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

31 October 1988

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 1988

This report is furnished pursuant to paragraph 9 of the Charter for the Armed Services Board of Contract Appeals, 1 July 1979. The statistics hereinafter set forth reflect the hearing, consideration, and determination of appeals originating in the Army, Navy, Air Force, Defense Logistics Agency (DLA), and other Defense agencies. Also included are appeals of various executive agencies.

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

A.	Appeals docketed during FY 1988 (Including 87 reinstatements)	2021
B.	Appeals disposed of during FY 1988	2169
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
	Net Decrease in Docket, FY 1988	148

D. Source of Appeals Docketed During FY 1988:

Army	707
Navy	630
Air Force	397
DLA	153
Other	47
Reinstated	87
TOTAL	2021

E. Status of Appeals Pending End of FY 1988:

Complaint Due	310
Answer Due	263
Discovery	860
To Be Set	114
Hearing Set	350
Transcript & Briefs Due	158
Suspense	81
Ready to Write	264
TOTAL	2355
Rule 12	167

F. Summary since 1 May 1949 (date of creation of ASBCA from predecessor boards):

Docketed	37,670
Reinstated	961
	38,631
Disposed of	36,276
TOTAL	2,355

During Fiscal Year 88 (FY 88) the Armed Services Board of Contract Appeals (ASBCA) reduced the size of its pending docket for the first time since the passage of the Contract Disputes Act of 1978. At the end of FY 88, the number of pending appeals, 2,355, represented a significant decrease from 2,503, the record number of pending appeals at the close of FY 87. FY 88 also marked the first year the Board both docketed and disposed of over 2,000 appeals. In FY 88, the Board docketed 2,021 new appeals, a 224 percent increase over new appeals docketed in FY 78, and disposed of 2,169 pending appeals, a 248 percent increase over the number of appeals disposed of in FY 78.

As litigation proliferates, a month which brought less than 100 new appeals would constitute an anomaly. As late as FY 83, the average number of new appeals was only 105 appeals a month. In FY 88, the average of 168 new appeals per month, although a welcome, yet unusual, decline in the number of new appeals from the prior fiscal year, still strains the resources of the Board. Hopefully, FY 87 proved to be the peak of the tidal wave with an average of 184 new appeals docketed each month.

Aggressive docket management and increased judge productivity were the Board's focus during the last four years. Additional personnel ranging from administrative judges to secretaries, office automation, superior office facilities, and internal reorganization all played a role in the ASBCA's more efficient and productive work environment. The Board's ability to reduce the size of the docket proves particularly satisfying in light of the Board's broadened jurisdiction during this same four-year period--our statistics do not account for decisions rendered under the Equal Access to Justice Act (EAJA), which took effect during FY 86.

For example, aggressive management resulted in the number of appeals ready to be set for hearing dropping from 441 in FY 85 to 114 in FY 88. This effort entailed setting firm schedules and holding a record number of hearings both at the Board's offices and at locations across the country and around the world. However, these efforts taxed the Board's resources and stretched the heavily burdened resources of the offices of the various Government trial attorneys.

Meanwhile, the number of appeals in ready-to-write status stabilized at approximately eleven percent of the Board's docket. Moreover, FY 88 witnessed the disposal of many old ready-to-writes which appeared problematic during FY 87 (when the Board experienced an unusually severe number of vacancies due to retirement, death, and illness).

The Board continues to work closely with the Administrative Conference of the United States (ACUS) in making Alternate Dispute Resolution (ADR) proceedings available to the parties. During FY 88, the Board participated in various training sessions held at the Board by ACUS. The ASBCA strongly encourages attempts by the parties, through ADR or conventional negotiation, to voluntarily resolve their disputes.

The Board acknowledges, however, that ADR alone cannot cause significant reductions in the size of the Board's docket. The Board believes that the greatest benefit derived from ADR may result from the parties' ability to resolve disputes prior to the issuance of contracting officer's decisions. Until the parties to government contracts forsake litigation and work on "getting to yes," the Board plans to expedite its decision making process by working with the parties to gain agreement to submit appeals for bench decisions or summary written decisions which lack precedential value and opportunities for appeal.

Another positive note derives from the efforts of the Government and the private bar to offer a new avenue for communication between litigants and the board through the creation of a Board of Contract Appeals Bar Association. Details regarding the association and membership information will be published in various contract law publications during FY 89.

Finally, as a precautionary note to the FY 88 statistics, a significant caveat applies. As a tool in developing statistical data relating to appeals docketed at the ASBCA, the Board requires contracting officers to submit Appeal Data Reports. The Board intends the report to help identify the parties, the nature of the issues, and the amounts in dispute. While these reports prove helpful, more often than not, contracting officers fail to make the requisite filing. Although failure to comply is of no consequence to the processing of appeals, this lack of information severely limits the accuracy or in-depth statistical analysis of the Board's docket. While the Board's statistics regarding numbers of pending appeals, days on the docket, status of appeals, and dispositions exist independently of appeal data report information, more specific statistics including type of claim, amount in dispute, dollar value of dispositions, etc., lose credibility. As a result, the Board plans to solicit suggestions for improving the forms and their preparation. Hopefully, the Appeal Data Reports will assist the Board and others in the disputes chain in understanding the nature of the disputes on the Board's docket and provide a valuable management tool in the Board's efforts to efficiently apply its resources.

Paul Williams

PAUL WILLIAMS
Chairman

Appeals Disposed of During FY's 1984-88

1. Origin of Appeals:	FY 1984	FY 1985	FY 1986	FY 1987	FY 1988
Air Force	234	258	507	376	436
Army	524	463	623	719	811
DLA	218	232	165	134	210
Navy	267	251	549	481	628
Other Agencies	63	61	71	59	48
Admin. Disposals	29	28	23	32	36
2. Hearings and Days of Hearing:					
Hearings:					
In Washington, D.C.	46	58	74	52	91
Outside Washington, D.C.	169	181	239	190	200
Percentage outside Washington, D.C.	79%	76%	76%	79%	69%
Days of Hearing:					
In Washington, D.C.	100	175	206	137	297
Outside Washington, D.C.	349	393	687	470	458
Percentage outside Washington, D.C.	78%	69%	77%	77%	61%
3. Pre-Hearing Discovery (appeals in which ruling sought)	137	300	418	812	1139
4. Pre-Hearing Conferences	114	228	298	231	329
5. Rule 12 Proceedings	229	262	354	396	318
6. Record only Dispositions	75	168	296	322	340

	FY 1984	FY 1985	FY 1986	FY 1987	FY 1988
7. Disposition:					
Settled	522	506	817	806	910
Dismissed (no reason given)	28	15	67	43	42
Dism/Rule 30	124	118	224	63	260
Dism/Rule 31	184	41	58	52	57
Lack of Jurisdiction	31	45	58	58	76
Dism/Withdrawn		121	113	176	185
Req. CO/Decision	56	47	60	83	62
Denied	205	226	286	242	280
Sustained	158	146	232	230	261
8. Days from date of docketing to date of decision:					
All appeals:					
Average	450	484	440	348	439
Median	297	299	273	196	261
Rule 12 appeals:					
Average	151	149	142	144	156
Median	149	130	134	133	141
9. Days from date appeal ready for decision to date decided:					
All appeals:					
Average	50	72	49	38	43
Median	4	7	7	5	6
Appeals in which formal opinion filed:					
Average	105	193	148	113	138
Median	19	53	51	38	56
All Rule 12 appeals:					
Average	16	13	18	15	21
Median	8	7	10	7	10