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

1 October 1995

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 1995

This report is furnished under paragraph 9 of the Charter of the Armed Services Board of Contract Appeals, revised 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 1995 (includes 110 reinstatements)	1323
B.	Appeals disposed of during FY 1995	1478
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
	Number of Appeals Pending 1 October 1994	1977
	Number of Appeals Pending 1 October 1995	1822
	Net Decrease in Docket, FY 1995	155

D. Source of Appeals Docketed FYs 1991-95

	FY 91	FY 92	FY 93	FY 94	FY 95
Air Force	508	355	266	311	251
Army	579	599	465	472	405
Navy	476	414	481	358	292
DLA	197	116	150	124	101
NASA			14	3	15
Other	122	67	68	133	149
Reinstated	139	161	107	132	110
TOTAL	2021	1712	1551	1533	1323

E. Status of Appeals Pending End of FY 1995:

Complaint Due	173
Answer Due	204
Discovery	842
To Be Set	62
Hearing Set	186
Transcript & Briefs Due	100
Suspense	19
Ready to Write	236
TOTAL	1822
Rule 12	59

F. Appeals Disposed of During FYs 1991-95

1. Origin of Appeals:	FY 91	FY 92	FY 93	FY 94	FY 95
Air Force	565	477	374	359	287
Army	662	636	689	450	551
Navy	603	472	393	487	357
DLA	149	170	258	182	97
NASA			2	9	8
Other Agencies	87	97	60	73	164
Admin. Disposals	50	29	46	23	14
2. Rule 12 Proceedings	341	276	261	238	180
3. Record only Dispositions 364	350	253	203	182	
4. Disposition:					
Dismissed	1537	1257	1251	1150	1083
Denied	279	283	262	225	227
Sustained	300	341	209	208	168
TOTAL	2116	1881	1722	1583	1478

	FY 91	FY 92	FY 93	FY 94	FY 95
5. Days from date of docketing to date of decision:					
All appeals:					
Average	455	510	512	462	528
Median	262	346	341	315	389
Rule 12 appeals:					
Average	160	165	145	163	140
Median	161	152	135	141	127

Of the Board's 1,822 active appeals, the Army has 521 (29%), the Navy has 602 (33%), the Air Force has 386 (21%), the DLA has 160 (9%), and 153 appeals (8%) are from other sources. At the conclusion of FY 95, 21 of the appeals were court remands, 22 were applications under the Equal Access to Justice Act, 9 were motions for reconsideration, and 59 were being processed under Rule 12 as expedited (13) or accelerated (46).

At the close of FY 95, 22 ASBCA decisions were under review by the U.S. Court of Appeals for the Federal Circuit (including 3 Government appeals) and two maritime appeals were pending before District Courts. The District Courts did not request a single advisory opinion under the Cochran Amendment (the Federal Acquisition Streamlining Act of 1994 (P.L. 103-355, Section 2354)).

During the fiscal year, the parties requested the Board's ADR services 31 times covering 61 appeals and one pre-appeal dispute. All but three of the completed ADR proceedings resulted in a resolution of the appeals. Because a number of the ADR proceedings were conducted near the end of the fiscal year or set for the following year, 11 requests are pending. Seventeen of the requests were for the settlement judge method, twelve for summary trial with a binding decision and two requests for a mini trial. The ADR data does not include appeals resolved by structured settlement conferences. On occasion, the parties requested that the Board issue a consent judgment in order to expedite payment of the settlement.

With the retirements of Judges Burg, Lussier, Reiter, and Harper, the Board is down from a high of 37 judges to 29. The inability to replace these senior judges, due to a high grade freeze, imposes additional burdens on the remaining judges. The loss of nearly a quarter of the judges at the ASBCA in the last four years is clearly not offset by the decrease in new appeals. The decrease in the number of new appeals may reflect the increased use of ADR by the parties to resolve smaller claims before they become appeals. This can be seen by the 47 percent decrease in the number of Rule 12 dispositions since FY 91.

Paul Williams

PAUL WILLIAMS
Chairman