



ARMED SERVICES BOARD OF CONTRACT APPEALS
SKYLINE 6, ROOM 703
5109 LEESBURG PIKE
FALLS CHURCH, VA 22041-3208

27 October 2009

MEMORANDUM FOR: THE SECRETARY OF DEFENSE
THE SECRETARY OF THE ARMY
THE SECRETARY OF THE NAVY
THE SECRETARY OF THE AIR FORCE
THE GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
THE 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 2009

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. Also included are appeals of various agencies which have been adjudicated under inter-agency arrangements.

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 2009	404
B. Appeals Disposed During FY 2009	444
C. Appeals Pending	
Number of Appeals Pending 1 October 2004	652
Number of Appeals Pending 1 October 2005	644
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
Net Decrease in Docket, FY 2009	40

D. Source of Appeals Docketed FYs 2005-2009

	<u>FY 05</u>	<u>FY06</u>	<u>FY07</u>	<u>FY08</u>	<u>FY 09</u>
Army	76	92	148	80	113
Navy	70	65	56	73	30
Air Force	72	62	208	36	41
Corps of Eng.	99	115	110	148	110
DLA & DCMA	88	55	53	32	66
Other Agencies	21	29	21	10	12
Reinstated	<u>50</u>	<u>20</u>	<u>28</u>	<u>23</u>	<u>32</u>
TOTAL	476	438	624	402	404

E. Appeals Disposed During FYs 2005-2009

	<u>FY 05</u>	<u>FY 06</u>	<u>FY07</u>	<u>FY08</u>	<u>FY 09</u>
1. Origin of Appeals					
Army	94	88	100	117	74
Navy	114	91	86	59	60
Air Force	59	72	119	123	68
Corps of Eng.	130	146	156	88	158
DLA & DCMA	62	93	54	51	65
Other Agencies	21	35	24	29	19
Admin. Disposal	<u>4</u>	<u>5</u>	<u>0</u>	<u>0</u>	<u>0</u>
TOTAL	484	530	539	467	444
2. Rule 12 Proceedings					
	41	33	29	15	19
3. Disposition					
Sustained	87	86	96	69	69
Denied	63	51	38	41	34
Dismissed	<u>334</u>	<u>393</u>	<u>405</u>	<u>357</u>	<u>341</u>
TOTAL	484	530	539	467	444

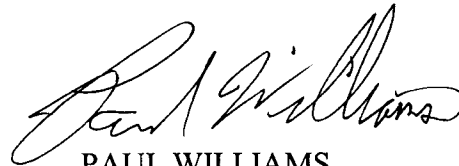
F. Status of Appeals Pending 1 October 2009

Complaint Due	56
Answer Due	40
Discovery	244
To Be Set	22
Hearing Set	81
Transcript & Briefs Due	18
Suspense	33
Ready to Write	<u>38</u>
TOTAL	532

Of the Board's 532 active appeals, the Army has 186 (35.0%), the Navy has 78 (14.7%), the Air Force has 47 (8.8%), the Corps of Engineers has 144 (27.1%), DLA and DCMA have 59 (11.1%), and the remaining 18 appeals (3.4%) are from other sources. At the conclusion of FY 2009, there were 8 appeals being processed under Board Rule 12 (4 expedited and 4 accelerated), 10 applications under the Equal Access to Justice Act, 3 motions for reconsideration, and 3 court remands.

In FY 2009, the Board disposed of 103 appeals on the merits. Of those dispositions, 67.0% of the decisions found merit in whole or in part. The Board dismissed 341 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 13 appeals from Board decisions, and 10 appeals were pending at the close of the fiscal year. Of the 13 dispositions by the Court of Appeals for the Federal Circuit involving appeals of ASBCA decisions: 5 were affirmed, 4 were dismissed, 1 was vacated and remanded, 2 were reversed and remanded, and 1 was reversed. During FY 09, the Board did not receive any requests from District Courts for an advisory opinion under the Cochran Amendment (41 U.S.C. § 609(f)).

During FY 2009, parties requested the Board's ADR services 21 times, covering 39 appeals and 2 undocketed disputes. Of the 21 requests, 2 were for binding ADR covering 3 appeals and 19 requests were for non-binding ADR covering 36 appeals and 2 undocketed disputes. Six of the requests received during the year were pending at the close of the fiscal year. Of the 25 requests subject to non-binding procedures concluded during the year, not limited to FY 2009 requests, 2 were withdrawn and 20 were successfully resolved.



PAUL WILLIAMS
Chairman
Armed Services Board
of Contract Appeals