

**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: **20191002-3-XXXXR-PD**

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

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Invoice	Invoice #	Unit #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	PF1910002102	DFSU6645612	10/01/2019	GPA/GCT	9/19/19	9/25/19	10/1/19	10/2/19	10/2/19	10/2/19
2	PF1910002538	NAPZ8004414	10/1/19	GPA/GCT	9/19/19	9/25/19	10/1/19	10/2/19	10/2/19	

MOTOR CARRIER'S BASIS OF DISPUTE:

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

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

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

DECISION:

After careful review of all documents and the evidence submitted by the parties, the panel unanimously finds in favor of the Motor Carrier. The Motor Carrier panel member noted that per D.3.b of the UIIA, the Motor Carrier must conduct pre-trip inspection as set forth in Exhibit A. Exhibit A states that “Pre-Trip inspection does not include the responsibility to identify latent defects unless caused by or resulting from the negligent or intentional acts or omissions of the Motor Carrier, its agents, employees, vendors or subcontractors during the Interchange Period.” Additionally, the floor is not one of the 16 items specified for the Motor Carrier to visually check prior to interchange. Furthermore, Exhibit B(3) clearly states “Damage caused during cargo loading/unloading operations excluded from Motor Carrier’s responsibility.” The equipment clearly had a weak floor that was damaged at time of loading with the forklift. The Motor Carrier returned the container within a reasonable time frame after receiving disposition from Evergreen on Friday, September 20th at 5:17 pm and returned the empty on Monday, September 23rd.

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

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

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

D. Equipment Interchange

3. Equipment Condition

- b. Motor Carriers will conduct a pre-trip inspection prior to departing with interchanged Equipment that will include those items set forth in Exhibit A to this Agreement. **[Item Re-numbered 10/01/18]**

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

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

1. Chassis Twist Locks and Safety Latches – (Check that twist locks and safety latches are engaged and properly secured.)
2. Slider Pins – (Check that slider pins are engaged for all sliding chassis.)
3. Bolsters (Check that bolsters are not bent and the container can be secured properly.)
4. Landing Legs (Check that Landing legs are in 90 degree position and they move up and down properly.)

5. Sand Shoes (Check that sand shoes or dolly wheels are attached to landing legs and secure.)
6. Crank Handles (Check that handle is attached, secure and operable to move landing legs up and down.)
7. Mud Flaps – (Check that mud flaps are whole and properly secured.)
8. Tires (Check that the following conditions are not present.)
 - a. Tire is flat, underinflated or has noticeable (e.g., can be heard or felt) leak.
 - b. Any tire with excessive wear (2/32nds or less thread depth), visually observable bump, or knot apparently related to tread or sidewall separation.
 - c. Tire is mounted or inflated so that it comes in contact with any part of the vehicle. (This includes any tire contacting its mate in a dual set.)
 - d. Seventy-five percent or more of the tread width is loose or missing in excess of 12 inches (30cm) in circumference.
9. Rims (Check that rims are not cracked and/or bent.)
10. Rear Underride Guard (“DOT Bumper”) (Check that Guard is in place and not bent under the frame.)
11. Electrical Wiring/Lights – (Check that lights are in working order.)
12. Reflectors/Conspicuity Treatments (Check for reflector lenses and presence of conspicuity tape or bar on the 3 visual sides of the chassis.)
13. Brake Lines, Including Air Hoses and Glad Hands – (Check for audible air leaks and proper pressurization only.)
14. Current License Plate (Check to see that it is affixed to equipment.)
15. Proper Display of Hazardous Cargo Placards, In Accordance with Shipping Papers
16. Display of Current Non-expired Federal Placards or Stickers (Check to see that it is affixed to equipment.)

The above Motor Carrier Pre-Trip Inspection does not include the responsibility to identify latent defects unless caused by or resulting from the negligent or intentional acts or omissions of the Motor Carrier, its agents, employees, vendors or subcontractors during the Interchange Period.
[Revised 10/01/18]

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

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

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

CASE REVIEWED AND DECIDED BY:

DAVE HENSAL
Motor Carrier Member

LEO IMPERIAL
Ocean Carrier Member

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

In the Dispute Between)

UIIA MC,)

Appellant, and)

UIIA EP,)

Respondent)

Case Number: **20200217-6-XXXG-PD**

Date of Decision: 05/19/2020

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Invoice	Invoice #	Container #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	2118143444	HLXU8006732	2/10/20	Ports Amer. New Orleans /Ports Amer. New Orleans	11/25/19	1/17/20	2/10/20	2/10/20	2/11/20	2/17/20

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section E.6 of the UIIA. The Motor Carrier disputed the invoice stating that the unit was out for an extended period of time due to issues with the TRAC chassis that the unit was pulled out on. The chassis had significant maintenance issues that were unable to be repaired on the roadside. The Motor Carrier stated that the customer had to unload this unit so that it could be towed to a facility for all of the repairs to be made. Once the repairs were made, TRAC advised the Motor Carrier that the unit could not be used to pull a loaded container until it was brought back to the port for the repairs to be inspected. The Motor Carrier feels that it is for this reason that the unit was out for such a long period of time and was returned empty. The Motor Carrier believes that they should not be held responsible for the per diem invoice due to the TRAC chassis issues.

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

The Equipment Provider responded to the claim stating that the per diem could not be waived as it was not due to the Equipment Provider's error. The Equipment Provider indicated that the shipment was a merchant haulage move, and as such, the Motor Carrier would have to contact the chassis provider if the detention was incurred due to a damaged chassis. Therefore, the Equipment Provider feels that the invoice is valid and should stand.

DECISION:

After careful review of all documents and the evidence submitted by the parties, the panel unanimously finds in favor of the Equipment Provider. The Ocean Carrier panel member noted that pursuant to Section D.3.b of the UIIA Motor Carriers will conduct a pretrip inspection prior to departing with the interchanged equipment that will include those items set forth in Exhibit A to the Agreement. The following list sets forth those items contained in Exhibit A to the UIIA, which the Motor Carrier has responsibility for visually or audibly checking prior to use of the Equipment:

8. Tires (Check that the following conditions are not present.)
 - a. Tire is flat, underinflated or has noticeable (e.g., can be heard or felt) leak.
 - b. Any tire with excessive wear (2/32nds or less thread depth), visually observable bump, or knot apparently related to tread or sidewall separation.
 - c. Tire is mounted or inflated so that it comes in contact with any part of the vehicle. (This includes any tire contacting its mate in a dual set.)
 - d. Seventy-five percent or more of the tread width is loose or missing in excess of 12 inches (30cm) in circumference.

The evidence presented in the case confirmed that four (4) tires needed to be replaced. It is the Motor Carriers responsibility to visually check the condition of the equipment prior to delivery. The delay in returning the container was of no fault of the Equipment Provider.

Based on the evidence presented in the case, the Motor Carrier panel member agreed with the finding in favor of the Equipment Provider. The Motor Carrier panel member noted that it did not believe this was a case of misuse of the chassis by the Motor Carrier, but rather the repair vendor taking an extended amount of time to repair the chassis. However, the Motor Carrier had the ability on Merchant Haulage to select or utilize their own chassis for the movement and was not required to use a specific chassis provider's equipment. Unfortunately, the chassis provider selected was not a signatory to the UIIA, but the Equipment Provider of the container is a UIIA participant and their per diem charges are spelled out within their UIIA addendum. Consequently, the billing was done in accordance with the terms set forth in the Equipment Provider's UIIA addendum so therefore the Motor Carrier would be responsible for the charges billed.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

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

D. Equipment Interchange

3. Equipment Condition
 - b. Motor Carriers will conduct a pre-trip inspection prior to departing with interchanged Equipment that will include those items set forth in Exhibit A to this Agreement. **[Item Re-numbered 10/01/18]**

E. Equipment Use

6. Free Days, Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage Charges
- a. Interchange of Equipment is on a compensation basis. Provider may permit some period of uncompensated use and thereafter impose Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage charges, as set forth in its Addendum. **[Revised 01/17/12]**
 - b. Motor Carrier shall be responsible for Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage charges set forth in the Addenda. **[Revised 01/17/12]**
 - c. Provider shall invoice Motor Carrier for Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage charges within sixty (60) days from the date on which Equipment was returned to Provider by Motor Carrier. If Motor Carrier is not invoiced within the established timeframe, the right of the Provider to recover such charges will be lost. **[Revised 01/17/12]**
- Should Provider invoice the incorrect party, Provider may invoice the interchanging Motor Carrier within thirty (30) days from the date the incorrect party disputes the charges with Provider or within the original sixty (60) day deadline, whichever is later. The preceding sentence only applies as long as the Provider issues such invoice to the interchanging Motor Carrier within ninety (90) days from the date on which Equipment was returned. **[Added 01/01/17]**

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

8. Tires (Check that the following conditions are not present.)
- a. Tire is flat, underinflated or has noticeable (e.g., can be heard or felt) leak.
 - b. Any tire with excessive wear (2/32nds or less thread depth), visually observable bump, or knot apparently related to tread or sidewall separation.
 - c. Tire is mounted or inflated so that it comes in contact with any part of the vehicle. (This includes any tire contacting its mate in a dual set.)
 - d. Seventy-five percent or more of the tread width is loose or missing in excess of 12 inches (30cm) in circumference.

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

4. USE CHARGES; SPECIAL APPLICATIONS

4.1 Motor Carrier shall pay Provider Use Charges on the Equipment as set forth in Schedule "A", which is annexed hereto and made a part hereof, for each day elapsed from the date of Interchange of each unit of Equipment until the date of return of each unit of Equipment unless otherwise expressly agreed to by Provider in writing.

4.2 When Equipment is damaged and reported to the Provider pursuant to paragraph 2 of this Agreement, Use Charges will cease from the date of notification requesting authorization to repair damages exceeding \$00.00 until repairs are authorized or instructions given as to disposition by Provider.

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

CASE REVIEWED AND DECIDED BY:

JAMES MICHALSKI
Ocean Carrier Member

KEVIN LHOTAK
Motor Carrier Member