

**NAFTA 2022 COMMITTEE**  
**2015 ANNUAL REPORT OF THE TASK FORCE ON SECTORAL ADR**  
**FOR THE TRANSPORTATION INDUSTRY**

**1. Update on Work of the Task Force**

During the 2014-2015 work year, the Task Force on Sectoral ADR for the Transportation Industry has been focusing on how to redefine its mission and goals based on the information obtained from the International Transportation Survey and the 2014 Background Interviews that were conducted with a number of International Transportation Attorney and Arbitrators by the NLCIFT. Below is a reminder of where the Task Force stands on these items and the recap of the information learned from each activity. The Task Force has also included a proposal for future work moving forward for discussion by the larger Committee.

*a. International Transportation Survey and Possible Industry Association Partners*

In 2013, the Task Force presented the results of the International Transportation Survey at the Committee's Annual Meeting. Upon presentation of these findings, the Committee suggested that the Task Force might receive more relevant survey responses if the Task Force identified a collaborating institution to assist with survey distribution. At the 2014 Annual Meeting, the Task Force prepared a list with associations from each NAFTA country for the Committee's review.

*b. International Transportation Attorneys and Arbitrators Interviews*

Prior to the 2014 Annual Meeting, the NLCIFT conducted interviews six transportation attorneys and arbitrators in an effort to gain more information about the current ADR practices being used within the transportation industry. Since many of the Committee Members were unable to attend the 2014 Meeting, the Task Force has included below the most relevant points learned from these interviews.<sup>1</sup>

**Participants:**

- Six Interview Responses: 1 from Canada, 1 from Mexico, 4 from the U.S.
- All with previous experience dealing with international transportation disputes within the NAFTA region

**The Transportation Industry in General:**

- Most common reason that gives rise to international transportation disputes is some sort of cargo damage
- Most popular ADR method within the transportation industry was mediation followed by arbitration
- All, including the attorneys from Canada and Mexico, have knowledge and have dealt with the Carmack Amendment however all generally deal with the law of their respective countries when involved in an international transportation dispute

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<sup>1</sup> The full responses to these interviews were included in the 2014 Annual Report of the Task Force

### **Awareness of Current Specialized Arbitration Institution for Transportation Disputes:**

- 2 of the 6 experience with the Transportation ADR Council sponsored by the Transportation Lawyers Association (TLA)<sup>2</sup>
- Other institutions mentioned: International Chamber of Commerce, the American Arbitration Association, the Association of Maritime Arbitrators of Canada and the Society of Maritime Arbitrators

### **Need for Arbitrators with Specialized Knowledge of the Transportation Industry:**

- All agreed need for arbitrators with specialized knowledge of the transportation industry
  - Specifically the Carmack Amendment
- Must keep costs down for such services

### **Need for Specialized Transportation Arbitration Institution for the NAFTA Region:**

- Transportation ADR Council sponsored by the Transportation Lawyers Association already doing this type of dispute resolution
- No need of a specialized arbitral tribunal for only the NAFTA countries
  - Transportation ADR Council only makes a couple of hundred dollars per dispute, not be worth it to try to establish an independent arbitral tribunal only for the NAFTA countries
  - Not a significant enough difference between disputes of the three NAFTA countries as opposed to disputes for cargo coming from elsewhere (i.e. El Salvador)
  - All attorneys specializing in this area are going to focus internationally not just within the NAFTA region
  - If tribunal was created from scratch, would have to establish credibility with trucking associations, shippers associations, and insurance companies to work effectively
- Better approach would be closer collaboration between organizations similar to the Transportation ADR Council
- Possible establishment of a system of referrals of potential clients to these organizations

## **2. Proposed Future Work and Focus**

During the 2014-2015 work year, the Task Force reviewed the interview results and potential collaborator list and determined that Transportation Lawyers Association (TLA) would make the best partner for Task Force moving forward, especially since certain members of the Task Force are active members of the TLA and willing to assist in facilitating the first steps of creating this collaborative relationship.

### *a. The Transportation Lawyer's Association*

The TLA is an independent, international bar association whose members assist providers and/or commercial users of logistics and transportation. The TLA has members from around the world, including the NAFTA countries and provides a member forum and CLEs and also organizes

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<sup>2</sup> Transportation Lawyer Association, *ADR Information*, available at <http://www.translaw.org>.

annual Conferences and Meetings. Additionally, the TLA offers ADR Services including PDF documents that provide example Administrative Rules for Arbitration and Mediation and the ability to search for an arbitrator or mediator. This search can be completed by State and currently includes states of both Canada and the United States but does not yet include Mexico. When searching for an arbitrator or mediator, results feature an individual's contact information, experience as an arbitrator or mediator, where they are licensed, their areas of legal practice, information about their representative transportation clients, and their education and professional associations.

*b. Proposed Collaborative Relationship*

Based on the existing framework and popularity of the TLA, the Task Force believes they would make a good partner for this project moving forward. The Task Force would suggest creating a formal collaborative relationship with the TLA. One goal for doing so would be to increase participation by arbitrators, mediators and attorneys from Mexico so that these individuals could be incorporated into the TLA's "Arbitrator and Mediator Search" and so that the search can become more useful for those within the NAFTA region. The Task Force believes this would be a great first step that would provide benefit to the NAFTA 2022 Committee as well as the TLA. From here, the collaboration could extend further and the Task Force could aid the TLA with various tasks deemed mutually beneficial for the relationship. These could include the development of a document highlighting best practices with the industry or specifically dealing with the Carmack Agreement. This could also include the organization of panels at TLA events or meetings and the general promotion of the TLA ADR services within the NAFTA region.

To create this formal Collaboration, the Task Force suggests the preparation of a letter to the President of the TLA that can be shared by members of the Task Force that are also members of TLA (i.e. Gordon Hearn – past TLA President). This letter/email should include general information about the NAFTA 2022 Committee and should outline what the collaboration would include and how we believe we can form a mutually beneficial relationship. If the TLA is receptive to the idea of this collaboration, the Task Force can then follow-up and discuss the details to present to the larger Committee.