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The Statute Of Limitations Under The Contract Disputes Act: Recent Developments

*By Paul E. Pompeo, Dominique L. Casimir, and Michael E. Samuels**

The law involving application of the six-year statute of limitations provision in the Contract Disputes Act (CDA)[1] continually evolves. Most notably, in 2014, the U.S. Court of Appeals for the Federal Circuit held that the statute of limitations is no longer a jurisdictional prerequisite.[2] Although two comprehensive BRIEFING PAPERS[3] have previously addressed the statute of limitations, this PAPER concentrates on recent developments in the case law. Thus, this BRIEFING PAPER begins with a brief overview of the statutory and regulatory language setting forth the CDA statute of limitations, the Federal Circuit's decision in *Sikorsky Aircraft Corp. v. United States* that the statute of limitations is not jurisdictional, but instead is an affirmative defense, and the impact of that decision on litigation. With that background, the PAPER then discusses the latest applications of the CDA statute of limitations, arranged by subject matter, focusing in particular on those decisions since the Federal Circuit's decision in *Sikorsky*, with some reach back to be contiguous with the last BRIEFING PAPER on this subject.

Overview

Statutory And Regulatory Language

The CDA statute of limitations provides: "Each claim by a contractor against the Federal Government relating to a contract and each claim by the Federal Government against a contractor relating to a contract shall be submitted within 6 years after the accrual of the claim."[4] Submitting a claim, in the case of a contractor's claim against the Government, means the contractor's written submission to the Contracting Officer (CO) requesting a decision.[5] A Government claim is typically embodied in a CO's final decision including a demand for payment.[6]

The critical determination involving application of the statute of limitations is identifying when a claim accrues. Although the CDA does not define claim

IN THIS ISSUE:

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accrual, Federal Acquisition Regulation (FAR) 33.201 defines "accrual of a claim" as "the date when all events, that fix the alleged liability of either the Government or the contractor and permit assertion of the claim, were known or should have been known. For liability to be fixed, some injury must have occurred. However, monetary damages need not have been incurred."[7] To determine when the alleged liability is fixed, courts and boards begin by examining the legal basis of the claim.[8] The relevant question is when the claimant knew or should have known that it had a potential claim. As the Armed Services Board of Contract Appeals (ASBCA) has held, "[o]nce a party is on notice that it has a potential claim, the statute of limitations can start to run."[9]

CDA Statute Of Limitations No Longer Considered Jurisdictional

From 1995, when the CDA statute of limitations first took effect,[10] through December 10, 2014, when the Federal Circuit decided *Sikorsky Aircraft Corp. v. United States*,[11] courts and boards of contract appeals treated the CDA's six-year statute of limitations as a jurisdictional prerequisite. This meant that a party could move to dismiss a time-barred CDA claim for lack of jurisdiction.[12] In such cases, the claimant, *i.e.*, the nonmoving party, bore the burden of proof, given its posture as the proponent of jurisdiction.[13] Under this regime, a contractor facing an untimely Government CDA claim had the opportunity to dispose of that claim expeditiously by moving to dismiss it for lack of jurisdiction. Such motions could be brought prior to discovery on the merits, thereby conserving substantial resources. Or, if some discovery were necessary, the court or boards could limit discovery to the issue of the statute of limitations.

The Federal Circuit's *Sikorsky* decision altered the landscape by holding that the CDA's six-year statute of limitations is not jurisdictional, but is, instead, an affirmative defense.[14] The Federal Circuit noted that, although it had previously characterized the CDA's six-year statute of limitations as jurisdictional, it was now changing course, recognizing that the U.S. Supreme Court had "repeatedly held that filing deadlines ordinarily are not jurisdictional" and are instead "quintessential claim-processing rules."[15] The Federal Circuit applied what it called "a readily administrable bright line rule" under which the inquiry is "whether Congress has clearly stated that [the limitations period] is jurisdictional[.]"[16]In the absence of a clear statement by Congress to such effect, the Supreme Court has "cautioned that courts should treat [a limitations period] as nonjurisdictional in character."[17] Although a statute need not use the word "jurisdictional" to convey its intent, courts can decipher Congress' intent by looking to such clues as the placement of the limitations period within the statutory scheme.[18]

In examining the CDA's six-year statute of limitations provision, the Federal Circuit concluded that Congress did not intend the limitations period to be jurisdictional in nature.[19] The court noted that the statute of limitations provision "does not speak in jurisdictional terms or refer in any way to the jurisdiction of the Claims Court."[20] Neither the explicit language of the statute nor the placement of the limitations provision within the statutory scheme provided any indication of congressional intent to make compliance with the limitations period a jurisdictional prerequisite.[21] Additionally, the court noted that the statute of limitations refers to the time within which a contractor must submit a claim to the CO for a decision, or, in the case of a Government claim, the time within which a CO must issue a final decision; the six-year statute of limitations, therefore, does not specify the time for filing an action in a reviewing court or board of contract appeals.[22] Moreover, even though the court and the boards of contract appeals had been treating the CDA's statute of limitations as a jurisdictional prerequisite for nearly a decade, the court ruled that there was not

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longstanding precedent such that the CDA's six-year statute of limitations could be considered jurisdictional pursuant to the doctrine of *stare decisis*.[23] The court acknowledged that, as a result of its holding that the statute of limitations is an affirmative defense and not jurisdictional, questions about a claimant's compliance with the statute of limitations "need not be addressed before deciding the merits."[24]

Impact On Litigation

Sikorsky represented a sea change in litigation of the CDA statute of limitations. Contractors may find it more challenging to dispose of untimely Government CDA claims expeditiously, particularly given the Federal Circuit's express statement that such challenges need not be decided before the reaching the underlying merits of the claim. The following are the ways in which litigating the statute of limitations has changed as a result of *Sikorsky*:

(1) *Motion for summary judgment*. In asserting the statute of limitations, the moving party must file a motion for summary judgment, as opposed to a motion to dismiss.[25]

(2) *Genuine issues of material facts*. The standard for resolving motions for summary judgment differs from that of a motion to dismiss. In deciding a motion to dismiss, the court or board of contract appeals presumes the truth of undisputed facts; disputed jurisdictional facts are subjected to the tribunal's own factfinding based upon review of the record.[26] Summary judgment, on the other hand, is appropriate only when there are no issues of material fact and the movant is entitled to judgment as a matter of law.[27] The court does not resolve factual disputes, but rather determines whether there are disputes of material facts.[28] A material fact is one that might affect the outcome of the case.[29] A genuine issue of material fact exists if a reasonable factfinder could find in favor of the nonmovant. The court will resolve any significant doubt over fact issues, and draw all reasonable inferences, in favor of the nonmoving party.[30]

(3) *Burden of proof*. When the statute of limitations was jurisdictional, the party asserting the claim (i.e., the nonmoving party) bore the burden of establishing, by a preponderance of the evidence, facts sufficient to invoke jurisdiction.[31] Now that the statute of limitations is an affirmative defense, the party seeking to invoke the statute of limitations (i.e., the moving party) bears the burden of proving that the claim accrued more than six years before assertion.[32]

(4) *Waiver*. Because the statute of limitations is an affirmative defense, it can be waived, such as if a party fails to assert it.

(5) *Sua sponte consideration unlikely.* A judge likely will not raise the issue of timeliness *sua sponte* if not raised by the litigants.[33]

(6) *Untimely claims*. Because the statute of limitations is an affirmative defense, the boards of contract appeals and Court of Federal Claims are not barred from hearing a case involving an untimely claim.

(7) *Voluntary tolling*. Parties may now request execution of an agreement to voluntarily toll the statute of limitations. The FAR recognizes that contracting parties may agree to a limitations period shorter than six-years,[34] which could suggest that parties may not agree to a longer limitations period. Indeed, in a pre-*Sikorsky* case interpreting that FAR provision, the Court of Federal Claims stated that contracting parties cannot lengthen the six-year statute of limitations by agreement.[35] However, there is no post-*Sikorsky* case holding that contracting parties cannot agree to toll the CDA's six-year statute of limitations. Accordingly, the Government often seeks to enter into a tolling agreement, particularly given the backlog of Defense Contract Audit Agency (DCAA) audits.

(8) *Discovery*. The boards of contract appeals and the Court of Federal Claims may be reticent to rule on the timeliness of a claim prior to adequate discovery.[36] However, if the facts are relatively straightforward, a moving party can prevail on a motion for summary judgment even without discovery.[37]

(9) *Resolution*. With the statute of limitations as an affirmative defense, many contractors have altered their approach to considering settlement, as resolution may now be deferred. Presumably, that is a lesser concern from the Government's perspective.

Although these changes are significant, there are many ways in which litigating the timeliness of CDA claims has remained unchanged post-*Sikorsky*. For instance:

(a) *Equal application to parties*. The statute of limitations continues to apply in equal fashion and with equal rigor to contractors and to the Government.[38]

(b) *Legal basis of the claim.* Determining when a CDA claim accrues still starts with examining the legal basis for the claim.[39]

(c) *Amount of damages*. Claim accrual is not delayed until a contracting party performs an audit or other financial analysis to determine the amount of its damages.[40]

(d) *Knowledge of the claim*. Claim accrual does not run from the date the CO or another particular individual with authority to certify a claim acquires knowledge of the potential claim.[41]

(e) *Reasonableness standard.* Claim accrual turns objectively based upon what facts are reasonably knowable.[42] The test for determining when the events were known or should have been known includes an intrinsic reasonableness component.[43]

(f) *Tolling*. The statute of limitations is not subject to tolling (outside of an agreement as discussed above) absent a showing of concealment or that the facts were inherently unknowable.[44]

Case Law Addressing The Statute Of Limitations

CAS: Failure To Comply With Disclosed Practice

In the pre-*Sikorsky* case *Raytheon Missile Systems*, Raytheon successfully challenged a time-barred Government claim by filing a motion to dismiss for lack of jurisdiction. The Government asserted a $17 million claim against Raytheon, stemming from the allegation that Raytheon had violated its disclosed Cost Accounting Standards (CAS) practices.[45] Raytheon submitted a CAS Disclosure Statement to the Defense Contract Management Agency (DCMA) effective January 1, 1999, that provided for excluding certain subcontract costs from the full burden of Raytheon's overhead rates.[46] Instead of receiving the full burden, this special category of subcontracts (called "Major Subcontracts") would receive a reduced, or "special," burden.[47] On June 18, 1999, Raytheon notified the DCMA Divisional Administrative Contracting Officer (DACO) that Raytheon was proposing to expand the application of this special burden to a broader group of major subcontractors, and that this change would be effective retroactively, as of January 1, 1999.[48] On July 20, 1999, Raytheon submitted a price proposal to the Government, which showed that one of Raytheon's subcontracts was not priced as a Major Subcontract, and therefore was not receiving the special burden.[49] A Government price analyst issued a report dated July 26, 1999, concluding that Raytheon had not priced the subcontract at issue as a Major Subcontract.[50]

Nevertheless, the DCAA waited until April 3, 2006, to issue a draft condition statement alleging that Raytheon improperly applied full burden to the subcontract, thereby failing to comply with disclosed cost accounting practices and causing the Government to pay increased costs of $17 million.[51] The CO issued a final decision on November 29, 2011.[52]

In its appeal of the Government claim at the ASBCA, Raytheon sought a declaration that the statute of limitations barred the Government's claim. Because the board treated the CDA's six-year statute of limitations as jurisdictional in this case, which predated *Sikorsky*, the board rejected the Government's argument that Raytheon bore the burden of proof. The board determined that the Government's November 29, 2011 claim was valid only if it accrued on or after November 29, 2005.[53] The board held that the Government claim was barred because Raytheon had disclosed sufficient facts to the Government in 1999 to place the Government on notice of a potential claim.[54]

The case is notable for the board's rejection of the Government's argument that the claim did not accrue in 1999 because the price analyst did not appreciate the significance of what Raytheon had disclosed. The board stated: "[C]laim accrual does not turn upon what a party subjectively understood; it objectively turns upon what facts are reasonably knowable."[55] The board also rejected the Government's argument that the claim could not accrue until the DACO became aware of the relevant facts, noting:

> The Government fails to cite any authority supporting the proposition that claim accrual is based only upon the knowledge of the individual clothed with authority to assert the claim. If that were the case, then both contractors and the Government could suspend accrual by internally compartmentalizing relevant information and insulating senior decision makers from it for as long as they choose. Nothing in FAR 33.201, which commences accrual of a claim when the events fixing alleged liability "were known or should have been known" by a party, contemplates permitting such gamesmanship.[56]

CAS: Accounting Change Cost Impacts

In another pre-*Sikorsky* case, *Raytheon Co., Space & Airborne Systems*, Raytheon moved for a declaratory judgment that the board lacked jurisdiction over the Government's allegedly time-barred CDA claims.[57] The claims sought recovery of costs purportedly resulting from accounting changes.[58]

The board held that one claim was timely and three were untimely.[59] Regarding the untimely claims, the board found that Raytheon had submitted notices of the accounting changes, along with their cost impacts, more than six years

prior to the Government's assertion of the claim, and this gave the Government sufficient information to put it on notice of a potential claim.[60] Though the Government contended that this submission did not contain sufficient detail to trigger the knowledge requirement for a claim to accrue, the board found that enough information had been provided for the Government to know "that some costs have been incurred, even if the amount is not finalized or a fuller analysis will follow."[61]

For the timely claim, Raytheon had submitted a form describing four changed accounting practices, of which one was the basis for the Government claim.[62] However, Raytheon did not provide cost impact information until a later date, one within six years of the assertion of the claim.[63] In finding the claim timely, the board held that the "knew or should have known" standard involves an element of reasonableness and that the form did not provide sufficient notice to begin claim accrual because it was unclear that there would be an adverse cost impact on the Government.[64] Finally, the board found that the Government was not required to pursue the cost impact information because the FAR 52.230-6 "Administration of Cost Accounting Standards" clause included in the contract placed a burden on the contractor to submit that information.[65]

Cost Disallowances

In *Raytheon Co. v. United States*, the Government asserted a claim for approximately $25 million in allegedly unallowable costs related to two retirement plans that Raytheon had acquired.[66] The Government asserted its claim against Raytheon in December 2008.[67] Raytheon contended that the claim was time barred because the Government knew or should have known of its potential claim for unallowable costs in 1999, when Raytheon and the Government entered into an advance agreement regarding those costs.[68]

The Government alleged that it did not know and could not have known that it had a potential claim against Raytheon until 2004, when the DCAA completed an initial audit and assessment.[69] The court disagreed, holding that the advance agreement contained information sufficient to trigger the knowledge requirement for claim accrual.[70] The court further found that delaying claim accrual until the DCAA-issued audit would impermissibly allow the Government to control the running of the six-year statute of limitations.[71]

Incurred Cost And Rate Proposals

In *Coherent Logix, Inc.*, CLX asserted that the CDA's six-year statute of limitations barred a CO's final decision asserting a claim for penalties.[72] Although the board ruled that this decision has no precedential value per Board Rule 12.2,[73] this case provides insights into how the board would proceed in a similar case. CLX submitted its original final indirect cost rate proposal on August 13, 2008, and the CO issued a final decision on November 21, 2014.[74] The question was whether the Government's claim accrued at the time the original proposal was submitted.[75] Placing the burden of proof on CLX, the board found that CLX failed to prove that the Government's claim accrued more than six years before the issuance of the CO's final decision.[76] The board found the claim did not accrue in 2008, because the proposal only included a line item for legal fees and did not clearly indicate that CLX was claiming patent legal costs, which were at issue in the claim.[77] The case is significant because the board held that despite the contractor's submission of its final indirect cost rate proposal, the Government could not know of its potential claim until the DCAA received the underlying general ledger detail. This is because the proposal simply listed "legal fees" generally and it was only in the general ledger detail that the Government could have known that the contractor was including patent legal costs. According to the board, CLX did not provide details of those patent legal costs until August 1, 2013.[78]

In *Alion Science & Technology Corp.*, Alion moved for summary judgment, arguing that the statute of limitations barred the Government's claim for expressly unallowable costs in Alion's final indirect cost rate proposal.[79] The board denied the motion, because it found that the Government presented evidence that the cost elements at issue were not identifiable in Alion's final indirect cost rate proposal.[80] Thus, the Government was able to show the existence of genuine issues of material facts in dispute.[81] The ultimate question of the timeliness of the claim had not been resolved.

In *Combat Support Associates*, the ASBCA denied a contractor's motion to dismiss an allegedly untimely Government claim.[82] The Administrative Contracting Officer (ACO) issued two final decisions—one demanding that the contractor pay the Government $332,167 in disallowed direct costs, and the other disallowing indirect costs and unilaterally determining the contractor's indirect cost rates for Fiscal Year 2006.[83] The contractor filed a motion to dismiss for lack of jurisdiction, arguing that the Government's claim accrued no later than May 20, 2007, when the contractor submitted its incurred cost submission (ICS).[84]

The Government argued that it had no knowledge or reason to know whether those costs were allowable until the contractor later submitted more detailed information about those costs.[85] The board found that the contractor, in filing its motion to dismiss, never "counter[ed] by demonstrating that, even without any supporting data, the government had, on 20 May 2007, the information it needed" to realize that it had a potential claim.[86] The board then described the ICS, noting that the ICS did not make evident the cost allowability issues that formed the basis for the Government's claim.[87] The board rejected the contractor's argument that it was not required to submit supporting information with its ICS, stating: "That misses the point. The issue raised by appellant's motion is when the government knew or should have known of its claims; not whether the ICS satisfied the requirements for an ICS."[88] Although this decision was later vacated[89] because the contractor moved for reconsideration and, in the interim, the Federal Circuit decided *Sikorsky*, which prompted the board to deny the motion, as well as the contractor's request to treat its motion to dismiss as a motion for summary judgment, the board's original analysis of claim accrual remains relevant in cases involving incurred cost submissions.

In *Technology Systems, Inc.*, the ASBCA ruled that a Government claim disallowing certain expenses in an indirect cost rate proposal cannot accrue until the contractor submits the indirect cost rate proposal.[90] The ASBCA found that the Government could not have questioned the costs until they were submitted. Here, as in many cases, the Government filed its claim one week shy of six years from submission of the incurred cost proposal.[91] The ASBCA acknowledged that prior year audits of the same types of costs that the Government was challenging "might" have bearing on the question of knowledge; yet, the claim would not accrue until the contractor submitted its incurred cost proposal.[92]

Audit Reports

In *Raytheon Missile Systems*, the board found that accrual of a claim is not delayed until the Government issues an audit or performs other financial analyses to determine the amount of its damages.[93] Similarly, a delay in assessing information available to a party also does not suspend accrual of a claim.[94] The board reaffirmed this conclusion in *Sparton DeLeon Springs, LLC*, where it rejected the Government's argument that a claim could not accrue until after an audit of interim vouchers.[95] The vouchers provided the requisite basis for knowledge and injury.[96] The Court of Federal Claims has also ruled that the Government cannot control the timing of claim accrual by conducting and issuing an audit.[97]

Knowledge Of Person With Authority

In *Raytheon Missile Systems*, the board rejected the Government's argument that its claim could not accrue until the CO had knowledge of the basis for the claim.[98] The board explained: "If that were the case, then both contractors and the Government could suspend accrual by internally compartmentalizing relevant information and insulating senior decision makers from it for as long as they choose."[99] The board dismissed the Government's claim as untimely.[100] Although this case was decided pre-*Sikorsky*, and under a motion to dismiss for lack of jurisdiction, the case remains relevant for the manner in which the board analyzed claim accrual. Even treating the statute of limitations as an affirmative defense, a party cannot control the timing of claim accrual by asserting that its claim accrues only when a particular person within the Government learns of the potential claim. Interestingly, the Government raised the same argument at the trial level of the *Sikorsky* case; the Court of Federal Claims acknowledged *Raytheon Missile Systems*, but elected not to speak on the issue.[101]

Subcontractor Termination Costs

In *Kellogg Brown & Root Services, Inc. v. Murphy*, the Federal Circuit reversed the ASBCA's holding that the CDA's six-year statute of limitations barred a contractor's claim against in the Government.[102] The contractor, KBR, asserted a claim for subcontractor costs arising from a termination of the subcontract on May 2, 2012.[103] In response to the Army's motion to dismiss the claim, the board found that the claim accrued on one of two possible dates, both lying outside of the six-year limitations period.[104] First, the board found that KBR's claim could have accrued on the date that its subcontractor stopped work, September 12, 2003.[105] Alternatively, the board found that KBR's claim could have accrued in January 2005, when KBR and its subcontractor entered into a written settlement agreement that segregated the subcontract costs at issue into a settlement amount—which was not at issue in the case—and a second category of costs as to which KBR and its subcontractor agreed that KBR would assert a Government claim.[106]

The Federal Circuit held that KBR's claim could not have accrued on the first of these two dates—the date that the subcontractor stopped work.[107] The court noted that, accord-

ing to the FAR, a claim does not accrue until KBR requested, or reasonably could have requested, a sum certain from the Government.[108] KBR could not have requested a sum certain from the Government as of the date the subcontractor stopped working because the reimbursable costs and profit entitlements were not then known due to disputes between KBR and its subcontractor.[109] In fact, when KBR tried to submit a claim to the Government prior to the resolution of these subcontractor disputes, the Government requested that KBR first resolve the outstanding dispute with its subcontractor before submitting a bill to the Government.[110]

The Federal Circuit also held that KBR's claim could not have accrued in January 2005, when KBR entered into a written agreement with its subcontractor segregating costs into a Settlement Amount (not at issue in the appeal) and other costs above that amount, which formed the basis for KBR's pass-through claim to the Army.[111] The written agreement did more than simply segregate costs.[112] It also converted KBR's earlier termination of the subcontract for default into a termination for convenience.[113] Accordingly. KBR and the subcontractor needed to resolve the issue of lost profits.[114] Until they did so, they did not have a sum certain, as required in order for a claim to exist, per the definition of "claim" in the FAR.[115]

The court sympathized with the Government's argument that this claim seemed to languish for many years, but the court did not agree that KBR had been able to unilaterally or indefinitely postpone accrual of its claim.[116] Rather, the court agreed with KBR that the "Allowable Cost and Payment" clause at FAR 52.216-7 limits the time within which a contractor may seek reimbursement after a "physically complete contract" has been performed.[117] The FAR requires the contractor to submit a "completion invoice or voucher," including "settled subcontract amounts," within 120 days after indirect cost rates are determined for all years of the contract, and then the contractor must release the Government from all further liabilities and claims under the contract except for specified and unknown claims.[118]

"Sum Certain" Implications Of Kellogg Brown & Root Services, Inc. v. Murphy

Interpreting *Kellogg Brown & Root Services, Inc. v. Murphy*, the Civilian Board of Contract Appeals (CBCA) acknowledged in *Crane & Co. v. Department of the Treasury* that "a 'claim' for 'the payment of money' does not 'accrue' until the amount of the claim, 'a sum certain,' FAR § 2.101 [defining "claim"], is 'known or should have been known.' "[119] However, the CBCA narrowed the holding of *Murphy*, finding that "[t]his cannot mean, however, that accrual of a claim under the CDA is uniformly deferred until a contractor has incurred all costs that it is going to incur from a contract breach or change. In the past, the Federal Circuit has clearly approved the contractor's submission of claims *before* the contractor has incurred all costs resulting from a change or breach."[120] The CBCA found that any interpretation of *Murphy* "as holding that a claim does not accrue until the contractor can identify and has incurred all costs resulting from a change or breach would directly conflict with the implementing FAR provision, as well as the Federal Circuit's past guidance as to when claims accrue."[121] Based upon the definition of claim accrual in FAR 33.201, only "some injury" and not "the totality of injury, need occur before the limitations period on a claim starts to run."[122] Accordingly, "[i]n response to a contract change, a contractor is entitled to submit a claim in a 'sum certain' that utilizes forward pricing for future anticipated costs; that reserves its right to claim additional amounts in the future for costs to be later incurred as a result of a change; or that reserves its right to revisit the claimed 'sum certain' amount until the time that a final release is executed."[123]

In another case, *Kellogg Brown & Root Services, Inc.,* the ASBCA cited the Federal Circuit's decision in *Murphy* solely for the proposition that fixing the date of accrual of a claim requires that there first be a claim.[124] The ASBCA did not further analyze the *Murphy* decision.[125] In this case, the ASBCA denied KBR's motion for summary judgment because KBR failed to establish undisputed material facts sufficient for the board to conclude that either the Government's nonmonetary or monetary claim was untimely.[126]

Direct Costs

A post-*Sikorsky* case, *Sparton DeLeon Springs, LLC*, is an example of a contractor successfully moving for summary judgment in a case involving a Government CDA claim. The Government issued a CO's final decision demanding reimbursement of an alleged overpayment of certain direct costs on October 26, 2015.[127] The Government alleged that it had no notice of its potential claim until the contractor, Sparton, submitted its final vouchers in response to a 2014 request by the CO, but the board disagreed, finding that there was no genuine dispute that the Government knew or should have known of a cost discrepancy that would have put it on notice of its potential claim no later than January 29, 2008.[128] As of this date, the Government knew or should have known that the costs at issue were not included in Sparton's indirect cost rate proposals.[129]

Indeed, the board found that the Government knew or should have known of its potential claim even earlier.[130] The undisputed facts showed that the Government paid the costs at issue pursuant to interim vouchers from January 2007 that contained sufficient identifying information.[131] The CO's final decision premised the Government's claim on insufficient support for those costs, and that lack of support would have been evident from the interim vouchers, which the Government paid.[132]

Notably, the board rejected the Government's argument that summary judgment was inappropriate because there had been no discovery in the appeal.[133] According to the board, "[w]hether the interim vouchers contained the necessary supporting documentation is something that the government should be able to substantiate on its own, without having to conduct discovery; at least, the government provides no indication why that is not the case."[134] Thus, in this case, the contractor not only succeeded in discharging its burden of proof to show that the Government's claim was untimely, but the contractor did so pre-discovery, thereby avoiding potentially wasteful expenditures of resources.[135]

The board also rejected the Government's argument that FAR 52.216-7(g), which addressed audits in the context of allowable cost and payments, trumps the statute of limitations by allowing the CO to adjust any prior overpayments following an audit.[136] Relying on *Raytheon Missile Systems*,[137] the board found that delay by a contracting party in assessing the information available to it does not suspend accrual of its claim.[138]

Prompt Payment Act

In *Public Warehousing Co., K.S.C.*, the Government brought a motion for summary judgment, arguing that the contractor's claim for $4.6 million in interest penalties allegedly due pursuant to the Prompt Payment Act (PPA)[139] was untimely.[140] The Government argued that the events fixing liability for late payment interest penalties occur, and a claim for the interest penalties accrues, once the Government fails to make timely payment on an invoice—that is, the day after the payment due date.[141]

The board rejected this argument for two reasons.[142] First, the board stated that the Government was conflating two different obligations—the obligation to make timely payment on an invoice and the obligation to pay an interest penalty for late payments.[143] Under the PPA, the Government has an obligation to pay the interest penalty for late payments automatically, and the Government breaches this obligation by failing to pay the interest penalty upon paying the underlying invoice.[144] Therefore, the claim accrued after the Government makes payment on the late invoice but fails to pay the associated interest penalty.[145] Second, the board found fault with the Government's motion because the Government had not established material facts regarding the dates when each invoice was paid and when the interest associated with each invoice should have been, but was not, paid.[146] The board ruled that "accrual [for a PPA interest claim] must be determined on an invoice-by-invoice basis."[147] The Government could not properly move for summary judgment by presenting summary arguments in a generalized fashion.[148] The board concluded that the Government's failure to introduce invoice-specific facts made it impossible for the board to apply the "should have known" test for claim accrual and that summary judgment was therefore inappropriate.[149]

Withheld Liquidated Damages

R.R. Gregory Corp. is a pre-*Sikorsky* case that is still relevant for its assessment of the timing of accrual when the claim is for liquidated damages. The U.S. Army Corps of Engineers contracted with Gregory for the construction of a fitness center at Walter Reed Army Medical Center.[150] The contract incorporated by reference FAR 52.211–12, "Liquidated Damages—Construction (Apr 1982)," which stated in paragraph (a): "If the Contractor fails to complete the work within the time specified in the contract, or any extension, the Contractor shall pay to the Government as liquidated damages, the sum of $1,015.00 for each day of delay." During the course of construction, the parties executed numerous contract modifications that gave Gregory a total of 549 extension days.[151] But finally, the ACO sent a letter to Gregory expressing disappointment with the "lack of progress towards completion" and stating a plan to withhold liquidated damages from Gregory's pay request as of December 1, 2002.[152] The Government determined that Gregory completed the work 141 days late, and therefore, the ACO sent Gregory a letter dated August 28, 2006, stating that the Government was withholding a total of $143,115.00 as liquidated damages.[153] On August 24, 2012, Gregory submitted a certified claim for the $143,115 in liquidated damages that the Government had withheld.[154] When the ACO did not issue a final decision, Gregory filed an appeal to the ASBCA on the deemed denial, and the Government moved to dismiss the appeal, arguing that the CDA's six-year statute of limitations barred Gregory's claim.[155]

The question before the board was when the claim for liquidated damages accrued.[156] The board found that liquidated damages can be assessed for the period between the date of contract completion and the date of beneficial occupancy or substantial completion.[157] The board held that Gregory's claim accrued on November 13, 2003, when the CO first assessed liquidated damages.[158] Because Gregory did not assert its claim until August 24, 2012, the statute of limitations barred Gregory's claim.[159]

Gregory tried to argue that the contract completion date was later than the date the board identified because from 2006 to 2011the parties were engaged in discussions about the effect of unadjusted change orders.[160] The board rejected this argument, citing *Raytheon Missile Systems*,[161] for the proposition that accrual of a claim is not delayed so that a party can determine the exact amount of its damages.[162]

The Statute Of Limitations Is Inapplicable To Affirmative Defenses

In *Supreme Foodservice GmbH*, the contractor filed an appeal from the CO's deemed denial of its claim for money allegedly owed to it under a contract for delivery of food and other products to the U.S. military and Defense Logistics Agency (DLA) customers in Afghanistan.[163] The CO also asserted a Government claim against Supreme, as well as three affirmative defenses.[164] The Government's affirmative defenses were that Supreme fraudulently induced DLA by materially misrepresenting its pricing and relationships prior to contract award and during performance, that Supreme had unclean hands due to violations by its personnel of conflicts-of-interest restrictions, and that it committed the first material contract breach.[165]

Supreme moved to dismiss and to strike the Government's affirmative defenses, and, in the event the board did not dismiss the affirmative defenses, Supreme moved for summary judgment on the basis that DLA's affirmative defenses are barred by the CDA's statute of limitations.[166] The board ruled that the statute of limitations applies only to claims, not to affirmative defenses.[167] It would be interesting to see the interplay between *Supreme Foodservices GmbH* and *M. Maropakis Carpentry, Inc. v. United States*, where the Federal Circuit held that a contractor's affirmative defense against a Government claim for liquidated damages required a separate, certified CDA claim as a matter of jurisdiction.[168]

Amending An Untimely Claim

In *Thorington Electrical & Construction Co.*, the contractor asserted a claim against the Government on July 16, 2015.[169] The board stated that it was "undisputed" that this claim had accrued "at the very latest" on April 28, 2009, when the contractor notified the Government of the potential claim at issue.[170] Although the limitations period, therefore, ostensibly ended on April 28, 2015, making the July 16, 2015 claim submission untimely, the contractor argued that the July 2015 submission to the CO was "merely an amendment of its earlier, timely claim, and that, as such, the 'amended' claim should relate back in time to the original claim pursuant to operation of [Federal Rule of Civil Procedure] 15(c)"[171] The board found that the Federal Rules did not apply because the board is an administrative body that only looks to the Federal Rules for guidance. Here, the contractor was attempting to amend the claim submitted to the CO, not the complaint filed before the board.[172]

The board rejected the contractor's argument, finding that no authority existed to allow a CDA claimant to amend a previously submitted claim, "much less allowing it to 'relate back' in time to the initial claim."[173] The ASBCA stated that to hold otherwise would provide a "back-door means to reset the statute of limitations."[174]

Defenses To The Statute Of Limitations

Continuing Claims Doctrine

The continuing claims doctrine, which provides for successive claims, rather than a single claim, applies if a claim is "inherently susceptible to being broken into a series of independent and distinct events or wrongs, each having its own associated damages."[175] If, however, the claim is "based upon a single distinct event, which may have continued ill effects later on," the continuing claims doctrine is not applicable.[176]

In *Raytheon Co.*, the Court of Federal Claims held that the continuing claims doctrine did not apply where Raytheon sought recovery of a fixed amount over an amortized period through its incurred cost claims pursuant to an advance agreement, because the entire amount was based on a single claim for recovery that the parties addressed in an advance agreement.[177] The entire claim therefore accrued as of the date of the advance agreement.[178]

In another case involving Raytheon Co., the ASBCA, while not specifically citing the continuing claims doctrine, found that the Government's claims (both for noncompliance with CAS 405 and for penalties for unallowable costs

under FAR 42.709) for alleged expressly unallowable incentive compensation costs for persons performing unallowable activities could be broken into a series of separate injuries.[179] The board held that the costs claimed for the period from 2002–2004 were barred by the statute of limitations, while those from 2004–2009 were timely.[180]

In *Fluor Corp.*, the Government asserted a claim against Fluor for increased costs that the Government allegedly paid to Fluor over the course of seven years for work performed on Government contracts.[181] The Government alleged that the increased costs occurred because Fluor failed to comply with applicable CAS.[182] Because this was a pre-*Sikorsky* case, Fluor moved to dismiss the Government's claim, alleging that the CDA's six-year statute of limitations provision barred the entire claim.[183] In particular, Fluor asserted that the Government's entire claim accrued when the Government had access to Fluor's cost accounting practices.[184] The board, however, disagreed and held that the "the government did not and could not know at that time, much less submit a CDA claim for, the increased cost of those practices to the government work over the next seven years until that work was performed, billed and paid."[185] In so holding, the board applied the continuing claims doctrine, explaining that the Government's claim was "inherently susceptible to being broken down into a series of independent and distinct events each having its own associated damages—namely, each payment by the government to Fluor for a CAS non-compliant billing on a government contract."[186]

Equitable Tolling

Equitable tolling allows a court to stay the statute of limitations if, under the circumstances, enforcing the limitations period would be unjust. A litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.[187] The Supreme Court has held that the second prong, "extraordinary circumstance," "is met only where the circumstances that caused a litigant's delay are both extraordinary and beyond its control."[188]

The Court of Federal Claims rejected the Government's request for equitable tolling in *Raytheon Co.*, discussed above. The Government argued that the CDA's statute of limitations should not be equitably tolled because of Raytheon's refusal to turn over records related to the Government's development of its claim, which Raytheon would have had to obtain from another contractor, Hughes Aircraft.[189] Raytheon contended that the documents were subject to a confidentiality agreement and were otherwise protected by the attorney-client privilege.[190] The Government did not file a motion to compel, opting instead to argue that Raytheon's refusal to turn over the documents was grounds for equitable tolling of the statute of limitations.[191] The court disagreed, and held that the Government had not met the standard for equitable tolling.[192] The court noted that Raytheon had represented to the court that the funds Raytheon received from Hughes in a settlement were not the same as the funds Raytheon was seeking from the Government, and the Government had provided no evidence to the contrary.[193] Additionally, the court found that the Government's "suggestion that plaintiff has not cooperated in discovery about the settlement is not sufficient to invoke equitable tolling where it has neither alleged wrongdoing by Raytheon nor sought assistance from the court" such as by filing a motion to compel.[194] Thus, the court held, the "Government has not met the stringent standards required for equitable tolling."[195]

In *Adamant Group for Contracting & General Trading*, the ASBCA rejected a contractor's argument that the limitations period was equitably tolled.[196] The contractor submitted an invoice to the Government for 650 tons of bulk cement in October 2004, but, when the invoice went unpaid, the contractor inexplicably waited nine years before pursuing the matter.[197] The contractor conceded that its claim was untimely but argued that it was barred from submitting its claim any earlier because of "the underlying danger of accessing U.S. facilities in Iraq, essentially suggesting that statute of limitations should be equitably tolled."[198] The board stated that the CDA statute of limitations may be tolled "when a litigant has (1) been pursuing his rights diligently, and (2) some extraordinary circumstance 'stood in his way and prevented timely filing.' "[199] The board looked at the facts of this case and found that the contractor provided no reason for its delay in submitting a claim that it could have submitted back in 2004.[200] Indeed, the contractor submitted another smaller invoice in 2004 that the Government had paid, and there was no reason that the larger, unpaid invoice could not have been submitted at the same time.[201] Moreover, the contractor had been able to send follow-up communication to the CO by email and phone regarding the larger, unpaid invoice in 2005, notwithstanding any purported danger in Iraq.[202] The board thus held that the contractor did not diligently pursue its rights such that equitable tolling was not warranted.[203]

The Court of Federal Claims denied a contractor's request

for equitable tolling of the statute of limitations in *Al-Juthoor Contracting Co. v. United States*.[204] In that case, the Army Corps of Engineers issued a task order to the contractor in September 2004 for the construction of a courthouse in Iraq.[205] The contractor submitted a certified claim to the CO on July 26, 2013, asserting seven claims and demanding payment of more than $7 million.[206] The court held that the CDA's six-year statute of limitations barred five of the seven claims.[207] As to those time-barred claims, the court assessed whether the statute of limitations should be equitably tolled.[208] The court noted that "equitable tolling against the federal government is a narrow doctrine" that "must be strictly construed."[209] In particular, "mere excusable neglect is not enough to establish a basis for equitable tolling; there must be a compelling justification for delay, such as 'where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass.' "[210] Moreover, the "the mere continuance of negotiations. . .constitutes no reason to extend the limitations period."[211] The contractor argued that equitable tolling should apply because it was induced into postponing the pursuit of its claims because individuals in the contracting office stated that the claims would be addressed before the close of the contract.[212] The court held that equitable tolling was not warranted because these Government statements did not amount to misconduct.[213] In particular, the court found no statements by Government personnel suggesting that the contractor forgo legal action, nor had the government promised any payment.[214]

Accrual Suspension Doctrine

Normally, the beginning of a statute of limitations period cannot be delayed by the parties. The "accrual suspension" doctrine excepts situations where one party has concealed its acts with the result that the other party was unaware of the existence of the acts or where the injury was 'inherently unknowable' at the time the cause of action accrued.[215] In *Raytheon Co. v. United States,* discussed above, the Government argued for accrual suspension but the court ruled that there was no evidence that Raytheon concealed its intentions, nor were any of the relevant facts inherently unknowable to the Government.[216]

Guidelines

The following *Guidelines* are suggestions to aid in your understanding of claim accruals related to the statute of limitations under Government contracts. They are not, however, a substitute for professional representation in any specific situation.

1. Maintain comprehensive, contemporaneous documentation on issues that have a clear potential to be in dispute and ultimately result in a claim.

2. Always first consider when liability was "fixed." When did the other party know or have reason to know the elements of the basis of your claim? This consideration has a reasonableness standard.

3. For accrual to begin, the party you are asserting a claim against must have known or should have known of the facts that "fixed" their liability.

4. Remember that some injury, whether monetary or otherwise, must have occurred for the claim to accrue.

5. Consider the risk to the timeliness of your claim caused by waiting to assert the claim until after completion of performance.

6. Recognize that the statute of limitations is no longer jurisdictional, which means a court or board may defer considering the issue until it takes up the merits, potentially undermining the utility of the statute of limitations as a means of achieving efficacious resolution of untimely claims.

7. Because the statute of limitations is an affirmative defense it can be waived; be careful not to waive the defense.

8. Be aware that whether for the Government or a contractor, internal audits, DCAA audits, and administrative procedures will not toll the statute of limitations.

9. If there appears to have been misconduct by the other party that resulted in a delay in bringing your claim, remember that equitable tolling is a possibility under those circumstances.

ENDNOTES:

[1]41 U.S.C.A. §§ 7101–7109.

[2]Sikorsky Aircraft Corp. v. United States, 773 F.3d 1315 (Fed. Cir. 2014).

[3]See West & Cassidy, "Contract-Related Statutes of Limitations," 97-07 Briefing Papers 1 (June 1997); Willard, "Limitations of Actions Under the Contract Disputes Act," 13-9 Briefing Papers 1 (Aug. 2013).

[4]41 U.S.C.A. § 7103(a)(4)(A).

[5]41 U.S.C.A. § 7103(a)(1).

[6]41 U.S.C.A. § 7103(a)(3); FAR 33.211(a)(4)(vi).

[7]FAR 33.201.

[8]Gray Personnel, Inc., ASBCA No. 54652, 06-2 BCA ¶ 33,378 ("To determine when liability is fixed, we start by examining the legal basis of the particular claim.") (citing RGW Communications, Inc. d/b/a Watson Cable Co., ASBCA No. 54495 et al., 05-2 BCA ¶ 32,972, at 163,331–32).

[9]Gray Personnel, Inc., ASBCA No. 54652, 06-2 BCA ¶ 33,378.

[10]The CDA's six-year statute of limitations provision (added by the Federal Acquisition Streamlining Act of 1994, Pub. L. No. 103-355, § 2351) does not apply to contracts awarded prior to October 1, 1995 (the effective date of the FAR implementation). FAR 33.206.

[11]Sikorsky Aircraft Corp. v. United States, 773 F.3d 1315 (Fed. Cir. 2014).

[12]Sys. Dev. Corp. v. McHugh, 658 F.3d 1341, 1347 (Fed. Cir. 2011) ("Contractor compliance with this statutory time limit on the presentment of a claim to a CO is a jurisdictional prerequisite. . . ."); Arctic Slope Native Assoc., Ltd. v. Sebelius, 583 F.3d 785, 793, 800 (Fed. Cir. 2009); England v. Swanson Grp., Inc., 353 F.3d 1375, 1379 (Fed. Cir. 2004).

[13]R.R. Gregory Corp., ASBCA No. 58517, 14-1 BCA ¶ 35,524.

[14]Sikorsky Aircraft Corp. v. United States, 773 F.3d 1315 (Fed. Cir. 2014).

[15]Sikorsky Aircraft Corp. v. United States, 773 F.3d 1315, 1321 (Fed. Cir. 2014).

[16]Sikorsky Aircraft Corp. v. United States, 773 F.3d 1315, 1321 (Fed. Cir. 2014).

[17]Sikorsky Aircraft Corp. v. United States, 773 F.3d 1315, 1321 (Fed. Cir. 2014).

[18]Sikorsky Aircraft Corp. v. United States, 773 F.3d 1315, 1321 (Fed. Cir. 2014).

[19]Sikorsky Aircraft Corp. v. United States, 773 F.3d 1315, 1322 (Fed. Cir. 2014).

[20]Sikorsky Aircraft Corp. v. United States, 773 F.3d 1315, 1322 (Fed. Cir. 2014) (discussing 41 U.S.C.A. § 7103) Sikorsky was an appeal from a decision by the Court of Federal Claims. The cited language, though speaking specifically about the Court of Federal Claims, applies equally to the boards.

[21]Sikorsky Aircraft Corp. v. United States, 773 F.3d 1315, 1321 (Fed. Cir. 2014).

[22]Sikorsky Aircraft Corp. v. United States, 773 F.3d 1315, 1321 (Fed. Cir. 2014).

[23]Sikorsky Aircraft Corp. v. United States, 773 F.3d 1315, 1321–22 (Fed. Cir. 2014).

[24]Sikorsky Aircraft Corp. v. United States, 773 F.3d 1315, 1322 (Fed. Cir. 2014).

[25]See Al Nawars Co., ASBCA No. 59043, 15-1 BCA ¶ 35,955 (denying the Government's pending motions to dismiss in light of Sikorsky ruling); LRV Envtl., Inc., ASBCA No. 58727, 15-1 BCA ¶ 36,042 (denying Government's motion to dismiss based upon Sikorsky ruling); Sys. Mgmt. & Res. Techs. Corp. v. Dep't of Energy, CBCA No. 4068, 15-1 BCA ¶ 35,976 ("[B]ecause the statute of limitations issue is no longer jurisdictional, the party seeking to enforce the limitations period must do so using the same procedural rules that the Board applies to other non-jurisdictional issues: motions for failure to state a claim, summary relief procedures, and, if there are genuine issues of material fact relating to the statute of limitations issue, a hearing or record submission to resolve competing versions of the facts.").

[26]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241, at 173,016.

[27]Mingus Constructors, Inc. v. United States, 812 F.2d 1387, 1390–91 (Fed. Cir. 1987).

[28]Free & Ben, Inc., ASBCA No. 56129, 09-1 BCA ¶ 34,127, at 168,742.

[29]Andersen v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

[30]MIC/CCS, Joint Venture, ASBCA No. 58023, 14-1 BCA ¶ 35,678, at 174,635; Alion Sci. & Tech. Corp., ASBCA No. 58992, 15-1 BCA ¶ 36,168, at 176,492.

[31]Combat Support Assocs., ASBCA No. 58945, 14-1 BCA ¶ 35,782 (citing Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988)).

[32]Supreme Foodservice GmbH, ASBCA No. 57884, 2016 WL 3264699 (Mar. 17, 2016).

[33]See Bowles v. Russell, 551 U.S. 205, 216–17 (2007) ("While a mandatory but nonjurisdictional limit is enforceable at the insistence of a party claiming its benefit or by a judge concerned with moving the docket, it may be waived or mitigated in exercising reasonable equitable discretion. But if a limit is taken to be jurisdictional, waiver becomes impossible, meritorious excuse irrelevant (unless the statute so provides), and sua sponte consideration in the courts of appeals mandatory. . . .").

[34]FAR 33.206(a).

[35]Raytheon Co. v. United States, 104 Fed. Cl. 327, 331 n.4 (2012), aff'd on recons., 105 Fed. Cl. 351 (2012).

[36]Ryan Co., ASBCA No. 58137, 15-1 BCA ¶ 35,998; Raytheon Co., ASBCA No. 58849, 15-1 BCA ¶ 36,000.

[37]Sparton DeLeon Springs, LLC, ASBCA No. 60416, 17-1 BCA ¶ 36,601 (2016).

[38]McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325 (2009).

[39]Gray Personnel, Inc., ASBCA No. 54652, 06-2 BCA ¶ 33,378.

[40]Sparton DeLeon Springs, LLC, ASBCA No. 60416, 17-1 BCA ¶ 36,601 (2016); Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241; Lockheed Martin Corp., ASBCA No. 57525, 12-1 BCA ¶ 35,017 ("the accrual definition and the case law make clear that a claimant need not be aware of the full impact of its increased costs/damages for its claim to accrue; however, for liability to be fixed at least some injury to claimant must be shown"); McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325 (2009) ("When monetary damages are alleged, some extra costs must have been incurred before liability

can be fixed and a claim accrued, but there is no requirement that a sum certain be established.") (citing Gray Personnel, Inc., ASBCA No. 54652, 06-2 BCA ¶ 33,378).

[41]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[42]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[43]Kellogg Brown & Root Servs., Inc., ASBCA No. 58175, 15-1 BCA ¶ 35,988.

[44]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[45]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[46]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[47]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[48]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[49]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[50]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[51]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[52]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[53]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[54]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[55]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[56]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[57]Raytheon Co., Space & Airborne Sys., ASBCA No. 57801, 13 BCA ¶ 35,319.

[58]Raytheon Co., Space & Airborne Sys., ASBCA No. 57801, 13 BCA ¶ 35,319.

[59]Raytheon Co., Space & Airborne Sys., ASBCA No. 57801, 13 BCA ¶ 35,319.

[60]Raytheon Co., Space & Airborne Sys., ASBCA No. 57801, 13 BCA ¶ 35,319.

[61]Raytheon Co., Space & Airborne Sys., ASBCA No. 57801, 13 BCA ¶ 35,319.

[62]Raytheon Co., Space & Airborne Sys., ASBCA No. 57801, 13 BCA ¶ 35,319.

[63]Raytheon Co., Space & Airborne Sys., ASBCA No. 57801, 13 BCA ¶ 35,319.

[64]Raytheon Co., Space & Airborne Sys., ASBCA No. 57801, 13 BCA ¶ 35,319.

[65]Raytheon Co., Space & Airborne Sys., ASBCA No. 57801, 13 BCA ¶ 35,319.

[66]Raytheon Co. v. United States, 104 Fed. Cl. 327, 329 (2012).

[67]Raytheon Co. v. United States, 104 Fed. Cl. 327, 330 (2012).

[68]Raytheon Co. v. United States, 104 Fed. Cl. 327, 330 (2012).

[69]Raytheon Co. v. United States, 104 Fed. Cl. 327, 330–31 (2012).

[70]Raytheon Co. v. United States, 104 Fed. Cl. 327, 331 (2012).

[71]Raytheon Co. v. United States, 104 Fed. Cl. 327, 331–32 (2012).

[72]Coherent Logix, Inc., ASBCA No. 59725, 15-1 BCA ¶ 35,947.

[73]Coherent Logix, Inc., ASBCA No. 59725, 15-1 BCA ¶ 35,947, n.1; see 41 U.S.C.A. § 7106(b)(5).

[74]Coherent Logix, Inc., ASBCA No. 59725, 15-1 BCA ¶ 35,947.

[75]Coherent Logix, Inc., ASBCA No. 59725, 15-1 BCA ¶ 35,947.

[76]Coherent Logix, Inc., ASBCA No. 59725, 15-1 BCA ¶ 35,947.

[77]Coherent Logix, Inc., ASBCA No. 59725, 15-1 BCA ¶ 35,947.

[78]Coherent Logix, Inc., ASBCA No. 59725, 15-1 BCA ¶ 35,947.

[79]Alion Sci. & Tech. Corp., ASBCA No. 58992, 15-1 BCA ¶ 36,168.

[80]Alion Sci. & Tech. Corp., ASBCA No. 58992, 15-1 BCA ¶ 36,168.

[81]Alion Sci. & Tech. Corp., ASBCA No. 58992, 15-1 BCA ¶ 36,168.

[82]Combat Support Assocs., ASBCA No. 58945, 14-1 BCA ¶ 35,782, vacated, 15-1 BCA ¶ 35,923.

[83]Combat Support Assocs., ASBCA No. 58945, 14-1 BCA ¶ 35,782, vacated, 15-1 BCA ¶ 35,923.

[84]Combat Support Assocs., ASBCA No. 58945, 14-1 BCA ¶ 35,782, vacated, 15-1 BCA ¶ 35,923.

[85]Combat Support Assocs., ASBCA No. 58945, 14-1 BCA ¶ 35,782, vacated, 15-1 BCA ¶ 35,923.

[86]Combat Support Assocs., ASBCA No. 58945, 14-1 BCA ¶ 35,782, vacated, 15-1 BCA ¶ 35,923.

[87]Combat Support Assocs., ASBCA No. 58945, 14-1 BCA ¶ 35,782, vacated,15-1 BCA ¶ 35,923.

[88]Combat Support Assocs., ASBCA No. 58945, 14-1 BCA ¶ 35,782, vacated, 15-1 BCA ¶ 35,923.

[89]Combat Support Assocs., ASBCA No. 58945, 15-1 BCA ¶ 35,923.

[90]Technology Sys., Inc., ASBCA No. 59577, 17-1 BCA ¶ 36,631.

[91]Technology Sys., Inc., ASBCA No. 59577, 17-1 BCA ¶ 36,631.

[92]Technology Sys., Inc., ASBCA No. 59577, 17-1 BCA ¶ 36,631.

[93]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[94]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[95]Sparton Deleon Springs, LLC, ASBCA No. 60416, 17-1 BCA ¶ 36,601 (2016).

[96]Sparton Deleon Springs, LLC, ASBCA No. 60416, 17-1 BCA ¶ 36,601 (2016).

[97]Raytheon Co. v. United States, 105 Fed. Cl. 351, 353 (2012).

[98]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[99]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[100]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[101]Sikorsky Aircraft Corp. v. United States, 110 Fed. Cl. 210, 221 n.22 (2013), aff'd in part, appeal dismissed in part, 773 F.3d 1315 (Fed. Cir. 2014).

[102]Kellogg Brown & Root Servs., Inc. v. Murphy, 823 F.3d 622, 624 (Fed. Cir. 2016).

[103]Kellogg Brown & Root Servs., Inc. v. Murphy, 823 F.3d 622, 624 (Fed. Cir. 2016).

[104]Kellogg Brown & Root Servs., Inc. v. Murphy, 823 F.3d 622, 625 (Fed. Cir. 2016).

[105]Kellogg Brown & Root Servs., Inc. v. Murphy, 823 F.3d 622, 625 (Fed. Cir. 2016).

[106]Kellogg Brown & Root Servs., Inc. v. Murphy, 823 F.3d 622, 625 (Fed. Cir. 2016).

[107]Kellogg Brown & Root Servs., Inc. v. Murphy, 823 F.3d 622, 626–27 (Fed. Cir. 2016).

[108]Kellogg Brown & Root Servs., Inc. v. Murphy, 823 F.3d 622, 626–29 (Fed. Cir. 2016).

[109]Kellogg Brown & Root Servs., Inc. v. Murphy, 823 F.3d 622, 626–29 (Fed. Cir. 2016).

[110]Kellogg Brown & Root Servs., Inc. v. Murphy, 823 F.3d 622, 626–29 (Fed. Cir. 2016).

[111]Kellogg Brown & Root Servs., Inc. v. Murphy, 823 F.3d 622, 629 (Fed. Cir. 2016).

[112]Kellogg Brown & Root Servs., Inc. v. Murphy, 823 F.3d 622, 629 (Fed. Cir. 2016).

[113]Kellogg Brown & Root Servs., Inc. v. Murphy, 823 F.3d 622, 629 (Fed. Cir. 2016).

[114]Kellogg Brown & Root Servs., Inc. v. Murphy, 823 F.3d 622, 629 (Fed. Cir. 2016).

[115]Kellogg Brown & Root Servs., Inc. v. Murphy, 823 F.3d 622, 629 (Fed. Cir. 2016); see FAR 2.101 ("Claim means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. However, a written demand or written assertion by the contractor seeking the payment of money exceeding $100,000 is not a claim under 41 U.S.C. chapter 71, Contract Disputes, until certified as required by the statute. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in [FAR] 33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.").

[116]Kellogg Brown & Root Servs., Inc. v. Murphy, 823 F.3d 622, 629 (Fed. Cir. 2016).

[117]Kellogg Brown & Root Servs., Inc. v. Murphy, 823 F.3d 622, 629 (Fed. Cir. 2016).

[118]Kellogg Brown & Root Servs., Inc. v. Murphy, 823 F.3d 622, 629 (Fed. Cir. 2016); see FAR 52.216-7(d)(5), (h).

[119]Crane & Co. v. Dep't of the Treasury, CBCA No. 4965, 16-1 BCA ¶ 36,539.

[120]Crane & Co. v. Dep't of the Treasury, CBCA No. 4965, 16-1 BCA ¶ 36,539.

[121]Crane & Co. v. Dep't of the Treasury, CBCA No. 4965, 16-1 BCA ¶ 36,539.

[122]Crane & Co. v. Dep't of the Treasury, CBCA No. 4965, 16-1 BCA ¶ 36,539.

[123]Crane & Co. v. Dep't of the Treasury, CBCA No. 4965, 16-1 BCA ¶ 36,539 (citations omitted).

[124]Kellogg Brown & Root Servs., Inc., ASBCA No. 58518, 16-1 BCA ¶ 36,408.

[125]Kellogg Brown & Root Servs., Inc., ASBCA No. 58518, 16-1 BCA ¶ 36,408.

[126]Kellogg Brown & Root Servs., Inc., ASBCA No. 58518, 16-1 BCA ¶ 36,408.

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[128]Sparton DeLeon Springs, LLC, ASBCA No. 60416, 17-1 BCA ¶ 36,601 (2016).

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[135]Sparton DeLeon Springs, LLC, ASBCA No. 60416 (2016).

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[137]Raytheon Missile Sys., ASBCA No. 58011, 13 BCA ¶ 35,241.

[138]Sparton DeLeon Springs, LLC, ASBCA No. 60416, 17-1 BCA ¶ 36,601 (2016).

[139]31 U.S.C.A. §§ 3901–3907.

[140]Pub. Warehousing Co., K.S.C., ASBCA No. 59020, 16-1 BCA ¶ 36,366.

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[169]Thorington Elec. & Constr. Co., ASBCA No. 60476, 2017 WL 840393 (Feb. 16, 2017).

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[176]Gray Personnel, Inc., ASBCA No. 54652, 06-2 BCA ¶ 33,378.

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[198]Adamant Group for Contracting & Gen. Trading, ASBCA No. 60316, 16-1 BCA ¶ 36,577.

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[212]Al-Juthoor Contracting Co. v. United States, 129 Fed. Cl. 599, 615 (2016).

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