CONTRIBUTED CONTENT & PRESENTATIONS

FMC Dispute Resolution: A Guide for Using CADRS to Resolve Ocean Carriage Disputes

MARCH 21, 2024

Authors: Jonathan R. Todd, J. Philip Nester, Megan K. MacCallum

Many shippers and service providers are looking toward the upcoming ocean carrier bid season while still reeling from the effects of the global pandemic. It is not uncommon to identify colorable claims against any number of market participants in this environment or conversely to plan for avoiding claims in the future. Whatever may come, it is helpful to bear in mind that the Federal Maritime Commission (FMC) offers a valuable forum for dispute resolution short of litigation.

The FMC's Office of Consumer Affairs and Dispute Resolution Services (CADRS) provides commercial ocean shipping parties a process to explore the resolution of claims. CADRS is a free service staffed by the FMC to provide a neutral and confidential forum for the disputing parties to negotiate and resolve claims without the time and expense of formal litigation. CADRS aims to provide practical and efficient solutions to such disputes and is charged with helping parties to resolve disputes relating to ocean shipments of cargo or household goods, and even cruise line service disputes or lost luggage.

Initiating CADRS Services

The parties who can use CADRS services include shippers and shippers' associations, NVOCCs, OFFs, VOCCs, MTOs, port authorities, inland transportation service providers, and cruise operators and passengers. A party can request CADRS services by emailing or faxing the Office a completed copy of the correct Dispute Resolution Service Request-a Form FMC-32 for a cruise-related dispute or a Form FMC-33 for a cargo-related dispute. Practically, the email or fax should include the name and contact information of the filing party, whether an individual or company (if an attorney or some other person assists with the filing, the name, contact, and relationship of the assisting person to the party in interest) and the name and contact information of the opposing party.

The request should also include a factual description of the dispute (including any attempts the filing party made to resolve the problem prior to filing the CADRS services request), the desired outcome, and any supporting documentation such as invoices, receipts, bills of lading, or other relevant records used to substantiate the filing party's claims. Because the CADRS process is voluntary, both the filing party and the opposing party must agree to the process pursuant to 46 CFR § 502.403.

Upon filing, CADRS reviews the submission, acknowledge receipt, and assigns a reference number to the dispute. A CADRS staffer will email or have a conversation with the filing party to determine whether additional information or records are needed to support the claim and to get a clear view of what the desired outcome is before reaching out to the opposing party. Importantly, CADRS will not proceed under circumstances where a legal resolution of the matter is required, the matter may impact policy issues that would require formal procedure or run counter to the FMC's policies,

where a public record would be considered important to the industry, or where the FMC would need to maintain continuing jurisdiction over the matter with the authority to alter the outcome. *Id.*

Selecting a Non-Adjudicative or Adjudicative Service

CADRS allows the parties to choose precisely which dispute resolution service they wish to use. Parties opting to use CADRS services can elect to resolve disputes through any of four discrete services that fall under "non-adjudicative services" on the one hand, including "OMBUDS"/Rapid Response Teams ("RRT"), mediation, or facilitation, or "adjudicative services" through arbitration on the other.

Non-Adjudicative Services - Parties can elect to use OMBUDS/RRT services for what is often fast and efficient resolution. CADRS uses the term "OMBUDS" to mean a range of services, including information gathering, coaching, and short-form telephone mediations where the parties can resolve issues as quickly and efficiently as possible. CADRS mediation services can be in-person or by teleconference, which is akin to private mediation where a neutral mediator is in the room as the disputing parties work toward resolution. Mediation may be particularly useful to avoid a formal adjudicative proceeding in contractual, regulatory, tort, or other commercial issues. Parties who select facilitation may benefit from a broader and more fluid resolution style. Such a resolution process may be as simple as the parties having a discussion about best practices between themselves or even brainstorming about the path to resolution.

Adjudicative Services - Where the parties wish to have a formal adjudicative proceeding, yet short of litigation, the CADRS arbitration process provides such recourse. In arbitration, CADRS appoints a staff member of the parties' choosing to hear the dispute, and the arbitrator will issue a legal opinion and award of damages (if any). The arbitrator has the authority to dismiss a dispute altogether. Requesting arbitration requires the parties to submit a written agreement that has the legal effect of creating jurisdiction for CADRS to issue a decision that will be legally binding on the parties. Such a written agreement can be achieved by a stand-alone agreement, or the parties can amend the applicable service contract to include a dispute resolution clause identifying CADRS as the agreed-upon forum and arbitrator. In either case, the agreement must also set forth a potential cap for the award of damages.

Arriving at Resolution

The FMC will appoint a neutral once the parties agree upon the particular CADRS Service. If the parties choose a person other than an official or employee of the FMC then the parties must bear any and all expenses and fees for that person's services. The appointed neutral and the CADRS staff work with the parties with the stated goal of achieving a resolution and settlement. Once a party files a submission with CADRS, the process can take as little as 30 days to reach a resolution. CADRS services are flexible, fast, and efficient, but it is important to bear in mind that the outcomes reached are not legally binding unless otherwise agreed to by the parties under the arbitration option. Under all circumstances, the CADRS process and outcome is to remain confidential.

Balancing Pros and Cons of CADRS as a Resource

Parties can benefit in a number of ways by using CADRS services; for example: (i) CADRS is free even if the parties decide to walk away and litigate, which means there is nothing to lose by giving it a try; (ii) there is controlled risk, as the OMBUDS/RRT, mediation, and facilitation services are grounded in what the parties agree to do; and (iii) arbitration controls risk, as the FMC requires the parties to enter into a written agreement setting forth a maximum potential exposure, which provides security for potential outcomes. In these ways, CADRS services can help to enhance commercial relationships by establishing operational parameters and party recourse in the event of loss or service failures, while also providing practical, collaborative, and quick resolutions.

The team at Benesch is well versed in all aspects of the ocean transportation market and is available to assist in developing pragmatic approaches for clients to participate in the market, contract for services, build compliant operational practices, and resolve disputes through direct business-to-business negotiations, the use of CADRS services, or formal litigation before the FMC.

Jonathan R. Todd is a partner in Benesch's Transportation & Logistics Practice Group and may be reached at (216) 363-4658 and jtodd@beneschlaw.com.

J. Philip Nester is an associate in the Transportation & Logistics Practice Group and may be reached at (216) 363-2460 and jpnester@beneschlaw.com.

Megan K. MacCallum is an associate in the Transportation & Logistics Practice Group and may be reached at (216)363-4185 and mmaccallum@beneschlaw.com.

Ashley Rice is an incoming associate with Benesch and a third-year law student at Cleveland State University College of Law.