

Federal Maritime Commission: Alternative Dispute Resolution Services



PRESENTED TO THE AGRICULTURAL
TRANSPORTATION COALITION

JULY 26, 2015



Agenda



- 1. BACKGROUND**
- 2. CADRS SERVICES**
- 3. TYPICAL COMPLAINTS**
- 4. RECENT DEVELOPMENTS**

Federal Maritime Commission



- **Independent Federal regulatory agency**
 - regulates the Nation's international ocean transportation for the benefit of exporters, importers, and the American consumer.
 - mission is to foster a fair, efficient, and reliable international ocean transportation system while protecting the public from unfair and deceptive practices.
- **HQ in Washington, DC with Area Representatives:**
 - San Pedro (SoCal)
 - Seattle (NorCal, PNW)
 - South Florida (SE, Midwest)
 - Houston (W. Gulf, Mountain)
 - New York/New Jersey (NE)
 - New Orleans (E. Gulf, Midwest)



Office of Consumer Affairs & Dispute Resolution Services (CADRS)



USING ADR TO RESOLVE INTERNATIONAL SHIPPING DISPUTES



Background: CADRS



- CADRS established as an independent office to provide:
 - Neutral and Confidential Forum
 - Practical, Real Time Solutions to Problems
 - Cost Savings
 - Enhanced Business Relationships
 - Experienced Neutrals with Industry Knowledge
- The Commission has encouraged the expansive use of CADRS' services to resolve industry-wide problems and disputes



Services Provided by CADRS



- Education and Outreach
- ADR: Voluntary, informal processes implemented to resolve conflict outside of a courtroom using a third party neutral. CADRS provides the following types of ADR services:
 - Ombuds and Rapid Response
 - Facilitation
 - Mediation
 - Binding Arbitration



Securing Assistance from CADRS



- Request for assistance before or after onset of dispute
 - Ombuds/complaints hotline
 - Mediation in docketed FMC proceedings

- Service Contract Dispute Resolution Clauses:
 - Mediation-Binding Arbitration
 - Mediation-Litigation



Binding Arbitration vs. Mediation



Binding Arbitration

- Voluntary participation
- Confidential
- Rules Based and Adjudicative
- Limited to legal issues
- Arbitration decision issued by arbitrator(s)
- Award is final

Mediation

- Voluntary participation
- Confidential
- Parties Control
- Open to all issues
- Settlement agreement at the end of a successful mediation
- Parties may litigate or arbitrate if mediation fails

Benefits of Using CADRS to Resolve Disputes



- No cost for services provided by CADRS Staff
- Confidential
- Neutral
- Experienced transportation neutrals
- Preserve business relationships
- Control over outcome
- Practical collaborative solutions
- Quick Resolution
- Parties likely to follow through on agreement





EXAMPLES OF CADRS ADR ISSUES



- Disputes related to non-payment (multiple NVOCCs)
- Expenses caused by delays at terminal/vessel bunching/scheduling/inspection/equipment shortages, etc.
- Maritime liens for past due amounts
- Multiple house bills of lading
- Cargo not allowed entry into export destination; resulting efforts to divert/return/abandon cargo
- Abandonment of cargo to mitigate damages





Typical Problems Handled By CADRS



- Household Goods – non-delivery; additional charges
- Rates and Surcharges - applicability
- Service Contract Disputes
- Tariff Disputes
- Phantom Bookings and Rolled Cargo
- Delays
- Cargo Loss or Damage
- Demurrage and Detention
- Civil Penalty Demand Letters



Use of ADR in Various Phases of Service Contracting



- **Contract Negotiation:**

- *Mediation* to assist with negotiation
- *Facilitation* to bring multiple parties together to explore best practices

- **Contract Term:**

- *Rapid Response Teams:* quick resolution to service issues
- *Ombuds:* consultation, coaching, assist with resolving real time commercial, regulatory, or contractual problems
- *Mediation:* assist in resolving ongoing real time and/or past dispute(s); can be used to enhance or repair party relationships; can address breach of contract issues simultaneously with regulatory, contract, or commercial issues
- *Binding Arbitration:* adjudicate breach of contract and/or regulatory disputes
- *Facilitation:* Can be used to address a dispute involving multiple parties; can be used industry wide to allow industry actors to discuss service contract issues generally





Use of ADR in Various Phases of Service Contracting (cont.)



- **Expiration or Termination of Contract:**
 - ***Mediation:*** assist in resolving dispute(s) to avoid litigation; can be used to repair damaged relationship to allow parties to do business in the future; can address breach of contract issues simultaneously with regulatory, contract, or commercial issues
 - ***Binding Arbitration:*** adjudicate breach of contract and/or regulatory disputes to avoid litigation



Obtaining Assistance from CADRS



- **CADRS Contact Information:**

complaints@fmc.gov

(202) 523-5807 (local)

(866) 448-9586 (toll free)

(202) 275-0059 (fax)

- **Helpful (not required) Information to Include:**

See advisory:

http://www.fmc.gov/requesting_cadrs_assistance/?CategoryId=2&pg=2

- Contact information for all parties to dispute
- Brief description of the problem or dispute
- Bill of lading and/or other relevant documentation



Recent FMC Actions



- Four public forums
- April, 2015 - Release of Demurrage, Detention and Free Time Report (available at: <http://www.fmc.gov/assets/1/Page/reportdemurrage.pdf>)
- June 24, 2015, FMC public meeting agenda item: *U.S. Port Congestion and Related International Supply Chain Issues – An Overview of Stakeholder Discussions at FMC Port Forums*



Thank You!



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