

CLIENT ALERT

Jurisdiction Found Over 85-804 Indemnification Clause Breach Claims

May 1, 2006

In an important case of first impression, the Armed Services Board of Contract Appeals in *The Boeing Co.* (Apr. 12, 2006, http://www.crowell.com/pdf/expertise/govtcontracts/ASBCA_decision.pdf), has held that it has jurisdiction under the Contract Disputes Act to consider claims for the costs of investigation and remediation of ground water pollution and toxic tort litigation under indemnification clauses authorized pursuant to the “residual powers” authority of Public Law 85-804 and 10 U.S.C. § 2354. The Board concluded that Public Law 85-804, 10 U.S.C. § 2354, and statutory and contractual provisions allegedly providing for secretarial and/or congressional approval did not divest the Board of its CDA jurisdiction because, *inter alia*, acceptance of such arguments would render the indemnification clauses, which were included in prime contracts awarded to Boeing and subcontracts awarded to Lockheed Martin Corporation in the 1960s and 1970s, “illusory.”

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Thomas P. Humphrey

Retired Partner – Washington, D.C.

Email: thumphrey@crowellretiredpartners.com