ANNUAL REPORT

UNITED STATES CIVILIAN BOARD OF CONTRACT APPEALS

Fiscal Year 2022
October 1, 2021 - September 30, 2022

MESSAGE FROM THE CHAIR

This year has seen a smooth return to the Board's offices and a successful return to in-person hearings and mediations. The Board staff and judges have taken advantage of the opportunity to meet, communicate, and collaborate in person once again, and our law clerks have benefitted from the ability to pop in to a judge's office with questions. It has been good for us all to see friends and colleagues in person instead of on a screen, and we look forward to engaging with counsel and litigants in the Board's courtrooms and conference rooms for future hearings and mediations.

In order to accommodate hearings and mediations at the Board, we have been working to upgrade our physical space, including our courtrooms and conference rooms, with particular focus on enhancing our courtroom technology. We hope to complete these upgrades early in the new year. We are also looking forward to rolling out a new electronic docketing system in the coming months that will enable parties to efile and access case files through an online CBCA portal.

Despite the resumption of in-person hearings and mediations, we will continue to hold hearings and mediations virtually. The Board judges have grown adept at holding these virtual proceedings by Zoom, and the success of this technology as a litigation platform warrants that we keep using it, especially given the cost savings and efficiency realized.

Work at the Board continued unabated throughout Fiscal Year 2022. The number of FEMA cases that we arbitrated nearly doubled—fifty-two this year compared to twenty-seven last year—while the number of Contract Disputes Act (CDA) appeals remained steady—177 this year compared to 185 last year. In fact, the Board docketed almost the same number of cases (372) as we resolved (375), leaving 346 cases pending as of the end of this year. Ultimately, we issued 129 decisions on the merits and held 66 mediations, of which 43 fully resolved the case. Clearly, it has been a busy year for our twelve judges and dedicated staff.

As we move forward, the Board remains confident and prepared to continue to fulfill our mission to provide a "just, informal, expeditious, and inexpensive resolution" of cases. Our judges and staff continue to work to adapt to the changing technology and to provide the best services and forum for the Board's litigants. It has been a pleasure serving the public this year, and we look forward to the new ways we will find to continue to serve the public successfully in the new year.

Erica S. Beardsley

Erica S. Beardsley, Board Chair

DECISIONS OF NOTE

***1425-1429 Snyder Realty, LLC v. Department of Veterans Affairs*, CBCA 6433 (Feb. 7, 2022)**

In 2011, 1425-1429 Snyder Realty entered into a lease contract with the Department of Veterans Affairs (VA) for property in Philadelphia, Pennsylvania. The contract required a fully built-out space for residential rehabilitation treatment programs for veterans. During the construction process, the parties amended the lease to give the VA unlimited access to the facility's basement for an additional cost in rent per month. After four years, despite continually using the space, the VA ceased paying rent. It was later determined that a new contracting officer for the project found paying the additional basement rent redundant. In responding to the appellant's claim, the VA alleged that the amendment lacked consideration because the lease already gave it access to the basement, such that the amendment created a redundant payment. Relying on the plain language of both the contract and the amendment, as well as on extrinsic evidence, the Board found that the amendment was not redundant and that there was proper consideration. The Board in its decision also explained that just because the Government was not utilizing a benefit—here, taking advantage of the basement as storage space—does not mean the agreement lacked consideration.

***Active Construction, Inc. v. Department of Transportation,* CBCA 6597 (Mar. 9, 2022)**

In 2014, the Federal Highway Administration (FHWA) awarded Active Construction, Inc. (ACI) a contract to reconstruct portions of a road in King County, Washington. During performance, ACI routinely treated its home and field office overhead as an indirect cost, adding a percentage markup to its direct costs when submitting invoices to account for it. Eventually, ACI submitted a certified claim seeking damages for 310 days of delay, alleging numerous differing site conditions and FHWA-caused delays that affected performance. In that claim, ACI sought to recover both home and field office overhead as direct costs. After ACI appealed the contracting officer's decision denying most of its claim, the FHWA filed a motion for partial summary judgment questioning ACI's change in its method of treating overhead. With regard to ACI's field office overhead costs, the Board found that the cost principles at Federal Acquisition Regulation (FAR) 31.105(d)(3) provide contractors the option of deciding whether to treat field office overhead as either a direct or indirect cost but that, once the contractor makes the choice, it must consistently apply that accounting practice. Because ACI had consistently treated field office overhead as an indirect cost through contract performance, ACI could not change cost accounting practices to claim it as a direct cost in its claim. With regard to ACI's home office overhead costs, the Board reached a different result, recognizing that many contractors spread their operational overhead costs across all of their contracts and that the Eichleay formula is used as the exclusive means of determining the recoverability of unabsorbed overhead resulting from government delay. The Board denied the FHWA's summary judgment motion as premature and noted that further development of the record would be necessary to show whether ACI was on "standby" during the alleged delays, which it would be required to prove in order to recover under *Eichleay*.

***Alares Construction, Inc. v. Department of Veterans Affairs*, CBCA 6149, et al. (Sept. 8, 2022)**

Alares Construction (Alares) asked the Board to determine whether Rule 68 of the Federal Rules of Civil Procedure (FRCP) applies to proceedings before the Board. During litigation, the Department of Veterans Affairs (VA) had provided Alares with an offer of judgment under Rule 68. Alares expressed concern that, if it did not accept the offer, the VA would attempt to collect costs and expenses from Alares, as permitted under Rule 68, if the Board ultimately awarded judgment in Alares' favor in an amount less than the offer. The Board held that without statutory authorization it cannot assess costs against an appellant. Although the Board often looks to the FRCP in interpreting its own rules, the Board is not a federal court and, as such, does not possess inherent authority to shift costs in the same way that a court might. Neither the Contract Disputes Act (CDA) nor the Equal Access to Justice Act (EAJA), statutes that provide the Board with jurisdiction to consider contract disputes and cost awards, gives the Board the ability to award costs to the Government. The CDA allows the Board to address monetary claims regarding the costs of contract performance, not the costs of litigation, and EAJA only authorizes cost awards to contractors against the Government. Because the VA did not identify any statutory authority for the Board to assess costs against an appellant, the Board could not find a basis upon which it could shift the VA's litigation costs to Alares. Nevertheless, the Board recognized that, to the extent that the VA might seek to use Rule 68 to shield itself from an award of costs and attorney fees against the VA under EAJA, the Board can take into account the fact that the VA offered Alares more than it was ultimately awarded in determining whether the VA's position was "substantially justified," a finding that could preclude an EAJA award.

***Avue Technologies Corp. v. Department of Health and Human Services & General Services Administration*, CBCA 6360, et al. (Jan. 14, 2022)**

After Avue Technologies Corporation (Avue) developed and licensed a software platform, another company sold that software to the Government under a General Services Administration (GSA) schedule contract (the prime contract). During briefing for summary judgment on entitlement, the Government challenged the Board's jurisdiction, arguing that Avue's software licensing agreement was not a procurement contract under the Contract Disputes Act (CDA). The Board noted that, while there have been many cases where a prime contractor has brought a claim relating to the licensing agreement under the prime contract, this was the first time to the Board's knowledge that a licensor lacking privity to the prime contract had brought a claim under a licensing agreement. In dismissing the claim for lack of jurisdiction, the Board concluded that, even though the Government's use of the software was likely subject to the licensing agreement, the licensing agreement itself was not a procurement contract for purposes of the CDA, since the Government did not actually purchase the software through the licensing agreement.

***Board of Education for the Gallup-McKinley County Schools v. Department of the Interior*, CBCA 7311 (July 5, 2022)**

The Board has long held that it does not have jurisdiction over pre-award contract disputes. Appellant, the Board of Education for the Gallup-McKinley County Schools (Gallup-McKinley), challenged the denial by the Department of the Interior (DOI) of Gallup-McKinley's applications for contracts that were distributed under the Johnson-O'Malley Act (JOMA) of 1934. Gallup-McKinley acknowledged the Board's lack of jurisdiction but still appealed to the Board because (1) DOI's decision denying the application referenced Board appeal rights and (2) DOI had sought dismissal of a suit that Gallup-McKinley had filed in a United States District Court by arguing that JOMA regulations required challenges to be heard before the Board and Gallup-McKinley had not exhausted that administrative remedy. The parties eventually agreed that the Board lacked jurisdiction to hear the pre-award appeal and sought to dismiss the case before the Board. Although appellant agreed that the Board lacked jurisdiction, appellant sought further rulings and argued DOI's motion to dismiss was moot. In reaching its conclusion that it lacked subject matter jurisdiction, the Board reiterated its long-standing holding that it does not have jurisdiction over pre-award disputes. The Board also ruled that once it determines it does not have subject matter jurisdiction, proceedings are concluded and the Board will refrain from taking further actions.

***Focused Management, Inc. v. Consumer Financial Protection Bureau*, CBCA 7324 (Aug. 5, 2022)**

Focused Management, Inc. (FMI) was awarded a contract in May 2017 by the Consumer Financial Protection Bureau (CFPB) to operate a support desk for information technology users. In its claim, FMI challenged four Contractor Performance Assessment Reporting System (CPARS) ratings received during the contract's second option year, May 2019 to May 2020. FMI alleged that it was surprised to receive a "marginal" rating in the Quality, Schedule, and Management categories and a "satisfactory" rating in the Cost Control category. Although the Board has typically limited its review of CPARS ratings to the procedural aspects of the ratings' development and has held that it cannot direct an agency to provide a specific rating, the Board, citing to the United States Court of Appeals for the Federal Circuit's decision in *Todd Construction, L.P. v. United States*, 656 F.3d 1306 (Fed. Cir. 2011), recognized that it may review CPARS ratings to determine if they are arbitrary and capricious, which equates to inaccurate and unfair. Here, however, FMI did not cite any evidence supporting its assertion that the CFPB's ratings were arbitrary, capricious, or otherwise in error. Conversely, the CFPB's evaluation provided specific and significant criticisms of FMI's performance, which was sufficient support for the ratings. Accordingly, the Board denied FMI's appeal.

***Heroes Hire, LLC v. Department of Veterans Affairs*, CBCA 7195, et al. (Oct. 7, 2021 & Apr. 13, 2022)**

Heroes Hire LLC (Heroes Hire) provided nursing services to the Department of Veterans Affairs (VA). During the course of providing these services, Heroes Hire assigned the right to payment to a third-party lender, an assignment that the VA recognized through a bilateral modification in compliance with the exception to the Anti-Assignment Act for lenders. After making what it believed was the final payment of its loan from the third-party lender, Heroes Hire sought release of the assignment. The third-party lender, however, refused to acknowledge that Heroes Hire had satisfied its obligations or to execute a release. Accordingly, Heroes Hire signed a written release itself and delivered it to the VA, asserting that it had satisfied its obligations to the third-party vendor. The VA rejected the release on the basis that the third-party lender had not signed the release and was, in fact, continuing to insist that any payments be directed to it. Upon the VA's rejection of the release and inability to pay Heroes Hire directly, Heroes Hire refused to provide any additional nursing services. The VA then terminated the contract with Heroes Hire for cause for failure to provide nursing services. Heroes Hire challenged the termination for cause before the Board and sought emergency injunctive relief. The Board rejected Heroes Hire's request for injunctive relief on the basis that the Contract Disputes Act (CDA) does not allow the Board to grant such relief. Additionally, the Board found that, while an assignment to a lender is valid only to the extent of the assignor's outstanding debt, the Federal Acquisition Regulation (FAR) dictates that, if the assignor believes that its obligations to the assignee have been fulfilled, it must submit a written notice of release signed by both the assignor and the assignee, a requirement that Heroes Hire's self-executed release did not satisfy. Ultimately, the Board held that the VA's termination of Heroes Hire's contract for cause, following Heroes Hire's breach of its contract by intentionally failing to provide services when due, was justified.

***Integhearty Wheelchair Van Services, LLC v. Department of Veterans Affairs*, CBCA 7318 (July 8, 2022)**

In recent years, the Board has seen several cases involving contracts that were described as indefinite-delivery, indefinite-quantity (IDIQ) contracts but that, crucially, contained no minimum purchase guarantee, leaving the contract enforceable only to the extent of work actually performed. As in those appeals, the appellant here, Integhearty Wheelchair Services, LLC (Integhearty), had a contract that purportedly was an IDIQ contract but contained no minimum guarantee. The Board held that, in such circumstances, the contractor was not entitled to an equitable adjustment for work not performed or for lost profits for work that it had anticipated performing but was not assigned. Unlike earlier cases, however, Integhearty raised specific allegations of bad faith against the contracting officer's representative (COR) involving retaliation against the contractor for failing to retain an employee who was a friend of the COR. The Board held that, because an IDIQ contract without a minimum guarantee is illusory and not enforceable beyond the work actually ordered and performed, alleged bad faith by the COR does not eradicate the illusory nature of the contract and allow the contractor to pursue lost profits for work not ordered. Nevertheless, the Board found that, to the extent that the contractor could show that the COR's retaliatory actions and efforts to interfere in the contractor's work increased the cost of the work actually performed, the contractor could be entitled to an equitable adjustment. Accordingly, the Board allowed Integhearty to proceed with claims seeking payment for cost increases tied to work actually performed that were allegedly caused by the COR's breach of the implied duty of good faith and fair dealing.

***International Development Solutions, LLC v. Department of State*, CBCA 6400, et al. (Mar. 16, 2022)**

International Development Solutions, LLC (IDS) alleged that it had incurred tax liabilities to the Afghan government and sought reimbursement of these costs under its cost-reimbursement contract with the Department of State. IDS had a complex corporate structure that involved multiple companies. The tax liabilities for which IDS sought payment were not paid by IDS itself but by other companies within IDS's corporate structure. IDS argued that the contract had been transferred by operation of law among the companies or, alternatively, that the other companies were nominal subcontractors. The Board rejected these arguments because they were unsupported by both the facts and the law. The Board found that costs will only be recognized if there is an economic sacrifice that the actual contractor incurs and that it is only the exceptional case in which the Board will disregard the corporate form the party has adopted. The Board held that, because IDS had not incurred the tax liabilities at issue, it was not entitled to recover.

***Mission Support Alliance, LLC v. Department of Energy*, CBCA 6477 (Aug. 17, 2022), aff'd on reconsideration, CBCA 6477-R (Oct. 20, 2022)**

Mission Support Alliance (MSA) had a cost-reimbursement contract with the Department of Energy (DOE) in which DOE disallowed costs that MSA paid to subcontractors. The costs in question were from three subcontracts with three different subcontractors. The Government argued that the costs were not recoverable because the subcontractors had not preserved timecards to support all of their labor costs. The Board stated that it did not necessarily agree with the Government's position that complete sets of timecards were necessary in the circumstances here, where more than six years had passed since at least some of the labor hours were incurred, but the Board determined that MSA and its subcontractors needed to present something to support the questioned costs beyond a contractor expert's otherwise unsupported opinion that any questioned costs were incurred and reasonable. The Board determined that it is the contractor's obligation to ensure maintenance of records that can support its costs. Accordingly, the Board denied MSA's claim for the subcontractor costs.

DECISIONS OF NOTE
COVID-19 AT THE BOARD

The Board addressed several cases in which the impact of the COVID-19 pandemic played a significant role, albeit in different ways:

The Effect of COVID on Pre-Existing Contracts.

Several decisions involved the effect of the pandemic on the performance of contracts that were awarded before the pandemic began. In *Nues, Inc. v. Department of Health & Human Services*, CBCA 7165 (Dec. 15, 2021), the Board had to consider the proper measure of compensation under a fixed-price contract after the Government issued a stop-work order in March 2020 in response to the COVID-19 pandemic before ultimately terminating the contract for convenience, reviewing each cost claimed to determine its reasonableness and recoverability. And in a series of appeals involving a single contractor, OWL, Inc. (OWL), the Board considered the effect of myriad directives and guidance that the Department of Veterans Affairs (VA) issued relating to the pandemic that limited the number of patients per trip and reduced the number of trip requests by instructing patients to conduct telehealth appointments under a series of different types of contracts. In *OWL, Inc. v. Department of Veterans Affairs*, CBCA 7183 (Dec. 20, 2021), the Board found that, because a contract purporting to be an indefinite-delivery, indefinite-quantity (IDIQ) contract did not include a minimum purchase guarantee, the contract was illusory, meaning that the contractor could not seek compensation for reduced work assignments after the pandemic began. In *OWL, Inc. v. Department of Veterans Affairs*, CBCA 7184 (Dec. 20, 2021), the Board found that OWL could not recover lost revenue under a requirements contract providing for ambulatory, wheelchair, and stretcher transportation services because, even though the pandemic reduced the amount of services that the parties originally anticipated would be needed, all required services were purchased through the contract, and the contract did not shift the risk of revenue loss because of a pandemic to the VA. Finally, in *OWL, Inc. v. Department of Veterans Affairs*, CBCA 7208 (Jan. 13, 2022), the Board found that, even though the pandemic reduced the originally estimated need for wheelchair van and sedan transportation services, the guaranteed minimum in the IDIQ contract had already been fulfilled before the pandemic began, meaning that the VA had satisfied its obligations under the contract.

Performance Problems on Contracts Awarded to Address COVID.

Other decisions involved contracts that agencies awarded because of, and to address the effects of, COVID-19, with resulting performance problems, two of which involved the same contractor. In *ORSA Technologies, LLC v. Department of Veterans Affairs*, CBCA 7141 (Jan. 18, 2022), and *ORSA Technologies, LLC v. Department of Veterans Affairs*, CBCA 7142 (Jan. 20, 2022), the Department of Veterans Affairs (VA) had awarded two contracts after the pandemic began to Orsa Technologies LLC (Orsa), seeking immediate delivery of nitrile gloves that the contractor was required to have had "on hand."

The VA terminated both contracts for cause after Orsa, which did not actually have such gloves "on hand" at the time of contract award, was unable to obtain and deliver acceptable gloves by the expedited contractual deadlines. In CBCA 7141, the VA declined to allow Orsa to substitute different nitrile gloves for those that were identified in the contract—gloves that had gone through pre-award quality testing—and terminated the contract for cause when Orsa did not deliver. The Board denied Orsa's challenge to the termination, finding the VA's rejection of Orsa's offer to provide substitute gloves permissible. In CBCA 7142, the VA agreed to accept substitute gloves, agreed to two extensions, and agreed to price increases, yet Orsa still did not deliver any gloves by the extended contract deadline. The Board also upheld this termination. In both cases, the Board rejected Orsa's argument that its inability to perform should be excused because the pandemic created an excusable delay. The Board held that, because the contractor was aware of the pandemic before it entered into these contracts, as well as before it executed the modifications for the contract at issue in CBCA 7142, the Excusable Delays clause did not apply and did not provide a basis for relief.

The Use of the Pandemic as an Excuse for Delays in Litigation.

In *United Facility Services Corp. v. General Services Administration*, CBCA 5272 (Feb. 16, 2022), *aff'd on reconsideration*, CBCA 5272-R (Apr. 4, 2022), the Board dismissed an appeal for failure to prosecute after the contractor, repeatedly citing to the pandemic as an excuse, made no effort to respond to the Government's written discovery requests, which were served only after the case had been effectively suspended for more than a year based upon the appellant's representations that, as a result of COVID, it was unable to devote time to discovery in the appeal. After months of no response, the General Services Administration (GSA) requested dismissal for failure to prosecute, and the appellant responded neither to the motion nor to a subsequent show cause order. After the Board granted the motion to dismiss, the appellant sought reconsideration, stating that it had significant challenges because of COVID-19 but providing no information about what challenges it faced; why it was unable to respond to any of the interrogatories, even partially; how COVID was impacting its efforts; or when it thought it could respond. In denying reconsideration, the Board indicated that simply citing the word "COVID" as a justification for delay, without anything more, is generally insufficient to excuse a failure to prosecute.

INCREASE IN FEMA ARBITRATIONS

As a result of an October 2018 amendment to the Robert T. Stafford Disaster Relief and Emergency Act, Congress designated the CBCA to arbitrate disputes between applicants for public assistance grants and the Federal Emergency Management Agency (FEMA) for disasters after January 1, 2016. The CBCA previously had such arbitration authority relating only to Hurricanes Katrina, Rita, and Gustav. The 2018 amendment, therefore, significantly expanded the number of applicants able to seek arbitration before the Board.

In recent years, the number of FEMA arbitrations docketed by the CBCA has grown steadily–from twelve arbitrations docketed in fiscal year 2020, to twenty-seven arbitrations docketed in fiscal year 2021, to fifty-two arbitrations docketed in fiscal year 2022. The CBCA expects these annual numbers to continue to rise sharply for the foreseeable future due to the fact that the applicants can come from any state or territory in the United States in which a disaster occurred. Our arbitrations come from many states including, but not limited to, California, Florida, Louisiana, Missouri, New Jersey, New York, North Carolina, Ohio, and Texas.

To implement the expanded authority, the CBCA adopted arbitration rules in 2019. The rules provide for a three-judge panel at a hearing at the CBCA offices in Washington, D.C., or for one judge to preside at another hearing location selected by the parties. Although the pandemic halted travel in 2020, the CBCA has successfully and seamlessly continued to arbitrate FEMA disputes virtually using Zoomgov.com. Although the CBCA anticipates a return to judicial travel for FEMA arbitrations during fiscal year 2023, we also expect to continue to offer the option for virtual arbitration hearings given the cost and time savings virtual hearings can provide.

CBCA LAW CLERKS
2022-2023

Ms. Lucinda Hendrix is a 2022 graduate of The George Washington University Law School, where she received a J.D. with a concentration in Government Procurement Law. While in law school Ms. Hendrix was the Senior Notes Editor of the Public Contract Law Journal. Her Note, Lessons from Disaster: Improving Emergency Response through Greater Coordination of Federal, State, and Local Efforts, was published in the fall 2021 issue of the Journal. Ms. Hendrix also served as the President of the Government Contracts Student Association and was a member of the Law School's Moot Court Board. She received her B.A. in History, *magna cum laude*, from the University of California, Los Angeles, with minors in Public Policy and Civic Engagement.

Mr. Logan Kemp is a 2022 graduate of The George Washington University Law School, where he received a J.D. with a concentration in Government Procurement Law. While in law school, Mr. Kemp was a member of the Public Contract Law Journal. Mr. Kemp interned at the General Services Administration, the United States Court of Federal Claims, and the Office of the Counsel to the Inspector General for the Social Security Administration. Mr. Kemp also worked for the law firm Brown Kiely, LLP. Mr. Kemp received a B.A. in Political Science and Economics, *summa cum laude*, from California State University, Sacramento.

Mr. Owen E. Salyers is a 2022 graduate of The Catholic University of America's Columbus School of Law, *cum laude*, where he also received a certificate from the Law and Technology Institute. Mr. Salyers served as an Associate Editor on the Catholic University Law Review, Vice-Chancellor for the Seigenthaler-Sutherland Cup National First Amendment Moot Court Competition, and Vice-President for Student Affairs of the Student Bar Association. Mr. Salyers also served as a Dean's Academic Fellow and sat on the Council for Professional Conduct as a 3L representative. Mr. Salyers received his Bachelor of Civil Engineering, *magna cum laude*, from The Catholic University of America, with honors in Liberal Studies and a minor in Politics.

CBCA EMPLOYEE RECOGNITION

SCOTT SYLKE
Clerk of the Board

The Board wants to acknowledge the outstanding work of our Clerk, Scott Sylke. Scott joined the Board in 2015 and became the Clerk of the Board in 2016. Scott has primary responsibility for managing case records, reviewing incoming filings for compliance with Board Rules, docketing new cases, and assigning judge panels. In his seven years at the Board, Scott has seen the Board through the transition from paper to electronic records. Currently, he is working hard with the Board's IT staff, including Arthur Hawkins, to develop a program that will transition the Board to an electronic docketing system, allowing parties to file and access case documents through an online CBCA portal. Scott's attention to detail and work ethic are commendable as is his personal history. Scott served in the U.S. Marine Corps from 1989-2001 where he had varied roles including military musician (trumpet), legal services specialist, and Senior Clerk of the Court for the Western Pacific Judicial Circuit in Okinawa, Japan. After leaving the Marine Corps in 2001 and before joining the Board, Scott worked for CACI International Inc. as project manager of a team supporting Department of Justice attorneys litigating spent nuclear fuel cases before the U.S. Court of Federal Claims and U.S. Court of Appeals for the Federal Circuit. Scott's work for the Board and his commitment to his country are noteworthy and admirable. Our sincerest thanks to Scott for all of his hard work!

DAVID WARREN
Budget Management Analyst

In fiscal year 2022, CBCA welcomed a new Budget Management Analyst, David Warren. David joined the Board as a full-time budget management analyst following five years as a program analyst for GSA's Technology Transformation Services (TTS). Prior to his time with TTS, David served as a Peace Corps volunteer in the Republic of North Macedonia. David received his B.A. in Political Science with a minor in Economics from Illinois Wesleyan University in 2012 and his M.A. in Political Science from Illinois State University in 2016. David has already made invaluable contributions to the CBCA budgeting program. David will pursue his contracting officer's warrant in the coming year, and we wish him luck in that endeavor!

CBCA EMPLOYEE RECOGNITION

JAMES "JIM" JOHNSON
Chief Counsel

The Board wants to acknowledge the many years of service of our Chief Counsel, Jim Johnson. Jim graduated *cum laude* from The University of Pennsylvania, with a B.A. in English, in 1976 and earned his J.D. from Georgetown University Law Center in 1982. Following law school, he briefly worked in private practice and clerked for Judge Joseph V. Colaianni at the United States Court of Federal Claims before joining the General Services Board of Contract Appeals (GSBCA) in 1986. He moved to the CBCA when its predecessor boards merged in January of 2007. At the CBCA, Jim is critical to the process of editing Board decisions and other public-facing documents. He also prepares numerous Board reports and other documents, including memoranda of agreement between the Board and other federal agencies, manages reimbursable billings, and writes the annual appropriation request. Moreover, Jim's institutional knowledge, thanks to his long service with this Board and the GSBCA, has been invaluable. It would not be possible to list all of Jim's legal, personal, and administrative contributions to the Board. We thank Jim for his hard work, humor, and attention to detail over a long and esteemed career.

FISCAL YEAR 2022 STATISTICS

The chart below details the total cases pending, filed, and resolved in FY 2022.

	ADR	Appeal	Debt	EAJA	FCIC	FEMA	FMCSA	ISDA	Other	Petition	Rate	RELO	TRAV	Total
On docket at start of fiscal year	35	275	7	3	0	10	0	8	0	0	0	8	3	**349**
Docketed	62	177	7	1	1	52	5	11	13	2	0	32	9	**372**
Resolved	66	194	12	3	0	41	4	10	5	2	0	30	8	375
Decision on merits	0	43	10	2	0	35	4	0	5	1	0	24	5	**129**
Granted	0	1	8	1	0	7	0	0	0	0	0	5	2	**24**
Granted-In-Part	0	8	0	0	0	6	2	0	0	0	0	2	1	**19**
Denied	0	34	2	1	0	22	2	0	5	1	0	17	2	**86**
Dismissals	0	151	2	1	0	6	0	10	0	1	0	6	3	**180**
Dismissed (voluntary)	0	136	2	1	0	5	0	10	0	1	0	5	2	**162**
Dismissed by decision	0	15	0	0	0	1	0	0	0	0	0	1	1	**18**
ADR Outcome	66	0	0	0	0	0	0	0	0	0	0	0	0	66
Fully Resolved	43	0	0	0	0	0	0	0	0	0	0	0	0	**43**
Partially Resolved	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
Not Resolved	23	0	0	0	0	0	0	0	0	0	0	0	0	**23**
Pending at close of fiscal year	31	258	2	1	1	21	1	9	8	0	0	10	4	**346**
Net change in docket	-4	-17	-5	-2	1	11	1	1	8	0	0	2	1	**-3**
Interlocutory Decisions	0	26	0	0	0	0	0	0	0	0	0	0	0	**26**

The chart below shows all electronic filings recieved by CBCA during FY 2022.

	Oct.	Nov.	Dec.	1st QTR.	Jan.	Feb.	Mar.	2nd QTR.	Apr.	May	Jun.	3rd QTR.	Jul.	Aug.	Sep.	4th QTR.	FY TOTAL
Processed	244	262	283	**789**	339	352	350	**1041**	354	304	322	**980**	276	335	343	**954**	**3764**
Not Processed	18	20	37	**75**	20	16	32	**68**	23	18	19	**60**	28	22	17	**67**	**270**
Rejected	5	23	7	**35**	12	10	8	**30**	9	12	5	**26**	6	10	6	**22**	**113**
Spam/Trash	26	18	16	**60**	33	27	12	**72**	8	11	10	**29**	14	23	9	**46**	**207**
TOTAL	**293**	**323**	**343**	**959**	**404**	**405**	**402**	**1211**	**394**	**345**	**356**	**1095**	**324**	**390**	**375**	**1089**	**4354**

Processed - Submissions found to be compliant with CBCA's rules and were included in the case record.

Not Processed - Submissions deemed not proper to include in the case record, such as acknowledgement of receipt emails from one party to the other, duplicate filings, and emails directed to the Clerk's office regarding general questions.

Rejected - Submissions found to be non-compliant with the CBCA's rules and were not included in the case record, such as filings with attachments that were not in PDF format, filings without the intended attachments, and filings in which the party submitted links in lieu of providing the actual documents.

Spam / Trash - Spam emails, advertisments, etc.

FISCAL YEAR 2022 STATISTICS

The chart below details all new cases docketed by the CBCA during FY 2022 by case type.

	Oct.	Nov.	Dec.	1st QTR.	Jan.	Feb.	Mar.	2nd QTR.	Apr.	May	Jun.	3rd QTR.	Jul.	Aug.	Sep.	4th QTR.	FY TOTAL
ADR	3	2	4	**9**	1	10	8	**19**	7	2	4	**13**	1	9	11	**21**	**62**
Appeal	10	6	14	**30**	11	19	9	**39**	20	15	17	**52**	14	14	28	**56**	**177**
Appeal Recon	0	1	0	**1**	0	0	1	**1**	0	0	0	**0**	0	0	1	**1**	**3**
Debt	1	0	2	**3**	1	1	0	**2**	0	2	0	**2**	0	0	0	**0**	**7**
EAJA Cost	0	0	0	**0**	0	0	1	**1**	0	0	0	**0**	0	0	0	**0**	**1**
FCIC	0	0	0	**0**	0	0	0	**0**	0	0	0	**0**	0	0	1	**1**	**1**
FCIC Recon	0	0	0	**0**	0	0	0	**0**	0	0	0	**0**	0	0	0	**0**	**0**
FEMA	3	4	6	**13**	6	4	5	**15**	4	11	3	**18**	2	2	2	**6**	**52**
FMCSA	2	0	0	**2**	1	0	1	**2**	0	0	0	**0**	0	0	1	**1**	**5**
ISDA	0	1	5	**6**	0	0	1	**1**	0	0	0	**0**	2	2	0	**4**	**11**
ISDA Recon	0	0	0	**0**	0	0	0	**0**	0	0	0	**0**	0	0	0	**0**	**0**
Other	0	0	0	**0**	1	0	0	**1**	0	0	0	**0**	0	0	0	**0**	**1**
Petition	0	0	0	**0**	0	0	1	**1**	1	0	0	**1**	0	0	0	**0**	**2**
Rate	0	0	0	**0**	0	0	0	**0**	0	0	0	**0**	0	0	0	**0**	**0**
Rate Recon	0	0	0	**0**	0	0	0	**0**	0	0	0	**0**	0	0	0	**0**	**0**
RELO	1	7	3	**11**	3	1	2	**6**	3	1	2	**6**	2	3	4	**9**	**32**
RELO Recon	0	0	1	**1**	0	1	0	**1**	0	0	0	**0**	0	0	0	**0**	**2**
Remand	0	0	0	**0**	0	0	0	**0**	0	0	6	**6**	0	0	0	**0**	**6**
TRAV	1	1	0	**2**	1	0	0	**1**	1	0	1	**2**	0	3	1	**4**	**9**
TRAV Recon	0	0	1	**1**	0	0	0	**0**	0	0	0	**0**	0	0	0	**0**	**1**
TOTAL	**21**	**22**	**36**	**79**	**25**	**36**	**29**	**90**	**36**	**31**	**33**	**100**	**21**	**33**	**49**	**103**	**372**

ADR - Alternative Dispute Resolution Case (Includes those with an underlying appeal)

Appeal - Contract Disputes Act Appeal of a Contracting Officer's Final Decision (COFD)

Debt - Debt Collection Case

EQJA Cost - Equal Access to Justice Act Case

FCIC - Federal Crop Insurance Corporation Case

FEMA - Federal Emergency Management Agency Arbitration

FMCSA - Federal Motor Carrier Safety Administration Case

ISDA - Indian Self Determination Act Case

Petition - Requesting an Order for a COFD

Rate - GSA Transportation Audit Case

RELO - Relocation Expenses Case

Recon - Reconsideration of any Type of Case

TRAV - Travel Expenses Case

The chart below shows filings and notices related to appeals of CBCA decisions to the United States Court of Appeals for the Federal Circuit in FY 2022.

	Oct.	Nov.	Dec.	1st QTR.	Jan.	Feb.	Mar.	2nd QTR.	Apr.	May	Jun.	3rd QTR.	Jul.	Aug.	Sep.	4th QTR.	FY TOTAL
Docketed	0	0	3	**3**	0	0	0	**0**	0	1	2	**3**	1	0	1	**2**	**8**
Certified List	0	0	2	**2**	1	0	0	**1**	0	0	1	**1**	2	1	1	**4**	**8**
Opinion	2	0	0	**2**	1	0	0	**1**	2	0	0	**2**	1	1	0	**2**	**7**
Mandate	1	0	0	**1**	1	0	0	**1**	0	0	2	**2**	0	1	1	**2**	**6**
TOTAL	**3**	**0**	**5**	**8**	**3**	**0**	**0**	**3**	**2**	**1**	**5**	**8**	**4**	**3**	**3**	**10**	**29**