

**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: **20180202-11-XXXI-MR-OTH**

Date of Decision: 05/09/2018

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Invoice	Invoice #	Equipment #	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	MR1711002274001	TCNU6921604	11/29/17	Maher Terminals/ Columbia Container	10/27/17	11/06/17	1/31/18	02/02/18	02/02/18	2/2/18

MOTOR CARRIER'S BASIS OF DISPUTE:

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

- The Motor Carrier stated that the invoice was not received until 1/31/2018, which was the day that the Equipment Provider put them on shutout.
- The Motor Carrier stated it never received the required three-business day notice prior to the Equipment Provider suspending their interchange privileges as required under Section G.14.c.
- The Motor Carrier feels that because it outgated the container as a loaded, sealed shipment, with no way to inspect the condition of the floor, or note any potential pre-existing damage on the outbound TIR they should not be held liable for the floor damage.
- Because the unit was sealed, it is unknown when the damage occurred.
- The images provided fail to prove that the damage was a result of loading or unloading abuse and there is no evidence of associated damage in the images or on the repair invoice.
- The Motor Carrier stated that the Equipment Provider only supplied them with a "repair estimate" as the supporting documentation to the invoice and not the actual repair invoice or work order.

- Previous binding arbitration case decisions that involve similar and identical circumstances related to responsibility for floor damage when container is sealed have found that the Motor Carrier is not responsible for these damages.

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

The Equipment Provider responded to the claim stating that they generated the invoice and sent it out to the Motor Carrier on 11/29/17. The Motor Carrier did not respond in regards to the invoice until 1/31/18, which is past the timeframe for the Motor Carrier to dispute the charges. The Equipment Provider confirmed that the invoice was sent by mail, to the following address: 6205 West 101 Street, Chicago Ridge, IL 60415 and via e-mail contact with the following: -----@-----.com. The address and e-mail on file with the UIIA on the date of 11/29/17 was 6205 West 101 Street, Chicago, IL 60415, which was the same address listed with the Equipment Provider. The primary e-mail address listed in the UIIA at the time of billing was -----@-----.com with a secondary e-mail address of: -----@-----.com. The Equipment Provider also noted that based on the photo and the TIR copy, it is clear that the container was heavily damaged while in the Motor Carrier's possession and not associated with normal wear and tear. Therefore, the Equipment Provider feels that based on UIIA (Exhibit B), the Motor Carrier is responsible for the floor damage unless it is associated with normal wear and tear so the invoice should stand.

DECISION:

After careful review of all documents and the evidence submitted by the parties, the panel unanimously finds in favor of the Motor Carrier. The Motor Carrier panel member indicated that the Motor Carrier was unable to inspect the interior of the container at the time of outgate because the container was sealed. Consequently, the Motor Carrier had no way to report any interior damage at the time of outgate. The Ocean Carrier panel member also finds in favor of the Motor Carrier noting that the container was sealed; therefore, the Motor Carrier could not perform an inspection of the floor prior to outgate.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (September 16, 2017) to make its decision:

D. Equipment Interchange

3. Equipment Condition

a. Warranty: **WHILE PARTIES MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE FITNESS OF THE EQUIPMENT, THEY RECOGNIZE AND AFFIRM THEIR RESPONSIBILITIES UNDER THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS.**

1) Motor Carriers will conduct a pre-trip inspection prior to departing with interchanged Equipment that will include those items set forth in Exhibit A to this Agreement. **[Revised 01/17/05]**

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

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

E. Equipment Use

3. Damage to Equipment

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

- 1) To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of an AGS gate transaction such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 09/16/17]**

G. General Terms

14. Notices

- c. In the event it becomes necessary for the Provider to suspend a Motor Carrier's interchange privileges for non-payment of outstanding invoices, Provider shall notify Motor Carrier, via confirmed facsimile, e-mail or letter, no less than 3 business days prior to suspension, that unless the outstanding issue is resolved, suspension of interchange privileges may occur. The final notification shall include contact information necessary for the Motor Carrier to resolve the outstanding issue. **[Revised 04/26/05]**

EXHIBIT C TO UIIA (Added to UIIA on 07/25/07, Last Revised 09/19/16)

Motor Carrier Responsibility During the Interchange Period

Tires

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

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

Slid Flat Damage to tire and/or tube - removal of tread or rubber to 2/32 inches of remaining tread depth or less in the affected area (flat spot) while the remaining unaffected tread depth is more than 4/32 inches.

Run Flat damage to tire and/or tube

Missing Tire, tube or rim

Removable Items

Missing chains, binders and cables
Missing tarpaulins and securements
Missing tarpaulins bows
Missing rear header bar
Missing bulkhead

Cut or Torn (through the thickness of metal)

Metal door, gate, sheet, post, crossmember, brace or support
DOT Under Ride Guard

Bent (where proper operation or function of unit is impaired)

Metal door, gate, sheet, post, crossmember, brace or support
DOT Under Ride Guard

Missing Items

DOT Under Ride Guard
Door or Gate
Removable side or section
Refrigeration unit parts

Interior

Interior not free of dunnage, bracing and/or debris
Contamination

Other

Correction of temporary repairs

Citations

Citations may be rebilled from the owner to the user of the equipment

The foregoing list does not include Defects as defined in Section B, Definitions of Terms.

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

CASE REVIEWED AND DECIDED BY:

KEVIN LHOTAK
Motor Carrier Member

JIM MICHALSKI
Ocean Carrier Member