ARMED SERVICES BOARD OF CONTRACT APPEALS
SKYLINE SIX
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FALLS CHURCH, VA 22041-3208

31 October 1993

MEMORANDUM FOR: THE SECRETARY OF DEFENSE
THE SECRETARY OF THE ARMY
THE SECRETARY OF THE NAVY
THE SECRETARY OF THE AIR FORCE

SUBJECT: Report of Transactions and Proceedings of the Armed Services Board of Contract Appeals for the Fiscal Year Ending 30 September 1993

This report is furnished under paragraph 9 of the Charter of the Armed Services Board of Contract Appeals, 1 July 1979. The statistics reflect the adjudication of appeals of the Army, Navy, Air Force, Defense Logistics Agency (DLA), and other defense agencies. Also included are appeals of various executive agencies which have been adjudicated under inter-agency arrangements as provided in 41 U.S.C. § 607(c).

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

A.	Appeals docketed during FY 1993 (Includes 107 reinstatements)	1551
B.	Appeals disposed of during FY 1993	1722
C.	Number of Appeals Pending 1 October 1978	1163
	Number of Appeals Pending 1 October 1979	1221
	Number of Appeals Pending 1 October 1980	1259
	Number of Appeals Pending 1 October 1981	1301
	Number of Appeals Pending 1 October 1982	1594
	Number of Appeals Pending 1 October 1983	1695
	Number of Appeals Pending 1 October 1984	1729
	Number of Appeals Pending 1 October 1985	2074
	Number of Appeals Pending 1 October 1986	2096
	Number of Appeals Pending 1 October 1987	2503
	Number of Appeals Pending 1 October 1988	2355
	Number of Appeals Pending 1 October 1989	2321
	Number of Appeals Pending 1 October 1990	2462
	Number of Appeals Pending 1 October 1991	2367
	Number of Appeals Pending 1 October 1992	2198
	Number of Appeals Pending 1 October 1993	2027
	Net Decrease in Docket, FY 1993	171

D. Source of Appeals Docketed FY's 1989-93

	FY 89	FY 90	FY 91	FY 92	FY 93
Air Force	424	540	508	355	266
Army	761	671	579	599	465
Navy	568	591	476	414	481
DLA	142	153	197	116	150
NASA					14
Other	65	123	122	67	68
Reinstated	158	140	139	161	107
TOTAL	2118	2218	2021	1712	1551

E. Status of Appeals Pending End of FY 1993:

Complaint Due	261
Answer Due	256
Discovery	809
To Be Set	39
Hearing Set	255
Transcript & Briefs Due	97
Suspense	17
Ready to Write	293
TOTAL	2027
Rule 12	93

F. Appeals Disposed of During FY's 1989-93

1. Origin of Appeals:	FY 89	FY 90	FY 91	FY 92	FY 93
Air Force	484	494	565	477	374
Army	749	714	662	636	689
Navy	645	580	603	472	393
DLA	186	141	149	170	258
NASA					2
Other Agencies	44	110	87	97	60
Admin. Disposals	44	38	50	29	46
2. Rule 12 Proceedings	396	315	341	276	261
3. Record only Dispositions	337	297	364	350	253
4. Disposition:					
Dismissed	1552	1532	1537	1257	1251
Denied	331	254	279	283	262
Sustained	269	291	300	341	209
TOTAL	2152	2077	2116	1881	1722

	FY 89	FY 90	FY 91	FY 92	FY 93
5. Days from date of docketing to date of decision:					
All appeals:					
Average	442	459	455	510	512
Median	260	258	262	346	341
Rule 12 appeals:					
Average	140	149	160	165	145
Median	126	147	161	152	135

While the number of appeals docketed in FY 93 is 9% less than that docketed in FY 92, the number of pending appeals remains over 2,000 for the ninth consecutive year. The average complexity of the appeals is increasing and many recently filed appeals involve dollar thresholds seldom seen in prior years.

Of the Board's 2027 active appeals, the Army has 565 (28.2%), the Navy has 709 (35.2%), the Air Force has 449 (22.2%), DLA has 196 (10.2%), and 108 appeals (5.2%) are from other miscellaneous sources. At the conclusion of FY 93, 8 of the pending appeals were court remands, 23 were applications under the Equal Access to Justice Act, 28 were motions for reconsidertion, and 93 were being processed under Rule 12, as expedited or accelerated appeals. At the close of FY 93, 50 ASBCA decisions were under review by the U.S. Court of Appeals for the Federal Circuit.

In FY 93, NASA transferred its Board's non-CDA activities to other employees and entered into an agreement with DoD to merge the NASA BCA with the ASBCA. Also, in FY 93, the ASBCA welcomed Judges Dicus, Hartman and Todd as new members. On a sad note, the passing of Judge Giertz in September 1993 leaves a large hole in the fabric of the Board. Judge Giertz, who gallantly fought a long-time illness, was widely admired for his legal skills and judicial temperament. He was everyone's friend. He will be remembered and missed.

The Board held its first formally designated ADR proceeding in March of 1987. Since that time ADR has been a tool available to the parties at the Board to resolve disputes. In April of 1989, the Board adopted its Notice Regarding Alternative Methods of Dispute Resolution (attached). The notice is provided to both parties with every docketing notice. It outlines three possible ADR approaches: Settlement Judge; Minitrial; and Summary Trial with Binding Decision. The notice, however, leaves open the possibility of agreeing on other informal methods tailored to suit the needs of a particular appeal.

From 1987 through fiscal year 1993, the Board has received 73 requests for ADR, covering 137 appeals. Seventy-eight of the appeals involved the use of the summary trial with binding decision method. Fifty-three involved the settlement judge approach, while minitrial techniques accounted for six appeals.

Though the use of formal ADR has not been extensive, the role of the administrative judge in assisting issue identification during the prehearing phases of the appeal process often has the effect of the judge serving as a settlement judge, facilitator, or mediator. Indeed, with the assistance of the judge explaining the strengths and weaknesses of the parties' positions, it is not uncommon for appeals to be settled during or after a hearing.

As we approach an era where DoD personnel and resources will be stretched to the limit, litigation parties must look to new and creative ways to resolve their disputes. The Board is committed to helping the parties meet the challenge.

Paul Williams

PAUL WILLIAMS
Chairman