Recent case law has significantly clarified the application of the statute of limitations to matters arising under the Contract Disputes Act. This is especially true when it comes to Government claims. While the case law relating to contractor claims is fairly well established, historically very few cases addressed the statute’s application to Government claims. In the past few years, cases have clarified how the CDA statute of limitations applies to various types of Government claims, including defective pricing claims, claims for the cost impact of accounting changes, Cost Accounting Standards noncompliance claims, and cost disallowance claims.

The purpose of this Briefing Paper is to summarize the cases addressing the application of the CDA statute of limitations, especially as it applies to Government claims.

**Types Of Limitations**

For claims subject to the CDA, two kinds of “limitations” periods apply. The first, which is the principal focus of this Briefing Paper, is the CDA statute of limitations (also called the CDA’s “presentation period”), which requires the claimant to...
“submit” claims within six years of their accrual.\(^2\)
The second kind of “limitation” is the period following a Contracting Officer’s final decision within which the contractor must file an action in the U.S. Court of Federal Claims (12 months) or an appeal to the board of contract appeals (90 days).\(^3\) This “second” kind of limitation period raises its own, unique issues, as noted briefly later in this Paper.

The CDA’s Six-Year Limitations Period

Under the CDA,\(^4\)

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.

Thus, the six-year limitations period generally applies to all contract claims. However, an exception is carved out for “a claim by the Federal Government against a contractor that is based on a claim by the contractor involving fraud.”\(^5\)
The CDA limitations provision was added by the Federal Acquisition Streamlining Act in 1994.\(^6\)
FAR 33.206 implements this provision of the CDA and also provides that the six-year period does not apply to contracts awarded prior to October 1, 1995, the regulation’s effective date.\(^7\)

Although the key element of the statutory proscription is the date of a claim’s “accrual,” the CDA itself does not define that term. The FAR does, however. In language promulgated in 1995\(^8\) and slightly revised in 2001,\(^9\) the FAR defines accrual of a claim as the date\(^10\)—

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.

In promulgating the original version of this regulation—which is substantively identical to the above (current) version—the FAR Council noted that commenters had proposed a number of alternate definitions of “accrual.” In apparent response to comments, the FAR Council stated that “[i]n addition to the discovery of events, a discovery of some damage has been added to cover the unusual case where the party is aware of the events giving rise to the claim but not of any resulting damage.”\(^11\) As discussed below, the application of the “discovery” rule, particularly to Government claims, has been addressed extensively in recent case law.

The CDA’s six-year limitation period is viewed as an aspect of the waiver of the Government’s sovereign immunity under the CDA and has been held to be jurisdictional.\(^12\) As stated by the Armed Services Board of Contract Appeals in McDonnell Douglas,\(^13\)

Because the government’s...claim upon which the COs’ decisions were based is time-barred and not cognizable under the CDA, the CO’s decision on the matter is a nullity and we do not have jurisdiction to entertain an appeal from the purported decision.

The conclusion that the CDA statute of limitations is jurisdictional means, among other things, that (a) the limitations period cannot be waived by the parties or voluntarily tolled,\(^14\) (b) the limitations bar may be asserted at any time during the proceedings,\(^15\) and (c) the contention that a claim is not barred by the statute, once challenged, must be supported with evidence produced by the party asserting the forum’s jurisdiction.\(^16\)
Accrual Of A Claim

Although FAR 33.201 defines “accrual of a claim,” case law has further explicated this provision’s meaning. One of the decisions that has most fully analyzed the provision is Gray Personnel, Inc., decided by the ASBCA in 2006, where the issue was when a contractor’s constructive change claim accrued. As a general rule, a claim accrues on the date when all events have occurred that fix the liability of the Government or contractor and entitle the claimant to institute an action. Thus, as the board explained in Gray Personnel, “[o]nce a party is on notice that it has a potential claim, the statute of limitations can start to run.”

More specifically, under the analysis in Gray Personnel, “accrual” under FAR 33.201 turns on the answers to three questions: (1) when was liability fixed; (2) when did the claimant know (or when should it have known) the events that fixed liability; and (3) when did injury first occur. Each of these three elements can raise significant issues.

To determine when liability is fixed, the court or board of contract appeals examines the legal basis of the particular claim. Ordinarily, this means that the court or board of contract appeals will refer to the formal elements of the claim. Thus, for example, in a defective pricing case, the board will examine when the Government knew or should have known information relating to the formal elements of a defective pricing claim. In a claim for noncompliance with CAS 418, “Allocation of Direct and Indirect Costs,” the court will seek to determine when the Government knew or should have known of the formal elements of a CAS 418 claim. As a practical matter, courts and boards often will look to the elements asserted by the claimant without independently reviewing the formal elements of its claim.

After the court or board identifies the elements of the claim, it will next examine when all events that fixed liability were known (or should have been known) by the claimant. This raises numerous issues. Who within the claimant’s organization must have the relevant knowledge? Who must have constructive knowledge? And what does “constructive knowledge” of the events that fix liability entail, particularly for complex Government cost claims? As discussed below, recent decisions have analyzed what counts as “constructive knowledge” variously, depending on the type of claim being asserted. There is no “one size fits all” definition of “constructive knowledge” under the FAR definition of “accrual.” Instead, what counts as constructive knowledge will depend on the type of claim asserted.

Finally, “[w]hen 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.” As noted above, there must be knowledge (or constructive knowledge) of some damage. As the FAR Council pointed out when promulgating FAR 33.201, this rule addresses the unusual situation in which the claimant is aware of all of the elements of its claim except the fact that it has suffered damages. A monetary claim cannot accrue unless the claimant has at least constructive knowledge of some injury.

Where a claim has “accrued” under the FAR definition, but the claim is not asserted (presented) within six years after the date of accrual, there is no cognizable claim upon which the CO can render a final decision, and the final decision is a “nullity.” This general proposition has been applied to both contractor and Government claims; in the past few years, it has been repeatedly applied to bar otherwise colorable Government claims against federal contractors.

Tolling

One question that has arisen under these principles is whether the CDA statute of limitations may be “toll,” thereby extending the six-year limitations period. This issue continues to evolve under decisional law, but the settled view of the courts and boards of contract appeals appears to be that the limitations period may in rare circumstances be subject to “equitable tolling.” On the other hand, the statute is not subject to consensual tolling—as often practiced by private litigants—nor is it subject to “class action” tolling.

Thus, except in rare circumstances giving rise to “equitable tolling,” the CDA statute of limitations may not be tolled. Under the CDA, the parties may not enter into a tolling agreement as...
they might in ordinary litigation between private litigants. As a consequence, parties who seek to negotiate the resolution of a CDA claim must instead either negotiate that resolution prior to the expiration of the statute of limitations or ask the court or board to stay proceedings, pending completion of negotiations, after filing a complaint at the court or taking an appeal to the board.

As discussed below, although the doctrine of equitable tolling applies to claims brought under the CDA, it is applied only in the unusual circumstance in which trickery or deception prevents one from timely submitting one’s claim.

Contractor Claims

■ Formal Changes

For an ordinary changes claim, liability is fixed when the CO enlarges the work scope. Injury occurs as soon as the contractor starts doing the changed work and thus incurs additional costs. In such circumstances, the contractor ordinarily would be charged with knowledge as soon as the CO enlarges the scope of work. Therefore, the changes claim accrues when the contractor begins performing the changed work.

■ Constructive Changes

The elements of a constructive change differ from those of a formal change, and so the rule relating to claim accrual is somewhat different. As the board stated in Gray Personnel, Inc., to determine when liability is fixed (for purposes of determining accrual) “we start by examining the legal basis of the particular claim.” A constructive change occurs when, “although the contracting officer has not issued a formal change order pursuant to the Changes clause, the contracting officer has the contractual authority unilaterally to alter the contractor’s duties under the agreement; the contractor’s performance requirements are enlarged; and the additional work is not volunteered but results from a direction of the Government officer.”

For delay and disruption claims, the ASBCA has rejected the argument that “lingering” or “cumulative” effects of a constructive change do not accrue until the completion of the contractor’s work. In Robinson Quality Constructors, the contractor argued that it could not have been aware whether it actually incurred additional costs, and the extent of those costs, until completion of its work on the contract. According to the board, where construction work is nearly complete except for certain punch list items, the contractor’s claims have already accrued, even if the contractor contends that it did not recognize the full impact of the changed work until after the completion of its work.

■ Breach Of Contract

While a claim for breach of contract ordinarily accrues when the breach occurs, this is not always the case. Specifically, a claim for breach does not accrue until the claimant has suffered damages. Thus, a breach of contract claim accrues when the claimant should have known of damages caused by the Government’s breach. While in the usual case the contractor suffers damages upon the occurrence of the breach, damages sometimes occur only later. Where damages occur later, the claim for breach does not accrue until the damages are incurred. However, if some damages are incurred at the time of the breach, then the claim for breach accrues at that time, even though the precise amount of damages may not be known until later.

Government Claims

■ Excess Reprocurement Costs

Usually there is no issue about when a claim for default termination accrues; it would be a very unusual circumstance indeed that resulted in the Government’s failure to default terminate a contractor within six years of the accrual of the claim. On the other hand, issues can arise because the Government may not assert its right to excess reprocurement costs until significantly later than the default termination itself. In both the boards of contract appeals and the Court of Federal Claims, the default termination and the claim for excess reprocurement costs are regarded as separate claims.

A recent decision of the Court of Federal Claims held that a claim for excess reprocurement costs...
does not accrue when the default termination is issued, but rather accrues only “when final payment is made to a replacement contractor.” The court noted that if the Government unreasonably delays seeking a replacement contractor, its claim may be barred by the doctrine of laches, but not by the CDA statute of limitations.

Defective Pricing

In McDonnell Douglas Services, Inc., the board cited Gray Personnel in its analysis of the statute of limitations for a Government defective pricing claim. McDonnell Douglas involved alleged defective pricing by the prime contractor’s subcontractor. The subcontractor had provided certified cost or pricing data in April 1997 and began performance under a letter contract in May 1997. In July 1998, the Defense Contract Audit Agency issued a report concluding that the subcontractor had submitted defective pricing by, among other things, overstating its overheads. The DCAA recommended a price reduction of more than $3.1 million. The DCAA issued additional audit reports in May 2000 and March 2001, reducing the alleged defective pricing to $2.9 million and then to $1.7 million. In May 2002, the DCAA notified the prime contractor of its preliminary findings and a recommended price adjustment of more than $2 million, which included the prime contractor’s overhead and profit. In June 2002, the DCAA issued an audit report for the procuring CO, this time including prime contractor burden and profit, for a total recommended price adjustment of just over $2 million. In June 2008, two COs (one “confirming” the other’s decision) issued final decisions demanding $2.025 million plus interest.

On appeal, the prime contractor contended that the Government’s claim was barred by the CDA statute of limitations. Following Gray Personnel, the board began by addressing the question of when liability is “fixed”: In evaluating when the claimed liability was fixed, we first examine the legal basis for the claim. In a defective pricing claim, the Government must prove that “(1) the information in dispute is ‘cost or pricing data’ under [the Truth in Negotiations Act]; (2) the cost or pricing data was not meaningfully disclosed; and (3) the government relied to its detriment upon the inaccurate, noncurrent or incomplete data presented by the contractor.”

Quoting Gray Personnel, the board stated that “[o]nce a party is on notice that it has a potential claim, the statute of limitations can start to run.” When monetary damages are alleged, the board stated, some additional costs must be incurred before liability can be fixed and a claim accrues.

In McDonnell Douglas, the board concluded that it did not need to establish the precise date the Government was on notice (or constructive notice) of its defective pricing claim. The undisputed facts “demonstrate[d] that the government had established the basis for its defective pricing claim” certainly no later than May 2002, more than six years before the CO’s final decision. The DCAA had discussed the matter with the CO and presented its findings to the contractor more than six years before the CO final decision. Accordingly, the Government’s claim was time barred, the claim was not valid, any purported CO decision on the matter was a nullity, and the board did “not have jurisdiction to entertain an appeal from the purported decision.”

The board reached a different result in a defective pricing case in Lord Corp. In this case, the contractor argued that Government defective pricing claims were time barred because they had accrued on the date the contract at issue was executed, more than six years earlier. The board disagreed. First, the board stated (and the contractor apparently agreed) that there was no evidence that the Government had “actual knowledge” of the alleged defective pricing on the dates of awards of the contracts at issue. The board also declined to infer that the Government “should have known” of the alleged defective pricing on those dates. The board stated that it “decline[d] to conclude that the government should have known more about [the contractor’s] own cost records before April 2002, when [the contractor] itself reported that it had then completed its ‘assessment’ of those cost records,” and that it “also saw no basis for concluding that the government should have known that the methodology apparently appearing in [the contractor’s] 1993 Disclosure Statement was no longer operative.” The board noted that the contractor itself had characterized the change in
its cost model that resulted in the alleged defective pricing as a “subtle change,” and that the contractor itself had “not appreciated” the issue until 2002.61

Defective pricing can be a factually complex issue. The evidence that the Lord contractor itself had difficulty finding any error in its rate calculation undermined its subsequent contention that the Government “should have known” of the defective pricing at or near the time of award. By contrast, in McDonnell Douglas, it was indisputable that the Government not only should have known the events that fixed liability, but that it actually knew of the alleged defective pricing more than six years prior to submission of its final decision.

Thus, for defective pricing claims, liability is fixed once the contractor does not meaningfully disclose cost or pricing data, the Government enters (and begins payment under) a contract in reliance on the contractor’s representations, and the contractor has knowledge or constructive knowledge of these events. As discussed below, “constructive knowledge” by the Government does not necessarily require that it has completed an audit of the contractor with respect to the issue at hand. Nor is the Government CO required to have learned of the issue from the Government’s auditors. For the claim to accrue, it is enough to say that the information was reasonably available to the Government, whether it had actual knowledge of the relevant information or not.

Cost Disallowances

Recently the Court of Federal Claims and the ASBCA have begun applying the statute of limitations to Government claims involving “cost” issues.62 One of the issues they have addressed is when the statute of limitations applies to Government cost disallowances.

In Raytheon Co.,63 the Government brought two claims against the contractor to recover allegedly unallowable costs. The first claim related to bonuses and incentive payments for allegedly unallowable activity; the second claim related to a shareholder return metric used in the contractor’s long-term incentive plan.64

With respect to the bonus and incentive payments, the Government issued its final decision on January 10, 2011, challenging costs incurred between 2002 and 2009. Accordingly, if the claims accrued prior to January 10, 2005, they would be barred by the CDA statute of limitations. The Government had audited the bonus and incentive plan in September 2003, and although its audit results were favorable to the contractor, this is the date by which (according to the board) the Government should have known that the costs were unallowable.65 Whether the later claims were barred by the CDA statute of limitations depended on whether the Government had reason to know that increased costs for the incentive plan had been included in the contractor’s costs in a given year. The Government’s claims relating to 2002 and 2003 costs were barred because the contractor had submitted its incurred costs no later than June 2003 and 2004.66 Similarly, the board found that the claim for 2004 costs was barred because the contractor had, in September 2004, submitted to the Government home office allocations for forward pricing rates. The board stated: “We believe the government should have known—prior to 10 January 2005—of the subject CAS noncompliance and that the government paid increased costs as a result in [calendar year] 2003 and CY 2004.”67

On the other hand, for the period from 2005 through 2009, the “government could not have been aware, actually or constructively, of any increased costs paid by the government under government contracts in these years and until payments were made under government contracts in those years.”68 Accordingly, the board deemed the Government’s claims in these later years to be timely.69 As discussed below, the board’s discussion of the CDA statute of limitation in this context suggests that the board regarded the Government’s claim as a “continuing” one, meaning that each year’s costs created a separate, independent basis for a claim by the Government.

With regard to the second claim relating to the shareholder return metric used for incentive compensation, the Government issued its final decision on June 2, 2011.70 The Government sought recovery for the allegedly unallowable costs and penalties for the years 2004 through 2006. The question was whether this claim accrued before June 2, 2005.71

In January 2004, the contractor had briefed the Government on the new compensation plan, and
in June 2004, the DCAA had conducted an audit of the plan. For these reasons, the Government should have known about the contractor’s use of an unallowable metric no later than 2004. As noted above, however, for a monetary claim to accrue, the claimant must also be aware of some injury: “[I]n order for the government’s claim to accrue the government also must have known or should have known of some ‘injury’ to the government by that date.” Here, the contractor incurred the costs under the unallowable metric on a three-year cycle, meaning that “the subject costs were incurred only after a full three-year cycle”—i.e., in 2006. As a consequence, the Government’s claim for the costs under the shareholder return metric for 2004–2006 was timely.

The Government also contended that its claim was “continuing” in nature, and that the statute of limitations began anew each year when the contractor submitted its incurred costs for the prior year. As a result, its claims for costs submitted in incurred cost submissions within six years of the final decision would not be barred. The contractor disagreed, contending that the claim was not capable of being broken down into a series of independent events. Instead, according to the contractor, only one set of operative events—the advance agreement—formed the basis of the Government’s claims. The court concurred with the contractor: “The only event occurring after defendant signed the Advance Agreement in 1999, and before the 2008 contracting officer’s final decision, was the Inspector General’s report criticizing DCAA’s $5 million first audit.” Quoting Gray Personnel, the court noted that a claim “based upon a single distinct event, which may have continued ill effects later on, is not a continuing claim.” Here, the Government knew about the contractor’s claimed costs in 1999; “no distinct facts or events distinguished one year from the next.”

The Government filed a motion for reconsideration, arguing that the Court of Federal Claims decision was in error because the Government received new evidence in 2003 upon which it based its audit. According to the Government, the claim could not have accrued until it received the new material in 2003 and used that material to perform its audit.

The court again rejected the Government’s argument. The court refused to rule on the nature of the 2003 material because the only relevant inquiry, it said, was whether the Government had sufficient information necessary to determine the nature of its claim in 1999. Interestingly, the court concluded that the later audit could not trigger the accrual of the statute of limitations, because that would in effect permit the parties to extend the six-year statute—which under the CDA they cannot do:

The Advance Agreement could not postpone accrual of the claim, however. Contracting parties
CAS Noncompliance

In *Raytheon Missile Systems*, the Government claimed that the contractor had failed to comply with its disclosed accounting practices by failing to assess indirect costs on a particular major subcontract in accordance with those disclosed practices. The Government issued its final decision demanding over $17 million in increased costs and interest on November 29, 2011. The contractor argued that the allegedly improper indirect costs had been disclosed to the Government in July 1999, more than 12 years before the Government’s final decision. The Government argued that the claim did not accrue until September 2006, when a DCAA audit report first calculated the alleged impact of the CAS noncompliance.

In examining when liability was “fixed,” the board reviewed the allegations of the CO’s final decision. Those allegations made clear that that the events that fixed the alleged liability occurred in 1999: in that year, the contractor allegedly submitted overhead costs in a contract proposal that were inconsistent with its disclosed accounting practices. In addition, the contractor separately disclosed sufficient facts for the Government to have known of its claim in 1999. The Government also alleged that it had incurred injury as a result of these 1999 events. Moreover, a Government price analyst recognized in July 1999 that the contract at issue was receiving a full burden when it should not have, and the analyst again recognized this when he reconsidered the issue in August 2005. According to the board, the alleged CAS noncompliance was “perfectly knowable” in 1999. At the latest, according to the board, the underlying facts were known no later than August 2005, when the Government’s price analyst acknowledged those key facts.

In rejecting the Government’s argument’s for a later accrual date, the board made several key points. First, whether the events fixing liability should have been known turns on whether they were concealed or were “inherently unknowable.” Citing *Japanese War Notes Claimants Ass’n of the Philippines, Inc. v. United States*, the board said that an example of an “inherently unknowable” fact would be the delivery of the wrong fruit tree, where the wrong is not knowable until the tree later bears fruit.

Second, “[a]ccrual of a contracting party’s claim is not delayed until it performs an audit or other financial analysis to determine the amount of its damages.” Just as the Court of Federal Claims indicated in *Raytheon Co. v. United States*, a single party may not postpone indefinitely and unilaterally the running of the statute of limitations.

Third, for the same reasons, a contracting party’s delay in assessing information available to it does not suspend the accrual of a claim.

Finally, the fact that “only” the price analyst had the relevant information was irrelevant. If that were the rule, “then both contractors and the government could suspend accrual by internally compartmentalizing relevant information and insulating senior decision makers from its as long as they choose.” FAR 33.201 does not contemplate “permitting such gamesmanship.”

As a result, the board dismissed the Government’s 2011 claim as untimely. The board stated: “Claim accrual is not suspended simply because the government may have been delayed appreciating the implications of what [the contractor] had disclosed, or in funneling to the individual authorized to act upon the claim all of the information relevant to it.”

In another CAS noncompliance case, *Sikorsky Aircraft Corp. v. United States*, the contractor sought dismissal of a Government claim that the contractor had misallocated approximately $80 million of indirect costs in violation of CAS 418 on statute of limitations grounds. The contractor had submitted a revised CAS Disclosure Form DS-1 in 1998 that documented certain accounting changes to take effect on January 1, 1999. The Government initially found the contractor’s DS-1 adequate and compliant. In a 2004 DCAA audit, however, the Government found the contractor’s use of a direct labor cost base to allocate material overhead noncompliant with CAS 418. The contractor had submitted a revised CAS Disclosure Form DS-1 in 1998 that documented certain accounting changes to take effect on January 1, 1999. The Government initially found the contractor’s DS-1 adequate and compliant. In 2004, a DCAA audit, however, the Government found the contractor’s use of a direct labor cost base to allocate material overhead noncompliant with CAS 418. The contractor corrected the problem by making changes to its accounting system in 2006. Nevertheless, the Government brought a claim for the noncompliant accounting practice in effect from 1999 through 2005.

The Government issued a final decision seeking recovery on December 11, 2008. In an
initial decision at the summary judgment stage, the court held that neither the Government’s internal administrative regulations outlining procedures for determining CAS noncompliance nor the provisions of FAR 52.230-6, “Administration of Cost Accounting Standards,” suspended accrual of the Government’s claim.\textsuperscript{121} For a CAS 418 violation to accrue, according to the court, two conditions must be met: first, “there must be a violation of CAS 418, which requires both that an indirect cost pool of a contractor contain costs that ‘do not have the same or a similar beneficial or causal relationship to cost objectives’ and that, ‘if the costs were allocated separately, the resulting allocation would be materially different.’”\textsuperscript{122} In addition, the Government must have actual or constructive knowledge of the CAS 418 violation.\textsuperscript{125} The court denied summary judgment because it found that there was a disputed fact as to when the Government had sufficient knowledge for the claim to have accrued under FAR 33.201.\textsuperscript{124}

After trial, the court revisited the statute of limitations issue. In 1999, the DCAA had prepared a draft audit report indicating that there was a potential CAS 418 violation resulting in a potential impact of $8 million in 2001 and $30 million in 2008. The draft audit report concluded that the potential violation did not have a “significant impact” for either 1999 or 2000. However, instead of issuing the draft audit report, the DCAA issued a final report saying that there was no CAS 418 violation because there was no material impact in 1999.\textsuperscript{125}

In 2000, the contractor submitted a cost impact proposal for its 1999 accounting change, and the contractor argued that this submission was sufficient to put the Government on notice of its claim.\textsuperscript{126} Although the Government auditors who reviewed the proposal believed there had been a cost impact, the Government could only say that the impact “possibly” related to a CAS violation. Moreover, the Government did not have “reliable evidence of a significant effect on present government costs.”\textsuperscript{127} Accordingly, the Government “did not have actual or constructive notice of any CAS violation at that time.”\textsuperscript{128} The DCAA, meanwhile, waited until 2002 to initiate a second audit, and in October 2004 it released an audit report concluding that the contractor had in fact violated CAS 418.\textsuperscript{129}

While noting that claim accrual is not suspended by an audit or other financial analysis, the court nevertheless found that the Government could not have had the information to assess the impact of the contractor’s accounting practices until the collection of actual cost information in 2003 as part of its audit investigation.\textsuperscript{130} The court distinguished the Sikorsky case from other decisions holding that an audit need not be completed for a Government claim to accrue, Raytheon Co. v. United States and Raytheon Missile Systems, discussed above.\textsuperscript{131} In those cases, the court stated, the Government “made the claim that the statute of limitations did not begin to run until it had completed an audit reflecting ‘evidence new to the government,’” and both the court and the board found that the information necessary to, and sufficient for, the Government’s determination of the claim was available well before the audit was performed.\textsuperscript{132} By contrast, “[t]he requisite information was not available to the government in this instance,”\textsuperscript{133} “In short,” the court held, the contractor “had not met its burden to show that the government had actual or constructive knowledge of a potential claim under CAS 418 prior to December 2002, and the [CO’s] assertion of the government’s claim on December 11, 2008, was within the six-year statute of limitations prescribed by the CDA.”\textsuperscript{134}

### Accounting Change Impacts

In Raytheon Co., Space & Airborne Systems,\textsuperscript{135} the ASBCA addressed the issue of accrual of a Government claim for the cost impact of accounting changes. The case involved the consolidation of four appeals, each addressing different claims for cost impacts resulting from accounting changes. The board ultimately found one of the Government’s claims timely and three of the Government’s claims untimely.

With regard to the Government’s timely claim, the contractor had submitted a DS-1 on February 10, 2004, after the DS-1’s effective date of January 1, 2004. The DS-1 identified four changed accounting practices, one of which, the property accounting/property management change, became the subject of the Government’s claim. The contractor did not provide any cost impact information for the changes with its initial DS-1
The contractor argued that the claim accrued on February 10, 2004 because of the notice of the revised DS-1 and the effective date of January 1, 2004. In the alternative, the contractor argued that the February 15, 2005 cost impact for one of the other changes triggered the accrual date. The board, however, rejected these dates. In so doing, it made the following points: First, the “knew or should have known” (constructive knowledge) standard for claim accrual contains an element of reasonableness. Second, the DS-1 did not provide sufficient notice for accrual of the Government’s claim because it did not report whether there would be an adverse cost impact to the Government. Third, despite knowing of the changed practice, the Government was not required to pursue the potential cost impact of the change on its own, “especially in light of the affirmative duty FAR 52.230-6(a) places on the contractor to submit a [general dollar magnitude proposal].” The board found that the Government’s claim did not accrue until April 3, 2006 (i.e., within the six-year limitations period), when the contractor first submitted information that identified an adverse impact for the accounting change at issue.

Regarding the Government’s untimely claims, the contractor submitted notice of the accounting changes and cost impact information together, thereby putting the Government on notice of an adverse impact with its initial submission. The board found the Government’s claims untimely because these initial submissions—with notice of the change and the impact of the change—were outside of the limitations period. The Government tried to argue that the initial cost impact information did not provide sufficient detail for its claim to have accrued. In rejecting this argument, the board explained that “[c]laim accrual does not depend on the degree of detail provided, whether the contractor revises the calculations later, or whether the contractor characterizes the impact as ‘immaterial.’ It is enough that the Government knows, or has reason to know, that some costs have been incurred, even if the amount is not finalized or a fuller analysis will follow.” The notice of the change and the adverse impact of the change, along with some injury, resulted in claim accrual.

In Boeing Co., the board addressed the statute of limitations in another case involving the cost impact of an accounting change. In that case, the contractor submitted a revised DS-1 in October 2000 for changes effective January 1, 2001. The DCAA audited the submission and determined (using information provided by the contractor) that the accounting change would result in approximately $7.4 million in increased costs to the Government. In September 2003, the CO wrote to the contractor that she had determined that the change was not desirable, and she proposed a contract adjustment of $6.42 million plus interest. She requested the contractor’s response to her proposal “so we can finally settle this issue.” Several rounds of negotiations ensued between 2003 and 2005, with subsequent intermittent discussions occurring until 2010. The CO issued a final decision demanding $6.42 million on October 25, 2010.

The contractor appealed the final decision and argued that the Government’s claim was untimely. In response, the Government contended that the CO’s September 2003 letter constituted a final decision, and therefore the claim was timely. In the alternative, the Government asserted that the contractor induced the Government into missing the claim submission deadline by leading the CO to believe that the matter was on the verge of settling, and, therefore, that the CDA’s statute of limitations should be equitably tolled.

The ASBCA rejected these arguments. The board noted that a claim accrues under the CDA “when the events giving rise to liability were known or should have been known.” Because the CO’s 2010 final decision did not articulate any facts occurring after the September 2003 letter relating to the basis of the Government’s claim, the board determined that the Government knew,
or should have known, the basis for its claim in 2003. Thus, the board found that the clock began running on the CDA statute of limitations no later than September 2003. The board rejected the contention that the CO’s September 2003 letter constituted a final decision. The board also rejected the Government’s equitable tolling argument, holding that it did “not perceive any misconduct by [the contractor] that could have induced or tricked the government into missing the deadline for submitting its claim for the accounting revision costs.”

**Selected Issues**

**Equitable Tolling**

Equitable tolling permits a court to “toll” a statute of limitations in the interest of fairness when, for example, one of the parties has, through its misconduct, caused the other party to miss a statutory limitations period. In *Arctic Slope Native Ass’n, Ltd. v. Sebelius*, the Federal Circuit held that the CDA statute of limitations could (in limited circumstances) be subject to equitable tolling—although it did not apply the doctrine in that case.

The ASBCA stated in *Bernard Cap Co.* that courts have applied this doctrine “sparingly” and “under limited circumstances.” Those circumstances include instances where a claimant filed a timely pleading that was defective or was induced by trickery to allow the applicable deadline to pass, or where the lateness in asserting a claim was the result of misleading Government conduct. Thus, equitable tolling applies when a litigant has been induced or tricked by its adversary’s misconduct into permitting a filing deadline to pass.

In *Bernard Cap*, the contractor argued that the Government’s general assurances that it would review and seek to reconcile payment records served to toll the limitations period. The board rejected the contractor’s argument: “Appellant presents no such equitable basis to support the tolling of the limitation period of the statute. Rather, the record shows a claimant that failed to exercise due diligence in preserving and protecting its legal rights under the contract.”

Similarly, equitable tolling does not apply simply because the parties engage in discussions or settlement negotiations, and one party, through a lack of diligence, allows the limitations period on its purported claims to expire. Nor can correspondence inviting additional negotiations constitute the kind of bad faith that might justify equitable tolling where there is no evidence of Government misconduct. Where the facts show that a party’s reasonable diligence could have prevented the missed deadline, the court or board will reject the argument for equitable tolling. Likewise, the Court of Federal Claims has held that “mere excusable neglect is not enough to establish a basis for equitable tolling.”

**Continuing Claims**

*Gray Personnel* also addressed the issue of a “continuing claim” and applied the doctrine applicable to the Tucker Act to the CDA as well, quoting *Brown Park Estates-Fairfield Development Co. v. United States*. In *Brown Park Estates*, the Federal Circuit explained that “[i]n order for the continuing claim doctrine to apply, the plaintiff’s claim must be inherently susceptible to being broken into a series of independent and distinct events or wrongs, each having its own associated damages…. However, a claim based upon a single distinct event, which may have continued ill effects later on, is not a continuing claim.” As discussed above, the decisions in several recent cases involving Government “cost” claims turn on whether the court or board of contract appeals regards claims—particularly claims affecting different fiscal years—to be claims “inherently susceptible” of being broken into a series of independent and distinct events.

**“Allowable Cost & Payment” Clause**

Finally, several board decisions note that a contractor’s claim for payment of incurred costs under the FAR 52.216-7, the “Allowable Cost and Payment” clause, cannot accrue until the contractor requests payment and the Government rejects the request. One such decision is *Todd Pacific Shipyards, Inc.* where the contractor sought reimbursement from the Government for certain dry dock costs it incurred. Historically, the contractor had recovered such costs through its indirect rates, allocated on the basis
of vessels in its shipyard. However, the contractor believed that the Government would agree to pay the dry dock costs directly under a newly awarded contract. Thus, the contractor hoped to obtain a change in the way that it accounted for dry dock costs, from indirect to direct, and it discussed this possibility with the Government for several years.172

Before any decision about the reallocation of dry dock costs from indirect to direct, the Navy canceled the options for work on several ships, making it impossible for the contractor to recover its costs indirectly (i.e., based on vessels in the shipyard), as it had done in the past.173 At the board, the contractor contended that its claim for dry dock payments did not “accrue,” for statute of limitations purposes, until it became clear upon cancellation of options that it could not recover its dry dock costs “provisionally” on an indirect basis while it waited for the Government to execute an agreement on direct recovery of dry dock costs. In other words, the contractor contended that its claim did not accrue until it became clear that it had no means to recover its dry dock costs from the Government.174

The board held that the claim did not accrue until the Navy in fact breached a contract clause.175 Here, the cost-reimbursement contract at issue contained the FAR 52.216-7 “Allowable Cost and Payment” clause, which required the Navy to “make payments to the Contractor when requested as work progresses.”176 Because at the motion to dismiss stage of the proceedings there was no evidence that the contractor had requested payments that the Government had failed to pay, there was no evidence that the claim had accrued, and there could be (at that juncture) no basis for barring the contractor’s claim under the CDA statute of limitations.177

Similarly, in Parsons-UXB Joint Venture,178 the board held that although the contractor first incurred a tax assessment cost in 1998, the claim for reimbursement did not accrue for statute of limitations purposes until years later, when the contractor requested payment under the “Allowable Cost and Payment” clause and the Government rejected the request. Hence, the contractor’s later claim was timely.

Deadlines For Appeal From A CO’s Final Decision

As noted at the outset of this Briefing Paper, the CDA six-year “presentation” period is not the only limitations period applicable to CDA claims. Contractors must also keep in mind that that strict deadlines apply to the timing of any appeal from a CO’s final decision on a contractor claim. The contractor has only 90 days to file an appeal to the appropriate agency board of contract appeals,179 or 12 months to file an action in the Court of Federal Claims.180 Numerous issues arise in connection with these two deadlines, e.g., whether the statutory deadlines may be waived; whether the deadlines are subject to equitable tolling; whether the deadlines may be “suspended” by the CO’s reconsideration of the contractor claim; and whether the deadlines are triggered when the CO’s final decision does not properly advise the contractor of its appeal rights. A detailed analysis of these issues is beyond the scope of this Briefing Paper.

GUIDELINES

These Guidelines are intended to assist you in understanding limitations of actions applicable to Government contracts covered by the CDA. They are not, however, a substitute for professional representation in any specific situation.

1. To determine when a CDA claim accrues, first determine the legal elements of the claim that “fix” liability.

2. Remember that to show a claim has accrued, you must show that the claimant knew or had constructive knowledge of the elements that “fix” liability.

3. For monetary claims, some damages must be shown, but it is not necessary that the full extent of the damages be known or that the claimant be able to quantify those damages.

4. Similarly, a claimant may have constructive knowledge of a claim without having completed an audit or financial analysis of the issues giving rise to the claim.
5. Constructive knowledge also does not mean knowledge by a specific person within the organization, such as the Government CO.

6. Although the CDA statute of limitations may be “equitably tolled” in unusual circumstances, delays resulting from a claimant’s internal administrative procedures, a Government audit or review, or the administrative processes contained in the parties’ contract will not toll the statute.

7. Similarly, the parties may shorten the six-year statute by agreement, but they may not lengthen (“toll”) the CDA statute of limitations.

8. Courts and boards of contract appeals generally hold that the party asserting jurisdiction—that is, the claimant—has the burden of showing that the claim is not barred by the CDA statute of limitations when challenged. However, this is a developing area of law that merits close attention.

REFERENCES


7/ FAR 33.206(a); see 60 Fed. Reg. 48224 (Sept. 18, 1995).


10/ FAR 33.201.


12/ See Arctic Slope Native Ass’n, Ltd. v. United States, 583 F.3d 785, 793 (Fed. Cir. 2009), 51 GC ¶ 404 (“subject to any applicable tolling of the statutory time period, the timely submission of a claim to a contracting officer is a necessary predicate to the exercise of jurisdiction by a court or a board of contract appeals over a contract dispute governed by the CDA.”); Sys. Dev. Corp. v. McHugh, 658 F.3d 1341, 1347 (Fed. Cir. 2011) (the board lacked jurisdiction where “[t]he equitable adjustment claims were submitted to the CO outside the six-year statute of limitations in 41 U.S.C.A. § 7103(a)(4)(A)”); Gray Personnel, Inc., ASBCA No. 54652, 06-2 BCA ¶ 33,378, at 165,475; McDonnell Douglas Servs., Inc., ASBCA No. 54652, 06-2 BCA ¶ 33,378, at 165,475; McDonnell Douglas Servs. Inc., ASBCA No. 54652, 06-2 BCA ¶ 33,378.

13/ McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325, at 169,529 (2009), 52 GC ¶ 86. But see Bright v. United States, 603 F.3d 1273, 1280 (Fed. Cir. 2010) (“The Arctic Slope court rejected the government’s argument that because the six-year time limit in [41 U.S.C.A. § 7103(a)(4)(A)] is a condition on the waiver of sovereign immunity, the statute is jurisdictional, and its time period is not subject to class action tolling.”).

14/ See Coastal Corp. v. United States, 713 F.2d 728, 730 (Fed. Cir. 1983) (“Jurisdiction of a tribunal...cannot be conferred by waiver or acquiescence.”); Raytheon Co. v. United States, 104 Fed. Cl. 327, 331 n.4 (2012), 54 GC ¶ 130 (“[P]arties may set a shorter limitations period, but not a longer one.”).


17/ See Gray Personnel, Inc., ASBCA No.54652, 06-2 BCA ¶ 33,378.

18/ Atherton Constr., Inc., ASBCA No. 56040, 08-2 BCA ¶ 34,011, at 168,191, 50 GC ¶ 444 (citing Hopland Band of Pomo Indians v. United States, 855 F.2d 1573, 1577 (Fed. Cir. 1988)).

19/ Gray Personnel, Inc., ASBCA No.54652, 06-2 BCA ¶ 33,378, at 165,476.

20/ FAR 33.201; Gray Personnel, Inc., ASBCA No. 54652, 06-2 BCA ¶ 33,378.

21/ Gray Personnel, Inc., ASBCA No. 54652, 06-2 BCA ¶ 33,378, at 165,475.

22/ McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325, at 169,528, 52 GC ¶ 86.


25/ Gray Personnel, Inc., ASBCA No. 54652, 06-2 BCA ¶ 33,378, at 165,476.

26/ McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325, at 169,528, 52 GC ¶ 86; Gray Personnel, Inc., ASBCA No. 54652, 06-2 BCA ¶ 33,378, at 165,476.


28/ If one assumes that injury is one of the “events” that fixed liability, then this “third” requirement is already contained in the first requirement. See, e.g., Masiello & Odill, "Feature Comment: CDA Statute of Limitations Applied To Bar the Government’s Claim in American Ordnance v. U.S.,” 51 GC ¶ 59 (Feb. 25, 2009).

29/ McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325, at 169,529, 52 GC ¶ 86.

30/ Coastal Corp. v. United States, 713 F.2d 728, 730 (Fed. Cir. 1983) (“Jurisdiction of a tribunal...cannot be conferred by waiver or acquiescence.”); Raytheon Co. v. United States, 104 Fed. Cl. 327, 331 n.4 (2012), 54 GC ¶ 130 (“[P]arties may set a shorter limitations period, but not a longer one.”).
31/ Gray Personnel, Inc., ASBCA No. 54652, 06-2 BCA ¶ 33,378, at 165,475 (citing RGW Comm’ns, Inc. d/b/a Watson Cable Co., ASBCA No. 54495 et al., 05-2 BCA ¶ 32,972, at 163,331–32.


33/ Robinson Quality Constructors ASBCA 55784, 09-1 BCA ¶ 34048, 51 GC ¶ 163.

34/ Robinson Quality Constructors ASBCA 55784, 09-1 BCA ¶ 34048, at 168,396, 51 GC ¶ 163.


37/ Ariadne Fin. Servs. Pty. Ltd. v. UnitedStates, 133 F.3d 874, 878 (Fed. Cir. 1998), 40 GC ¶ 85.


39/ E.g., United States v. Skidmore, Owings & Merrill, 505 F. Supp. 1101, 1104 n.3 (S.D.N.Y. 1981); see also Am. Ordnance LLC v. United States, 83 Fed. Cl. 559, 574–75 (2008), 50 GC ¶ 387 (breach of contract claim accrues when the injured party knew or should have known it was injured).


41/ M.E.S., Inc., 104 Fed. Cl. at 637 n.16.

42/ McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325 (2009), 52 GC ¶ 86.

43/ McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325 (2009), at 169,524–25, 52 GC ¶ 86.

44/ McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325 (2009), at 169,525, 52 GC ¶ 86.

45/ McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325 (2009), at 169,525–26, 52 GC ¶ 86.

46/ McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325 (2009), at 169,526, 52 GC ¶ 86.

47/ McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325 (2009), at 169,526, 52 GC ¶ 86.

48/ McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325 (2009), at 169,526–27, 52 GC ¶ 86.

49/ McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325 (2009), at 169,527, 52 GC ¶ 86.

50/ McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325, at 169,528 (2009), 52 GC ¶ 86 (citing Gray Personnel, Inc., ASBCA No. 54652, 06-2 BCA ¶ 33,378, at 165,475).

51/ McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325, at 169,528 (2009), 52 GC ¶ 86 (citing Gray Personnel, Inc., ASBCA No. 54652, 06-2 BCA ¶ 33,378, at 165,475).

52/ McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325, at 169,528 (2009), 52 GC ¶ 86 (quoting Gray Personnel, Inc., ASBCA No. 54652, 06-2 BCA ¶ 33,378, at 165,475).

53/ McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325, at 169,528 (2009), 52 GC ¶ 86.

54/ McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325, at 169,529 (2009), 52 GC ¶ 86.

55/ McDonnell Douglas Servs., Inc., ASBCA No. 56568, 10-1 BCA ¶ 34,325, at 169,529 (2009), 52 GC ¶ 86.

56/ Lord Corp., ASBCA No. 54940, 06-2 BCA ¶ 33,314.

57/ Lord Corp., ASBCA No. 54940, 06-2 BCA ¶ 33,314, at 165,168.

58/ Lord Corp., ASBCA No. 54940, 06-2 BCA ¶ 33,314, at 165,170.

59/ Lord Corp., ASBCA No. 54940, 06-2 BCA ¶ 33,314, at 165,170.

60/ Lord Corp., ASBCA No. 54940, 06-2 BCA ¶ 33,314, at 165,170.

61/ Lord Corp., ASBCA No. 54940, 06-2 BCA ¶ 33,314, at 165,170.


70/ Raytheon Co., ASBCA No. 57576 et al., 13-1 BCA ¶ 35,209, at 172,752 (2012), 55 GC ¶ 46.


74/ Raytheon Co., ASBCA No. 57576 et al., 13-1 BCA ¶ 35,209, at 172,752 (2012), 55 GC ¶ 46.

75/ Raytheon Co., ASBCA No. 57576 et al., 13-1 BCA ¶ 35,209, at 172,752 (2012), 55 GC ¶ 46.

76/ Raytheon Co. v. United States, 104 Fed. Cl. 327 (2012), 54 GC ¶ 130.

Briefing Papers © 2013 by Thomson Reuters
77/ Raytheon Co., 104 Fed. Cl. at 330.

78/ Raytheon Co., 104 Fed. Cl. at 330.

79/ Raytheon Co., 104 Fed. Cl. at 331.

80/ Raytheon Co., 104 Fed. Cl. at 331.


82/ Raytheon Co., 104 Fed. Cl. at 330.

83/ Raytheon Co., 104 Fed. Cl. at 331.

84/ Raytheon Co., 104 Fed. Cl. at 331.

85/ Raytheon Co., 104 Fed. Cl. at 331 n.4.

86/ Raytheon Co., 104 Fed. Cl. at 332.

87/ Raytheon Co., 104 Fed. Cl. at 332.

88/ Raytheon Co., 104 Fed. Cl. at 333.


91/ Raytheon Co., 105 Fed. Cl. at 352–53.

92/ Raytheon Co., 105 Fed. Cl. at 353.

93/ Raytheon Co., 105 Fed. Cl. at 353.

94/ Raytheon Co., 105 Fed. Cl. at 353.

95/ See Raytheon Co. v. United States, No. 105-5017 (Fed. Cir. Apr. 1, 2013).


104/ Japanese War Notes Claimants Ass’n of the Philippines, Inc. v. United States, 373 F.2d 356, 359 (Ct. Cl. 1967).


107/ Raytheon Co. v. United States, 104 Fed. Cl. 327, 331 n.4 (2012), 54 GC ¶ 130.


112/ Raytheon Missile Sys., ASBCA No. 58011, 13-1 BCA ¶ 35,241, 173,017, 55 GC ¶ 73.

113/ Raytheon Missile Sys., ASBCA No. 58011, 13-1 BCA ¶ 35,241, 173,017, 55 GC ¶ 73.


115/ Sikorsky Aircraft Corp., 110 Fed. Cl. at 216.


117/ Sikorsky Aircraft Corp., 110 Fed. Cl. at 218.

118/ Sikorsky Aircraft Corp., 110 Fed. Cl. at 218.


120/ Sikorsky Aircraft Corp., 110 Fed. Cl. at 219.


122/ Sikorsky Aircraft Corp., 105 Fed. Cl. at 672.

123/ Sikorsky Aircraft Corp., 105 Fed. Cl. at 672.

124/ Sikorsky Aircraft Corp., 105 Fed. Cl. at 673.

125/ Sikorsky Aircraft Corp. 110 Fed. Cl. at 222.

126/ Sikorsky Aircraft Corp. 110 Fed. Cl. at 222.

127/ Sikorsky Aircraft Corp. 110 Fed. Cl. at 222.

128/ Sikorsky Aircraft Corp. 110 Fed. Cl. at 222.

129/ Sikorsky Aircraft Corp. 110 Fed. Cl. at 222.

130/ Sikorsky Aircraft Corp. 110 Fed. Cl. at 222.


132/ Sikorsky Aircraft Corp. 110 Fed. Cl. at 222–23 (quoting Raytheon Co., 105 Fed. Cl. at 353).

133/ Sikorsky Aircraft Corp. 110 Fed. Cl. at 223.
134/ Sikorsky Aircraft Corp. 110 Fed. Cl. at 223.
135/ Raytheon Co., Space & Airborne Sys., ASBCA No. 57801 et al., 13-1 BCA ¶ 35319, 55 GC ¶ 185.
140/ Raytheon Co., Space & Airborne Sys., ASBCA No. 57801 et al., 13-1 BCA ¶ 35319, at 173,373, 55 GC ¶ 185.
142/ Raytheon Co., Space & Airborne Sys., ASBCA No. 57801 et al., 13-1 BCA ¶ 35319, at 173,374, 55 GC ¶ 185.
143/ Raytheon Co., Space & Airborne Sys., ASBCA No. 57801 et al., 13-1 BCA ¶ 35319, at 173,374, 55 GC ¶ 185.
144/ Raytheon Co., Space & Airborne Sys., ASBCA No. 57801 et al., 13-1 BCA ¶ 35319, at 173,374–75, 55 GC ¶ 185.
146/ Raytheon Co., Space & Airborne Sys., ASBCA No. 57801 et al., 13-1 BCA ¶ 35319, at 173,374–75, 55 GC ¶ 185.
147/ Raytheon Co., Space & Airborne Sys., ASBCA No. 57801 et al., 13-1 BCA ¶ 35319, at 173,375, 55 GC ¶ 185.
149/ Boeing Co., ASBCA No. 57490, 12-1 BCA ¶ 34,916.
150/ Boeing Co., ASBCA No. 57490, 12-1 BCA ¶ 34,916, at 171,670.
151/ Boeing Co., ASBCA No. 57490, 12-1 BCA ¶ 34,916, at 171,671.
152/ Boeing Co., ASBCA No. 57490, 12-1 BCA ¶ 34,916, at 171,671.
153/ Boeing Co., ASBCA No. 57490, 12-1 BCA ¶ 34,916, at 171,671.
154/ Boeing Co., ASBCA No. 57490, 12-1 BCA ¶ 34,916, at 171,672.
155/ Boeing Co., ASBCA No. 57490, 12-1 BCA ¶ 34,916, at 171,672.
156/ Boeing Co., ASBCA No. 57490, 12-1 BCA ¶ 34,916, at 171,672.
157/ Boeing Co., ASBCA No. 57490, 12-1 BCA ¶ 34,916, at 171,673.
158/ Arctic Slope Native Ass’n, Ltd. v. Sebelius, 583 F.3d 785 (Fed. Cir. 2009), 51 GC ¶ 404.
159/ Bernard Cap Co., ASBCA No. 56679, 10-1 BCA ¶ 34,387.
160/ Bernard Cap Co., ASBCA No. 56679, 10-1 BCA ¶ 34,387, at 169,801 (citing Irwin v. Dep’t of Veterans Affairs, 498 U.S. 89, 96 (1990); Former Employees of Sunoco Prods. Co. v. Chao, 372 F.3d 1291, 1299 (Fed. Cir. 2004); and Frazer of Sunoco Prods. Co. v. Chao, 372 F.3d 1347, 1354 (Fed. Cir. 2000)).
161/ Boeing Co., ASBCA No. 57490, 12-1 BCA ¶ 34,916, at 171,673 (citing Frazer v. United States, 288 F.3d 1347, 1354 (Fed. Cir. 2000)).
162/ Bernard Cap Co., ASBCA No. 56679, 10-1 BCA ¶ 34,387, at 169,800.
163/ Bernard Cap Co., ASBCA No. 56679, 10-1 BCA ¶ 34,387, at 169,801.
164/ Env’tl Safety Consultants, Inc. v. United States, 97 Fed. Cl. 190, 199 (2011) ("The continued communications between the parties regarding the completion of the work remaining on the contract and [the contractor’s] repeated requests for payments that the Navy previously denied did not change the dates on which plaintiffs’ claims accrued.") (citing Brighton Village Assocs. v. United States, 52 F.3d 1056, 1061 (Fed. Cir. 1995), which stated that “[the mere continuance of negotiations... constitutes no reason to extend the limitations period").
165/ Env’tl Safety Consultants, 97 Fed. Cl. at 201 (in correspondence prior to the default termination the agency maintained its position that it would not pay the contractor its requested funds and repeatedly asked the contractor to finish the remaining work under the contract).
166/ Bernard Cap Co., ASBCA No. 56679, 10-1 BCA ¶ 34,387, at 169,801 (refusing to apply equitable tolling where claimant ‘failed to exercise due diligence in preserving and protecting its legal rights under the contract’).
167/ Env’tl Safety Consultants, 97 Fed. Cl. at 201 (citing Roth v. United States, 73 Fed. Cl. 144, 153 (2006)).
170/ Brown Park Estates-Fairfield Dev. Co. v. United States, 127 F.3d 1449, 1456 (Fed. Cir. 1997) (quoting Friedman v. United States, 159 Ct. Cl. 1, 310 F.2d 381 (1962)).
171/ Todd Pacific Shipyards, Inc., ASBCA No. 55126, 10-1 BCA ¶ 34,368.
172/ Todd Pacific Shipyards, Inc., ASBCA No. 55126, 10-1 BCA ¶ 34,368 at 169,714-15.
173/ Todd Pacific Shipyards, Inc., ASBCA No. 55126, 10-1 BCA ¶ 34,368 at 169,717.
174/ Todd Pacific Shipyards, Inc., ASBCA No. 55126, 10-1 BCA ¶ 34,368 at 169,715-14.
175/ Todd Pacific Shipyards, Inc., ASBCA No. 55126, 10-1 BCA ¶ 34,368 at 169,714-15.
176/ FAR 52.216-7(a).
177/ Todd Pacific Shipyards, Inc., ASBCA No. 55126, 10-1 BCA ¶ 34,368, at 169,718.
178/ Parsons-UXB Joint Venture, ASBCA No. 56481, 09-2 BCA ¶ 34,305.