**Preventing and Resolving Shipping Disputes**

**Q&A with the FMC’s Office of Consumer Affairs and Dispute Resolution Services**

**By Jennifer M. Gartlan, Deputy Director, CADRS\***

The Federal Maritime Commission’s Office of Consumer Affairs & Dispute Resolution Services (CADRS) provides confidential assistance to parties seeking to resolve their international ocean shipping disputes. In FY 2016, household goods matters represented approximately 30% of all requests for assistance received by CADRS.

CADRS often receives inquiries about ocean transportation intermediaries (OTIs) and the services they provide to help shippers transport household goods overseas as well as common issues that arise during a household goods move. The following Q&A discusses some of the most common questions received by CADRS regarding its services.

CADRS staff are trained mediators with expertise in ocean shipping regulations and commercial practices. Staff utilize these capabilities to help parties avoid time consuming and costly litigation by working with parties to negotiate creative and meaningful solutions to ocean shipping challenges and disputes in real time.

The process is confidential, meaning that CADRS staff will not disclose to the public or other agency offices confidential information provided during the course of the dispute resolution process.

The following discusses some of the most common questions received by CADRS regarding its services.

**What kind of services does CADRS offer?**

CADRS offers ombuds and mediation services to resolve both emergent and ongoing international ocean shipping disputes. Services can be provided at any phase of a dispute (i.e. to avoid litigation or to resolve ongoing litigation).

These services are offered on a voluntary basis -- all parties to the dispute must consent to the use of CADRS’s staff to assist with resolving the dispute prior to the provision of services. The CADRS staff member or either party may discontinue the process at any time after the process begins.

Services provided by CADRS are confidential -- CADRS staff cannot disclose confidential information provided during an ombuds or mediation session to the public or to other FMC offices.

With respect to the process itself, CADRS staff act as neutrals. They do not advocate for a particular party, rather they advocate for a fair and balanced process that takes into account the needs and interests of each participating party. CADRS staff work with the parties to generate workable settlement options to meet party needs and interests. This approach often lends itself to creative solutions that allow parties to go beyond traditional legal remedies to provide the parties with what they are actually seeking (e.g., release of cargo, enhanced business opportunities, avoidance of negative publicity, etc.).

**What is the difference between ombuds services and mediation?**

|  |  |
| --- | --- |
| **Ombuds** | **Mediation** |
| CADRS neutral uses various techniques (e.g. inquiry, informal coaching, telephonic mediation, etc.) to assist two or more parties resolve challenges or disputes between | ADR process used to resolve disputes between two or more parties |
| ADR process used to resolve disputes between two or more parties | Appropriate for immediate or ongoing issue that may or may not be in litigation |
| Parties control outcome; either party/ombuds can terminate at any time | Parties control outcome; either party/ mediator can terminate at any time |
| Results in an Informal agreement to resolve dispute as agreed by the parties | Parties enter a formal written settlement agreement at the successful end of mediation |

**How are services offered?**

Because parties are often located at significant geographic distances, CADRS often provides services via telephone or video conference. However, where parties are located in the same region or wish to travel to Washington, DC, CADRS may offer services in person.

**What if I would like assistance, but am not ready for CADRS to contact the other party?**

Occasionally, a party will request general information or seek guidance as a means to prevent a dispute. While CADRS does not provide legal guidance or representation, it can help parties obtain a better understanding of commercial norms, as well as the various options that may be available to resolve a dispute. CADRS can also assist parties with strategizing on how to best communicate with another party. For example, a party may be concerned regarding the perception of a lack of trust or the use of commercial terms in communication with another party. This is an area where CADRS may be able to provide preliminary assistance to parties.

**Do I need a lawyer to use CADRS’s services?**

Parties are not required to have legal representation, but may include counsel if they prefer. Because CADRS cannot provide legal advice or representation, it is always advisable for parties to consult with counsel should they have specific legal questions or concerns.

**Will using CADRS leave my company vulnerable to FMC enforcement action? Will CADRS report another party to the Commission’s Bureau of Enforcement (BOE) if my dispute is not resolved?**

No. Federal law bars CADRS staff from disclosing confidential information provided during an ombuds or mediation matter for the purpose of resolving a dispute. As such, CADRS staff will not report an entity to BOE based upon its good faith participation in a CADRS sponsored dispute resolution process.

**Can an ocean transportation intermediary that arranges for household goods shipments request assistance with resolving a dispute between the moving company and a customer?**

Yes. Ocean transportation intermediaries (i.e. international moving companies) that offer to arrange household goods shipments between U.S. and foreign seaports may request assistance from CADRS. Such assistance may involve answering inquiries as well as providing ombuds or mediation services to help parties resolve their disputes in real time.

**Are CADRS services limited to moving company and customer disputes?**

No. CADRS routinely handles disputes between the ocean transportation intermediaries and other parties in the logistics chain such as other freight forwarders and NVOCCs; vessel operators; marine terminal operators; truckers; etc. CADRS can also provide assistance for inquiries and disputes involving commodities other than household goods.

**What are some of the issues that CADRS regularly addresses?**

Some typical examples of disputes handled by CADRS include:

* assessment of demurrage and per diem
* cargo liens
* service contract disputes or negotiated rate agreement disputes
* rate or surcharge disputes
* volume disputes
* co-loading disputes

**Are there any current dispute trends that international movers should be aware of?**

Ocean transportation intermediaries accepting shipments from unlicensed entities continues to be a significant problem. Under FMC regulations, licensed moving companies are prohibited from accepting shipments from unlicensed or unregistered NVOCCs. 46 CFR 515.27(a). In addition to the legal risks associated with accepting shipments from unlicensed entities, there are competitive and practical problems associated with accepting such shipments. For example, many unlicensed entities often undercut licensed companies’ rates. Further, unscrupulous companies often book multiple shipments with a licensed ocean transportation intermediary, but fail to tender ocean freight and other charges leaving the ocean transportation intermediary in a vulnerable position given its contractual obligation to the vessel operator.

Another trend involves challenges with the use of NVOCC Negotiated Rate Agreements (NRAs). There have been instances where an NVOCC will use an NRA to establish rates for a particular household goods move, which do not sufficiently cover the volume of cargo that is to be transported. For example, a mover may quote a rate for forty-foot container and twenty-foot container for a move, but later determine that an additional 20-foot container is necessary. Because an NRA may not be modified upon receipt of the cargo by the NVOCC, this is an area where disputes are prevalent. The Commission recently addressed this issue in *Gruenberg – Reisner v. Overseas Moving Specialist Inc. d/b/a Int’l Sea & Air Shipping*, FMC Docket 1947(I), holding that a company that attempted to increase a rate established in an NRA after receipt of the cargo had violated the Shipping Act. *See* 46 U.S.C. § 41102(c). Essentially, the Commission held that the first agreement for the forty-foot and twenty-foot containers met the requirement of an NRA, however, a second agreement submitted to the shipper by the NVOCC after cargo was received raising the rate, did not meet the NRA requirements as it was not agreed upon by the parties prior to receipt of the cargo pursuant to 46 C.F.R. §532.5.

**Any Suggestions for Avoiding Disputes?**

* Avoid accepting shipments from unlicensed ocean transportation intermediaries.
* Be wary of companies that book multiple shipments, but are slow to pay.
* Whenever possible, base quotes for service on an onsite inspection of the goods using an itemized packing list; ensure that any customer additions are clearly marked.
* Whenever possible, use plain language rather than industry terms when dealing with consumers.
* Ensure that consumers understand what is, and is not, included in the quote for service; and, if the shipment is flagged for additional scrutiny by customs, it will incur additional related handling and storage charges.
* Ensure that consumers are aware of what insurance does, and does not, cover.
* Ensure that consumers provide accurate declarations of value.
* Ensure that consumers are aware of commodity specific regulatory requirements (e.g. need for BIS license for certain types of computer parts, ensuring that consumers empty gas tank before shipping vehicles, ensuring that items are removed from automobiles before shipping, etc.).
* Ensure that the consumer is kept up to date with respect to consolidation and shipment arrival status.

**How can I learn more about CADRS or request assistance?**

To inquire about CADRS or to request assistance, call: (866) 448-9586 (toll free) or write to complaints@fmc.gov.

When requesting assistance please provide CADRS staff with a brief description of the dispute, what you are hoping to attain through CADRS’s services, and provide copies of relevant shipping documents.

\**Jennifer M. Gartlan is the Deputy Director of the FMC’s Office of Consumer Affairs & Dispute Resolution Services. The opinions and views expressed in this article are her own and are not binding on the FMC. This article is intended to provide general guidance and does not constitute legal advice or guidance.*