



ARMED SERVICES BOARD OF CONTRACT APPEALS

SKYLINE 6, ROOM 703
5109 LEESBURG PIKE
FALLS CHURCH, VA 22041-3208

21 October 2011

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 2011

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.

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 2011	432
B. Appeals Disposed During FY 2011	439
C. Appeals Pending	
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
Number of Appeals Pending 1 October 2011	566
Net Decrease in Docket, FY 2011	7

D. Source of Appeals Docketed FYs 2007-2011

	<u>FY07</u>	<u>FY08</u>	<u>FY 09</u>	<u>FY 10</u>	<u>FY11</u>
Army	148	80	113	114	126
Navy	56	73	30	62	38
Air Force	208	36	41	62	45
Corps of Eng.	110	148	110	140	95
DLA & DCMA	53	32	66	49	94
Other Agencies	21	10	12	9	10
Reinstated	<u>28</u>	<u>23</u>	<u>32</u>	<u>29</u>	<u>24</u>
TOTAL	624	402	404	465	432

E. Appeals Disposed During FYs 2007-2011

	<u>FY07</u>	<u>FY08</u>	<u>FY 09</u>	<u>FY 10</u>	<u>FY 11</u>
1. Origin of Appeals					
Army	100	117	74	126	115
Navy	86	59	60	70	62
Air Force	119	123	68	32	78
Corps of Eng.	156	88	158	123	112
DLA & DCMA	54	51	65	58	63
Other Agencies	<u>24</u>	<u>29</u>	<u>19</u>	<u>15</u>	<u>9</u>
TOTAL	539	467	444	424	439
2. Rule 12 Proceedings					
	29	15	19	25	29
3. Disposition					
Sustained	96	69	69	61	43
Denied	38	41	34	46	38
Dismissed	<u>405</u>	<u>357</u>	<u>341</u>	<u>317</u>	<u>358</u>
TOTAL	539	467	444	424	439

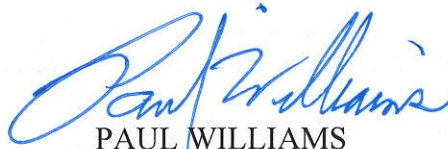
F. Status of Appeals Pending 1 October 2011

Complaint Due	69
Answer Due	57
Discovery	166
To Be Set	28
Hearing Set	77
Transcript & Briefs Due	34
Suspense	93
Ready to Write	<u>42</u>
TOTAL	566

Of the Board's 566 active appeals, the Army has 202 (35.7%), the Navy has 57 (10.1%), the Air Force has 48 (8.5%), the Corps of Engineers has 150 (26.5%), DLA and DCMA have 95 (16.8%), and the remaining 14 appeals (2.5%) are from other sources. At the conclusion of FY 2011, there were 29 appeals being processed under Board Rule 12 (24 expedited and 5 accelerated), 4 applications under the Equal Access to Justice Act, 9 motions for reconsideration, and 2 court remands.

In FY 2011, the Board disposed of 81 appeals on the merits. Of those dispositions, 53.1% of the decisions found merit in whole or in part. The Board dismissed 358 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 12 appeals from Board decisions, and 9 appeals were pending at the close of the fiscal year. Of the 9 dispositions by the Court of Appeals for the Federal Circuit involving appeals of ASBCA decisions: 3 were affirmed, 1 was affirmed and remanded, 2 were dismissed, 1 was reversed and remanded, and 2 were reversed. A maritime appeal transferred by the Federal Circuit to the Federal District Court of Maryland was reversed and remanded to the Board. During FY 11, the Board did not receive any requests from District Courts for an advisory opinion under the Cochran Amendment (41 U.S.C. § 7107(f)).

During FY 2011, parties requested the Board's ADR services 22 times, covering 70 appeals and 3 undocketed disputes. Of the 22 requests, 1 was for binding ADR covering 2 appeals and 21 requests were for non-binding ADR covering 68 appeals and 3 undocketed matters. Eleven of the requests received during the year were pending at the close of the fiscal year. Of the 22 requests subject to non-binding procedures concluded during the year, not limited to FY 2011 requests, 2 were withdrawn, 1 was unsuccessful and 19 were successfully resolved.



PAUL WILLIAMS
Chairman
Armed Services Board
of Contract Appeals