



Resolving International Ocean Shipping Disputes: The Federal Maritime Commission’s Office of Consumer Affairs & Dispute Resolution Services

Jennifer M. Gartlan

The Federal Maritime Commission (FMC) is the independent federal agency charged with regulating the commercial ocean common carriage transport of cargo and persons between U.S. and foreign ports. In addition to its oversight of ocean transportation intermediaries (i.e. ocean freight forwarders and non-vessel operating common carriers), vessel operators, and marine terminal operators, the FMC plays an important role in resolving private party disputes. In addition to its civil regulatory enforcement program, the FMC’s authorizing statute, the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998, 46 U.S.C. §§ 40101-41309 (Shipping Act), allows private parties to bring claims against others before the FMC for reparations resulting from violations of the Shipping Act.

In light of the exigent nature of commercial shipping disputes, coupled with the important relationships that underlie shipping transactions, the FMC long ago established the Office of Consumer Affairs & Dispute Resolution Services (CADRS) to provide confidential mediation and ombuds services to the shipping public. These services are provided pursuant to the Administrative Dispute Resolution Act, 5 U.S.C. § 574 et seq., as well as the FMC’s regulations at 46 C.F.R. §§ 502.401-502.411. As such, CADRS neutrals cannot share confi-

dential information and dispute resolution communications with third parties (including other FMC offices). This includes instances where a party may disclose information regarding a prospective Shipping Act violation during the course of the mediation or ombuds service.

With respect to parties who file formal complaints for reparations, FMC regulations require litigating parties to schedule a conference led by an FMC mediator within fifteen days of the filing of an answer to a complaint for reparations to allow parties an early opportunity to explore settlement. 46 C.F.R. § 502.64(a) (2). Parties may also opt during their conference to schedule mediation after the discovery period or at any other time during the administrative litigation process. 46 C.F.R. § 502.64(b). Mediation conferences may be provided in person, telephonically, or via video conference at the behest of the parties and mediator. There is no limit with respect to the number of mediation sessions available to parties. Continuation or termination of mediation is based upon the agreement of the parties and the mediator. In the event that mediation is successful, the parties execute a written settlement agreement, which is submitted to the presiding administrative law judge for review. 46 C.F.R. § 502.91(e).

Parties engaged in ongoing com-

plex ocean shipping disputes that may involve Shipping Act or other commercial and legal disagreements may also avoid the need to litigate by requesting mediation services from CADRS. Such services are routinely provided by staff via telephone or in person depending on the needs and location of the parties and are provided without charge to the parties. Parties may or may not be represented by legal counsel. Mediators work with parties to craft workable solutions that are memorialized in written settlement agreements. Such settlements achieved prior to filing administrative litigation can be kept confidential, are not required to undergo review by the presiding judge. Further, in the event that the parties or mediator terminate mediation prior to achieving resolution, parties are free to pursue traditional dispute resolution options such as arbitration or litigation.

In addition to mediation, CADRS staff routinely act as ombudsmen to assist parties with resolving real time commercial shipping disputes such as freight and surcharge concerns, the assessment of demurrage and per diem, the imposition of general lien clauses, and tariff and service contract related concerns. CADRS also assists parties pre-dispute by answering general questions regarding com-

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Chair's Corner

Kathryn Gainey, Chair of the Transportation and Transportation Security Law Section



The Transportation and Transportation Security Law Section is off to a strong start in 2017. In January, the Section hosted a panel discussion that offered tips for setting career goals in transportation and transportation security. Our panelists were Monica Hargrove, the Vice President and Secretary of Metropolitan Washington Airports Authority; Susan Prosnitz, Deputy Chief Counsel for Regulations and Security Standards at the Transportation Security Administration; and Fred Wagner, former Chief Counsel of the Federal Highway Administration. It was an energizing program to start the year.

On February 17, the Section and the DC Chapter hosted a panel discussion concerning Arctic Transportation Infrastructure and Transportation Security at the U.S. Department of Transportation. Shakira Mack moderated the program, and the panelists included Dr. Alyson Azzara, International Trade Specialist, Office of International Activities, Maritime Administration; and Joel Neimeyer, Federal Co-Chair, Denali Commission.

Save the Dates (4/3; 5/11; and 7/12). Please RSVP for the program to Josh

Albertson at jalbertson@fedbar.org.

On Monday, April 3, the Section and DC Chapter will host the program, Transportation Security in the Era of "Drones," from 1:00 to 4:00 at TSA Headquarters. The agenda includes panel discussions of (1) The Evolution of Unmanned Aircraft Systems (UAS), and (2) Emerging UAS Legal and Regulatory Issues. See the flyer on page 5 for a list of the speakers and panelists.

On Thursday, May 11 at noon, the Section will host a panel discussion of legislative developments at the US Department of Transportation.

On Wednesday, July 12 at 5:30-7:30, join us for the Sections' Speed Mentoring and Networking Event sponsored by Foley & Lardner LLP in the firm's Washington DC office.

For more information about upcoming programs, please visit the Section's Calendar page at www.fedbar.org/Sections/TTSL/Calendar.aspx

Stay connected with the Section (save fedbarttsl@gmail.com to your contacts and join us on LinkedIn). We are sending information about upcoming events through the Section's

new email address: fedbarttsl@gmail.com. Please add this email address to your Contacts so you receive

our announcements about events. We have started a LinkedIn Group under the name "Transportation and Transportation Security Law Section." The FBA is the group owner.

Get Involved with the Section. Get involved with the Section to raise your profile and meet other transportation and transportation security law practitioners. We have a variety of opportunities. You could help to plan an event hosted by the Section or participate in an event as a moderator or panelist. You could write an article for TransLaw or the FBA's Federal Lawyer Magazine. You could volunteer for a leadership role as a Section committee chairperson or even on the Board of Directors. Finally, if you are not already a member, I encourage you to join the Section. ❖

Message from the Editor

Samuel Negatu

On behalf of the Board, thank you for your membership and involvement in the section. In this issue, Jen Gartlan from the Federal Maritime Commission (FMC) discusses the commission's role in settling interna-

tional ocean shipping disputes.

We welcome your submissions to *TransLaw*. Articles could describe a recent case or legal development in transportation, profile a transportation lawyer, or summarize an event. With

many interesting legal developments in transportation and transportation security law, there is plenty of material in the transportation modes. Please email me at Samuel.Negatu@mail.house.gov to propose or submit an article. ❖



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mercial practices and FMC programs as well as educating the shipping public regarding regulatory compliance and the availability of CADRS's services. Generally, ombuds services are provided electronically and via telephone, ensuring real time response to parties located across the globe.

Coupled with its dispute resolution efforts, CADRS works to proactively inform the shipping public regarding regulatory compliance and industry trends. CADRS issues trend reports to the highest level of the FMC and, as appropriate, issues public alerts and publications. For example, CADRS has issued alerts regarding unlicensed activity involving shipments of automobiles, as well as difficulties encountered shipping yachts. CADRS contributed an article to a trade publication detailing the problem yacht shipping trends and ways to prevent problems when shipping yachts. Further, CADRS recently produced brochures available to the public in print and online summarizing its ombuds and mediation services generally, as well as a subject matter brochure assisting consumers that are preparing to ship their household goods and personal effects to or from the United States. These brochures are available on the Commission's websites jurisdiction who encounter service-related disputes. The FMC has limited jurisdiction over passenger vessel operators. Pursuant to Public Law 89-777, *Financial Responsibility for Death or Injury to Passengers and for Nonperformance of Voyage*, cruise lines are required to establish financial responsibility to "meet liability for death or injury to passengers or other individuals on a voyage to or from a port in the United States." 46 U.S.C. § 44103(a). In addition, cruise lines must also demonstrate to the FMC "financial responsibility to indemnify passengers for nonperformance of the transportation." 46 U.S.C. §

44102(a).

While the FMC regulates the financial responsibility aspect, there is no federal agency that regulates general commercial cruise-related concerns. The entire commercial relationship between the passenger and the cruise line is governed by the ticket contract. For example, cruise ticket contracts generally allow the passenger vessel operator to cancel or change particular ports of call without penalty. With respect to enforcement, the ticket contract often contains forum selection clauses in locales that may be inconvenient for the passenger. As such, CADRS provides an informal forum for passengers and cruise lines to explore resolution of disputes. In addition to changes of itinerary, other common examples of typical cruise-related disputes involve penalties for passenger cancellations, billing disputes, and other problems encountered upon the cruise itself. Further, despite the lack of technical jurisdiction over these types of matters, CADRS often receives referrals from Congressional staff seeking assistance on behalf of constituents as well as States' Attorneys General.

Akin to its preventative efforts regarding cargo trends and concerns, CADRS has undertaken efforts to educate the cruising public regarding emerging trends as well as steps that consumers can take to avoid challenges with their cruise vacations. CADRS coordinates with other Commission offices to issue public alerts when major cruise disruptions occur. Further, CADRS recently developed a brochure to assist passengers planning a cruise vacation. The brochure highlights common concerns covered by cruise ticket contracts and provides a preparation checklist as well as contact information where passengers can obtain assistance once aboard a cruise. The brochure is also available on the FMC's website.

Finally, it bears repeating that there is no charge to the parties for CADRS's services nor is there a minimum or maximum threshold for obtaining CADRS's ombuds or mediation services. As such, parties who may ordinarily be discouraged from filing litigation even in small claims court due to the amount in controversy, coupled with the prohibitive litigation costs, may be able to avail mutually-agreed upon relief through the use of CADRS. Conversely, parties involved in large complex matters may find the use of CADRS helpful to effectively narrow the issues in dispute and facilitate communication with an opposing party, if not resolve the dispute in its entirety. It is also important to note that parties may choose to be represented by counsel during the provision of mediation or ombuds services or may appear *pro se*. Because CADRS cannot provide legal advice or representation, parties are encouraged to consult with counsel regarding their rights and responsibilities as questions and concerns arise.

For additional information regarding CADRS services or to request assistance, please contact (202) 523-5807 or (866) 448-9586 (toll free) or email complaints@fmc.gov.

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 do not reflect those of the Federal government or the Federal Maritime Commission, nor are they binding on the FMC. This article is intended to provide general guidance and does not constitute legal advice or guidance.



Federal Bar Association

Transportation and Transportation
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Federal Bar Association

District of Columbia Chapter

Transportation Security in the Era of “Drones”

Monday, April 3, 2017 • 1:00–4:00 p.m.

Transportation Security Administration Town Hall^o

601 S. 12th Street, Arlington, VA 20598

AGENDA

1:00 – 1:10 p.m. **Welcoming Remarks:** *Francine J. Kerner, Chief Counsel
Transportation Security Administration (TSA)*

1:10 – 1:25 p.m. **Keynote Speaker:** *Tina Gabbrielli, Director of Counterintelligence
Department of Homeland Security (DHS)*

1:25 – 2:35 p.m. **The Evolution of Unmanned Aircraft Systems (UAS)**

Moderator: *Nicole Marcson, Deputy Associate General Counsel for Technology Programs, Office of the General Counsel, DHS*

Panelists: *Joshua Turner, Partner and UAS Practice Co-Chair, Wiley Rein
Eric Ebenstein, Head of North American Public Policy, DJI
Norm Robinson, Deputy Assistant Director, Flight Operations Division, Federal Air Marshal Service, TSA
Parimal Kopardekar, Principal Investigator for UAS Traffic Management, National Aeronautics and Space Administration*

2:35 – 2:45 p.m. **Break**

2:45 – 3:55 p.m. **Emerging UAS Legal and Regulatory Issues**

Moderator: *Kiran Raj, former Deputy General Counsel, DHS*

Panelists: *Brendan Groves, Counsel, Office of Legal Policy, U.S. Department of Justice
Jennifer Ambrose, Attorney, Team Lead for UAS Regulatory Policy and Outreach, Office of the Chief Counsel,
Federal Aviation Administration
Lisa Ellman, Partner and UAS Practice Co-Chair, Hogan Lovells
Matt Scassero, Director of the UAS Test Site, University of Maryland
Sean Cusson, Director of Public Safety and Security, Airports Council International – North America*

3:55 p.m. – 4:00 p.m. **Closing Remarks:** *Kathy Gainey, Counsel, Regulatory Affairs, CN*

This forum is hosted by the TSA Office of Chief Counsel.

For more information regarding the program, feel free to contact Timothy Weston at Timothy.Weston@tsa.dhs.gov.

There is no cost to attend, but advance registration is required to ensure entry into the building.

Please RSVP to Josh Albertson at JAlbertson@fedbar.org by Monday, March 27, 2017.

^o Please arrive at TSA 20 minutes in advance to allow time for check in at the Visitor Center outside of the building.