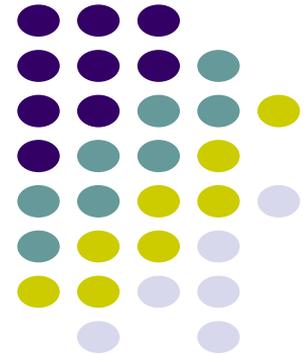


# Maritime Law 2018

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# Bill-64 *Wrecked, Abandoned or Hazardous Vessels Act*

- Fixes a legislative patchwork – NPA, CSA, CMA
- Imposes liability on the owners of derelict vessels
- Transport Canada can take measures, penalties
- **Status** – Passed House 3rd reading, in senate 2<sup>nd</sup> hearing at Standing Senate Committee on Transport and Communications.





## ***Adventurer Owner v. Canada***

- Expedition Cruise ship grounded on uncharted shoal
- Federal Court of Appeal dismissing the appeal which held that Federal Crown had discharged its duty of care by issuing a Notice to Shipping v. a Notice to Mariners (more permanent type of update to paper hydrographic charts)
- Written Notice to Shipping are broadcast over radio for 14 days and placed on Coast Guard's website.
- Ship's agent had only updated the ship's chart from Notice of Mariners - missed



## ***Douglas v. Stan Fergusson Fuels Ltd.***

- Subrogation where insured is bankrupt
- Ontario C.A. held insurer was not entitled to continue action in subrogation as the insured's cause of action had "vested" in the trustee in bankruptcy.
- Action was started after the bankruptcy but prior to the discharge of the bankrupt
- Subrogation clause in policy is not sufficient. Needed an assignment (by a clause in the policy or otherwise)



## ***Kingston & The Islands Boat Lines v. TSB***

- Vessel touched bottom - no damage
- TSB did investigation
- TSB issued summons requesting certain information (which Kingston opposed on grounds outside scope of TSB – hearing in Federal Court scheduled)
- TSB then issued search warrant to search for information
- Held: TSB's conduct issuing a warrant was an abuse of process



## ***Re: OpenHydro Technology Canada Ltd.***

- Nova Scotia Court followed case law in other provinces regarding actions in *rem* in Federal Court vs. bankruptcy proceedings in provincial courts
- OpenHydro requested stay of proceedings of Federal Court Action, in Nova Scotia court CCAA proceeding
- Judge Wood: any stay of proceedings regarding in *rem* proceedings had to be issued by the Federal Court

# ***ATS Automation Tooling Systems Inc. v. Chubb Insurance Company of Canada***

- Application by ATS to stay its on action in Ontario pending an arbitration between it and its buyer in India
- Chubb opposed the application.
- Shipment of a machine from Thailand to India. Discharged from the vessel in Chennai. Travelled by road over 1000 km.
- Shipment was CIF Chennai port
- Chubb policy covers shipment to port of discharge
- ATS was paid for the shipment, but faced potential



# ***ATS Automation Tooling Systems Inc. v. Chubb Insurance Company of Canada***

- Buyer advised ATS it intended to arbitrate its dispute in India
- ATS commenced an action against Chubb in Ontario
- Chubb: action is for cargo damage and for *liability* of ATS to Buyer. ATS has suffered no loss re cargo. Policy is not a liability policy.
- Chubb – asked court to allow it to proceed with a summary judgment application. ATS asked for a stay
- Held: Stay denied. [Under appeal].



# Carriage of Goods by Road



# Domestic Law



# Canada – Contract Law

## Freedom of Contract – Tercon v. B.C. (SCC)

Application of contracts except in very limited circumstances



# BILLS OF LADING



## 2135040 Ontario Ltd. o/a ASTER TRANSPORT

Address: 55 Golden Eagle Road, Brampton ON L6R1Z3  
Tel: 905.216.7305 Fax: 905.488.0251

HIGHWAY  
CARRIAGE

B/L No. .... ASTER TRANSPORT Ltd.	<b>BILL OF LADING</b>	NOT NEGOTIABLE	No. .... Consignor use
--------------------------------------	-----------------------	----------------	---------------------------

At ..... Date .....

(Point of Origin)

Consignor ..... Consignor's No. ....  
(or Agent)

Address .....

Received at the point of origin on the date specified, from the consignor mentioned herein, the property herein described, in apparent good order, except as noted (contents and conditions of contents of package unknown) marked, consigned and destined as indicated below which the carrier agreed to carry and to deliver to the consignee at the said destination. If on its own authorized route or otherwise to cause to be carried by another carrier on the route to said destination, subject to the rates and classification in effect on the date of shipment.

It is mutually agreed, as to each carrier or all or any of the goods over all or any portion of the route to destination, and as to each party of any time interested in all or any of the goods, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, including conditions on back hereof, which are hereby agreed by the consignor and accepted for himself and his assigns.

Consignee .....  
(Name and Address)

Destination ..... Route .....

Number and Type of Packages	Particulars of the Goods, Marks and Exceptions	Weight	Rate	Amount

<b>FREIGHT CHARGES</b> <input type="checkbox"/> Collect <input type="checkbox"/> Prepaid <input type="checkbox"/> Other	<b>3RD PARTY BILLING</b>	<b>C.O.D. SHIPMENTS</b> Amount \$ _____ Collection Charge _____ <b>Total</b> _____
--	--------------------------	---

Special agreement between consignor and carrier, advise here. At owner's risk? \_\_\_\_

DECLARED VALUATION FOR CARRIAGE \$ \_\_\_\_\_, Maximum liability of \$2.00 per pound (\$4.41 per kilogram) computed on the total weight of the shipment, unless declared valuation states otherwise, (Conditions 9 and 10 on back). Subject to the conditions in "Part C Other Specifications" paragraph 7.

Insurance Amount	Valuation for Customs Purposes	For AT Use Only
------------------	--------------------------------	-----------------

Consignor ..... Carrier: ASTER TRANSPORT or .....

Per ..... Per .....

RECEIVED IN APPARENT GOOD ORDER EXCEPT AS NOTED

Per ..... Consignee Date .....

### NOTICE OF CLAIM

- (a) No carrier is liable for loss, damage or delay to any goods under the Bill of Lading unless notice thereof setting out particulars of the origin, destination and date of shipment of the goods and the estimated amount claimed in respect of such loss, damage or delay is given in writing to the originating carrier or the delivering carrier within sixty (60) days after the delivery of the goods, or, in the case of failure to make delivery, within nine (9) months from the date of shipment.
- (b) The final statement of the claim must be filed within nine (9) months from the date of shipment together with a copy of the paid freight bill.

**CHARGES:** PICK UP CHARGES \_\_\_\_\_ C.O.D. FEE: \_\_\_\_\_

DELIVERY CHARGES \_\_\_\_\_ ADVANCED AT ORIGIN: \_\_\_\_\_ OTHER: \_\_\_\_\_

INSURANCE FEE: \_\_\_\_\_ ADVANCED AT DES.: \_\_\_\_\_ TOTAL \_\_\_\_\_

NOTE CAREFULLY CONDITIONS ON BACK HEREOF WHICH ARE HEREBY ACCEPTED

## Use of Bills of Lading

If no statute applies or no contract applies, then as a carrier – common law applies – you are the insurer of the goods

No limitation of liability

No statutory defenses

Valuation of Loss is affected





## Use of Bills of Lading

In Canada – federal statute – *Motor Vehicle Transport Act* and Conditions of Carriage Regulations, SOR/2005-404:

- s. 1 - the conditions of carriage and limitations of liability that apply to transport by an extra-provincial truck undertaking are those set out in the **laws of the province in which the transport originates**



## Use of Bills of Lading

In Canada – federal statute – *Motor Vehicle Transport Act* and Conditions of Carriage Regulations, SOR/2005-404:

- s. 2 in the absence of a provincial enactment the conditions of carriage and limitations of liability that apply to transport by an extra-provincial truck undertaking are those agreed to by the undertaking (trucking company)

## Statute That Applies

Law that applies is the law of the province where the shipment originates

Yukon Territories – no legislation

PEI – no legislation

Nfld. & Labrador - no legislation

Northwest Territories & Nunavut – no legislation.





## Provinces with Laws

Nova Scotia – Carriage of Freight by Vehicle Regulations s. 10 – **bills of lading shall** be issued in triplicate

Manitoba–*Highway Traffic Act*, s. 313(1) **a bill of lading** shall be issued by the carrier

Quebec– *Transport Act*, Transport Regulation 1198/99– an operator of heavy vehicles must **issue a bill of lading**

New Brunswick – Commercial Vehicle Bill of Lading and Cargo Insurance Reg. – **bill of lading is required**

British Columbia –*Motor Vehicle Act*, Motor Vehicle Act Regulations: s. 37.39 **a bill of lading** must be issued by the carrier

Saskatchewan – *Motor Carrier Act*, S.S. 1986 s. 16 – carrier must **use bills of lading or other documents** relating to the transportation of goods as required

Ontario – A **contract of carriage** must contain certain information

# U.S. Law



# Shipments From Canada to the USA – Canadian Courts

From Canada - Law applicable is likely law of province of origin

From USA to Canada – Carmack Amendment - Law applicable is US law – Carmack amendment – unless contracted out



# Shipments From Canada to the USA – U.S. Courts

Carmack applies “from a place in the United States to a place in an adjacent foreign county when transported under a through bill of lading . . . .” 49 U.S.C. § 14706(a)(1).

- Majority Rule: Carmack does not apply from Mexico/Canada to U.S.
- Second View: conflict of laws analysis must be used to determine which law applies
- Minority View: Carmack applies



# Shipments from the USA

The Carmack Amendment is presently codified at 49 U.S.C. Section 14706 et seq. The courts have uniformly held that the Carmack Amendment preempts all state and common law claims and provides the sole and exclusive remedy to shippers for loss or damage in interstate transit. **Hughes Aircraft v. North American Van Lines**, 970 F.2d 609, 613 (9th Cir. 1992).

The preemptive effect of the Carmack Amendment also applies to claims of damage or loss relating to storage and other services rendered by interstate carriers. **Margetson v. United Van Lines, Inc.**, 785 F.Supp. 917, 919 (D.M. 1991).



# Carriage from the U.S.A.

To establish a prima facie case under the statute, a shipper must prove

- (1) delivery of the goods to the initial carrier in good condition,
- (2) damage to the goods before delivery to their final destination, and
- (3) the amount of damages.



# Carriage from the U.S.A.

Given that the Carmack Amendment provides a shipper with the **sole remedy for interstate moves, all conditions precedent** to bring a civil action under the Carmack Amendment **must be satisfied**. In particular, a carrier may, by contract, require that a claim be made to it by a shipper within nine (9) months of the shipment and that a civil action be instituted within two (2) years after the denial of such a claim. 49 U.S.C. Section 14706(e). **The nine (9) month limitation is a condition precedent to bringing a civil action.** *Consolidated Rail Corp. v. Primary Industries Corp.*, 868 F.Supp. 566, 577 (S. D. NY 1994). A cause of action will simply not accrue absent strict compliance with the claims limitation.





# Carriage from the U.S.A.

The Carmack Amendment also provides that a carrier **may limit its liability** "to a value established by written declaration of the shipper or by a written agreement." 49 U.S.C. § 14706(f). In order to effectively limit its liability, the carrier must:

1. **Provide** to the shipper upon request **copies of the rate**, classification, rules and practices upon which the shipping rate is based;
2. Give the shipper a **reasonable opportunity** to choose between two or more levels of liability;
3. Obtain the shipper's agreement as to his choice of carrier liability limit; and,
4. **Issue a bill of lading** prior to moving the shipment that reflects any such agreement.

# Carriage from the U.S.A.

A carrier is no longer required to file a tariff with the Surface Transportation Board but must provide to a shipper, upon request, copies of the rate, classification, rules and practices upon which the shipping rate is based.





## Carriage from the U.S.A.

A "**reasonable opportunity**" means that the shipper had both reasonable notice of the liability limitation and the opportunity to obtain information necessary to make a deliberate and informed choice.

In **Schultz v. Auld**, 848 F.Supp. 1497, 1505 (Idaho 1993), the court held that a signature on the contract evidencing an acknowledgment and receipt of the contract and its terms was sufficient evidence of a reasonable opportunity to select among liability limitations.

# Carriage from the U.S.A.

Punitive damages are not allowed in a cargo cases, and you can't get attorney's fees. If \$8,000 worth of goods were stolen, and the carrier refuses to make good on it, and it takes \$20,000 in attorney's fees to sue, the claimant can only get the \$8000. **The maximum damages allowed is the value of the goods that were damaged, destroyed, or lost in shipment.** The courts have ruled that even in cases of outright theft, misrepresentation, and negligence, the most you can get out of the mover is the cost of the goods he stole or allowed to be damaged through his own negligence.

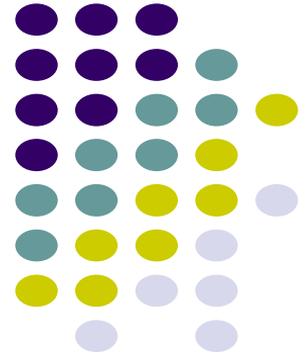


# Trucking and Cross-Border

- *Key Regulatory Developments*

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# US: *The “STF” Rule* / Canada: *SFCA*

Overview of Sanitary Transportation of Human and Animal Food (STF) Rule

How does the STF Rule Interact with U.S. Federal Law on Cargo Liability?

Canada: *Safe Food for Canadians Act*

# United States: Shippers, Carriers, Loaders and Receivers



## Food Not Completely Enclosed in a Container

Any food that is placed into a container in such a manner that it is partially open to the surrounding environment, such as:

- ❖ Open wooden basket or crate
- ❖ Open cardboard box
- ❖ Vented cardboard box
- ❖ Vented plastic bag

This term does NOT include food transported in a bulk vehicle

# United States: Shippers, Carriers, Loaders and Receivers – *The STF Rule*

**Shippers, Loaders, Receivers, or Carriers** who transport food in the U.S. by rail or motor vehicle

- “Shipper” expressly includes freight brokers.
- A warehouse can be a shipper if arranging transportation
- Loader may include Warehouses, Shippers, or Carriers
- Receivers are persons who receive the food after transportation in the U.S., even if not the final destination
- Applies to both interstate and intrastate transportation



# Vehicles and Transportation Equipment

- Designed and made of materials suitable and adequately cleanable for their intended use to prevent food from becoming unsafe
- Maintained in such a sanitary condition for their intended use as to prevent food from becoming unsafe
- Temperature Controls
- Storage





# Contracting Dynamics

Any party may re-assign its obligations by written agreement

- Responsibility for compliance must be assigned to competent supervisory personnel
- All Transportation Operations must be conducted under conditions and controls necessary to prevent food from becoming unsafe during transportation
- Commodity specific

# Shippers

The Shipper must specify to the Carrier (and if necessary, the Loader) in writing all specifications and necessary temperature control requirements for the Carrier's vehicle and transportation equipment to prevent food from becoming unsafe

- The Shipper must provide an operating temperature and, if necessary, a pre-cooling phase
- One time notification shall be sufficient unless the conditions of shipment change – if there is a change, notice in writing is required

➤





## Shippers

- The Shipper must specify to the Carrier (and if necessary, the Loader) in writing all necessary sanitary specifications for the Carrier's vehicle and transportation equipment to prevent food from becoming unsafe
  - This includes design specification and cleaning procedures
  - One time notification shall be sufficient unless the design and cleaning procedures change based on the type of food to be transported – if there is a change, notice in writing is required
  - As with all required writings under this Rule, the records must be retained – here for 12 months beyond the termination of the agreement with the Carrier



## Loaders

Before loading food not completely enclosed in a container, the Loader must determine that the vehicle is in appropriate sanitary condition to transport food

- Must consider Shipper's specifications
- Vehicle must be in adequate physical condition
- Vehicle must be free of visible evidence of pest infestation that could cause the food to become unsafe in transport
- Vehicle must be free of evidence of previous cargo that could cause the food to become unsafe in transport
- This may be accomplished by “any appropriate means”



## Loaders

Before loading temperature controlled food, the Loader must verify, considering Shipper specifications, that any mechanically refrigerated area is adequately prepared for transport

- Includes pre-cooling, if necessary
- And, if not fully enclosed, meets the other conditions for food transportation



# Carriers

A Carrier must develop and implement written procedures and keep these records for 12 months beyond when the agreements and procedures are in use in their transportation operations

*Written procedures must:*

- Specify practices for cleaning, sanitizing (if necessary) and inspecting vehicles and transportation equipment so as to ensure vehicles are in appropriate condition and will remain so during transport
- Describe how Carrier will comply with the provisions for temperature control and with bulk vehicle requirements



# Record Keeping Requirements

All records must be made promptly available to a duly authorized individual upon oral or written request

Original, copies or electronic records are acceptable

Where to keep the records?

- Written agreements and Carrier practices for cleaning, sanitizing and inspecting vehicles and transportation equipment need to be kept on-site at all times
- Other records must be kept on-site for 6 months (following the 12-month expiration date)
- If held off-site thereafter, must be retrievable within 24 hours

FDA allowed to take copies of records with them in the event of an inspection



# Transportation Operations

If a Shipper, Receiver, Loader or Carrier becomes aware of an indication of a possible material failure of temperature control or other condition that may render food unsafe during transportation, the food shall not be sold or distributed

Appropriate action must be taken to ensure the food is not sold or distributed – unless a determination is made by a qualified individual that the temperature deviation or other condition did not render the food unsafe

Failure to have determination made by a qualified individual renders the food adulterated

# Liability Considerations – The U.S. “Crush and Dump” Problem



- U.S. *Federal Food, Drug and Cosmetics Act* “adulteration rule”: 402(i) vs. historic carrier liability for “actual” loss or damage
- If a Shipper, Receiver, Loader or Carrier becomes aware of an indication of a possible material failure of temperature control or other condition that may render food unsafe during transportation, the food shall not be sold or distributed
- Misuse of “adulteration” standard set in FSMA?
- Confusion of FDA’s food “safety” standards with market value and appearance
- Entire loads being rejected at destination – and diverted to landfills – because a few packages have minor scratches and dents, or because of immaterial temperature deviations



# STF vs. Carmack

How does the STF Rule Interact with U.S. Federal Law on Cargo Liability?

## **Carmack regime:**

- Only to the extent of actual loss of or injury to goods being transported
- Corollary: Carrier had a right to mitigate damages payable to shippers
- This commonly was done through “salvage” (or resale of intact portion of cargo to third parties)
- Limitation on salvage: Shippers normally could require removal of their labels/logos from goods before resale.



# ***Canada: Safe Foods for Canadians Act***

January 15, 2019

- activity, commodity specific as to “phasing in”

There are exceptions, and exceptions to exceptions  
largely harmonized with FMISA

*“exporting from Canada”*

*“importing from Canada”*

*“shipping across provincial borders”*

# SFCA: Key Stakeholders

## Food industry businesses

- Preparers of food for interprovincial trade
- Preparers of food for export
  - i.e. labeling, packing, grading, storing
- Food importers
- Food exporters
- Interprovincial traders of food
- Fresh fruit and vegetable primary producers
- Organic food industry, including certification bodies and conformity verification bodies

## SFCA: Key Stakeholders

- **but not carriers** if that is their sole purpose in connection with the food
- we do not have an equivalent to the *Rule for Sanitary Transportation of Human and Animal food* which puts obligations on carriers.

= contract risk “shift”?

*Carriers are obliged to deliver cargo in good order and condition anyways. Why not impose specific equipment requirements and service levels?*

# Carriage Conveyances

There are rules as to conveyances used and sanitary means of transport:

Any **conveyance** that is used to convey a food to or from an establishment and that is unloaded or loaded at the establishment:

- must be designed, constructed and maintained to prevent contamination of the food
- must be constructed of, and maintained using, materials that are suitable for their intended use and, if the materials present a risk of contamination of the food, that are durable, capable of withstanding repeated cleaning and, repeated sanitizing as necessary, and free of noxious constituent
- must be capable of maintaining the temperature and humidity at levels that are appropriate for the foods and, if necessary, to prevent contamination of the food, be equipped with instruments that control, indicate and record those levels

## ... loading, unloading and storage too

- Rules regarding the design, cleanliness and maintenance of equipment used to transport the food **also apply to an establishment itself and other equipment** (reg'ns go into everything from lighting, ventilation, location of facility, hygiene of workers, etc..)
- Must be maintained in a way to prevent contamination of food and fit for intended purpose – e.g. keeping grapes cold vs. shipping canned goods – maintenance requirements will differ

# The SFCR Regime

Trade	Licenses	Preventive Control Measures	Traceability
Commodity -specific Requirements	Recognition of Foreign Systems	Ministerial Exemptions	Inspection Legends
Packaging	Labeling	Grades and Grade Names	Seizure and Detention
Organic Products			



# Three Key Food Safety Elements



## Licenses

Under the proposed Regulations, licenses would be required for food importers, for persons (e.g. food businesses) preparing food for export or for interprovincial trade, with some exceptions (as described in the section “Exceptions and Exemptions”), and for persons slaughtering food animals from which meat products for export or interprovincial trade may be derived. License applications would require certain information from the applicant regarding their identity (e.g. business name) and business activities, which would inform risk-based oversight.

## Traceability

The proposed Regulations would apply the international standard for traceability established by Codex to persons importing, exporting and interprovincially trading food, as well as to other persons holding a license issued under the SFCA, and to growers and harvesters of fresh fruits or vegetables that are to be exported or traded interprovincially. Electronic or paper records would be required to be prepared and kept in order to track food forward to the immediate customer (e.g. a retailer or another food business) and backwards to the immediate supplier (i.e. one step forward, one step back along the supply chain). Retailers would not be required to trace forward their sales to consumers.

## Preventive Control Plan

Preventive controls and preventive control plan (PCP): The proposed Regulations would require food subject to the Regulations and activities (e.g. importing, preparing meat products for export or interprovincial trade) to meet food safety requirements and that those activities be conducted in a manner that is consistent with internationally recognized agricultural and manufacturing practices (i.e. GAPs, GMPs and HACCP).



# Exports and Licenses

1. If you export food – without further activity - you do not need a license unless you would like to obtain an export certificate.
2. Exporter must make sure that if food being exported has been manufactured, processed, treated, preserved, graded, packaged or labeled in Canada that those activities were conducted by a license holder
3. If you manufacture, process, treat preserve, grade, package or label food for export you need a license unless:
  - food additives or alcoholic beverages, unless exporter wants to have an export certificate
  - if the product will be manufactured, processed, treated for use as grain, oil, pulse, sugar or beverage and has a “for further preparation only” label and is not a consumer prepackaged food



# Imports and Licenses

You need an import license unless:

- food additives or alcoholic beverages
- unprocessed food as prescribed if it:
  - will be manufactured, processed or treated for use as grain, oil, pulse, sugar or beverage,
  - has a label applied or attached to it, or accompanying it, that bears the expression "For Further Preparation Only" and
  - is not a consumer prepackaged food

# Interprovincial Shipments

You do not need a license to send or convey food from one province to another.

However, it is your responsibility to make sure that the food you send or convey from one province to another if it had been manufactured, processed, treated, preserved, graded, packaged or labeled in Canada, those activities were conducted by a license holder as required



# Enforcement

- Type of inspection and enforcement will depend on the nature of the product and activity / associated risk
- CFIA has broad powers – it can:
  - Suspend or cancel licenses for non-compliance / repeated non compliance
  - Inspection powers; inspect establishments, products, engage in sampling
    - visual observations, evaluating documentation, interviewing personnel, sampling, measuring, testing, and commodity specific inspection seizure of product; restrict movement prohibit from carrying on an activity
  - stop or move conveyance





# Enforcement

- Penalties – range from for less serious offences – capped at \$250,000; more serious offences – capped at \$5MM – all depends on severity and if the charge is by way of indictment or summary conviction
- For tampering or communicating false or misleading information – fine is at discretion of court and up to 5 years in jail
- Due diligence defence
- Directors/officers can also be found liable where they **direct, authorize, assent to, acquiesce or participate** in the commission of the offence.
- A corporation will be held liable for the acts of its **employees or agents** unless it can show that the offence was committed without its knowledge or consent and that it exercised all due diligence to prevent it.
- this is where having an actual food safety policy in place will be helpful – not only in place but showing that it is being actively enforced and monitored.

# Conflicts of Laws

- U.S. origin point to a Canadian destination point
- Canadian destination point to a U.S. origin point
- Intra-Canada movement of goods

*... which law applies?*



# USMCA



## Timeline

The newly elected Congress will take office January 3, 2019. A potentially different group of lawmakers who will be tasked to consider and vote on the USMCA. Here is a look at the road to implement the USMCA.



2019

January 3, 2019

Incoming U.S. Congress

January 30, 2019

Last day for U.S. administration to submit list of changes to U.S. law (60 days after signing)

January/February 2019

Final agreement text submitted to Congress 30 days prior to implementing legislation

Mid-March, 2019

Last day for US International Trade Commission economic impact report of USMCA deal (105 days after signing)

April, 2019

Implementation bill introduced in House and Senate

April to July, 2019

Bill is debated and considered in House and Senate committees before final vote





Mid-July, 2019

Senate votes on USMCA implementation bill

July, 2019

USMCA potentially signed into law by President Trump

October 21, 2019

Canadian Federal election



# USMCA

“Apart from the name change from NAFTA to the United States – Mexico – Canada Agreement (USMCA) what has changed for Canada’s property and casualty insurers?”

*“Not a whole heck of a lot it would appear”*

*David Gambrill Canadian Underwriter, October 1, 2018*

- Regulations around solvency, capital requirements and market conduct are exactly the same under USMCA as they were under NAFTA
- The status quo remains for Canadian, Mexican and U.S. insurers and brokerages operating in each other’s jurisdictions

# USMCA

## General themes

- Encourages parties to develop regulatory procedures that expedite the offering of insurance services by licensed suppliers, such as:
  - 1) allowing the introduction of products unless they are disapproved
  - 2) not requiring product approval for certain lines of insurance, or
  - 3) not imposing limitations on the number of product introductions (Article 17.16)
- This maintains the NAFTA general language that “parties will consult on liberalizing cross-border trade with regard to insurance by considering:
  - 1) allowing a wider range of cross-border insurance services to be provided, and
  - 2) whether Mexico’s limitation regarding insurance needs to be modified.



# Article 17.16: Expedited Availability of Insurance Services



The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers. These procedures may include: allowing introduction of products unless those products are disapproved within a reasonable period of time; not requiring product approval or authorization of insurance lines for insurance other than insurance sold to individuals or compulsory insurance; or not imposing limitations on the number or frequency of product introductions. If a Party maintains regulatory product approval procedures, that Party shall endeavor to maintain or improve those procedures, as appropriate, to expedite availability of insurance services by licensed suppliers.

# USMCA

Under NAFTA, insurance regulators within each jurisdiction could not discriminate against foreign based insurers or brokerages by imposing different solvency, capital requirements or market conduct standards required of domestic insurers or brokerages

Same requirement has been replicated in the USMCA language

There is now the formation of a committee to “assess the functioning of the Agreement”: Art. 17.21 establishes a new Committee on Financial Services, which is essentially a trilateral commission to oversee and supervise that the countries are treating the other two countries fairly and according to the rules and standards of the Agreement.

