

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: **20141208-2-XXXN-PD**

Date of Decision: May 6, 2015

The Motor Carrier disputes the following invoices:

	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
Invoice #1	LGBD20140815095	11/3/14	00.00	ITS/ITS	10/23/14	10/31/14	11/3/14	11/20/14	11/24/14	12/8/14
Invoice #2	LGBD20140749009	10/9/14	00.00	ITS/ITS	9/25/14	10/8/14	11/20/14	12/5/14	12/5/14	12/8/14
Invoice #3	LGBD20140861194	11/19/14	00.00	ITS/ITS	11/5/14	11/17/14	11/24/14	12/5/14	12/5/14	12/8/14

Motor Carrier Basis of Dispute:

The Motor Carrier disputes these invoices under Section G.12 of the UIIA (Force Majeure) due to the port congestion conditions on the West Coast. The Motor Carrier states that the essential condition within the Force Majeure clause in the UIIA is that the Motor Carrier be unable to interchange equipment to the Equipment Provider for reasons beyond the Motor Carrier's control. When this condition is met, the Motor Carrier is exempted from the per diem charges for the duration of this condition. The Motor Carrier argues that the recent port congestion precluded it from returning the equipment within the free time period. The Motor Carrier also argued that the Equipment Provider violated the provision in SB45 prohibiting intermodal marine equipment providers from imposing per diem, detention and demurrage charges on the Motor Carrier when the marine terminal is too congested to accept containers and Motor Carriers are turned away. The Motor Carrier provided supporting documentation, including Journal of Commerce articles and e-mail communications, to prove these conditions existed at the port facilities during the time covered by the invoices.

Equipment Provider's Response:

The Equipment Provider responded with an e-mail communication from the ITS facility as proof that no truckers were shut out from returning empty container during the dates of 9/25/14 through 11/17/14. The terminal stated that there are two scenarios when empties are rejected: 1) when the SSL instructs ITS to reject equipment; and, 2) when the terminal has an extra gate shift where they accept only certain types of cargo. If these conditions exist, the ITS facility informs all lines and truckers of such conditions by e-mail from eModal. The ITS Terminal confirmed that it was closed on the following dates:

9/24/14 – Wednesday	10/25/14 - Saturday	10/19/14 - Sunday
9/28/14 – Sunday	10/26/14 - Sunday	
10/4/14 – Saturday	11/9/14 – Sunday	

The ITS terminal also confirmed to the Equipment Provider that if a trucker was turned away at the gate they would receive a turn away ticket. The Equipment Provider states that it requested, but the Motor Carrier did not produce, any evidence that it was turned away or that the facility was closed. The Equipment Provider indicates that if it had received such evidence from the Motor Carrier, it would have been unreasonable in billing per diem charges.

Discussion:

The Motor Carrier submitted JOC articles and eModal communications covering a wide range of dates that address conditions at specific facilities and notifications relating to equipment return. IANA identified for the panel the articles dated during the interchange period related to the challenged invoices, and the eModal communications covering the specific facility where the interchange of the equipment related to these invoices occurred. The Motor Carrier provided other supporting documentation made available to the panel under Central Desktop as “ADDL SUPPORTING DOCS.”

JOC Articles:

The JOC articles included with the claim are dated between 9/25/2014 and 11/17/2014. The JOC articles submitted by the Moving Party 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 Moving Party that specifically described the conditions at the ITS facility where the equipment associated with the disputed invoices was in-gated.

eModal E-mail Communications:

The Motor Carrier provided copies of e-mail communications received from eModal. These communications identified specific conditions at various facilities. These e-mail communications were related to the ITS facility where the interchange associated with the invoices under dispute took place. The e-mails include information related to row closures, chassis availability as well as specifics regarding ITS gate hours in certain conditions. The e-mails dated between the interchange period associated with the disputed invoices did not indicate that the ITS facility gates were closed or that drivers were turned away on any of these dates. The ITS facility confirmed via e-mail that if drivers were turned away, the driver would have received a turn away ticket. In addition, if the facility was no longer accepting equipment on behalf of an Equipment Provider, that information would be sent from eModal by e-mail. The Motor Carrier provided no evidence that it received any e-mail communications of this type regarding the ITS facility.

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.

Regarding SB45, this California state legislation 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. Section G.11 of the UIIA states that all parties must comply with all applicable federal, state and local laws, rules and regulations. The Motor Carrier did provide evidence of internal dispatch e-mail communications, which showed that there were instances on specific dates where its driver attempted to return empty equipment on behalf of the Equipment Provider to the ITS facility and was turned away.

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., the Force Majeure provision of the UIIA. They could also not

reach a consensus on whether the conditions identified by the Motor Carrier prevented it from being able to redeliver the equipment to the Equipment Provider within the specified free time. Both panel members agreed that the California Business and Professions Code Section 22928 (SB45) establishes specific conditions when the Equipment Provider cannot bill per diem. However, the modal panel members were unable to agree that these specific conditions were met on an overall basis to relieve the Motor Carrier from all of the per diem charges being disputed under this claim. Therefore, the third panel member was brought in to render a decision 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 provision. A 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.

Because the terminals were not completely shut down, 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**. Proof of rejection includes: rejection slips from the terminals, correspondence between the Equipment Provider and Motor Carrier, or dispatch correspondence at the time the Motor Carrier advised they could not deliver the equipment because of a specific reason on that day. Therefore, the third panel member finds in favor of the Equipment Provider with the exception of those dates that the Motor Carrier was able to provide proof of rejection or inability to interchange.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (August 1, 2014 and 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 exception of the specific dollar amounts associated with the following invoices. The majority of the panel has determined that the following invoices should be reduced based on the Motor Carrier's evidence of driver rejection, precluding the Motor Carrier's ability to interchange the equipment within the permitted free time.

DRP Case #	Invoice Number	Container Number	Date Charge Waived	Amount Waived
20141208-2-SOCN-PD	LGBD20140861194	WHLU6018857	11/14/14	\$000.00
20141208-2-SOCN-PD	LGBD20140749009	BMOU4004773	10/6/14	\$00.00
Total Invoice Adjustments:				\$00.00

The panel finds that the motor carrier is responsible for the remaining charges associated with this claim as follows:

DRP Case #	Invoice Number	Amount Owed
20141208-2-SOCN-PD	LGBD20140815095	\$00.00
20141208-2-SOCN-PD	LGBD20140861194	No balance
20141208-2-SOCN-PD	LGBD20140749009	\$00.00
	Total Owed:	\$00.00

CASE REVIEWED AND DECIDED BY:

GERRY BISAILLON
Rail Carrier Member

DAVID DALY
Ocean Carrier Member

ROBERT CURRY
Motor Carrier Member

Additional Commentary from Gerry Bisailon:

The third panel member agrees that the congestion in the Ports of Los Angeles and Long Beach was significant enough to reach national attention and had a significant impact on the economy. At its height, dozens of container ships lay offshore at anchor, waiting to berth and discharge their cargo. Meanwhile, westbound freight continued to flow for a time into the terminals both from road and rail with port operators selectively receiving cargo based on the current

conditions at the terminals. Port road infrastructure at times was congested enough to require police intervention and traffic control including directing trucks to find alternate routes or to turn around all together. Conditions were tough in the industry for all modes of transport, for shippers, customers, and members of the public.

Although not part of this decision, the third panel member stated that the situation at the West Coast ports as a result of the ILWU slowdown created numerous operating issues for all parties. In the spirit of cooperation and stewardship, he believes that the Equipment Providers should work with the Motor Carriers to resolve and find mutually agreeable terms, which may include waivers in whole or in part. The labor situation was atypical and lasted for an extended amount of time through no fault of the Motor Carrier, creating burdens on both Equipment Providers and Motor Carriers.

Additional Commentary from Dave Daly:

Although not part of this decision, the Ocean Carrier panel member believes that the work slowdown has to result in a stoppage condition and not a slowed condition to be considered a “strike” under Section G.12.

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: **20141222-4-XXXN-PD**

Date of Decision: May 6, 2015

The Motor Carrier disputes the following invoices:

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
PD00124854	11/3/2014	00.00	WBCT/WBCT	10/22/2014	10/29/2014	11/3/2014	11/24/2014	12/8/2014	12/22/2014
PD00125319	11/17/2014	00.00	WBCT/WBCT	11/4/2014	11/14/2014	11/17/2014	12/5/2014	12/8/2014	12/22/2014
				11/1/2014	11/13/2014				
				11/3/2014	11/10/2014				
				11/3/2014	11/13/2014				
				11/5/2014	11/12/2014				
PD00125668	12/1/2014	00.00	STS/STS	11/14/2014	11/24/2014	12/1/2014	12/5/2014	12/8/2014	12/22/2014

Motor Carrier Basis of 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 them from returning the equipment within the 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 meet this condition. 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]**. The Motor Carrier also stated that the Equipment Provider's tariff filed with FMC contains a force majeure provision that includes "port congestion". The Motor Carrier stated in its basis that it has the trucks, drivers and logistical system to timely return the containers, but were 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, which were all beyond the Motor Carrier's control.

The Motor Carrier also indicated that the Equipment Provider is not in compliance with California State regulation SB45, which prohibits intermodal marine equipment providers from imposing per diem, detention and demurrage charges on the Motor Carrier when the intermodal marine terminal is too congested to accept containers and turns away the Motor Carrier. The Motor Carrier has provided supporting documentation consisting of JOC articles, status updates issued by different Equipment Providers relating to the port congestion and various other documents that it believes supports its argument that these conditions existed at the port facilities.

Equipment Provider's Response:

The Equipment Provider responded that it requested the Motor Carrier to provide evidence that its drivers were turned away from the WBCT and STS facilities, but the Motor Carrier was unable to provide such information. The Equipment Provider advised the Motor Carrier that it would not be able to assist them with the dispute of the charges without proof that the driver was in fact turned away from the specific facility. The Equipment Provider also provided confirmation from the WBCT facility that it was open for delivery of equipment between the dates of 10/22/14 through 11/14/14 with the exception of weekends when the facility is normally closed. In addition, WBCT confirmed that it does not provide turn away tickets to Motor Carriers that are turned away at the gate. The STS facility confirmed that it had no gate closures between the dates of 11/14/14 through 11/24/14 with the exception of weekends when the facility is normally closed. It also indicated that the facility does not issue turn away tickets.

Discussion:

The majority of the supporting documentation provided by the Motor Carrier encompasses a wide range of dates of JOC articles talking about the congestion issues on the West Coast, a court decision involving the subject matter of force majeure, individual UIIA EP 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 interchange dates related to the invoices above and for the eModal transmissions that were specific to the facility where the interchange of the equipment related to these invoices occurred. This information has been included as part of the primary documentation for this claim. The other additional supporting documentation is available under Central Desktop under the document titled "ADDL SUPPORTING DOCS" for the panel's review as well.

JOC Articles:

The JOC articles included with the claim are dated between 10/22/14 through 11/24/14. The JOC articles submitted by the Motor Carrier provide 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 WBCT or STS facilities, which are the facilities where the equipment associated with the disputed invoices was in-gated.

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. 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). A copy of the commercial tariff filed by the specific Equipment Provider that is the Responding Party in this case has been included in the case file. The Equipment Provider's tariff includes a force majeure clause under Section O. of the tariff that includes a reference to "port congestion" as being a condition that would fall under the force majeure provision in the Equipment Provider's tariff. However, this tariff is considered outside the scope of the UIIA.

eModal E-mail Communications:

The Motor Carrier provided copies of e-mail communications received from eModal. These communications identified specific conditions at various facilities. From the eModal communications submitted with this claim, there were none that were related to the two facilities where the interchange of the equipment occurred. All eModal communications submitted were related to facilities other than WBCT and STS. Since none of these communications were related to STS and/or WBCT, this documentation has been included under the document "ADDL SUPPORTING DOCS" and is available through Central Desktop should the panel wish to review this information.

The Equipment Provider in this claim had requested that the Motor Carrier provide evidence that the STS and WBCT facilities closed their gates on the dates of the interchanges related to the disputed invoices and/or provide copies of driver turn away tickets from either of these facilities. The Motor Carrier was not able to produce the requested documentation, however the Motor Carrier indicated that the driver was turned away prior to reaching the gate so would not have been issued a turn away ticket. In addition, both facilities (STS and WBCT) confirmed that they do not issue turn away tickets to drivers. Please note however that there were also no eModal e-mail communications provided that evidenced that either of these facilities were no longer accepting empties on behalf of the EP or had been closed during the dates associated with the interchange of this equipment.

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 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, the only evidence presented that the driver attempted to gain access to these facilities and was turned away were the internal dispatch e-mail communications identifying specific dates and container movements where the driver encountered this problem.

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., the Force Majeure provision of the UIIA. They could also not reach a consensus on whether the conditions identified by the Motor Carrier prevented it from being able to redeliver the equipment to the Equipment Provider within the specified free time. Both panel members agreed that the California Business and Professions Code Section 22928 (SB45) establishes specific conditions when the Equipment Provider cannot bill per diem. However, the modal panel members were unable to agree that these specific conditions were met on an overall basis to relieve the Motor Carrier from all of the per diem charges being disputed under this claim. Therefore, the third panel member was brought in to render a decision 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 provision. A 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.

Because the terminals were not completely shut down, 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**. Proof of rejection includes: rejection slips from the terminals, correspondence between the Equipment Provider and

the Motor Carrier, or dispatch correspondence at the time the Motor Carrier advised they could not deliver the equipment because of a specific reason on that day. Therefore, the third panel member finds in favor of the Equipment Provider with the exception of those dates that the Motor Carrier was able to provide proof of rejection or inability to interchange.

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 this case, the internal dispatch e-mail communications provided by the Motor Carrier regarding driver rejection for the container moves below were associated with dates where the Equipment Provider had not assessed any per diem charges. Therefore, the Motor Carrier is found liable for the per diem charges listed in the following invoices.

DRP Case #	Invoice Number	Container Number	Date Charge Waived Based on MC Internal Dispatch Communication	Amount Waived	Amount Owed
20141222-4-SOCN-PD	PD00124854	TCNU4333089	10/27/14	No amount waived (Still Free Day – no charge issued by EP for this day- Last free day was 10/28/14 and equipment returned on 10/29/14.)	\$00.00

DRP Case #	Invoice Number	Container Number	Date Charge Waived Based on MC Internal Dispatch Communication	Amount Waived	Amount Owed
20141222-4-SOCN-PD	PD00125319	SEGU4490754 CCLU7214855	11/7/14	No amount waived (No charge for this container on invoice)	\$00.00
20141222-4-SOCN-PD	PD00125319	CCLU7214855	11/7/14	No amount waived (No charge for this container on invoice)	\$00.00
Total Owed:					\$00.00

CASE REVIEWED AND DECIDED BY:

GERRY BISAILLON
Rail Carrier Member

DAVID DALY
Ocean Carrier Member

ROBERT CURRY
Motor Carrier Member

Additional Commentary from Gerry Bisailon:

The third panel member agrees that the congestion in the Ports of Los Angeles and Long Beach was significant enough to reach national attention and had a significant impact on the economy. At its height, dozens of container ships lay offshore at anchor, waiting to berth and discharge their cargo. Meanwhile, westbound freight continued to flow for a time into the terminals both from road and rail with port operators selectively receiving cargo based on the current conditions at the terminals. Port road infrastructure at times was congested enough to require police intervention and traffic control including directing trucks to find alternate routes or to turn around all together. Conditions were tough in the industry for all modes of transport, for shippers, customers, and members of the public.

Although not part of this decision, the third panel member stated that the situation at the West Coast ports as a result of the ILWU slowdown created numerous operating issues for all parties. In the spirit of cooperation and stewardship, he believes that the Equipment Providers should work with the Motor Carriers to resolve and find mutually agreeable terms, which may include waivers in whole or in part. The labor situation was atypical and lasted for an extended amount of time through no fault of the Motor Carrier, creating burdens on both Equipment Providers and Motor Carriers.

Additional Commentary from Dave Daly:

Although not part of this decision, the Ocean Carrier panel member believes that the work slowdown has to result in a stoppage condition and not a slowed condition to be considered a "strike" under Section G.12.

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In the Dispute Between

UIIA Motor Carrier,
Appellant, and

UIIA Equipment Provider,
Respondent

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Case Number: **20141222-5-XXXN-PD**

Date of Decision: May 6, 2015

The Motor Carrier disputes the following invoices:

	Invoice	Inv. Date	Amount	OutGate/ InGate Facility	Date of Outgate	Date of Ingate	Date MC stated they rec'd inv.	Date MC disputed the inv.	EP Resp. to MC Disp.	Notice of Intent Rec'd	Addl. Comments
Inv1	PDLAX0022029	11/5/14	\$00.00	SHIPPERS/PCT	10/22/14	10/31/14	11/05/14	12/05/14	12/8/15	12/22/14	
				TTI/APM	10/16/14	10/31/14					
Inv2	PDLAX0021720	10/3/14	\$00.00	APM/PCT	09/22/14	09/26/14	10/03/14	10/21/14	12/8/15	12/22/14	Dates Disputed based on port fire 9/22 – 9/24
				PCT/PCT	09/08/14	09/16/14					
				SHIPPERS/SHIPP ERS	09/09/14	09/17/14					
				Evergreen /PCT	09/19/14	09/25/14					Dates Disputed based on port fire 9/22 – 9/24
				TTI/PCT	09/15/14	09/26/14					Dates Disputed based on port fire 9/22 – 9/24
				SHIPPERS/PCT	09/08/14	09/22/14					
				PCT/PCT	09/10/14	09/17/14					
Inv3	PDLAX0021882	10/21/14	\$00.00	TTI/TTI	09/16/14	09/30/14	10/21/14	10/23/14	12/8/15	12/22/14	Dates Disputed based on port fire 9/22 – 9/24
Inv4	PDLAX0022188	11/19/14	\$00.00	Evergreen/WBCT	11/04/14	11/11/14	11/19/14	12/05/14	12/8/15	12/22/14	
				Evergreen/ PCT	11/05/14	11/12/14					
				Evergreen/PCT	10/23/14	11/11/14					

	Invoice	Inv. Date	Amount	OutGate/ InGate Facility	Date of Outgate	Date of Ingate	Date MC stated they rec'd inv.	Date MC disputed the inv.	EP Resp. to MC Disp.	Notice of Intent Rec'd	Addl. Comments
Inv5	PDLAX22347	12/4/14	\$00.00	TTI/APM	10/31/14	11/19/14	12/04/14	12/05/14	12/8/15	12/22/14	
				TTI/APM	11/01/14	11/19/14					
				TTI/APM	10/31/14	11/19/14					
				TTI/PCT	10/24/14	11/12/14					
Inv 5 cont				TTI/APM	11/06/14	11/19/14	12/4/14	12/5/14		12/22/14	
				TTI/PCT	11/07/14	11/21/14					
				APM/PCT	11/20/14	11/26/14					
				ITS/APM	11/04/14	11/19/14					

Motor Carrier Basis of 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 free time period. In addition, there were three dates (9/22/14, 9/23/14 and 9/24/14) that the Motor Carrier indicated that the facility was closed due to a port fire. 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, and 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 the conditions caused by the West Coast port congestion as well as the port fire meet this condition. 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 – Page 6]**. In addition, the Motor Carrier stated that the Equipment Provider's tariff filed with FMC contains a force majeure provision that includes "port congestion." The Motor Carrier stated in its basis that it has the trucks, drivers and logistical system to timely return the containers, but were unable to return the equipment to the port because of terminal closures, re-routing, gate changes/restrictions and extensive long backups at the terminals that were the result of the port congestion as well as the closure of facilities during the port fire on the specified dates, which were all beyond the Motor Carrier's control.

The Motor Carrier also indicated that the Equipment Provider is not in compliance with California State regulation SB45, which prohibits intermodal marine equipment providers from imposing per diem, detention and demurrage charges on the Motor Carrier when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. The Motor Carrier has provided supporting documentation consisting of JOC articles, status updates issued by different Equipment Providers relating to the port congestion and various other documents that it believes supports its argument that these conditions existed at the port facilities.

Equipment Provider's Response:

The Equipment Provider responded stating that the Motor Carrier's argument related to the port fire in regards to Invoice 2 (PDLAX0021720) is not correct. The container moves affected by this (SZLU9140135, FSCU5076311 and CBHU8756188) were in-gated at the PCT terminal. The Equipment Provider indicated that this facility confirmed it was operating on the dates of 9/22/14 through 9/24/14. Invoice 3 was also disputed by the Motor Carrier based on the port fire and involved

the TTI facility. The Equipment Provider was unable to present evidence of what the operating status was for the TTI Terminal on the dates of 9/22/14 through 9/24/14.

In regards to the Motor Carrier's second argument regarding force majeure, the Equipment Provider indicated that the Motor Carrier was attempting to have force majeure apply to any per diem charges issued in the months of September, October and November of 2014. The Motor Carrier has not identified the specific events that prevented the return of EP's equipment in each of these instances, but has only provided general statements regarding port congestion. Lacking specific information, the Equipment Provider stated that its response is that the Port of Long Beach and the Port of Los Angeles continued to operate during the months of September, October and November. The Equipment Provider took the position that force majeure would not comply to any of the invoices under dispute since the terminals continued to operate. In regards to the Motor Carrier's argument that the port congestion would be considered "like causes beyond the Motor Carrier's control" under Section G.12. of the UIIA, the Equipment Provider did not agree with this statement. "Port congestion" is not a "like cause" to that of Acts of God, war, insurrections, strikes, fire or flood. These causes would lead to the closure of the terminal, however the facilities continued to operate during this timeframe.

The Equipment Provider furnished confirmation of the operating hours for the PCT facility during the dates of 9/22/14 through 9/24/14 and for the WBCT facility during the timeframe of 9/8/2014 – 11/26/2014.

PCT – confirmed it was open during the dates of 9/22/14 – 9/24/14, which were the dates associated with the port fire at the Pasha facility.

WBCT – see table below of WBCT's operating hours during the timeframe of the dates associated with the disputed invoices (9/8/14 – 11/26/14):

(WBCT Facility Hours)								
Date	1st Shift	2nd Shift	Date	1st Shift	2nd Shift	Date	1st Shift	2nd Shift
9/8/2014	Open	Open	10/5/2014	Closed	Closed	11/1/2014	Open	Closed
9/9/2014	Open	Open	10/6/2014	Open	Open	11/2/2014	Closed	Closed
9/10/2014	Open	Open	10/7/2014	Open	Open	11/3/2014	Open	Open
9/11/2014	Open	Open	10/8/2014	Open	Open	11/4/2014	Open	Open
9/12/2014	Open	Closed	10/9/2014	Open	Open	11/5/2014	Open	Open
9/13/2014	Open	Closed	10/10/2014	Open	Closed	11/6/2014	Open	Closed
9/14/2014	Closed	Closed	10/11/2014	Open	Closed	11/7/2014	Open	Closed
9/15/2014	Open	Open	10/12/2014	Closed	Closed	11/8/2014	Open	Closed
9/16/2014	Open	Open	10/13/2014	Open	Open	11/9/2014	Closed	Closed
9/17/2014	Open	Open	10/14/2014	Open	Open	11/10/2014	Open	Open
9/18/2014	Open	Open	10/15/2014	Open	Open	11/11/2014	Open	Open
9/19/2014	Open	Open	10/16/2014	Open	Open	11/12/2014	Open	Open
9/20/2014	Open	Closed	10/17/2014	Open	Closed	11/13/2014	Open	Open
9/21/2014	Closed	Closed	10/18/2014	Open	Closed	11/14/2014	Open	Closed
9/22/2014	Open	Open	10/19/2014	Closed	Closed	11/15/2014	Open	Closed
9/23/2014	Open	Open	10/20/2014	Open	Open	11/16/2014	Closed	Closed
9/24/2014	Open	Open	10/21/2014	Open	Open	11/17/2014	Open	Open

9/25/2014	Open	Open	10/22/2014	Open	Open	11/18/2014	Open	Open
9/26/2014	Open	Open	10/23/2014	Open	Open	11/19/2014	Open	Open
9/27/2014	Open	Closed	10/24/2014	Open	Closed	11/20/2014	Open	Open
9/28/2014	Closed	Closed	10/25/2014	Open	Closed	11/21/2014	Open	Closed
9/29/2014	Open	Open	10/26/2014	Closed	Closed	11/22/2014	Open	Open
9/30/2014	Open	Open	10/27/2014	Open	Open	11/23/2014	Open	Open
10/1/2014	Open	Open	10/28/2014	Open	Open	11/24/2014	Open	Open
10/2/2014	Open	Closed	10/29/2014	Open	Open	11/25/2014	Open	Open
10/3/2014	Open	Open	10/30/2014	Open	Open	11/26/2014	Open	Open
10/4/2014	Open	Open	10/31/2014	Open	Closed			

WBCT Normal Operating Hours Are:

Shift	Sat	Sun	Mon	Tue	Wed	Thur	Fri
1 st - 7am - 5pm	As Needed	Closed	Open	Open	Open	Open	Open
2 nd - 5pm - 3 am	Closed	Closed	Open	Open	Open	Open*	Closed
*1st Thursday of every month we are closed 2 nd shift due to ILWU Stop Work Meeting							

***WBCT also confirmed that drivers are given turn around/leave terminal tickets for any number of reasons.**

***Please note EP was requested to provide confirmation of the operating hours of the other in-gate facilities associated with the invoices in this claim (APM and TTI), however was unable to provide this information. IANA staff also reached out to these facilities in attempt to obtain this information, but the facilities did not respond.**

Discussion:

There are five invoices under this claim. For Invoice 2 (PDLAX0021720), the Motor Carrier disputed only a portion (\$425) of this invoice on 10/21/2014 due to conditions related to a port fire that occurred between the dates of 9/22 – 9/24. On 12/5/2014, the Motor Carrier disputed the additional per diem charges associated with this same invoice, which was beyond thirty days from the date the invoice was received by the Motor Carrier. Based on a previous DRP case precedent (20140904-2-TNNR-PD), because the Motor Carrier did not dispute all of the charges associated with the one invoice within thirty days, the second dispute of the additional charges (\$00) for this one invoice would be considered outside of the dispute timeframe allowed under the Equipment Provider's addendum. All other invoices under this claim were disputed within the 30-day timeframe.

The majority of the supporting documentation provided by the Motor Carrier encompasses a wide range of dates of JOC articles talking about the congestion issues on the West Coast, a court decision involving the subject matter of force majeure, individual UIIA EP commercial tariffs and eModal transmissions that address conditions at specific facilities as it relates to equipment return. In addition, the Motor Carrier provided an article regarding the port fire, which is the basis of its

dispute for a portion of Invoice 2 and all of Invoice 3. IANA staff has went through all 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 e-Modal transmissions that were specific to the facility where the interchange of the equipment related to these invoices occurred. This information has been included as part of the primary documentation for this claim. The other additional supporting documentation that was provided by the Motor Carrier that did not meet these parameters is available under Central Desktop under the document titled “ADDL SUPPORTING DOCS” for the panel’s review.

JOC Articles:

The JOC articles included with the claim are dated between 09/08/14 through 11/26/14. The JOC articles submitted by the Motor Carrier provide 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 any of the facilities that the in-gate of the equipment associated with these invoices occurred.

Port Fire:

The Motor Carrier provided one article from CNN related to a wharf fire that occurred at the Port of Los Angeles that indicated people were warned to stay indoors because of the potentially toxic smoke. The Motor Carrier also provided the following eModal transmissions from various terminals located in this area regarding the impact that the fire had on gate operations:

Terminal	Date/Time	Message
Yusen Terminals (YTI)	9/23 at 12:06 a.m.	All Operations at YTI have been suspended
	9/23 at 3:11 a.m.	Operations have been suspended thru the second shift.
Yusen Terminals (YTI) cont’d	9/23 at 4:51 p.m.	Suspended operations on 2 nd shift, but would resume normal operations on 9/24 at 0800 (in-gate did not open until 0900)
APM Terminals – Los Angeles	9/22 at 11:12 p.m.	Due to fire at Pasha’s Terminal, APMT PIER 400 suspended operations for the night.
	9/23 at 10:51 a.m.	APMT gate will be closed for the 1 st shift today.
	9/23 at 10:56 a.m.	PIER 400 will be closed today first shift due to fire at Berths 177 and 179.
	9/24 at 12:14 a.m.	All gate & yard continue to be temporarily suspended until 23:00 due to poor air quality issues. Intend to resume normal gate operations at 23:00 p.m.
	9/24 at 1:59 a.m.	APM would resume normal operations at 23:00 p.m.
Eagle Marine Services –LA GGS	9/22 at 11:20 p.m.	Due to potential hazard from fire, EMS GGS Terminal is suspending terminal operations until further notice. .
	9/22 at 11:20 p.m.	Fire forced terminal to close for Monday’s 2 nd shift.

	9/23 at 11:01 a.m.	Notice stated that GGS was suspending terminal operations until further notice due to the smoke from the fire.
	9/23 at 11:21 a.m.	GGS will be closed today until further notice
	9/24 at 2:56 a.m.	GGS resumed full service gate operations
California United Terminal	9/22 at 10:51 p.m.	All terminal operations have been suspended
	9/23 at 1:46 a.m.	All terminal operations have been suspended until further notice
	9/23 at 11:26 a.m.	CUT is scheduled to be closed today.
WBCT	9/23 at 2:09 a.m.	Terminal closing due to the fire.
ITS	9/23 at 4:19 a.m.	Early closure which will ensure that ITS can service the customers that are already in the terminal
	9/23 at 6:45 a.m.	Terminal is closed due to smoke from fire.
ITS	9/23 at 11:12 a.m.	ITS is open for normal gate operations today 9/23.
	9/23 at 1:37 p.m.	Experiencing heavy volume – potential service delays may occur.
TraPac – Los Angeles	9/23 at 8:30 a.m.	TraPac Los Angeles is closed for the first shift today, 9/23.
PCT	9/24 at 12:31 p.m.	Experiencing intermittent computer delays -
PCT cont'd	9/24 at 2:11 p.m.	Computer issues have been resolved with no further delays expected.
LBCT	9/23 at 12:36 p.m.	LBCT will be closed today until further notice due to the fire.
SSAT – PIER A	9/23 at 1:01 p.m.	Pier A-90 will be closed first shift today 9/23.

The in-gate of equipment for the two invoice disputes involving the port fire occurred at PCT and TTI. Based on the eModal e-mail communications provided by the Motor Carrier there was no evidence that PCT or TTI were closed during the dates of 9/22/14 through 9/24/14. There was an e-mail communication indicating that PCT encountered some computer issues on 9/24, but these issues were cleared up the same day.

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. 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 of Equipment Providers' tariffs that are on file with the Federal Maritime Commission (FMC). A copy of the commercial tariff filed by the specific Equipment Provider that is the Responding Party in this case has been included in the case file. The Equipment Provider's tariff includes a force majeure clause under Section Q. of the tariff that includes a reference to "port congestion" as being a condition that would fall under the force majeure provision in the Equipment Provider's tariff. However, this tariff is 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. The return facilities associated with these invoices were PCT, APM, TTI and WBCT. From the eModal communications submitted with this claim, there were a few that noted that the facility was not accepting empties for the EP. This occurred on 9/9 and 9/10 for APMT, which was prior to the time the Motor Carrier had out-gated the equipment associated with the returns to APMT. On 10/1, PCT indicated that it would not be accepting EP's empties for the first and second shift and on 10/2 for the first shift only, however based on the in-gate dates it does not appear to have impacted any of the returns associated with the disputed charges. There was also an eModal transmission on 10/3 regarding APM Terminals, which indicated that labor shortages were impacting service levels at Pier 400. The eModal notification however did not indicate that the PIER 400 facility was closed or no longer accepting returns. All other eModal documentation provided by the Motor Carrier was related to facilities other than those where the equipment was returned. This documentation is included under the document "ADDL SUPPORTING DOCS" and is available through Central Desktop should the panel wish to review this information.

The Equipment Provider in this claim had requested that the Motor Carrier provide evidence that the return facilities were closed. At the time of the initial dispute of these charges, the Motor Carrier was unable to produce the requested documentation to the Equipment Provider.

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.

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 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, the only evidence presented that the driver attempted to gain access to the in-gate facilities and was turned away were the internal dispatch e-mail communications identifying specific dates and container movements where the driver encountered this problem.

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., the Force Majeure provision of the UIIA. They could also not reach a consensus on whether the conditions identified by the Motor Carrier prevented it from being able to redeliver the equipment to the Equipment Provider within the specified free time. Both panel members agreed that the California Business and Professions Code Section 22928 (SB45) establishes specific conditions when the Equipment Provider cannot bill per diem. However, the modal panel members were unable to agree that these specific conditions were met on an overall basis to relieve the Motor Carrier from all per diem charges under this dispute. Therefore, the third panel member was brought in to render a decision 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 provision. A 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.

Because the terminals were not completely shut down, 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**. Proof of rejection includes: rejection slips from the terminals, correspondence between the Equipment Provider and Motor Carrier, or dispatch correspondence at the time the Motor Carrier advised they could not deliver the equipment because of a specific reason on that day.

Therefore, the third panel member finds in favor of the Equipment Provider with the exception of those dates that the Motor Carrier was able to provide proof of rejection or inability to interchange.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (August 1, 2014 and 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 – (Re: Invoice 2 PDLAX0021720)

METHOD OF DISPUTE RESOLUTION

Motor Carrier shall advise Provider in writing of any disputed items on Provider's invoices within 30 days of the receipt of such invoice(s). Provider will undertake to reconcile such disputed items within **30 working days** of receipt of Motor Carrier's notice and will either provide verification for the charges as invoiced or will issue a credit to Motor Carrier's account for any amount not properly invoiced. Such disputes do not constitute valid grounds for withholding or delaying payments of undisputed charges as required by the terms of this Agreement. In the event that charges which have been verified by the Provider are gain rejected and disputed by Motor Carrier for whatever reasons, Provider reserves its rights and remedies under the law to compel payment of such charges.

DECISION: A majority of the panel finds in favor of the Equipment Provider with the exception of the specific dollar amounts associated with the following invoices. The majority of the panel has determined that the following invoices should be reduced based on the supporting documentation presented by the Motor Carrier that provided evidence of driver rejection, which precluded the Motor Carrier's ability in these instances to interchange the equipment back to the Equipment Provider within the specified free time.

DRP Case #	Invoice Number	Container Number	Date Charge Waived	Amount Waived
20141222-5-SOCN-PD	PDLAX0022029	TRIU8184972	10/29/14	\$00.00
20141222-5-SOCN-PD	PDLAX0021720	UETU5225212	9/12/14	\$00.00 (9/12 was last free day and equipment returned on 9/17/14).
20141222-5-SOCN-PD	PDLAX0021720	FSCU8452310	9/17/14	\$00.00 (9/17 was last free day and equipment returned on 9/22/14).
20141222-5-SOCN-PD	PDLAX0022188	CBHU3603592	11/6/14	No amount waived (Still Free Day – No charge issued by EP for this day. Last free day was 11/7 and equipment returned on 11/11/14).
20141222-5-SOCN-PD	PDLAX0022347	CRSU9357295	10/29/14	No amount waived (Still Free Day – No charge issued by EP for this day. Last free day was 11/4/14 and equipment returned on 11/12/14).
20141222-5-SOCN-PD	PDLAX0022347	TGHU9310560	11/10/14	No amount waived (Still Free Day – No charge issued by EP for this day. Last free day was 11/14/14 and equipment returned on 11/19/14).
20141222-5-SOCN-PD	PDLAX0022347	FCIU9629946	11/21/14	No amount waived (Still Free Day – No charge issued by EP for this day. Last free day 11/25/14 and equipment returned on 11/26/14).
Total Invoice Adjustments:				\$00.00

The panel finds that the Motor Carrier is responsible for the remaining charges associated with this claim as follows:

DRP Case #	Invoice Number	Amount Owed
20141222-5-SOCN-PD	PDLAX0022029	\$00.00
20141222-5-SOCN-PD	PDLAX0021720	\$00.00
20141222-5-SOCN-PD	PDLAX0021882	\$00.00
20141222-5-SOCN-PD	PDLAX0022188	\$00.00
20141222-5-SOCN-PD	PDLAX22347	\$00.00
Total Amount		\$00.00

CASE REVIEWED AND DECIDED BY:

GERRY BISAILLON
Rail Carrier Member

DAVID DALY
Ocean Carrier Member

ROBERT CURRY
Motor Carrier Member

Additional Commentary from Gerry Bisailon:

The third panel member agrees that the congestion in the Ports of Los Angeles and Long Beach was significant enough to reach national attention and had a significant impact on the economy. At its height, dozens of container ships lay offshore at anchor, waiting to berth and discharge their cargo. Meanwhile, westbound freight continued to flow for a time into the terminals both from road and rail with port operators selectively receiving cargo based on the current conditions at the terminals. Port road infrastructure at times was congested enough to require police intervention and traffic control including directing trucks to find alternate routes or to turn around all together. Conditions were tough in the industry for all modes of transport, for shippers, customers, and members of the public.

Although not part of this decision, the third panel member stated that the situation at the West Coast ports as a result of the ILWU slowdown created numerous operating issues for all parties. In the spirit of cooperation and stewardship, he believes that the Equipment Providers should work with the Motor Carriers to resolve and find mutually agreeable terms, which may include waivers in whole or in part. The labor situation was atypical and lasted for an extended amount of time through no fault of the Motor Carrier, creating burdens on both Equipment Providers and Motor Carriers.

Additional Commentary from Dave Daly:

Although not part of this decision, the Ocean Carrier panel member believes that the work slowdown has to result in a stoppage condition and not a slowed condition to be considered a "strike" under Section G.12.

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: **20141222-7-XXXN-PD**

Date of Decision: May 6, 2015

The Motor Carrier disputes the following invoices:

	Invoice	Inv. Date	Amount	Facility Outgate/ Ingate	Outgated	Ingated	Date MC received invoice	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
Invoice 1	DT0131988	11/3/2014	00.00	ITS /WBCT	10/15/2014	10/23/2014	11/4/2014	11/22/2014	No actual decline	12/22/2014
Invoice 2	DT0133216	12/1/2014	00.00	WBCT/WBCT	11/3/2014	11/10/2014	12/2/2015	12/9/2014	No actual decline	12/22/2014

Motor Carrier Basis of 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 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 and 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 the conditions caused by the West Coast port congestion meet this parameter. 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 – Page 3]**. The Motor Carrier also stated that the Equipment Provider's tariff filed with FMC contains a force majeure provision that includes "port congestion". The Motor Carrier stated in its basis that it has the trucks, drivers and logistical system to timely return the containers, but were unable to return the equipment to the port because of terminal closures, re-routing, gate changes/restrictions and extensive backups at the gates that were the result of the port congestion, which were all beyond the Motor Carrier's control.

The Motor Carrier also indicated that the Equipment Provider is not in compliance with California State regulation SB45, which prohibits intermodal marine Equipment Providers from imposing per diem, detention and demurrage charges on the Motor Carrier when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. The Motor Carrier has provided supporting documentation consisting of JOC articles, status updates for the various facilities within the Port of LA/LB issued by eModal and various other documents that it believes support its argument that these conditions existed at the port facilities.

Equipment Provider's Response:

The Equipment Provider responded stating that it offered extended free time to a trucker when the company provides valid information showing that it attempted to return the empty to the facility, but was unable to do so due to port congestion. Although there were labor issues in LA terminals, Motor Carriers were still able to return empties to the port during the dates associated with these invoices. The Equipment Provider indicated that the last free day on Invoice 1 was 10/21/14 and on that same day the Equipment Provider received a total of 260 empties at the WBCT facility. The Equipment Provider states that the Motor Carrier did not contact it or try to return the empty as soon as possible to avoid per diem charges accumulating, but kept the empty until 10/23/14. For Invoice 2, the last free day was 11/7/14. WBCT shows that it was accepting YML empties during the dates of 11/3/14 through 11/8/14. The date of 11/9 was a Sunday and the facility is normally closed. The Motor Carrier returned the unit on Monday, 11/10. The Equipment Provider indicated that it requested the Motor Carrier to provide evidence that it tried to contact them to advise they were having trouble returning equipment to the WBCT or that the Motor Carrier attempted to return the equipment to WBCT and was turned away. However, the Motor Carrier was unable to provide such information. Consequently, the Equipment Provider believes the per diem charges are justified.

The Equipment Provider furnished confirmation from the WBCT facility of their operating hours during the timeframe of 10/17/14 through 11/10/14 as follows:

Date	Day of the Week	1 st Shift (0700 – 1700)	2 nd Shift (1700 – 0200)
17-Oct	Friday	Open	Closed
18-Oct	Saturday	Open	Closed
19-Oct	Sunday	Closed	Closed
20-Oct	Monday	Open	Open
21-Oct	Tuesday	Open	Open
22-Oct	Wednesday	Open	Open
23-Oct	Thursday	Open	Open
24-Oct	Friday	Open	Closed
25-Oct	Saturday	Open	Closed
26-Oct	Sunday	Closed	Closed
27-Oct	Monday	Open	Open
28-Oct	Tuesday	Open	Open
29-Oct	Wednesday	Open	Open
30-Oct	Thursday	Open	Open
31-Oct	Friday	Open	Closed
01-Nov	Saturday	Open	Closed
02-Nov	Sunday	Closed	Closed
03-Nov	Monday	Open	Open
04-Nov	Tuesday	Open	Open
05-Nov	Wednesday	Open	Open
06-Nov	Thursday	Open	Closed
07-Nov	Friday	Open	Closed
08-Nov	Saturday	Open	Closed
09-Nov	Sunday	Closed	Closed
10-Nov	Monday	Open	Open

Note: WBCT confirmed that they normally have a 1st and 2nd shift Monday through Thursday. Second shift on Fridays is only on select occasions. Saturday normally has 1st shift only and Sunday the facility is normally closed. Consequently, the only day that was out of the normal business hours was Thursday, November 6th when there was no second shift, however the facility was open during the first shift on this date.

The WBCT terminal also confirmed that they do not provide trouble tickets to drivers that are not allowed into the terminal. The only reason a driver would be turned away for an empty container would be if the trucking company had been placed on hold by the Equipment Provider, which was not the case with this Motor Carrier.

Discussion:

The majority of the supporting documentation provided by the Motor Carrier encompasses a wide range 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 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 e-Modal transmissions that were specific to the facility where the interchange of the equipment occurred. This information has been included as part of the primary documentation for this claim. The other additional supporting documentation is available under Central Desktop under the document titled "ADDL SUPPORTING DOCS" for the panel's review as well.

JOC Articles:

The JOC articles included with the claim are dated between 10/15/14 through 11/10/14 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 WBCT facility, which is the facility where the equipment associated with the disputed invoices was in-gated. (Please see operating hours provided by WBCT 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). A copy of the commercial tariff filed by the specific Equipment Provider that is the Responding Party in this case has been included in the case file. The Equipment Provider's tariff includes a force majeure clause under Section O. of the tariff that includes a reference to "port congestion" as being a condition that would fall under the force majeure provision in the Equipment Provider's tariff. However, this tariff is 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. From the eModal communications submitted with this claim, there were only two that were related to the facilities where the interchange of the equipment occurred. Both of these communications were related to ITS, the out-gating facility for Invoice 1 only, so this would not have been applicable to the Motor Carrier's ability to return the equipment to the in-gating facility at WBCT. All other eModal documentation that was not related to WBCT (the in-gating facility) has been included under the document "ADDL SUPPORTING DOCS" and is available through Central Desktop should the panel wish to review this information.

The Equipment Provider in this claim had requested that the Motor Carrier provide evidence that the WBCT facility was closed or that it had trouble returning empty equipment to this facility on the dates of the interchanges related to the disputed invoices. From the evidence presented by the Motor Carrier there was nothing that indicated that the WBCT facility was closed or was not accepting equipment for the EP during the dates associated with the disputed invoices. WBCT did confirm that it does not issue turn away tickets to drivers, however WBCT indicated that drivers returning empties would only be turned away if the Motor Carrier was placed on hold by the Equipment Provider.

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 California SB45, this legislation 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. 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 supporting documentation provided by the Motor Carrier, the only evidence presented that the driver attempted to gain access to the WBCT facility and was turned away were the internal dispatch e-mail communications identifying specific dates and container movements where the driver encountered this problem.

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., the Force Majeure provision of the UIIA. They could also not reach a consensus on whether the conditions identified by the Motor Carrier prevented it from being able to redeliver the equipment to the Equipment Provider within the specified free time. Both panel members agreed that the California Business and Professions Code Section 22928 (SB45) establishes specific conditions when the Equipment Provider cannot bill per diem. However, the modal panel members were unable to agree that these specific conditions were met on an overall basis to relieve the Motor Carrier from all of the per diem charges associated with this claim. Therefore, the third panel member was brought in to render a decision 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 provision. A 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.

Because the terminals were not completely shut down, 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**. Proof of rejection includes: rejection slips from the terminals, correspondence between the Equipment Provider and Motor Carrier, or dispatch correspondence at the time the Motor Carrier advised it could not deliver the equipment because of a specific reason on that day. Therefore, the third panel member finds in favor of the Equipment Provider with the exception of those dates that the Motor Carrier was able to provide proof of rejection or inability to interchange.

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 exception of the specific dollar amounts associated with the following invoices. The majority of the panel has determined that the following invoices should be reduced based on supporting documentation presented by the Motor Carrier that provided evidence of driver rejection, which precluded the Motor Carrier's ability in these instances to interchange the equipment back to the Equipment Provider within the specified free time.

DRP Case #	Invoice Number	Container Number	Date Charge Waived	Amount Waived
20141222-7-SOCN-PD	DT0131988	YMLU8260501	10/21/14	\$00.00 (Last free day was 10/21/14 and equipment returned on 10/23/14).
20141222-7-SOCN-PD	DT0133216	CAIU3544186	11/7/14	\$0.00 (Last free day was 11/7/14 and equipment returned on 11/10/14).
Total Invoice Adjustments:				\$00.00

The panel finds that the Motor Carrier is responsible for the remaining charges associated with this claim as follows:

DRP Case #	Invoice Number	Amount Owed
20141222-7-SOCN-PD	DT0131988	00.00
20141222-7-SOCN-PD	DT0133216	No balance
Total Owed:		\$00.00

CASE REVIEWED AND DECIDED BY:

GERRY BISAILLON
Rail Carrier Member

DAVID DALY
Ocean Carrier Member

ROBERT CURRY
Motor Carrier Member

Additional Commentary from Gerry Bisailon:

The third panel member agrees that the congestion in the Ports of Los Angeles and Long Beach was significant enough to reach national attention and had a significant impact on the economy. At its height, dozens of container ships lay offshore at anchor, waiting to berth and discharge their cargo. Meanwhile, westbound freight continued to flow for a time into the terminals both from road and rail with port operators selectively receiving cargo based on the current conditions at the terminals. Port road infrastructure at times was congested enough to require police intervention and traffic control including directing trucks to find alternate routes or to turn around all together. Conditions were tough in the industry for all modes of transport, for shippers, customers, and members of the public.

Although not part of this decision, the third panel member stated that the situation at the West Coast ports as a result of the ILWU slowdown created numerous operating issues for all parties. In the spirit of cooperation and stewardship, he believes that the Equipment Providers should work with the Motor Carriers to resolve and find mutually agreeable terms, which may include waivers in whole or in part. The labor situation was atypical and lasted for an extended amount of time through no fault of the Motor Carrier, creating burdens on both Equipment Providers and Motor Carriers.

Additional Commentary from Dave Daly:

Although not part of this decision, the Ocean Carrier panel member believes that the work slowdown has to result in a stoppage condition and not a slowed condition to be considered a “strike” under Section G.12.

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: **20150210-1-XXXX-PD**

Date of Decision: May 27, 2015

MOTOR CARRIER'S DISPUTE

The Motor Carrier disputes the following invoices:

	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
Invoice #1	5249299288	1/14/15	\$00.00	T18/T18	12/23/14	1/02/15	1/14/15	2/9/15	2/10/15	2/10/15

Note: Claim also included two additional invoices (5249206246 and 5249206247), however these invoices were not disputed by the Motor Carrier within the thirty day timeframe so were not acceptable for submission under this binding arbitration claim.

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure) due to the port congestion conditions that existed at all major West Coast ports, which the Motor Carrier indicates precluded it from returning the equipment within the free time period. Motor Carrier stated that it was not able to quickly increase driver capacity to manage an unexpected backlog of shipments with increased processing times and every effort was made to navigate/plan around this. The trucking community should not be penalized, in the form of detention, for congestion that the Motor Carrier did not trigger. The Motor Carrier believes that a waiver of per diem charges should be given despite no documentation recording this congestion as the Motor Carrier was not privy to such reports and even when such information was available, many ocean terminals' turn times did not measure a driver's wait time in line prior to the transaction.

The Motor Carrier noted that this case involved reefer shipments and was affected by reefer plug shortages, which resulted in drivers being unable to deliver the container after having waited in long lines. Such rejections due to the lack of reefer plugs is not given in writing and is therefore, not documented. This claim was also affected by documentation cutoffs that were not adjusted when vessel receiving changes, which forces the customer to load its shipments early in order to meet documentation cutoff requirements. All of these conditions were a cascading effect of the PMA-ILWU dispute.

EQUIPMENT PROVIDER'S RESPONSE

The Equipment Provider responded indicating that after further review of Invoice 5249299288, it did find an error in the calculation as the Motor Carrier was not credited for the New Year's holiday (1/1/15). Consequently, the Equipment Provider indicated the adjusted invoice amount is \$00.00. The EP provided confirmation that the normal terminal hours for Seattle T18 were 0800 – 1630. The terminal was closed on the following dates during the timeframe of 12/23/14 through 1/30/15:

Thursday, December 25 and Thursday, January 1

The Equipment Provider also confirmed with the T18 facility that if the Motor Carrier is turned away from the gate the facility issues a “pink slip”. SSA also indicated that there were no major issues noted during this timeframe. The facility never ran out of reefer plugs nor does it show any reefer loads being turned away at the gate during this same time period. SSA claimed that its reefer track record was excellent as it nearly always resolved reefer trouble tickets while the truck was at the gate.

The Equipment Provider asked staff to reach out the Motor Carrier and request if it had any additional supporting document to evidence any problems it had encountered returning the equipment. Staff did contact the Motor Carrier, however the Motor Carrier did not provide any additional documentation in support of its claim.

DISCUSSION

The Motor Carrier only submitted the information in its basis of dispute in support of its claim that conditions existed due to the port congestion that were beyond its control and therefore fell under Section G.12 Force Majeure of the UIIA. No further supporting documentation was provided. Based on the in-gate and out-gate dates, the Equipment Provider confirmed that the invoice should be adjusted to show the amount of \$00.00 versus the \$00.00 originally billed to the Motor Carrier. However, the Equipment Provider believes that the adjusted charges are valid since the Motor Carrier was not able to present any supporting documentation that conditions existed at Seattle T18 that precluded it from returning 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 a specific facility, on a specific date and time, and whether these conditions prevented the pick-up and/or re-delivery of equipment.

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. 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 identifying a force majeure condition within Section G.12 of the UIIA 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.” 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 period. The EP did adjust the invoice to remove the charges associated with the days that the facility was closed for the holiday. The adjusted invoice total was \$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

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. Therefore, the Motor Carrier is responsible for the adjusted invoice amount of \$00.00.

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

Case Number: **20150210-5-XXXN-PD**

Date of Decision: May 27, 2015

MOTOR CARRIER'S DISPUTE

The Motor Carrier disputes the following invoices:

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
Invoice #1	OAKI009882	1/31/15	\$00.00		12/30/14	1/15/15	2/5/15	2/6/15	2/10/15	2/10/15
	TRLU9451424		\$ 00.00	OICT/ Trapac	1/2/15	1/15/15	"	"	"	"
	APZU4792158		\$ 00.00	OICT/ Trapac	12/30/14	1/12/15	"	"	"	"
	APZU4366949		\$ 00.00	OICT/ Trapac	1/5/15	1/15/15	"	"	"	"
	APZU4094440		\$ 00.00	OICT/ Trapac	1/5/15	1/15/15	"	"	"	"
	TCLU4105461		\$ 00.00	OICT/ OICT	12/30/14	1/8/15	"	"	"	"

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure) due to vessel delay and terminal congestion due to labor disruption between PMA and ILWU. The Motor Carrier indicated that these conditions were beyond the Motor Carrier's control. The Motor Carrier stated that it in-gated the containers on the first available receiving date.

EQUIPMENT PROVIDER'S RESPONSE

The Equipment Provider responded that the interchange dates and free time allowed for each container provided in the information submitted by the Motor Carrier under this claim was not in dispute. For the invoices in dispute, the Motor Carrier was charged a rate of \$85.00 a day versus \$94.00 as currently contained in the EP's UIIA Addendum. EP only seeks payment of the \$85.00 rate. The Equipment Provider indicated that once bookings are posted in the port terminal system, the Motor Carrier is allowed to pick up the empty containers. EP advises the customer/Motor Carrier to pick up the empty containers within a 7 day window of cut-off; otherwise they will face the prospect of incurring per diem charges. The terminals where the interchange of the containers under dispute occurred were not operated by EP so it does not have access to data or documents generated by these facilities. This information would have been available online at the time of the transactions, but were not maintained for retrieval. The Equipment Provider submitted statements with its response to confirm the dates on which the gates

were opened for the vessels in question. The terminal dictates the date of receiving for a particular vessel and that information is updated daily on the terminal's website. The Equipment Provider does not have access to this historical data.

The Equipment Provider provided the following information in regards the normal operating hours for the involved facilities:

OMO (Oakland, Trapac Terminal, Berth 30)	Monday – Friday 7:00 a.m. to 5:00 p.m.
OA8 (Oakland, SSAT Terminal, Berths 57-59)	Monday – Friday 7:00 a.m. to 4:30 p.m.
	Closed lunch 12:00 p.m. to 1:00 p.m.

During the dates associated with the disputed invoices (12/30/14 through 1/15/15) were as follows:

Thursday, January 1
Saturday, January 3
Sunday, January 4
Saturday, January 10
Sunday, January 11

The Equipment Provider also confirmed that at the SSA terminal, notification regarding any trouble issue is provided to the Motor Carrier via e-mail from the terminal to the Motor Carrier's dispatch. The terminal clerk would advise the Motor Carrier what the issue was and direct them to the trouble window area. At Trapac terminal, drivers are issued trouble tickets when there is an issue. The trouble tickets indicate what the specific is issue and directs the driver to resolve the issue at the trouble window within the facility.

In addition, the Equipment Provider responded as follows in regards to each disputed charge:

For each of the containers on the vessel MOL Courage and included on Invoice 1, the Motor Carrier chose to pick up the empty container prior to the pickup window, which was January 9 – January 15, 2015. The first day that cargo was allowed to be received at the terminal for this vessel was January 14, 2015 and the Motor Carrier could have returned the containers on that day. The Equipment Provider provided confirmation of this fact via e-mail from Tami Nagasawa at Trapac. If the Motor Carrier had picked up the containers within the window as advised by the Equipment Provider, it would not have incurred per diem charges. For the containers returned on January 15, because the terminal was open for receipt of vessel's cargo that day, January 15th is chargeable without regard to any of the reason given by the Motor Carrier.

Container TRLU9451424 – Equipment Provider agreed to adjust the amount owed from \$00.00 to \$00.00 after withdrawing weekends that were originally calculated in the charges. Amount owed by Motor Carrier: \$00.00.

Container APZU4792158 – Equipment Provider agreed to adjust the amount owed from \$00.00 to \$00.00 after withdrawing weekends that were originally calculated in the charges. Amount owed by Motor Carrier: \$00.00

Container APZU4366949 - Equipment Provider stated Motor Carrier was responsible for charges as billed. The Motor Carrier would not have incurred these charges if it had picked up the empty container within the pickup window. Amount owed by Motor Carrier: \$00.00

Container APZU4094440 – Equipment Provider stated Motor Carrier was responsible for charges as billed. The Motor Carrier would not have incurred these charges if it had picked up the empty container within the pickup window. Amount owed by Motor Carrier: \$00.00

TCLU4105461 – Equipment Provider stated that the pickup window for this vessel was January 2-8, 2015. The first day that cargo was allowed to be received at the terminal was January 7th. Therefore the Motor Carrier was responsible for charges as billed. Amount owed by Motor Carrier: \$00.00

Total Adjusted amount of Invoice OAKI009882 - \$00.00.

DISCUSSION

The Motor Carrier only submitted the information in its basis of dispute in support of its claim that conditions existed due to vessel delay and terminal congestion. The Motor Carrier did include a document from Terminal B58 that showed that the vessel EP Barcelona receiving date had been moved out twice to the dates of 1/5/15 and then to the date of 1/8/15. The Equipment Provider did confirm the status of the operating hours for the involved facilities during the interchange dates. In addition, the Equipment Provider adjusted the invoice to withdraw weekend days that were charged on two containers that should not have been. However, the Equipment Provider believes that the Motor Carrier should be responsible for the charges billed minus the adjustment.

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.

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. Therefore, the third panel member was brought in under Exhibit D to the UIIA.

The third panel member identification of a force majeure condition within Section G.12 of the UIIA does not alone 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." In this case, the Motor Carrier failed to provide evidence that supported its contention that the vessel delay and terminal congestion prevented it from returning the equipment within the specified free time. The Equipment Provider provided documentation that showed that the return facility was open and available for container returns during the interchange period and adjusted the invoice for the weekend days that were incorrectly billed to the Motor Carrier. Therefore, the third panel member finds in favor of the EP for the adjust invoice amount of \$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

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. Therefore, the Motor Carrier is responsible for the adjusted amount of \$00.00.

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 panel reviewed all documents and evidence submitted by the parties. The panel finds in favor of the Equipment Provider. 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.” The evidence submitted by the Motor Carrier in connection with this claim does not demonstrate that the port gate was closed or that the conditions that existed impacted the Motor Carrier’s ability to interchange the equipment. Therefore, 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:

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

G. General Terms

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: **20150224-5-XXXL-PD**

Date of Decision: 10/05/2015

The motor carrier disputes the following invoice:

Invoice	Invoice #	Inv. Date	Amount	Facility Outgate/Ingate	Outgated	Ingated
1	STB1693417	2/9/15	\$00.00	ITS/ITS	1/19/15	1/30/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure). Terminal operations were impacted by labor disruption, which precluded the Motor Carrier from being able to return export loads at its company's accustomed volume. The Motor Carrier asserts that it was not able to send empty containers back because the Motor Carrier's drivers were covering export loads that the Motor Carrier was unable to previously complete due to port congestion. The Motor Carrier stated that the out-gate interchange receipts are evidence of the extreme delays at the ITS facility. The out-gate interchange receipts showed that it took the driver over three hours to get the container out of the terminal. In its initial dispute of the charges with the Equipment Provider, the Motor Carrier also stated that many terminals were not accepting empties, or were only accepting empties if there was a dual transaction.

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

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

The Equipment Provider responded that the force majeure provision in the UIIA was not applicable to return conditions for the interchanging of EP equipment. The Equipment Provider stated that its return locations remained open throughout the interchange period in question, and that 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 – By day and by week document demonstrating consistent empty return for all EP empty returns to terminals throughout the disputed period. In addition, the 2nd pivot shows the Motor Carrier's specific in and out-gates in a consistent volume during the same contested period.
- 2) Exhibit 3 – List of the known restricted receiving dates by terminal and by day. For the in and out gated terminal being disputed in this case, no restrictions were in place.
- 3) Exhibit 4 – Detailed listing of the disputed invoices and notation that Equipment Provider's terminals were not restricting empty receipt.
- 4) Equipment Provider indicated the regular hours for empty receiving – 8am-4:30 p.m. and 6pm – 2am respectively.
- 5) Equipment Provider also indicated that a refusal slip (and/or e-mail) would be tendered by a terminal if a Motor Carrier is 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 in relation to this event. The Equipment Provider believes the supporting documentation it has submitted demonstrates that the facility associated with the disputed charges was open and accepting equipment on behalf of the Equipment Provider on the interchange dates related to this claim. Consequently, the Equipment Provider believes that the invoices should stand 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 HTA information submitted showed that the average turn time during the period of October 2013 through August 2014 was 75 minutes. If the baseline of 75 minutes is applied to the invoice in question, the Motor Carrier panel member's calculations results shows that only three days are applicable for a per diem charge at a rate of \$00 per day. Consequently, the Motor Carrier panel member believes that the original amount should be adjusted from \$00 (original amount) to \$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 Equipment Provider provided documentation that showed that the return facility remained open throughout the interchange period in question. In addition, the Equipment Provider provided information that illustrated a consistent empty return by day, by week and no restrictions existed during the period being disputed. Therefore, 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 did 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, the third panel member stated that the Equipment Provider submitted factual supporting documentation that reinforced that the terminal in question was open and receiving equipment, with no restrictions, during the interchange period associated with the Motor Carrier's dispute. Therefore, the third panel member finds that the Motor Carrier is responsible for the invoices under this arbitration claim as billed for the full amount of \$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

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

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: **20150224-6-XXXL-PD**

Date of Decision: 10/20/2015

The motor carrier disputes the following invoices:

Invoice	Invoice #	Inv. Date	Amount	Facility Outgate/Ingate	Outgated	Ingated
1	NAEX1595319	12/30/14	\$00.00	TTI/PCT	12/13/14	12/23/14
2	NAIM3111377	12/29/14	\$00.00	TTI/PCT	12/9/14	12/22/14

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure). General terminal operations were impacted by labor disruption, which precluded the Motor Carrier from being able to return export loads at the volume that its company is accustomed to. The Motor Carrier indicated that it was not able to return empties back because its drivers were covering export loads that the Motor Carrier was unable to previously complete due to port congestion. The Motor Carrier stated that the out-gate interchange receipts are evidence of the extreme delays at the ITS facility as it took the driver over three hours to get the container out of the terminal. In its initial dispute of the charges with the Equipment Provider, the Motor Carrier also stated that many terminals were not accepting empties or were only accepting empties if there was a dual transaction.

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

There was no response provided by the Equipment Provider in this claim other than its response to the Motor Carrier's initial dispute, which was that port congestion was not a valid reason for disputing the charges. The Equipment Provider believes the charges billed are valid.

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.

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." The Motor Carrier provided evidence that the street turn associated with Invoice NAEX1595319 was approved by the Equipment Provider on 12/12/14. The Motor Carrier in this instance had a valid reason to dispute the charges with the Equipment Provider. However, after carefully reviewing the evidence, the Motor Carrier's initial dispute to the Equipment Provider on 1/13/15 cites "port congestion" as the reason for not been able to interchange the equipment. The Motor Carrier panel noted that had the Motor Carrier filed their dispute based on that it was unable to interchange the container because their booking was coming back as invalid at the terminal, the outcome of this decision relating to this invoice may have been different. With regards to Invoice NAIM3111377, the evidence shows that the street turn associated with this invoice was denied by the Equipment Provider because the booking

was not received until 12/22/15. The panel finds that none of the evidence presented demonstrates that the Motor Carrier was prevented from interchanging the equipment within the free time specified under the Equipment Provider's Addendum.

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

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 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

Case Number: **20150304-1-XXXI-PD**

Date of Decision: 09/17/2015

The motor carrier disputes the following invoice:

Invoice	Invoice #	Inv. Date	Amount	Facility Outgate/Ingate	Outgated	Ingated
1	BLAI0243898	2/12/15	\$00.00	Shippers Transport/TTI	1/22/15	2/2/15
2	BLAI0243899	2/12/15	\$00.00	Shippers Transport/TTI	1/22/15	2/2/15
3	BLAI0243708	2/10/15	\$00.00	SSA/TTI	1/26/15	2/6/15

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 strike conditions existed that caused complete gridlock and severe interruption of normal operations and of equipment transactions including import pickups, delivery of loaded exports and termination of empty containers. Delays and operational challenges within each terminal complex had a cascading effect on the system, making redelivery of equipment within free time windows impractical. These conditions created a system in which Equipment Providers were increasingly using dual transaction-only days in which the Equipment Providers refused to accept their own empty containers unless the Motor Carriers were also picking up a container. This results in Motor Carriers being forced to keep the containers and subsequently being charged per diem for conditions that are completely beyond their control.

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

The Equipment Provider involved in this claim did not provide a response.

Discussion:

The Motor Carrier submitted its basis of dispute only as its supporting documentation for this claim. The Motor Carrier cited the following examples of how normal operations and equipment transactions were impacted by the port congestion:

- Instructions to hold both empty and export container loads at Motor Carrier facilities due to terminal congestion and ship delays, in order to avoid terminal wharf demurrage.
- Last minute notifications regarding container availability, at times in high quantities that made on-time pickups impractical.
- Daily patchwork instructions regarding acceptance of termination of empty equipment by individual steamship lines within the same terminal.
- Excessive congestion and wait times at marine terminals.

In addition, the Motor Carrier submitted driver turn time data 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 did not respond to the Motor Carrier's notice of intent to seek binding arbitration. They were requested to provide information relating to the operating hours of the facilities associated with the disputed charges, but no information was provided.

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.

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 indicated that it thought the terminal turn time data presented by the Moving Party confirmed that the work slowdown on the West Coast had a direct and measurable impact on the Moving Party's ability to timely interchange equipment. Based on the terminal turn time data for January and February 2015, which showed that turn times were 39% and 33% higher than the base line period from October 2013 to August 2014, the Motor Carrier panel member thought that the free time associated with the disputed invoices should be increased by the same percentage to allow two additional free days on each invoice. The Ocean Carrier panel member did not agree indicating that there was no way to identify what the driver turn time data figures measured and what may be the driving factor in the time indicated. The Ocean Carrier panel member did not find any evidence to suggest that the Motor Carrier was unable to interchange equipment during the timeframe associated with the disputed invoices. 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." IANA's counsel in his memorandum dated June 5, 2015 further clarified the scope of Section G. 12 by stating that "in addition to a gate closure, or a Motor Carrier being turned away from the facility, "any other situation" which impacted the Motor Carrier's ability to timely return the intermodal equipment may be used in determining whether the per diem charges were exempted under Section G.12. Considering the scope of the definition of Section G. 12 and counsel's memorandum, the third panel member determined that none of the evidence presented proved that the Motor Carrier was unable to return the equipment within the allowable free time. The third panel member noted that although the driver turn time data provided general and valuable information, it did not clearly prove that the Motor Carrier was unable to return equipment to the Provider during the interchange period associated with the disputed invoices. Consequently, the third panel member finds in favor of the Equipment Provider for the full amount of 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:

G. General Terms

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:

TIM WILLIAMS
Rail Carrier Member

ROBERT CANNIZZARO
Ocean Carrier Member

FRED HUENNEKENS
Motor Carrier Member

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

Date of Decision: 09/17/2015

- 1) Exhibit 2 – demonstrating consistent empty return to terminals by day and by week covering the disputed period. In addition, the 2nd pivot shows the Motor Carrier's specific in and out-gates in a consistent volume during the same contested period.
- 2) Exhibit 3 – List of the known restricted receiving dates by terminal and by day. For the in/out gated terminals being disputed in this case, no restrictions were in place.
- 3) Exhibit 4 – Detailed listing of the disputed invoices and notation that Equipment Provider's terminals were not restricting empty receipt.
- 4) Equipment Provider indicated that the regular hours for empty receiving were 8am-4:30 p.m. and 6pm – 2am respectively.
- 5) 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 be 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 related operations. The Equipment Provider stated that although the Motor Carrier may have been restricted from time to time for certain other carriers, this was not relevant to their force majeure claim against EP.

DISCUSSION:

The Motor Carrier submitted as part of its supporting documentation several news articles that provided general information related 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 believes the supporting documentation it has submitted proves 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.

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.

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 indicated that based on the driver turn time data submitted by the Moving Party, that the average terminal visit time increased by 38.67% during the month of January 2015. Consequently, the Motor Carrier panel member thought the free time associated with the disputed invoices should be increased by this same percentage. The Ocean Carrier panel member thought the supporting documentation provided by the Equipment Provider in this case showed that empty containers were being returned on a daily basis and at a consistent rate to the specific facilities and during the interchange periods associated with the disputed charges. Therefore, the third panel member was brought in under Exhibit D to the UIIA.

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." The third panel member did not believe that the evidence presented by the Moving Party proved that the port congestion specifically impacted its ability to interchange equipment back to the Equipment Provider within the allowable free time. In addition, the third panel member noted that the Equipment Provider submitted ample evidence that proved that it was able to accept equipment and that the Moving Party in this case was returning equipment during the period associated with the disputed charges. Therefore, the third panel member finds that the Moving Party is responsible for the invoices under this arbitration claim as 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:

G. General Terms

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:

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)	
)	
)	
UIIA MC,)	Case Number: 20150318-14-XXXN-PD
Appellant, and)	
)	
UIIA EP,)	Date of Decision: 12/31/2015
Respondent)	

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

	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
Revised	PDLAX0023314	3/10/15	Pier 400 APM/ SSA PCT	1/21/15	2/6/15	3/10/15	3/10/15	3/12/15	3/18/15
Invoice			SSA PCT	2/3/15	2/11/15				
Original	PDLAX0023314	2/20/15	Pier 400 LA/SSA PCT	1/21/15	2/6/15	2/20/15	3/3/15	3/10/15	-
Invoice	-	-	SSA PCT	2/3/15	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). The Motor carrier stated that it was precluded from returning equipment within the allowable free time period due to the port congestion conditions on the West Coast. The Motor Carrier further stated that the essential condition within the Force Majeure clause of the UIIA *"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."* was met. The Motor Carrier argued that the issue was not that a specific terminal or Equipment Provider, on a specific date and time, refused the return of empty equipment, but that due to the congestion issues at all terminals combined, there were not enough trucks available to return equipment timely regardless of whether the terminal was open for a specific

shift on a certain day. The Motor Carrier stated that many factors beyond its control contributed to the fact that productivity of its trucks were impacted, thus not allowing it to complete a typical workload in the normal amount of time. The Motor Carrier provided GPS data that showed the impact on its turn times for the period of May 2014 through December 2014. In December 2014, the Motor Carrier indicated that forty-five percent of all visits to the terminals were over two hours as compared to only seventeen percent over two hours in May 2014. The Motor Carrier provided turn time data it collected for the facilities that the Equipment Provider utilized to depict the percentage of turns times over two hours.

Other supporting documentation provided by the Motor Carrier included nightly email communications from its dispatchers outlining the previous nights' activities. The Motor Carrier stated that these communications are a good illustration of how non-productive the terminals were. In addition, a copy of California State law SB45 and daily e-Modal transmissions showing terminal status conditions at the APM Terminal were also provided. The Motor Carrier also noted that the majority of the eModal transmissions were not provided within a timely manner and would be considered not in compliance with SB45. Lastly, the Motor Carrier provided as part of its supporting documentation various news articles describing the port congestion issues on the West Coast.

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

The Equipment Provider responded by providing the PCT facility operating hours and gate schedules for the months of February and March. PCT's normal operating hours during this timeframe were 8:00 a.m. to 5:00 p.m. (day shift) and 6:00 p.m. to 3:00 a.m. (night shift/Pier Pass hours). The Equipment Provider noted that after further review of the invoice, it adjusted the charges for one day in consideration of the wait time that the Motor Carrier reported it encountered. The adjustment resulted in a reduction of \$120. The Equipment Provider further stated that because the terminal was open and accepting equipment on behalf of COSCO, no further waiver would be granted.

The following are the gate schedules for several facilities provided by the Equipment Provider. The in-gate facility related to this claim is PCT. The other facilities are not associated with this claim, with the exception that APM Pier 400 was the out-gate facility. The interchange period for the disputed charges was January 21, 2015 through February 11, 2015. The Equipment Provider provided confirmation of gate schedules for the period of February 2, 2015 through March 2, 2015.

Gate Schedules

	MON 2/2		TUE 2/3		WED 2/4		THU 2/5		FRI 2/6		SAT 2/7	MON 2/9	
	DAY	NIGHT	DAY	NIGHT	DAY	NIGHT	DAY	NIGHT	DAY	NIGHT	DAY	DAY	NIGHT
PCT	OPEN	OPEN (mon)	OPEN	OPEN	OPEN	OPEN	OPEN	ILWU STOP Work Meeting	OPEN	OPEN	closed	OPEN	closed
ITS	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN		OPEN	closed	closed	OPEN	OPEN
TTI	closed	closed	closed	closed	OPEN (dual required)	OPEN (dual required)	OPEN (dual required)		OPEN (dual required)	closed	closed	OPEN (dual required)	OPEN (dual required)
WBCT	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN		OPEN	closed	closed	OPEN	OPEN
STS	closed	closed	closed	closed	closed	closed	closed		closed	closed	closed	closed	closed
APMT	OPEN (dual required)	closed	OPEN (dual required)	OPEN (dual required)	OPEN	OPEN	OPEN		OPEN	closed	closed	OPEN	OPEN

	MON 2/9		TUE 2/10		WED 2/11		THU 2/12 (Lincoln's BD)		FRI 2/13		SAT 2/14	MON 2/16 (Holiday/President Day)		TUE 2/17	
	DAY	NIGHT	DAY	NIGHT	DAY	NIGHT	DAY	NIGHT	DAY	NIGHT	DAY	DAY	NIGHT	DAY	NIGHT
PCT	OPEN	closed	OPEN	OPEN	OPEN	OPEN	closed	closed	OPEN	OPEN	closed	closed	closed	OPEN	OPEN
ITS	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN	closed due to congestion	closed til 2/20	closed	closed	closed til 2/20	closed til 2/20	closed til 2/20	closed til 2/20
TTI	OPEN (dual required)	closed	closed	closed	closed	OPENED 40'ST/45'HC only (dual)	closed	OPENED 40'ST/45'HC only (dual)	closed	closed	closed	closed	closed	closed	??
WBCT	OPEN	OPEN	OPEN	OPEN	OPEN	closed 2.11pm	OPEN - NO EI allowed	closed	closed	closed	closed	closed	closed	closed	closed
STS	closed	closed	closed	closed	closed	closed	closed	closed	closed	closed	closed	closed	closed	closed	closed
APMT	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN (dual required)	OPEN - NO EI allowed	OPEN (dual required)	OPEN (dual required)	closed	closed	OPEN - NO EI allowed	OPEN (dual required)	OPEN (dual required)	OPEN (dual required)

	MON 2/16 (Holiday/President Day)		TUE 2/17		WED 2/18		THU 2/19 (Happy Lunar Year)		FRI 2/20		SAT 2/21	MON 2/23	
	DAY	NIGHT	DAY	NIGHT	DAY	NIGHT	DAY	NIGHT	DAY	NIGHT	DAY	DAY	NIGHT
PCT	closed	closed	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN	closed 2.20	closed 2.20	closed	closed	closed
ITS	closed til 2/20	closed til 2/20	closed til 2/20	closed til 2/20	closed til 2/20	closed til 2/20	closed til 2/20	closed til 2/20	closed til further notice	closed	closed	closed	closed
TTI	closed	closed	closed	closed	closed	closed	OPENED 45' only/dual required	OPEN (dual) 20' not allowed	OPEN (dual) 20' not allowed	closed	closed	OPEN 40'HC / 45' HC only (dual)	TBA
WBCT	closed	closed	closed	closed	closed	closed	OPENED 2.19 (appointment required)	OPEN (appointment required)	OPEN (appointment required)	closed	closed	OPEN (appt required)	OPEN (appt required)
STS	closed	closed	closed	closed	closed	closed	closed	closed	closed	closed	closed	closed	closed
APMT	OPEN - NO EI allowed	OPEN (dual required)	OPEN (dual required)	OPEN (dual required)	OPEN (dual)	OPEN (dual)	OPEN (dual)	OPEN (dual)	OPEN (dual)	closed	closed	OPEN (dual)	OPEN (dual)

MON 2/23	TUE 2/24	WED 2/25	THU 2/26	FRI 2/27	SAT 2/28	MON 3/2
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	DAY	NIGHT	DAY	NIGHT	DAY	NIGHT	DAY	NIGHT	DAY	NIGHT	DAY	DAY	NIGHT
PCT	OPENED 12noon/1pm	closed	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN	OPEN	closed	OPEN	OPEN (mon)
ITS	closed	closed	closed	closed	closed	closed	closed	closed	closed	closed	closed	closed	closed
TTI	OPEN 40'HC / 45' HC only (dual)	OPEN 40'HC / 45'HC only (dual)	OPEN 40'HC / 45' HC only (dual)	OPEN 40'HC / 45'HC only (dual)	OPEN (dual) 20' NOT allowed	OPEN 40'HC / 45'HC only (dual)	OPEN 40'HC / 45' HC only (dual)	OPEN 40'HC only (dual)	OPEN 40'HC only (dual)	closed	OPEN (dual) NO 40'ST allowed	OPEN (dual) NO 40'ST allowed	TBA
WBCT	OPEN (appt required)	OPEN (appt required)	OPEN (appt required)	OPEN (appt required)	OPEN (appt required)	OPEN (appt required)	OPEN (appt required)	OPEN (appt required)	OPEN (appt required)	closed	OPEN (appt required)	OPEN (appt required)	OPEN (appt required)
STS	closed	closed	closed	closed	closed	closed	closed	closed	closed	closed	closed	closed	closed
APMT	OPEN (dual)	OPEN (dual)	OPEN (dual)	OPEN (dual)	OPEN	OPEN	OPEN	OPEN	OPEN	closed	OPEN	OPEN (may change to dual?)	TBA

Based upon the gate schedule referenced above, the PCT facility was closed on the following dates:

Thursday, 2/5 – work stoppage meeting
Saturday, 2/7
Monday, 2/9 (open day shift/night shift closed)
Thursday, 2/12 (Holiday – Lincoln’s Birthday)
Saturday, 2/14
Monday, 2/16 (Holiday- President’s Day)
Saturday, 2/21
Monday, 2/23
Saturday, 2/28

DISCUSSION:

The Motor Carrier submitted its basis of dispute and documentation that included a wide range of general news articles that describe the West Coast port congestion, nightly internal dispatch communications, GPS data collected that shows the impact of the congestion on driver turn times, and eModal transmissions that were specific to the facility where the interchange of equipment occurred. The nightly internal email communications provided by the Motor Carrier, from its dispatcher to its customer service department, summarized conditions at various facilities. There were three email communications that referenced conditions at the in-gating facility, PCT. They are as follows:

February 3, 2014	Dispatcher stated there were extremely long wait lines at PCT.
February 4, 2014 and February 22, 2014	Dispatcher noted that there were extremely long flip lines at PCT.

All other dispatch communications advised of conditions at facilities other than PCT, including the out-gate facility, APM Terminal.

The Motor Carrier also provided copies of email communications from eModal. These communications identified specific conditions at various facilities. The majority of the transmissions were related to the out-gate facility, APM Pier 400. Only one of the eModal transmissions indicated that PCT had empty equipment return restrictions in place. However, these restrictions were not related to the Equipment Provider involved in this claim.

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 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. There was no evidence presented by the Motor Carrier that would indicate that the Equipment Provider did not comply with the SB45 as it relates to the charges being disputed under this claim.

DECISION:

After careful review of all documents and evidence submitted, the panel could not reach a consensus. The Motor Carrier panel member stated that a complete shut down or inability to interchange equipment is not necessary to claim force majeure. This panel member stated that based upon the detailed documentation provided by the Motor Carrier relative to the inability of the Motor Carrier to interchange equipment in the normal fashion, he believes that the charges on the original invoice should be reduced in half resulting in the Motor Carrier owing \$00.00 instead of the revised amount of \$00.00. The Ocean Carrier panel member indicated that although there was congestion at the terminal, the terminals were open and receiving equipment as outlined by the Equipment Provider in this case. The Equipment Provider did reduce the charges on the one container movement by one day to offset the wait time that the Motor Carrier encountered. Therefore, the Ocean Carrier panel member determined that no force majeure condition existed and found in favor of the EP. Since the two modal panel members were unable to reach a consensus, under Exhibit D, the third panel member was brought in to render the decision in the case.

The Rail Carrier panel member found in favor of the Equipment Provider. The Rail Carrier panel member reasoned that while it was clear from the documentation provided by the Motor Carrier that the port labor slowdowns were a factor in its decision making, the Motor Carrier did not provide documentation showing that any attempt was made to return the units involved prior to the dates on which the units were actually returned.

The question of the Equipment Provider's compliance with Section G.11. Compliance With the Law did not come up in any of the panel members' discussions relating to the final decision in this case.

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

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:

CLIFF CREECH
Rail Carrier Member

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)	Case Number: 20150318-1-XXXY-PD
Appellant, and)	
)	
UIIA Equipment Provider)	Date of Decision: 09/01/2015
Respondent)	

The motor carrier disputes the following invoice:

Invoice#	Invoice	Inv. Date	Amount	Facility	Outgated	Ingated
1	PDUER0046321	2/19/2015	\$00.00	Conley Terminal	1/30/2015 1/30/2015 2/5/2015 1/23/2015 1/30/2015 1/23/2015 1/22/2015	2/4/2015 2/4/2015 2/11/2015 2/6/2015 2/4/2015 2/5/2015 2/6/2015
2	PDUER0046547	3/5/2015	\$00.00	Conley Terminal	1/20/2015 1/20/2015 2/4/2015 1/20/2015 1/21/2015 1/20/2015 1/30/2015 1/22/2015	2/11/2015 2/11/2015 2/20/2015 2/5/2015 2/6/2015 2/17/2015 2/17/2015 2/18/2015
3	PDUER0046740	3/9/2015	\$00.00	Conley Terminal	2/6/2015	2/24/2015

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure) due to weather conditions that closed Conley Terminal in Boston and prevented the Motor Carrier from returning the equipment. The invoices issued by the Equipment Provider did not factor in the multiple days that Conley Terminal was closed. Boston received an all time record snowfall this winter through the end of February. The Motor Carrier believes that due to the severe weather conditions, the days the terminal was closed should not be counted as working days. The Motor Carrier states that it is willing to pay the charges related to its company not returning the empties by the last free day, but does not think it is fair to pay the full per diem bill if EP does not factor in the terminal closure days as non-working days.

The Motor Carrier states that it understood EP's policy for free time as it relates to what is considered a non-working day versus a working day under normal circumstances, but the amounts being disputed are 100% percent due to the extreme weather conditions experienced in Boston during the winter of 2015. The Motor Carrier stated that the other UIIA Equipment Providers that they have disputed similar charges with all have agreed to waive charges related to when the terminal was closed on the dates of 1/27, 1/28, 1/29, 2/2, 2/3, 2/9, 2/10 and 2/16. Not only was the terminal closed on these dates, but a state of emergency was in place for both the city of Boston and through the Commonwealth of Massachusetts with non-essential traffic banned from the public highways and roadways. The Motor Carrier states that based on the terminal closures it would agree to pay the following adjusted invoice amounts for the three invoices being disputed:

PDUER0046321 – Should be no balance based on terminal closures.

PDUER0046547 – Motor Carrier would agree to pay adjusted amount of \$1,105.00

PDUER0046740 – Should be no balance based on terminal closures.

EQUIPMENT PROVIDER RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider did not respond to the arbitration claim. However, the Equipment Provider's response to the Motor Carrier's initial dispute of these charges was that if the terminal was closed on the last free day the charges for that day would be waived. However, if the terminal was closed on last free day, the Motor Carrier is expected to return the equipment to the facility the very next day. Even though the terminal was closed, the Equipment Provider still considered these days as working days for the purposes of calculating free time. The Equipment Provider indicated that terminal closures were taken into consideration in the adjusted invoice amounts and that the charges billed are valid.

DISCUSSION:

The Motor Carrier submitted e-mail communications from Conley Terminal showing the dates it was closed due to the inclement weather conditions.

The Equipment Provider submitted no comments other than those shown in its response to the initial dispute of the charges by the Motor Carrier.

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.

Based on the case documentation submitted by the involved Parties and the facts surrounding this claim, the panel will need to determine if Section G.12. Force Majeure is applicable in this case.

DECISION:

The panel reviewed all documents and evidence submitted by the parties. Provision 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 reviewed in this case reveals that the facility was closed due to inclement weather. Because the terminal was closed the Motor Carrier was unable to interchange the equipment within the free time. Further, free time falling in a period of Force Majeure and terminal closings cannot be considered when calculating per diem as part of a Motor Carrier's "free time." After reviewing the invoices, and considering the allowable free time for each movement versus the standard three day set forth in the Equipment Provider's Addendum, the panel finds in favor of the Motor Carrier with the exception for dates that the Motor Carrier did not present proof. Consequently, the Motor Carrier is responsible for the specific dollar amount of \$2,210.00.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2014 and January 26, 2015) to make its decision:

G. General Terms

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 Uniform Intermodal Interchange and Facilities Access Agreement

Section 6. FREE TIME

A. Free Time shall be allowed for the equipment commencing with the day the equipment is delivered to the Motor Carrier at the terms indicated below. Saturdays, Sundays, and Holidays shall be excluded in computing free time. Coincident with the expiration of said free time, per diem charges shall be assessed on the equipment for each calendar day until the day said equipment properly returned to the Provider.

TERMS: [I] U.S. East Coast and Gulf Terminals – First 3 working days are free to trucker.
 [II] U.S. West Coast Terminals – First 4 working days are free to trucker.
 [III] All US Rail Ramps – First 3 working days are free to trucker.

DECISION: The panel unanimously finds in favor of the Motor Carrier with the exception of the specific dollar amounts associated with the following invoices:

Invoice Number	Container Number	Days	Amount Waived
PDUER0046547	CBHU8288826	2 Days	\$00.00
	CBHU8614408	2 Days	\$00.00
	CBHU8943888	1 Day	\$00.00
	CBHU5833151	0 Days	\$0.00
	FCIU4952914	0 Days	\$0.00
	DSZU2043397	4 days	\$00.00
	DSZU2043421	0 Days	\$0.00
	DSZU2043360	3 Days	\$00.00
	CBHU5779180	2 Days	\$00.00
	GLDU9564197	1 Day	\$00.00
PDUER0046740		1 Day	\$00.00

The panel finds that the motor carrier is responsible for the charges associated with this claim as follows:

Invoice Number	Amount Owed
PDUER0046321	\$0.00
PDUER0046547	\$00.00
PDUER0046740	\$00.00
Total Owed:	\$00.00

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 MC,
Appellant, and)

Case Number: **20150327-6-XXXV-PD**

UIIA EP,
Respondent)

Date of Decision: 12/30/2015

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Inv #	Inv.	Inv. Date	Facility	Outgated	Ingated
1	SPEI042287	1/31/2015	GGGS	12/26/2014	1/2/2015
			GGGS/YTI	1/6/2015	1/13/2015
			Pier A/GGS	1/9/2015	1/15/2015
			GGGS	12/24/2014	12/31/2014
2	SPEI042458	2/16/2015	GGGS	1/22/2015	1/30/2015
			Pier A/GGS	1/20/2015	1/28/2015

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 stated that containers could not be returned within the free time due to constant port labor slowdowns, port congestion issues, vessel delays, as well as pushed back export receiving dates, all of which were beyond the Motor Carrier's control and resulted in the Motor Carrier's inability to return the equipment to the Provider within the allowable free time.

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

The Equipment Provider did not respond to the arbitration claim. However, during the Motor Carrier's initial dispute of the charges, the Equipment Provider responded stating that they did not believe the port congestion issues were a force majeure event. The Equipment Provider indicated that it continued to provide information as to where the Motor Carrier could return equipment during the relevant timeframe. The Equipment Provider confirmed that the following terminals were open and ready to receive equipment: Eagle Marine Services' Global Gateway South, Trapac, California United Terminals, Long Beach Container Terminal and Yusen Terminals. Consequently, the Equipment Provider believes that the Motor Carrier would have been able to return the equipment within the specified free time.

DISCUSSION:

The Motor Carrier submitted its basis of dispute and documentation that included information related to contract negotiations between the Pacific Maritime Association, International Longshore, and Warehouse Union. The Motor Carrier also submitted several other articles that described port congestion issues on the West Coast, however the articles were not specific to the facilities associated with the disputed invoices. The Motor Carrier believes that force majeure conditions existed that precluded the redelivery of equipment.

The Equipment Provider did not respond to the arbitration claim. The only information available from the Equipment Provider was the communication between the Motor Carrier and the Equipment Provider prior to this claim being submitted for binding arbitration.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the Intermodal Interchange Executive Committee ("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.

DECISION:

The panel, after careful review of all documents and evidence submitted, could not reach a consensus. The Motor Carrier panel member believed that although the Motor Carrier did not provide GPS data related to turn times, that the Motor Carrier nevertheless made a fairly compelling case that the labor slow down impeded its ability to return equipment to the Equipment Provider. The Motor Carrier panel member favored giving the Motor Carrier one (1) extra free day for each transaction.

The Ocean Carrier panel member found in favor of the Equipment Provider stating that the Equipment Provider's initial response that the terminals were open and available to receive equipment, indicated to him this was not a force majeure event and, therefore, found the charges to be valid. The Ocean Carrier panel member further stated that if the guidance from the IIEC is that the "Equipment Provider should determine the force majeure on a case by case basis when there is congestion but terminals are open", then based on the evidence presented in this case there was no choice but to find in favor of the Equipment Provider.

In accordance with Exhibit D, the Rail Carrier panel member was brought in to render the final determination in the case since there was no consensus between the modal panel members. The Rail Carrier panel member found in favor of the Equipment Provider stating that while he believed that port labor slowdowns were likely a factor in the Motor Carrier's decision making at the time, the Motor Carrier did not provide documentation showing that any attempt was made to return any of the units involved prior to the dates on which the units were actually 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

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:

CLIFF CREECH
Rail Carrier Member

THOMAS BARATTINI
Ocean Carrier Member

JEFF 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: **20150330-7-XXXL-PD**

UIIA EP,
Respondent)

Date of Decision: 02/09/2016

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Invoice #	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
1	5249276979	1/7/2015	MSKU8359498	TTI	12/10/2014	12/23/2014	1/7/2015	2/5/2015	2/6/15 & 3/18/15	3/30/2015
2	5249247466	12/30/2014	PONU7187373	TTI	12/10/2014	12/19/2014	12/30/2014	1/14/2015	2/6/2015 & 3/20/15	3/30/2015
			MSKU0448243	TTI	12/10/2014	12/17/2014		1/14/2015		
3	5249299121	1/14/2015	CLHU4352824	APM Pier 400	12/23/2014	12/29/2014	1/14/2015	2/5/2015	2/6/15 & 3/20/15	3/30/2015
					12/22/2014	12/29/2014		2/5/2015		

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute for Invoices 1 and 2 is Section G.12 of the UIIA (Force Majeure) due to the inclement weather in Reno, Nevada that made driving conditions unsafe. The Motor Carrier stated that by the time it tried to dispatch drivers for the loads, it already had three other drivers that had halted operations on the same route until the weather conditions improved.

The Motor Carrier's basis for Invoice 3 is Section E.6.d. of the UIIA. The Motor Carrier does not believe the Equipment Provider complied with providing the documentation necessary to support that the billing was the Motor Carrier's responsibility. The containers under this invoice were booked using Booking Number 565385541 per the work order received from the Motor Carrier's customer on December 3, 2014. On December 10, 2014, the booking was rolled with a new cut date on December 22, 2014. On December 22, 2014, the Motor Carrier attempted to deliver the box to APM and its driver was given a trouble ticket with a reason of "Bad Bkg". The export customer reached out to the Equipment Provider who advised the booking had been cancelled because the Motor Carrier had not taken the containers out against the correct booking number. The Motor Carrier states that this was not correct; that the gate activity report from December 23, 2014, shows that 565385541 was the booking number reported to the Equipment Provider. As of December 23, 2014, the export customer obtained a new booking number under 565754199 and advised the ERD was December 31, 2014. On December 29, 2014, the Motor Carrier was able to claim pier pass and in-gate the containers early to avoid any further

delays. The Motor Carrier indicated that when it initially disputed these charges with the Equipment Provider, the Equipment Provider responded stating that the booking had not been cancelled and that the Motor Carrier was still responsible for the charges. The Motor Carrier states that they have proof to show that it reported the correct booking number to the Equipment Provider, as well as the trouble ticket to show the Equipment Provider had cancelled the trouble ticket at the APM facility.

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

The Equipment Provider responded stating that after further review of the invoices, they agreed to adjust Invoices 1 and 2 due to the significant storm in the Reno, Nevada area. Invoice adjustments are as follows:

- Invoice 5249276979 – reduced from \$00 to \$00
- Invoice 5249247466 – reduced from \$00 to \$00

The Equipment Provider's position on the balance of these two invoices and on Invoice 3 is that the charges are valid as billed with the two adjustments noted above.

The EP also provided the following information regarding the operating hours of the facilities associated with the above invoices:

<u>Pier 400</u>		
	Monday – Thursday	1 st shift full service gates 07:00 -17:00 (Import delivery ends at 16:00)
		2 nd shift full service gates 17:00 - 02:30 (Import grounded delivery ends at 01:00)
	Fridays	1 st shift full service gate 07:00 – 17:00 (Import delivery ends at 15:30)
		2 nd shift wheeled import gates 17:00 – 02:30
	Saturdays	1 st shift full service gate 07:00 – 16:00 (Import delivery ends at 14:00)

The only date reported by the Equipment Provider that the facility was closed was on December 25, 2014. The Equipment Provider also reported that Pier 400 does provide turn away tickets if the driver is turned away from the gate.

<u>TTI Facility</u>		
	Monday – Thursday	07:00 – 16:45 full service gate for all lines (PierPass TMF) – Front and Back Ingate Only
		17:00 – 02:30 full service gate for all lines Flex Gate (PierPass Off-Peak) – Front Gate Only
	Friday	07:00 – 16:30 full service gate for all lines (PierPass TMF) – Front and Back Ingate Only

The Equipment Provider indicated that this facility was not closed any dates between December 10, 2014 and December 23, 2014. In addition, the Equipment Provider reported that the facility does provide turn away tickets if the driver is turned away from the gate.

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. The Motor Carrier believes that the inclement weather in Reno, Nevada during the dates associated with Invoices 1 and 2 precluded the redelivery of the equipment within the specified free time. The Motor Carrier submitted communication between its import department and the receiving customer documenting that the weather conditions were unsafe for travel. In regards, Invoice 3, the Motor Carrier does not believe the Equipment Provider provided sufficient factual documentation to support the invoice. The Equipment Provider believes the charges are valid as billed with the exception of the adjustments to Invoices 1 and 2 due to the weather conditions in Reno, Nevada.

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.

DECISION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence, the Ocean Carrier panel member finds in favor of the Equipment Provider for the invoiced amounts stated on the Equipment Provider's response to the UIIA dated May 12, 2015. The Ocean panel member noted that while the Equipment Provider agreed to make adjustments to Invoices 1 and 2 (5249276979/5249247466) due to weather conditions, the Motor Carrier failed to provide any supporting documentation that containers could not be ingated due to congestion. The Ocean panel member stated that the Equipment Provider provided a clear explanation that the shipment associated with Invoice 3 (5249299121) was originally cancelled due to the fact that the Motor Carrier failed to return the containers within the free time.

The Motor Carrier panel member also found in favor of the Equipment Provider on Invoices 1 and 2 (5249276979/5249247466) for the reduced per diem amounts. As to Invoice 3 (5249299121), The Motor panel member finds in favor of the Motor Carrier stating that the Motor Carrier supplied all necessary paperwork and backup supporting its claim that the booking was cancelled and a new cut-off was due to issuing a new booking number.

Because the model members could not reach a consensus on Invoice 3, 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 stated that he would not comment on Invoices 1 and 2 (5249276979/ 5249247466) because of the consensus reached by the Ocean and Motor panel members. In regard to Invoice 3 (5249299121), the Rail panel member finds in favor of the Motor Carrier noting the following dates:

- January 14, 2015 – Motor Carrier received invoice
- February 5, 2015 – Motor Carrier disputed the invoice
- March 20, 2015 – Equipment Provider responded to Motor Carrier's dispute (43 days after the Motor Carrier's dispute). The Equipment Provider's dispute resolution process contained within its addendum states that the Provider will respond to the Motor Carrier's dispute within 30 days of receipt.

The Rail panel member stated that the Motor Carrier met the requirements and timeline for dispute required by the UIIA and the Equipment Provider's Addendum to the UIIA, however the Equipment Provider did not comply with the response timeframe set forth in its addendum.

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:

EP's Addendum to the UIIA – Section IX. Invoice Dispute Resolution, 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.

Provider shall process Motor Carrier's dispute and provide the outcome via written communication.

E. Equipment Use

6. Free Days, Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage Charges
 - d. Provider shall provide the Motor Carrier documentation as is reasonably necessary to support its invoice.
 - e. Motor Carrier shall respond in writing to Provider's invoices within thirty (30) days, documenting with appropriate evidence its disagreement with any of Provider's invoices it believes to be incorrect.

G. General Terms

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: Invoices 1 and 2 (5249276979/5249247466) – the Ocean and Motor panel members find in favor of the Equipment Provider for the adjusted invoiced amounts stated in the Equipment Provider's response to the UIIA dated May 12, 2015. Total due by the Motor Carrier on the invoices is: Invoice 1 (5249276979) - \$00 and Invoice 2 (5249247466) - \$00.

Invoice 3 (5249299121), the majority of the panel members finds in favor of the Motor Carrier.

CASE REVIEWED AND DECIDED BY:

CHAD PETERSON
Rail Carrier Member

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

Case Number: **20150415-9-XXXV-PD**

Date of Decision: 11/20/2015

The motor carrier disputes the following per diem 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	Notice of Intent Rec'd
1	P150200720	2/9/15	\$00.00	HDMU5550470 HDMU5568593 CAIU5516120	CUT/GGS CUT/GGS ConGlobal/GGS	1/16/15 1/16/15 1/16/15	2/2/15 2/2/15 2/2/15	2/9/15	2/10/15	3/31/15	4/15/15
2	P150200738	2/9/15	\$00.00	HDMU5490875	CUT/LBCT	1/28/15	2/3/15	2/9/15	2/10/15	3/31/15	4/15/15
3	P150201238	2/17/15	\$00.00	HDMU5555641	ConGlobal/YTI	1/26/15	2/11/15	2/17/15	2/17/15	3/31/15	4/15/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure). The Motor Carrier stated that it was prevented from returning the containers within the free time because of the port congestion that existed at the Ports of Los Angeles and Long Beach. The Motor Carrier stated that conditions such as port labor slowdowns, port congestion issues, vessel delays, as well as pushed back export receiving dates all contributed to the congestion and were beyond the Motor Carrier's control.

The Motor Carrier submitted supporting documentation that related to the contract negotiations between the Pacific Maritime Association and the International Longshore and Warehouse Union, as well as how these negotiations impacted the various port facilities. The Motor Carrier also submitted several other articles that described the port congestion issues on the West Coast.

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

The Equipment Provider responded with the following information regarding the operating hours of the in-gating facilities.

As per HMM local equipment department, all terminals are open Monday – Friday 8:00 a.m. – 4:30 p.m. and Monday through Thursday, 5:00 p.m. – 2:00 a.m. (second shift).

The Equipment Provider also noted that during the timeframe associated with the invoices under dispute, there was always an alternate return location. As per the EIRs provided by the Motor Carrier, there were different terminal location gate receipts since the containers were not terminated at the original point of interchange. See table below for adjustments to invoices based on terminal closures:

Invoice #	Container #	Out Gate Date	Return Date	Total days in Use	Free Days	Remarks
P150201238	HDMU5555641	26-Jan-15	11-Feb-15	17	12	These move typically receive "Use Charge Free time" per HMM Addendum Day of out gate and 3 working days. Received 8 additional free days due to terminal closure.
P150200720	HDMU5550470	16-Jan-15	2-Feb-15	17	12	These move typically receive "Use Charge Free time" per HMM Addendum Day of out gate and 3 working days. Received 8 additional free days due to terminal closure.
	HDMU5568593	16-Jan-15	2-Feb-15	17	12	
	CAIU5516120	16-Jan-15	2-Feb-15	17	12	
P150200738	HDM5490875	28-Jan-15	3-Feb-15	6	5	Received no additional free time as terminal was open during charge time.

During the Motor Carrier's initial dispute of the charges, the Equipment Provider responded that there were no changes to the booking as it relates to the Motor Carrier's argument that the export receiving dates had been delayed, causing the containers to be out for extra time. The Equipment Provider did provide some additional free days for Invoice P150201238 and P150200720 due to a terminal closure.

The Equipment Provider believes the invoices, with the adjustment in free time as noted above, 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 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, the panel 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.

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

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 adjusted amount.

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 MC,
Appellant, and)

Case Number: **20150501-11-XXXV-PD**

UIIA EP,
Respondent)

Date of Decision: 1/12/16

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Inv. #	Invoice	Inv. Date	Amount	Facility	Outgated	Ingated
1	OAKI010182	3/31/15	\$00.00	Oakland Berth 58/ TraPac Oakland SSA/ TraPac Oakland Berth 58/ TraPac	2/11/15 2/11/15 2/5/15	3/4/15 3/4/15 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). Due to port congestion that existed at the Ports of Los Angeles and Long Beach. The Motor Carrier indicated that the containers could not be returned within the free time due to constant port labor slowdowns, vessel delays and pushed back export receiving dates. These force majeure conditions made it impossible for Motor Carriers to return equipment to the Equipment Provider within the established free time. The MC argued that these export loads had to be kept out extra time as the shipping line/port was not receiving them. Once the MC pulled out the empties the vessels continued to get delayed due to the port labor slowdown and the export receiving got delayed as well. These conditions were totally out of the Motor Carrier's control.

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

The Equipment Provider responded stating that its UIIA addendum provides for three (3) days of free time for refrigerated containers and, that the calculation of free time is based on the date of interchange plus the number of free days allowed by contract. The Equipment Provider further stated that only working days are counted as free time and that weekends and holidays within the free time are, therefore, added to the number of days allowed. The Equipment Provider added that the relevant time period for this dispute was February 11, 2015 through March 4, 2015. In addition, the Equipment Provider noted that although the Motor Carrier submitted articles about congestion at the ports in California, none specifically addressed or described conditions at the port associated with the disputed invoice during the period February 11, 2015, through March 4, 2015.

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

Trapac Terminal (Code: OMO)	Monday – Friday (7:00 a.m. – 5:00 p.m.); Closed on weekends (Saturday & Sunday)
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The Equipment Provider indicated that the facility was closed on Presidents Day, February 16, 2015.

The Equipment Provider reported that after further review of the disputed invoices, it agreed to the following adjustments:

<u>CONTAINER(S)</u>	<u>ADJUSTMENT</u>	<u>BASIS FOR ADJUSTMENT</u>
GESU9469400 TTNU8292798	Rate adjusted to \$495.00 per container for a total of \$990.00	<p>The Equipment Provider noted that the Motor Carrier picked up the empty container(s) on February 11, 2015, at which time the Motor Carrier was advised that the booking had an updated cutoff date of February 26, 2015, at 4:00 p.m. The Equipment Provider also noted that it is the Port's practice to allow loaded reefer exports to be received two days before the cutoff. Consequently, the earliest the Motor Carrier could have returned the loaded container(s) was February 24, 2015.</p> <p>On 2/11/15, the Motor Carrier was aware that it would be charged for three (3) days of per diem as invoiced because it would have incurred these charges regardless of any subsequent vessel delays. After the Motor Carrier picked up the empty container(s), the vessel cutoff date was pushed back, and the first day cargo was allowed to be received at the Port was March 4, 2015. The Motor Carrier returned the container(s) on that date. As a result, the EP agreed to remove the per diem charges for the following days: February 25, 2015, through February 27, 2015, March 2, 2015, and March 3, 2015.</p>
APRU6122234	Removed from Invoice	The Equipment Provider confirmed that the first day cargo was allowed to be received at the Port for this vessel was March 2, 2015. The Motor Carrier returned the container on that date.

Based on the Equipment Provider's recalculation, the total adjusted charges owed by the Motor Carrier is \$00.00

DISCUSSION:

The Motor Carrier believes that force majeure conditions existed that precluded the redelivery of equipment.

The Equipment Provider's initial invoice was in the amount of \$00.00. After review of the records, including pushed back export receiving dates, the Equipment Provider determined that an adjustment was appropriate for Containers GESU9469400 and TTNU8292798 for the reasons set forth above. In addition, the Equipment Provider also determined that the Motor Carrier returned Container APRU6122234 on March 2, 2015, which was the first day cargo was allowed to be received at the Port for this vessel. The charge for Container APRU6122234 was removed from the invoice. The Equipment Provider adjusted the total charges due from \$00.00 to \$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.

DECISION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based on the supporting documents and evidence submitted, the panel unanimously finds in favor of the Equipment Provider in the amount of the adjusted invoice 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

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 \$0.00.

CASE REVIEWED AND DECIDED BY:

JIM MICHALSKI
Ocean Carrier Member

KEVIN LHOTAK
Motor Carrier Member

In the Dispute Between

Case Number: **20150514-26-XXXI-PD**

Date of Decision: 01/28/2016

Inv. #	Invoice	Inv. Date	Container #	Facility	Outgated	Ingated
1	5249586237	4/1/15	MSKU8996639 PONU8116857	TTI/Pier 400 TTI/Pier 400	3/12/15 3/12/15	3/19/15 3/19/15
2	5249586235	4/1/15	MSKU0915733	Pier 400	3/10/15	3/18/15
3	5249586238	4/1/15	MSKU1654906 MSKU9880140	TTI/Pier 400	3/12/15 3/12/15	3/19/15 3/19/15
4	5249586236	4/1/15	MRKU3202858	TTI/Pier 400	3/11/15	3/18/15

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 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 all contributed to the congestion and are conditions beyond the Motor Carrier's control. The Motor Carrier also stated that port congestion has been recognized by Equipment Providers, such as Maersk, as a form of force majeure and that 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 themselves from liabilities and, therefore, 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 believes it should not be held responsible for per diem during the timeframes in question.

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 noted there was no restriction on the dates the invoices cover.

In addition, the Equipment Provider provided the hours of operations for the identified facilities during period of 03/10/2015 through 03/19/2015, as follows:

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)
Sundays	Closed

TTI

Monday – Thursday	07:00 – 16:45 full service gate for all lines. (Pier Pass TMF) – Front and Back ingate only 1700 – Closed.
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The Equipment Provider reports that Pier 400/TTI was not closed on any day between 3/12 and 3/19 and, further, that Pier 400/TTI does give out turn away tickets if the Motor Carrier is turned away at the port. The Equipment Provider believes the charges are valid as invoiced.

DISCUSSION:

The Motor Carrier submitted its basis and narrative as well as supporting documentation showing average turns times for West Coast terminals for the period of October 2013 through June 2015. The Motor Carrier believes this additional documentation provides proof that the congestion impacted its business operations. The Motor Carrier also provided several news articles regarding the port congestion; however, none of these articles were associated with the specific facilities related to the disputed charges.

The Equipment Provider believes the supporting documentation it has submitted evidences that the conditions existing at the facilities during the dates of the interchange periods did not preclude/prevent the Motor Carrier from returning the equipment within the free time. The Equipment Provider also noted that the driver turn time data was not specific to the facilities where the interchange of equipment occurred and had not been validated. The Equipment Provider believes that the invoices should stand 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 EP within the allowable free time.

DECISION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence, the Motor Carrier panel member finds in favor of the Motor Carrier stating he believes that the HTA study should be utilized in establishing additional free time. This panel member argues that it is the general conditions described in Section G.12 that result in the inability of the Motor Carrier to return equipment to the Equipment Provider within the free time, and notes that those conditions do not apply to specific equipment on a container by container basis. The panel member further states that Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control apply generally to all the equipment out under interchange. In addition, this panel member believes it is the backlog created by the force majeure condition that results in the Motor Carrier being "unable" to return all the equipment it has out under interchange within the free time allowed for that equipment.

The Ocean Carrier panel member finds in favor of the Equipment Provider stating that the matter comes to the definition of Force Majeure specifically with regard to the meaning of "unable". The Ocean Carrier panel member believes the specific language in Section G.14. Force Majeure defines "unable" as "prevented" and believes the charges under dispute are valid as billed by the Equipment Provider.

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 stating that while there was likely increased congestion for several weeks, before and after the date of this claim, no facts were presented by the Motor Carrier that clearly outlines the impossibility to return containers during the free time. Nothing in the documents show that the Motor Carrier was turned away or rejected.

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

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:

TIM WILLIAMS
Rail Carrier Member

ROBERT CANNIZZARO
Ocean Carrier Member

FRED HUENNEKENS
Motor Carrier Member

In the Dispute Between

Case Number: **20150514-27-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
1	STB1825103	3/30/15	\$0.00	KKFU1197525 TTNU4452711	ITS/TTI ITS/WBCT	3/12/15 3/10/15	3/19/15 3/19/15	3/30/15	4/28/15	5/1/15

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 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 all contributed to the congestion and are conditions beyond the Motor Carrier's control. The Motor Carrier also stated that port congestion has been recognized by Equipment Providers, such as EP, as a form of force majeure and that 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 themselves from liabilities and, therefore, 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 the HTA data supports its assertion that the port congestion had a direct impact on the Motor Carrier’s normal business operations preventing it from returning the equipment within the allowable free time. The Motor Carrier believes it should not be held responsible for per diem during the timeframes in question.

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

The Equipment Provider responded stating that the force majeure provision of the UIIA was not applicable. The Equipment Provider reported that its return locations remained open throughout the interchange periods in question. In support of its claim, the Equipment Provider provided the following:

1. Documents demonstrating consistent empty return for all EP empty returns to terminals by day and by week covering the disputed period. The Equipment Provider also noted that the 2nd pivot shows the Motor Carrier's specific in/out gates in a consistent volume during the same contested period;
2. A list of the known restricted receiving dates by terminal and by day. For the in/out gated terminals being disputed in this case, no restrictions were in place; and
3. A detailed listing of the disputed invoices and notation that the Equipment Provider's terminals were not restricting empty receipts.

The Equipment Provider believes the supporting documentation proves that the conditions existing at the facilities associated with the disputed charges did not preclude/prevent the Motor Carrier from returning the equipment to the Equipment Provider within the allowed free time period.

In addition, the Equipment Provider stated that the regular hours for empty receiving was 8:00 a.m. – 4:30 p.m. and 6:00 p.m. – 2:00 a.m., respectively. The Equipment Provider also indicated that a refusal slip and/or email would be tendered by a terminal if a Motor Carrier is turned away. The Equipment Provider believes that the invoices should stand as billed.

DISCUSSION:

The Motor Carrier submitted its basis and narrative as well as supporting documentation showing turn time data from the HTA. The Motor Carrier believes the HTA data provides proof that the congestion impacted its business operations preventing it from returning the equipment within the allowable free time.

The Equipment Provider believes the supporting documentation it has submitted evidences that the conditions existing at the facilities during the dates of the interchange periods did not preclude/prevent the Motor Carrier from returning the equipment within the allowed free time. The Equipment Provider believes that 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 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 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 an adjusted amount of \$00.00. The Motor panel member states that Force Majeure cannot be determined simply by a facility being opened or closed and notes that "facility open or closed" is not a determinate within Section G.12 of

the UIIA provision as to whether force majeure applies. The Motor panel member believes that in the interest of a fair and equitable resolution, the invoice should be reduced based upon using the HTA turn time data as follows:

Using the baseline of 102 minutes (average time during March 2015) – $102 \div 75$ (HTA average for the prior year) = 1.36; 6 (free days) X 1.36 = 8.16 rounded down to 8 days. Apply 8 free days to each container - KKFU1197525 - 7 total days outgate - give 8 free - ZERO due on this container from Motor Carrier; TTNU4452711 container outgate 9 days total - apply 8 free days = 1 day chargeable @ 00.00 = \$ 00.00.

The Ocean Carrier panel member finds in favor of the Equipment Provider in the full amount of the invoice stating that the Motor Carrier failed to provide documentation that showed conditions existed that prevented it from returning the equipment within the allowable free time period. The HTA turn time data that illustrates Terminal Visit Times does not identify the basis of the data or the sample size. There is no way to clearly what the HTA data measures i.e. gate to gate, single moves, double moves, etc. The Ocean panel member also noted that no evidence was submitted supporting the Motor Carrier's claim that gates were closed. However, the Equipment Provider provided evidence that the return locations remained open throughout the interchange period in question.

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 of the invoice stating that the Motor Carrier did not provide documentation that supported their assertion that port congestion prevented them from returning the equipment within the allowable free time period.

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

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 the full amount of the invoice.

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 MC,
Appellant, and

UIIA EP,
Respondent

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Case Number: **20150514-28-XXXI-PD**

Date of Decision: 02/09/2016

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
PD00130272	4/13/15	0.00	TEMU3097651	PCT	3/30/15	4/10/15	4/13/15	5/1/15	5/1/15	5/14/15

Note: PCT confirmed they were open during normal busienss hours during the timeframe of 3/30/15 – 4/10/2015.

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 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 all contributed to the congestion and are conditions beyond the Motor Carrier's control. The Motor Carrier also stated that port congestion has been recognized by Equipment Providers, such as EP, as a form of force majeure and that 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 themselves from liabilities and, therefore, 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 the HTA data supports its assertion that the port congestion had a direct impact on the Motor Carrier's normal business operations preventing it from returning the equipment within the allowable free time. The Motor Carrier believes it should not be held responsible for per diem during the timeframes in question.

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

The Equipment Provider responded stating that the terminal was fully operational for the interchange period associated with the disputed charges. The Equipment Provider also noted that the HTA data provided by the Motor Carrier was not relevant in that “EP has no control over the pier/terminal that is individual/separate entity”.

The Equipment Provider provided the following hours of operation for the facility:

- Gate hours are from 8:00 to 3:00 Monday – Friday
- The Facility was not closed on any of the dates of interchange.
- 2/12/15 – closed both shifts for holiday (Lincoln’s Birthday)

The Equipment Provider also noted that the facility is a paperless terminal and does not provide turn away tickets.

The Equipment Provider reported the facility was open prior to the Motor Carrier’s last free day and noted the Motor Carrier provided no evidence that it was precluded from returning the equipment within the allowable free time. The Equipment Provider believes the charges are valid as billed.

DISCUSSION:

The Motor Carrier submitted its basis and narrative as well as supporting documentation showing turn time data from the HTA. The Motor Carrier believes the HTA data provides proof that the congestion impacted its business operations preventing it from returning the equipment within the allowable free time.

The Equipment Provider believes the evidence it has submitted proves that the conditions existing at the facilities during the dates of the interchange periods did not preclude/prevent the Motor Carrier from returning the equipment within the allowed free time. The Equipment Provider believes that the invoices should stand 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.

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 an adjusted amount of \$0.00. The Motor Carrier panel member stated that it was apparent a labor slow down existed making it near impossible for the Motor Carrier to return the equipment timely. The Motor panel member believes the invoice should be adjusted based upon the HTA turn time data as follows:

Using the baseline of 93 minutes (average time during April 2015) – $93 \div 75$ (HTA average for the prior year) = 1.24; The Equipment Provider gave 5 free days + the weekend; 7 (free days) $\times 1.24 = 8.68$ rounded up to 9 free days. Invoice shows a total of 12 calendar days minus the 9 free days = 3 chargeable days @ \$00.00 per day = \$0.00

The Ocean Carrier panel member finds in favor of the Equipment Provider in the full amount of the invoice stating that the Motor Carrier failed to provide documentation that showed conditions existed that prevented it from returning the equipment within the allowable free time period. The HTA turn time data that illustrates Terminal Visit Times does not identify the basis of the data or the sample size. There is no way to clearly what the HTA data measures i.e. gate to gate, single moves, double moves, etc. The Ocean panel member also noted that no evidence was submitted supporting the Motor Carrier's claim that gates were closed.

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 of the invoice stating that the Motor Carrier did not provide documentation that supported their assertion that port congestion prevented them from returning the equipment within the allowable free time period.

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

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 the full amount of the invoice.

CASE REVIEWED AND DECIDED BY:

CHAD PETERSON
Rail Carrier Member

KEVIN LHOTAK
Motor Carrier Member

JIM MICHALSKI
Ocean Carrier Member

In the Dispute Between

Case Number: **20150603-31-XXI-PD**

Date of Decision: 1/20/2016

				TCKU9457473	Shipper Transport / SSAT Pier A	4/8/15	4/15/15			
7	5249699008	4/29/15	\$00.00	PONU0084413	Pier 400/SSAT Pier A	4/3/15	4/13/15	4/29/15	5/28/15	5/29/15
8	5249699010	4/29/15	\$00.00	MRKU3879704	Shipper Transport / SSAT Pier A	4/7/15	4/14/15	4/29/15	5/28/15	5/29/15
				UESU4564579	Shipper Transport / SSAT Pier A	4/7/15	4/14/15			
9	5249699009	4/29/15	\$00.00	MRKU2955760	Shipper Transport / SSAT Pier A	4/7/15	4/14/15	4/29/15	5/28/15	5/29/15
10	5249680913	4/24/15	\$00.00	TRLU6680685	Pier 400	3/31/15	4/7/15	4/24/15	5/23/15	5/23/15
11	5249680914	4/24/15	\$00.00	MRKU2065283	Pier 400	3/30/15	4/7/15	4/24/15	5/23/15	5/23/15
12	5249680915	4/24/15	\$00.00	TGHU4795941	BNSF LA/Pier 400	4/2/15	4/9/15	4/24/15	5/23/15	5/23/15

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 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 all contributed to the congestion and are conditions beyond the Motor Carrier's control. The Motor Carrier stated that these conditions prevented it from returning equipment within the allowable free time period.

The Motor Carrier also provided the following email communications regarding terminals conditions:

- Pier A – dated 12/26/2014 at 1:57 p.m., is experiencing a number of delays.
- Pier A – dated 01/06/2015 at 5:15 p.m., effective 1/7/2015 Pier A will be closing certain import areas in the yard on a rotating basis.
- TTI – will be running a limited gate Friday 03/06/2015 2nd shift and Saturday 03/07/2015 1st shift for loads out, empty's in/out and bare chassis in/out we will not be receiving full in export containers. Update – TTI is accepting single empty in transactions as of 03/03/2015.

The Motor Carrier believes it should not be held responsible for per diem during the timeframes in question.

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

The Equipment Provider responded to the arbitration claim by providing turn times for some of the containers in question. The turn time table for specific containers under dispute is as follows:

LINE	TYPE	TRANS #	UPPER	TRUCKING COMPANY	TRUCK #	CONTAINER	CATEGORY	CTR OWNER	ENTERED	EXITED	POSITION
MSK	DI	2633	COMPLETE	BM06	D6398881	TRLU6680685	I	MSK	3/31/2015 06:58:04 PM	3/31/2015 07:17:49 PM	0:19
MSK	RM	3470	COMPLETE	BM06	N9812028	MSKU1884473	E	MSK	4/2/2015 06:11:46 PM	4/2/2015 07:10:45 PM	0:58
MSK	DI	6997	COMPLETE	BM06	N9812028	MRKU2065283	I	MSK	3/30/2015 08:55:52 PM	3/30/2015 09:48:50 PM	0:52
MSK	RM	8993	COMPLETE	BM06	D7302034	TRLU6680685	M	MSK	4/7/2015 06:51:50 PM	4/7/2015 08:36:59 PM	1:45
MSK	RM	9838	COMPLETE	BM06	D6398881	MSKU1745333	M	MSK	4/1/2015 10:20:08 PM	4/2/2015 12:01:30 AM	1:41

In addition, the Equipment Provider provided confirmation of the operating hours and terminal closures for Pier A, Pier 400 & TTI. The hours were as follows:

Pier A

- Monday – Friday – 8:00am to 5:00pm
- Monday – Thursday 6:00pm to 2:30am
- Pier A was closed on the following days: 12/25/2014, 01/01/2015, 01/16/2015 and 02/16/2015

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).
- Sundays - Closed

- Pier 400 was closed on the following days: 12/25/2014, 01/01/2015, 01/16/2015 and 02/16/2015
- Both facilities (Pier A & Pier 400) give out trouble tickets when turned away at the port.

TTI

- TTI was closed on the following days: 12/25/2014, 01/01/2015, 01/16/2015 and 02/16/2015

DISCUSSION:

The Motor Carrier submitted its basis and narrative as well as excerpts from various email communication regarding terminal conditions. The Motor Carrier also submitted as part of its supporting documentation information showing the average visit times at West Coast facilities for the period of October 2013 through June 2015. The Motor Carrier believes this evidence shows the impact the port congestion had on its business operations that resulted in the Motor Carrier's inability to return the equipment within the specified free time. The Motor Carrier also submitted several JOC articles; however, this information was not specific to the facilities associated with the disputed charges.

The Equipment Provider stated that the supporting documentation it submitted evidences that the conditions at the facilities did not preclude/prevent the Motor Carrier from returning the equipment within the allowable free time period. The Equipment Provider also commented that the average visit times provided by the Motor Carrier had no direct correlation to the containers in question, nor had this data been independently verified. 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 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 carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence, the Motor Carrier panel member believes that the HTA study should be utilized in establishing additional free time. This panel member noted that while the Equipment Provider provided turn times on some of the containers involved, it was a small percentage and the times did not take into account gate dwell time. The Motor Carrier panel member believes extra free days should be calculated by taking the increase percentage in average turn times multiplied by the applicable free days. The Ocean Carrier panel member finds in favor of the Equipment Provider stating the Motor Carrier's claims are not based on specific facts and figures related to the specific case, but rather on the overall general report of delays and congestion. The Ocean Carrier panel member noted that the Equipment Provider provided specific turn time reports as well as confirmation that the facilities were operating during the disputed period and finds there is no justification for Force Majeure.

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 stating that while it is likely that port labor slowdowns were a factor in the Motor Carrier's decision making at the time, the Motor Carrier did not provide any documentation showing that any attempt was made to return any of the units involved prior to the dates on which the units were interchanged.

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

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:

CLIFF CREECH
Rail Carrier Member

THOMAS BARATTINI
Ocean Carrier Member

JEFFREY LANG
Motor Carrier Member

In the Dispute Between

UIIA MC,
Appellant, and

UIIA EP,
Respondent

Case Number: **20151123-1-XXX-PD**

Date of Decision:

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
BLAI0300974	11/02/2015	Shippers Transport/West Basin Cont. Terminal	10/14/2015	11/02/2015	11/02/2015	11/11/2015	11/13/2015	11/23/2015
BLAI0300973	11/02/2015	Shippers Transport/PCT- SSA (pier J)	10/15/2015	11/02/2015	11/02/2015	11/11/2015	11/13/2015	11/23/2015
BLAI0300975	11/02/2015	PCT-SSA(pier J)/PCT- SSA(pier J)	10/16/2015	11/02/2015	11/02/2015	11/11/2015	11/13/2015	11/23/2015

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 stated that West Coast ports locked them out due to picketing at the facility. The Motor Carrier indicated the lock out precluded them from returning the equipment within the free time period. The Motor Carrier believes 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 its control and, when this condition is met, the Motor Carrier is exempted from the per diem charges during the duration of this condition. The Motor Carrier stated that the terminal operators cited "safety" concerns related to the picketing to justify banning the Motor Carrier's owner/operators and other companies from entering the ports from October 26th through October 30th. The Motor Carrier stated that in reality, even according to the port themselves, there were no safety issues. The Motor Carrier indicated that a port spokesman noted that there were no more than fifteen (15) people participating in the picket at the Port of Los Angeles creating little to no impact on port operations. Consequently, the Motor Carrier believes it is not responsible for the invoiced amounts resulting from the port locking them out as a result of the protest.

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

The Equipment Provider responded stating that it stands by the charges billed based on the following facts:

- The strike that took place from October 26th thru October 30th in LA/LB was orchestrated by MC's drivers.
- The strike did not halt operations at the terminal nor prevent MC from ingating the containers.
- The terminals have confirmed that containers were able to ingate regardless of the protestors.
- The containers associated with the billing under dispute remained out past the allotted free-time, therefore the detention is valid as billed.

The Equipment Provider also stated that by MC's own admission, the fact that port spokesman Phillip Sanfield, advised that "no more than 15 people picketed at the Port of Los Angeles" creating "little to no impact on port operations", indicates that there was no reason for the containers not to be ingated.

DISCUSSION:

The Motor Carrier submitted its basis and narrative as well as supporting documentation. The supporting documentation provided by the Motor Carrier included an email from APL/GGS that indicated MC will not be serviced due to safety concerns until further notice. However, this was not one of the facilities associated with the disputed invoices under this claim. The two facilities associated with the disputed charges are WBCT and PCT. The Motor Carrier was unable to provide documentation from WBCT and/or PCT stating that both terminals refused to answer and/or acknowledge them during this period of time. The Motor Carrier believes it was precluded from returning the equipment within the allowed free time period due to the lock out and, therefore, are not responsible for the invoices.

The Equipment Provider believes the evidence it has submitted proves that the conditions existing at the facilities during the dates of the interchange periods did not preclude/prevent the Motor Carrier from returning the equipment within the allowed free time. The Equipment Provider believes that the invoices should stand 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 port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

DECISION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence, the Motor Carrier panel member finds in favor of the Motor Carrier due to the fact the terminal would not allow them access while some of the motor carrier's independent contractors refused to work. The Motor Carrier panel member stated this condition was beyond Motor Carrier's control.

The Ocean Carrier panel member finds in favor of the Equipment Provider in the full amount of the invoices stating that the Motor Carrier failed to produce evidence they were restricted from returning containers to the terminals involved in the arbitration claim.

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 of the invoices. The Rail panel member commented that although MC provided communication of notice of force majeure to their customers, it appears that there was no imminent threat of safety to MC affiliated drivers in returning equipment timely, even by their own admission. The Rail panel member stated that although the event may have represented a strike, due to the lack of documentation of service restriction, specifically from West Basin and PCT terminals during the said dates, the refusal of these particular units cannot be validated.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (June 08, 2015) to make its decision:

G. General Terms

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 the full amount of the invoices.

CASE REVIEWED AND DECIDED BY:

LaVERSIA (ELLE) SPENCER
Rail Carrier Member

AL SMERALDO
Ocean Carrier Member

DAVE MANNING
Motor Carrier Member

In the Dispute Between

Case Number: **20160401-7-XXXI-PD**

Date of Decision: 01/04/2017

Invoice	Invoice #	Container #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	PDUNR0024831	TRHU1777843	02/15/16	Chicago Intermodal Terminal/Chicago Intermodal Terminal	10/21/15	02/02/16	02/15/16	02/15/16	03/23/06	04/01/16

The Motor Carrier basis of dispute is Section G.12. of the UIIA, Force Majeure. The Motor Carrier stated that the unit was involved in a bad accident immediately after being out-gated from the CN Rail facility. Two of the passengers were killed in the accident, and the driver of the car spent weeks in the hospital. The Motor Carrier indicated that since the accident involved fatalities, the equipment was impounded (truck, chassis and container) from October 21, 2015 (day equipment was out-gated) until Friday January 31, 2016. Once the unit was released by the authorities, the Motor Carrier returned the equipment on February 2, 2016. Therefore, the Motor Carrier feels that they should not be held responsible for the charges while the unit was in the custody of the local authorities.

The Equipment Provider did not respond to the arbitration claim. However, the Equipment Provider responded to the Motor Carrier's initial dispute of these charges stating that it felt it was not their fault that the unit was involved in an accident and, therefore, it believes that the per diem invoice is valid as billed and should not be waived.

DISCUSSION:

The Motor Carrier submitted its basis of dispute stating that conditions beyond their control, i.e. a fatal accident, resulted in the unit being impounded. The unit was released by the authorities on January 31, 2016, and the Motor Carrier returned the unit on February 2, 2016. While the Equipment Provider did not respond to the arbitration claim, they did respond to the initial dispute of the charges stating that the accident was not their fault and, therefore, believe the charges are valid.

DECISION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence, the Motor Carrier panel member finds in favor of the Motor Carrier stating that the Equipment Provider failed to respond within the thirty (30) day timeframe set forth by the UIIA.

The Ocean Carrier panel member disagreed with the Motor Carrier panel member's findings stating that there is nothing in the agreement to toll the accrualment of charges during the time of the impoundment. The Ocean Carrier panel member finds that the Motor Carrier, under E.6.a. of the agreement, is responsible for per diem and container use. The Ocean Carrier panel member found in favor of the Equipment Provider for the full amount of the invoice.

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

The Rail Carrier panel member also found in favor of the Equipment Provider for the full amount of the invoice. The Rail Carrier panel member stated that the Motor Carrier's basis of dispute in regards to "Force Majeure" is not valid. The citation issued to the driver for the accident indicated "failure to yield turning left", which would be the fault of the Motor Carrier's driver and therefore voids any basis for "Force Majeure". The Rail Carrier panel member also finds that the Equipment Provider was in compliance with their response to the Motor Carrier's initial dispute of the charges based on the terms of the method of dispute provision contained in the Equipment Provider's addendum. The addendum states that that the Equipment Provider will respond within 30 "working days" of receipt of the Motor Carrier's dispute. The Rail Carrier panel member noted that based on the language in Section 5 of the Equipment Provider's addendum, it appears the Equipment Provider's intent with its reference to "working days" is that it excludes Saturdays, Sundays and holidays. Consequently, the Rail Carrier finds that the Equipment Provider was in compliance with its response to the Motor Carrier's initial dispute at 27 "working days".

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:

Equipment Providers Addendum to the UIIA

Section 5. HOW INTERCHANGE IS MADE AND PAID FOR:

- B. On all interchanged equipment, the day of interchange and the next two working days will be considered as days of grace during which time no charge will be made FOR THE USE OF THE EQUIPMENT. Thereafter, full**

per diem will be assessed. Saturdays, Sundays, and Holidays will not be counted when computing the free time allowance. Holidays refer to those that are enumerated in labor contracts at the point of interchange.

METHOD OF DISPUTE RESOLUTION

Motor Carrier shall advise Provider in writing of any disputed items on Provider's invoices within 30 days of the receipt of such invoice(s). Provider will undertake to reconcile such disputed items within 30 working days of receipt of Motor Carrier's notice and will either provide verification for the charges as invoiced or will issue a credit to Motor Carrier's account for any amount not properly invoiced. Such disputes do not constitute valid grounds for withholding or delaying payments of undisputed charges as required by the terms of this Agreement. In the event that charges which have been verified by the Provider are gain rejected and disputed by Motor Carrier for whatever reasons, Provider reserves its rights and remedies under the law to compel payment of such charges.

G. GENERAL TERMS

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

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure) due to the terminal not accepting the loaded containers until the ERD (earliest receiving date). The Motor Carrier believes that per diem charges should be waived since it was unable to return the containers for reasons that they believe were not within their control due to the earliest receiving dates.

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

Although the Equipment Provider did not provide comments on the binding arbitration case within the 15 day timeframe set forth in Exhibit D of the UIIA, it did respond to the Motor Carrier's original dispute of the charges. In reviewing the Motor Carrier's dispute, the Equipment Provider requested that the Motor Carrier obtain written proof from the terminal that the earliest receiving dates had been changed. The Motor Carrier provided screenshots from the terminal's website showing the earliest receiving dates, but the Equipment Provider stated that these dates are posted at a set time and it is the Motor Carrier's responsibility to outgate and ingate equipment within the free time provided. From the Equipment Provider's perspective, the disputed invoices are valid. The Equipment Provider noted that the Motor Carrier pulled the empties from the facility too early and because it was not able to return the loaded export containers until the earliest receiving date, this resulted in the Motor Carrier going beyond the allowable free time for each container move.

DISCUSSION:

After careful review of all documents and the evidence submitted by the parties, the panel finds in favor of the Equipment Provider. The Ocean Carrier panel member noted that the Motor Carrier picked up the empties early and was restricted from returning the containers as exports due to the terminal's early receiving windows. In addition, the Ocean Carrier panel member also commented that this situation did not constitute a force majeure condition.

The Motor Carrier panel member also found in favor of the Equipment Provider stating the Motor Carrier did not provide any supporting evidence to indicate that the early receiving dates were changed, which would have qualified as being beyond the Motor Carrier's control.

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

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: **20190718-2-XXXM-PD**

Date of Decision: 11/19/2019

Invoice	Invoice #	Container #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	UST168875	DRYU6043023	6/14/19	ITS/YTI	11/21/2018	06/4/19	6/14/19	6/18/19	7/18/19	7/18/19

The Motor Carrier's basis of dispute is Section G.12 of the UIIA. The Motor Carrier disputed the invoice stating that the container was held by Mexican Customs for an extended period of time, which was beyond their control. Due the circumstances, the Motor Carrier feels they should not be liable for the per diem charges.

The Equipment Provider responded to the claim indicating while unfortunate, it is both foreseeable and reasonable to expect that cargo in transit across the border from the United States to Mexico might be seized by customs. However, the Equipment Provider does not believe a customs hold qualifies as a force majeure event and therefore the invoice is valid.

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the Ocean Carrier panel member found in favor of the Equipment Provider based on the fact that the argument presented by the Motor Carrier does not qualify as a Force Majeure event as defined in Section G.12. Customs inspections do not qualify as an "Act of God", war, insurrections, strikes, fire or floods. The Motor Carrier provided information that the reason the cargo was seized was due to regulatory violations. Seizure is not a force majeure event and is completely within the control of the beneficial cargo owner. The Motor Carrier panel member found in favor of the Motor Carrier

noting Section G.12. states "...or any like causes beyond the Motor Carrier's control, the Motor Carrier will be exempted from the Per Diem charges to extent of, and for the duration of, the condition that prevented the redelivery of the Equipment." The Motor Carrier panel member thought that the Motor Carrier lost control of the container during the time it was held by Mexican Customs.

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

Upon review of the information submitted with the claim, the senior arbitration panel found the case in favor of the Equipment Provider. It was the consensus of all three senior DRP panel members that this issue goes beyond Section G.12. Force Majeure since normally customs is for the account of the shipper/BCO. Consequently, the panel found that the Motor Carrier would be in the best position to recoup these costs from the shipper.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

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

Section G.12. Force Majeure

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.

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

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

DECISION: The Senior DRP Panel unanimously finds in favor of the Equipment Provider.

CASE REVIEWED AND DECIDED BY:

DAVE MANNING
Motor Carrier Senior DRP Panel Member

AL SMERALDO
Ocean Carrier Senior DRP Panel Member

WILLIAM TRAUB
Rail Senior DRP Panel Member

In the Dispute Between

UIIA MC,
Appellant, and

UIIA EP,
Respondent

Case Number: **20210604-5-XXXP-PD**

Date of Decision: **October 11, 2021**

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Invoice	Invoice number	Inv. Date	Inv. Amount	Out Gate	In Gate	Date MC stated they received invoices	Date MC Disputed Inv's	Date EP Responded to MC's Dispute
1	LGBD20210627312	4/22/2021	\$	3/29/2021	4/12/2021	4/22/2021	5/21/2021	5/28/2021
2	LGBD20210629642	4/22/2021	\$	3/24/2021	4/12/2021	4/22/2021	5/21/2021	5/28/2021
3	LGBD20210633452	4/22/2021	\$	3/25/2021	4/13/2021	4/22/2021	5/21/2021	5/28/2021
4	LGBD20210635387	4/22/2021	\$	3/29/2021	4/13/2021	4/22/2021	5/21/2021	5/28/2021
5	LGBD20210648251	4/22/2021	\$	4/5/2021	4/15/2021	4/22/2021	5/21/2021	5/28/2021
6	LGBD20210649474	4/22/2021	\$	4/2/2021	4/15/2021	4/22/2021	5/21/2021	5/28/2021
7	LGBD20210655720	4/22/2021	\$	4/6/2021	4/16/2021	4/22/2021	5/21/2021	5/28/2021

MOTOR CARRIER'S DISPUTE

The Motor Carrier's basis of dispute is Section E.1.b., G.11 and G.12 of the UIIA. The Motor Carrier states that the Equipment Provider provided equipment return locations however, the locations did not have any appointments available which precluded their ability to return the equipment to the designated locations. The Motor Carrier indicated that they contacted the EP for alternate locations to return the equipment and were told in some instances to make the next available appointment at the same facility and in other instances the Motor Carrier states they did not receive a response from the EP. When the Motor Carrier received the per diem invoices they disputed the charges asking the Equipment Provider to waive the charges due to being precluded from returning equipment to the satellite return location requested by the EP and also the EP not providing an alternate return location.

The Motor Carrier also believes that the Equipment Provider did not comply with Section G.11. because the California state legislation SB45 states that per diem cannot be imposed when the terminal is open but is not accepting empties. The Motor Carrier also feels that because they were precluded from returning the

equipment to the satellite location due to the terminal not having available appointments that this would fall under Section G.12. Force Majeure since this condition was beyond the Motor Carrier's control.

Based on the Equipment Provider's response to the arbitration claim, the Motor Carrier provided additional comments indicating that the information furnished in the Equipment Provider's argument is vague. Terminals showing empty receiving during a specific timeframe does not reflect the lack of appointments those facilities had during that same period. The Motor Carrier also noted that the empty return information on the Equipment Provider's website does not reflect a timestamp of when it was last updated so there is no way for the Motor Carrier to know if the information was posted after the 4:00 p.m. deadline required under Section E.1.b. Lastly, the Motor Carrier stated that all marine terminals (except ITS) require an empty-in appointment to be made prior to returning empty equipment. If there are no appointments how would a Motor Carrier be able to avoid per diem if there are no appointments for consecutive days and the Motor Carrier is not provided an alternate return location.

For the reasons outlined above, the Motor Carrier believes they should not be held responsible for the per diem charges billed.

EQUIPMENT PROVIDER'S RESPONSE

The Equipment Provider responded that they complied with the terms of the UIIA as the terminals were open during the time period in question. The Equipment Provider provided reports from two other facilities PCT and PIER A that specified the quantity of empty containers received by each terminal during the period of the dispute. The Equipment Provider stated that they were not able to generate a report from WBCT as gate data was only maintained for the last 45 days but indicated that they expect similar numbers for this terminal as well. The Equipment Provider believes this information provides sufficient proof that facilities were accepting empties during this period. Furthermore, the Equipment Provider noted that they provide full visibility of the terminals open for empty receiving and empty return instructions on their website at us.wanhai.com. Any changes are updated by 4:00 p.m. the day prior. Truckers are instructed to use this additional tool provided by Equipment Provider. The Equipment Provider also stated it is the Motor Carrier's responsibility to secure appointments for empty container returns and not the Equipment Provider's responsibility.

The Equipment Provider provided a final response to the Motor Carrier's additional comments indicating that there were contradicting statements in the Motor Carrier's argument regarding appointment availability at the terminals during this timeframe. The Equipment Provider added that their empty container receiving information is updated on their website the first workday of each week for the upcoming week. If changes occur, the Equipment Provider states that they update the website at least one day before actual changes take place. Lastly, the Equipment Provider states that the Motor Carrier's argument regarding SB45 is also inaccurate. The Motor Carrier states that code 22928(b)(1) applies to them because the terminal truck gate was closed during posted normal working hours. However, this assertion is untrue, as our previously submitted reports have illustrated the number of WHL empty containers received by terminals during the dispute period.

For the reasons stated above, the Equipment Provider believes the invoices issued are valid as billed to the Motor Carrier.

DISCUSSION

After careful review of all documents and evidence submitted, the panel finds in favor of the Motor Carrier. The Motor Carrier panel member indicated that the Motor Carrier attempted to return the equipment to the only physical location provided by the Equipment Provider and there were no appointments. The Equipment Provider did not provide an alternative location. They advised the Motor Carrier that "no appointments does not mean there are no valid empty locations". The Motor Carrier was unable to obtain appointments on consecutive days, with no alternate return locations provided by the Equipment Provider, so the Motor Carrier panel member deemed this to be a condition beyond the Motor Carrier's control based on Section G.12. Force Majeure. The Motor Carrier panel member noted that because this is a condition beyond the Motor Carrier's control, they should be exempted from per diem until such a time an appointment can be made, or another valid empty location is provided by the Equipment Provider.

The Ocean Carrier panel member concurred that the case should be found in favor of the Motor Carrier based on the fact that the evidence and documentation presented in the case clearly showed that an effort was made on the part of the Motor Carrier to find a solution to the equipment return issue. Consequently, the Ocean Carrier panel member believes the per diem charges should be waived.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

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

E. Equipment Return, Item E.1.b.

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 a satellite location(s): 1) as governed by a written bilateral equipment interchange agreement between the Parties or 2) as specified in a notification from the Provider to Motor Carrier via internet posting or e-mail to return the Equipment to a Provider-designated satellite location, listed in IANA's Equipment Return Location Directory (ERLD). 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.

G. General Terms, Item G.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 based on the evidence and supporting documentation presented in the case. The Motor Carrier should not be held responsible for the disputed per diem charges under this claim based on Section E.1.b and G.12.

CASE REVIEWED AND DECIDED BY:

Dave Hensal

Motor Carrier Panel Member

Leo Imperial

Ocean Carrier Panel Member

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

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent.

Case Number: **20210721-7-XXXP-PD**

Date of Decision: 01/28/2022

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Invoice	Invoice #	Container #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	UST521596	ONEU0136570	06/29/21	YTI/YTI	5/11/2021	6/21/2021	6/30/21	7/2/21	7/7/2021	7/21/21
2	UST521595	FDCU0556469	06/29/21	YTI/ITS	5/11/2021	6/22/2021	6/30/21	7/2/21	7/7/2021	
3	UST521599	TRHU4350921	06/29/21	YTI/YTI	5/19/2021	6/21/2021	6/30/21	7/2/21	7/7/2021	
4	UST521597	BEAU5302016	06/29/21	YTI/ITS	5/20/2021	6/25/2021	6/30/21	7/2/21	7/7/2021	
5	UST521052	BEAU5327884	06/29/21	YTI/ITS	5/20/2021	6/22/2021	6/30/21	7/2/21	7/7/2021	
6	UST521060	ONEU0331598	06/29/21	YTI/YTI	5/20/2021	6/23/2021	6/30/21	7/2/21	7/7/2021	

MOTOR CARRIER'S DISPUTE

The Motor Carrier's basis of dispute is Sections E.1.b., E.1.d., G.12, and H.2. of the UIIA. The Motor Carrier states that the Equipment Provider requested the Motor Carrier to return the empty equipment to Trapac. When the Motor Carrier attempted to return the empties to Trapac, the facility had empty return restrictions. The Motor Carrier contacted the Equipment Provider and was instructed to take the empty equipment to International Transportation Services (ITS). On July 2, 2021, the Motor Carrier received the per diem invoices and disputed the charges on the basis that there were empty equipment restrictions at the facility which precluded it from returning the equipment within the free time allowed under Section E.1.d. in order to avoid per diem charges.

The Motor Carrier believes that the Equipment Provider did not comply with Section E.1.b. of the UIIA by not providing a valid return location and not notifying the Motor Carrier by 4:00 p.m. (local time) the business day prior to the change in the equipment return location. In addition, the Equipment Provider did not provide the additional business day for the equipment to be returned as required under Section E.1.d. The Motor Carrier believes it attempted to work with the Equipment Provider to avoid the dispute from going to arbitration, but no response was received from the Equipment Provider which is a violation of Section H.2. Lastly, the Motor Carrier believes the Equipment Provider did not comply with Section G.12 of the UIIA. as they did not abide by California State Bill SB45 that precludes the Equipment Provider from assessing per diem charges on days when terminals are not receiving empty equipment due to a lack of appointments being made. The Motor Carrier stated that it does not control the appointment systems, and the steamship lines have the control to redirect the equipment to an appropriate facility. For the reasons above, the Motor Carrier believes they should not be held responsible for the per diem charges billed.

EQUIPMENT PROVIDER'S RESPONSE

The Equipment Provider responded to the Motor Carrier's dispute indicating that the dispute was declined since they had provided the Motor Carrier with an alternate return location (ITS) the same day the Motor Carrier reported there were empty restrictions at the original return location (Trapac). The Equipment Provider believes that Sections E.1.b. & E.1.d. of the UIIA apply only if the original return location is changed and does not apply just because an alternative location is provided. Therefore, the Equipment Provider feels that Section E.1.d. of the UIIA did not require it to extend the last free day. The Equipment Provider's responses to the Motor Carrier's emails did not violate the UIIA as the responses solely provided exemptions or alternative return locations and never changed the original return location posted. In addition, the Equipment Provider does not believe this situation warrants a force majeure condition based on the language in Section G.12 in the UIIA as argued by the Motor Carrier. The Equipment Provider believes the per diem charges are valid as billed.

DISCUSSION

After careful review of all the parties' arguments, documents, and evidence submitted, the panel finds in favor of the Equipment Provider. The Ocean Carrier panel member indicated that the Equipment Provider advised the Motor Carrier of all return locations before the daily cut-off time pursuant to Section E.1.b. of the UIIA. The Equipment Provider acted reasonably when notified on May 12th and May 25th that the original return location had empty restrictions on the specific date the Motor Carrier attempted to return the equipment by providing the Motor Carrier with either an exemption and/or an alternate location to return the equipment. This information was provided to the Motor Carrier the same day they had reported the empty restrictions to the Equipment Provider. Therefore, based on the Equipment Provider's response to the Motor Carrier in this situation, the Ocean Carrier panel member did not believe Section E.1.d. that offers an additional business day to return the equipment was applicable. In addition, although an alternate return location was provided to the Motor Carrier on the same day (May 12th and May 25th) the Equipment Provider was notified of the empty restrictions, the actual return of the equipment did not take place until late June.

The Motor Carrier panel member concurred with the Ocean Carrier panel member's analysis of the facts and documentation presented in the case. Finally, the panel agrees with the Equipment Provider that based on the facts presented, the situation did not warrant a force majeure condition set forth in the language of Section G.12 of the UIIA. Accordingly, based on the above, the panel finds in favor of the Equipment Provider.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

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

E. Equipment Return, Item E.1.b.

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 a satellite location(s): 1) as governed by a written bilateral equipment interchange agreement between the Parties or 2) as specified in a notification from the Provider to Motor Carrier via internet posting or e-mail to return the Equipment to a Provider-designated satellite location, listed in IANA's Equipment Return Location Directory (ERLD). 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. **[Revised 02/08/16]**

E. Equipment Return, Item E.1.d.

Should the notification required under subsection 1.b. above not be made one (1) business day prior to the effective date of the change, and the late notification delayed the Interchange of Equipment, then the Motor Carrier would be entitled to one (1) additional business day to return the Equipment. **[Added 02/08/16]**

G. General Terms, Item G.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]**

H. Default Dispute Resolution and Binding Arbitration Processes, Item H.2.

Should no resolution be reached between the Parties for charges disputed within the applicable dispute resolution process, then the Parties will have the ability to submit the disputed charges for binding arbitration in accordance with Exhibit D of the Agreement. Prior to the commencement of binding arbitration, both Parties are expected to take every reasonable effort to resolve the dispute. Following the initiation of binding arbitration, the arbitration panel will determine the Party responsible for payment based on the specific facts and circumstances associated with the claim, the terms and conditions of the Agreement and the Provider's Addendum along with the supporting documentation presented by the involved Parties. **[Revised 04/23/21]**

DECISION:

The panel unanimously finds in favor of the Equipment Provider based on the evidence and supporting documentation presented in the case. The Motor Carrier is responsible for the disputed per diem charges under this claim based on Section E.1.b. of the UIIA.

CASE REVIEWED AND DECIDED BY:

JORDAN HUNT
Motor Carrier Panel Member

TIM AMES
Ocean Carrier Panel Member

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

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent.

Case Number: **20210609-1-XXXW-PD**

Date of Decision: 10/4/2021

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Invoice	Invoice #	Inv. Date	Container / Chassis	Facility In/Out	Outgate Date	Ingate Date	Date MC rec'd inv.	Date MC disputed original invoice	Date MC disputed revised invoice	Date EP sent final response to MC's dispute	Notice of Intent Rec'd
1	DT0270217	5/3/21	YMLU8852769 / TSXZ498162	USNYC/USNYC	3/17/21	4/12/21	5/4/21	5/4/21	6/3/21	6/8/21	6/9/21
2	DT0270218	5/3/21	YMMU6289686 / METZ510962	USNYC/USNYC	3/16/21	4/12/21	5/4/21	5/4/21	6/3/21	6/8/21	
3	DT0270219	5/3/21	TCNU4772034 / TSXZ424859	USNYC/USNYC	3/25/21	4/14/21	5/4/21	5/4/21	6/3/21	6/8/21	
4	DT0270220	5/3/21	BEAU4841440 / METZ443897	USNYC/USNYC	3/24/21	4/23/21	5/4/21	5/4/21	6/3/21	6/8/21	
			FBLU0157380 / METZ411498	USNYC/USNYC	4/7/21	4/19/21	5/4/21	5/4/21	6/3/21	6/8/21	
			TEMU7078325	USNYC/USNYC	3/24/21	4/21/21	5/4/21	5/4/21	6/3/21	6/8/21	
			TGBU5166495	USNYC/USNYC	3/24/21	4/22/21	5/4/21	5/4/21	6/3/21	6/8/21	
5	DT0270221	5/3/21	SEGU6186015	USNYC/USNYC	4/6/21	4/21/21	5/4/21	5/4/21	6/3/21	6/8/21	
6	DT0270222	5/3/21	YMLU8611740	USNYC/USNYC	4/12/21	4/19/21	5/4/21	5/4/21	6/3/21	6/8/21	

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's dispute is based on Sections E.1.b. and G.12 of the UIIA. The Motor Carrier states that the Equipment Provider did not provide a valid equipment return location. The empty equipment was requested to be returned to Global Terminal. The Motor Carrier indicated that when attempting to return the empty equipment to this facility, there were either restrictions in place or no appointment available that precluded the Motor Carrier's ability to return the equipment. There were communications between the Motor Carrier and the Equipment Provider regarding the Motor

Carrier's dispute of the per diem charges on the units that the Motor Carrier was unable to return. The Motor Carrier continued to advise the Equipment Provider that they were unable to return the equipment to Global Terminal as requested for the reasons stated above. On May 4, 2021, the Motor Carrier e-mailed the Equipment Provider with its initial dispute of the six invoices. On June 3, 2021, the Equipment Provider issued revised invoices to the Motor Carrier for per diem charges. The Motor Carrier again disputed the charges based on no return location being available. The Motor Carrier believes that the Equipment Provider did not comply with Section E.1.b. of the UIIA by not providing a valid location to return the equipment, and the Motor Carrier should not be held responsible for the per diem charges.

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

The Equipment Provider responded to the Motor Carrier's initial dispute of the charges and indicated that the Motor Carrier should contact its equipment control department for assistance. After the Motor Carrier again advised the Equipment Provider that there was no return location, the Equipment Provider adjusted the invoices. The Motor Carrier disputed the new invoices based on the fact that there was not a valid location to return the empty containers and stated that a larger adjustment would need to be considered since there were no return locations. The Equipment Provider reviewed the invoices again and stated that no new information had been provided by the Motor Carrier to support further adjustment to the per diem charges. The Equipment Provider informed the Motor Carrier that the invoices were for detention that was over 10 days and as much as up to 25 days. The Equipment Provider further informed the Motor Carrier that in consideration of the additional normal free time detention should be expected under these circumstances, and the Motor Carrier is responsible for payment of the revised invoices.

DISCUSSION:

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 states that while the Equipment Provider makes a valid point that a one-day closure at a port should not constitute a limitless extension of free time, the Equipment Provider should also consider the congestion associated with open receiving days when so many days are restricted. The Motor Carrier provided evidence of restricted empty container return accounting for five days in March and five days in April. While better communication between the Motor Carrier and the Equipment Provider regarding the delays could have, perhaps, addressed the situation prior to submitting for arbitration, in accordance with Section G.12. a Motor Carrier should not be held responsible for per diem when conditions outside of their control prevent them from returning the equipment. If per diem is not incentivizing cargo flow, then it should not be charged.

Consequently, the Motor Carrier panel member finds that the days the port was closed based on the evidence provided by the Motor Carrier are not billable days. Regardless, there was per diem accrued on each container in question during open receiving days, which should be the responsibility of the Motor Carrier, despite the well understood challenges associated with the empty returns. As such, the Motor Carrier panel member finds a split decision for this case with financial adjustments to the invoices noted in the table below:

Note: Table on the following page sets forth the number of days the return facilities were closed during the interchange period beyond the last free day (LFD).

Invoice #	Container / Chassis	Original Number of Days Billed	Original Invoice Amount	EP Revised Invoice	Days Facilities closed During Interchange Period Past Last Free Day (LFD)	Adjusted Number of Days Billed	Panel's Decision Adjusted Invoice Amount
DT0270217	YMLU8852769	13			9 day(March 31, April 3,4,5,6,7,9,10,11)	4	
DT0270218	YMMU6289686	18			12 days (March 26,27,28,31, April 3,4,5,6,7,9,10,11)	6	
DT0270219	TCNU4772034	15			10 days (March 31, April 3,4,5,6,7,9,10,11,13)	5	
DT0270220							
	FBLU0157380	7			3 days (April 13, 17, 18)	4	
	BEAU4841440	25			12 days (March 31, April 3,4,5,6,7,9,10,11,13,17,18)	13	
	TEMU7078325	23			12 days (March 31, April 3,4,5,6,7,9,10,11,13,17,18)	11	
	TGBU5166495	24			12 days (March 31, April 3,4,5,6,7,9,10,11,13,17,18)	12	
DT0270220 Total Invoice							
DT0270221	SEGU6186015	12			6 days (April 9,10,11,13, 17, 18)	6	
DT0270222	YMLU8611740	4			2 days (April 17,18)	2	
Total Owed							

The Ocean Carrier panel member concurred with the split decision and agreed with the adjustments to the disputed invoices with the Motor Carrier's responsibility shown in the column titled "Panel's Decision Adjusted Invoice Amount" in the table above.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

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

G. General Terms, Item G.12.

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 for a split decision in this case with the Motor Carrier's being responsible for a total of \$00.00 of the billed per diem charges.

CASE REVIEWED AND DECIDED BY:

BEN BANKS

Motor Carrier Panel Member

THOMAS BARATTINI

Ocean Carrier Panel Member

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

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent.

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Case Number: 20230316-42-XXXI-PD

Date of Decision: 09/19/2023

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

	Invoice Number	Unit #	Invoice Date	Facility	Outgated	Ingated	Date MC Rec'd Invoice	Date MC Disputed Invoice	Date EP Responded only confirmed receipt of dispute	Date Notice of Intent Received
1	DT0316797	TCNU1858941/ HDMZ408367	11/6/2022	USCHS	09/28/22	10/7/22	11/7/2022	11/9/2022	12/7/2022	03/16/23
		TGBU6600836	11/6/2022	USCHS	09/28/22	10/13/22	11/7/2022	11/9/2022	12/7/2022	03/16/23
		NAPZ422215	11/6/2022	USCHS	09/28/22	10/07/22	11/7/2022	11/9/2022	12/7/2022	03/16/23
		TLLU4183605	11/6/2022	USCHS	09/28/22	10/17/22	11/7/2022	11/9/2022	12/7/2022	03/16/23
		TLXZ459409	11/6/2022	USCHS	09/28/22	10/07/22	11/7/2022	11/9/2022	12/7/2022	03/16/23
	Total of Invoice									

MOTOR CARRIER'S BASIS OF DISPUTE

The Motor Carrier's dispute is based on Sections G.12. and H.1. of the UIIA. The Motor Carrier disputes charges billed covering the date of September 30, 2022 since the Port of Charleston was closed that day due to a hurricane. There were ongoing e-mail communications with the Equipment Provider relating to the dispute. In the last correspondence, dated December 7, 2022, the Motor Carrier explained to the Equipment Provider that Force Majeure is a special circumstance and days when the port is closed cannot be counted as days towards free time or per diem regardless of contract terms. No further response was received from the Equipment Provider, so the Motor Carrier believes the Equipment Provider also did not comply with Section H.1. of the UIIA by responding with a definitive denial or acceptance of the Motor Carrier's dispute within 30 days. Consequently, the Motor Carrier believes the invoice should be canceled.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE

The Equipment Provider did not respond to the binding arbitration claim, but there were multiple communications between the Motor Carrier and the Equipment Provider related to the Motor Carrier's initial dispute of the charges. The last communication from the Equipment Provider was on December 7, 2022, when it indicated that the shipment was provided 10 calendar days and that every calendar day counted in the calculation of free time, including weekends, holidays, and terminal closure days. The Equipment Provider stated that although the port was closed on September 30, 2022, it is still counted as a one free day based on the terms of the service contract.

DISCUSSION

The panel has carefully reviewed all documents and evidence submitted by the parties. The Motor Carrier's initial basis of dispute is that the Equipment Provider counted as free time a date, September 30, 2022, on which the Motor Carrier was unable to interchange equipment to the Equipment Provider due to circumstances covered under Section G.12. of the UIIA, namely a hurricane, confirmation of which was received from the Marine Terminal Operator via email on November 16, 2022. The Equipment Provider, in its email of December 7, 2022, asserted that "every day is counted into your free time, including weekends, holidays, terminal closure day," which appears to conflict with Section G.12. of the UIIA. While the Motor Carrier relies on Section H.1 of the Agreement in its filing, the Motor Carrier panel member finds that the Equipment Provider's December 7, 2022 email is a definitive denial of the Motor Carrier's dispute and that this denial took place within the 30-day timeframe afforded by Sections H.1. and H.4 of the UIIA. The Ocean Carrier panel member finds that the Equipment Provider responded to the Motor Carrier's dispute on December 7, 2022 and therein confirmed that the special free time was applied, and that this response can be interpreted as the Equipment Provider's response that the invoice is valid.

However, the panel also finds that the Equipment Provider erred in refusing to honor the Motor Carrier's initial dispute under Section G.12. of the UIIA. The Motor Carrier panel notes that a terminal closure due to a hurricane would most reasonably be construed as within the accommodations afforded by Section G.12. The Ocean Carrier panel member notes that it is reasonable for the Motor Carrier to dispute the invoice because the port was closed for 1 day, which prevented the Motor Carrier from delivering the equipment and was validated by the South Carolina Ports Update provided in the case file.

Note: The original arbitration panel did not reach a consensus on how the \$00 arbitration filing fee should be handled in this case. Consequently, this specific issue related to reimbursement of the filing fee was directed to the senior arbitration panel for final determination. The senior arbitration panel unanimously determined that in accordance with Exhibit D, Item D.14. that the Motor Carrier should be reimbursed the \$00 filing fee by the Equipment Provider since the Motor Carrier prevailed in the arbitration case.

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

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]**

H. Default Dispute Resolution and Binding Arbitration Processes, Items H.1. and H.4.

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, maintenance and repair or Equipment use/rental charges, the following default dispute resolution process will apply. **[Revised 05/01/17]**

4. Should the Invoicing Party fail to respond to the Invoiced Party's dispute of an invoice relating to Per Diem, maintenance and repair or Equipment use/rental 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 05/01/17]**

DECISION

The panel finds the Equipment Provider's December 7, 2022 email was a denial of the Motor Carrier's initial dispute and that the denial occurred within 30-days and therefore complied with Section H.1. of the UIIA. However, the Equipment Provider should have honored the Motor Carrier's dispute under Section G.12. of the UIIA because the port was closed on September 30, 2022 when the Motor Carrier tried to interchange the equipment. Consequently, the invoice in question should be adjusted by reducing one day of per diem for each piece of equipment listed, which equates to a reduction of \$00.00. The adjusted invoice total with this reduction would be \$00.00, which would be owed by the Motor Carrier. The Equipment Provider should issue an adjusted invoice to the Motor Carrier for the revised amount of \$00.00. In addition, the senior arbitration panel determined that the Equipment Provider is to reimburse the Motor Carrier the \$00.00 arbitration filing fee.

CASE REVIEWED AND DECIDED BY:

MATT SCIASCIA
Motor Carrier Panel Member

JIM MICHALSKI
Ocean Carrier Panel Member

Note: Senior arbitration panel rendered the final decision solely as it relates to the handling of the arbitration filing fee of \$00.

**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: **20211012-9-XXXP-PD**

Date of Decision: 05/05/2022

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Invoice	Invoice #	Container #	Inv. Date	Amount	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
See attached spreadsheet listing 125 invoices involved in this dispute totaling \$00.00											

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Sections G.11, G.12, H.1. and H.4 of the UIIA. The Motor Carrier initially disputed the invoices on July 21, 2021, stating that the return locations provided by the Equipment Provider did not have any appointments available which precluded the Motor Carrier's ability to return the equipment to the designated location. The Motor Carrier further stated that they contacted the Equipment Provider daily for alternate locations to return the equipment but received no response, which resulted in the Motor Carrier incurring the per diem charges being disputed. On October 6, 2021, the Motor Carrier advised that the Equipment Provider offered the Motor Carrier a thirty percent (30%) discount on the total invoices owed, and later offered a fifty percent (50%) discount on the disputed charges. The Motor Carrier elected to decline the offer as it feels that based on the lack of response from the Equipment Provider to provide a valid equipment return location the full amount of the charges should be waived.

In addition, the Motor Carrier states that it disputed the charges in accordance with Section H.1. of the UIIA. The Equipment Provider did not comply with the dispute resolution process as it did not respond to the dispute within the thirty (30) day timeframe under Section H.1. of the UIIA. The Equipment Provider stated that they sent an email response to the dispute, but the Motor Carrier argues that when the Equipment Provider tried to send the original email response the file was too large, therefore the email was not received by the Motor Carrier. Consequently, the Motor Carrier believes that based on Section H.4. of the UIIA, the Equipment Provider has lost its rights to collect the per diem charges.

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

The Equipment Provider responded to the claim stating that during the period of July 21, 2021, through August 4, 2021, it received ten separate emails from the Motor Carrier disputing the charges that were submitted with the claim. The Equipment Provider stated they responded to the Motor Carrier's initial dispute of all invoices on August 5, 2021, in a single email communication to the Motor Carrier. The Equipment Provider stated that the response to the Motor Carrier's email was sent to the address on file in the UIIA subscriber record which is ---@----, and to the specific email address of the individual at the Motor Carrier who submitted the dispute which is ---@----.com. The Equipment Provider indicated that there was no bounce back or failure of delivery on its end to the email that was sent. Regarding the Motor Carrier's initial dispute of the charges, the Equipment Provider stated that after reviewing all the invoices disputed, there were several indications that the Motor Carrier was able to terminate empty containers on days when the Motor Carrier claimed to have return restrictions.

On September 16, 2021, the Equipment Provider's AR Team received several emails from the Motor Carrier claiming it never received a response from the Equipment Provider about the disputed invoices and requested that the disputed invoices be removed from their account. The Equipment Provider advised that they responded to the claims on August 4, 2021. The Equipment Provider sent a copy of the original email to the Motor Carrier noting that there was no bounce back or failure of delivery on the original email that was sent.

The Equipment Provider offered to work with the Motor Carrier's IT department to identify if there was a technical issue with the original response sent via email to the Motor Carrier. The results of the communications between the two parties were unsatisfactory to the Motor Carrier. In addition, the Equipment Provider at one point offered the Motor Carrier a sixty percent (60%) discount on the disputed charges, but the Motor Carrier did not accept the offer. Consequently, the Motor Carrier indicated it was submitting the claim for binding arbitration. The Equipment Provider believes it has complied with Section H.1 of the UIIA by responding to the disputed invoices to the Motor carrier within the 30-day timeframe.

DISCUSSION:

The panel carefully reviewed all documents and information provided by the parties. The Motor Carrier filed its dispute based on Sections H.1, G.11 and G.12 of the UIIA. The panel addressed its decision as it relates to these sections as follows:

Section H.1. - The Motor Carrier claims that they did not receive a timely response to their dispute within the thirty (30) day timeframe set forth in Section H.1, however the Equipment Provider has provided evidence that a timely response was sent. Upon reviewing that evidence, the panel finds there is satisfactory proof that an email was sent when the Equipment Provider stated. Why the Motor Carrier did not receive the email remains undetermined but setting a precedence ruling in favor of the Motor Carrier in this specific case on that basis would allow further disputes based solely on the claim of no receipt of email - which is not the intent of the DRP process.

Section G.11 – The panel found no violations of Section G.11 in the dispute based on the supporting documentation provided with the case.

Section G.12 - There is sufficient evidence provided by the Motor Carrier that demonstrates challenges with empty returns, if not the prevention of such returns altogether for several days. Contrarily, the Equipment Provider provided evidence that shows alternate return locations or differing closure dates of facilities based upon information from different sources than the Motor Carrier was receiving. Due to the significant amount of containers in this claim and the contradictory information, it is difficult at best to determine exact circumstances where the Motor Carrier should be exempt from per diem charges based on Section G.12, however, there are undoubtedly instances of such occurrences.

Despite the claims under UIIA Sections H.1, G.11 and G.12, the panel's findings and decision are in favor of the Equipment Provider based on Section H.2 of the UIIA, that states, "Prior to the commencement of binding arbitration, both Parties are expected to take every reasonable effort to resolve the dispute". Based on the evidence provided, the Equipment Provider offered a 30% reduction on October 6, 2021, a 50% reduction on October 12, 2021, and a 60% reduction on October 14, 2021 on all per diem invoices in order to resolve the dispute. Due to the complexity involved, the lack of clarity on return locations, and the fact that much of the per diem charges billed appear to be valid, the panel finds that the 60% offer to reduce the amount of the per diem charges to be very reasonable. Despite the Equipment Provider demonstrating proof that they at least attempted to communicate in a timely manner, the Motor Carrier failed to reasonably work with the Equipment Provider to collaboratively address the disputes.

Therefore, the panel finds in favor of the Equipment Provider based on Section H.2. of the UIIA, provided the Equipment Provider maintains the previously offered 60% reduction in the balance due.

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.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]**

H. Default Dispute Resolution and Binding Arbitration Processes, Item H.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, maintenance and repair or Equipment use/rental charges, the following default dispute resolution process will apply: **[Revised 05/01/17]**

Invoiced Party shall advise Invoicing Party in writing of any disputed items on invoices within 30 days of the receipt of such invoice(s), documenting with appropriate evidence, its disagreement with any of Invoicing Party's bills it believes to be incorrect. Invoicing Party will respond in writing to such disputed items within 30 days of receipt of Invoiced Party's notice with its decision to accept or deny the Invoice Party's dispute. 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 06/13/16]**

H. Default Dispute Resolution and Binding Arbitration Processes, Item H.2.

Should no resolution be reached between the Parties for charges disputed within the applicable dispute resolution process, then the Parties will have the ability to submit the disputed charges for binding arbitration in accordance with Exhibit D of the Agreement. Prior to the commencement of binding arbitration, both Parties are expected to take every reasonable effort to resolve the dispute. Following the initiation of binding arbitration, the arbitration panel will determine the Party responsible for payment based on the specific facts and circumstances associated with the claim, the terms and

conditions of the Agreement and the Provider's Addendum along with the supporting documentation presented by the involved Parties. **[Revised 04/23/21]**

DECISION:

The panel unanimously finds in favor of the Equipment Provider based on Sections G.12., H.1.and H.2. of the UIIA. Further, the panel's decision in favor of the Equipment Provider based on Section H.2. is provided the Equipment Provider maintains the previously offered 60% reduction on the balance due of the 125 invoices in dispute. The total of the 125 disputed invoices under this claim is \$00.00. The 60% discount the EP would need to provide the Motor Carrier would be \$00.00 so the remaining balance owed by the Motor Carrier to the Equipment Provider under this claim is \$00.00.

CASE REVIEWED AND DECIDED BY:

BEN BANKS
Motor Carrier Panel Member

THOMAS BARATTINI
Ocean Carrier Panel Member