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# Arbitration of War Contract Termination Claims

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## BENCH AND BAR

ARBITRATION OF WAR CONTRACT TERMINATION  
CLAIMS

BY MARTIN DOMKE\*

TO ASSURE expeditious conversion from war conditions to civilian production a quick, equitable and final settlement of claims of terminated war contracts will be necessary. It is facilitated through the Contract Settlement Act of 1944 signed by the President on July 1, 1944.<sup>1</sup> The Act was passed after considerable revision and extensive Committee hearings. The principle on which it is based governs substantially all its provisions, namely, the termination claims of all war contractors, prime contractors and subcontractors alike, must be settled and paid fairly and speedily but the government is to be protected carefully against any fraud.<sup>2</sup>

The Act establishes an Office of Contract Settlement to coordinate the activities of all the government agencies in connection with termination claims, and a Contract Settlement Advisory Board composed of representatives of the principal contracting agencies. The Director of Contract Settlement is authorized to appoint an Appeal Board to hear contractors' appeal from termination decisions of the various agencies. Each government contracting agency is authorized to settle all or any part of a contract by agreement under the contract or by determination of the amount due on the contract.

Prior to July 21, 1944—the date the new Act came into effect—practically every war contract which the contractors were required to sign had in it a dispute clause<sup>3</sup> which appointed the government contracting officer the final arbiter of all facts in any disputes between the contracting agency and the contractor. If the contractor was not satisfied with the decision of the contracting officer, the sole relief was an appeal to the Court of Claims on

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<sup>1</sup>Public Law 395—78th Congress, Chap. 358—2d Session (Senate Bill 1718).

<sup>2</sup>James E. Murray (Senator from Montana): Contract Settlement Act of 1944, 10 Law and Contemporary Problems (1944) p. 685.

<sup>3</sup>Section 803.236, War Department Procurement Regulation No. 15 as amended June 29, 1944, 9 Fed. Register (1944) p. 8412. Reg. 15 entitled: Termination of Contracts for the Convenience of the Government, forms part 815 of Chapter VIII, Title 10, Code of Federal Regulations, 9 Fed. Register, Part 2, (1944) p. 8363.

some question of law. The Court, however, in view of the conditions of the contract as originally agreed upon was bound by the decision of the government contracting officer whose judgment as to the termination value of the contract was a final determination of disputed facts. This situation has now been fundamentally changed.

The new Act allows the contractor who is aggrieved by the decision of the government procurement agency's settlement officer to appeal to the Board of Contract Appeals established by Section 13 of the Act or to bring suit against the United States in the Court of Claims or a United States District Court within ninety days after delivery to him of the findings of the procurement agency.<sup>4</sup> In such appeal or suit those findings though they are considered "prima facie correct" are not binding upon the Board or the Court. Says Section 13 (c) (3):

"Notwithstanding any contrary provision in any war contract, the Appeal Board or court shall not be bound by the findings of the contracting agency, but shall treat such findings as prima facie correct, and the burden shall be on the war contractor to establish that the amount on his claim or part thereof exceeds the amount allowed by the findings of the contracting agency."

Thus every clause making the government contracting officer the final arbiter on disputed facts has now been written out retroactively in all war contracts.

The pendency of any appeal, however, within the Department or before the new statutory Board of Contract Appeals, does not prevent the making of a negotiated agreement with a war contractor before the appeal is decided.<sup>5</sup>

The contracting agency is not only authorized to settle by negotiation any termination claim; the Act further empowers the government contracting agency to submit to arbitration any disputes arising out of termination claims. Section 13 (e) of the new Act provides the following:

"The contracting agency responsible for settling any claim and the war contractor asserting the claim, by agreement, may submit all or any part of the termination claim to arbitration, without regard to the amount in dispute. Such arbitration proceedings shall be governed by the provisions of the United States Arbitration Act to the same extent as if authorized by an effective agree-

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<sup>4</sup>See Regulation 15, as amended August 4, 1944, sec. 815.560 (d) (4), 9 Federal Register 9478 (1944).

<sup>5</sup>See Regulation 15, as amended August 4, 1944, sec. 815.560 (d) (5), 9 Federal Register (1944) p. 9479.

ment in writing between the Government and the war contractor. Any such arbitration award shall be final and conclusive upon the United States to the same extent as a settlement under subsection (c) of section 6, but shall not be subject to approval by any settlement review board."

Thus a war contractor<sup>6</sup> may, where the contracting agency agrees to arbitrate, submit the dispute to arbitration, and any award is to be final and conclusive as between the contracting agency and the war contractor. Though arbitration is dependent on an agreement a contracting officer may no longer decline to arbitrate<sup>7</sup> on the grounds that he is without legal authority to commit the United States to arbitrate a dispute concerning a claim against the United States.

Whenever a dispute exists between a war contractor and subcontractor regarding any termination claim, they may agree to submit the dispute to the statutory Appeal Board or to a contracting agency for mediation or arbitration whenever such mediation or arbitration is authorized by the agency or required by the Director of Contract Settlement.<sup>8</sup> On the other hand, direct settlement by the contracting agency of termination claims of subcontractors is, under certain conditions, provided for in Section 7 (d) of the Act, to the extent that the War Department "deems such action necessary or desirable for the expeditious and equitable settlement of such claims."<sup>9</sup>

A speedy and equitable review of unilateral decisions of contracting agencies becomes necessary in order to avoid business failures and large unemployment through delays in reaching equitable and final settlements. In view of the fact that over sixty percent of the industry of this country is involved in war work,<sup>10</sup> we may be confronted at the end of the hostilities with an unusually large number of cases requiring review. The existing legal machinery would not be sufficient to settle even a limited number. Access to arbitration will therefore be one of the means of speedy and equitable settlement of disputes on termination claims, and of vital importance in the transition period of reconversion.

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<sup>6</sup>The term means any holder of one or more war contracts, prime contracts or sub-contracts, sec. 3 (c) of the Act, Sec. 815.510, *ibid.* p. 9470.

<sup>7</sup>Sec. 815.107, *ibid.* p. 9469.

<sup>8</sup>Sec. 13 (f) of the Act; Sec. 815.436, Reg. 15, 9 Federal Register (1944) p. 9473.

<sup>9</sup>Sec. 815.570, *ibid.* p. 9479. See also Regulations of U. S. Maritime Commission of August 10, 1944, Sec. 298.164, *ibid.* p. 9841.

<sup>10</sup>See A. D. H. Kaplan: *The Liquidation of War Production* (1944) p. 84.

It is fortunate that country-wide machinery for administered and impartial arbitration of high technical competency has been built up by the American Arbitration Association since the last war. The critical congestion in court calendars due to the avalanche of litigation following World War I gave a great impetus to arbitration. Enactment of modern arbitration statutes by many states and of the U. S. Arbitration Act in 1925 by the Congress was both the result largely of support by the Bar and the cause of greatly increased interest on the part of the Bar.

The fruit of its forethought and prevision is that now the Bar has a well seasoned supplementary process through which it can protect the interests and conserve the assets of its private clients as well as safeguard the rights of the taxpayer. Modern arbitration—the child of World War I—has reached virile maturity for the settlement of disputes growing out of the termination of contracts for the production that is winning World War II.