



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

26 October 2012

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 2012

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, other Defense agencies, Central Intelligence Agency, National Aeronautics and Space Administration, and the Washington Metropolitan Area Transit Authority.

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 2012	571
B. Appeals Disposed During FY 2012	457
C. Appeals Pending	
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
Number of Appeals Pending 1 October 2012	680
Net Increase in Docket, FY 2012	114

D. Source of Appeals Docketed FYs 2008-2012

	<u>FY08</u>	<u>FY 09</u>	<u>FY 10</u>	<u>FY11</u>	<u>FY12</u>
Army	80	113	114	126	124
Navy	73	30	62	38	72
Air Force	36	41	62	45	92
Corps of Eng.	148	110	140	95	147
DLA & DCMA	32	66	49	94	91
Other Agencies	10	12	9	10	17
Reinstated	<u>23</u>	<u>32</u>	<u>29</u>	<u>24</u>	<u>28</u>
TOTAL	402	404	465	432	571

E. Appeals Disposed During FYs 2008-2012

	<u>FY08</u>	<u>FY 09</u>	<u>FY 10</u>	<u>FY 11</u>	<u>FY12</u>
1. Origin of Appeals					
Army	117	74	126	115	123
Navy	59	60	70	62	68
Air Force	123	68	32	78	53
Corps of Eng.	88	158	123	112	115
DLA & DCMA	51	65	58	63	83
Other Agencies	<u>29</u>	<u>19</u>	<u>15</u>	<u>9</u>	<u>15</u>
TOTAL	467	444	424	439	457
2. Rule 12 Proceedings					
	15	19	25	29	51
3. Disposition					
Sustained	69	69	61	43	41
Denied	41	34	46	38	45
Dismissed	<u>357</u>	<u>341</u>	<u>317</u>	<u>358</u>	<u>371</u>
TOTAL	467	444	424	439	457

F. Status of Appeals Pending 1 October 2012

Complaint Due	60
Answer Due	68
Discovery	217
To Be Set	24
Hearing Set	154
Transcript & Briefs Due	32
Suspense	104
Ready to Write	<u>21</u>
TOTAL	680

Of the Board's 680 active appeals, the Army has 206 (30.3%), the Navy has 63 (9.3%), the Air Force has 98 (14.4%), the Corps of Engineers has 186 (27.4%), DLA and DCMA have 110 (16.2%), and the remaining 17 appeals (2.5%) are from other sources.

During FY 2012, there were 64 elections to have appeals processed under Board Rule 12 (49 expedited and 15 accelerated), 15 applications under the Equal Access to Justice Act, 12 motions for reconsideration, and 0 court remands. At the conclusion of FY 2012, there were 11 appeals being processed under Board Rule 12 (9 expedited and 2 accelerated), 12 applications under the Equal Access to Justice Act, 2 motions for reconsideration, and 0 court remands pending.

In FY 2012, the Board disposed of 86 appeals on the merits. Of those dispositions, 47.7% of the decisions found merit in whole or in part. The Board dismissed 371 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 8 appeals from Board decisions, and 6 appeals were pending at the close of the fiscal year. Of the 11 dispositions by the Court of Appeals for the Federal Circuit involving appeals of ASBCA decisions: 4 were affirmed, 7 were dismissed. In a WMATA appeal, the U.S. Court of Appeals for the District of Columbia Circuit affirmed a federal district court decision that had affirmed a Board decision. Two appeals from Board decisions were pending in other tribunals at the close of the fiscal year, one Wunderlich Act appeal at the U.S. Court of Federal Claims and one maritime appeal at the U.S. District Court for the Southern District of California.

During FY 2012, parties requested the Board's ADR services 24 times, covering 47 appeals and two undocketed disputes. All requests were for nonbinding ADR. Eight of the requests received during the year were pending at the close of the fiscal year. Of the 27 requests concluded during the year, not limited to FY 2012 requests, 3 covering 3 matters were withdrawn; 3 covering 3 matters were unsuccessful; and 21 covering 57 matters, including 6 undocketed disputes, were successfully resolved.

The ASBCA is proud to note that one of the successful mediations involved a number of disputes that totaled more than two billion dollars relating to a long term logistics contract which was nearing completion. Approximately half of the claims were on the Board's docket and involved complex contract interpretation, performance and payment issues. The non-docketed claims primarily related to various intellectual property matters, including allegations of breach of contract. The mediation was held at the offices of the Board where, for an extended period of time, virtually all the hearing and conference rooms were dedicated exclusively for use by the two Judge mediators, the parties, and their large supporting teams. All claims were successfully resolved with a cash payment, award of a multi-year, follow-on contract, and the determinations of the use, ownership, and rights relating to the intellectual property claims.



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PAUL WILLIAMS  
Chairman