



ARMED SERVICES BOARD OF CONTRACT APPEALS
SKYLINE 6, ROOM 703
5109 LEESBURG PIKE
FALLS CHURCH, VA 22041-3208

28 October 2010

MEMORANDUM FOR: SECRETARY OF DEFENSE
SECRETARY OF THE ARMY
SECRETARY OF THE NAVY
SECRETARY OF THE AIR FORCE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF THE DEFENSE LOGISTICS AGENCY

SUBJECT: Report of Transactions and Proceedings of the Armed Services Board
of Contract Appeals for the Fiscal Year Ending 30 September 2010

This report is furnished under paragraph 9 of the Charter of the Armed Services Board of Contract Appeals, revised 14 May 2007. The statistics reflect the adjudication of appeals of the Army, Navy, Air Force, Corps of Engineers, Defense Logistics Agency, Defense Contract Management Agency, and other defense agencies. Also included are appeals of various agencies which have been adjudicated under inter-agency arrangements.

The following statistics cover the activities of the Board during the reporting period and the current reserve of pending matters:

A. Appeals Docketed During FY 2010	465
B. Appeals Disposed During FY 2010	424
C. Appeals Pending	
Number of Appeals Pending 1 October 2005	644
Number of Appeals Pending 1 October 2006	552
Number of Appeals Pending 1 October 2007	637
Number of Appeals Pending 1 October 2008	572
Number of Appeals Pending 1 October 2009	532
Number of Appeals Pending 1 October 2010	573
Net Increase in Docket, FY 2010	41

D. Source of Appeals Docketed FYs 2006-2010

	<u>FY06</u>	<u>FY07</u>	<u>FY08</u>	<u>FY 09</u>	<u>FY 10</u>
Army	92	148	80	113	114
Navy	65	56	73	30	62
Air Force	62	208	36	41	62
Corps of Eng.	115	110	148	110	140
DLA & DCMA	55	53	32	66	49
Other Agencies	29	21	10	12	9
Reinstated	<u>20</u>	<u>28</u>	<u>23</u>	<u>32</u>	<u>29</u>
TOTAL	438	624	402	404	465

E. Appeals Disposed During FYs 2006-2010

	<u>FY 06</u>	<u>FY07</u>	<u>FY08</u>	<u>FY 09</u>	<u>FY 10</u>
1. Origin of Appeals					
Army	88	100	117	74	126
Navy	91	86	59	60	70
Air Force	72	119	123	68	32
Corps of Eng.	146	156	88	158	123
DLA & DCMA	93	54	51	65	58
Other Agencies	35	24	29	19	15
Admin. Disposal	<u>5</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
TOTAL	530	539	467	444	424
2. Rule 12 Proceedings					
	33	29	15	19	25
3. Disposition					
Sustained	86	96	69	69	61
Denied	51	38	41	34	46
Dismissed	<u>393</u>	<u>405</u>	<u>357</u>	<u>341</u>	<u>317</u>
TOTAL	530	539	467	444	424

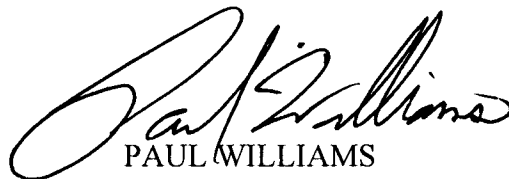
F. Status of Appeals Pending 1 October 2010

Complaint Due	95
Answer Due	56
Discovery	174
To Be Set	37
Hearing Set	95
Transcript & Briefs Due	22
Suspense	61
Ready to Write	<u>33</u>
TOTAL	573

Of the Board's 573 active appeals, the Army has 186 (32.5%), the Navy has 78 (13.6%), the Air Force has 80 (14.0%), the Corps of Engineers has 162 (28.3%), DLA and DCMA have 54 (9.4%), and the remaining 13 appeals (2.3%) are from other sources. At the conclusion of FY 2010, there were 8 appeals being processed under Board Rule 12 (2 expedited and 6 accelerated), 6 applications under the Equal Access to Justice Act, 2 motions for reconsideration, and 0 court remands.

In FY 2010, the Board disposed of 107 appeals on the merits. Of those dispositions, 57.0% of the decisions found merit in whole or in part. The Board dismissed 317 appeals. In the majority of cases, a dismissal reflects that the parties have reached a settlement. The U.S. Court of Appeals for the Federal Circuit docketed 9 appeals from Board decisions, and 8 appeals were pending at the close of the fiscal year. Of the 12 dispositions by the Court of Appeals for the Federal Circuit involving appeals of ASBCA decisions: 7 were affirmed, 2 were dismissed, 1 was reversed and remanded, 1 was reversed, and 1 was transferred to a Federal District Court. A Board decision in a WMATA case that was appealed to the U.S. District Court for the District of Columbia was affirmed by that court. During FY 10, the Board did not receive any requests from District Courts for an advisory opinion under the Cochran Amendment (41 U.S.C. § 609(f)).

During FY 2010, parties requested the Board's ADR services 27 times, covering 58 appeals and 2 undocketed disputes. Of the 27 requests, 2 were for binding ADR covering 3 appeals and 25 requests were for non-binding ADR covering 55 appeals and 2 undocketed disputes. Fourteen of the requests received during the year were pending at the close of the fiscal year. Of the 18 requests subject to non-binding procedures concluded during the year, not limited to FY 2010 requests, 1 was withdrawn and 16 were successfully resolved.



PAUL WILLIAMS
Chairman
Armed Services Board
of Contract Appeals