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# **Assessment of Arbitration in HHG Moves**

## **Final Report**

**November 2008**

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## Executive Summary

### **Background:**

This report presents an assessment of the dispute settlement program (arbitration) that motor carriers engaged in interstate transportation of Household Goods (HHG) must offer to shippers of HHG as a means of settling disputes concerning damage or loss to the HHG. The Federal Motor Carrier Safety Administration (FMCSA) was delegated by the Secretary of Transportation to conduct this assessment in response to a requirement of the Interstate Commerce Commission Termination Act of 1995 (ICCTA). The John A. Volpe Transportation Systems Center (the Volpe Center) assisted FMCSA in this effort, and with input from FMCSA, authored this report.

As of February 2007, the HHG moving industry was comprised of 4,670<sup>1</sup> HHG carriers ranging in size from one-vehicle operations to van lines. Together, these carriers operate over 31,000 straight trucks, 94,000 tractors and 255,000 trailers. (See Table E1.)

**Table E1. Summary of HHG Motor Carriers by Size<sup>2</sup>**  
(as of February 23, 2007)

| <b>Carrier Size<br/>(# Power Units)</b> | <b>Number of<br/>Carriers</b> | <b>Number of<br/>Tractors</b> | <b>Number of<br/>Trailers</b> | <b>Number of<br/>Straight<br/>Trucks</b> |
|---|-------------------------------|-------------------------------|-------------------------------|--|
| 1 - 5                                   | 3,022                         | 2,147                         | 3,184                         | 4,450                                    |
| 6 - 20                                  | 1,169                         | 5,144                         | 9,338                         | 6,863                                    |
| 21 - 100                                | 378                           | 10,198                        | 36,161                        | 5,028                                    |
| 100+                                    | 101                           | 77,240                        | 206,866                       | 15,174                                   |
| Total                                   | 4,670                         | 94,729                        | 255,549                       | 31,515                                   |

The ICCTA requires that a HHGs carrier, as a condition of registration, offer shippers arbitration as a means of settling disputes concerning damage or loss to the HHG transported. The arbitration program must conform to the following major specifications:

- Prior to the actual move, the carrier must notify the shipper of the availability of a neutral arbitration program to decide shipper claims for damage or loss to HHGs. The carrier is obligated to provide shippers with a copy of the FMCSA booklet “*Your Rights and Responsibilities When You Move*,” and provide them with specific information about the HHG carrier’s arbitration program;
- Each party entering into arbitration will pay a fee equal to half of the arbitration costs, currently a minimum of \$245 for each party;

<sup>1</sup> In addition to these FMCSA-registered carriers, 544 entities are registered as household goods motor carriers, but have no registered power units. These “unspecified” HHG carriers are not included in this study.

<sup>2</sup> Household goods companies must be registered as Household Goods carriers in the FMCSA Licensing & Insurance (L&I) system and 'Active' in both the FMCSA Motor Carrier Management Information System (MCMIS) and L&I systems as of February 23, 2007.

- HHG carriers must agree to enter arbitration with shippers for claims up to a set dollar limit, currently \$10,000. Shippers may enter arbitration for larger amounts only if the carrier agrees;
- The arbitrator must base the decision on written documentation provided by the shipper and the carrier, and must make a decision within 60 days of receiving written documentation of the dispute; and
- The decision is binding, that is, neither party can take further action against the other for additional compensation.

In practice, carriers rely on arbitration programs set up by trade organizations to which they belong, rather than make arrangements on their own with independent arbitrators. The American Moving and Storage Association (AMSA) is the major national HHG trade organization, and it provides neutral arbitration services to its members through the National Arbitration Forum (NAF). The Better Business Bureaus (BBB) and other organizations also operate arbitration programs. From 1999 through 2004, AMSA's arbitration program resolved 308 claims per year on average. To put this in perspective, they estimate their members perform approximately 1.5 million interstate household moves per year.<sup>3</sup>

In making their decisions, the arbitrators adhere to provisions of Federal law<sup>4</sup>, which requires the shipper to prove three elements in order to recover compensation for damaged or lost HHG: 1) the HHG were tendered to the HHG carrier in good condition; 2) the HHG were received at the destination in a damaged condition, or not delivered at all; and 3) the amount of damages.

### **Arbitration Program Assessment:**

The purpose of this assessment for the arbitration program is to determine:

- The degree of compliance of United States registered interstate HHG carriers with the requirement to offer an arbitration option to shippers;
- The level of satisfaction of shippers and HHG carriers with the arbitration option;
- The effectiveness of the arbitration program in settling disputes;
- The equitability of arbitration results; and
- Recommendations to improve the arbitration process.

This assessment was designed to determine not only how well the arbitration program works for the parties that use it, but also the degree to which HHG carriers are informing their shippers of its availability. A large-scale mail survey was determined to be the most cost effective and efficient way to obtain this information.

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<sup>3</sup> Testimony of Joseph Harrison, President of AMSA before Transportation Subcommittee, 2006, (<http://commerce.senate.gov/pdf/harrison-050406.pdf>).

<sup>4</sup> 49 U.S.C. 14706: *Missouri Pacific Railway Co. v Elmore & Stahl*, 377 U.S, 134 (1964).

In order to conduct the mail survey, FMCSA needed to be able to identify the population of HHG carriers and shippers. In the case of United States registered interstate HHG carriers, FMCSA was able to identify the entire population through its national motor carrier registration files.<sup>5</sup> However, there is no known source for the population of HHG shippers. As a consequence, FMCSA had to rely on shipper lists from several sources: people who filed complaints via the FMCSA online complaint Web site, and lists of arbitration users and filers from the AMSA<sup>6</sup> arbitration program. The inability to identify the entire population of shippers, however, means that certain survey results cannot be generalized broadly to all shipper experiences.

Questionnaires were mailed to the four response universes: arbitration users, arbitration filers, complainants, and HHG carriers. Table E2 shows the response rates for the response universes in the survey. The second response rate shows the number of responses as a percent of questionnaires that reached the intended parties and is the more meaningful measure. The response rates for the shipper categories exceeded the expected; however, the carrier response rate was significantly lower than expected.

**Table E2. Response Rates**

| <b>Respondent Universe</b> | <b>Expected Response Rate</b> | <b>Number of Respondents</b> | <b>Response Rate Including Addressee Unknowns</b> | <b>Response Rate Excluding Addressee Unknowns</b> |
|----------------------------|-------------------------------|------------------------------|---|---|
| Arbitration Users          | 18.0%                         | 178                          | 18.6%   | 25.6%   |
| Arbitration Filers         | 18.0%                         | 81                           | 14.2%   | 20.2%   |
| Complainants               | 26.2%                         | 360                          | 26.7%   | 32.6%   |
| HHG Carriers               | 52.2%                         | 151                          | 21.0%   | 22.6%   |

## **Findings and Recommendations:**

The surveys conducted for the assessment of the HHG arbitration program provided FMCSA with valuable insight into the satisfaction of its users with the program, as well as the way the program is implemented. The surveys shed light on a number of issues that need to be resolved to improve the arbitration program to make it a more satisfying experience for all users. The five main issue areas are discussed below with recommendations on how to address them.

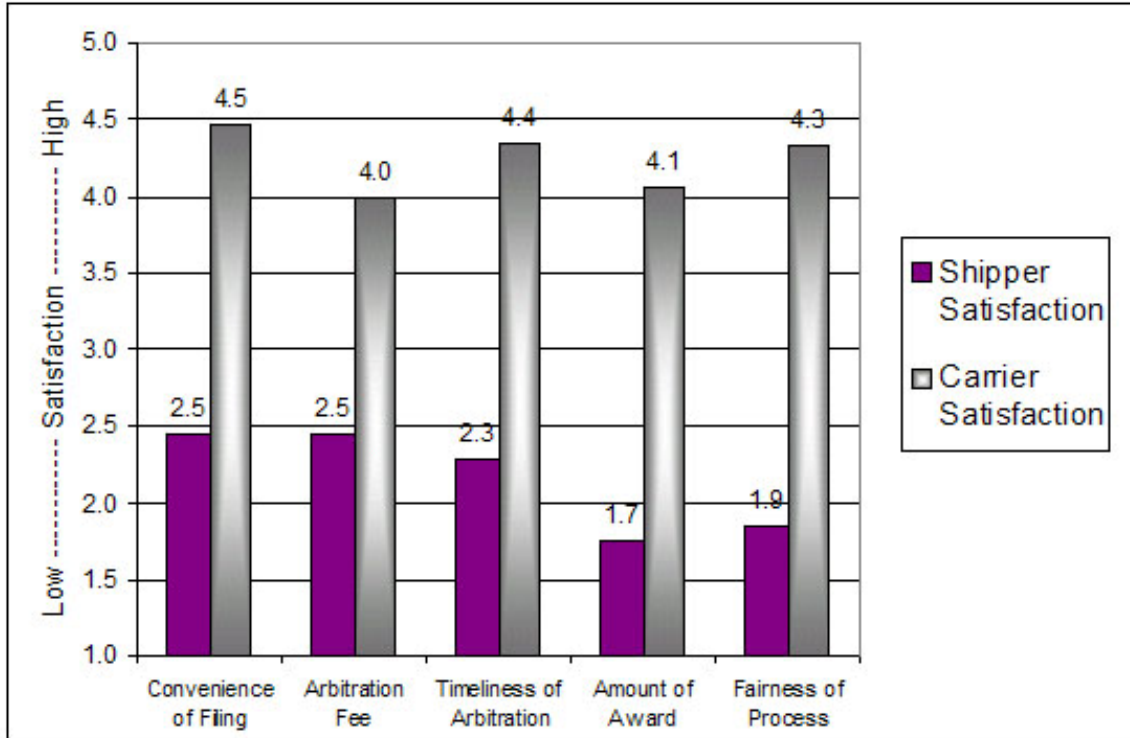
### **User Satisfaction with and Equitability of the Arbitration Process**

While HHG carriers gave the arbitration process high scores in all the satisfaction areas ranging between “satisfied” and “very satisfied,” shippers viewed the process quite

<sup>5</sup> The Motor Carrier Management Information System (MCMIS).

<sup>6</sup> The Volpe Center made unsuccessful attempts to obtain shipper arbitration user lists from other sources: the BBB does not track users of its arbitration program; and large household goods carriers could not release names of shippers with whom they participated in arbitration due to privacy concerns.

differently, giving it low scores ranging between “dissatisfied” and “very dissatisfied.” Figure E1 underscores the difference in viewpoints between carriers and shippers in five satisfaction areas. The scale goes from 1 (very dissatisfied) to 3 (no opinion) to 5 (very satisfied).



**Figure E1. Comparison of Shipper and HHG Carrier Satisfaction with Arbitration**

Shipper arbitration users were dissatisfied with the complexity of applying for arbitration, the time required and expense of the process, the uncertainty of the outcome, and the expectation of a lengthy time period for resolution. However, the most frequently cited problem with the arbitration process was the perception of its inherent unfairness to shippers.

The description of the arbitration process as “neutral” means that the arbitrators are not biased toward one party or the other. The arbitrator must follow the rule of law, which asserts that the carrier assumes no liability for damage or loss to HHG unless the shipper can meet the legal standard of proof that 1) the HHG were in good shape before shipment, 2) damage or loss occurred, and 3) the HHG are worth the stated value based on sales receipts and/or appraisals. The burden of proof is on the shipper.

Not all shippers are informed of this burden of proof requirement before the move; therefore, many are not adequately prepared for the arbitration proceedings. Without receipts, photos, or other evidence, and with only undocumented statements, shippers cannot prevail over carriers in arbitration regardless of the stated loss. As a result

shippers often receive only partial, if any, settlements. This feeds the perception that the process is not equitable to shippers.

*Recommendations:*

1. *Expand the discussion of arbitration in the FMCSA booklet “Your Rights and Responsibilities When You Move” and on the FMCSA Web site <http://www.protectyourmove.gov/> to include and highlight the information needed to document a claim for arbitration, as well as the information needed for insurance claims or direct negotiations with the carrier. The current moving preparation checklist on the Web site should be expanded to delineate a shipper’s responsibilities for assembling proper documentation in case of damage or loss to HHG. This checklist could be included in the booklet “Your Rights...”*

### **Informing Shippers about Arbitration**

Not enough HHG carriers are following the laws requiring them to establish and offer an arbitration program to their shippers. While all large carrier respondents with 100 or more power units have established programs, about 69 percent of smaller HHG carriers in the survey reported that they have programs. Further, when they do have an arbitration program, not enough carriers follow the law requiring them to provide information about arbitration.

In addition, about 57 percent of HHG carriers report that they handed out “*Your Rights and Responsibilities When You Move*” before the move; and 75 percent of shippers likewise reported that they never received the booklet. Similarly, 84 percent of shippers stated that they did not receive specific information about the carriers’ arbitration process from the carrier before the move.

*Recommendation:*

2. *FMCSA should increase HHG carrier education and enforcement efforts to insure that carriers: establish an arbitration program that meets the full requirements of the existing law; and provide both the FMCSA booklet “Your Rights and Responsibilities When You Move” and detailed information about their arbitration programs to shippers prior to their signing the moving contracts.*

### **Insurance for the Move**

Shippers expressed considerable confusion regarding insurance coverage, irrespective of whether they had purchased extra valuation coverage (insurance) or had the standard released value coverage providing benefits of 60 cents per pound on damaged or lost items.<sup>7</sup> Respondents were perplexed over the differences among insurance coverage,

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<sup>7</sup> The 2005 revisions to the ICCTA changed the default insurance coverage from the minimal (60 cents per pound benefit) no-cost-to-the-shipper insurance to full value protection which shippers must formally

insurance claims, damage and loss claims, and amounts of arbitration awards. Comments on many survey forms showed a general misunderstanding of the role of insurance in covering claims for damage and loss to HHG and the documentation needed to prove the claims. Shippers did not seem to understand that purchasing extra valuation coverage directly from the carriers meant that a carrier's insurance adjuster would assess the damage and loss amount for a claim, rather than a third party insurance company.

Sixty-six percent of arbitration users who purchased extra insurance from the carriers for their moves reported they did not receive any compensation for their losses. Many had to initiate arbitration proceedings to obtain any settlement from the carrier. This indicates that the purchase of additional insurance coverage does not insure carriers will compensate shippers for damage and loss to HHG.

*Recommendation:*

3. *FMCSA should clarify the insurance discussion in the FMCSA booklet "Your Rights and Responsibilities When You Move" to:*
  - *Highlight the documentation requirements for proving loss and damage to HHG for each coverage option;*
  - *Explain the pros and cons of purchasing insurance from an independent third party insurance company; specifying that third party insurance companies are not within the jurisdiction of the FMCSA nor are disputes with third party insurance companies subject to mandatory arbitration under the FMCSA requirements; and*
  - *Explain that shipments transported under the carrier's valuation coverage options are subject to arbitration in the event of disputed loss and damage claims.*

### **Carrier Payment of Arbitration Awards to Shippers**

In 18 percent of the cases where shippers were awarded a settlement in arbitration, the HHG carriers never paid. In all cases of nonpayment in the survey, carriers with fewer than 100 power units were involved. The arbitration process does not follow up on whether or not the HHG carrier actually pays the shipper, leaving the shipper's only recourse to be legal action against the carrier. Although 82 percent of the arbitration awards were paid, an 18 percent default rate is too large.

*Recommendation:*

4. *FMCSA should take the necessary steps to enhance their authority to take enforcement action against HHG carriers that do not pay settlements to shippers*

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waive to avoid being charged for. The carrier underwrites both of these policies as opposed to a third-party insurance company.



*as a result of arbitration, and to require carriers to report information on their payment of arbitration settlements to shippers.*

### **Limits on Arbitration's Use and Applicability**

A high percentage of arbitration users recommended that dollar limits for arbitration claims be increased; fees be reduced; and arbitration be expanded to cover other financial losses due to delays, hostage goods, and damage to property other than HHG.

*Recommendations:*

- 5. Collect information on the number of HHG movements that result in property damage and loss (and other) claims, so there exists a sound, data based, foundation for making changes to the arbitration claims limit.*
- 6. The current level of arbitration fees covers the full costs of arbitration. Even though a reduction in fees would likely encourage more arbitration usage, fees can be reduced only if subsidies are made available.*

### **In Summary**

This assessment of the arbitration program has found that:

- Shippers who have completed the arbitration process, particularly those who have not been awarded any or only a small percentage of their claims, find it to be unfair and are generally dissatisfied with it, while HHG carriers generally view it as an equitable process;
- Shippers generally believe the arbitration process is unfair and that the burden of proof is not clearly explained results in their inability to document the burden of proof after the shipments are transported;
- Almost 70 percent of HHG carriers have established an arbitration program, as required by FMCSA regulations, and almost 60 percent distribute the FMCSA booklet “*Your Rights and Responsibilities When You Move*” to their shippers;
- Shippers are generally confused about insurance coverage options; and
- Around 18 percent of HHG carriers do not pay the amounts awarded to shippers when shippers prevail in arbitration.

FMCSA believes that the arbitration process can be fair in its existing form and that the perception of unfairness by shippers and their confusion about insurance options can be addressed by:

- Providing shippers with better information about the arbitration process and insurance coverage options, and the steps they need to take prior to their moves to

- ensure they have the documentation needed to support claims of damage in direct negotiations with movers, in insurance claims, and in arbitration;
- Enforcing existing regulations requiring HHG carriers to establish arbitration programs, provide shippers detailed information on their programs, and give each shipper a copy of *“Your Rights and Responsibilities When You Move;”* and
  - Taking steps to enhance FMCSA’s authority to take enforcement action against HHG carriers that do not pay settlements to shippers as a result of arbitration, and to require carriers to report information on their payment of arbitration settlements to shippers.

## **Introduction/Background**

### **Requirement for Study**

This report presents an assessment of the dispute settlement program (arbitration) that motor carriers engaged in interstate transportation of Household Goods (HHG) must offer to shippers of HHG as a means of settling disputes concerning damage or loss to the HHG. The Federal Motor Carrier Safety Administration (FMCSA) was delegated by the Secretary of Transportation to conduct this assessment in response to a requirement of the Interstate Commerce Commission Termination Act of 1995 (ICCTA)<sup>8</sup> and a recommendation in the 2001 testimony of the General Accountability Office (GAO) entitled “Consumer Protection: Federal Actions to Oversee the Household Goods Moving Industry Are Unlikely to Have Immediate Impact.”<sup>9</sup> The John A. Volpe Transportation Systems Center (the Volpe Center) assisted FMCSA in this effort, and with input from FMCSA, authored this report.

### **Description of the Interstate Household Goods Transportation Industry**

Motor carriers registered with FMCSA under §§ 13902 of 49 United States, are permitted to conduct interstate transportation of HHG. As of February 2007, the industry was comprised of 4,670<sup>10</sup> HHG carriers ranging in size from one-vehicle operations to van lines, and operating over 31,000 straight trucks, 94,000 tractors and 255,000 trailers. (See Table 1.)

The interstate HHG moving industry generates \$10 billion in revenues annually in the United States.<sup>11</sup> Many HHG carriers join trade associations such as the American Moving and Storage Association (AMSA) and the Better Business Bureau (BBB) that provide carrier members and their customers with business-related services and benefits. Over 2,000 interstate HHG carriers, including 20 national van lines, are members of AMSA alone, and are responsible for approximately 1.5 million interstate moves annually (over 80 percent of all United States interstate moves).

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<sup>8</sup> Public Law 104-88, 109 Stat. 803, December 29, 1995, (<http://ntl.bts.gov/lib/5000/5800/5848/pl104-88.pdf>). Relevant sections of 49 U.S.C. Subtitle IV Chapter 135 – Jurisdiction include: Subchapter I – Motor Carrier Transportation and Subchapter III – Freight Forwarder Service; §§ 13902 Registration of motor carriers; § 13903 Registration of freight forwarders; and § 14708(g) Dispute settlement program for household goods carriers. This assessment does not include freight forwarders (18 registered with FMCSA as of March 2007).

<sup>9</sup> Report Number GAO-01-819T, dated July 12, 2001, (<http://www.gao.gov/new.items/d01819t.pdf>).

<sup>10</sup> In addition to these carriers, 544 entities are registered as household goods motor carriers, but have no registered power units. These “unspecified” HHG carriers are not included in this study.

<sup>11</sup> Statistics in this paragraph come from testimony of Joseph Harrison, President of AMSA before Transportation Subcommittee, 2006, (<http://commerce.senate.gov/pdf/harrison-050406.pdf>).

**Table 1. Summary of Household Goods Motor Carriers by Size<sup>12</sup>**  
(as of February 23, 2007)

| <b>Carrier Size<br/>(# Power Units)</b> | <b>Number of<br/>Carriers</b> | <b>Number of<br/>Tractors</b> | <b>Number of<br/>Trailers</b> | <b>Number of<br/>Straight<br/>Trucks</b> |
|---|-------------------------------|-------------------------------|-------------------------------|--|
| 1 - 5                                   | 3,022                         | 2,147                         | 3,184                         | 4,450                                    |
| 6 - 20                                  | 1,169                         | 5,144                         | 9,338                         | 6,863                                    |
| 21 - 100                                | 378                           | 10,198                        | 36,161                        | 5,028                                    |
| 100+                                    | 101                           | 77,240                        | 206,866                       | 15,174                                   |
| Total                                   | 4,670                         | 94,729                        | 255,549                       | 31,515                                   |

## Description of the Arbitration Process

### *Requirements of the Interstate Commerce Commission Termination Act of 1995*

The ICCTA requires that an interstate HHG carrier, as a condition of registration, offer shippers arbitration as a means of settling disputes concerning damage or loss to the HHG transported. The arbitration program does not cover disputes arising from other types of problems associated with a move such as, holding goods hostage, damage to property other than HHG, and delays. Shippers must pursue other avenues for obtaining compensation for these occurrences such as, direct negotiations with the carrier or court actions. Shippers may also lodge complaints against the carrier with trade organizations such as the BBB and AMSA, or with FMCSA through the National Consumer Complaint Website or the Complaint Hotline.<sup>13</sup>

The law<sup>14</sup> stipulates that the arbitration program conform to the following specifications:

- Prior to the actual move, the carrier must notify the shipper of the availability of a neutral arbitration program to decide shipper claims for damage or loss to HHG, including 1) a concise easy-to-read, accurate summary of the arbitration procedure, 2) any applicable costs, and 3) the legal effects of the shipper's choosing to use arbitration;
- When requested, the carrier must promptly provide the shipper with the forms and other information it considers necessary for initiating an arbitration action;
- The arbitration process must be designed to prevent a shipper from being at a disadvantage because he/she does not reside or do business in the vicinity of the carrier's principal or other place of business;
- Persons authorized to arbitrate must be independent of the parties to the dispute, and must meet qualifications set by the Secretary of Transportation;

<sup>12</sup> Household goods companies must be registered as Household Goods carriers in the FMCSA Licensing & Insurance (L&I) system and 'Active' in both the FMCSA Motor Carrier Management Information System (MCMIS) and L&I systems as of February 23, 2007.

<sup>13</sup> National Consumer Complaint Website: <http://www.nccdb.fmcsa.dot.gov>. Complaint Hotline: 1-888-DOT-SAFT(1-888-368-7238).

<sup>14</sup> Public Law 104-88, 109 Stat. 803, December 29, 1995, (<http://ntl.bts.gov/lib/5000/5800/5848/pl104-88.pdf>), § 14708(g) Dispute settlement program for household goods carriers.

- Each party will initially pay a fee equal to half of the arbitration costs. The decision may determine, however, that one party should reimburse the other party's fee. Additionally, the arbitrator in certain circumstances may determine that one party should pay the other's legal costs;
- HHG carriers must agree to enter arbitration with shippers for claims up to a set dollar limit. Shippers may enter arbitration for larger amounts only if the carrier agrees. Initially the limit on shipper claims was \$1,000. Beginning the year of 2000, this amount was raised to \$5,000, and in 2005, to \$10,000;
- The arbitrator must base the decision on written documentation provided by the shipper and the carrier, unless both parties agree to oral presentation of their claims and to the date, time and location of such presentation;
- The arbitrator must make a decision within 60 days of receiving written documentation of the dispute. When one party fails to provide complete information, the arbitrator may extend this time period another 60 days; and
- The decision is binding, that is, neither party can take further action against the other for additional compensation.

In addition to information about arbitration, a HHG carrier must provide shippers with a copy of the FMCSA booklet "*Your Rights and Responsibilities When You Move.*"<sup>15</sup>

### ***The AMSA Arbitration Program***

In practice, carriers often rely on arbitration programs set up by trade organizations to which they belong, rather than make arrangements on their own with independent arbitrators. This section describes the AMSA arbitration program because it is the most commonly used program among interstate HHG carriers. AMSA designed its arbitration program to conform to the requirements of the ICCTA and its amendments, and offers it as a benefit to their membership. It is available as an option to shippers only after they have attempted to negotiate directly with their HHG carriers for their damage and loss claims, and have been unsuccessful in obtaining a satisfactory settlement. AMSA statistics shows that over the past three years for which data are available, on average 308 cases annually have been completed through their arbitration program. To put this in perspective, they estimate their members perform approximately 1.5 million interstate household moves per year.<sup>16</sup>

At the time of contract signing, HHG carriers are obligated by ICCTA to inform shippers of the availability of arbitration as an option for pursuing damage and loss claims, provide them with a copy of the FMCSA booklet "*Your Rights and Responsibilities When You Move,*" and provide them with information about the HHG carrier's arbitration program. Shippers can find additional information at the AMSA Web site <http://www.moving.org/>, including the arbitration application form (Appendix A).

<sup>15</sup> <http://www.protectyourmove.gov/consumer/awareness/rights/rights.htm>

<sup>16</sup> Testimony of Joseph Harrison, President of AMSA before Transportation Subcommittee, 2006, (<http://commerce.senate.gov/pdf/harrison-050406.pdf>).

AMSA has contracted with the National Arbitration Forum (NAF) to provide neutral arbitration services to AMSA members. AMSA does not underwrite NAF services; the arbitration fees equally shared by the parties cover all associated costs. The total amount of the fee is dependent on the size of the claim. Because the parties may settle the dispute before the arbitrator hears the case or the arbitrator may determine the dispute does not qualify for arbitration, the fee is not paid when an application is filed, but only within 30 days of the date set for consideration of the arbitration case.

The NAF acts as an intermediary between the parties and the arbitrators. They perform administrative functions, such as providing information to arbitration users, answering questions, helping users (particularly shippers) complete their forms, passing the completed forms and information on to the arbitrators, and informing users of the outcome. They also check individual arbitrators for conflicts of interest in each case.

The NAF has vetted a 10-member panel of arbitrators who collectively cover around 300 cases per year. The arbitrators are either lawyers or retired judges, whose qualifications include 15 years of experience in law, some experience in transportation law, and acceptable ratings by several lawyer-rating groups.

In making their decisions, the arbitrators adhere to the Federal law<sup>17</sup>, which requires the shipper to prove three elements in order to recover compensation for damaged or lost HHG: 1) the HHG were in good shape before shipment, 2) damage or loss occurred, and 3) the HHG are worth the stated value based on sales receipts and/or appraisals.

Once a decision is rendered, the NAF informs both parties. In the case where there is an award to the shipper, the NAF does not follow-up on whether or not the HHG carrier actually pays the shipper. The arbitration is considered binding, that is, both parties must accept the outcome and cannot pursue the claim any further. However, if the HHG carrier does not pay the shipper, the shipper has the option to take the issue to a court of appropriate jurisdiction. If AMSA is notified that a member(s) has not paid, then AMSA will contact the member(s). If the member refuses to pay an arbitration settlement, their AMSA membership will be revoked. Under current law, FMCSA cannot intervene in these matters.

AMSA provided Tables 2 and 3 documenting the use of their arbitration program from 1999 through 2005. Given that all of the national van lines and about half of the smaller HHG carriers are AMSA members, these figures represent a significant portion of arbitration usage during this period. Of the total 3,392 shippers who applied for arbitration, 47.8 percent completed arbitration; 6.6 percent of applicants had claims that were deemed non-eligible for arbitration such as non-damage and loss claims or complaints; 19.8 percent agreed to settlements from the HHG carrier prior to arbitration; and 25.8 percent dropped out of the process for unspecified reasons. Of the 1,620 completed arbitration cases, 67.8 percent awarded full or partial payment to the shipper and 32.2 percent ruled in favor of the HHG carrier. In only 20.5 percent of the arbitration cases were shippers awarded their full claims.

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<sup>17</sup> 49 U.S.C. 14706: *Missouri Pacific Railway Co. v Elmore & Stahl*, 377 U.S, 134 (1964).

**Table 2. Requests for Arbitration through AMSA**

| <b>Year</b>    | <b>Number of Shipper Applications</b> | <b>Non-eligible Applications</b> | <b>Claims Settled by Carrier</b> | <b>Shipper Declines to Arbitrate</b> | <b>Claims Resolved by Arbitration</b> |
|----------------|---------------------------------------|----------------------------------|----------------------------------|--------------------------------------|---------------------------------------|
| 1999           | 712                                   | 67                               | 141                              | 144                                  | 360                                   |
| 2000           | 726                                   | 41                               | 123                              | 188                                  | 374                                   |
| 2001           | 723                                   | 38                               | 119                              | 215                                  | 351                                   |
| 2002           | 683                                   | 47                               | 177                              | 152                                  | 251                                   |
| 2003           | 548                                   | 32                               | 113                              | 152                                  | 251                                   |
| 2004           | 435                                   | N/A                              | N/A                              | N/A                                  | 263                                   |
| 2005*          | 297                                   | N/A                              | N/A                              | N/A                                  | 186                                   |
| Yearly Average | 639                                   | 45                               | 135                              | 170                                  | 308                                   |

\* Partial year

**Table 3. AMSA Arbitration Case Dispositions**

| <b>Year</b> | <b>Claims Resolved by Arbitration</b> | <b>Full or Partial Claims Awarded to Shipper</b> | <b>Case Awarded to Carrier</b> |
|-------------|---------------------------------------|--|--------------------------------|
| 1999        | 360                                   | 226  | 134                            |
| 2000        | 374                                   | 258  | 116                            |
| 2001        | 351                                   | 252  | 99                             |
| 2002        | 284                                   | 196  | 88                             |
| 2003        | 251                                   | 167  | 84                             |
| Total       | 1,620                                 | 1,099  | 521                            |

## **II. HHG Arbitration Assessment Overview**

### **Objectives**

The purpose of the assessment of the arbitration program is to determine:

- The degree of compliance of United States registered interstate HHG carriers with the requirement to offer an arbitration option to shippers;
- The level of satisfaction of shippers and HHG carriers with the arbitration option;
- The effectiveness of the arbitration program in settling disputes;
- The equitability of arbitration results; and
- The means to improve the arbitration process.

Assessing arbitration’s “effectiveness” means investigating if it is operating as intended, results are obtained in a timely fashion, the filing process is not overly complicated for users to understand, and that shippers actually receive any settlements they are awarded from the HHG carriers. Assessing arbitration’s “equitability” means investigating if the

process is fair, if awards are appropriate and, if they are based on the documentary evidence presented.

Based on the assessment, if it is determined that changes to the arbitration program are required, FMCSA will take actions to implement such changes within their authority, and make recommendations to Congress to change relevant laws as necessary.

### **Arbitration Environment**

Since the initial mandate for this study was issued in 1995, provisions in the ICCTA dealing with arbitration have been amended twice. Section 209 (b) of the Motor Carrier Safety Improvement Act of 1999 increased the maximum amount for shipper claims of damage and loss to which HHG carriers were required to enter arbitration from \$1,000 to \$5,000. A more comprehensive overhaul of the arbitration requirements occurred with the HHG Mover Oversight Enforcement and Reform Act of 2005 (Section 4201-4216 of SAFETEA-LU). This legislation raised the maximum amount to which HHG carriers must agree to enter arbitration from \$5,000 to \$10,000. Other features of the 2005 legislation related to arbitration include:

- The default insurance plan for HHG moves was changed to carrier-backed full value replacement, rather than the released value plan with limited liability (60 cents per pound). Shippers are charged for full value replacement unless they formally reject it on the contract;
- Criminal and civil penalties were established for holding HHG hostage; and
- Shippers were permitted to use arbitration for claims for additional charges billed to them after the delivery of their HHG by the carrier.

## **III. Assessment Methodology Overview**<sup>18</sup>

### **Sources of Inputs**

This assessment was designed to determine not only how well the arbitration program works for the parties that use it, but also the degree to which HHG carriers are informing their shippers of its availability. Inputs were needed from both parties in the arbitration process, namely HHG shippers and carriers, as well as HHG shippers in general. A large-scale mail survey was determined to be the most cost effective and efficient way to obtain these inputs. Additionally, the Volpe Center conducted interviews with other key participants, including AMSA, the BBB, the NAF, and independent arbitrators, to obtain their perspectives on the arbitration process and its implementation.

In order to conduct the mail survey, FMCSA needed to be able to identify the population

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<sup>18</sup> The following discussion summarizes the description of the survey objectives, design, statistical methodology, and related issues. Appendix B, the documentation package prepared to obtain survey clearance from the Office of Management and Budget (OMB), addresses these topics in more detail.



of United States registered interstate HHG carriers and shippers. In the case of United States registered interstate HHG carriers, FMCSA was able to identify the entire population through its national motor carrier registration files.<sup>19</sup> However, there is no known source for the population of HHG shippers, that is, a list of people throughout the United States that make interstate HHG moves during a set period of time. As a consequence, FMCSA had to rely on partial shipper lists that they were able to access, or obtain through the cooperation of other organizations. The inability to identify the entire population of shippers, however, means that the results of the survey cannot be generalized broadly to all shipper experiences.

FMCSA mailed questionnaires to a sample of shippers identified in the following sources:

- Arbitration users: AMSA<sup>20</sup> provided contact information for shippers who completed the AMSA arbitration program;
- Arbitration filers: AMSA provided contact information for shippers who filed paperwork for the AMSA arbitration program and subsequently decided not to file for arbitration; and
- Shippers in general: FMCSA used contact information for people who filed complaints with FMCSA. This source also had the potential to provide information from shippers who used non-AMSA arbitration programs.

In addition, FMCSA mailed questionnaires to a sample of United States registered interstate HHG carriers from the FMCSA motor carrier register.

### **Statistical Methodology**

The aim of the survey was to obtain statistical precision in the resulting estimates of +/- 5 percent with 95 percent confidence,<sup>21</sup> the standard of precision commonly used in this type of systematic sample survey. It was determined, however, that the standard would not likely be met for the arbitration users and filers, and that the required sample sizes had to be larger than calculated by standard statistical formulas because of expected high non-response due to the factors below.

- Mail surveys without incentives, such as payments, have historically lower response rates than some other more expensive methods such as personal interviews;
- Shipper contact information is more likely to be out of date as time goes by, and several years of arbitration cases were needed for the study; and

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<sup>19</sup> The Motor Carrier Management Information System (MCMIS).

<sup>20</sup> The Volpe Center made unsuccessful attempts to obtain shipper arbitration user lists from other sources: the BBB does not track users of its arbitration program; and large household goods carriers could not release names of shippers with whom they participated in arbitration due to privacy concerns.

<sup>21</sup> This means that if the survey were to be conducted repeatedly in the same manner, 95 percent of the time the estimate +/- 5 percent would contain the true value of the parameter being estimated for the population.

- Literacy problems and restricting the survey to English would eliminate some potential respondents.

The size of the respondent universes, expected precision of results, and final sample sizes are shown in Table 4. The shipper respondent universes were limited to the most recent years of data available to maximize the accuracy of respondents’ recall of their experiences with their moves.

**Table 4. Sample Size Parameters**

| <b>Respondent Universe</b>    | <b>Respondent Universe Size</b> | <b>Expected Precision</b> | <b>Sample Size</b> |
|-------------------------------|---------------------------------|---------------------------|--------------------|
| AMSA Arbitration Users        | 956 (3 years)                   | 8%                        | 956                |
| AMSA Arbitration Filers       | 570 (3 years)                   | 8%                        | 570                |
| FMCSA Complaints Database     | 3,200 (2 years)                 | 5%                        | 1,349              |
| HHG Carrier Registration File | 4,771 carriers                  | 5%                        | 719                |

## Survey Design

Three distinct questionnaires were designed for the survey, one covering both HHG shipper arbitration users and filers (referred to as the “arbitration user questionnaire”), one for HHG shippers registering a complaint with FMCSA, and one for HHG carriers. The questionnaires and the accompanying cover letters are included as Appendix C, Appendix D and Appendix E, respectively.

- The shipper arbitration user questionnaire requests information on the move itself, if and how the shipper was informed of the availability of arbitration, problems encountered during the move, direct negotiations with the mover, shipper experience (including satisfaction) with the arbitration process, and demographic information about the person dealing with the mover;
- The complainant questionnaire requests information on the complaint, in addition to the same information as the arbitration user questionnaire above in the event the complainant has completed arbitration; and
- The carrier questionnaire requests information on the arbitration program the company offers, its use of arbitration, its use of direct negotiation with the mover, and its HHG moving business.

A number of steps were taken to maximize the response rate:

- Respondent-friendly design;
- Sequenced mailings:
  - Pre-notice letter
  - First questionnaire and cover letter one week after pre-notice
  - Reminder postcard about 10 days after questionnaire
  - Replacement questionnaire and cover letter about a week after postcard

- Minimal questionnaire length no more than four pages, and an easily readable font;
- Official government appeal;
- Assurance of confidentiality of responses;
- Postage paid return envelope; and
- Limiting FMCSA and AMSA contact information to the most recent years to minimize the likelihood of obsolete contact information.

## **Survey Implementation**

The survey was implemented as planned on the dates shown in Table 5. Responses were accepted until the cut-off date of February 28, 2007, a 4-month duration in total, to take advantage of a significant number of late responses.

**Table 5. Timing of Survey Implementation**

| <b>Survey Activity</b>   | <b>Date</b>          |
|--------------------------|----------------------|
| Pre-notification Letter  | November 3-4, 2006   |
| First Mailing            | November 15-16, 2006 |
| Reminder Postcard        | November 28, 2006    |
| Follow-up Mailing        | December 7, 2006     |
| Cut-off Date for Returns | February 28, 2007    |

## **IV. Survey Results**

### **Survey Response**

Table 6 shows the response rates for the four response universes in the survey. Two response rates were calculated. The first shows the number of responses as a percentage of all questionnaires mailed out, while the second shows the number of responses as a percent of questionnaires that reached the intended parties. If it can be assumed that potential respondents whose addresses were outdated are not inherently different from those whose addresses were current, then the latter response rate is the more meaningful.

The response rates for the shipper categories exceeded expectations; however, the carrier response rate was significantly lower than expected. The assumption made in determining the expected rates that carriers would be more responsive to a survey sponsored by their regulatory agency than the shippers, even though responses in both were voluntary, did not prove true.

**Table 6. Response Rates**

| <b>Respondent Universe</b> | <b>Expected Response Rate</b> | <b>Number of Respondents</b> | <b>Response Rate Including Addressee Unknowns</b> | <b>Response Rate Excluding Addressee Unknowns</b> |
|----------------------------|-------------------------------|------------------------------|---|---|
| Arbitration Users          | 18.0%                         | 178                          | 18.6%   | 25.6%   |
| Arbitration Filers         | 18.0%                         | 81                           | 14.2%   | 20.2%   |
| Complainants               | 26.2%                         | 360                          | 26.7%   | 32.6%   |
| Carriers                   | 52.2%                         | 151                          | 21.0%   | 22.6%   |

## Survey Precision

The widths for 95 percent confidence intervals for estimates of proportions equal to 0.5 (percentages equal to 50 percent) based on the four respondent universes are shown in Table 7. Estimates equal to 0.5 (or 50 percent) have the maximum width confidence interval; all other estimates, both larger and smaller, have narrower intervals, that is, they are more precise. While these intervals are slightly wider than expected for the arbitration filers and HHG carriers, they meet expectations for the arbitration users and complainants. All are well within or close to +/- 10 percent, which is an acceptable level for surveys of this type.

**Table 7. Precision of Estimates**

| <b>Respondent Universe</b> | <b>Width of 95% Confidence Interval for an Estimate of 50%</b> |
|----------------------------|--|
| Arbitration Users          | +/- 7.3%   |
| Arbitration Filers         | +/- 10.9%  |
| Complainants               | +/- 5.2%   |
| HHG Carriers               | +/- 8.0%   |

## Potential Bias in Results and Extrapolation of Results to National Populations<sup>22</sup>

When response rates are relatively low (though expected) as in this survey and when the respondent universes do not represent all segments of the population as with the shipper databases used in this study, the interpretation of survey results must take these shortcomings into consideration. Low response rates may yield biased results if there is a systematic difference between the respondents and non-respondents in key descriptive parameters. If segments of the population are not included in the survey to begin with, then there is little justification for extrapolation of results to national populations, i.e., inferring that the results apply to the unrepresented segments.

<sup>22</sup> See Appendix F for a more detailed analysis of potential bias in the results.

FMCSA believes that survey results pertaining to shipper and HHG carrier experiences with the arbitration process are applicable to all arbitration users and HHG carriers in the United States. However, there are limitations to the wider application of certain survey findings dealing with moving experiences in general to more than the respondent universes.

To address these issues, two types of comparisons were made:

- Comparison of key characteristics of respondents to their corresponding populations to determine if respondents fairly represent the populations; and
- Examination of the differences in responses to the first and second mailings, assuming that responses to the second mailing would be more similar to those of the non-respondents had they replied. Adjustments to survey results can be made if deemed necessary.

***Shipper Respondents’ Experience with Arbitration***

Table 8 shows a comparison of shipper arbitration user respondents and various population statistics. It can be seen that the proportion of AMSA vs. non-AMSA arbitration user respondents is similar to the proportion of shippers who use AMSA and non-AMSA member HHG carriers for their moves. In addition, the proportion of arbitration user respondents who were awarded a settlement in their arbitration cases is very close to the proportion of AMSA arbitration users who were awarded settlements.

**Table 8. Comparison of Shipper Response and Population Statistics**

| <b>Arbitration Users in Survey</b>                                   | <b>Population</b>   |
|--|---|
| 89% Used AMSA Arbitration Program                                    | 80+% Interstate Moves Performed by AMSA HHG Carriers                      |
| 11% Used Non-AMSA Arbitration Program                                | <20% Interstate Moves Performed by Non-AMSA HHG Carriers                  |
| 60.7% of Arbitration Cases Yielded Full or Partial Award to Shippers | 67.8% of AMSA Arbitration Cases Yielded Full or Partial Award to Shippers |

Further, shipper arbitration user responses to several key questions do not differ significantly on average from the first to the second mailing. The mean total loss estimates were \$6,665.88 for the first mailing and \$6,385.39 for the second, a decrease of less than 5 percent. Differences from the first to the second mailings in overall satisfaction for both direct negotiations and arbitration were less than 0.2 on a scale of 1 (very unsatisfied) to 5 (very satisfied). Respondents to both the first and second mailings listed similar suggestions for improving the arbitration process. Based on these comparisons, FMCSA believes that the survey results can be used to represent the experiences of arbitration users nationally in an unbiased manner and that adjusting the results for non-response is not necessary.

Although there does not appear to be any significant sampling bias in the shipper arbitration user survey, the outcomes of shippers' experiences with the arbitration process may have colored their responses to other survey questions. Table 9 shows how three categories of shipper arbitration users rated their satisfaction with the arbitration process. It is evident that the less favorable the outcome to the shipper, the lower their satisfaction ratings. On a scale of 1 (very unsatisfied) to 5 (very satisfied), those arbitration users who received no award had an average satisfaction score of approximately 1.8; those who received less than or equal to 50 percent of their claim had average satisfaction score of approximately 2.1; those who received more than 50 percent of their claim had an average satisfaction score of 3.5. Shippers with no award or a low award gave lower satisfaction ratings to arbitration features associated with arbitration outcome than to those not associated with arbitration outcome (convenience and information quality). Receiving a low or no award may affect responses to other survey questions as well, but there is no way to quantify the effect. Readers of this report should nevertheless be aware of this tendency as they interpret the survey results.

**Table 9. Shipper Arbitration User Satisfaction by Size of Award**

| Size of Shipper's Award               | Shipper Arbitration Users |                             |                        |
|---------------------------------------|---------------------------|-----------------------------|------------------------|
|                                       | No Award                  | Awarded < or = 50% of Claim | Awarded > 50% of Claim |
| Satisfaction with Arbitration         |                           |                             |                        |
| Quality of information on arbitration | 1.8                       | 2.6                         | 3.8                    |
| Convenience of obtaining information  | 2.3                       | 2.4                         | 3.8                    |
| Convenience of filing for arbitration | 2.3                       | 2.3                         | 3.4                    |
| Arbitration fee                       | 2.3                       | 2.5                         | 3.4                    |
| Timeliness of arbitration             | 1.9                       | 2.2                         | 3.1                    |
| Amount of award                       | 1.1                       | 1.2                         | 3.3                    |
| Timeliness of award payment           | N/A                       | 2.4                         | 3.7                    |
| Fairness of process                   | 1.1                       | 1.4                         | 3.6                    |

### *Household Goods Carrier Respondents' Experience with Arbitration*

Table 10 shows the size distribution of United States registered interstate HHG carrier respondents compared to the size distribution for all registered HHG carriers in the United States. The percent of the United States carrier population and the percent of respondents to our survey by carrier size are remarkably similar.

**Table 10. Comparison of HHG Carrier Respondents and United States Population**

| Carrier Size<br>(# Power Units) | HHG Carriers                           |                          |                          |                           |
|---------------------------------|--|--------------------------|--------------------------|---------------------------|
|                                 | UNITED STATES<br>Carrier<br>Population | Percent of<br>Population | Number of<br>Respondents | Percent of<br>Respondents |
| 1 - 5                           | 3,022                                  | 64.7                     | 103                      | 66.9                      |
| 6 - 20                          | 1,169                                  | 25                       | 33                       | 21.4                      |
| 21 - 100                        | 378                                    | 8.1                      | 13                       | 8.4                       |
| 100+                            | 101                                    | 2.2                      | 5                        | 3.2                       |

In addition, HHG carrier responses to two key questions are similar to each other for the first and the second mailings. About 67.4 percent of carrier respondents to the first mailing have established an arbitration program, compared to 67.9 percent of second mailing respondents. The overall satisfaction of first mailing respondents was 4.5 compared to 4.0 for second mailing respondents on a scale of 1 (very unsatisfied) to 5 (very satisfied). The similarity in these statistics indicates that survey results based on the HHG carrier respondents may be extrapolated to represent all HHG carriers in the country and that adjustment of the results is not warranted.

### *Complainant Respondents' Experiences with Their Moves*

Survey results that depend solely on survey responses from people who filed complaints on the FMCSA Web site should not be extrapolated to all shippers in general. These results include:

- The proportion of shippers whose HHG carriers gave them a copy of the FMCSA booklet “*Your Rights and Responsibilities When You Move*;”
- The distribution of how and when shippers obtained information about arbitration; and
- Whether shippers purchased additional valuation coverage for their moves.

Shippers who had problems with their moves, as evidenced by their filing complaints on the FMCSA web site, may be motivated to respond to these questions more negatively than shippers in general. Conversely, because they filed complaints, they may also have more accurate recall of the answers than other shippers. There is no way for FMCSA to determine the degree to which these circumstances might have affected their responses. Consequently, these results accurately portray the experiences of shippers who filed complaints about their moves and possibly all shippers who had problems with their

moves, which cannot be extrapolated to the entire population of shippers in the United States

## Responses to Key Research Questions

This section responds to the key research questions that were determined to address the major survey objectives; many were identified during the process of obtaining clearance for the survey from OMB. Appendix G contains additional survey results not included here.

### *1. What is the proportion of shippers who were informed of the arbitration process by their carriers, and how were they informed?*

Based on the survey of shippers filing complaints with FMCSA, Table 11 shows that 15.8 percent of shippers were informed about the availability of arbitration by their HHG carriers. Other methods that shippers used to obtain information included Web sites (19.7 percent), publications (7.8 percent), friends and acquaintances (2.5 percent), the media (0.6 percent), and unspecified methods (11.1 percent). Overall, 39.2 percent of all shippers obtained information about arbitration through at least one of these methods; 10.8 percent of all shippers obtained information through two or more methods. Additionally, the survey showed that 24 percent of shippers received the FMCSA booklet “*Your Rights and Responsibilities When You Move.*”

As illustrated in Table 12 of those shippers who were informed by their HHG carriers, 10.8 percent were informed prior to the move while 39.8 percent were informed when they filed damage or loss claims with their carriers, and 63.2 percent were informed only after the direct negotiation of their claims failed. Because 14.4 percent obtained information at more than one point, the entries in Table 12 add up to greater than 100 percent. About 66 percent obtained written information, while about 48 percent were informed verbally (Table 13). Around 7.2 percent of shippers were informed both verbally and in writing, resulting in Table 13 adding to greater than 100 percent.

**Table 11. How Shippers Obtained Information about Arbitration**

| <b>How Shippers Obtained Information about Arbitration</b> | <b>Percent</b> |
|--|----------------|
| HHG Carrier  | 15.8           |
| Web Site   | 19.7           |
| Publication  | 7.8            |
| Media Public Service Announcement                          | 0.6            |
| Friend, Acquaintance                                       | 2.5            |
| Other  | 11.1           |



**Table 12. When HHG Carriers Informed Shippers about Arbitration**<sup>23</sup>

| <b>When HHG Carriers Informed Shippers of Arbitration</b> | <b>Percent</b> |
|---|----------------|
| Prior to Move   | 10.8           |
| When Claim Filed  | 39.8           |
| After Negotiation Failure                                 | 63.2           |

**Table 13. How HHG Carriers Informed Shippers about Arbitration**<sup>24</sup>

| <b>How HHG Carriers Informed Shippers of Arbitration</b> | <b>Percent</b> |
|--|----------------|
| In Writing   | 66.2           |
| Verbally   | 48.1           |

**2. What is the proportion of HHG carriers who offer an arbitration program to their shippers, and how do they inform their shippers of its availability?**

Table 14 shows that 68.7 percent of United States registered interstate HHG carriers in the survey with 1 to 5 power units offered an arbitration program. The five large carriers that responded (100 and more trucks) all offered arbitration programs, while only 67.7 percent of the smaller carriers (fewer than 100 trucks) that responded offered arbitration programs.

**Table 14. HHG Carrier Respondents Offering an Arbitration Program**

| <b>Carrier Size (# Power Units)</b> | <b>Percent Offering Arbitration</b> | <b>Number of Carrier Respondents</b> |
|-------------------------------------|-------------------------------------|--------------------------------------|
| 1 - 5                               | 68.7                                | 103                                  |
| 6 - 20                              | 67.7                                | 33                                   |
| 21 - 100                            | 58.3                                | 13                                   |
| 100+                                | 100.0                               | 5                                    |

Table 15 shows the methods that HHG carriers use to inform shippers about their arbitration programs. Over half of the carriers who responded that they offer arbitration programs use the FMCSA booklet “*Your Rights and Responsibilities When You Move*” as the vehicle for informing shippers that arbitration is available if needed. Over 25 percent of carriers with arbitration programs give shippers company brochures on their programs. About 19 percent include information about arbitration in the contracts; 6 percent require that the shippers initial they have read the clause relating to arbitration. About 19 percent responded that they simply inform the shippers orally about the availability of arbitration,

<sup>23</sup> Of the shippers responding to this question, 14.4 percent chose more than one answer, resulting in the entries adding to greater than 100 percent.

<sup>24</sup> Of the shippers responding to this question, 7.2 percent were informed both verbally and in writing, resulting in the entries adding to greater than 100 percent.

and about 5 percent inform the shippers only if there are problems with the move. Over 40 percent of the carriers indicated that they used more than one method to inform shippers about their arbitration programs, resulting in the entries in Table 15 adding to greater than 100 percent.

**Table 15. How HHG Carrier Respondents Inform Shippers about Arbitration**<sup>25</sup>

| <b>How HHG Carriers Inform Shippers about Arbitration</b> | <b>Percent</b> |
|---|----------------|
| Written in Contract                                       | 18.9           |
| Shippers Must Initial Arbitration Clause                  | 6.1            |
| Company Brochure  | 25.7           |
| Agent Informs Shippers Orally                             | 18.9           |
| Contained in FMCSA Brochure "Your Rights..."              | 57.4           |
| Shippers Informed Only If Problems Occur                  | 4.7            |
| Other   | 10.1           |

***3. What proportion of shippers purchase additional valuation coverage (insurance), and what proportion received compensation for insurance claims made?***

Based on the survey of shippers filing complaints with FMCSA, 35.9 percent of shippers purchased additional valuation coverage (insurance) for their moves. When they made a claim, only about 36 percent of these shippers received any compensation for damage or loss to HHG from their insurance.

Of those shippers responding to the arbitration user survey, 65.6 percent had purchased additional valuation coverage, yet still entered arbitration to obtain compensation for damage and loss to their HHG.

***4. What percent of shippers filing damage and loss claims with their HHG carriers go through arbitration?***

Based on the survey of shippers filing complaints with FMCSA, 6.9 percent of shippers filing damage and loss claims with their carriers subsequently went through arbitration. Indeed, from the perspective of the HHG carriers surveyed, only about 0.35 percent of their damage and loss claims go to arbitration.

***5. How satisfied are shippers and carriers with the arbitration process? How do they assess its equitability?***

Tables 16 and 17 show how shippers and HHG carriers rated the arbitration process on various satisfaction areas. The scale used for the ratings ranged from “1” indicating “very dissatisfied” to “5” indicating “very satisfied,” with “3” indicating “no opinion” or ‘neutral.’ In comparing the two tables, it is apparent that shippers overall rated the

<sup>25</sup> Over 40 percent of the carriers indicated more than one method of informing shippers, resulting in the table entries adding to greater than 100 percent.

process much lower than the carriers, with the shippers’ range of ratings from 1.7 to 2.7 and the carriers’ range from 4.0 to 4.5. Concerning equitability in particular, shippers rated “Fairness of Process” 1.7, while carriers rated “Fairness of Process” 4.3.

For the shipper table, responses from both arbitration users and filers contributed to the ratings for the first four satisfaction areas, as these areas deal with issues preliminary to the process itself. Only responses from arbitration users contributed to the last four satisfaction areas are relevant to shippers who completed the arbitration process. Of all the satisfaction areas, shippers rated “Amount of Award” and “Fairness of Process” the lowest with ratings of 1.7 and 1.9, respectively. Satisfaction areas relating to the administrative aspects of the arbitration process fared better with ratings generally around 2.5. HHG carriers, in contrast to the shippers, seemed relatively satisfied with all aspects of the arbitration process.

**Table 16. Shipper Satisfaction with Arbitration**

| <b>Shipper Satisfaction Area</b>     | <b>Rating: 1(Low) to 5(High)</b> |
|--------------------------------------|----------------------------------|
| Information Quality                  | 2.5                              |
| Convenience of Obtaining Information | 2.6                              |
| Convenience of Filing                | 2.5                              |
| Arbitration Fee                      | 2.5                              |
| Timeliness of Arbitration            | 2.3                              |
| Amount of Award                      | 1.7                              |
| Timeliness of Award Payment          | 2.7                              |
| Fairness of Process                  | 1.9                              |

**Table 17. HHG Carrier Satisfaction with Arbitration**

| <b>HHG Carrier Satisfaction Area</b> | <b>Rating: 1(Low) to 5(High)</b> |
|--------------------------------------|----------------------------------|
| Convenience of Filing                | 4.5                              |
| Arbitration Fee                      | 4.0                              |
| Timeliness of Arbitration            | 4.4                              |
| Amount of Award                      | 4.1                              |
| Fairness of Process                  | 4.3                              |

**6. What are the primary reasons shippers drop out of the arbitration process?**

Table 18 lists the reasons shippers chose for not completing or dropping out of the arbitration process once they filed initial applications for arbitration. Besides “Other,” the most frequently cited reason was “HHG Carrier Would Not Respond” (33.3 percent). Anticipated problems with the arbitration process were evidenced by 27.5 percent of shippers citing “Shipper Did Not Expect Desired Outcome,” 15.0 percent citing “Shipper Did Not Trust Fairness of Arbitrator,” and 12.4 percent citing “Shipper Did Not Expect Prompt Resolution.” Over 16 percent settled their claims with their carriers prior to entering arbitration. Over 24 percent thought arbitration was too expensive, and over 11

percent thought it was too time consuming. A small percentage of shippers got to the point of filing for arbitration only to learn that their claims were unqualified for arbitration (3.3 percent), were not for loss or damage to HHG (2.0 percent), or were for more than the arbitration limit of \$5,000<sup>26</sup> (2.6 percent).

Other reasons shippers recorded for not pursuing arbitration are also shown in Table 18. The most frequently cited of these other reasons included the shipper feeling discouraged at the complexity of the process or thinking he/she would not win; the shipper being given misinformation about the process; the HHG carrier's disappearance; the shipper's decision to take legal action against the carrier; and the shipper's decision to accept what the carrier offered, even though it was not satisfactory.

**Table 18. Reasons Shippers Did Not Complete the Arbitration Process**

| <b>Reasons Shippers Did Not Complete Arbitration</b>        | <b>Percent</b> |
|---|----------------|
| HHG Carrier Settled Outside of Arbitration                  | 16.3           |
| HHG Carrier Would Not Respond                               | 33.3           |
| Claim Was Ruled Unqualified for Arbitration                 | 3.3            |
| Claim Was Not for Loss or Damage                            | 2.0            |
| Claim Was for More than \$5000                              | 2.6            |
| Shipper Did Not Expect Desired Outcome                      | 27.5           |
| Shipper Did Not Trust Fairness of Arbitrator                | 15.0           |
| Arbitration Is Too Expensive                                | 24.2           |
| Arbitration Is Too Time Consuming                           | 11.1           |
| Shipper Did Not Expect Prompt Resolution                    | 12.4           |
| Other Reasons Written in by Shippers:                       | 40.5           |
| Arbitration seemed complicated, discouraging, and stressful | 10.8           |
| Shipper received misinformation from carrier                | 9.9            |
| HHG carrier disappeared                                     | 7.2            |
| Shipper pursued legal action instead                        | 4.5            |
| Shipper accepted unsatisfactory settlement from carrier     | 1.9            |
| Miscellaneous other reasons                                 | 6.2            |

### ***7. What percent of arbitration cases result in an award to the shippers?***

Based on both AMSA and other arbitration users in the survey, in 60.7 percent of the arbitration cases some settlement was awarded to the shipper. However, this does not mean the shipper received his/her entire claim: in only 20.5 percent of the arbitration cases were shippers awarded their full claims. The next question provides more detail on arbitration settlement amounts.

<sup>26</sup> Prior to 2005.

**8. What is the average arbitration settlement awarded to shippers, and what is the average settlement as a percent of the claim?**

Table 19 shows that the average settlement that shippers are awarded (\$2,223) represents only 48 percent of their claims, on average.

**Table 19. Statistics on Arbitration Settlements to Shippers**

| <b>Settlement Statistics</b>           |         |
|--|---------|
| Average Claim                          | \$4,631 |
| Average Settlement                     | \$2,223 |
| Average Settlement as Percent of Claim | 48.0 %  |

**9. What proportion of shippers who were awarded settlements through arbitration were paid by their HHG carriers, and how long did it take to receive payment after the award?**

About 82 percent of shippers who were awarded settlements through arbitration were paid by their carriers within an average of 3 months. This leaves 18 percent of shippers who went through the entire arbitration process, never received any payment from their carriers.

**10. What suggestions do shippers and HHG carriers have for improving the arbitration process?**

Table 20 shows the suggestions shippers who used arbitration indicated for improving the arbitration process. Unfortunately, because HHG carriers who used arbitration had a very low response rate on this question (only 10 carriers), their results are unreliable and are not presented here.

Next to “Other,” over 38 percent of shippers using arbitration suggested expanding arbitration to other types of losses. The fact that recent legislation did expand arbitration to cover disputed excess charges was pointed out in the question. Therefore, these responses are taken to mean expansion to cover other financial losses to the shipper such as those associated with delays, hostage goods, damage to house, etc. About 32 percent of shippers thought the maximum dollar amount that can be arbitrated should be raised beyond \$10,000. About 20 percent thought the deadline to file for arbitration should be extended and 20 percent thought the time period for arbitration to occur after paying the fee should be shortened. Almost 40 percent thought the fees should be reduced.

Since so many respondents cited “Other” as a choice, the comments were analyzed to determine other significant suggestions. The most frequently cited “Other” comment indicated that shippers using arbitration perceived the process was not fair to shippers. Additional frequently cited comments are listed in Table 20.

**Table 20. Suggestions for Improving the Arbitration Process**

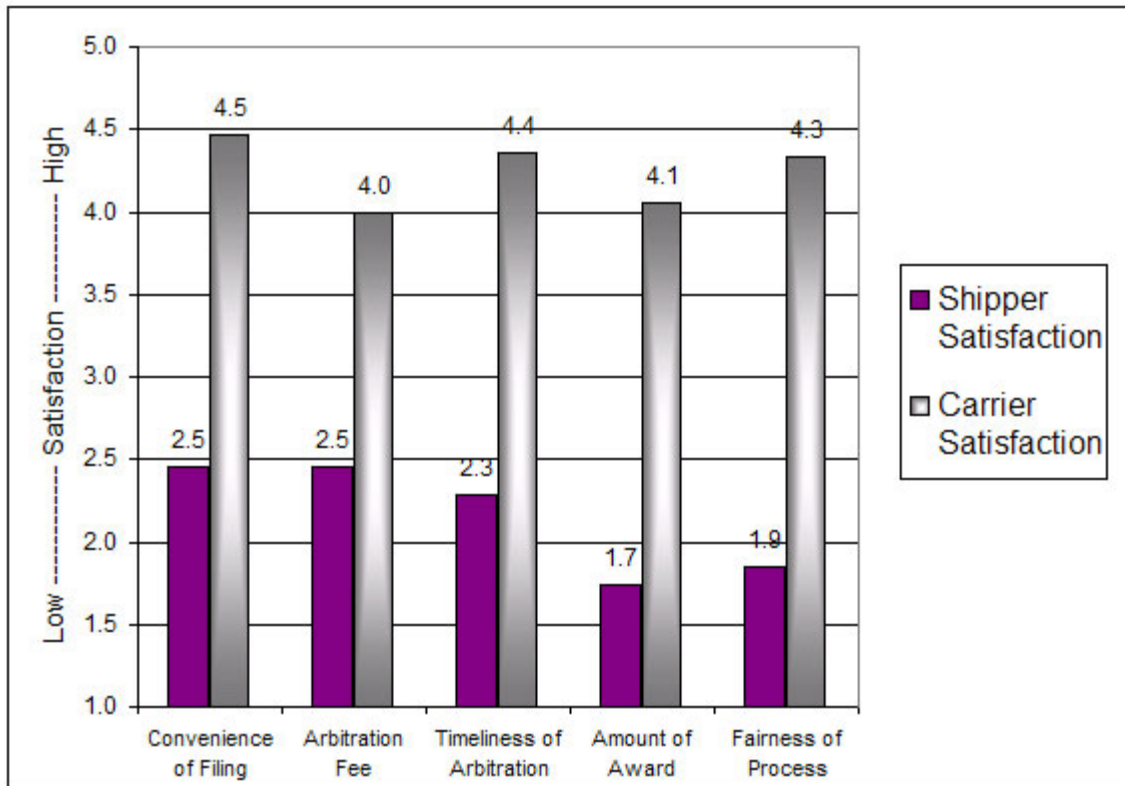
| <b>Suggestion</b>   | <b>Percent of Shippers</b> |
|---|----------------------------|
| Reduce fees   | 38.2                       |
| Lengthen the time period to file for arbitration                  | 20.1                       |
| Shorten the time period for arbitration to take place             | 21.1                       |
| Increase the maximum dollar amount that can be arbitrated         | 31.9                       |
| Expand arbitration to include other types of financial losses     | 41.2                       |
| Other Suggestions Written in by Shippers:                         | 52.5                       |
| Make the process fair to shippers                                 | 17.2                       |
| Improve communications among all arbitration participants         | 5.6                        |
| Provide shippers an opportunity to talk directly to arbitrator    | 5.0                        |
| Have carrier pay all fees if arbitrator rules in favor of shipper | 3.0                        |
| Simplify the paperwork  | 3.0                        |
| Enforce the decisions for HHG carriers to pay shippers            | 3.0                        |
| Advise shippers they should get legal representation              | 1.5                        |
| Miscellaneous other suggestions                                   | 13.1                       |

## **V. Findings and Recommendations**

The surveys conducted for the assessment of the HHG arbitration program provided FMCSA with valuable insight into the satisfaction of its users with the program, as well as the way the program is implemented. The surveys shed light on a number of issues that need to be resolved to improve the arbitration program to make it a more satisfying experience for all its users. The five main issue areas are discussed below with recommendations on how to address them.

### **User Satisfaction with and Equitability of the Arbitration Process**

While United States registered interstate HHG carriers gave the arbitration process high scores in all the satisfaction areas ranging between “satisfied” and “very satisfied,” shippers viewed the process quite differently, giving it low scores ranging between “dissatisfied” and “very dissatisfied.” Figure 1 underscores the difference in viewpoints between carriers and shippers in five satisfaction areas common to the questions asked of both groups. The scale goes from 1 (very dissatisfied) to 3 (no opinion) to 5 (very satisfied).



**Figure 1. Comparison of Shipper and HHG Carrier Satisfaction with Arbitration**

Shippers often found it difficult to obtain the basic information needed about the arbitration process and how to file for it. A very small proportion of shippers were given detailed information about carriers’ arbitration programs prior to their moves (1.7 percent), even though the law requires it. Shipper arbitration users felt the fees (starting at \$250 for the AMSA arbitration program and increasing with the size of the claim) were too high, especially when compared with the size of their awards - on average 48 percent of their claims. The process took too long to complete, averaging about 5 months between the time users filed for arbitration and received a decision.

Many shippers who initiated arbitration (arbitration filers) did not complete the process, citing, in addition to the disappearance of the HHG carriers involved, problems similar to those cited by users: the complexity, time required and expense of the process, the uncertainty of the outcome, and the expectation of a lengthy time period for resolution.

However, the most frequently cited problem with the arbitration process by both shipper arbitration users and filers was the perception of its inherent unfairness to shippers.

The description of the arbitration process as “neutral” means that the arbitrators are not biased toward one party or the other. The arbitrator must follow the rule of law which asserts that the carrier assumes no liability for damage or loss to HHG unless the shipper can meet the legal standard of proof that 1) the HHG were in good shape before shipment, 2) damage or loss occurred, and 3) the HHG are worth the stated value based on sales receipts and/or appraisals.

Not all shippers are informed of this burden of proof requirement before the move, so that many are not adequately prepared for the arbitration proceedings. Without receipts, photos, or other evidence, and with only undocumented statements, shipper arbitration users cannot prevail over carriers in arbitration regardless of the stated loss. As a result shippers often receive only partial, if any, settlements. This feeds the perception that the process is not equitable.

#### *Recommendations*

- *Expand the discussion of arbitration in the FMCSA booklet “Your Rights and Responsibilities When You Move” and on the FMCSA Web site <http://www.protectyourmove.gov/> to include and highlight the information needed to document a claim for arbitration, as well as the information needed for insurance claims or direct negotiations with the carrier. The current moving preparation checklist on the Web site should be expanded to delineate a shipper’s responsibilities for assembling proper documentation in case of damage or loss to HHG. This checklist could be included in the booklet “Your Rights...”*

#### Informing Shippers about Arbitration

Not enough United States registered interstate HHG carriers are following the laws requiring them to establish and offer an arbitration program to their shippers. While all large carrier respondents with 100 or more power units have established programs, about 69 percent of smaller HHG carriers in the survey reported that they have programs. Further, when they do have an arbitration program, not enough carriers follow the law requiring them to provide information about arbitration.

In addition, about 57 percent of HHG carriers report that they handed out the “*Your Rights and Responsibilities When You Move*” booklet before the move; and 75 percent of shippers likewise reported that they never received the booklet. Similarly, 84 percent of shippers stated that they did not receive specific information about the carriers’ arbitration process from the carrier before the move.

#### *Recommendations*

*FMCSA should increase HHG carrier education and enforcement efforts to insure that carriers:*

- *Establish an arbitration program meeting the requirements of the ICCTA; and*
- *Provide both the FMCSA booklet “Your Rights and Responsibilities When You Move” and detailed information about their arbitration programs to shippers prior to their signing the moving contracts.*



## Insurance for the Move

Shippers expressed considerable confusion regarding insurance coverage, irrespective of whether they had purchased extra valuation coverage (insurance) or had the standard released value coverage providing benefits of 60 cents per pound on damaged or lost items.<sup>27</sup> Respondents were perplexed over the differences among insurance coverage, insurance claims, damage and loss claims, and amounts of arbitration awards. Comments on many survey forms showed a general misunderstanding of the role of insurance in covering claims for damage and loss to HHG and the documentation needed to prove the claims. They did not seem to understand that purchasing extra valuation coverage directly from the carriers meant that a carrier's insurance adjuster would assess the damage and loss amount for a claim, rather than a third party insurance company.

Sixty-six percent of arbitration users who purchased extra insurance from the carriers for their moves reported they did not receive any compensation for their losses. Many had to initiate arbitration proceedings to obtain any settlement from the carrier. This indicates that the purchase of additional insurance coverage does not insure carriers will compensate shippers for damage and loss to HHG.

### *Recommendations*

*FMCSA should clarify the insurance discussion in the FMCSA booklet "Your Rights and Responsibilities When You Move" to:*

- *Highlight the documentation requirements for proving loss and damage to HHG for each coverage option;*
- *Explain the pros and cons of purchasing insurance from an independent third party insurance company; specifying that third party insurance companies are not within the jurisdiction of the FMCSA nor are disputes with third party insurance companies subject to mandatory arbitration under the FMCSA requirements; and*
- *Explain that shipments transported under the carrier's valuation coverage options are subject to arbitration in the event of disputed loss and damage claims.*

## Carrier Payment of Arbitration Awards to Shippers

In 18 percent of the cases where shippers were awarded a settlement in arbitration, the HHG carriers never paid. In all cases of nonpayment in the survey, carriers with fewer than 100 power units were involved. The arbitration process does not follow up on whether or not the HHG carrier actually pays the shipper, leaving the shipper's only

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<sup>27</sup> The 2005 revisions to the ICCTA changed the default insurance coverage from the minimal (60 cents per pound benefit) no-cost-to-the-shipper insurance to full value protection which shippers must formally waive to avoid being charged for. The carrier underwrites both of these policies as opposed to a third-party insurance company.

recourse to be legal action against the carrier. Although 82 percent of the arbitration awards were paid, an 18 percent default rate is too large.

### *Recommendation*

*FMCSA should take the necessary steps to enhance their authority to take enforcement action against HHG carriers that do not pay settlements to shippers as a result of arbitration, and to require carriers to report information on their payment of arbitration settlements to shippers.*

### Limits on Arbitration's Use and Applicability

A high percentage of arbitration users recommended that dollar limits for arbitration claims be increased; fees be reduced; and arbitration be expanded to cover other financial losses due to delays, hostage goods, and damage to property other than HHG.

### *Recommendations*

- *Collect information on the number of HHG movements that result in property damage and loss (and other) claims, so there exists a sound, data based, foundation for making changes to the arbitration claims limit; and*
- *The current level of arbitration fees covers the full costs of arbitration. Even though a reduction in fees would likely encourage more arbitration usage, fees can be reduced only if subsidies are made available.*

### In Summary

This assessment of the dispute settlement program (arbitration) has found that:

- Shippers who have completed the arbitration process, particularly those who have not been awarded any or only a small percentage of their claims, find it to be unfair and are generally dissatisfied with it, while HHG carriers generally view it as an equitable process;
- Almost 70 percent of HHG carriers have established an arbitration program, as required by FMCSA regulations, and almost 60 percent distribute the FMCSA booklet “*Your Rights and Responsibilities When You Move*” to their shippers;
- Shippers are generally confused about insurance coverage options; and
- Around 18 percent of HHG carriers do not pay the amounts adjudicated to shippers when shippers prevail in arbitration.

FMCSA believes that the arbitration process can be fair in its existing form and that the perception of unfairness by shippers and their confusion about insurance options can be addressed by:

- Providing shippers with better information about the arbitration process and insurance coverage options, and the steps they need to take prior to their moves to ensure they have the documentation needed to support claims of damage in direct negotiations with movers, in insurance claims, and in arbitration;
- Enforcing existing regulations requiring HHG carriers to establish arbitration programs, provide shippers detailed information on their programs, and give each shipper a copy of “*Your Rights and Responsibilities When You Move;*” and
- Taking steps to enhance FMCSA’s authority to take enforcement action against HHG carriers that do not pay settlements to shippers as a result of arbitration, and to require carriers to report information on their payment of arbitration settlements to shippers.