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

31 October 1989

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 1989

This report is furnished pursuant to paragraph 9 of the Charter of 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 1989 (Including 158 reinstatements)	2118
B.	Appeals disposed of during FY 1989	2152
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
	Net Decrease in Docket, FY 1989	34

D. Source of Appeals Docketed During FY 1989

Army	761
Navy	568
Air Force	424
DLA	142
Other	65
Reinstated	158
TOTAL	2118

E. Status of Appeals Pending End of FY 1989:

Complaint Due	420
Answer Due	218
Discovery	880
To Be Set	78
Hearing Set	251
Transcript & Briefs Due	142
Suspense	94
Ready to Write	238
TOTAL	2321
Rule 12	116

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

Docketed	39,630
Reinstated	1,119
	40,749
Disposed of	38,428
TOTAL	2,321

During FY 89 the Armed Services Board of Contract Appeals reduced the size of its pending docket for the second consecutive year. Since the close of FY 87 the Board has reduced the number of pending appeals on the Board's docket by 182. If the size of the reduction appears insignificant, recall that FY 88 was the first year since the passage of the Contract Disputes Act of 1978 that the Board had reduced its pending docket.

The trend of increased Board productivity continued in FY 89. For the second fiscal year in a row, the Board disposed of over 2,100 appeals. Of particular note was the rendering of 600 substantive dispositive written decisions, which exclude jurisdictional rulings, interlocutory rulings, dismissals, withdrawals, and decisions on motions for reconsideration. The Board also continued to make inroads with regard to reducing the number of appeals in the ready-to-write status. Ready-to-writes numbered approximately 10 percent of the Board's docket, compared to 11 percent in FY 88. Moreover, the number of appeals which have been on the Board's docket for three years or more decreased from 10% in FY 88 to 8% in FY 89.

On a less positive note, FY 88's welcome decline in the number of new appeals proved an anomaly. During FY 89, the Board both docketed more new appeals and reinstated more appeals than during FY 88 when it docketed an average of 168 appeals per month. Fortunately, while averaging 177 new docketings a month in FY 89, the pace of new docketings remained below the dramatic 184 new-appeals-per-month pace of FY 87.

Further, during FY 89, the Board bid fond farewell to three administrative judges who cumulatively shared over 69 years of service on the Board's bench. The contributions of Harris J. Andrews, whose 27 years of Board work included fifteen years as Board chairman and vice chairman, Basil S. Norris, who bore an inordinate share of the Board's processing of foreign appeals during his 18 years on the Board, and Robert J. Rowe, who served on the Board for 24 years, will be sorely missed.

As indicated in the Board's FY 88 report, the ASBCA remains committed to supporting efforts by the Administrative Conference of the United States, the bar, Government agencies, and the contracting community to develop systems to resolve disputes through means other than litigation. The Board recently began distributing a "Notice Regarding Alternative Methods of Dispute Resolution" to its litigants, explaining various litigation alternatives. Although the ASBCA usually accommodates the parties when both seek an abbreviated adjudication or an alternative dispute resolution (ADR), few requests for such procedures have materialized. On a number of occasions, the Board has successfully conducted abbreviated proceedings over the telephone, saving all parties considerable time and expense.

The parties should consider using ADR options more frequently. Too often, parties litigate because of habit. While there are many disputes for which litigation is the only means of reaching a resolution, more appeals should be resolved by responsible management decision makers. Litigation is a last resort, not a negotiating position. We need ADR in government contracting because there is too much litigation. ADR serves its purposes best in reminding the contracting parties that the negotiating table, not the courtroom, is the forum of choice in a healthy and productive business relationship.

Paul Williams

PAUL WILLIAMS
Chairman

Appeals Disposed of During FY's 1985-89

1. Origin of Appeals:	FY 1985	FY 1986	FY 1987	FY 1988	FY 1989
Air Force	258	507	376	436	484
Army	463	623	719	811	749
DLA	232	165	134	210	186
Navy	251	549	481	628	645
Other Agencies	61	71	59	48	44
Admin. Disposals	28	23	32	36	44
2. Hearings and Days of Hearing:					
Hearings:					
In Washington, D.C.	58	74	52	91	74
Outside Washington, D.C.	181	239	190	200	250
Percentage outside Washington, D.C.	76%	76%	79%	69%	77%
Days of Hearing:					
In Washington, D.C.	175	206	137	297	233
Outside Washington, D.C.	393	687	470	458	564
Percentage outside Washington, D.C.	69%	77%	77%	61%	71%
3. Pre-Hearing Discovery (appeals in which ruling sought)	300	418	812	1139	1246
4. Pre-Hearing Conferences	228	298	231	329	391
5. Rule 12 Proceedings	262	354	396	318	396

	FY 1985	FY 1986	FY 1987	FY 1988	FY 1989
6. Record only Dispositions	168	296	322	340	337
7. Disposition:					
Dismissed	921	1420	1329	1628	1552
Denied	226	286	242	280	331
Sustained	146	232	230	261	269
8. Days from date of docketing to date of decision:					
All appeals:					
Average	484	440	348	439	442
Median	299	273	196	261	260
Rule 12 appeals:					
Average	149	142	144	156	140
Median	130	134	133	141	126
9. Days from date appeal ready for decision to date decided:					
All appeals:					
Average	72	49	38	43	59
Median	7	7	5	6	6