT/WBCT	12/19/14	1/15/15
2	PD00126495	12/29/14	\$00.00			
	CCLU3430671			STS/PCT	12/17/14	12/26/14
	CCLU5069887			WBCT/TT	12/17/14	12/24/14
	CCLU7116838			Shippers/PCT	12/15/14	12/23/14
	TCLU4389748			TTI/TTI	12/18/14	12/26/14
	TCNU6566330			PCT/PCT	12/11/14	12/22/14
	TGHU6922984			WBCT/TTI	12/15/14	12/23/14
3	PD00127623	1/26/15	\$00.00			
	CAIU8646935			PCT/WBCT	1/7/15	1/23/15
	CCLU6568767			PCT/STS	1/9/15	1/21/15
	CCLU7006384			PCT/WBCT	1/9/15	1/23/15
	CCLU7113090			PCT/STS	1/9/15	1/22/15
	CCLU7333664			PCT/STS	1/7/15	1/21/15
	CCLU7363632			PCT/STS	1/9/15	1/21/15
	CCLU7768008			PCT/WBCT	1/7/15	1/23/15
	HCZU2912580			STS/Harding	12/27/14	1/13/15
	HCZU9811139			Shippers/Harding	12/29/14	1/14/15
	SEGU4919715			PCT/STS	1/9/15	1/20/15
	TCNU8577381			PCT/STS	1/7/15	1/21/15

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that conditions existed that prevented its ability to return

equipment within the specified free time. The Motor Carrier stated that conditions such as labor issues, closed terminals, early gate closures, closed areas, equipment redirections, non-acceptance of equipment on certain days/shifts and types of equipment such as status (load/empty), size and chassis have all contributed to the congestion and are issues that are beyond the Motor Carrier's control. Under these situations, delays cannot be avoided by motor carriers and therefore the Motor Carrier should not be held responsible for per diem during this timeframe.

The Motor Carrier submitted as part of its supporting documentation several news articles that described the West Coast port congestion conditions, however none of these articles were specific to the facilities associated with the disputed charges. The Motor Carrier did mention in the narrative it provided that the California Business and Professions Code 22928 (SB45) prohibited the assessment of per diem during labor disruptions like those that occurred on the West Coast. Lastly, the Motor Carrier submitted driver turn time data captured by the Harbor Trucking Association that provided evidence of the impact that the port congestion had on its business operations.

EQUIPMENT PROVIDER RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded with the following information provided by the specific terminals:

WBCT

Normal port hours – 1st shift 0700-1700 and 2nd shift – 1700 – 0300

Facility was open Monday – Thursday 1st and 2nd shift, Open Friday and Saturday 1st shift only. WBCT indicated that they were closed on stop work meetings.

WBCT indicated that they only block EP's empties if the Equipment Provider requests them to do so. WBCT's records show that they were not accepting EP's empties on the following dates:

1/31/15 – no empties

2/7/15 – no empties

2/12/15 – limited to PGI for empty receiving

2/13/15 – limited to PGI for empty receiving

WBCT does provide "leave terminal" tickets.

PCT

Operating hours for the month of January was Monday thru Friday 0800 – 1700; Tuesday thru Friday 1800-0300, closed on 1/8/15 shift stop work ILWU meeting. Closed both shifts on Martin Luther King Jr. holiday. PCT is a paperless terminal so no turn away tickets were provided.

STS Terminal

Operating hours Monday – Saturday (1st shift 0700-1700 hours), Monday thru Wednesday (2nd shift – 1700 – 0300 hours). The In-Gate will close 45-60 minutes prior to close. STA-LA will operate Thursday and Friday night gates at operational discretion. Inbound rail always open when working.

Dates that STS-LA had gate closures – Closed on winter holidays, closure initiated by ILWU stop work meetings. EP's empties were denied entry to STS for inventory control –

- 11/25/14 – 1/8/15 – denied
- 1/9/15 thru 1/21/15 – allowed
- 1/22/15 thru 3/1/15 – denied
- 3/2/15 – allowed

STS stated that turn away tickets are possible if requested by the driver.

There was also an e-mail, dated March 20th, that identified containers associated with Invoice 2 showing that some of these returns were blocked at the facility.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

In regards to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate., or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations.

DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties. The two modal panel members could not agree on whether the conditions outlined by the Motor Carrier and the supporting documents provided met the criteria set forth in Section G.12. The Motor Carrier panel member stated that the Motor Carrier submitted evidence quantifying the amount of additional time spent on terminal during the labor slowdown. The additional turn times prevented the Motor Carrier from returning the equipment in a timely manner. After reviewing the invoices, the Motor Carrier panel member believes that the free time for the Motor Carrier should be increased by the same percentage of increased turn times at the terminal in the month corresponding to the equipment return dates for the disputed charges. The Ocean panel member reviewed the evidence, and noted that the terminals were open for equipment return. In addition, the Ocean panel member indicated that it was difficult to determine what, if any impact the turn time evidence had to prevent the return of empty containers. Therefore, the third panel member was brought in under Exhibit D to the UIIA.

The third panel member has reviewed the evidence provided by the Motor Carrier and Equipment Provider. Section G.12 of the UIIA states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment." The third panel member found that the Motor Carrier was clear in that the surrounding port congestion impacted its ability to return empty containers; however, the Motor Carrier offered no documentation to support an attempted return. Based on the findings for closures and prevention of return of empty containers, the third panel member reached a split decision. Therefore, the invoices in connection with this claim should be adjusted as follows:

Invoice No.	Invoice Number	Original Amount	Amount Waived	Adjusted Amount Owed	Reason for Reduction
1	PD00127419	\$00.00	\$00.00	\$00.00	Reduce per diem charges that ended up returning to WBCT by 1 day.
2	PD00126495	\$00.00	\$00.00	\$00.00	No reduction. Per diem charges stand.
3	PD00127623	\$00.00	\$00.00	\$00.00	Reduce per diem charges for all days in question with STS where empty containers were not allowed to be returned.
Total Adjusted Amount Owed				\$00.00	

None of the panel members found that the EP had not complied with Section G.11. Compliance With the Law as it relates to the California Business and Professions code Section 22928.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

EXHIBIT D TO THE UIIA

3. A three-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IANA member from each mode, i.e. a Motor Carrier, Water Carrier and Railroad. However, the decision will be rendered by the two arbitrators representing the modes involved in the disputed invoice(s). The third appointed arbitrator from the mode not involved in the transaction will act as an alternate, and will render a decision only in the event the arbitrators from the involved modes cannot agree on a resolution of the dispute.

DECISION: The third panel member finds in favor of the Equipment Provider, but for reduced billing amounts. The third panel member determined that the following amounts should be waived based on supporting documentation presented by the Motor Carrier that provided evidence which precluded the Motor Carrier's ability in these instances to interchange the equipment back to the Equipment Provider within the specified free time.

Invoice No.	Invoice Number	Original Amount	Amount Waived	Amount Owed
1	PD00127419	\$00.00	\$00.00	\$00.00
3	PD00127623	\$00.00	\$00.00	\$00.00

Original Invoiced Amount:	\$00.00
Total Adjusted Amount Owed by the Motor Carrier to the EP:	\$00.00

CASE REVIEWED AND DECIDED BY:

WALTER D. WATSON
Rail Carrier Member

DAVE MANNING
Motor Carrier Member

AL SMERALDO
Ocean Carrier Member

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

Date of Decision: 06/22/2015

DISCUSSION

The Motor Carrier submitted as part of its supporting documentation a JOC article that referenced specific equipment providers reinstating port congestion surcharges due to the port congestion. The date of the JOC article was prior to the dates associated with the interchange period for the disputed invoices, with the exception of invoice 1 that shows the unit was out-gated on 10/27/14 and in-gated on 12/9/14. The Motor Carrier provided additional e-mail communications to the Equipment Provider indicating that it was unable to return equipment to the TTI facility since they were only accepting dual transactions. These communications however were all prior to the interchange dates associated with the disputed charges. The only exception was an e-mail transmission from TTI, dated November 14th specifically stating that it was only accepting dual transactions.

As precedent in regards to identifying a situation as falling under the Force Majeure provision of the UIIA, the IIEC has previously indicated that in situations when the facility is open, the applicability of force majeure would need to be determined by each Equipment Provider on a case by case basis dependent upon the conditions that existed at a specific facility, on a specific date and time, and if these conditions prevented the pick-up and/or re-delivery of equipment.

The Motor Carrier also indicated that the Equipment Provider was not in compliance with the California State regulation SB45, which prohibits intermodal marine Equipment Providers from imposing per diem, detention and demurrage charges under the following conditions: 1) when the intermodal marine terminal or terminal truck gate is closed during posted normal working hours, or during a labor disruption or any other period involving an act of God or any other planned or unplanned action that closes the truck gate, 2) when the intermodal marine terminal decides to divert equipment without 48 hours' electronic or written notification to the Motor Carrier, 3) when a loaded container is not available for pickup when the Motor Carrier arrives at the intermodal marine terminal, and 4) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. The Motor Carrier indicated that one or more of the above conditions existed during the period covered by the disputed charges.

DECISION

The panel reviewed all documents and evidence submitted by the parties. The panel members stated that in previous case precedent it has been established that the Motor Carrier must provide evidence that it was precluded from interchanging equipment based on the force majeure conditions that existed in order to meet the requirements for invoking relief available in Section G.12, Force Majeure of the UIIA. Force Majeure as defined in provision G.12 of the UIIA requires conditions to exist that prevent the Motor Carrier from interchanging equipment. Provision G.12 states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in the Provider's Addendum." SB45 clearly states that in order to qualify for relief, the planned or unplanned action (i.e. Labor disruption) would need to close the truck gate, or that the intermodal marine terminal turns away the Motor Carrier due to congestion. Both provision G.12 of the UIIA and SB45 contemplate the inability to interchange equipment.

In this case, the Motor Carrier failed to present substantial evidence that demonstrated it was subjected to force majeure conditions of severe congestion which prevented the interchange of equipment on the dates of the disputed invoices. Consequently, the panel finds in favor of the EP. However, the two modal panel members were unable to reach a consensus on whether a partial adjustment should be made to Invoice NAIM3120369 since the Motor Carrier had presented an e-mail transmission that stated that the facility was only accepting dual transactions on the date of November 14, 2014. The third panel member was brought in under Exhibit D of the UIIA to render the final decision in regards to only this one invoice.

The third panel member found that the Equipment Provider should adjust invoice NAIM3120369 by one day of per diem charge for the date of November 14th on the grounds that the Motor Carrier was UNABLE to return the equipment due to actions taken by TTI requiring only dual transaction on this date. The email from "TTI Admin" clearly stated that "ALL DRIVERS ARRIVING TO TTI WITH AN EMPTY IN ONLY WILL BE TURNED AROUND." The third panel found that the Motor Carrier had provided sufficient proof and as such should be granted relief under the provisions of G.12 of the UIIA for the date of 11/14/14.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

EXHIBIT D TO THE UIIA

3. A three-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IANA member from each mode, i.e. a Motor Carrier, Water Carrier and Railroad. However, the decision will be rendered by the two arbitrators representing the modes involved in the disputed invoice(s). The third appointed arbitrator from the mode not involved in the transaction will act as an alternate, and will render a decision only in the event the arbitrators from the involved modes cannot agree on a resolution of the dispute.

DECISION: The panel unanimously finds in favor of the Equipment Provider with the exception of the adjustment to Invoice NAIM3120369. In regards to the adjustment to this invoice, the majority of the panel finds that an adjustment should be applied to invoice NAIM3120369 based on the reason below.

Invoice #	Inv. Date	Amount	Ingate Facility	Adjusted Date	Adjustment	Reason	<u>NEW</u> Amount Owed
NAIM3120369	1/5/15	\$0.00	TTI/TTI	11/14/14	\$0.00	The panel finds that the Motor Carrier provided sufficient proof and as such should be granted relief under the provisions of G.12 of the UIIA.	\$0.00

CASE REVIEWED AND DECIDED BY

GERRY BISAILLON
Rail Carrier Member

ROBERT A. CURRY
Motor Carrier Member

DAVID DALY
Ocean Carrier Member

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

Date of Decision: 11/03/2015

In addition, the Motor Carrier also indicated in its initial dispute of the charges with the EP that the EP was not complying with Section E.1. of the UIIA in regards to the required notification should the equipment return location change from the original point of interchange. The EP was not notifying the Motor Carrier by 16:00 p.m. (local time) the business day prior to the change in return location was becoming effective.

The majority of the supporting documentation provided by the Motor Carrier encompasses a wide range of dates of JOC articles about the on-going congestion issues on the West Coast, eModal transmissions that address conditions at specific facilities and notifications relating to equipment return. Staff has gone through all the documentation that was provided and identified those that were dated between the timeframe of the out-gate and in-gate dates related to invoices above and for the eModal communications regarding the specific facility where the interchange of the equipment related to these invoices occurred.

Dispatch Records

The Motor Carrier provided examples of e-mails from its nightly dispatchers to its customer service group outlining the previous night's activities. This included comments regarding the conditions at the specific facilities, as well as how many loads the Motor Carrier missed during a specific shift that did not get picked up and were unable to be delivered to the customer. The Motor Carrier believes this illustrated how non-productive the terminals really were and how congestion affected the ability of drivers to perform their duties. These communications were dated for the period of 1/8/15 through 1/29/15. The following is a summary of the comments related to the in-gating facilities associated with the disputed invoices:

1/8/15 – APM Terminal extremely congested flip lines. Grounded operations ceased at 2300. STS facility extremely long flip lines. WBCT facility extremely long line to get into the facility and long flip lines.

1/13/15 – APM Terminal extremely congested flip lines. Drivers did not get out in time to make second run from the terminals due to congestion. Grounded operations ceased at 2300. Drivers did not get serviced, no equipment available. STS facility had extremely long line to get into the terminal. Appointments expired as driver waited to get in, no slots available. Due to congestion, drivers did not make it out in time to make second run from the terminals. Many drivers not serviced. WBCT facility had extremely long line to get in. Appointments expired as drivers waited to get in, no available slots to rescheduled missed appointments.

1/14/15 – APM Terminal congested flip lines. Due to congestion, drivers did not get out in time to make second run from the terminals. Grounded operations ceased at 2200. Many drivers did not get serviced. STS facility had long lines to get in as well. Appointments expired as drivers waited to get in and no slots available to reschedule missed appointments.

1/16/15 – APM Terminal congested flip lines. Due to congestion, drivers did not get out in time to make second run from the terminals. Grounded operations ceased at 2200. Many drivers did not get serviced, no equipment available and many containers were located in closed areas. STS facility also had extremely long lines to get into the facility. Due to congestion, drivers did not make it out in time to make a second run from the terminals. WBCT had long lines to get into the facility causing appointments to expire as drivers waited to get in the facility. There were also no available slots to reschedule missed appointments.

1/22/15 – APM Terminal had extremely congested flip lines. Drivers did not make it out in time to make second run from the terminals. Many drivers did not get serviced. No equipment was available as many containers were in closed areas. STS also had extremely long flip lines. WBCT had long lines and long flip lines to get into the facility.

1/23/15 – APM Terminal had congested flip lines and many containers were in closed areas. Only double transactions were serviced. PCT had long flip lines. WBCT had long flip lines and long lines to get into the facility.

1/27/15 – APM Terminal had extremely long flip lines. Grounded operations ceased at 2300. No equipment available. STS also had extremely long flip lines and lines to get in the terminal. WBCT had long lines to get into the facility.

1/28/15 – APM Terminal had congested flip lines and no equipment available. WBCT had long lines to get into the facility.

The Motor Carrier also showed total loads moved and total loads missed on the dates above. The following chart provides a summary of this data:

Date	Total Loads Moved	Total Load Missed	Total Owner Operator Drivers
1/8/15	98	76	58
1/10/15	25	0	16
1/13/15	98	55	56
1/14/15	114	53	58
1/16/15	88	35	58
1/22/15	140	23	59
1/23/15	43	7	40

1/26/15	127	70	57
1/28/15	174	45	58
1/29/15	124	2	64
Total	1031	366	

SB45 Court Decision

The Motor Carrier included as part of its supporting documentation a copy of a California court decision relating to SB45. This decision clarified that per diem charges cannot be assessed on a weekend or holiday when the facility is closed.

JOC Articles

The JOC articles included with the claim are dated between 1/06/15 through 1/28/15. The JOC articles submitted by the Motor Carrier all provided general statements regarding the on-going congestion issues on the West Coast and the overall conditions that existed at the Port of Los Angeles and Port of Long Beach. There were no JOC articles provided by the Motor Carrier that specifically described the conditions at the facilities involved.

Court Case Referenced by Motor Carrier – *United Arab vs PB Express, Inc.*

The Motor Carrier submitted a copy of a court case involving UIIA EP, United Arab Shipping and UIIA Motor Carrier, PB Express, Inc. that involves Force Majeure due to work stoppage of independent contractors hired by the Motor Carrier. The original court decision was found in favor of United Arab Shipping, but was later reversed and found in favor of PB Express. The court determined that the specific situation associated with the work stoppage was beyond the Motor Carrier's control and that therefore Force Majeure would be applicable.

eModal E-mail Communications

The Motor Carrier also provided copies of e-mail communications received from eModal. These communications identify specific conditions at various facilities. There were several eModal transmissions for the APM facility and a few for the PCT facility. The APM communications covered dates of 1/7/15 through 1/22/15 and outlined specific lane closures on specific dates. Additionally, on 1/13, 1/15 and 1/16 the facilities ceased grounded deliveries at specific times. The APM facility was only accepting dual transactions on the dates of 1/19/15 through 1/22/15. No single MTY IN/Single Export IN transactions were accepted on these dates. There were also empty return restrictions on these same dates at the APM facility, but none of these were for the Equipment Provider. There was one e-mail communication for PCT, dated 1/20/15 that indicated PCT was not accepting empties for the EP, however PCT was only associated with Invoice 1 and this was after the in-gate date, which was 1/15/15.

Equipment Provider Tariffs

The Motor Carrier also submitted information on several Equipment Providers' tariffs that are on file with the Federal Maritime Commission (FMC). A copy of the Equipment Provider's tariff was provided that referenced "port congestion" in Section O as a condition of Force Majeure. A Bill of Lading Liberties for the specific Equipment Provider that is the Equipment Provider in this case has been included in the case file. However, the terms of the Equipment Provider's tariff would be considered outside of the UIIA as the terms and conditions of the UIIA and the Equipment Provider's addendum to the UIIA would be applicable as it relates to the interchange contract between the Equipment Provider and the Motor Carrier.

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

The Equipment Provider responded with e-mail communication from the PCT & WBCT facilities confirming the following:

The **WBCT** Terminal did confirm that their normal operating hours are:

Monday thru Thursday 1st shift 0700-1700

Monday thru Thursday 2nd shift 1700-0300

Friday and Saturday – 2nd shift closed

Sunday – closed

The WBCT terminal is closed during stop work meetings. The WBCT terminal also confirmed to EP that if the trucker was turned away at the gate they would have received a leave terminal ticket. The Motor Carrier did not provide evidence of any turn away tickets in its supporting documentation.

In addition, WBCT indicated that they only block the EP's empties per the Equipment Provider's request. WBCT identified the following dates when empties were not accepted:

1/31/15 – no empties

2/7/15 – no empties

2/12/15 – limited to only PGI for empty receiving

2/13/15 – limited to only PGI for empty receiving

As shown below, **PCT** confirmed their normal operating hours, as well as the dates they were closed between 1/06/15 and 1/28/15.

Monday thru Friday 0800 - 1700

Tuesday thru Friday 1800 – 0300

Closed on 1/8/15 1800 shift stop work ILWU meeting

Closed both shifts on Martin Luther King Holiday.

The PCT terminal also confirmed to EP that they are a paperless facility, therefore, they would not provide turn away tickets.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

With regard to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier when the port is too congested and the driver is turned away. Section G.11 of the UIIA states that all parties must comply with all applicable federal, state and local laws, rules and regulations.

DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties. Section G.12 of the UIIA states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment." In this case, the Motor Carrier panel member finds that the GPS documentation provided as evidence by the Motor Carrier corroborates that port slowdown caused a 38% increase in port turn time when comparing data from January 2014 with January 2015. If the increase time is applied to the base turn time, the Motor Carrier should have had an additional two free days added to the Equipment Provider's allowed free time. Consequently, the Motor panel member believes that port congestion prevented the Motor Carrier's ability to return the equipment within the allowable time. After reviewing the evidence, the Ocean panel member requested an example of the Equipment Providers' notice regarding empty returns during the period in question. IANA's staff requested the information from the Equipment Provider. The Equipment Provider was unable to provide an example of the notice. However, in its response it states that "every trucker is free to use terminal websites or E-modal to verify what empties are accepted. We also send a weekly trucker notice with information regarding empty returns." The Ocean panel member reviewed the response and found that the information lacked details for the timeframe in question. Consequently, the Ocean panel member finds that the Equipment Provider failed to comply with section E.1 of the UIIA as it relates to the required notification that the Equipment Provider is to provide when the equipment return location changes from the original point of interchange. In addition, neither panel member found evidence to support that the Equipment Provider had not complied with the California State regulation SB45 or Section G.11. Compliance with the Law under the UIIA.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

E. Equipment Use

1. Absent a separate bilateral equipment interchange agreement in written or electronic form between the Parties, the Motor Carrier shall use the Equipment for only the purposes for which it was interchanged, not authorize use by others, and promptly return the Equipment after its interchange purpose is complete. The Motor Carrier shall return the Equipment to the physical location at which the Equipment was received unless the Provider directs the Equipment to be returned to satellite locations as governed by 1) a written bilateral equipment interchange agreement between the Parties or 2) a notification from the Provider to the Motor Carrier via internet posting, e-mail, or shipping order. Satellite location(s) are facilities which are within the same local commercial territory and support operations of the Provider for the location from which the Equipment was originally received. Whenever a return location is changed, Provider must notify the Motor Carrier by e-mail by 16:00 p.m. local time the business day prior to the change becoming effective. Motor Carrier must furnish the Provider with e-mail addresses to be used for Motor Carrier notification when return locations are changed.

An Addendum to this Agreement does not constitute a separate bilateral equipment interchange agreement. **[Revised 08/01/14]**

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

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

CASE REVIEWED AND DECIDED BY:

DAVE MANNING
Motor Carrier Member

AL SMERALDO
Ocean Carrier Member

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

Date of Decision: 09/01/2015

As precedent, under the Force Majeure provision of the UIIA, the IIEC has previously found that when the facility is open, the applicability of force majeure would need to be determined by each Equipment Provider on a case by case basis dependent upon the conditions that existed at the specific facility, on a specific date and time, and whether these conditions prevented the pick-up and/or re-delivery of equipment.

In regards to the Motor Carrier's basis relating to SB45, this legislation identifies the conditions in the state of California under which an Equipment Provider cannot assess per diem to the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations. Based on the supporting documentation provided by the Motor Carrier, the panel will need to determine if any of the conditions outlined in the SB45 regulation existed during the dates of 12/23/14 through 1/6/15, which are the interchange dates associated with the disputed charges.

DECISION:

The panel reviewed all documents and evidence submitted by the parties. The panel finds that the Motor Carrier did not satisfy the criteria under provision G.12 of the UIIA. In this provision Force Majeure is defined as: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in the Provider's Addendum." Further, SB45 clearly states that in order to qualify for relief, the planned or unplanned action (i.e. labor disruption) would need to close the truck gate, or that the intermodal marine terminal turns away the Motor Carrier due to congestion. Both provision G.12 of the UIIA and SB45 contemplate the inability to interchange equipment. The evidence submitted by the Motor Carrier in connection to this claim does not represent that the port gate was closed or that the Motor Carrier's ability to interchange was interrupted. Hence, because the port was not closed and the gates were open, the application of provision G.12 does not apply in this situation since technically the Motor Carrier was able to interchange the equipment.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

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

CASE REVIEWED AND DECIDED BY:

DAVE MANNING
Motor Carrier Member

AL SMERALDO
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: **20150221-1-XXXI-PD**

Date of Decision: 06/22/2015

MOTOR CARRIER'S DISPUTE

The Motor Carrier disputes the following invoices:

Invoice	Invoice #	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	D000444457	1/7/15	\$00.00	Global Gateway/CUT	11/25/14	12/30/14	1/7/15	2/5/15	No response from EP	2/21/15
2	D000449071	1/15/15	\$00.00	Yusen Terminal/Global Gateway	12/10/14	1/6/15	1/15/15	1/21/15	No response from EP	2/21/15
3	D000449068	1/15/15	\$00.00	CUT/CUT	12/12/14	1/6/15	1/15/15	1/21/15	No response from EP	2/21/15
4	D000449072	1/15/15	\$00.00	Global Gateway/CUT	12/4/14	1/6/15	1/15/15	1/21/15	No response from EP	2/21/15
5	D0004449120	1/15/15	\$00.00	CUT/Trapac	12/24/14	1/5/15	1/15/15	1/21/15	No response from EP	2/21/15
6	D000449121	1/15/15	\$00.00	CUT/Trapac	12/23/14	1/5/15	1/15/15	1/21/15	No response from EP	2/21/15

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure) due to port congestion that existed at the Ports of Los Angeles and Long Beach. The Motor Carrier indicates that conditions existed that prevented its ability to return equipment within the specified free time. The Motor Carrier indicated that conditions such as labor issues, closed terminals, early gate closures, closed areas, equipment redirections and non-acceptance of equipment on certain days/shifts have all contributed to the congestion and are issues that were beyond the Motor Carrier's control. Under these situations, delays cannot be avoided by Motor Carriers and therefore the Motor Carrier should not be held responsible for per diem during this timeframe. In addition, the Motor Carrier also argued that the California State regulation SB45 prohibited an Equipment Provider from imposing per diem charges during work stoppages and congested conditions.

EQUIPMENT PROVIDER'S RESPONSE

The Equipment Provider did not submit comments or supporting documentation relating to this arbitration claim.

DISCUSSION

The Motor Carrier submitted as part of its supporting documentation a JOC article that referenced specific equipment providers reinstating port congestion surcharges due to the port congestion. The date of the JOC article was prior to the dates associated with the interchange period for the disputed invoices, with the exception of the out-gate date related to invoice 1.

As precedent in regards to identifying a situation as falling under the Force Majeure provision of the UIIA, the IIEC has previously indicated that in situations when the facility is open, the applicability of force majeure would need to be determined by each equipment provider on a case by case basis dependent upon the conditions that existed at a specific facility, on a specific date and time, and if these conditions prevented the pick-up and/or re-delivery of equipment.

The Motor Carrier also indicated that the Equipment Provider was not in compliance with the California State regulation SB45, which prohibits intermodal marine Equipment Providers from imposing per diem, detention and demurrage charges under the following conditions: 1) when the intermodal marine terminal or terminal truck gate is closed during posted normal working hours, or during a labor disruption or any other period involving an act of God or any other planned or unplanned action that closes the truck gate, 2) when the intermodal marine terminal decides to divert equipment without 48 hours' electronic or written notification to the Motor Carrier, 3) when a loaded container is not available for pickup when the Motor Carrier arrives at the intermodal marine terminal, and 4) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. The Motor Carrier indicated that one or more of the above conditions existed during the period covered by the disputed charges.

DECISION

The panel reviewed all documents and evidence submitted by the parties. The panel members stated that in previous case precedent it has been established that the Motor Carrier must provide evidence that it was precluded from interchanging equipment based on the force majeure conditions that existed in order to meet the requirements for invoking relief available in Section G.12, Force Majeure of the UIIA. Force Majeure as defined in provision G.12 of the UIIA requires conditions to exist that prevent the Motor Carrier from interchanging equipment. Provision G.12 states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in the Provider's Addendum." SB45 clearly states that in order to qualify for relief, the planned or unplanned action (i.e. Labor disruption) would need to close the truck gate, or that the intermodal marine terminal turns away the Motor Carrier due to congestion. Both provision G.12 of the UIIA and SB45 contemplate the inability to interchange equipment.

In this case, the Motor Carrier failed to present substantial evidence that demonstrated it was subjected to force majeure conditions of severe congestion which prevented the interchange of equipment on the dates of the disputed invoices. Consequently, the panel finds in favor of the EP.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like

causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

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

CASE REVIEWED AND DECIDED BY

ROBERT A. CURRY
Motor Carrier Member

DAVID 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

Case Number: **20150227-17-XXXI-PD**

Date of Decision: 10/06/2015

The motor carrier disputes the following invoice:

<u>Invoice #</u>	<u>Inv. Date</u>	<u>Amount</u>	<u>Facility</u>	<u>Outgated</u>	<u>Ingated</u>
PDLAX0023184	2/6/15	\$00.00			
TCLU8764045			PCT/PCT	12/29/14	1/20/15
FCIU9734812			PCT/PCT	12/23/14	1/20/15
FCIU9525730			PCT/PCT	1/14/15	1/30/15
GVCU5194170			PCT/PCT	1/9/15	1/21/15
FCIU9878255			PCT/PCT	1/9/15	1/26/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that conditions existed that prevented it from returning equipment within the specified free time. The Motor Carrier argued that conditions such as labor issues, closed terminals, early gate closures, closed areas, equipment redirections and non-acceptance of equipment on certain days/shifts have all contributed to the congestion and are issues that are beyond the Motor Carrier's control. The Motor Carrier also indicated that port congestion has been recognized by Equipment Providers, such as the Equipment Provider in this claim, as a form of force majeure. The FMC filed tariffs of many Equipment Providers cite port congestion as a condition of force majeure. The Motor Carrier believes if Equipment Providers can exempt themselves from liabilities based on force majeure provisions within their own tariffs, then they should not be able to levy charges against a Motor Carrier for delays in returning equipment. The Motor Carrier also referenced the California State regulation SB45 indicating that this law prohibited the Equipment Provider from imposing per diem charges during work stoppages and congested conditions.

In addition, the Motor Carrier several news articles that described the port congestion conditions on the West Coast, however were not specific to the facility associated with this claim. The Motor Carrier also submitted as part of its supporting documentation driver turn time data collected by the Harbor Trucking Association for the period of October 2013 through June 2015. This data showed the average visit time at the various West Coast terminals during this timeframe. The Motor Carrier believes this data provides evidence that the port congestion conditions impacted its ability to return equipment within the allowable free time.

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

The Equipment Provider responded that after careful review of the marine terminal schedules for the periods in question, it confirmed that the Motor Carrier was not charged for any date that the terminal was not open and operating. The Equipment Provider did not see any support for the Motor Carrier's interpretation that the mere existence of congestion means that per diem cannot be issued and must be suspended. The terminal provided confirmation that PCT was closed on January 19, 2015 due to a holiday (day shift). A copy of the terminal's gate schedule for the period of January 26 – February 2nd was provided as well. The schedule showed the following for the PCT facility:

Monday, January 26th – Open Day Shift/Closed Night Shift
Tuesday, January 27th through Friday, January 30th – Open Day Shift/Open Night Shift
Saturday, January 31st – N/A
Monday, January 2nd – Open Day Shift/Closed Night Shift

*Day Shift runs from 8am -5pm; night shift/Pier Pass hours from 6pm to 3am.

PCT was open during the containers last free day for all the Equipment Provider's equipment associated with the disputed invoice. PCT does not provide turn away tickets if the Motor Carrier is turned away at the gate.

The Equipment Provider believes the charges invoiced are valid and that the evidence it has presented shows that the facility where the interchange of the equipment occurred was open and accepting EP's equipment.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

The California State regulation SB45 prohibits intermodal marine Equipment Providers from imposing per diem, detention and demurrage charges under the following conditions: 1) when the intermodal marine terminal or terminal truck gate is closed during posted normal working hours, or during a labor disruption or any other period involving an act of God or any other planned or unplanned action that closes the truck gate, 2) when the intermodal marine terminal decides to divert equipment without 48 hours' electronic or written notification to the Motor Carrier, 3) when a loaded container is not available for pickup when the Motor Carrier arrives at the intermodal marine terminal, and 4) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. The Motor Carrier indicated in its initial dispute of the charges that one or more of the above conditions existed during the period covered by the disputed charges. Based on the supporting documentation provided by the Motor Carrier, there was no evidence presented that showed the driver attempted to gain access to the facility and was turned away, or that the work stoppage/labor disruptions closed the facility's gates.

DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties. The two modal panel members could not agree on whether the conditions outlined by the Motor Carrier and the supporting documents provided met the criteria set forth in Section G.12. The Motor Carrier panel member stated that based on the HTA information submitted, an average baseline turn time of 75 minutes was identified for the period of October 2013 through August 2014. Using the baseline of 75 minutes against the turn time of 104 minutes in January 2014, which is the timeframe associated with the disputed charges, the Motor Carrier panel member believes the free time associated with the disputed charges should be re-calculated using this data and would result in the following adjustments being made to the invoices under this claim:

<u>Container</u>	<u>Chargeable Days</u>	<u>Original Amount</u>	<u>Adjusted Amount</u>
TCLU8764045	4 days	\$00.00	\$00.00
FCIU9734812	6 days	\$00.00	\$00.00
FCIU9525730	2 days	\$00.00	\$00.00
GVCU5194170	0 days	\$00.00	\$00.00
FCIU9878255	1 day	\$00.00	\$00.00

Consequently, the Motor Carrier panel member believes that the original amount should be adjusted from \$00.00 (original amount) to \$00.00. The Ocean Carrier panel member believes that the Motor Carrier failed to present specific evidence that supports its claim that its ability to return the equipment was interrupted due to labor disruptions. Further, the Ocean Carrier panel member believes that the HTA chart did not provide information that indicated the terminal was closed for a specified period. In addition, the Equipment Provider provided information that showed that the Motor Carrier was not charged for any date that the terminal was not open and operating. Therefore, the third panel member was brought in under Exhibit D to the UIIA.

The third panel member has reviewed the evidence provided by the Motor Carrier and Equipment Provider. Section G.12 of the UIIA states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire,

flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment." The third panel member does not believe that the evidence presented by the Motor Carrier proved that the port congestion specifically impacted its ability to interchange equipment back to the Equipment Provider within the allowable free time. In addition, there was no evidence presented that the Equipment Provider had not complied with the California State regulation SB45. Therefore, the third panel member finds that the Motor Carrier is responsible for the full amount of the invoice, which is \$00.00.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

EXHIBIT D TO THE UIIA

3. A three-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IANA member from each mode, i.e. a Motor Carrier, Water Carrier and Railroad. However, the decision will be rendered by the two arbitrators representing the modes involved in the disputed invoice(s). The third appointed arbitrator from the mode not involved in the transaction will act as an alternate, and will render a decision only in the event the arbitrators from the involved modes cannot agree on a resolution of the dispute.

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

CASE REVIEWED AND DECIDED BY:

CHAD M. PETERSON
Rail Carrier Member

JIM MICHALSKI
Ocean Carrier Member

KEVIN LHOTAK
Motor Carrier Member

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

Date of Decision: 10/20/2015

The Motor Carrier submitted several news articles regarding the port congestion, however none of these articles were specific to the facilities associated with this claim. The Motor Carrier also submitted driver turn time data captured by the Harbor Trucking Association to evidence that these conditions impacted the Motor Carrier's business operations. Lastly, the Motor Carrier also stated in its basis of dispute that Equipment Providers have recognized port congestion as a form of force majeure within their own tariffs filed with FMC. The Motor Carrier does not believe a Motor Carrier should be held responsible for the force majeure conditions that existed due to port congestion, which resulted in the Motor Carrier's inability to return equipment within the specified free time.

EQUIPMENT PROVIDER RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded that the Motor Carrier's only basis of dispute is that the port was congested. The Motor Carrier has provided no trouble tickets for any of the containers associated with the charges under dispute stating that the facilities do not provide turn away tickets of any kind. The Equipment Provider stated that it confirmed that Eagle Marine Services (Global Gateway) and Long Beach Container Terminal both provide trouble tickets if the truckers are turned away. The Equipment Provider does not believe that port congestion constitutes a force majeure event. The facilities associated with the disputed charges remained open and were accepting equipment on behalf of the Equipment Provider on the interchange dates involved with the invoices being disputed under this claim. Furthermore, the Equipment Provider stated that the general industry articles submitted by the Motor Carrier are not relevant to the invoices under dispute. The Equipment Provider believes that the Motor Carrier has not presented any evidence to support its basis that conditions existed that prevented it from returning the equipment to the Equipment Provider within the specified free time.

The Equipment Provider does not believe the Motor Carrier's basis of dispute has been proven by the supporting documentation presented. The Motor Carrier has failed to show that any force majeure condition existed that would have prevented its timely return of containers to the facilities and therefore is not entitled to exemption from the per diem charges billed.

As part of its response, the Equipment Provider provided the following port hours for Eagle Marine Services (Global Gateway) and Long Beach Container Terminal:

Eagle Marine Services

Berths 302-305

Hours:

Monday – Friday 7:00 a.m. – 4:45 p.m.

Monday – Thursday – 5:00 p.m. – 2:45 a.m.

Saturday 8:00 a.m. – 4:30 p.m.

Long Beach Container Terminal

Berths 6-10

Hours:

Monday – Friday 8:00 a.m. – 2:30 p.m.

Monday – Thursday 5:00 p.m. – 2:45 p.m.

Saturday 8:00 a.m. – 4:30 p.m.

The dates each facility was closed during the interchange periods are as follows:

Eagle Marine Services (Global Gateway)

Interchange Period: 10/20/14 – 1/16/15

Saturday, 10/16/14	Sunday, 12/14/14
Sunday, 11/2/14	Sunday, 12/21/14
Sunday, 11/9/14	Holiday, 12/25/14
Sunday, 11/16/14	Sunday, 12/28/14
Sunday 11/23/14	Holiday, 1/1/15
Holiday, 11/27/14	Sunday, 1/4/15
Sunday, 11/30/14	Sunday, 1/11/15
Sunday, 12/7/14	

Long Beach Container Terminal

Interchange Period: 12/2/14 – 12/18/14

Sunday, 12/7/14
Sunday, 12/14/14

Turnaway Tickets: The two facilities issued drivers a “trouble ticket” at the pedestal if the driver is turned away once they reach the pedestal. If the driver departs from the line prior to reaching the pedestal, it will not receive a ticket.

Invoice – SPEI041397 – Equipment Provider stated that per diem was billed for October 28, 2014 – November 3, 2014 (7 days). One of these days was a weekend day when the terminal was closed (Sunday, November 2). Equipment Provider has adjusted the invoice to \$00.00, which it believes are valid charges that the Motor Carrier must be held responsible for.

Invoice – SPEI041799 – Equipment Provider believes Motor Carrier is responsible for the charges as billed. Total owed \$00.00.

Invoice – SPEI041996 – Equipment Provider indicated that charges billed were valid with the exception of the per diem charges for container FICU2100626. The calculation of per diem on this specific container move did not take into consideration that four of the days were weekend days when the terminal was closed (November 23 & 30; December 7 & 14). Equipment Provider adjusted the per diem associated with this container move to \$00.00, which it believes the Motor Carrier is responsible for. Total per diem charges for this invoice are now \$00.00.

Invoice SPEI042221 – Equipment Provider believes Motor Carrier is responsible for the charges as billed. Total owed \$00.00.

Total per diem charges owed based on EP adjustments to the above invoices: \$00.00

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

In regards to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate., or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations.

DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties. The two modal panel members could not agree on whether the conditions outlined by the Motor Carrier and the supporting documents provided met the criteria set forth in Section G.12. The Motor Carrier panel member stated that based on the HTA information submitted, an average baseline turn time of 75 minutes was identified for the period of October 2013 through August 2014. Using the baseline of 75 minutes, the data showed that the turn time for the months associated with the disputed charges was well above the baseline. Consequently, the Motor Carrier panel member believes the free time associated with the disputed charges should be extended based on the HTA data. The Motor Carrier panel member believes that the original amount should be adjusted from \$00.00 (original amount) to \$00.00. The Ocean Carrier panel member believes that the Motor Carrier failed to present evidence that supports its claim that its ability to return the equipment was prevented due to force majeure conditions or that it was turned away by the terminal. Therefore, the third panel member was brought in under Exhibit D to the UIIA.

The third panel member has reviewed the evidence provided by the Motor Carrier and Equipment Provider. Section G.12 of the UIIA states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment." The third panel member states that per precedent cases, congestion did exist at the port terminals in LB and in LA. This fact is evident by the HTA turn time data that was submitted. While the Motor Carrier did not provide adequate proof that a force majeure condition existed at the specific terminals on the specific days that equipment was to be returned, the turn time data shows Motor Carriers were subjected to incremental costs and challenges associated with working in and around the ports during the ILWU / PMA discussion period. In addition, there was no evidence presented that the Equipment Provider had not complied with the California State regulation SB45.

Consequently, it is the opinion of the third panel member that a fair and equitable way of approaching these disputes and quantitatively evaluating the invoices is to use the turn time data to determine what level of adjustment should be made. Using this approach, the Motor Carrier is granted some relief to compensate for the condition of the terminals during this time period, however without positive evidence of a force majeure condition at the specific terminal in question during the time the Motor Carrier attempted to return the asset, the Motor Carrier would still be responsible for per diem and would not be absolved from payment.

The Motor Carrier panel member's approach to provide increased free time that is analogous and directly proportional to the increased turn times is a fair and equitable way to resolve the disputes. The third panel member finds as follows, with the arbitrated amount being the responsibility of the Motor Carrier:

Invoice	Container	Terminal	Desc.	Amount
SPEI041397	APHU370550	SPQ	EP Initial Invoice	\$00
			EP Adj. Invoice	\$00
			Arbitrated	\$00
SPEI041799	APZU3085361	SPQ	EP Initial Invoice	\$00
			EP Adj. Invoice	\$00
			Arbitrated	\$00
SPEI041996	TCKU2815913	LOB	EP Initial Invoice	\$00
			EP Adj. Invoice	\$00
			Arbitrated	\$00
	APHU682034	SPQ	EP Initial Invoice	\$00
			EP Adj. Invoice	\$00

Invoice	Container	Terminal	Desc.	Amount
			Arbitrated	\$0
	FCIU2100626	SPQ	EP Initial Invoice	\$00
			EP Adj. Invoice	\$00
			Arbitrated	\$00
	TGHU3230616	SPQ	EP Initial Invoice	\$00
			EP Adj. Invoice	\$00
			Arbitrated	\$0
SPEI042221	APZU4275725	SPQ	EP Initial Invoice	\$00
			EP Adj. Invoice	\$00
			Arbitrated	\$00
			<u>Grand Total</u>	
			EP Initial Invoice	\$00.00
			EP Adj. Invoice	\$00.00
			Arbitrated	\$00.00

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

EXHIBIT D TO THE UIIA

3. A three-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IANA member from each mode, i.e. a Motor Carrier, Water Carrier and Railroad. However, the decision will be rendered by the two arbitrators representing the modes involved in the disputed invoice(s). The third appointed arbitrator from the mode not involved in the transaction will act as an alternate, and will render a decision only in the event the arbitrators from the involved modes cannot agree on a resolution of the dispute.

DECISION: A majority of the panel finds in favor of the Equipment Provider in the amount of \$00.00.

CASE REVIEWED AND DECIDED BY:

ROBERT CURRY
Motor Carrier Member

GERRY BISAILLON
Rail 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

Case Number: **20150302-4-XXXI-PD**

Date of Decision: 09/01/2015

The motor carrier disputes the following invoice:

Invoice	Invoice #	Inv. Date	Amount	Facility Outgate/Ingate	Outgated	Ingated
1	P150100208	1/7/15	\$00.00			
	FCOI8919196			/CUT	12/16/14	12/31/14
	TEMU6701826			YTI/Global Gateway	12/15/14	01/02/15
2	P150100675*	1/14/15	\$00.00			
	HDMU4778764			Global Gateway/Global Gateway	12/19/14	01/09/15
	HDMZ409708			Global Gate/Global Gateway	12/27/14	01/09/15
3	P150100674*	1/14/15	\$00.00			
	HDMU6364594			Global Gateway/Trapac	12/17/14	01/08/15
	TLXZ422849			Global Gateway/Trapac	12/25/14	01/08/15
	DRYU4217949			Global Gateway/Global Gateway	12/26/14	01/09/15
	TLXZ500035			Global Gateway/Global Gateway	01/03/15	01/09/15
	HDMU4751341			Global Gateway/Not Provided	12/18/14	01/09/15
	OOLZ055186			Global Gateway/Not Provided	12/26/14	01/09/15
4	P150101139*	1/19/15	\$00.00			
	BSIU2424474			Global Gateway/Global Gateway	12/17/14	1/13/15
	GACZ231271			Global Gateway/Trapac	12/25/14	1/13/15
4- cont'd	HDMU4731176			Global Gateway/Trapac	12/23/14	01/13/15
	APLZ451162			?/Trapac	12/31/14	01/13/15
5	P150101142*	1/19/15	\$00.00			
	TEMU3343950			Global Gateway/EMS	12/16/14	1/15/15
	HLC842060			Not Provided	12/24/14	1/15/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier states that conditions existed that prevented its ability to return equipment within the specified free time. The Motor Carrier argues that conditions such as: labor issues, closed terminals, early gate closures, closed areas, equipment redirections and non-acceptance of equipment on certain days/shifts have all contributed to the congestion and are issues that are beyond the Motor Carrier's control. Under these situations, delays cannot be avoided and therefore the Motor Carrier should not be held responsible for per diem during this timeframe.

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

The Equipment Provider responded with copies of revised invoices detailing the following adjustments:

Invoice	Invoice #	Original Amount	Adjusted Amount
1	P150100208	\$00.00	\$00.00
2	P150100675	\$00.00	\$00.00
3	P150100674	\$00.00	\$00.00
4	P150101139	\$00.00	\$00.00
5	P150101142	\$00.00	\$00.00

No further comments were provided by the Equipment Provider.

DISCUSSION:

The Motor Carrier submitted its basis of dispute and one JOC article related to specific Equipment Providers reinstating port congestion surcharges. The date of the JOC article was prior to the dates associated with the interchange period for the disputed invoices. In addition, the Motor Carrier also submitted driver turn time data collected by the Harbor Trucking Association reflecting the turn times prior to and during the port congestion issues evidencing the impact these conditions had on drivers' turn times.

The Equipment Provider reviewed the disputed invoices and adjusted the charges billed based on what the Equipment Provider believes is the correct allocation of free time and per diem. The Equipment Provider believes the adjusted invoices are valid as provided to the Motor Carrier.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the EP within the allowable free time.

DECISION:

The panel reviewed all documents and evidence submitted by the parties. The Motor Carrier panel member believes the turn time data presented by the Motor Carrier in the case corroborates that the work slowdown on the West Coast had a direct and measurable impact on the Motor Carrier's ability to timely interchange equipment. Based on several memorandums from IANA Counsel on the subject of force majeure, an open gate at a terminal does not preclude a force majeure condition from existing. "Any other situation", which would have impacted the Motor Carrier's ability to timely return the equipment may be considered when determining the existence of a force majeure condition. The HTA data presented by the Motor Carrier in this case shows that the average turn time was 44% higher in December 2014 than it was during the 11 month "base line" period from October 2013 to August 2014. It was 39% higher than the base line period in January 2015. Based on this information, the Motor Carrier panel member believes the free time for the five invoices should be increased 41%, which represents an average of the increased turn time for the period of December and January. The EP involved in this claim on its own volition however already reduced the original invoice amounts well below what the charges would have been with the adjusted free time. Consequently, the Motor Carrier panel member finds in favor of the EP for the adjusted amount due of \$00.00.

The Ocean Carrier panel member also finds in favor of the EP for the adjusted amount, however for different reasons. The Ocean Carrier panel does not believe that the evidence presented by the Motor Carrier proves that it was unable to interchange equipment during this timeframe. Provision G. 12, states that "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment." The Ocean Carrier panel member believes the key word to force majeure is the word "unable". There was no evidence provided that suggested the terminal gates were closed or the Motor Carrier's drivers were turned away during the period in question. However, the Equipment Provider has already made significant concessions with regard to the application of charges due and has reduced the amount of its original invoices to \$8,095. Therefore, both panel members find in favor of the Equipment Provider for the total adjusted amount of \$00.00.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

DECISION: The panel unanimously finds in favor of the Equipment Provider in the amount of \$00.

CASE REVIEWED AND DECIDED BY:

FRED HUENNEKENS
Motor Carrier Member

ROBERT CANNIZZARO
Ocean Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

In the Dispute Between

UIIA Motor Carrier,
Appellant, and

UIIA Equipment Provider,
Respondent

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Case Number: **20150306-11-XXXI-PD**

Date of Decision: 10/06/2015

The motor carrier disputes the following invoice:

Invoice	Invoice #	Inv. Date	Amount	Facility Outgate/Ingate	Outgated	Ingated
1	5249299055	1/14/15	\$00.00	LGBTE/Not Provided	12/17/14	12/29/14
2	5249390356	2/9/15	\$00.00	LGBTE/Pier A	1/12/15	1/21/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier believes that the Equipment Provider declared a de facto force majeure by filing and assessing port congestion surcharges under their FMC tariffs. On a daily basis steamship lines and terminal operators were refusing, diverting and splitting the return of equipment in the name of "port congestion." The Motor Carrier states that these conditions prevented the Motor Carrier from returning the equipment within the allowed free time. The Motor Carrier states that the findings of the FMC, daily news articles from various publications (i.e. Los Angeles Times, JOC, etc.), press releases from the Pacific Maritime Association and the Intl. Longshore Workers Union all support that the port congestion experienced was a force majeure situation. In addition, the Motor Carrier indicates that California Business and Professions Code 22928 (SB45) expressly prohibits the assessment of per diem "during labor disruption periods" and Parties to the UIIA are required to comply with federal, state and local laws under Section G.11 of the UIIA. Based on the above reasons, the Motor Carrier believes they should not be responsible for the per diem charges being disputed.

On Invoice 5249299055, dated 1/14/15, the Motor Carrier states that they did not receive this invoice until 2/4/15. However, the Equipment Provider states that invoice was issued on 1/14/15 and that the Motor Carrier's dispute of these charges is outside of the 30 day timeframe.

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

The Equipment Provider did not respond to the arbitration claim. The only response from the Equipment Provider was during the initial dispute of the charges. At that time, the Equipment Provider stated that the facility was open and accepting empty equipment returns so it was the responsibility of the Motor Carrier to in-gate the empty container into the specific terminal within the free time. Consequently, the Equipment Provider believes the charges are valid as billed.

DISCUSSION:

The Motor Carrier submitted their basis of dispute and a letter outlining the reasons it believes conditions existed beyond the Motor Carrier's control due to the port congestion that fall under the force majeure provision in the UIIA. In addition, the Moving Party raised the issue that the California regulation SB45 precluded the assessment of per diem charges during labor disruptions so the Responding Party was not in compliance with Section G.11 of the UIIA.

The Motor Carrier also provided a screen printout from their internal system that referenced the following information regarding the container associated with Invoice 5249390356 – "1/6 – 2PM Closed Area Pier JIE, 1/20 – Night Pier A Rejected This Empty Per Efrain."

The Equipment Provider's comments were only those provided in regards to the Motor Carrier's initial dispute of the charges. The Equipment Provider believes the Motor Carrier was not precluded from returning the equipment within the specified free time and that the charges billed are justified.

On Invoice 5249299055, if the panel determines that the invoice was issued on January 14, 2015 as stated by the Equipment Provider, then the Motor Carrier's ability to dispute the invoice would be outside of the established 30 day timeframe set forth in the Equipment Provider's Addendum.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the EP within the allowable free time.

In regards to the Motor Carrier's basis relating to SB45, this legislation identifies the conditions in the state of California under which an Equipment Provider cannot assess per diem to the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations.

DECISION:

The panel reviewed all documents and evidence submitted by the parties. The panel finds in favor of the Equipment Provider for the following reasons: 1) Invoice 5249299055: the panel finds that the Motor Carrier failed to dispute the invoice within the 30 days period prescribed under provision H. 1. of the UIIA and the Equipment Provider's Addendum section IX.B; 2) Invoice 5249390356: the panel finds that the Motor Carrier did not satisfy the criteria under provision G.12 of the UIIA where it states that "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in the Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment." The evidence submitted by the Motor Carrier in connection to this invoice did not provide hard evidence that conditions existed that prevented it from timely returning the equipment to the terminal. Consequently, based on the supporting documentation presented it was not proven that Section G.12. Force Majeure was applicable in this arbitration case. The panel members also did not find any evidence that the Equipment Provider had not complied with the California state regulation SB45 as it relates to the charges billed.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

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]**

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

EP's addendum to the UIIA

* * * * *

Addendum to the Uniform Intermodal Interchange and Facilities Access Agreement

IX. INVOICE DISPUTE RESOLUTION

This dispute resolution covers the following types of invoices generated by EP Demurrage & Detention group:

B. Dispute Notification and Resolution Timeframe

The Motor Carrier must advise Provider of disputes within 30 days of invoice receipt.

Provider will respond to Motor Carrier within 30 days of dispute receipt.

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

In the Dispute Between

UIIA MC,
Appellant, and

Case Number: **20150306-12-XXXI-PD**

UIIA EP,
Respondent

Date of Decision: 01/05/2016

Invoice	Invoice #	Inv. Date	Amount	Facility Outgate/Ingate	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	30307926	2/3/2015	\$00.00	Pier 400/CUT	1/26/2015	1/28/2015	02/03/15	2/27/2015	3/6/2015	3/6/2015

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that the Equipment Provider declared a de facto force majeure by filing and assessing port congestion surcharges under their FMC tariffs. The Motor Carrier reported that steamship lines and terminal operators were refusing, diverting and splitting the return of equipment in the name of "port congestion" on a daily basis. The Motor Carrier stated that these conditions prevented the Motor Carrier from returning equipment within the allowed free time. The Motor Carrier also reported that the findings of the FMC, daily news articles from various publications (i.e. Los Angeles Times, JOC, etc.), press releases from the Pacific Maritime Association and the International Longshore Workers Union all support that the port congestion is a force majeure situation. In addition, the Motor Carrier indicates that California Business and Professions Code 22928 (SB45) expressly prohibits the assessment of per diem "during labor disruption periods" and Parties to the UIIA are required to comply with federal, state and local laws under Section G.11 of the UIIA. For the reasons set forth above, the Motor Carrier believes it should not be responsible for the per diem charges that are in disputed.

Note: There were originally three invoices submitted under this claim. However, two of the invoices were removed because the Motor Carrier disputed the charges outside of the established 30 day timeframe.

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

The Equipment Provider responded and provided the following information regarding APM Pier 400 and California United Terminal CUT, where the interchange occurred:

- Operating Hours – 8am-5pm (first shift) 6pm – 2am (second shift)
- Neither facility provides turn away tickets if the driver is turned away at the gate

In addition, the Equipment Provider produced copies of empty return notices for the dates of January 26, 2015 to January 28, 2015, reflecting the following:

- Monday, January 26th – 20' were dual transaction only at APMT and YTI
- Tuesday, January 27th and Wednesday, January 28th – 20's could be returned to CUT.

DISCUSSION:

The Motor Carrier submitted its basis of dispute and a letter outlining the reasons it believes conditions existed beyond the Motor Carrier's control, and further stated that the port congestion falls under the force majeure provision in the UIIA. In addition, the Motor Carrier raised the issue of California regulation SB45 which precludes the assessment of per diem charges during labor disruptions. The Motor Carrier believes the Equipment Provider is not in compliance with Section G.11 of the UIIA.

The Equipment Provider responded by providing information relating to the operating hours of the two facilities where the interchange of the equipment occurred. In addition, the Equipment Provider stated, in its response to the Motor Carrier's initial dispute that it believes the Motor Carrier's declaration of force majeure is not appropriate in regards to the conditions that existed at the Port of Los Angeles and Port of Long Beach. The Equipment Provider does not believe the Motor Carrier has presented sufficient evidence to support its dispute.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

With regards to the Motor Carrier's basis relating to the California Business and Professions Code, Section 22928, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, during a labor disruption period, during any other period involving an act of God, or any other planned or unplanned action that closes the truck gate; or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11. of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations.

DECISION:

After careful review of all documents and evidence submitted, the panel could not reach a consensus. The Motor Carrier panel member found that the Motor Carrier should be granted one (1) day of relief, but should also be required to pay the Equipment Provider \$135.00 for one day's per diem. The documentation provided showed that the notice provided to the Motor Carrier on January 26, 2015 at 8:25 a.m. noted that containers should be returned to YTI or APM on a dual transaction. Given that this notice was sent out on the same day requiring a dual transaction limited the ability of the Motor Carrier to anticipate and plan ahead for this transaction. Consequently, this limited the Motor Carrier's ability to interchange equipment that day. The Ocean Carrier panel member found the charges to be valid as billed indicating that the unit in question was being invoiced for the dates of January 27th and January 28th. While the Motor Carrier was restricted on January 26th from returning units without a dual transaction, January 26th was a free day and not charged. The Ocean Carrier panel member stated from a legal/contractual standpoint, it did not see how not being able to return the equipment on January 26th prevented the Equipment Provider from charging per diem on January 27th. He did not believe that the UIIA or SB45 address what is required on free days. Since the two modal panel members were unable to reach a consensus, in accordance with Exhibit D of the UIIA, the third panel member was brought in to render the final decision in the case.

The third panel member found that the Motor Carrier should be granted one day of relief, and should be required to remit payment of \$135 for one day's per diem to the Equipment Provider. The panel member indicated that the evidence presented showed that the Motor Carrier was prevented from returning the equipment on the last free day. On January 26th, APM and YTI facilities were accepting dual transactions only. The notice provided shows a date and time stamp of January 26, 2015 at 8:26 a.m., for limitations that apply to that same day. The third panel member noted that this does not comply with UIIA Section E.1. that requires notification by 16:00 the day before. This "forced" the Motor Carrier into a position where the soonest that it could return the equipment was on January 27th. By returning the equipment on January 27th, the Motor Carrier would be charged \$135, which would be unavoidable. If the Motor Carrier had returned the equipment on this date, no charges would have been due. However, since the Motor Carrier elected to return the equipment the following day (January 28th), the Motor Carrier is responsible for one day's per diem of \$135.

None of the panel members indicated that the Equipment Provider had not complied with Section G.11. Compliance With the Law.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

E. Equipment Use

1. Absent a separate bilateral equipment interchange agreement in written or electronic form between the Parties, the Motor Carrier shall use the Equipment for only the purposes for which it was interchanged, not authorize use by others, and promptly return the Equipment after its interchange purpose is complete. The Motor Carrier shall return the Equipment to the physical location at which the Equipment was received unless the Provider directs the Equipment to be returned to satellite locations as governed by 1) a written bilateral equipment interchange agreement between the Parties or 2) a notification from the Provider to the Motor Carrier via internet posting, e-mail, or shipping order. Satellite location(s) are facilities which are within the same local commercial territory and support operations of the Provider for the location from which the Equipment was originally received. Whenever a return location is changed, Provider must notify the Motor

Carrier by e-mail by 16:00 p.m. local time the business day prior to the change becoming effective. Motor Carrier must furnish the Provider with e-mail addresses to be used for Motor Carrier notification when return locations are changed.

An Addendum to this Agreement does not constitute a separate bilateral equipment interchange agreement. **[Revised 08/01/14]**

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

DECISION: The majority of the panel finds that Motor Carrier should be granted one (1) day of relief, but should also be required to pay the Equipment Provider \$00.00 for one day's per diem.

CASE REVIEWED AND DECIDED BY:

GERRY BISAILLON
Rail Carrier Member

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)	
)	
UIIA Motor Carrier,	)	Case Number: 20150313-1-XXXH-PD
Appellant, and)	
)	
UIIA Equipment Provider,	)	Date of Decision: 09/30/2015
Respondent)	

The motor carrier disputes the following invoice:

Invoice, NAIM3134722, dated 1/16/2015, in the amount of 00.00

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that obvious force majeure conditions existed at the port. Further, steamship lines had already declared a de facto force majeure by assessing port congestion surcharges under their Federal Maritime Commission filed tariffs. The Equipment Providers changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier argued that these conditions prevented it from returning equipment within the specified free time period.

The Motor Carrier also indicated that the findings of the FMC, as well as the articles in various publications, all support the conclusion that port congestion is force majeure. The Motor Carrier stated that under the Code of Federal Regulations (49 CFR 375.103), "*Force majeure means a defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control the parties and could not be avoided by exercise of due care.*" The FMC filed tariffs of many Equipment Providers also define force majeure as "... *port congestion, strikes, imminent strikes, lockouts or harbor disturbances...*" The UIIA defines force majeure as "...*strikes, or any like causes beyond the Motor Carrier's control...*" In addition, the California Business and Professions Code Section 22928 expressly prohibits the assessment of per diem "during a labor disruption period..." The Motor Carrier claimed that based on the facts, all UIIA Equipment Providers must obey the law and immediately suspend per diem charges on any interchanged equipment in the Port of Long Beach and Port of Los Angeles.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER DISPUTE:

No response was received from the Equipment Provider with regard to the arbitration claim filed by the Motor Carrier.

DISCUSSION:

The Motor Carrier submitted as part of its supporting documentation an article relating to the International Longshore and Warehouse Union and a copy of the California Business and Professions Code, Section 22928 (SB45). The Motor Carrier believes that force majeure conditions existed that precluded the redelivery of equipment and that the Equipment Provider has not complied with the California state regulation with regard to the conditions when state law precludes the assessment of per diem.

The Equipment Provider did not provide any response to the arbitration claim, but did indicate in its response to the Motor Carrier's initial dispute of the charges that port congestion is not a valid dispute to waive per diem charges since the terminal gate was open and receiving containers.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

With regard to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, during a labor disruption period, during any other period involving an act of God, or any other planned or unplanned action that closes the truck gate., or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations. Based on the supporting documentation provided by the Motor Carrier, there was no evidence presented that showed the driver attempted to gain access to the SSA facility and that it was turned away, or that any labor disruption closed the facility's gate.

DECISION:

The panel reviewed all documents and evidence submitted by the parties. The two modal panel members could not agree on whether the conditions outlined by the Motor Carrier and the supporting documents provided met the criteria set forth in Section G.12. Although the Moving Party in this claim did not present evidence that included the driver turn time data collected by the Harbor Trucking Association, the Motor Carrier panel member thought that his knowledge of this information should be applied to this case. The turn time data confirmed that the slowdown on the West Coast had a direct and measurable impact on Motor Carriers' ability to timely interchange equipment. Based on his awareness of the driver turn time data statistics, the Motor Carrier panel member indicated that there was a 38.67% increase in turns times in January 2015, which corresponds to the out-gate time for this case. In light of this evidence, the Motor Carrier panel member believes that the free time should have been increased the same percentage. This would leave the Moving Party owing a balance of \$00 on the disputed invoice. The Motor Carrier panel member thought the arbitration fees should be split between both parties. The Ocean Carrier panel member disagreed indicating that he believes the Motor Carrier failed to provide concrete evidence that suggests that it was unable to return the equipment within the allowable free time. Therefore, the third panel member was brought in under Exhibit D to the UIIA.

The third panel member reviewed all documents presented by the Motor Carrier and Equipment Provider. Section G.12 of the UIIA states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment." The Motor Carrier failed to provide any documentation or proof that an attempted return of the equipment was made and that the driver was turned away or that the facility was closed during its normal posted hours. Consequently, there was no evidence to support that the Equipment Provider did not comply with California State regulation SB45 and Section G.11. of the UIIA. There was also no evidence to prove that the Motor Carrier was unable to interchange equipment back to the Equipment Provider within the allowable free time.

Consequently, the third panel member finds in favor of the Equipment Provider, however noted that the Equipment Provider did not properly invoice the Motor Carrier. Pursuant to the Equipment Provider's Addendum, "Free Time period shall consist of the day the equipment is interchanged plus the next four working days: Saturdays, Sundays and holidays shall be excluded. Upon Expiration of free time, per diem charges shall be assessed on a straight calendar day basis until the equipment is returned." Based on the calendar days in question, the **last day** of free time would have fallen on January 5th, 2015. Therefore, "day 6" took place on January 6th and should have been rated at \$00 per day until January 10th. Given that the equipment was returned on January 9th, including the day of interchange back to the Equipment Provider, the total per diem owed should be \$00. The third panel member requests that the Equipment Provider adjust the invoice from \$00 to \$00.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable

Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

EXHIBIT D TO THE UIIA

3. A three-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IANA member from each mode, i.e. a Motor Carrier, Water Carrier and Railroad. However, the decision will be rendered by the two arbitrators representing the modes involved in the disputed invoice(s). The third appointed arbitrator from the mode not involved in the transaction will act as an alternate, and will render a decision only in the event the arbitrators from the involved modes cannot agree on a resolution of the dispute.

EP's addendum to the UIIA

* * * * *

Addendum to the Uniform Intermodal Interchange and Facilities Access Agreement

A. FREE TIME

Free Time period shall consist of the day the equipment is interchanged plus the next four working days: Saturdays, Sundays and holidays shall be excluded. Upon Expiration of free time, per diem charges shall be assessed on a straight calendar day basis until the equipment is returned.

DECISION: A majority of the panel finds in favor of the Equipment Provider. However, the third panel member requests that the amount of the invoice be adjusted from \$00 to \$00.

CASE REVIEWED AND DECIDED BY:

WALTER WATSON
Rail Carrier Member

AL SMERALDO
Ocean Carrier Member

JEFFREY LANG
Motor 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
Appellant, and

Case Number: **20150317-2-XXXT-PD**

UIIA Equipment Provider
Respondent

Date of Decision: 10/05/2015

The motor carrier disputes the following invoice:

Invoice PDLAX0023294, dated 2/20/2015, in the amount of 00.00.

MOTOR CARRIER BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure) due to port congestion that existed at the Ports of Los Angeles and Long Beach. The Motor Carrier indicated that there were no return locations for these containers as the specific terminals were not receiving empties on behalf of the Equipment Provider. In the Motor Carrier's initial dispute of the charges, it provided a narrative that stated it was obvious that force majeure conditions existed at the port and that steamship lines had already declared a de facto force majeure by assessing port congestion surcharges under their Federal Maritime Commission filed tariffs. The Motor Carrier stated that on a daily basis, steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier argued that these conditions prevented it from returning equipment within the specified free time period.

The Motor Carrier also indicated that the findings of the FMC, as well as the articles in various publications, all support the conclusion that port congestion is force majeure. The Motor Carrier indicated that under the Code of Federal Regulations (49 CFR 375.103), "*Force majeure means a defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control the parties and could not be avoided by exercise of due care.*" The FMC filed tariffs of many Equipment Providers also define force majeure as "... *port congestion, strikes, imminent strikes, lockouts or harbor disturbances...*" The UIIA defines force majeure as "...*strikes, or any like causes beyond the Motor Carrier's control...*" In addition, the California Business and Professions Code Section 22928 expressly prohibits the assessment of per diem "during a labor disruption period..." The Motor Carrier indicated that based on the facts, all UIIA Equipment Providers must obey the law and immediately suspend per charges on any interchanged equipment in the Port of Long Beach and the Port of Los Angeles.

The Motor Carrier only submitted its basis and narrative relating to initial dispute of the charges with the Equipment Provider as its supporting documentation for this claim. Based on this information, the Motor Carrier believes that force majeure conditions existed that precluded its ability to return the equipment within the specified free time. In addition, the Equipment Provider did not comply with SB45 by assessing per diem charges during a labor disruption period.

EQUIPMENT PROVIDER RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded that after careful review of the marine terminal schedules for the periods associated with the disputed invoices, it confirmed that the Motor Carrier was only charged for dates when the terminal was open and operating. The Equipment Provider does not see any support for the Motor Carrier's interpretation that the mere existence of congestion means that per diem cannot be issued and must be suspended.

The following terminal operating schedules were provided by the Equipment Provider:

PDLAX0023294	FO Date	FO Terminal	LFD	EI Date	EI Terminal
UETU4003870	1/16/2015	LAS06/APM	1/29/2015	2/2/2015	LGB01/PCT
MAGU4871437	1/21/2015	LGB01/PCT	2/3/2015	2/9/2015	LGB01/PCT
	EO Date	EO Terminal	LFD	FI Date	FI Terminal
FCIU9478942	1/22/2015	LGB01/PCT	1/27/2015	2/10/2015	LGB01/PCT

The Equipment Provider stated that of the three disputed containers, FCIU9478942 was not an import container but an export. Therefore, the Motor Carrier's argument that the delay for this unit was attributed to no empty return location available was invalid. As for UETU4003870 & MAGU4871437, the Motor Carrier inquired about the empty return location on several occasions, 1/28/15 and 2/2/15, prior to the last free day (e-mail communications included as part of the Equipment Provider's response). The Equipment Provider stated that the day shift for this facility runs from 8am to 5pm; night shift/Pier Pass Hours from 6pm to 3am. PCT was opened during the day/night shift for empty returns on both 1/29/15 and 2/3/15 (the last free days for the containers). Both containers were returned to PCT after the last free day by the Motor Carrier. PCT does not provide turn away tickets if the Motor Carrier is turned away while at the port.

Tables showing operating hours for PCT on 1/29/15 and 2/3/15:

	THU 1/29	
	DAY	NIGHT
PCT	OPEN	OPEN
ITS	OPEN	OPEN
TTI	closed	OPEN 40HC/45HC only (dual required)
WBCT	OPEN	OPEN
STS	closed 1.29	closed
APMT	closed	closed

	TUE 2/3	
	DAY	NIGHT
PCT	OPEN	OPEN
ITS	OPEN	OPEN
TTI	closed	closed
WBCT	OPEN	OPEN
STS	closed	closed
APMT	OPEN (dual required)	OPEN (dual required)

The Equipment Provider indicated that it does not believe the congestion issues warrant a waiver of per diem charges since the terminals were open and accepting equipment on behalf of the Equipment Provider.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

With regard to the Motor Carrier's initial dispute of the charges relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier during specific conditions. Two of these conditions are 1) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier, or 2) when the intermodal marine terminal or terminal truck gate is closed during posted normal working hours, or during a labor disruption or any other period involving an act of God or any other planned or unplanned action that closes the truck gate. Section G.11 of the UIIA states that all parties must comply with all applicable federal, state and local laws, rules and regulations. Based on the supporting documentation provided by the Motor Carrier, there was no evidence presented that showed that either of the above two conditions existed during the interchange period associated with the disputed invoice.

DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties. Section G.12 of the UIIA states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment." In this case, the Ocean panel member found that the evidence provided showed that the Motor Carrier's initial reason for dispute, which was that there were no empty return locations available and that terminals were not receiving empties on behalf of the Equipment Provider was not a valid dispute in regards to the one container movement (FCIU9478942) as this was an export container, not an empty return. The evidence provided by the Equipment Provider also demonstrated that the Motor Carrier had requested the empty return location on the other two containers and that this information had been provided to the Motor Carrier by the Equipment Provider. The Ocean panel did not find any supporting documentation that suggested that the Motor Carrier's access was denied to interchange the equipment. The Motor Carrier panel member disagreed with the Ocean Carrier panel member's opinion that only a complete inability to interchange is justification for reducing or eliminating equipment use charges. However, the Motor Carrier panel member also finds in favor the Equipment Provider but only because the Motor Carrier failed to present evidence that statistically documented the slowdown of terminal operations during the period in question and its impact on the Motor Carrier's business operations. In addition, neither panel member found evidence to support that the Equipment Provider had not complied with the California State regulation SB45 or Section G.11. Compliance with the Law under the UIIA.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

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

CASE REVIEWED AND DECIDED BY:

JEFFREY LANG
Motor Carrier Member

AL SMERALDO
Ocean Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

In the Dispute Between)	
)	
UIIA Motor Carrier	)	Case Number: 20150318-19-XXXI-PD
Appellant, and)	
)	
UIIA Equipment Provider	)	Date of Decision: 09/01/2015
Respondent)	

The motor carrier disputes the following invoice:

Invoice	Inv. Date	Amount	Facility Outgate/Ingate	Outgate	Ingate
BLAI0243576	2/10/2015	\$00.00	SSA - LGB Pier A Conglobal Industries	11/15/2014	1/15/2015

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier states that conditions existed that prevented its ability to return the equipment within the specified free time. The Motor Carrier states that conditions such as: labor issues, closed terminals, early gate closures, closed areas, equipment redirections, and non-acceptance of equipment on certain days/shifts all contributed to the congestion and were issues that were beyond the Motor Carrier's control. Under these situations, delays could not be avoided by the Motor Carrier and therefore the Motor Carrier should not be held responsible for per diem during this timeframe. The Motor Carrier also mentioned that port congestion was recognized by several Equipment Providers as a form of force majeure within their own tariffs filed with the Federal Maritime Commission. The Motor Carrier argued that the Equipment Provider cannot levy per diem on Motor Carriers for delays in returning equipment due to congestion and still avail the same protection for itself under its commercial tariffs.

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

The Equipment Provider's position is that the charges billed were valid. The Motor Carrier contested that the container SUDU6682139 incurred per diem due to terminal congestion, however the container in question was slated as an off hire container to be returned empty to the Conglobal Industries depot, and not a terminal. As the container was returned to the depot as an off hire, the port congestion at the terminals would not have had an effect on the length of time this container was out past the free time.

DISCUSSION:

The Motor Carrier submitted as part of its supporting documentation a JOC article that referenced specific Equipment Providers reinstating port congestion surcharges due to the port congestion along with three other articles from other publications relating to port congestion. The Motor Carrier did mention in its initial dispute of the charges that the terminals were over capacity and congested, which caused delays and dry runs to pull or return containers. The Motor Carrier also referenced the California State law SB45 stating that this regulation prohibited the Equipment Provider from imposing per diem during work stoppages and congested conditions. In addition, the Motor Carrier also presented additional supporting documentation collected by the Harbor Trucking Association that reflected driver turn time data prior to as well as during the port congestion conditions. The MC believes this data demonstrates the impact that the port congestion had on its ability to return equipment within the allowable free time.

The Equipment Provider stated that the charges were valid as billed based on the fact that the container was an off hire returned to ConGlobal Industries depot and not a port terminal. Consequently, the port congestion did not have any impact on the return of this equipment.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the EP within the allowable free time.

With regard to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate., or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations. Based on the supporting documentation provided by the Motor Carrier, there was no evidence presented that showed the driver attempted to gain access to the facility associated with this invoice and was turned away or that the facility was closed on the date of the interchange.

DECISION:

The panel reviewed all documents and evidence submitted by the parties. The Motor Carrier submitted significant information that supported their contention that their ability to interchange equipment at the port terminals was significantly impacted by the work slowdown. However, the equipment in question was not interchanged at a port terminal but at an off dock facility (Conglobal). In the supporting documentation provided there is no mention of this facility. In addition, there was no hard data to prove that the off dock facility was operating at a lesser efficiency level due to the port congestion. Provision G. 12, states that "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment." Further, SB45 clearly states that in order to qualify for relief, the planned or unplanned action (i.e. Labor disruption) would need to close the truck gate, or that the intermodal marine terminal turns away the Motor Carrier due to congestion. Both provision G.12 of the UIIA and SB45 contemplate the inability to interchange equipment. The evidence submitted by the Motor Carrier in connection to this claim does not represent that the Motor Carrier's ability to interchange at the off dock facility was interrupted. Therefore, the force majeure argument asserted by the Motor Carrier in this case is not valid since there was no hard evidence to quantify the impact that the port slowdown may have had on the off dock facility where the interchange took place. There was also no evidence submitted that indicated the EP had not complied with the California state regulation SB45. Consequently, the panel finds in favor of the EP for the full amount of the invoice.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

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

CASE REVIEWED AND DECIDED BY:

FRED HUENNEKENS
Motor Carrier Member

ROBERT CANNIZZARO
Ocean Carrier Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

In the Dispute Between)	
)	
UIIA Motor Carrier	)	Case Number: 20150318-21-XXXI-PD
Appellant, and)	
)	
UIIA Equipment Provider	)	Date of Decision: 10/20/2015
Respondent)	

The motor carrier disputes the following invoice:

Invoice	Inv. Date	Amount	Facility Outgate/Ingate	Outgated	Ingated
5712778620	1/29/15	\$00.00	Pier 400/ Pier 400	12/30/14	1/12/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier states that conditions existed that prevented its ability to return equipment within the specified free time. The Motor Carrier stated that conditions such as labor issues, closed terminals, early gate closures, closed areas, equipment redirections, non-acceptance of equipment on certain days/shifts all contributed to the congestion and were issues that were beyond the Motor Carrier's control. Under these situations, delays could not be avoided by the Motor Carrier and therefore the Motor Carrier should not be held responsible for per diem during this timeframe.

The Motor Carrier submitted as part of its supporting documentation a JOC article that referenced specific Equipment Providers reinstating port congestion surcharges due to the port congestion along with three other articles from other publications relating to port congestion. The date of the JOC article was prior to the date associated with the interchange period for the disputed invoice. The other three articles were dated after the interchange period related to the invoice in question. The Motor Carrier did mention in its initial dispute of the charges that the terminals were over capacity and congested, which caused delays and dry runs to pull or return a container. The Motor Carrier also referenced California State law SB45 indicating that this regulation prohibited the Equipment Provider from imposing per diem during a work stoppage period.

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

No response was received from the Equipment Provider with regard to the arbitration claim. The Equipment Provider did, however respond to the Motor Carrier's initial dispute of the charges. The Equipment Provider's response to the initial dispute was simply that it had reviewed the matter and that charges could not be waived.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

In regards to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate., or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations. Based on the supporting documentation provided by the Motor Carrier, there was no evidence presented that any of the conditions above existed that precluded the Motor Carrier's ability to return the equipment within the specified free time.

DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties. Section G.12 of the UIIA states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment." In this case, the Ocean panel member found that the Motor Carrier did not provide the documentation that supported its contention that port congestion prevented it from returning the equipment within the specified free time. After reviewing the evidence the Motor Carrier panel member requested further information from the Moving Party in order to be able to give a complete assessment of the evidence. IANA's staff requested the information from the Motor Carrier, however, no response was received. Consequently, in absence of the Motor Carrier's response to the request for additional information, the Motor Carrier panel member finds in favor of the Equipment Provider as it provided evidence to support the invoiced charges. In addition, neither panel member found evidence to support that the Equipment Provider had not complied with the California State regulation SB45 or Section G.11. Compliance with the Law under the UIIA.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

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

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 Motor Carrier,
Appellant, and

UIIA Equipment Provider,
Respondent

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)
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)
)

Case Number: **20150323-22-XXXI-PD**

Date of Decision: 11/2/2015

The motor carrier disputes the following invoice:

Invoice	Inv. Date	Amount	Facility	Outgated	Ingated	Date MC stated they rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
PD00128402	2/23/15	\$00.00	Shippers Transport/PCT	2/5/15	2/18/25	3/5/15	3/6/15	3/11/2015	3/23/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that conditions existed that prevented its ability to return equipment within the specified free time. The Motor Carrier asserts that conditions such as labor issues, closed terminals, early gate closures, closed areas, equipment redirections, non-acceptance of equipment on certain days/shifts all contributed to the congestion and were issues that were beyond the Motor Carrier's control. Under these situations, delays could not be avoided by the Motor Carrier and therefore, the Motor Carrier should not be held responsible for per diem during this timeframe. The Motor Carrier also stated that port congestion has been recognized by Equipment Providers, such as China Shipping, as a form of Force Majeure. Many Equipment Providers within their FMC filed tariffs include port congestion as an example of Force Majeure. The Motor Carrier argued that the Equipment Provider can invoke the Force Majeure provision within its own tariff to exempt itself from liabilities. Therefore, the Equipment Provider should not be able to levy per diem charges against Motor Carriers under these same conditions for delays in returning equipment due to congestion at the terminals. The Motor Carrier indicated that the PCT facility was closed on 2/12/15 and 2/16/15 for the holidays. When the facility re-opened on 2/17/15 it was very congested and therefore, the Motor Carrier was unable to return the empty container until 2/18/15.

The Motor Carrier submitted as part of its supporting documentation several news articles relating to the overall port congestion issues, however this information was not specific to the facilities associated with the disputed charges. The Motor Carrier also referenced California State law SB45 indicating that this regulation prohibited the Equipment Provider from imposing per diem during a work stoppage period and under congested conditions. Lastly, the Motor Carrier submitted driver turn time data captured by the Harbor Trucking Association that provided evidence of the impact that the port congestion had on its business operations.

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

The Equipment Provider believes the charges are valid as billed. The PCT facility was open prior to the Motor Carrier's last free day. The Motor Carrier provided no evidence that it was precluded from the ability to interchange the empty equipment back to PCT on that day. The Equipment Provider also noted that SB45 stated per diem cannot be assessed when the intermodal marine terminal is too congested to accept the container and the Motor Carrier is turned away. There was no evidence presented that showed this occurred.

The Equipment Provider responded with confirmation of the operating hours for the PCT facility. The hours were as follows:

PCT Gate hours are from 0800 to 1700 Monday – Friday / Tuesday – Friday 1800 – 0300

PCT was closed on the following dates:

2/12/15 – closed both shifts for holiday (Lincoln's Birthday)

2/16/15 – closed both shifts for holiday (President's Day)

PCT is a paperless terminal so does not provide turn away tickets if the driver is turned away.

In the Equipment Provider's response to the initial dispute of the charges, it stated that extended free time of 10 calendar days had been provided on this movement based on the service contract. The last free day was on 2/13/15. The Motor Carrier should have therefore returned the empty container within the free time to avoid per diem charges. The Equipment Provider requested that the Motor Carrier provide evidence that it was turned away due to terminal congestion, however, the Motor Carrier stated that it was unable to provide such documentation since PCT does not issue turn away tickets to drivers. In regards to the HTA turn time data provided by the Motor Carrier, the EP stated that it has not control over the pier/terminal as this is an individual entity. The Motor Carrier should have brought all of its congestion issues to the port authority/terminal. In addition, the EP indicated that the terminals were fully operational for the date ranges when the containers were interchanged.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

In regards to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate., or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations.

DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties. The two modal panel members could not agree on whether the conditions outlined by the Motor Carrier and the supporting documents provided met the criteria set forth in Section G.12. The Motor Carrier panel member stated that the HTA turn time data provided by the Motor Carrier shows that the average turn time was 100 minutes in February of 2015. This average turn time well exceeds the average baseline of 75 minutes (which was the norm from October 2013 through August 2014) by 33.33%. The Motor Carrier panel member finds that this statistic is a clear indicator that terminals were extremely congested and that this situation interfered with the Motor Carrier's ability to interchange equipment. The Ocean Carrier panel member believes that the Motor Carrier failed to present evidence that supports its claim that its ability to return the equipment was prevented due to force majeure conditions or that it was turned away by the terminal. Therefore, the third panel member was brought in under Exhibit D to the UIIA.

The third panel member has reviewed the evidence provided by the Motor Carrier and Equipment Provider. Section G.12 of the UIIA states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment." The evidence and data provided showed that congestion did exist at the terminals and that the turn time increased by 33.33% during the period in question. Based on this data, the third panel member believes that the Motor Carrier should be granted some additional free time. To be consistent with the methodology of how the additional free time is calculated based on the increased turn time of 33.33%, the Motor Carrier should then have been permitted 2 additional free days, however one of the additional free days should be 2/13, which the EP had already applied this adjustment. Although the

Motor Carrier has presented compelling evidence to support its claim, after applying the extended free time, I find the Motor Carrier liable for the adjusted amount of \$00

None of the panel members indicated that the Equipment Provider had not complied with Section G.11. Compliance With the Law as it relates to the California State regulation SB45.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

EXHIBIT D TO THE UIIA

3. A three-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IANA member from each mode, i.e. a Motor Carrier, Water Carrier and Railroad. However, the decision will be rendered by the two arbitrators representing the modes involved in the disputed invoice(s). The third appointed arbitrator from the mode not involved in the transaction will act as an alternate, and will render a decision only in the event the arbitrators from the involved modes cannot agree on a resolution of the dispute.

DECISION: A majority of the panel finds in favor of the Motor Carrier with the exception that the reduced amount of \$00.00 should be paid to the Equipment Provider.

CASE REVIEWED AND DECIDED BY:

GERRY BISAILLON
Rail Carrier Member

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)	
)	
UIIA Motor Carrier	)	Case Number: 20150323-23-XXXI-PD
Appellant, and)	
)	
UIIA Equipment Provider	)	Date of Decision: 12/22/2015
Respondent)	

The motor carrier disputes the following per diem invoices:

Inv. #	Invoice	Inv. Date	Facility	Outgated	Ingated
1	NAIM3106942	12/23/2014	Shippers Transport/PCT SSA Pier J	11/25/2014	12/16/2014
2	NAIM3144079	1/21/2015	Shippers Transport/PCT SSA Pier J	12/19/2014	1/13/2015
3	NAIM3106624	12/23/2014	Shippers Transport/PCT SSA Pier J Shippers Transport/PCT SSA Pier J	12/12/2014 12/9/2014	12/19/2014 12/16/2014
4	NAIM3107740	12/24/2014	TTI/PCT SSA Pier J	11/29/2014	12/17/2014
5	NAIM3111167	12/26/2014	LA APM/LA APM	12/3/2014	12/18/2014
6	NAIM3109844	12/26/2014	Shippers Transport/PCT SSA Pier J Shippers Transport/PCT SSA Pier J	12/10/2014 12/9/2014	12/18/2014 12/18/2014
7	NAIM3111125	12/26/2014	SSA LGB PIER A/INT'L CARGO EQUIP	12/10/2014	12/21/2014
8	NAIM3111380	12/29/2014	TTI/TTI	12/9/2014	12/22/2014
9	NAIM3144529	1/22/2015	LA APM/PCT SSA Pier J	1/3/2015	12/12/2015
10	NAIM3144551	1/22/2015	PCT SSA PIER J/PCT SSA PIER J	12/30/2015	1/15/2015

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure). The Motor Carrier stated that port congestion that existed at the Ports of Los Angeles and Long Beach prevented its ability to return the equipment within the specified free time. The Motor Carrier stated that conditions such as labor issues, closed terminals, early gate closures, closed areas, equipment redirections, and non-acceptance of equipment on certain days/shifts all contributed to the congestion and were issues that were beyond the Motor Carrier's control. Under these situations, delays could not be avoided by the Motor Carrier and therefore, the Motor Carrier should not be held responsible for per diem during this timeframe. Many Equipment Providers within their FMC filed tariffs have included port congestion as an example of Force Majeure. The Motor Carrier argued that the Equipment Provider can invoke the Force Majeure provision within its own tariff to exempt themselves from liabilities, so it should not be able to levy per diem charges against Motor Carriers under these same conditions for delays in returning equipment due to congestion at the terminals.

The Motor Carrier submitted as part of its supporting documentation several news articles describing the general port congestion issues, but none of them were specific to the facilities associated with the disputed charges. The Motor Carrier also provided a copy of SB45 as part of its supporting documentation. The Motor Carrier had indicated in its initial dispute of the charges with the Equipment Provider that SB45 precluded assessment of per diem during work stoppages and congested conditions. In addition, the Motor Carrier also submitted turn time data from the Harbor Trucking Association that showed the impact on driver turn times during the timeframe of the port congestion. The Motor Carrier believes this evidence supports its dispute that the port congestion had a direct impact on its normal business operations with regard to being able to return equipment to the Equipment Provider within the allowable free time.

With regards to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, during a

labor disruption period, during any other period involving an act of God or any other planned or unplanned action that closes the truck gate., or 2) When the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations. Based on the supporting documentation provided by the Motor Carrier, there was no evidence presented that showed that the driver attempted to gain access to the facilities associated with these invoices and was turned away, or that any of the facilities were closed during posted normal working hours for the dates associated with the interchange period of the disputed charges.

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

The Equipment Provider did not provide any comments regarding this binding arbitration claim. The only comments included from the Equipment Provider were those provided in response to the Motor Carrier's initial dispute of the charges. At that time, the Equipment Provider indicated that congestion was not a valid dispute unless the Motor Carrier could provide evidence that its driver had been turned away from the facility.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties. The two modal panel members could not agree on whether the conditions outlined by the Motor Carrier and the supporting documents provided met the criteria set forth in Section G.12. The Motor Carrier panel member finds that the Equipment Provider's invoices should be reduced to reflect an increase in free time based on the driver turn data submitted by the Moving Party. This evidence quantified the amount of additional time Motor Carriers spent on the terminal during the labor slowdown and that it had a significant impact on business operations. The documentation provided by the Motor Carrier demonstrates an increased in the average turn time for the periods specified, which clearly establishes an inability to return the equipment that meets the standard established in the UIIA Section G.12. Consequently, the Motor Carrier panel member believes that free time allowed by the Equipment Provider should be increased by 49.3% for the month of November, 44% for December and 38.7% for January. The per diem invoices should be adjusted as follows:

Invoice #	Invoice	Original Amount	Adjusted Amount	Amount Owed
1	NAIM3106942	\$00	\$00	\$00
2	NAIM3144079	\$00	\$00	\$00
3	NAIM3106624	\$00	\$00	\$00
4	NAIM3107740	\$00	\$00	\$00
5	NAIM3111167	\$00	\$00	\$00
6	NAIM3109844	\$00	\$00	\$00
7	NAIM3111125	\$00	\$00	\$00
8	NAIM3111380	\$00	\$00	\$00
9	NAIM3144529	\$00	\$00	\$00
10	NAIM3144551	\$00	\$00	\$00

The Ocean panel member reviewed the evidence, and found that the Motor Carrier presented no specific information regarding terminal closings or turn away notifications in connection to the invoices in question. Because the modal panel members were unable to reach a consensus regarding the disputed charges in this case, the third panel member was brought in under Exhibit D to the UIIA.

The third panel member reviewed the evidence provided by the Motor Carrier and Equipment Provider. Section G.12 of the UIIA states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment." The third panel member finds in favor of the Equipment Provider provided the per diem invoices are reduced to reflect the increased free time as outlined by the Motor Carrier panel member based on the turn time data provided by the Moving Party. The adjusted invoice amounts owed by the Moving Party are shown in the table above.

Furthermore, none of the panel members found that the Equipment Provider had not complied with Section G.11. Compliance With the Law as it relates to the California Business and Professions code Section 22928.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

EXHIBIT D TO THE UIIA

3. A three-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IANA member from each mode, i.e. a Motor Carrier, Water Carrier and Railroad. However, the decision will be rendered by the two arbitrators representing the modes involved in the disputed invoice(s). The third appointed arbitrator from the mode not involved in the transaction will act as an alternate, and will render a decision only in the event the arbitrators from the involved modes cannot agree on a resolution of the dispute.

DECISION: The majority of the panel members find in favor of the Equipment Provider for the adjusted amounts.

Invoice #	Invoice	Original Amount	Adjusted Amount	Amount Owed
1	NAIM3106942	\$00	\$00	\$00
2	NAIM3144079	\$00	\$00	\$00
3	NAIM3106624	\$00	\$00	\$00
4	NAIM3107740	\$00	\$00	\$00
5	NAIM3111167	\$00	\$00	\$00
6	NAIM3109844	\$00	\$00	\$00
7	NAIM3111125	\$00	\$00	\$00
8	NAIM3111380	\$00	\$00	\$00
9	NAIM3144529	\$00	\$00	\$00
10	NAIM3144551	\$00	\$00	\$00
Totals:		\$00.00	\$00.00	\$00.00

Total Adjusted Amount Owed by the Motor Carrier to the EP: \$00.00

CASE REVIEWED AND DECIDED BY:

WALTER D. WATSON
Rail Carrier Member

DAVE MANNING
Motor Carrier Member

AL SMERALDO
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: **20150326-24-XXXI-PD**

Date of Decision: 01/29/2016

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Inv #	Invoice	Inv. Date	Amount	Facility	Outgated	Ingated	Date MC stated they rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	P150200579 Invoice was cancelled per email rec'd from EP sent to UIIA Staff on 3/31	2/9/15	\$00.00	Global Gateway/TraPac	1/15/15	2/2/15	2/10/15	2/19/15	-	3/26/15
2	P150200100	2/2/15	\$00.00	Global Gateway/CUT	1/12/15	1/29/15	2/3/15	2/9/15	No response	3/26/15
3	*P150100539	1/14/15	\$00.00 \$00.00	TraPac/CUT	12/22/14	1/8/15	1/15/15	2/2/15	No response	3/26/15

* Invoice reduced to \$000 per email received from EP sent to UIIA Staff on 3/31/15. In addition, Invoice 1 was cancelled and is no longer a part of this claim.

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that force majeure conditions existed at the port and that steamship lines declared a de facto force majeure by assessing port congestion surcharges under their Federal Maritime Commission ("FMC") filed tariffs. The Motor Carrier further stated that, on a daily basis, steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier stated that these conditions prevented it from returning equipment within the allowable free time period. The

Motor Carrier stated that the findings of the FMC, daily news articles from various publications, (i.e. Los Angeles Times, JOC, etc.), press releases from the Pacific Maritime Association and the International Longshore Workers Union all support that the port congestion was a force majeure situation. In addition, the Motor Carrier indicated that California Business and Professions Code 22928 (SB45) expressly prohibits the assessment of per diem “during labor disruption periods...” and Parties to the UIIA are required to comply with federal, state and local laws under Section G.11 of the UIIA. For reasons set forth above, the Motor Carrier believes it should not be responsible for the per diem charges being disputed.

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

The Equipment Provider responded stating that that some of the facilities provide tickets when the driver is turned away and some do not. The Equipment Provider reported that most facilities do, however, post on their website the current status for receiving or not receiving specific equipment at the facility.

The Equipment Provider also provided the following hours of operation for the facilities where the interchange occurred:

Monday thru Friday	8:00 a.m. - 4:30 p.m.
Monday thru Thursday (different shifts)	5:00 p.m. – 2:00 a.m.

DISCUSSION:

The Motor Carrier submitted its basis and a letter, together with general news articles regarding port congestion as its supporting documentation for this claim. The Motor Carrier believes that force majeure conditions existed that precluded the return the equipment within the specified free time.

The Equipment Provider provided information relating to the operating hours of the facilities where the interchange of the equipment occurred.

As precedent in regards to identifying a situation as falling under the Force Majeure provision of the UIIA, the IIEC has previously indicated that in situations when the facility is open, the applicability of force majeure would need to be determined by each Equipment Provider on a case by case basis dependent upon the conditions that existed at a specific facility, on a specific date and time, and if these conditions prevented the pick-up and/or re-delivery of equipment.

In regards to the Motor Carrier’s basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate., or 2) When the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations. In this instance, there was no supporting documentation presented by the Motor Carrier that evidenced that the truck gates of the facilities associated with the above invoices were closed during any type of labor disruption.

DECISION:

Based upon the supporting documents and evidence submitted, the panel finds that there is no evidence that the Motor Carrier was unable and/or prevented from returning the equipment due to force majeure conditions or that it was turned away by the terminal. The panel also noted that the Equipment Provider attempted to settle this claim by writing off Invoice P150200579 in the amount of \$00.00 and reducing Invoice P150100539 from \$00.00 to \$00.00, thus reducing the total claim from \$00.00 to \$00.00. Because the Motor Carrier failed to provide supporting documentation that evidenced that it was precluded from returning the equipment within the allowable free time and/or that the terminal gates were closed during any type of labor disruption, the panel unanimously finds for the Equipment Provider in the adjusted amount of 00.00.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised [09/13/04]**

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

CASE REVIEWED AND DECIDED BY:

THOMAS BARATTINI
Ocean Carrier Member

JEFFREY LANG
Motor Carrier Member

In the Dispute Between

Case Number: **20150402-13-XXXN-PD**

Date of Decision: 02/04/2016

Invoice	Inv. Date	Amount	Container #'s	Facility	Outgated	Ingated	Date MC stated they rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute
SPEI041850	12/31/2014	\$00.00	TTNU9098302	LBCT/STREET INTERCHANGE	11/19/2014	12/5/2014	1/8/2015	1/22/2015	3/3/2015
			DRYU4039410	TraPac/EMS Global Gateway	11/12/2014	12/1/2014			
			TTNU5817305	EMS Global Gateway/NO IN-GATE	11/5/2014	12/3/2014			
			GVCU2033232	EMS Global Gateway/CUT	11/21/2014	12/5/2014			
			APZU3343635	EMS Global Gateway	11/21/2014	12/4/2014			
			TCNU9992535	TraPac	11/21/2014	12/1/2014			
			APHU7096042	EMS Global Gateway/NO IN-GATE	11/14/2014	12/6/2014			
			GESU5022413	TraPac/EMS Global Gateway	11/21/2014	12/2/2014			
			APZU4266209	TraPac/Yusen	11/26/2014	12/10/2014			
			TCNU6050750	TraPac/EMS Global Gateway	11/13/2014	12/4/2014			
			APHU7246142	TraPac/EMS Global Gateway	11/13/2014	12/4/2014			
			TCNU5030683	TraPac/EMS Global Gateway	11/20/2014	12/4/2014			
			APZU4703989	TraPac/EMS Global Gateway	11/20/2014	12/6/2014			

			APHU6071409	TraPac/EMS Global Gateway	11/21/2014	12/6/2014			
			FSCU9958956	EMS Global Gateway/NO IN-GATE	12/4/2014	12/15/2014			
			APZU4466486	LBCT/EMS Global Gateway	11/22/2014	12/6/2014			
			TGHU4924490	LBCT/EMS Global Gateway	11/18/2014	12/4/2014			
			BMOU4359639	LBCT/EMS Global Gateway	11/19/2014	12/6/2014			
			APHU7397529	LBCT/EMS Global Gateway	11/20/2014	12/2/2014			
			TGHU9629901	TraPac	11/18/2014	12/1/2014			
			APZU4639977	EMS Global Gateway	11/15/2014	12/5/2014			
			TCLU8466565	EMS Global Gateway/LBCT	11/26/2014	12/11/2014			
			TCLU8646839	EMS Global Gateway/LBCT	11/26/2014	12/10/2014			
SPEI042055	1/16/2015	\$00.00	TGHU7634473	LBCT/NO IN-GATE	12/13/2014	12/23/2014	1/16/2015	1/22/2015	3/3/2015
			FSCU9984282	TraPac/EMS Global Gateway	12/10/2014	12/27/2014			
			APHU7152568	EMS Global Gateway/LBCT	12/4/2014	12/16/2014			
			SEGU4904664	EMS Global Gateway	12/6/2014	12/19/2014			
			TCNU5194795	EMS Global Gateway	12/6/2014	12/18/2014			
			CAIU9126521	EMS Global Gateway/LBCT	12/4/2014	12/17/2014			
			FCIU8796614	EMS Global Gateway	12/6/2014	12/18/2014			
			TCNU5162838	EMS Global Gateway/LBCT	12/6/2014	12/17/2014			
			APHU4611370	LBCT	12/13/2014	12/27/2014			
			FSCU9521101	Yusen/LBCT	12/6/2014	12/17/2014			
			DFSU6329039	Yusen/LBCT	12/6/2014	12/17/2014			
			TCNU5159032	Yusen/LBCT	12/6/2014	12/17/2014			
			APHU6754010	EMS Global Gateway	11/26/2014	12/18/2014			
			TTNU4252631	EMS Global Gateway	12/6/2014	12/18/2014			

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure) due to port congestion conditions on the West Coast, which the Motor Carrier indicated were beyond its control and precluded the return of equipment to the Equipment Provider within the free time period. The Motor Carrier contends that it was not a specific terminal or Equipment Provider, or certain day or time, necessarily that refused the return of empty equipment, but that all terminals combined created the congestion. The Motor Carrier reported that even if the terminal was open on a specific day/time, there were not enough trucks available to return equipment timely. The Motor Carrier stated that many factors like chassis shortages, labor disruptions and slowdowns, terminal over capacity, lack of infrastructure to handle larger vessels, as well as other issues, all played roles in slowing truck velocity to the lowest levels in years. The Motor Carrier noted that trucks were once able to do 3-4 turns into the local area outside the ports, but during the port congestion trucks were, at best, averaging 1-1.5 turns per shift. In addition, the Motor Carrier provided GPS data that it compiled based on geo-fencing that tracked the actual visit times at the terminal.

The Motor Carrier also provided copies of communications between its nightly dispatchers and its customer service group. The Motor Carrier states that these communications provide evidence of how non-productive the terminals were during this timeframe and how this impacted the Motor Carrier's ability to perform its duties. Additional supporting documentation included daily eModal transmissions advising of conditions at various facilities were also provided. The Motor Carrier noted that many of these notifications were not sent in a timely manner and would be considered illegal pursuant to California State law SB45 as one of the conditions under which an Equipment Provider cannot assess per diem to a Motor Carrier.

The Motor Carrier also provided articles from various publications addressing the congestion and its impact on the port. The Motor Carrier stated that the conditions referenced above prevented it from returning equipment within the allowable free time period.

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

The Equipment Provider responded stating that the relative dates associated with this claim are November 5, 2014 through December 27, 2014, and provided documentation showing that the Motor Carrier in-gated 2,131 containers during this timeframe. The Equipment Provider added that 2,094 of those containers were returned by the Motor Carrier within the allotted free time period. The Equipment Provider stated that the Motor Carrier was billed for 37 containers that it did not return within the free time period allowed. In addition, The Equipment Provider believes the GPS data provided by the Motor Carrier is irrelevant to the issue of whether the Motor Carrier failed to timely return the 37 containers because of port congestion. The Equipment Provider stated that the Motor Carrier neglected to explain why those same wait times prevented the on-time return of the 37 containers, but did not impact its ability to return 2,094 containers within the free time during this same period. The Equipment Provider noted that the four relevant facilities associated with the billings were open for regular equipment returns during the timeframe in question. The Equipment Provider also provided evidence showing that other Motor Carriers servicing these same facilities, during this timeframe, were able to return 85,547 containers to the Equipment Provider.

In addition, the Equipment Provider provided the following hours of operation for the facilities associated with the disputed invoices:

	OPEN	CLOSED
<u>Eagle Marine Services</u>	Monday – Friday 7:00 am – 4:45 p.m. Monday – Thursday 5:00 p.m. – 2:45 a.m. Saturday – 8:00 a.m. – 4:30 p.m.	For Period 11/14/14 TO 12/27/14 - Sunday, 11/16 Sunday, 11/23 Thursday, 11/27 (holiday) Sunday, 11/30 Sunday, 12/7 Sunday, 12/14 Sunday, 12/21 Thursday, 12/25 (holiday)
<u>Long Beach Container Terminal</u>	Monday – Friday 8:00 a.m. – 2:30 p.m. Monday – Thursday – 5:00 p.m. – 2:45 a.m. Saturday 8:00 a.m. – 4:30 p.m.	For Period 12/2/14 to 12/18/14 – Sunday, 12/4 Sunday, 12/14
<u>Trapac</u>	Monday – Friday – 8:00 a.m. – 4:30 p.m. and 6:00 p.m.- 3:00 a.m. Friday – 8:00 a.m.- 4:30 p.m. Saturday – 8:00 a.m. – 4:40 p.m.	None Provided
<u>YTI</u>	Monday – Friday 7:00 a.m. – 4:40 p.m. and 6:00 p.m. – 3:00 a.m. Saturday – 7:00 a.m. – 4:30 p.m	None Provided

The Equipment Provider confirmed that, for the facilities referenced above, if the driver departs the line prior to getting to the pedestal it would not receive a trouble ticket. However, if the driver reached the pedestal and is then turned away, a trouble ticket would have been provided.

The Equipment Provider also provided a detailed summary of each movement on the two invoices in regards to the charges billed and adjusted charges associated with several of the container movements based on dates that were associated with a holiday or weekend. Based on the adjustments made, the Equipment Provider believes the charges are valid.

DISCUSSION:

The Motor Carrier submitted its basis and narrative relating to the initial dispute of the charges as its supporting documentation for this claim. In addition, the Motor Carrier provided GPS data and other supporting documentation including JOC articles of various dates describing the on-going congestion issues on the West Coast; however, none of the articles were specific to the facilities related to this case. In addition, eModal

transmissions were furnished advising of conditions at various facilities from which a spreadsheet was created documenting each eModal/dispatch logged and the number of containers associated with the disputed charges for the specific facility and timeframe.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of the port congestion prevented the Motor Carrier from returning the equipment to the Equipment Provider within the allowable free time.

The Motor Carrier also indicated that the Equipment Provider was not in compliance with the California State regulation SB45, which prohibits intermodal marine Equipment Providers from imposing per diem, detention and demurrage charges under the following conditions: 1) when the intermodal marine terminal or terminal truck gate is closed during posted normal working hours, or during a labor disruption or any other period involving an act of God or any other planned or unplanned action that closes the truck gate, 2) when the intermodal marine terminal decides to divert equipment without 48 hours' electronic or written notification to the Motor Carrier, 3) when a loaded container is not available for pickup when the Motor Carrier arrives at the intermodal marine terminal, and 4) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. The Motor Carrier indicated that one or more of the above conditions existed during the period covered by the disputed charges.

The Equipment Provider believes the adjusted invoices are valid and that the Motor Carrier did not submit evidence that proved there were Force Majeure conditions that prevented the redelivery of the units within the specified free time.

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 finds in favor of the Motor Carrier, but for a reduced amount. The Motor panel member believes the evidence submitted clearly indicates the Motor Carrier should qualify for relief under force majeure and suggested using the average turn times provided in the GPS driver turn time data furnished by the Motor Carrier as a means to calculate how much relief should be provided. The Motor Carrier provided average turn times of 127 minutes for November 2014, and 133 minutes for December 2014. The Motor Carrier panel member suggests using the baseline turn time of 75 minutes to calculate the percent increase in turn times and reducing the per diem by that same percentage.

The Ocean Carrier panel member finds in favor of the Equipment Provider stating that the Motor Carrier failed to prove the units were empty and available to be returned and, further, that its ability to return the equipment was prevented due to force majeure conditions and/or that it was turned away by the terminal. The Ocean panel member noted that he believes it is incumbent on the Motor Carrier to prove units were empty at the time the Motor Carrier claims it was prevented from returning the units.

Because the model 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 panel member finds in favor of the Equipment Provider, but for the adjusted amount of \$13,880.00. The Rail panel member acknowledged that the Equipment Provider adjusted the invoices for days that the terminals were closed. However, the Rail panel member does not believe the total provided by the Equipment Provider in their write-up was correct. The Rail panel member stated that:

1. For invoice SPEI041850, the adjusted total provided by the Equipment Provider was \$10,317.00; however, the sum of the individual container charges in their detailed write up was \$10,496.00; and
2. For invoice SPEI042055, the adjusted total provided by the Equipment Provider was \$3,290.00; however, the sum of the individual container charges in their detailed write up was \$3,384.00.

The Rail panel member also noted that based on the evidence provided by the Motor Carrier, Yusen Terminal, GGS, and LBCT all had short notice terminal closures during the interchange period where empties were not being accepted. Specifically, GGS was closed abruptly on 12/12 and 12/19 and both LBCT and Yusen experienced a closure on 12/4 for empty returns. Under the UIIA, and SB45, these days are not chargeable and the Motor Carrier is entitled to relief for such. It should also be noted in the evidence (e-mail communication dated 12/4/2015) provided by the Motor Carrier, it was documented that the Motor Carrier had drivers who simply decided to go home when there was tons of work from the terminals. This undoubtedly contributed to the driver shortage that the Motor Carrier was experiencing, but not something that the EP could remedy. As such, the Rail panel member does not believe a Force Majeure condition existed. While conditions were not ideal, empty equipment could be returned thereby nullifying the argument that a Force Majeure existed.

Although no Force Majeure condition existed, the Rail panel member believes that the elevated turn times did contribute to driver shortages. Evidence provided by the Motor Carrier did demonstrate the elongated turn times that would result in the Rail panel member normally extending additional free time to the Motor Carrier, however in all instances the Rail panel member believes that the Equipment Provider already compensated the Motor Carrier for the long turn times based on free time provided and adjustments it made to the invoices. Consequently, the Rail panel member finds in favor of the Equipment Provider for the total adjusted invoices in the amount of \$13,880.00, which is the correct total based on the individual container charges shown in the Equipment Provider's detailed write-up.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

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

CASE REVIEWED AND DECIDED BY:

GERRY BISAILLON
Rail Carrier Member

ROBERT A. 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

UIIA MC,
Appellant, and

UIIA EP,
Respondent

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Case Number: **20150403-24-XXXI-PD**

Date of Decision: 02/29/2016

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Invoice	Inv. Date	Container #	Facility	Outgated	Ingated	Date MC stated they rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
D000378749	8/12/14	NYKU4887778	Global Gateway	7/14/14	8/8/14	8/15/14	8/15/14		4/3/15
D000385487	8/26/14	NYKU5962412	Global Gateway	7/24/14	8/18/14	8/26/14	9/19/14	3/20/15	4/3/15
D000385489	8/26/14	NYKU5961186	CUT	7/24/14	8/19/14	8/26/14	9/19/14	3/20/15	4/3/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section G.11 of the UIIA (Compliance With the Law). The Motor Carrier indicated that under California state regulation SB45, an Equipment Provider cannot assess per diem charges on a weekend or holiday if the terminal is closed after free time expires. The Motor Carrier stated that it requested the Equipment Provider waive the charges on Invoice 1 for the dates of August 2, 2014 and August 3, 2014, and for Invoices 2 and 3 for the dates August 16, 2014 and August 17, 2014, since these were weekend days when the terminal was closed.

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

The Equipment Provider did not provide any comments to the binding arbitration claim. In addition, the evidence presented showed that the Equipment Provider did not respond to the Motor Carrier's initial dispute of the charges within the established thirty (30) day timeframe under Section H.1. of the UIIA.

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 indicated that the Equipment Provider was not in compliance with the California State regulation SB45, which prohibits intermodal marine Equipment Providers from imposing per diem, detention and demurrage charges under the following conditions: 1) when the intermodal marine terminal or terminal truck gate is closed during posted normal working hours, or during a labor disruption or any other period involving an act of God or any other planned or unplanned action that closes the truck gate, 2) when the intermodal marine terminal decides to divert equipment without 48 hours' electronic or written notification to the Motor Carrier, 3) when a loaded container is not available for pickup when the Motor Carrier arrives at the intermodal marine terminal, and 4) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. The Motor Carrier indicated that for the three invoices billed there were two sets of weekend days that the terminal was closed and the Equipment Provider cannot charge per diem on days that the terminal is closed.

The Equipment Provider responded to the initial dispute of charges outside the thirty (30) day timeframe required by Section H.1 of the UIIA. The Equipment Provider did not provide comments to the arbitration claim.

DECISION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence, the Motor Carrier panel member found in favor of the Motor Carrier stating that the Equipment Provider lost its right to collect on the invoices, under Sections H.1 and H.4 of the UIIA, due to their failure to provide a written response either accepting or denying the disputed charges within the thirty (30) day timeframe as set forth in the UIIA.

The Ocean Carrier panel member found in favor of the Motor Carrier based upon California state regulation SB45 stating that the Equipment Provider cannot charge for days in which the terminal is closed. The Ocean panel member noted that his decision was in favor of the Motor Carrier, but only for the charges associated with those days that were disputed. The Ocean panel member stated that the entire invoice should not be cancelled because the Equipment Provider did not reply if the full amount of the invoice was not disputed by the Motor Carrier.

Because the model 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 also found in favor of the Motor Carrier, but for only that portion of the invoices that had been disputed due to the Equipment Provider's failure to respond within the required timeframe under Section H.1. and based on UIIA Section G.11. Compliance With the Law

requiring compliance to the California regulation SB45, which does not allow an Equipment Provider to charge per diem when the terminal is closed. The Rail panel member noted that the Motor Carrier did not dispute the entire invoice which essentially rendered the non-disputed portion of the invoice as valid and due. The Rail panel member stated the fact that the Equipment Provider did not respond to the dispute does not render the portion of the invoice that is valid and due as an invalid invoice; therefore, that undisputed portion should be paid by the Motor Carrier. The Rail panel member finds as follows:

Invoice #1 D000378749:	Total Amount:	\$00.00	(7 days at \$00/day)
	Disputed Amount:	\$00.00	(2 days - 08/02 & 08/03)
	DRP Finding:	In favor of MC for \$00.00. Amount due: \$00.00	
Invoice #2 D000385487:	Total Amount:	\$00.00	(5 days at \$100/day)
	Disputed Amount:	\$00.00	(2 days - 08/16 & 08/17)
	DRP Finding:	In favor of MC for \$00.00. Amount due: \$00.00	
Invoice #3 D000385489:	Total Amount:	\$00.00	(6 days at \$00/day)
	Disputed Amount:	\$00.00	(2 days - 08/16 & 08/17)
	DRP Finding:	In favor of MC for \$00.00. Amount due: \$00.00	

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

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]**

4. Should the Invoicing Party fail to respond to the Invoiced Party's dispute of an invoice relating to Per Diem or maintenance and repair charges within the established timeframes in the Provider's Addendum, or in absence of a dispute resolution process in the Provider's Addendum, the default dispute resolution process in Section H.1., the Invoicing Party will lose its right to collect such charges and its ability to pursue binding arbitration under Exhibit D of the Agreement. **[Revised [4/14/11]**

DECISION: The majority of the panel finds in favor of the Motor Carrier for the disputed charges only as follows: Invoice #1 D000378749, \$00.00; Invoice #2 D000385487, \$00.00; and Invoice #3, \$00.00. Total adjusted amount owed to the Equipment Provider in regards to the three invoices is \$00.00.

CASE REVIEWED AND DECIDED BY:

GERRY BISAILLON
Rail Carrier Member

DAVE DALY
Ocean Carrier Member

ROBERT A. CURRY
Motor Carrier Member

In the Dispute Between

Case Number: **20150406-18-XXXI-PD**

Date of Decision: 02/09/2016

Inv #	Invoice	Inv. Date	Amount	Container #	Facility	Outgated	Ingated	Date MC stated they rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	5249453178	2/26/15	\$0.00	TR1U6884375	LGBTE/SSAT Pier A	2/2/15	2/13/15	2/26/15	3/6/15	3/24/15	4/6/15
2	5249475520	3/3/15	\$0.00	MSKU6734141	LGBTE/SSAT Pier A	2/9/15	2/19/15	3/3/15	3/6/15	3/27/15	4/6/15

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that force majeure conditions existed at the port and that steamship lines declared a de facto force majeure by assessing port congestion surcharges under their Federal Maritime Commission ("FMC") filed tariffs. The Motor Carrier further stated that, on a daily basis, steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier stated that these conditions prevented it from returning equipment within the allowable free time period.

The Motor Carrier also indicated that the findings of the FMC as well as the articles in various publications all support the conclusion that port congestion is force majeure. The Motor Carrier referenced that under the Code of Federal Regulations (49 CFR 375.103), “*Force majeure means a*

defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control the parties and could not be avoided by exercise of due care.” The FMC filed tariffs of many Equipment Providers also define force majeure as “... port congestion, strikes, imminent strikes, lockouts or harbor disturbances...” The UIIA defines force majeure as “...*strikes, or any like causes beyond the Motor Carrier’s control...*” In addition, California Business and Professions Code Section 22928 expressly prohibits the assessment of per diem “*during a labor disruption period...*” The Motor Carrier indicated that based on these facts and the law, it believes all UIIA Equipment Providers should suspend per diem charges on any interchanged equipment in the Port of Long Beach and Port of Los Angeles

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

The Equipment Provider responded stating that more than the existence of a force majeure situation must be shown. The Equipment Provider argued that it must be established that the Motor Carrier was unable/prevented from returning the equipment, and further stated there was no restriction on the dates associated with the invoices. The Equipment Provider believes the charges are valid as invoiced.

In addition, the Equipment Provider provided the following port operating hours:

- Monday – Friday 8:00 a.m. – 5:00 p.m.
- Monday – Thursday – 6:00 p.m. – 2:30 a.m.

The Equipment Provider stated that the facility was closed on 2/16/15 for the President’s day holiday. In addition, the Equipment Provider confirmed that the facility does provide turn away tickets if the Motor Carrier is turned away at the gate.

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 also provided copies of two articles regarding the port congestion on the West Coast. The Motor Carrier believes that Force Majeure conditions existed that prevented it from returning the equipment within the specified free time. In addition, the Motor Carrier does not believe the Equipment Provider complied with SB45 by assessing per diem charges during a labor disruption period.

The Equipment Provider believes the invoices are valid as billed, and that the Motor Carrier has not submitted evidence proving that there were Force Majeure conditions that prevented the redelivery of equipment within the specified free time.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the EP within the allowable free time.

In regards to the Motor Carrier’s basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate., or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations.

DECISION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence, the Motor Carrier panel member finds in favor of the Equipment Provider for both invoices in the reduced amount of \$190.00. The Motor panel member stated that there is no question a labor slow down took place which falls under Section G.12 of the UIIA “*any like causes beyond the Motor Carrier’s control*” and noted that the HTA study that had been provided in previous arbitration cases proved the normal baseline over a one (1) year period was seventy-five (75) minutes. The Motor panel member noted that in February 2015, the baseline of minutes in and out of West Coast Facilities was one hundred (100) minutes. The Motor panel member believes the amount should be reduced based upon the following calculations:

Invoice No. 5249453178	Total free time given was five 5 free days	$100 \div 75 = 1.33$; 5 free days $\times 1.33 = 6.65$ round up to 7 free days; unit was out a total of 9 days - 7 free days = 2 chargeable days @ 95.00 = \$190.00
Invoice No. 5249475520	Total free time given was 10 free days	$100 \div 75 = 1.33$; 10 free days $\times 1.33 = 13.30$ round down to 13 = \$0.00 due

The Ocean Carrier panel member finds in favor of the Equipment Provider for the full amount as invoiced stating that the Motor Carrier provided no evidence that conditions existed that precluded it from returning the equipment prior to the expiration of the free time assigned by the Equipment Provider, nor did the Motor Carrier provide documentation that illustrated the facility was closed for receiving.

Because the model 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 panel member also finds in favor of the Equipment Provider for the full amount as invoiced. The Rail panel member notes that the documentation provided by the Motor Carrier does not support their contention that conditions existed that prevented the interchange of equipment or that there was a proof of rejection.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to interchange Equipment to Provider within the free time as

specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. [Revised [09/13/04]

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

CASE REVIEWED AND DECIDED BY:

CHAD PETERSON
Rail Carrier Member

JIM MICHALSKI
Ocean Carrier Member

KEVIN LHOTAK
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: 20150406-4-XXXH-PD
Appellant, and)	
)	
UIIA Equipment Provider	)	Date of Decision: 12/15/2015
Respondent)	

The motor carrier disputes the following invoice:

Invoice#	Invoice	Inv. Date	Amount	Facility	Outgated	Ingated
1	5249453794	2/26/15	\$00.00	LGBTE/Global Gateway	2/2/15	2/11/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that force majeure conditions existed at the port and that steamship lines declared a de facto force majeure by assessing port congestion surcharges under their Federal Maritime Commission ("FMC") filed tariffs. The Motor Carrier further stated that, on a daily basis, steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier stated that these conditions prevented it from returning equipment within the specified free time period.

The Motor Carrier also indicated that the findings of the FMC as well as articles in various publications all support the conclusion that port congestion is a force majeure event. The Motor Carrier referenced that under the Code of Federal Regulations (49 CFR 375.103), "*Force majeure means a defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care.*" The FMC filed tariffs of many Equipment Providers also define force majeure as "... port congestion, strikes, imminent strikes, lockouts or harbor disturbances..." The UIIA defines force majeure as "...strikes, or any like causes beyond the Motor Carrier's control..." In addition, the California Business and Professions Code Section 22928 expressly prohibits the assessment of per diem "during a labor disruption period...". The Motor Carrier indicated that based on these facts, all UIIA Equipment Providers must obey the law and immediately suspend per diem charges on any interchanged equipment in the Port of Long Beach and Port of Los Angeles.

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

The Equipment Provider responded that the charges were correct and valid based on the fact that the existence of a force majeure situation must be shown. The Equipment Provider stated that it must be established that the Motor Carrier was unable (prevented) from returning the equipment. The Equipment Provider further stated there were no restrictions at the facilities on the dates these invoices cover.

The Equipment Provider provided the following regarding the port operating hours:

Monday – Thursday	6:30 a.m. – 2:00 a.m.
Friday	6:30 a.m. – 6:00 p.m.
Saturday & Sunday	7:30 a.m. – 4:30 p.m.

The Equipment Provider requested confirmation of whether the terminal was closed on February 2 and February 11, but the terminal never responded.

DISCUSSION:

The Motor Carrier submitted its basis of dispute and two articles regarding the port congestion on the West Coast. The Motor Carrier believes that force majeure conditions existed that precluded the redelivery of equipment and that the Equipment Provider has not complied with the California state regulation with regards to the conditions when state law precludes the assessment of per diem.

The Equipment Provider believes that the charges are valid as billed and that the Motor Carrier did not present any evidence to support that the Motor Carrier was unable (prevented) from returning the equipment.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

With regards to the Motor Carrier's basis relating to the California Business and Professions Code, Section 22928, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, during a labor disruption period, during any other period involving an act of God, or any other planned or unplanned action that closes the truck gate; or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11. of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations. Based on the supporting documentation provided by the Motor Carrier, there is no evidence presented that showed the driver attempted to gain access to the facility and was turned away, or that any labor disruption closed the facility's gate.

DECISION

The panel has carefully reviewed this case and has reached a decision that although the Motor Carrier did file a timely dispute with regards to Invoice 5249453794, the Motor Carrier failed to provide any substantive evidence to support its contention that a force majeure condition existed which prevented it from returning equipment in a timely manner. In addition, neither panel member found the EP had not complied with Section G.11. Compliance With the Law in the UIIA. Therefore, the panel finds in favor of the Equipment Provider with regard to this invoice.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the

Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment.
[Revised [09/13/04]

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

CASE REVIEWED AND DECIDED BY:

FRED HUENNEKENS
Motor Carrier Member

ROBERT CANNIZZARO
Ocean Carrier Member

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

In the Dispute Between

UIIA MC,
Appellant, and

UIIA EP,
Respondent

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)
)

Case Number: **20150410-8-XXXT-PD**

Date of Decision: 01/29/16

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Inv #	Invoice	Inv. Date	Amount	Container #	Facility	Outgated	Ingated
1	5249453786	2/26/15	\$0.00	MRKU8365246	APM Maersk	1/27/15	2/10/15
2	5249453788	2/26/15	\$0.00	MSKU9952316	APM Maersk	1/13/15	2/12/15
3	5249453789	2/26/15	\$0.00 \$0.00	GESU5927377 TRLU6671488	APM Maersk APM Maersk	1/20/15 1/19/15	2/9/15 2/9/15
4	5249453790	2/26/15	\$0.00	MSKU1949907	APM Maersk	1/16/15	2/9/15
5	5249453791	2/26/15	\$0.00 \$0.00	MRKU3047598 TCLU7223771	APM Maersk APM Maersk	1/21/15 1/21/15	2/9/15 2/9/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that force majeure conditions existed at the port and that steamship lines declared a de facto force majeure by assessing port congestion surcharges under their Federal Maritime Commission ("FMC") filed tariffs. The Motor Carrier further stated that, on a daily basis, steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier stated that these conditions prevented it from returning equipment within the allowable free time period.

The Motor Carrier also indicated that the findings of the FMC as well as the articles in various publications all support the conclusion that port congestion is force majeure. The Motor Carrier referenced that under the Code of Federal Regulations (49 CFR 375.103), "*Force majeure means a defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control the parties and could not be avoided by exercise of due care.*" The FMC filed tariffs of many Equipment Providers also define force majeure as "... port congestion, strikes, imminent strikes, lockouts or harbor disturbances..." The UIIA defines force majeure as "...*strikes, or any like causes beyond the Motor Carrier's control...*" In addition, California Business and Professions Code Section 22928 expressly prohibits the assessment of per diem "*during a labor disruption period...*" The Motor Carrier indicated that based on these facts and the law, it believes all UIIA Equipment Providers should suspend per diem charges on any interchanged equipment in the Port of Long Beach and Port of Los Angeles

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

The Equipment Provider responded stating that more than the existence of a force majeure situation must be shown. The Equipment Provider argued that it must be established that the Motor Carrier was unable/prevented from returning the equipment, and further stated there was no restriction on the dates associated with the invoices. The Equipment Provider believes the charges are valid as invoiced.

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 believes that Force Majeure conditions existed that prevented it from returning the equipment within the specified free time. In addition, that the Motor Carrier does not believe the Equipment Provider complied with SB45 by assessing per diem charges during a labor disruption period.

The Equipment Provider believes the invoices are valid as billed, and that the Motor Carrier has not submitted evidence proving that there were Force Majeure conditions that prevented the redelivery of equipment within the specified free time.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the EP within the allowable free time.

In regards to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate., or 2) when the intermodal marine terminal is too congested to accept the container

and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations.

DECISION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence, the Motor Carrier panel member believes that Invoice 2, 5249453788, should be reduced by one (1) day. The Motor Carrier panel member noted that the Motor Carrier provided an eModal transmission dated February 11, 2015, which notes “APM was only accepting dual transactions that day” and further that the requirement for a dual transaction limited the Motor Carrier’s ability to interchange equipment on that day. As to all other invoices, the Motor Carrier panel member finds in favor of the Equipment Provider stating the Motor Carrier did not provide sufficient evidence for relief under Force Majeure. The Ocean Carrier panel member finds in favor of the Equipment Provider for all invoices stating that not enough evidence was provided to prove units were being turned away or that Force Majeure conditions prevented the units from being returned. As to Invoice 2, 5249453788, the Ocean Carrier panel member states that the Motor Carrier was requested to prove that the unit was empty on February 11, 2015, when the APM terminal was only taking dual transactions. The Motor Carrier provided no such evidence.

Because the model 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 panel member also finds in favor of the Equipment Provider. With regard to Invoice 2, 5249453788, the Rail panel member states there are two issues associated with the notice that leads him to believe the Motor Carrier was not prevented from returning the equipment on the same day:

1) The notice said that the dual transactions would begin on night shift, so it is conceivable that the Empty In could have been accomplished on day shift; and,

2) The second paragraph of the notice specifically identifies which containers would be subject to the Empty In restrictions, and the EP empty was not on the restricted list. Therefore, even though dual transactions requirements were issued, it does not appear that the Motor Carrier was prevented from returning the EP’s empty. The dual transaction notice said it would be in place “until further notice” and despite that, the Motor Carrier was able to return the EP’s empty on the next day when, presumably, the dual transaction restrictions were still in place. As to the remaining invoices, the Rail panel member agrees that not enough evidence was provided to prove units were being turned away or that Force Majeure conditions prevented the units from being returned.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations

including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. [Revised **[09/13/04]**]

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

CASE REVIEWED AND DECIDED BY:

GERRY BISAILLON
Rail Carrier Member

DAVE DALY
Ocean Carrier Member

ROBERT A. CURRY
Motor Carrier Member

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

Date of Decision: 12/21/2015

The Equipment Provider responded that its UIIA addendum provides for three days of free time for refrigerated containers. The calculation of free time is based on the date of interchange plus the number of free days allowed by contract, which is in line with the Equipment Provider's AP1 tariff. Only working days are counted as free time, while weekends and holidays within the free time are added to the number of days allowed. The Equipment Provider added that the relevant time period for this dispute was January 21, 2015 through February 24, 2015. The Equipment Provider stated that based on its records, the Motor Carrier in-gated 278 containers during this time frame. The Equipment Provider's records also showed that the Motor Carrier was able to return 267 of the 278 containers within the allotted free time. The Equipment

Provider has charged per diem for only the 11 containers that the Motor Carrier did not return within the allowable free time.

The Equipment Provider provided the following information regarding the operating hours of the port and facilities:

Eagle Marine Services (Global Gateway South) – Monday – Thursday (7:00 a.m. – 4:45 p.m. and 5:00 p.m. – 2:45 a.m.); Friday (7:00 a.m. – 4:45 p.m.); and Saturday (8:00 a.m. – 4:30 p.m.)

Trapac – Monday – Thursday (8:00 a.m. – 6:00 p.m. and 6:00 p.m. – 3:00 a.m.); Friday (8:00 a.m. – 4:30 p.m.) and Saturday (8:00 a.m. – 4:00 p.m.)

SSA Terminals – Monday – Thursday (8:00 a.m. – 4:30 p.m. and 6:00 p.m. - 2:30 a.m.); Friday (8:00 a.m. – 4:30 p.m.) and Saturday (closed)

The Equipment Provider indicated that the facilities were closed on the following dates:

Eagle Marine Services

Sunday, 1/25 Saturday, 2/14

Sunday, 2/1 Sunday, 2/15

Sunday, 2/8 Sunday, 2/22

Trapac Terminal

Sunday, 1/25 Sunday, 2/15

Sunday, 2/1 Sunday, 2/22

Sunday, 2/8

SSA Terminals

Saturday, 1/24 Saturday, 2/14

Sunday, 1/25 Sunday, 2/15

Saturday, 1/31 Monday, 2/16

Sunday, 2/1 Saturday, 2/21

Saturday, 2/7 Sunday, 2/22

Sunday, 2/8

The Equipment Provider also noted that for each of these facilities, truckers are given a “trouble” ticket at the pedestal if the driver is turned away once they reach this point. If the driver has departed from the line prior to reaching the pedestal, then it would not receive any type of documentation.

The Equipment Provider provided the following explanation with regard to the invoices billed:

Invoice SPEI042614

Container TRIU8619611 – Motor Carrier was invoiced per diem for the period of 1/27/15 through 2/2/15 (7 days). Of the 7 days, one day was a weekend day when the terminal was closed (2/1/15). The Equipment Provider adjusted the invoice for the one day and the amount due is \$00.00.

Container APRU6110510 – Motor Carrier was invoiced per diem for the period of 1/27/15 through 2/2/15 (7 days). Of the 7 days, one day was a weekend day when the terminal was closed (2/1/15). The Equipment Provider adjusted the invoice for the one day and the amount due is \$00.00.

Container TRIU8108400 – Motor Carrier was invoiced per diem for 2/12/15 (1 day). The Equipment Provider believes the charges billed are valid. These charges were not a result of port labor slowdowns or port congestion, but factors that were entirely within the Motor Carrier’s control.

Container APRU5831214 – The Equipment Provider confirmed that the first day that cargo was allowed to be received at the terminal for this vessel was 2/12/15. The Motor Carrier returned the container on this date so the Equipment Provider has cancelled the charges associated with this move (\$00.00).

Container APRU5726939 – The Equipment Provider confirmed that the first day that cargo was allowed to be received at the terminal for this vessel was 1/30/15. The Motor Carrier returned the container on this date so the Equipment Provider has cancelled the charges associated with this move. (\$00.00)

Container APRU5799278 – The Equipment Provider confirmed that the first day that cargo was allowed to be received at the terminal for this vessel was 1/30/15. The Motor Carrier returned the container on this date so the Equipment Provider has cancelled the charges for this one day only. The Motor Carrier remains responsible for the per diem charges for 1/31/15 since it provided no evidence that the terminal was closed or that it was not open to receive the loaded container. The adjusted amount due is \$00.00.

Container APRU5739772 – The Equipment Provider confirmed that the first day that cargo was allowed to be received at the terminal for this vessel was 1/30/15, so the Equipment Provider cancels the per diem charges for this one day only. The Motor Carrier remains responsible for the per diem charges for 1/31/15 since it provided no evidence that the terminal was closed or that it was not open to receive the loaded container. The adjusted amount due is \$00.00.

Invoice SPEI042744

Container TTNU8289963- The Motor Carrier was invoiced per diem for the period of 2/11/15 through 2/17/15 (7 days). Of the 7 days, two days were weekend days or holidays when the terminal was closed (2/15 and 2/16). The Equipment Provider adjusted the invoice for these two days and the amount due is \$00.00.

Container TEMU9044617 – The Equipment Provider confirmed that the first day that cargo was allowed to be received at the terminal for this vessel was 2/24/15. The Motor Carrier returned the container on this date so the Equipment Provider has canceled the charges associated with this move. (\$00.00)

Container CXRU1039065 – The Equipment Provider has confirmed that the first day that cargo was allowed to be received at the terminal for this vessel was 2/24/15. The Motor Carrier returned the container on this date so the Equipment Provider has cancelled the charges associated with this move. (\$00.00)

Container APRU5780354 – The Equipment Provider has confirmed that the first day that cargo was allowed to be received at the terminal for this vessel was 2/24/15. The Motor Carrier returned the container on this date so the Equipment Provider has cancelled the charges associated with this move. (\$00.00)

The total adjusted amount due on the two invoices is:

SPEI042614 - \$00.00

SPEI042744 - \$00.00

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties. Section G.12 of the UIIA states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment." In this case, both of the panel members agree that the Motor Carrier failed to provide substantial evidence that demonstrates that its ability to return the equipment within the allowable free timeframe was prevented by the port congestion. Consequently, the panel members agree with the Equipment Provider's adjustment of the invoices as outlined above.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

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

CASE REVIEWED AND DECIDED BY:

ROBERT A. CURRY
Motor Carrier Member

DAVE DALY
Ocean Carrier Member

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

Date of Decision: 10/30/2015

The Equipment Provider's Addendum states that "On all refrigerated or tank interchanged equipment, the day of pick-up and the first four (4) calendar days after the day of pick-up will be considered days of grace during which time no charge will be made for the use of the equipment." In this case, the Motor Carrier return the equipment outside the allowable free time.

Further, the panel has considered all the evidence and has reached a conclusion that the Equipment Provider's actions were within compliance of Section G.11 of the UIIA and within the California State regulation SB45.

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:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

**Senate Bill No. 45
CHAPTER 244**

The people of the State of California do enact as follows:

SECTION 1. Chapter 28.5 (commencing with Section 22928) is added to Division 8 of the Business and Professions Code, to read:
Chapter 28.5. Intermodal Marine Terminals 22928.

- (a) The Legislature finds and declares that unilateral termination, suspension, or restriction of equipment interchange rights of an intermodal motor carrier shall not result from intermodal marine terminal actions as specified in subdivision (b).
- (b) An intermodal marine equipment provider or intermodal marine terminal operator shall not impose per diem, detention, or demurrage charges on an intermodal motor carrier relative to transactions involving cargo shipped by intermodal transport under any of the following circumstances:

(1) When the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate.

EP's addendum to the UIIA

Addendum to the Uniform Intermodal Interchange and Facilities Access Agreement

**APPENDIX A: "EP
PER DIEM - METHOD OF SETTLEMENT**

1. FREE TIME - (Subject to Notes 1 thru 3)

A. On all regular interchanged equipment, the day of pick-up plus six (6) calendar days after the day of pick-up will be considered days of grace during which time no charges will be made for the use of the equipment.

B. On all refrigerated or tank interchanged equipment, the day of pick-up and the first four (4) calendar days after the day of pick-up will be considered days of grace during which time no charge will be made for the use of the equipment.

C. Thereafter, per diem, as per the "Table of Charges" will be assessed for each calendar day until the equipment is returned.

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

CASE REVIEWED AND DECIDED BY:

AL SMERALDO
Ocean Carrier Member

DAVE MANNING
Motor Carrier Member

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

Date of Decision: 12/21/2015

Invoice	Inv. Date	Amount	Container #	Facility	Outgated	Ingated
PF1503000360-006	3/2/15	\$00.00	IMTU1003335	APM	2/5/15	2/27/15
			EMCU3916972	APM	2/20/15	2/28/15
			MAGU5425907	TraPac/APM	1/28/15	2/28/15
			OCGU8092833	APM	1/26/15	2/28/15
			EITU1289740	Berth 233	2/3/15	2/25/15
			EITU1343693	Berth 233	2/3/15	2/25/15
			EITU1483479	Berth 233	2/3/15	2/25/15
			EITU1112056	Berth 233	2/4/15	2/28/15
			TEMU6442978	Berth 233	2/4/15	2/28/15
			EITU1270560	Berth 233	2/5/15	2/24/15
			BMOU5767471	TraPac/APM	2/6/15	2/28/15
			EITU1044413	TraPac/APM	2/6/15	2/28/15
			EITU1083071	TraPac/TTI	2/6/15	2/28/15
			EITU1276738	TraPac/APM	2/6/15	2/28/15
			EITU1417292	TraPac	2/6/15	2/28/15
			EITU1483036	TraPac/APM	2/6/15	2/28/15
			HMCU9164495	TraPac/APM	2/6/15	2/28/15
			TCNU5457192	TraPac/APM	2/6/15	2/28/15
			TEMU6538811	TraPac/APM	2/6/15	2/28/15
			TEMU7334788	TraPac/APM	2/6/15	2/28/15
			EITU1121567	Berth 233	2/7/15	2/28/15
			MAGU5480360	TraPac/APM	2/7/15	2/28/15
			BMOU5452181	TraPac/APM	2/9/15	2/28/15
			DRYU9345618	TraPac/Berth 233	2/9/15	2/28/15
			EITU1110747	TraPac/APM	2/9/15	2/28/15
			EITU1377306	TraPac/APM	2/9/15	2/28/15
			TCLU8894075	TraPac/APM	2/9/15	2/28/15
			TCNU5804959	TraPac/APM	2/9/15	2/28/15
			WFHU5190200	TraPac	2/9/15	2/28/15
			DRYU9791250	TraPac/APM	2/10/15	2/28/15

Invoice	Inv. Date	Amount	Container #	Facility	Outgated	Ingated
			DRYU9891120	TraPac/APM	2/10/15	2/28/15
			EISU9384680	TraPac	2/10/15	2/28/15
			EITU1138127	TraPac/APM	2/10/15	2/27/15
			EITU1211676	TraPac/APM	2/10/15	2/25/15
			HMCU9170733	TraPac/APM	2/10/15	2/28/15
			MAGU5368880	TraPac/APM	2/10/15	2/28/15
			MAGU5450258	TraPac/APM	2/10/15	2/28/15
			MAGU5456317	TraPac	2/10/15	2/28/15
			EISU9266429	TraPac/APM	2/11/15	2/28/15
			EITU1377815	TraPac/APM	2/11/15	2/27/15
			EITU1362965	Berth 233	2/12/15	2/26/15
			EGHU9080268	WBCT/APM	1/31/15	2/27/15
			EISU9363964	Berth 233	1/26/15	2/28/15
			FCIU8224080	WBCT/APM	1/29/15	2/26/15
			FCIU9803209	Berth 233	2/3/15	2/28/15
			MAGU5430919	Berth 233	2/3/15	2/28/15
			MAGU2192740	Berth 233	2/4/15	2/28/15
			HMCU1048800	APM	2/11/15	2/27/15
			BMOU5000387	APM	2/12/15	2/28/15
			GESU6338509	APM	2/12/15	2/28/15
			EGHU1029470	APM	2/16/15	2/28/15
			HMCU1041128	APM	2/16/15	2/28/15
PF1503000729-002	3/4/15	\$00.00	EMCU3916972	APM	2/20/15	3/2/15
			FCIU9803209	Berth 233	2/3/15	3/2/15
			MAGU2192740	Berth 233	2/4/15	3/2/15
			MAGU5430919	Berth 233	2/3/15	3/2/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure). The Motor Carrier states that port congestion conditions on the West Coast precluded its ability to return equipment within the free time period. The Motor Carrier stated that the port congestion impacted the Motor Carrier's normal business operations. Therefore, the Motor Carrier believes that it is not responsible for any per diem charges billed from January 1, 2015 thru April 15, 2015. Furthermore, the Motor Carrier stated that any assessment of per diem during this timeframe would be illegal under the California Business and Professions Code Section 22928. This regulation also precludes the Equipment Provider from shutting out a Motor Carrier for using the UIIA binding arbitration process to contest these charges.

The Motor Carrier did provide as evidence the following terminal status information to show the impact that the congestion caused at specific facilities:

EP's Return Update – Dated 2/17/15 –

Return EP's Containers to Terminal of Origin
Empties not originating from STS/LAX will be rejected effective Feb 4/1200

Monday, Feb. 16th – STS facility closed both 1st and 2nd shift

Due to delayed start and extended stay of vessels, the gate openings for export receiving has been adjusted to 5 days.

Exports will be received 2 working days (Monday – Saturday) prior to a vessel's estimated berthing schedule.

Exports will continue to be received up until 3 working days (Monday – Saturday) after a vessel's estimated berthing schedule and at 1700 hours of the given day, the window will close.

Working days include Saturday, but not Sundays.

EP's Return Update – Dated 2/18/15

Return EP's Containers to Terminal of Origin

Empties not originating from STS/LAX will be rejected effective Feb 4/1200

Thursday, Feb. 19th – STS will be closed on second shift

Thursday and Friday night gates are not in operation

Due to delayed start and extended stay of vessels, the gate openings for export receiving has been adjusted to 5 days.

Exports will be received 2 working days (Monday – Saturday) prior to a vessel's estimated berthing schedule.

Exports will continue to be received up to 3 working days (Monday – Saturday) after a vessel's estimated berthing schedule and the window will close at 1700 hours of the given day, the window will close.

Working days include Saturday, but not Sundays.

EP's Return Updates – Dated 2/20/15, 2/24/15, 2/25/15, 3/2/15, 3/4/15

Return EP's Containers to Terminal of Origin

Empties not originating from STS/LAX will be rejected effective Feb 4/1200.

Thursday and Friday night gates are not in operation (Note: This is for the STS facility)

Due to delayed start and extended stay of vessels, the gate openings for export receiving has been adjusted to 5 days.

Exports will be received 2 working days (Monday – Saturday) prior to a vessel's estimated berthing schedule.

Exports will continue to be received up until 3 working days (Monday – Saturday) after a vessel's estimated berthing schedule and at 1700 hours of the given day, the window will close.

Working days include Saturday, but not Sundays

Trapac Return Updates – Dated 2/17/15 – 3/4/15

The Motor Carrier provided empty return location information for Trapac for the dates of 2/17/15 through 3/4/15. The updates showed that empties were not being accepted for EP's on the following dates at this facility: 2/17/15, 2/18/15, 2/19/15, 2/20/15, 2/24/15, 2/25/15 (no 45SD96), and 3/4/15

LBCT Return Updates – Dated 2/17/15 – 3/4/15

The Motor Carrier provided empty return location updates for the Long Beach Container Terminal, however, no information related to EP's was shown in these updates.

TTI Terminal Updates – Dated 2/17/15 - 3/4/15

February 17th – TTI ran a limited gate on the first shift. Gate was to include the following transactions – imports out, empties out, exports in (full in) and chassis in/out. TTI was not receiving empty in transactions on this date for the first shift only. A full service gate was run on the 2nd shift. TTI Long Beach was not receiving empty in transactions. Empty in transactions must be accompanied with an out-container. TTI did not received empties on behalf of EP's on the 2nd shift that date.

February 18th – TTI did not receive empty in transactions on this date for the 1st and 2nd shifts. In addition, the facility was not accepting empties on behalf of EP's on this date.

February 19th and February 20th - TTI was not receiving single empty in transactions on this date. Empty in transactions had to be accompanied with an out-container.

February 24th and February 25th - TTI was not receiving single empty in transactions on this date. Empty in transactions had to be accompanied with a container out. In addition, TTI was not receiving empty containers for EP's on this date during the first shift. The update for 2/25/15 also noted that TTI would run a limited gate on Saturday, Feb. 28th for loads out, empties in/out and chassis in/out.

March 4th – The back gate in-gate was opened the night of 3/3/15 for bobtail and chassis in transactions. TTI ran a limited gate on Friday, March 6th (2nd shift) and Saturday, March 7th (1st shift) for loads out, empties in/out and bare chassis in/out. TTI was not receiving full in export containers on March 4th, but was accepting single empty in transactions as of March 3rd.

APM Terminal Return Updates – Dated 2/17/15 – 3/4/15

None of the updates showed that the APM facility was not accepting EP's empties for the period of 2/17/15 through 3/4/15. The 3/4/15 update did indicate that APM was only processing dual transactions or single import out or single empty out. EP's was identified as one of the designated lines for which single empty in transactions would be accepted.

The Motor Carrier also included snapshots of other Equipment Providers empty return information. This data, however, would not be applicable to the Equipment Provider involved in this claim.

With regard to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate., or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations.

EQUIPMENT PROVIDER RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded to the Motor Carrier's claim by stating that the evidence the Motor Carrier presented does not provide proof of any redelivery problems at the APM and STS terminals during the interchange period associated with the disputed charges. The Equipment Provider provided the following exhibits that included multiple spreadsheets that identified the in and out gate movements of the Equipment Provider's containers at the terminals involved in this arbitration claim:

Exhibit A – Copy of Invoice 1 that is under dispute that lists container movements for the month of February 2015 that the Motor Carrier was invoiced per diem charges.

Exhibit C – Outlines the container movements associated with the disputed invoices. The Equipment Provider indicated that Exhibit D shows that empties were being accepted by APM and STS during the interchange period associated with the disputed charges so there is no reason the Motor Carrier could not have redelivered this equipment within the allowable free time.

Exhibit D – Shows the volume of EP's empties that were returned by all trucking companies at the APM and STS facilities during the last week of January through the last week of February 2015. This shows that APM received 3,831 empty EP's containers during this period and that the STS terminal received 13,756 empties during the same period.

Exhibit E – This spreadsheet shows redeliveries during the period of January to April 2015 of empties for non-Bridgestone containers being made anywhere from 1 day to 2 days after full out deliveries from various terminals. The Equipment Provider indicated that this clearly shows that if the containers were available for redelivery, the Motor Carrier was able to make those redeliveries in a timely fashion. The Equipment Provider stated that the crux of the Motor Carrier's complaint is the 30 containers that were originally delivered to HRT at the Trapac Terminal during the period of January 28, 2015 through February 11, 2015. The Motor Carrier claimed that Trapac was not receiving empties on behalf of the Equipment Provider on the following days:

February 16 – February 20
February 21 (Saturday)
February 22 (Sunday)
February 24 – February 25
February 28 – (Saturday)

The Equipment Provider argued that the Motor Carrier sent out a notice to all Equipment Providers on March 15, 2015 advising that it could not redeliver empties in its possession during its normal operational hours. The

Equipment Provider believes that the Motor Carrier was over-extended and would have been unable to return the equipment whether the facility was open or not. The Equipment Provider also indicated that there was no evidence presented by the Motor Carrier to show that the 30 containers were available for redelivery during the period of February 10 – February 28. The Equipment Provider noted that all of these containers were consigned to Bridgestone. Therefore, if the equipment was not available for redelivery from Bridgestone it was irrelevant whether the Trapac Terminal was or was not receiving empties on behalf of the Equipment Provider.

Exhibit F – This exhibit represents only Bridgestone shipments during the relevant period identified by the Motor Carrier (Jan-April 2015). This exhibit provides evidence that the Motor Carrier was in fact able to out-gate containers from Trapac and in-gate the units at another facility within the free time period. It was a very normal practice for the Motor Carrier to pick up a full container from one terminal and redeliver it to another facility that the Equipment Provider approved. The ability of the Motor Carrier to complete container movements associated with Bridgestone shipments during the height of the alleged problem makes the Equipment Provider question whether the units were available for redelivery from Bridgestone during the last two weeks of February.

The Equipment Provider also stated that under Invoice 15030000729002, three of the four containers under this invoice had 15 days free time (commencing on February 3rd and February 4th) and the Motor Carrier provided no explanation as to why the containers could not be redelivered within this free time period. There was no proof presented by the Motor Carrier that the APM terminal and STS terminal had any type of closures during this timeframe. Consequently, the Equipment Provider feels that the per diem charges for the containers for both invoices under this arbitration case should be paid.

In addition, the Equipment Provider confirmed their operating hours from the four facilities involved in this claim for the period of 01/28/2015 through 02/28/2015 as follows:

STS Terminal - hours of operations:

0800 to 1700 hrs. Monday thru Friday (Day Shift)
 1800 to 0300 hrs. Monday thru Thursday (Night Shift)
 0800 to 1700 hrs. Saturday (Special Gate)

Date	Day of the Week	1 st Shift (0800 – 1700)	2 nd Shift (1800 – 0300)
Feb. 05	Friday	Open	Closed
Feb. 12	Thursday	Closed	Open

APM Terminal - hours of operations:

0800 to 1700 hrs. Monday thru Friday (Day Shift)
 1800 to 0300 hrs. Monday thru Thursday (Night Shift)
 0800 to 1700 hrs. Saturday (Special Gate)

Date	Day of the Week	1 st Shift (0800 – 1700)	2 nd Shift (1800 – 0300)
Feb. 05	Friday	Open	Closed
Feb. 13	Friday	Open	Closed

TRAPAC Terminal - hours of operations:

0800 to 1700 hrs. Monday thru Friday (Day Shift)
 1800 to 0300 hrs. Monday thru Thursday (Night Shift)
 0800 to 1700 hrs. Saturday (Special Gate)

Date	Day of the Week	1 st Shift (0800 – 1700)	2 nd Shift (1800 – 0300)
Feb. 05	Friday	Open	Closed
Feb. 12	Thursday	Closed	Open
Feb. 14	Saturday	Closed	Open
Feb. 21	Saturday	Closed	Open
Feb. 28	Saturday	Closed	Open

WBCT Terminal - hours of operations:

0800 to 1700 hrs. Monday thru Friday (Day Shift)
1800 to 0300 hrs. Monday thru Thursday (Night Shift)
0800 to 1700 hrs. Saturday (Special Gate)

Date	Day of the Week	1 st Shift (0800 – 1700)	2 nd Shift (1800 – 0300)
Feb. 05	Friday	Open	Closed
Feb. 12	Thursday	Closed	Open
Feb. 14	Saturday	Closed	Open
Feb. 21	Saturday	Closed	Open

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties. The two modal panel members could not agree on whether the conditions outlined by the Motor Carrier and the supporting documents provided met the criteria set forth in Section G.12. The Motor Carrier panel member finds that the Motor Carrier is responsible for Invoice PF1503000729 (\$560). However, the Motor Carrier panel member finds that based on specific evidence presented in this case, Invoice PF1503000360 should be reduced from \$36,940 to \$29,360. The evidence supports that the Motor Carrier was in fact restricted from returning the equipment within the allowable time during the interchange period. Consequently, a reduction of \$7,580 is necessary to account for all days the Motor Carrier was restricted from returning the equipment. Further, the Motor Carrier panel member notes that if the Motor Carrier has invoiced their customer and collected the previously billed amounts, then it should not be allowed this reduction. The Ocean panel member finds that the Equipment Provider's evidence supports that the terminals were operational and in some instances the Motor Carrier returned equipment in a timeframe below the allowable free time. Further, the Ocean panel member finds it troublesome that the Motor Carrier sent out an e-mail advising that it would pass on all costs related to per diem and detention to its customers. Therefore, the third panel member was brought in under Exhibit D to the UIIA.

The third panel member has reviewed the evidence provided by the Motor Carrier and Equipment Provider. Section G.12 of the UIIA states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment." In this case, the third panel member finds in favor of the Equipment Provider. The Equipment Provider provided clear evidence that returns were not impacted as a result of closed or reduced gates at the terminals for return. Additionally, the third panel member noted that billing customers per diem charged to the Motor Carrier by the Equipment Provider and then initiating binding arbitration for the disputed charges is not in the spirit or purpose of the UIIA DRP guidelines.

Further, none of the panel members found that the Equipment Provider had not complied with Section G.11. Compliance With the Law as it relates to the California Business and Professions code Section 22928.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery

of the Equipment. **[Revised 09/13/04]**

EXHIBIT D TO THE UIIA

3. A three-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IANA member from each mode, i.e. a Motor Carrier, Water Carrier and Railroad. However, the decision will be rendered by the two arbitrators representing the modes involved in the disputed invoice(s). The third appointed arbitrator from the mode not involved in the transaction will act as an alternate, and will render a decision only in the event the arbitrators from the involved modes cannot agree on a resolution of the dispute.

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

CASE REVIEWED AND DECIDED BY:

WALTER D. WATSON
Rail Carrier Member

AL SMERALDO
Ocean 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
Appellant, and

UIIA Equipment Provider
Respondent

Case Number: **20150416-25-XXXI-PD**

Date of Decision: 12/21/2015

The motor carrier disputes the following per diem invoices:

Invoice #	Invoice	Inv. Date	Container #	Facility	Outgated	Ingated
1	NAIM3156059	2/2/15	GESU5302883	APM/SSA Pier J	12/10/14	1/15/15
2	NAIM3156060	2/2/15	ECMU9343498	Shippers Transport/SSA Pier J	12/15/14	1/13/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure). The Motor Carrier states that port congestion that existed at the Ports of Los Angeles and Long Beach prevented its ability to return the equipment within the specified free time. The Motor Carrier asserts that conditions such as labor issues, closed terminals, early gate closures, closed areas, equipment redirections and non-acceptance of equipment on certain days/shifts all contributed to the congestion and were issues that were beyond the Motor Carrier's control. Under these situations, delays could not be avoided by the Motor Carrier and therefore it should not be held responsible for per diem during this timeframe. The Motor Carrier also stated that port congestion has been recognized by various Equipment Providers as a form of Force Majeure. Many Equipment Providers within their FMC filed tariffs include port congestion as an example of Force Majeure. The Motor Carrier argued that if the Equipment Provider can invoke the Force Majeure provision within its own tariff to exempt itself from liabilities, it should not be able to levy per diem charges against Motor Carriers under these same conditions for delays in returning equipment due to congestion at the terminals. The Motor Carrier also indicated that the Equipment Provider was not in compliance with California State regulation SB45, which precluded the assessment of per diem during work stoppages and congested conditions.

The Motor Carrier believes that port congestion precluded it from returning equipment within the allowable free time and that one or more of the conditions under SB45 existed that precludes the assessment of per diem. Consequently, the per diem charges should be removed from its account. The Motor Carrier also submitted turn time data from the Harbor Trucking Association that showed the impact to driver turn times during the timeframe of the port congestion. The Motor Carrier believes this evidence supports its dispute that the port congestion had a direct impact on its normal business operations with regard to being able to return equipment to the Equipment Provider within the allowable free time.

With regard to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate., or 2) When the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all parties must comply with all applicable federal, state and local laws, rules and regulations. Based on the supporting documentation provided by the Motor Carrier, there was no evidence presented that showed the driver attempted to gain access to the facilities associated with these invoices and was turned away.

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

The Equipment Provider did not provide any comments with regard to this binding arbitration claim. With regard to the initial dispute of the charges, the Equipment Provider adjusted both invoices to remove weekend days that had originally been charged to the Motor Carrier. The adjusted invoice amounts were Invoice NAIM3156059 (\$00.00) and Invoice NAIM3156060 (\$00.00). The Equipment Provider stated in its response to the initial dispute of the charges that it did not consider port congestion a valid dispute unless the Motor Carrier was able to provide documentation that the driver was turned away or rejected. The Equipment Provider states that Pier J was not closed and that it did not have dual transaction limitations on the billable dates, therefore the Equipment Provider's adjusted invoices were valid as billed.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties. The two modal panel members could not agree on whether the conditions outlined by the Motor Carrier and the supporting documents provided met the criteria set forth in Section G.12. The Motor Carrier panel member stated that the Motor Carrier submitted evidence quantifying the amount of additional time spent on terminal during the labor slowdown. Based on the evidence the reduction in the average turn time was 41.34% when the average turn time for December was 44% and 38.67% for January. Consequently, the free time allowed by the Equipment Provider should be increase by 41.34%. Using the increased free time Invoice NAIM 3217666 should be reduced from \$00.00 to \$00.00 and invoice NAIM3218041 should be reduced from \$00.00 to \$00.00. The Ocean panel member reviewed the evidence, and found that the Motor Carrier presented turn times that are not specific to the containers in this case. In addition, the Ocean panel member highlighted that invoice NAIM 3217666 should have per diem charges for 4 billing days instead of 5 billing days, assuming that the terminal was closed on New Years. IANA's staff requested from the Equipment Provider the terminal gate hours for New Years. The Equipment Provider confirmed that the terminal was closed on New Years. Because the modal panel members were unable to reach a consensus in regards to the disputed charges in this case, the third panel member was brought in under Exhibit D to the UIIA.

The third panel member has reviewed the evidence provided by the Motor Carrier and Equipment Provider. Section G.12 of the UIIA states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment." The third panel member finds in favor of the Equipment Provider, provided, the per diem bills are reduced to reflect the increased free time as outlined by the Motor Carrier panel member based on the turn time data provided by the Moving Party as supporting documentation in this arbitration case. Furthermore, in light of the confirmation that the terminal gate was closed on New Year's, the third panel finds that invoice NAIM 3217666 was miscalculated and the Motor Carrier is liable for 4 billing days and not 5 billing days as the revised invoice states.

Furthermore, none of the panel members found that the Equipment Provider had not complied with Section G.11. Compliance With the Law as it relates to the California Business and Professions code Section 22928.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes

beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

EXHIBIT D TO THE UIIA

3. A three-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IANA member from each mode, i.e. a Motor Carrier, Water Carrier and Railroad. However, the decision will be rendered by the two arbitrators representing the modes involved in the disputed invoice(s). The third appointed arbitrator from the mode not involved in the transaction will act as an alternate, and will render a decision only in the event the arbitrators from the involved modes cannot agree on a resolution of the dispute.

DECISION: The majority of the panel members finds in favor of the Equipment Provider for the adjusted amounts.

Invoice No.	Invoice Number	Original Amount	EP Revised Amount	Adjusted Amount	Amount Owed
1	NAIM3156059	\$00.00	\$00.00	\$00.00	\$00.00
2	NAIM3156060	\$00.00	\$00.00	\$00.00	\$00.00.00
	Totals:	\$00.00	\$00.00	\$00.00	\$00.00

Total Adjusted Amount Owed by the Motor Carrier to the EP: \$00.00

CASE REVIEWED AND DECIDED BY:

WALTER D. WATSON
Rail Carrier Member

DAVE MANNING
Motor Carrier Member

AL SMERALDO
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: **20150417-23-XXXI-PD**

Date of Decision: 01/20/2016

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Inv.	Invoice	Inv. Date	Amount	Container #	Facility	Outgated	Ingated	Date MC stated they rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute
1	5249585759	4/1/15	\$0.00	MRKU2646755	SSA Pier A	03/10/15	03/19/15	04/01/15	4/10/15	4/10/15
2	5249554637	3/24/15	\$0.00	UETU5037961	APM Pier 400	02/25/15	03/09/15	03/25/15	4/10/15	4/10/15
3	5249342236	1/27/15	\$0.00	PONU7638482		12/30/14	01/07/15	04/03/15	4/10/15	4/10/15
4	5249295570	1/13/15	\$0.00	MSKU6787373	APM Pier 400	12/19/14	12/29/14	04/03/15	4/10/15	4/10/15
5	5249342233	1/27/15	\$0.00	MRKU4767632	SSA Pier A	12/23/15	01/06/15	04/03/15	4/10/15	4/10/15
6	5249342234	1/27/15	\$0.00	TGHU9753656	SSA Pier A	12/29/14	01/06/15	04/03/15	4/10/15	This inv. was cancelled by EP
7	5249342237	1/27/15	\$0.00	MRKU9467237	APM Pier 400	12/26/14	01/06/15	04/03/15	4/10/15	4/10/15
8	5249427042	2/18/15	\$0.00	MSKU2565043	SSA Pier A	01/29/15	02/04/15	04/03/15	4/10/15	4/10/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that force majeure conditions existed at the port and that steamship lines declared a de facto force majeure by assessing port congestion surcharges under their Federal Maritime Commission ("FMC") filed tariffs. The Motor Carrier further stated that, on a daily basis, steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier stated that these conditions prevented it from returning equipment within the allowable free time period.

The Motor Carrier also indicated that the findings of the FMC as well as the articles in various publications all support the conclusion that port congestion is a force majeure event. The Motor Carrier referenced that under the Code of Federal Regulations (49 CFR 375.103), “*Force majeure means a defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care.*” The FMC filed tariffs of many Equipment Providers also define force majeure as “... *port congestion, strikes, imminent strikes, lockouts or harbor disturbances...*” The UIIA defines force majeure as “...*strikes, or any like causes beyond the Motor Carrier’s control...*” In addition, the California Business and Professions Code Section 22928 expressly prohibits the assessment of per diem “during a labor disruption period...” The Motor Carrier indicated that based on these facts and the law, all UIIA Equipment Providers should immediately suspend per diem charges on any interchanged equipment in the Port of Long Beach and Port of Los Angeles.

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

The Equipment Provider responded stating there were no restrictions at the facilities for the dates the invoices cover. The Equipment Provider believes the charges are correct and valid based upon the fact that the Motor Carrier failed to provide evidence that a force majeure condition existed.

The Equipment Provider provided the following port operating hours and closures:

Pier 400	Monday – Thursday – Full Service Gates	1 st shift - 07:00 – 17:00 (import delivery ends 16:00)
		2 nd shift 17:00 – 2:30 (import grounded delivery ends at 01:00)
	Fridays	1 st shift 07:00 – 17:00 – Full Service Gate (import delivery ends at 15:30)
		2 nd shift Wheeled Import Gates 17:00 – 2:30
	Saturdays	1 st shift Full Service Gate 07:00 – 16:00 (Import delivery ends at 14:00)

Pier 400 was closed on the dates of interchange: 12/25/14 and 1/1/2015.

Pier A	Monday – Friday	8:00am – 5:00pm
	Monday – Thursday	6:00pm – 2:30am

Pier A was closed on the dates of interchange:

- 12/24 – closed at 2:00pm
- 12/25 – closed
- 12/26 – closed at 6:00pm
- 12/31 – closed at 6:00pm
- 01/01 – closed

- 01/02 - closed at 6:00

The Equipment Provider confirmed that both facilities provide turn away tickets if the Motor Carrier is turned away at the gate.

DISCUSSION:

The Motor Carrier submitted its basis and several articles regarding port congestion of the West Coast as supporting documentation for this claim. The Motor Carrier believes that force majeure conditions existed that precluded the return the equipment within the specified free time.

The Equipment Provider believes it provided the necessary evidence to prove that port congestion did not impact business operations at the facilities associated with the disputed charges. The Equipment Provider believes the charges are valid as invoiced.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

With regards to the Motor Carrier's basis relating to the California Business and Professions Code, Section 22928, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, during a labor disruption period, during any other period involving an act of God, or any other planned or unplanned action that closes the truck gate; or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11. of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations.

DECISION:

Based upon the supporting documents and evidence submitted, the panel finds that there is no evidence that the Motor Carrier was unable and/or prevented from returning the equipment due to force majeure conditions or that it was turned away by the terminal. The Motor Carrier panel member noted that the Moving Party failed to provide supporting documentation, such as a Harbor Trucking Study, that would demonstrate increased terminal dwell time during the period contested in this case. However, the Ocean Carrier panel member indicated that the Equipment Provider produced evidence of the hours of operation and closures that showed the ports were open during the time period in question. The panel did not find any evidence that the Provider had not complied with Section G.11 Compliance With the Law of the UIIA. Therefore, the panel finds that there is no evidence to support the Motor Carrier's claim and unanimously finds for the Equipment Provider.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

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

CASE REVIEWED AND DECIDED BY:

THOMAS BARATTINI
Ocean Carrier Member

JEFFREY LANG
Motor Carrier Member

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

In the Dispute Between

UIIA Motor Carrier,
Appellant, and

UIIA Equipment Provider,
Respondent

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Case Number: **20150417-5-XXXH-PD**

Date of Decision: 12/30/2015

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Invoice	Inv. Date	Amount	Container #	Facility	Outgated	Ingated	Date MC stated they rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
MNCD80881	3/10/15	\$00.00	MATU257892	SHA/LAX	2/24/15	3/6/15	3/10/15	4/3/15	4/3/15	4/17/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that force majeure conditions existed at the port and that steamship lines declared a de facto force majeure by assessing port congestion surcharges under their Federal Maritime Commission ("FMC") filed tariffs. The Motor Carrier further stated that, on a daily basis, steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier stated that these conditions prevented it from returning equipment within the allowable free time period.

The Motor Carrier also indicated that the findings of the FMC as well as the articles in various publications all support the conclusion that port congestion is a force majeure event. The Motor Carrier referenced that under the Code of Federal Regulations (49 CFR 375.103), "*Force majeure means a defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care.*" The FMC filed tariffs of many Equipment Providers also define force majeure as "...port congestion, strikes, imminent strikes, lockouts or harbor disturbances..." The UIIA defines force majeure as "...strikes, or any like causes beyond the Motor Carrier's control..." In addition, the California Business and Professions Code Section 22928 expressly prohibits the assessment of per diem "during a labor disruption period..." The Motor Carrier indicated that based on these facts and the law, all UIIA Equipment Providers should immediately suspend per diem charges on any interchanged equipment in the Port of Long Beach and Port of Los Angeles.

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

The Equipment Provider responded stating that during the relevant time period of March 4, 2015 to March 6, 2015, their terminal ("Pier C") averaged a thirty-four (34) minute turn time. The Equipment Provider also stated that Pier C is an exclusive use terminal that provides its own chassis and, as a result, they do not have the chassis shortage or truck turn time problems experienced by carriers at other marine terminals. The Equipment Provider believes the charges are valid as invoiced.

The Equipment Provider also provided the following regarding Pier C operating hours:

Monday – Friday	0800 – 1700
Monday, Tuesday and Friday nights	1800 – 0300
Pier C was closed on 2/28 & 2/29	

The Equipment Provider further reported that Pier C does turn away truckers while the gate is open so there is no need for turn away tickets.

DISCUSSION:

The Motor Carrier submitted its basis and narrative, together with two general news articles regarding port congestion of the West Coast, relating to the initial dispute of charges as its supporting documentation for this claim. The Motor Carrier believes that force majeure conditions existed that precluded the return the equipment within the specified free time.

The Equipment Provider believes it provided the necessary evidence to prove that the port congestion did not impact business operations at Pier C, which is the facility associated with the disputed charges. Therefore the Motor Carrier's ability to return the equipment within the allowable free time was not precluded and the charges invoiced are valid as billed.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

With regards to the Motor Carrier's basis relating to the California Business and Professions Code, Section 22928, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, during a labor disruption period, during any other period involving an act of God, or any other planned or unplanned action that closes the truck gate; or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11. of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations.

DECISION:

Based upon the supporting documents and evidence submitted, the panel finds that there is no evidence that the Motor Carrier was unable and/or prevented from returning the equipment due to force majeure conditions or that it was turned away by the terminal. The Motor Carrier failed to

provide supporting documentation, such as Harbor Trucking Association Port Turn Times (“HTA”) that would demonstrate congestion increased at the terminal during the period contested in this case. To the contrary, HTA data shows that the turn time at Pier C, during the base line period from October 2013 through August 2014, was less than half the average turn time at all the other terminals included in the report. The turn time at this terminal also remained well below the base line average throughout the work slowdown period that affected the Southern California ports from September 2014 through March 2015. In addition, the panel did not find any evidence that the Provider had not complied with Section G.11 Compliance With the Law of the UIIA. Therefore, the panel finds that there is no evidence to support the Motor Carrier’s claim and unanimously finds for the Equipment Provider.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to interchange Equipment to Provider within the free time as specified in Provider’s Addendum, or Provider’s applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier’s control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

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

CASE REVIEWED AND DECIDED BY:

ROBERT CANNIZZARO
Ocean 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 Motor Carrier,
Appellant, and)

Case Number: **201500429-2-XXXN-PD**

UIIA Equipment Provider,
Respondent)

Date of Decision: 12/18/2015

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Invoice#	Invoice	Inv. Date	Amount	Facility	Outgated	Ingated
1	NAIM3138748	1/20/15	\$00.00	PCT/LGB Pier A	12/30/14	1/13/15
2	NAIM3138541	1/20/15	\$00.00	PCT	12/30/14	1/13/15
3	NAIM3137948	1/20/15	\$00.00	PCT/LGB Pier A	12/30/14	1/13/15
4	NAIM3137053	1/20/15	\$00.00	Shippers Transport/LGB Pier A	12/30/14	1/13/15
5	NAIM3144589	1/22/15	\$00.00	Shippers Transport/LGB Pier A	12/29/14	1/14/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that force majeure conditions existed at the port and that steamship lines declared a de facto force majeure by assessing port congestion surcharges under their Federal Maritime Commission ("FMC") filed tariffs. The Motor Carrier further stated that, on a daily basis, steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier stated that these conditions prevented it from returning equipment within the allowable free time period.

The Motor Carrier also indicated that the findings of the FMC as well as the articles in various publications all support the conclusion that port congestion is a force majeure event. The Motor Carrier referenced that under the Code of Federal Regulations (49 CFR 375.103), "*Force majeure means a defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care.*" The FMC filed tariffs of many Equipment Providers also define force majeure as "... *port congestion, strikes, imminent strikes, lockouts or harbor disturbances...*" The UIIA defines force majeure as "...*strikes, or any like causes beyond the Motor Carrier's control...*" In addition, the California Business and Professions Code Section 22928 expressly prohibits the assessment of per diem "during a labor disruption period..." The Motor Carrier indicated that based on these facts and the law, all UIIA Equipment Providers should immediately suspend per diem charges on any interchanged equipment in the Port of Long Beach and Port of Los Angeles.

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

The Equipment Provider responded stating that it has no way of knowing if the Motor Carrier attempted to return the units or, if the Motor Carrier simply did not try because the Motor Carrier knew the terminals were congested.

Further, the Equipment Provider stated that the Motor Carrier did not provide documentation showing that the Motor Carrier was turned away from the terminal and, therefore, believes that the invoices are valid because the terminals were not closed.

The Equipment Provider provided the Port hours and the days the facilities were closed during the interchange period of December 29, 2014 through January 12, 2015:

	Hours	Dates Closed	
Pier A	Monday thru Friday 8:00 a.m. – 4:30 p.m; Monday thru Thursday 6:00 p.m. 2:30 a.m.	January 1st, January 19th dayside only	This facility does not provide turn away tickets to the Motor Carriers that are turned away
PCT	Monday thru Friday 7:00 a.m. – 3:00 a.m.	12/28/14 thru 1/15/15; 12/31/14, 1/1/15, 1/18/15 from 5:00 p.m. – 3:00 p.m.	This facility does not provide turn away tickets to the Motor Carriers that are turned away

DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties. 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 believes that force majeure conditions existed that precluded the return the equipment within the specified free time.

The Equipment Provider responded stating that it has no way of knowing if the Motor Carrier attempted to return the units. Further, the Equipment Provider stated that the Motor Carrier did not provide documentation showing that the Motor Carrier was turned away from the terminal and, therefore, believes that the invoices are valid because the terminals were not closed.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

With regard to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine terminal or terminal truck gate is closed during posted normal working hours, or during a labor disruption or any other period involving an act of God or any other planned or unplanned action that closes the truck gate, 2) when the intermodal marine terminal decides to divert equipment without 48 hours' electronic or written notification to the Motor Carrier, 3) when a loaded container is not available for pickup when the Motor Carrier arrives at the intermodal marine terminal, and 4) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. The Motor Carrier indicated that one or more of the above conditions existed during the period covered by the disputed charges.

DECISION

The panel reviewed all documents and evidence submitted by the parties. The Motor Carrier submitted its basis and narrative relating to the initial dispute of the charges as its supporting documentation for this claim. The Equipment Provider responded stating that it has no way of knowing if the Motor Carrier attempted to return the units. Further, the Equipment Provider stated that the Motor Carrier did not provide documentation showing that the Motor Carrier was turned away from the terminal and, therefore, believes that the invoices are valid because the terminals were not closed.

Based on the supporting documents and evidence submitted, the Motor Carrier failed to prove the units were empty and available to be returned. In addition, the Motor Carrier failed to prove that it was unable and/or prevented from returning the equipment due to force majeure condition or that it was turned away by the terminal.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised [09/13/04]**

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

CASE REVIEWED AND DECIDED BY:

DAVE DALY
Ocean Carrier Member

ROBERT A. CURRY
Motor Carrier Member

In the Dispute Between

Case Number: **20150515-12-XXXT-PD**

Date of Decision: 01/20/2016

Inv. #	Invoice	Inv. Date	Amount	Container #	Facility	Outgated	Ingated	Date MC stated they rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute
1	STB1812048	3/23/15	\$ 00.00	KKFU7409160	TraPac/ITS	2/26/15	3/12/15	3/23/15	4/22/15	4/30/15
				KKFU7581923	TraPac/ITS	3/3/15	311/15			
				KKFU7665006	TraPac/ITS	3/4/15	3/12/15			
				KKFU7694067	TraPac/ITS	3/3/15	3/10/15			
				KKFU7925607	TraPac/ITS	3/4/15	3/12/15			
				KKFU9140439	TTI/ITS	2/27/15	3/10/15			
				TCLU1822330	TraPac/ITS	3/5/15	3/12/15			

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that force majeure conditions existed at the port and that steamship lines declared a de facto force majeure by assessing port congestion surcharges under their Federal Maritime Commission ("FMC") filed tariffs. The Motor Carrier further stated that, on a daily basis, steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier stated that it was unable to return the equipment to the Provider within the free time allowed as the terminal was only accepting dual transactions.

The Motor Carrier also indicated that the findings of the FMC as well as the articles in various publications all support the conclusion that port congestion is a force majeure event. The Motor Carrier referenced that under the Code of Federal Regulations (49 CFR 375.103), “*Force majeure means a defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care.*” The FMC filed tariffs of many Equipment Providers also define force majeure as “... *port congestion, strikes, imminent strikes, lockouts or harbor disturbances...*” The UIIA defines force majeure as “...*strikes, or any like causes beyond the Motor Carrier’s control...*” In addition, the California Business and Professions Code Section 22928 expressly prohibits the assessment of per diem “during a labor disruption period...” The Motor Carrier indicated that based on these facts and the law, all UIIA Equipment Providers should immediately suspend per diem charges on any interchanged equipment in the Port of Long Beach and Port of Los Angeles.

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

The Equipment Provider responded stating that its return locations remained open throughout the interchange periods in question. Therefore, the Motor Carrier was not precluded from returning the equipment within the free time allowed. The Equipment Provider also provided the port hours as day/night shifts, 8:00 a.m. – 4:30 p.m. and 6:00 p.m. – 2:00 a.m. The Equipment Provider indicated that the facilities in question provide refusal slips and/or email when a Motor Carrier is turned away at the port. In addition, the Equipment Provider provided an Empty Return report that demonstrates consistent empty returns for all K-Lines empty returns to terminals by day and by week covering the disputed period. In addition, the Equipment Provider also provided a table that shows during this same timeframe, the Motor Carrier was also in-gating and out-gating equipment in a consistent volume. The Equipment Provider believes the charges are valid as invoiced.

DISCUSSION:

The Motor Carrier submitted its basis and narrative relating to the initial dispute of charges as its supporting documentation for this claim. The Motor Carrier believes that force majeure conditions existed that precluded the return the equipment within the specified free time. The Motor Carrier also provided email communications from the Equipment Provider’s equipment control department providing instructions regarding empty equipment returns for the period February 26, 2015 through March 12, 2015. However, while some emails indicate the Equipment Provider was only accepting dual transaction, there was no reference to ITS where all the containers were returned.

The Equipment Provider believes it provided the necessary evidence to prove that the port congestion did not impact business operations at the facility associated with the disputed charges. Therefore the Motor Carrier’s ability to return the equipment within the allowable free time was not precluded and the charges invoiced are valid as billed.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

With regards to the Motor Carrier’s basis relating to the California Business and Professions Code, Section 22928, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, during a labor disruption period, during any other period involving an act of God, or any other planned or unplanned action that closes the truck gate; or 2) when the intermodal

marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11. of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations.

DECISION:

Based upon the supporting documents and evidence submitted, the panel finds that there is no evidence that the Motor Carrier was unable and/or prevented from returning the equipment due to force majeure conditions or that it was turned away by the terminal. The Motor Carrier panel member added that the Moving Party failed to provide supporting documentation that would demonstrate increased terminal dwell time during the period contested in this case. In addition, the panel did not find any evidence that the Provider had not complied with Section G.11 Compliance With the Law of the UIIA. Therefore, the panel finds that there is no evidence to support the Motor Carrier's claim and unanimously finds for the Equipment Provider.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised [09/13/04]**

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

CASE REVIEWED AND DECIDED BY:

THOMAS BARATTINI
Ocean Carrier Member

JEFFREY LANG
Motor Carrier Member

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

In the Dispute Between

UIIA MC,
Appellant, and

UIIA EP,
Respondent

Case Number: **20150601-30-XXXI-PD**

Date of Decision: 02/23/2016

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Inv. #	Invoice	Inv. Date	Amount	Container #	Facility	Outgated	Ingated	Date MC stated they rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute
1	BLAI0252650	3/30/15	\$00.00	CMAU5333307	TTI/TTI	12/12/14	1/9/15	3/30/15	4/28/15	5/18/15
2	BLAI0252647	3/30/15	\$00.00	GLDU7643123	TTI/TTI	12/3/14	1/8/15	3/30/15	4/28/15	5/18/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure) due to port congestion that existed at the Ports of Los Angeles and Long Beach. The Motor Carrier stated that conditions existed that prevented its ability to return equipment within the specified free time. The Motor Carrier indicated that conditions such as labor issues, closed terminals, early gate closures, closed areas, equipment redirections and non-acceptance of equipment on certain days/shifts have all contributed to the congestion and are issues that were beyond the Motor Carrier's control. The Motor Carrier stated that under these conditions delays cannot be avoided and, therefore, it should not be held responsible for per diem during this timeframe. The Motor Carrier also stated that port congestion has been recognized by Equipment Providers, as a form of force majeure. Many Equipment Providers, within their FMC filed tariffs, include port congestion as an example of force majeure. The Motor Carrier argues that since the Equipment Provider can invoke the force majeure provision within its own tariff to exempt themselves from liabilities, they should not be able to levy per diem charges against Motor Carriers under these same conditions for delays in returning equipment due to congestion at the terminals.

The Motor Carrier also submitted turn time data from the Harbor Trucking Association ("HTA") that showed the impact on driver turn times during the timeframe of the port congestion. The Motor Carrier believes this evidence supports its dispute that the port congestion had a direct impact on its normal business operations in regard to being able to return equipment to the Equipment Provider within the allowable free time. The Motor Carrier also commented, in its initial dispute of the charges that it was unable to return the equipment to the TTI terminal as the facility was only accepting

dual transactions and the Motor Carrier did not have a load ready to pull from the facility at that time. The unit was finally return on January 9th when the Motor Carrier indicated that it had an empty to return in order to meet the dual transaction restriction at the TTI facility. The Motor Carriers also indicated that the terminals were over capacity and congested, which caused delays and dry runs to pull or return a container. The Motor Carrier is unable to control these types of conditions. Lastly, the Motor Carrier also referenced California State law SB45 indicating that this regulation prohibited the Equipment Provider from imposing per diem when the terminal rejected an empty and there was no other location where the empty could be terminated.

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

The Equipment Provider did not submit comments or supporting documentation relating to this arbitration claim; however, the Equipment Provider did respond to the Motor Carrier's initial dispute of the charges. The Equipment Provider stated in its initial response to the dispute that the facility was open for business during the interchange dates and there were no restrictions in place during this timeframe. Therefore, the Equipment Provider believes the charges are valid as billed.

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 also provided turn time data from the HTA that showed the impact on driver turn times during the timeframe of the port congestion. The Motor Carrier also indicated that there were dual transaction limitations in place at TTI during the interchange period that precluded its ability to return the empty unit. In addition, the Motor Carrier does not believe the Equipment Provider complied with SB45 by assessing per diem charges since the terminal rejected the equipment and there was no alternate location provided to return the empty.

The Equipment Provider did not submit comments or documentation to the arbitration claim, but did respond to the initial dispute of charges stating the facility was open during the interchange dates and believes the charges are valid as billed.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

In regards to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate., or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations

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 finds in favor of the Motor Carrier. The Motor panel member stated that the Motor Carrier provided documentation

proving that an empty could not be returned to TTI unless a load was picked up. The Motor panel member commented that the Motor Carrier does not control when the next load will be available at TTI and also noted that the Motor Carrier returned the empty when a load was available. The Motor panel member believes these conditions were beyond the control of the Motor Carrier.

The Ocean Carrier panel member finds in favor of the Equipment Provider. The Ocean Carrier panel member commented that the Motor Carrier did not notify the Equipment Provider at the time of interchange that they had issues regarding return of the equipment. The Ocean panel member also noted that the supporting documentation evidencing the need for dual transactions is not during the interchange period of the invoices. A request was made to both the Motor Carrier and the terminal to provide additional documentation to confirm when the dual transaction restriction was in place, but no additional evidence was provided.

Because the model 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.

Based on the evidence presented in this case, the Rail panel member commented that this is a case of "he said/she said" in that neither the Motor Carrier nor the Equipment Provider provided sufficient documentation to prove their claims. The Rail panel member states that the Motor Carrier failed to provide sufficient documentation to prove that TTI's "dual transaction" policy was in effect at the time of the attempted return, and that the Equipment Provider failed to substantiate the claims it made by failing to respond to the arbitration claim. As such, given the relatively little documentation provided by both parties, the Rail panel member finds a split decision in this case. The per diem should be evenly split between the parties. The total amount owed by the Motor Carrier to the Equipment Provider for the two invoices is \$00.00.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material.
[Revised 08/26/13]

12. Force Majeure: In the event the Motor Carrier is unable to interchange Equipment to provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment.
[Revised [09/13/04]

Exhibit D, Item 9

The arbitration process will be commenced by IANA's transmittal of the Notice of Intent to Seek Arbitration and the required information and arguments to the appropriate individual in the Invoicing Party or Invoiced Party (Responding Party) organization

designated to receive such Notice and information. The Responding Party will have 15 calendar days from the date of transmittal of the arbitration documents from IANA to respond. Upon receipt of the Responding Party's documents, the complete record will be transmitted by IANA to the arbitrators. Failure of the Responding Party to respond to the claim (s) within this timeframe will result in the arbitration panel rendering its decision based solely on the supporting documentation submitted by the Moving Party, along with the terms and conditions of the UIIA and/or the Providers' Addenda. **[Revised 08/26/13]**

DECISION: The third panel member finds a split decision in this case. The per diem charges on the two invoices under dispute are to be split evenly between the involved parties. Consequently, the Motor Carrier is responsible for the adjusted amount of \$00.00.

CASE REVIEWED AND DECIDED BY:

WALTER WATSON
Rail Carrier Member

AL SMERALDO
Ocean 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 MC,
Appellant, and)

UIIA EP,
Respondent)

Case Number: **20150602-4-XXXN-PD**

Date of Decision: 01/29/2016

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Inv #	Invoice	Inv. Date	Amount	Container #	Facility	Outgated	Ingated	Date MC stated they rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute
1	2330040	3/2/15	\$00.00	PCIU8546723	LBS / Los Angeles Street	1/30/15	2/9/15	3/2/15	3/23/15	3/27/15
2	2330020	3/2/15	\$00.00	PCIU8453385	LBS / ITS	1/28/15	2/12/15	3/2/15	3/23/15	3/27/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that force majeure conditions existed at the port and that steamship lines declared a de facto force majeure by assessing port congestion surcharges under their Federal Maritime Commission ("FMC") filed tariffs. The Motor Carrier further stated that, on a daily basis, steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier stated that these conditions prevented it from returning equipment within the allowable free time period.

The Motor Carrier also indicated that the findings of the FMC as well as the articles in various publications all support the conclusion that port congestion is a force majeure event. The Motor Carrier referenced that under the Code of Federal Regulations (49 CFR 375.103), "*Force majeure means a defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care.*" The FMC filed tariffs of many Equipment Providers also define force majeure as "... *port congestion, strikes, imminent strikes, lockouts or harbor disturbances...*" The UIIA defines force majeure as "...*strikes, or any like causes beyond the Motor Carrier's control...*" In addition, the California Business and Professions Code Section 22928 expressly prohibits the assessment of per diem

“during a labor disruption period...” The Motor Carrier indicated that based on these facts and the law, all UIIA Equipment Providers should immediately suspend per diem charges on any interchanged equipment in the Port of Long Beach and Port of Los Angeles.

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

The Equipment Provider did not submit comments to the arbitration claim. However, The Equipment Provider did provide confirmation of the terminal’s normal business hours, dates the facility was closed, and if the facility provided turn away tickets as follows:

- Monday – Thursday – 0700 – 0200
- Friday - 0700 – 1600, Saturday – 0700 – 1600, Sunday – Closed
- Terminal was closed 1 day (February 8, 2015 – Sunday) during the interchange period.

The Equipment Provider adjusted the invoices to remove the one day for Sunday, February 8th that the terminal was closed, but indicated that the terminal is open on Saturdays.

The Equipment Provider reported that turn away tickets are provided to the Motor Carrier if the Motor Carrier is turned away at the gate.

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 believes that force majeure conditions existed that precluded the return of the equipment within the specified free time.

Based on the Motor Carrier’s initial dispute of the charges, the evidence showed that the Equipment Provider did adjust the billings for the one day that the terminal was closed.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

With regard to the Motor Carrier’s basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate, or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations.

DECISION:

Based upon the supporting documents and evidence submitted, the panel finds that there is no evidence that the Motor Carrier was unable and/or prevented from returning the equipment due to force majeure conditions or that it was turned away by the terminal. The Motor Carrier failed to provide supporting documentation that would substantiate slower driver turn times during the period contested in this case. Furthermore, the panel does not believe that SB 45 is applicable in this instance as the terminal was open and, therefore, finds no evidence that the Provider had not complied with Section G.11 Compliance With the Law of the UIIA. The Provider adjusted the billings for the one day that the facility was closed. Therefore, the panel finds that there is no evidence to support the Motor Carrier's claim and unanimously finds for the Equipment Provider.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

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

CASE REVIEWED AND DECIDED BY:

THOMAS BARATTINI
Ocean Carrier Member

JEFFREY LANG
Motor Carrier Member

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

In the Dispute Between)

UIIA MC,
Appellant, and)

Case Number: **20150630-7-XXXN-PD**

UIIA EP,
Respondent)

Date of Decision: 01/29/2016

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Invoice#	Invoice	Inv. Date	Amount	Facility	Outgated	Ingated
1	SPEI042243	1/31/15	\$00.00	Global Gateway	12/17/14	1/2/15
				Global Gateway/LBCT	12/24/14	1/6/15
2	SPEI042017	1/16/15	\$00.00	Global Gateway	12/3/14	12/18/14
				Global Gateway	12/4/14	12/18/14
				Global Gateway	12/10/14	12/23/14
				Global Gateway/LBCT	12/10/14	12/24/14
				Global Gateway	11/26/14	12/18/14
				Global Gateway	12/4/14	12/17/14
				Global Gateway	12/3/14	12/18/14
				Global Gateway/LBCT	12/9/14	12/24/14
				Global Gateway	12/17/14	12/29/14

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that force majeure conditions existed at the port and that steamship lines declared a de facto force majeure by assessing port congestion surcharges under their Federal Maritime Commission ("FMC") filed tariffs. The Motor Carrier further stated that, on a daily basis, steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier stated that these conditions prevented it from returning equipment within the allowable free time period.

The Motor Carrier also indicated that the findings of the FMC as well as the articles in various publications all support the conclusion that port congestion is a force majeure event. The Motor Carrier referenced that under the Code of Federal Regulations (49 CFR 375.103), "*Force majeure means a defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care.*" The FMC filed tariffs of many Equipment Providers also define force majeure as "... port congestion, strikes, imminent strikes, lockouts or harbor disturbances..." The UIIA defines force majeure as "...strikes, or any like causes beyond the Motor Carrier's control..." In addition, the California Business and Professions Code Section 22928 expressly prohibits the assessment of per diem "during a labor disruption period..." The Motor Carrier indicated that based on these facts and the law,

all UIIA Equipment Providers should immediately suspend per diem charges on any interchanged equipment in the Port of Long Beach and Port of Los Angeles.

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

The Equipment Provider responded stating that on February 3, 2015, the Motor Carrier sent a general dispute letter demanding force majeure be declared and that all per diem be suspended. However, the letter did not identify any specific invoices being disputed on the grounds of force majeure. May 1, 2015, was the first indication by the Motor Carrier that it was disputing Invoices SPEI042243 and SPEI042017 under the present claim.

On February 10, 2015, the Motor Carrier disputed certain containers on these same invoices, but for grounds other than force majeure. After discussion with the Motor Carrier, the Equipment Provider removed the charges for these containers and provided the Motor Carrier with revised invoices. In addition, on February 10th, the Motor Carrier also disputed specific container movements on Invoices SPEI042017 and SPEI042243 in regards to being charged for Saturdays and number of free days provided.

The Equipment Provider responded to the Motor Carrier's dispute within the sixty (60) day timeframe set forth in its addendum. The Equipment Provider concurred with the issue raised by the Motor Carrier related to free time and amended the invoices to reflect the appropriate free time. The Equipment Provider disputes the Saturday charges stating the facility was open on that day. The amended invoices are identical to the ones submitted by the Motor Carrier with this arbitration claim.

In addition, the Equipment Provider provided the following regarding the terminals normal business hours, the dates the facility was closed and, if the facility provided turn away tickets:

Eagle Marine Services Hours:	Monday – Friday 7:00 a.m. to 4:45 p.m. Monday – Thursday 5:00 p.m. to 2:45 a.m. Saturday 8:00 a.m. to 4:30 p.m.
Eagle Marine Services was closed on the following dates:	Holidays – 11/27/14, 12/25/14 and 1/1/15 Sundays – 11/30/14, 12/7/14, 12/14/14, 12/21/14, 12/28/14 and 1/4/15
Long Beach Container Terminal Hours	Long Beach Container Terminal Hours: Monday – Friday 8:00 a.m. to 2:30 p.m. Monday – Thursday 5:00 p.m. to 2:45 a.m. Saturday 8:00 a.m. to 4:30 p.m.

No closure dates for Long Beach Container Terminal were provided. The Equipment Provider also confirmed that no turn away tickets are provided unless the trucker gets to the pedestal and is turned away. If the driver departs before reaching the pedestal, they will not receive a ticket.

The Equipment Provider provided a breakdown of each invoice as follows:

Invoice SPEI042243	Invoice SPEI042017
Container – TRLU5823523 – charges stand as invoiced	Container TRLU6648894 – charges stand as billed
Container – TEMU7396542 – charges stand as invoiced.	Container TCLU5151029 – charges stand as billed
	Container TRLU8171033 – charges stand as billed
	Container APHU7339076 – charges stand as billed
	Container PCIU9802835 – adjusted per diem by one day for 12/14/14 which was a Sunday. Total adjusted amount due on this invoice is \$846.

	Container TCNU9208541 – charges stand as billed
	Container APHU7144460 – charges stand as billed
	Container TCLU5017010 – charges stand as billed
	Container TRLU5011767 0 charges stand as billed

Total Charges Due: Invoice SPEI042243 - \$00.00 Invoice SPEI042017 - \$00.00

DISCUSSION:

The Motor Carrier submitted its basis of dispute and a narrative relating to the initial dispute of the charges with the Equipment Provider. The Motor Carrier believes that force majeure conditions existed that precluded the redelivery of equipment and that the Equipment Provider has not complied with the California state regulation with regards to the conditions when state law precludes the assessment of per diem.

The Equipment Provider believes the invoices, with the exception of the adjustments made, are valid as billed and that the conditions that existed as a result of the port congestion did not preclude the Motor Carrier from returning the equipment within the specified free time.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

With regards to the Motor Carrier's basis relating to the California Business and Professions Code, Section 22928, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, during a labor disruption period, during any other period involving an act of God, or any other planned or unplanned action that closes the truck gate; or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11. of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations.

DECISION:

The panel carefully reviewed all documents and evidence submitted by the parties. The Equipment Provider carefully reviewed each disputed Invoice and made adjustments when the return facility was closed and/or additional free time was extended. In addition, the Equipment Provider provided confirmation of the terminals normal business hours, dates closed, and if turn away tickets were provided. The Motor Carrier failed to provide any detail showing that the port slowdown impacted their operation resulting in their inability to timely return containers.

Based on the supporting documents and evidence submitted, the Motor Carrier failed to prove that it was unable and/or prevented from returning the equipment due to force majeure conditions or that it was turned away by the terminal. Therefore, the panel unanimously finds in favor of the Equipment Provider.

The panel found no evidence that the Equipment Provider did not comply with Section G.11. Compliance with the Law of the UIIA.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised [09/13/04]**

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

CASE REVIEWED AND DECIDED BY:

AL SMERALDO
Ocean Carrier Member

DAVE MANNING
Motor Carrier Member

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

Date of Decision: 09/30/2016

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Inv. #	Invoice	Inv. Date	Facility	Outgated	Ingated	Date MC stated they rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent form rec'd.	Days MC is disputing:
1	D000622096	2/1/16	CA United Terminals (CUT)/ CA United Terminals (CUT)	12/9/15	1/22/16	2/1/16	2/22/16	3/7/16	3/15/16	1/10 Sunday 1/17 Sunday
2	D000622097	2/1/16	Trapac/CUT	12/15/15	1/22/16	2/1/16	2/22/16	3/7/16	3/15/16	1/10 Sunday 1/17 Sunday
3	D000622091	2/1/16	Trapac/ConGlobal	12/1/15	1/19/16	2/1/16	2/22/16	3/7/16	3/15/16	1/16 Saturday 1/17 Sunday 1/18 MLH
4	D000623308	2/3/16	Global Gateway/Yusen	12/15/15	1/25/16	2/3/16	2/22/16	3/7/16	3/15/16	1/10 Sunday 1/17 Sunday 1/24 Sunday
5	D000623315	2/3/16	CUT/LBCT	12/3/15	1/27/16	2/3/16	2/22/16	3/7/16	3/15/16	1/24 Sunday
6	D000623321	2/3/16	CUT/Global Gateway	12/23/15	1/29/16	2/3/16	2/22/16	3/7/16	3/15/16	1/24 Sunday
7	D000623310	2/3/16	CUT/CUT	12/23/15	1/25/16	2/3/16	2/22/16	3/7/16	3/15/16	1/24 Sunday
8	D000623311	2/3/16	Trapac/Trapac	12/7/15	1/25/16	2/3/16	2/22/16	3/7/16	3/15/16	1/1 New Year 1/3 Sunday 1/10 Sunday 1/17 Sunday 1/24 Sunday

9	D000623317	2/3/16	Trapac/LBCT	12/29/15	1/27/16	2/3/16	2/22/16	3/7/16	3/15/16	1/24 Sunday
10	D000628791	2/17/16	Trapac/LBCT	12/29/15	2/8/16	2/17/16	2/22/16	3/7/16	3/15/16	1/24 Sunday 1/31 Sunday 2/7 Sunday
11	D000628789	2/17/16	Trapac/LBCT	12/9/15	2/8/16	2/17/16	2/22/16	3/7/16	3/15/16	1/24 Sunday 1/31 Sunday 2/7 Sunday
12	D000628790	2/17/16	Trapac/LBCT	12/30/15	2/9/16	2/17/16	2/22/16	3/7/16	3/15/16	1/24 Sunday 1/31 Sunday 2/7 Sunday
13	D000628792	2/17/16	Trapac/CUT	1/2/16	2/11/16	2/17/16	2/22/16	3/7/16	3/15/16	1/24 Sunday 1/31 Sunday 2/7 Sunday

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Section G.11 of the UIIA (Compliance with the Law). The Motor Carrier indicated that the Equipment Provider did not comply with the California state regulation SB45, which indicates that no per diem can be assessed to the Motor Carrier when the intermodal marine or terminal truck gate is closed during posted normal working hours. The Motor Carrier also noted that the SB45 regulation indicates that no per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate. The Motor Carrier does not believe it is liable for payment of these invoices.

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

The Equipment Provider responded stating that the weekends and holidays were not calculated in the Motor Carrier's 14 calendar days of free time. Therefore, the Equipment Provider feels that the charges are valid 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. Both panel members requested further confirmation from the involved parties that the terminals were in fact closed on the days claimed by the Motor Carrier. After receiving affirmative of this information, both panel members found the Motor Carrier not responsible for the disputed charges due to the facilities being closed on the specified dates. The Motor Carrier panel member further noted that according to the California state regulation SB45, the Motor Carrier is not to be billed per diem for days when the facilities are closed.

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:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

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

CASE REVIEWED AND DECIDED BY:

DAVE MANNING
Motor Carrier Member

AL SMERALDO
Ocean Carrier Member

EQUIPMENT PROVIDER'S RESPONSE

The Equipment Provider did not provide any comments during the 15-day comment period, but it did respond to the Motor Carrier's initial dispute stating that the earliest return date (ERD) was July 12, 2022, but the Motor Carrier street turned the container on June 29, 2022. The Equipment Provider stated that the Motor Carrier would have had 10 calendar days free time, but since the Motor Carrier street turned the equipment too early on June 29th, it caused the last free day to change to July 8, 2022. Therefore, the Equipment Provider believes that because the per diem was incurred due to the Motor Carrier street turning the container too early, the per diem charges are valid and the invoice should stand as billed.

DISCUSSION

After careful review of the parties' arguments, documents, and evidence submitted, the panel finds in favor of the Motor Carrier. The Motor Carrier panel member noted that the Motor Carrier performed a street turn within reasonable and customary standards, and the container did not have to remain on the import booking. The per diem was not accrued as a result of the Motor Carrier's performance, but it was the result of the Equipment Provider and vessel delays. The Motor Carrier panel member concurred with the basis of the Motor Carrier's dispute that the Equipment Provider did not comply with Subsection (d)(2)(M) of 46 U.S.C., 41104, OSRA regulation that requires confirmation that the common carrier's performance did not cause or contribute to the underlying invoiced charges. Therefore, the Equipment Provider did not comply with Section G.11. of the UIIA that requires signatories to "obey all applicable federal, state and local laws, rules and regulations."

The Ocean Panel member concurred that upon review of the supporting evidence that the per diem was not accrued as a result of the Motor Carrier's performance, but by the Equipment Provider and vessel delays.

Accordingly, based on the above, 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:

G. General Terms, Item G.11

Compliance with the Law: The Parties shall obey all applicable federal, state, and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

46 U.S.C. § 41104, Subsection (d)(2)(M) Common carriers

(2) Contents of invoice.-An invoice under subsection (a)(15), unless otherwise determined by subsequent Commission rulemaking, shall include accurate information on each of the following, as well as minimum information as determined by the Commission:

(M) A statement that the common carrier's performance did not cause or contribute to the underlying invoiced charges.

DECISION:

The panel unanimously finds in favor of the Motor Carrier based on the evidence and supporting documentation presented in the case. The Motor Carrier is not responsible for the disputed per diem charges in the amount of \$00.00 under this claim based on Section G.11. of the UIIA.

CASE REVIEWED AND DECIDED BY:

DAVID HENSAL
Motor Carrier Panel Member

LEONARD IMPERIAL
Ocean Carrier Panel Member

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent.

Case Number: **20220901-33-XXXI-PD**

Date of Decision: 05/22/2023

	Invoice Number	Invoice Date	Date MOTOR CARRIER Rec'd Invoice	Date MOTOR CARRIER Disputed Invoice	Date EQUIPMENT PROVIDER Responded to MC's dispute	Notice of Intent Received
1	DT0311789	8/29/2022	8/29/2022	8/30/2022	8/31/2022	8/24/22

The Motor Carrier is basing its dispute on Section G.11. of the UIIA and the Ocean Shipping Reform Act of 2022, 46 U.S.C. § 41104, Section 7(d)(2)(M). The Motor Carrier states that the units were street turned to an export customer, and the Equipment Provider states that the Motor Carrier should have continued to use the containers under the importer's bookings instead of street turning the units to the exporter's bookings because the free time had not run out on the import. However, the Motor Carrier believes that the billing is in violation of federal law, specifically section (d)(2)(M) of the invoicing requirements of the Ocean Shipping Reform Act (OSRA) that requires an invoice to include accurate information stating that the "common carrier's performance did not cause or contribute to the underlying invoiced charges". Therefore, the Motor Carrier believes that the Equipment Provider did not comply with Section G.11 of the UIIA and is not responsible for the per diem charges billed.

The Equipment Provider responded to the Motor Carrier's dispute stating that the free time was 10 calendar days so the Motor Carrier should not have street turned the containers so early. By doing so, it caused the last free day to change which was before the early return date (ERD). Therefore, the Equipment Provider believes the per diem charges are valid and the Motor Carrier is responsible for the charges billed.

DISCUSSION

After careful review of the parties' arguments, documents, and information presented in the dispute, the panel finds in favor of the Motor Carrier. The Ocean Carrier panel member indicated that the Equipment Provider's Detention (Per Diem) Invoice does not include all of the information required under 46 U.S.C. § 41104, Section (d)(2)(M) of the OSRA regulations, and the Motor Carrier has no obligation to pay the invoice in accordance with 46 U.S.C. § 41104, Section (f) of the regulations.

As required by the Ocean Shipping Reform Act of 2022, Section (d)(2)(M), the Equipment Provider (Invoicing Party) included a statement on its invoice stating, "Based on information that is available to the carrier at the time when the invoice was issued, the common carrier's performance, upon information and belief, did not cause or contribute to the underlying invoiced charges." However, based on the evidence provided, and not disputed by the Equipment Provider, it appears that the actions of the Equipment Provider did cause or contribute to the invoiced charges, rendering the Equipment Provider's statement on the invoice false in this instance.

The panel finds that it is questionable that the Equipment Provider denied the Motor Carrier's dispute on the basis that the Motor Carrier should have delayed requesting a street turn on the equipment so as to allow the remaining free time from the import shipment of the containers to have first elapsed. It would be inappropriate of the Motor Carrier (Moving Party) to reuse the container for an export shipment for the benefit of a different customer without the express written authorization of the Equipment Provider which can only be obtained through the street turn process. The Equipment Provider's basis in its argument that a Motor Carrier reuse a container for the benefit of a new customer while still under the interchange and booking of a prior, unrelated customer is inconsistent with long-standing industry best practices and standard protocol.

Based on the above and pursuant to Section G.11. of the UIIA and Sections (d)(2)(M) and (f) of the OSRA, the panel finds in favor of the Motor Carrier. The \$00.00 invoice in dispute should be canceled by the Equipment Provider, and the binding arbitration filing and processing fees should be reimbursed to 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:

G. General Terms, Item G.11

Compliance with the Law: The Parties shall obey all applicable federal, state, and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

46 U.S.C. § 41104, Section (d)(2)(M) Common Carriers

(2) CONTENTS OF INVOICE. - An invoice under subsection (a)(15), unless otherwise determined by subsequent Commission rulemaking, shall include accurate information on each of the following, as well as minimum information as determined by the Commission:

(M) A statement that the common carrier's performance did not cause or contribute to the underlying invoiced charges.

46 U.S.C. § 41104, Section (f) Common Carriers

(f) Elimination of Charge Obligation.—Failure to include the information required under subsection (d) on an invoice with any demurrage or detention charge shall eliminate any obligation of the charged party to pay the applicable charge.

DECISION:

The panel unanimously finds in favor of the Motor Carrier based on the evidence and supporting documentation presented in the case. The Motor Carrier is not responsible for the disputed per diem charges in the amount of \$00.00 under this claim based on Section G.11. of the UIIA and Sections (d)(2)(M) and (f) of the OSRA regulation. The \$00.00 invoice must be canceled by the Equipment Provider, and the binding arbitration filing and processing fees shall be reimbursed to the Motor Carrier based on Section (e) of the OSRA.

CASE REVIEWED AND DECIDED BY:

MATTHEW SCIASCIA
Motor Carrier Panel Member

JIM MICHALSKI
Ocean Carrier Panel Member