The Dispute Resolution Board Foundation

Forum

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International Conference Grows In Size and Scope

By Peter HJ Chapman

"How Dubai sustains such fabulous growth is a question for the economists, but for the construction dispute specialist Dubai and the other emirates hold enormous future potential."

The 5th International DRBF Conference was the first DRBF conference held outside the USA or Europe. Traditionally the DRBF Annual Meeting is held somewhere in the USA (Denver on October 8th and 9th this year if the place and date are not already firmly in your diary) and, hitherto, the International Conference has been in a European capital city (London, Rome, Paris, Berlin). Consequently, it was something of a gamble to propose that the 5th International Conference should be held in the United Arab Emirates – an area which had no history whatsoever of dispute boards! Readers will be pleased to learn that the gamble paid off and as many people attended the Dubai conference as attended that last Annual Meeting in San Francisco with departing comments indicating how enjoyable and beneficial the conference had been. Phew!

So what was the attraction of Dubai apart from the sun and deep blue skies, the crystal-clear sea, fabulous hotels and belly dancers? The reason for the success of the venue was encapsulated in a comment by the DRBF president whom, whilst cruising through the coastal waters around Dubai on the Sunday afternoon of the second day turned his head landward and said to me that in over 40 years of being associated with construction he had never seen the number of tower cranes in one place as were reaching skyward from just one development on the Dubai waterfront. Yes, the construction boom in Dubai is in full

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DRBF member Jim Perry and OP Geol prepare to enjoy a traditional desert dinner under the stars.

In this issue of the Forum

President's Page

I have literally been around the world recently to represent the DRBF and participate in stimulating discussions on future projects for the Foundation.

In April, the board of directors met in Chicago to wrestle with a number of key issues, including changes to the nominating process for the board of directors, regional chapters, and the performance of our new executive director (see more on these topics on page 10). One of the main topics that drew the most passion from our group was about changing the way we address membership grades.

Currently, members fall into categories that range from student to corporate members. Each is based on the member's position and financial commitment to the organization.

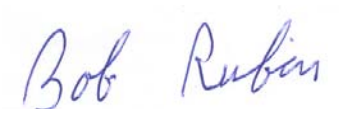
There has been a growing interest in providing dispute board accreditation. The benefits for those who achieve accreditation are clear – a confirmation of their expertise and experience makes them more attractive candidates for dispute board postings. However, from an organizational standpoint, the challenges are equally clear – it would require administration of a detailed program which we don't currently have the resources to manage. Furthermore, it would be agonizing to deal with the subjective nature required in analyzing someone's experience, since our membership draws from such a diverse professional and cultural pool.

The compromise for the Foundation at its current administrative capacity is to offer a stratified tier of membership grades that places members within a category based on strictly objective criteria. For example, we might offer "member," "senior member," or "fellow" levels, each with its own set of requirements and membership benefits. A team spearheaded by president elect Hal McKittrick has been wrestling with a proposal that explores the options for a change to our membership levels. Although they have received input from the board, it is critical that they hear from different voices throughout the organization. This will be an important breakout session at our Annual Meeting and Conference in October. I urge you to send your thoughts to Hal and his team in the next few months, and to join us in Denver and participate in the dialog.

I have also been involved in discussions with the international organization of consulting engineers, FIDIC, about working together to develop training programs which merge their dispute resolution requirements with tested DRB principles. In addition, the International Chamber of Commerce (ICC) is working closely with Bob Smith, Steve Butler and myself to create a seminar on the ICC's support of DRBs and their use on projects within the U.S. This group has had many successes in the international arena, so it is encouraging that we will be working together from inception on their North American strategy. There are many synergies with both of these organizations that benefit DRBF practitioners in every market, so stay tuned for more details as they become available.

I must commend Hamish Macdonald, Gordon Jaynes, Peter Chapman, Gwyn Owen and the rest of the team that organized the International Conference in Dubai. Just in its fifth year, this event has risen in size and scope to challenge the U.S. based conference. The expansive agenda and intellectual content was matched in impressiveness by the after-hours activities – this group works hard and plays hard! The dune bashing, desert dinner and tours of the unique projects underway in Dubai will be a cherished memory. I trust the Annual Meeting and Conference, organized by Sam Guy, Ray Henn and their team, will match the enthusiasm demonstrated by the international team in creating an event that is intellectually stimulating and moves us to the next level in our evolution. Mark your calendars now and join us!

Sincerely,



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The *Forum* welcomes articles on all aspects of Dispute Resolution Boards, and members are encouraged to submit articles or topics to the DRBF, attn: Editor.

Please send change of address with a copy of a recent mailing label six weeks in advance.

Committee Reports

Best Practice

All inconsistencies have been resolved between BPG and Manual Committees and the Guidelines have been included in the main body of the Manual rather than as annexes. They are set forth under four categories of best practices instead of the original three in Section 1, Chapter 2 of the Manual. The categories are: Specification Provisions; Actions by the Parties; Behavior of Board Members and Dispute Hearings. The BPG Guidelines are stand alone and can be excerpted from the Manual by on line access at the DRBF website. Simply visit the DRBF Practices and Procedures Manual. The guidelines can be found in Section 1, Chapter 2, "Overview of the Process and Best Practice Guidelines" and downloaded.

Future activities of the committee will be driven by the needs of the Foundation and its sections.

Harold McKittrick

Manual

The entire Manual is on the DRBF web site. We hope you have printed it and filed it in a 3-ring binder with the cover inserts and tab sheets. Let Steve Fox know if you're not receiving e-mail notifications of Manual postings to the web.

An important revision to Chapter 2 of Section 1was posted in March. Be sure to read it.

The Manual is available to everyone. When you meet people interested in the process refer them to drb.org – they can read the entire Manual. Please also tell your fellow DRB members and the owner, contractor, subcontractor, and CM representatives that it's available on the web.

The Manual is a living document – totally unlike a printed edition; it's easy to change and we plan to keep it up-to-date with the latest and greatest ideas. Please let us have your comments on how to improve it – no suggestion is too minor or nit-picky.

The committee's current work is to prepare another questionnaire. Look for it by e-mail in August and please give us your input. We'll report on the results at the Annual Meeting. Revisions to several more chapters of the Manual are also in the works.

Joe Sperry

Web Site

There are several pages or sections on the website that need to have content added or updated. A schedule has been established so that each will be completed by the Annual Meeting in October. In addition, the committee is looking at making minor changes to the toolbar buttons to improve user access to information.

There are two policy issues we hoped to tackle this year, and one is already underway by the Training Committee regarding the use of the DRBF logo on other websites. We will do our best to periodically search for DRB sites and work with members or others on reciprocal links, etc. which fall within our guidelines.

The other big issue is with regard to the process for posting previously published – and therefore copyrighted – articles within our library. Currently eight articles written by DRBF members have been submitted for posting. We are working through the proper channels to insure the DRBF has necessary permissions and a strong policy in place prior to posting these articles.

Ann McGough

Education/Training

Larry Rogers and Jim Donaldson have completed and published the new 2005 Administration & Practice Workshop and 2005 Advanced/Chairing Workshop manuals. These new manuals are the foundation of the new trainings they will be presenting around the country. The first of these new workshops were held in four California cities in March and April. *(continued on page 5)*

Letters and E-mail to the DRBF

I have been a proud member of the DRBF since the mid-1990s, and have traveled great distances to attend the International Conference in London and the Annual Meeting and Conference in San Francisco. On both occasions, I was extremely disappointed with the corrosive obsession with "the lawyers" as the bad guys. This negativity has continued in several articles and letters in recent issues of the *Forum*.

Can construction, and construction dispute resolution in particular, get by without the law and lawyers?

I began to wonder whether the critics might be right and pose myself the above question. The short answer I came up with was a resounding yes! This flash of insight, and lack of self-interest, from a lawyer might be surprising. However, the answer comes with a fundamental proviso: so don't let's get carried away too quickly.

The fundamental proviso in this instance is the surprisingly simple one that the parties involved in the industry do not chose to resort to the law and do not retain lawyers. Just as clients go to law (law does not go them) clients retain lawyers: lawyers do not retain clients. Some of the larger players on each side of the industry, more particularly amongst contractors, whose *raison d'etre* is have lawyers on their staff. Until I set up a consultancy I was such a lawyer.

It is often said that the best contracts, or more accurately, the best projects, are those where there is no need to know whether the agreement which defines the relationship is or is not a contract, nor what are the rights and obligations of the parties. The partnering school argues that constructing things according to a contract, which spells out rights and obligations, is the very cause of the conflict and confrontational attitudes. Irrespective of where you stand on them, these issues lay dormant and irrelevant, to the physical act of construction in return for payment, for as long as each party leaves them so. Happily, even in the construction world the overwhelming majority of parties do just that, and we should all celebrate the fact. Nevertheless, most major projects are carried out under what are thought to be contracts, at least until a particular party goes to law and finds out that in his case it is not. If no party goes to law no one cares one way or the other. The same is true of dispute resolution agreements.

As a member of the DRBF, and a supporter of the process it advocates, I feel that we must recognize that parties do not always so will it: instead they chose to go to law. Allowing for the fact that not all systems of law are the same worldwide, and recognizing that we aspire to foster commonsense dispute resolution worldwide, my view is still that we should note, and learn from, the salutary points of the jurisprudence on this subject, as they might reflect inherently universal values.

I highly recommend members read the reported case law on UK adjudication. 210 cases have been reported since early 1999, and the reports are easily accessed for free by logging on to: www.bailii.org. It is in our enlightened self- interest to learn from the mistakes of others, to ensure that the users of DBs are not involved in the kind of wasted effort, time and money which is drawing the kind of criticism that adjudication is currently beginning to attract here.

It seems to me, from having participated in-house on the contractors' side of the industry for over 20 years, and the employers' side for 9, that the ideal construction claims team should be mirrored in a construction dispute board. That is, the board should consist of a technical expert, a financial expert and a legal expert. It is axiomatic that the technical expert should have

appropriate experience in the form of construction in issue. The financial expert should have appropriate experience in construction finance: it might be expecting too much for specialization in the particular form of construction. The latter point might also be true of the lawyer, but he should have practiced non- contentious and contentious construction law for a suitably long period. He should also have a good grounding in legal history, jurisprudence and, if he is involved in contracts and disputes having an international element (as I have been), conflict of laws.

I recognize that the DRBF is continually growing and evolving. I respectfully request the following of my co-members of all first callings:

1. Let us remind ourselves that our stated objective is fostering common sense dispute resolution worldwide. If this means (as it surely must) shedding light where there has been heat, why cannot this be done in our relationships? How can we hold ourselves out as being able to resolve other people's disputes by the application of common sense, when we seem unable to apply it in our own debates?

2. Because it is in keeping with fostering common sense construction dispute resolution, to embrace the objective of the British Society of Construction Law of promoting the study and understanding of construction law amongst all those involved in the construction industry. As well as noting its purpose, it is very important to note the inclusiveness of the promotion, which, without pre-classifying them, targets all people involved in the construction industry.

3. Revel in the diversity of our membership, draw strength from it, and end the divisiveness.

Derek Griffiths & Associates Ltd
E-mail: info@dgaconstruction-law.com
www.dgaconstruction-law.com

(continued from page 3)

There will be a new training program introduced as part of the Denver Annual Meeting in October. Please attend this event to be part of this new opportunity.

An issue has arisen regarding the proper use of the DRBF title and logo by members, non-members, seminar presenters, etc. We are working on a comprehensive policy regarding use of the DRBF logo and title that will be submitted for member input before it is adopted. For the present, we ask that before any member or non-member places the DRBF title or logo on any document, website or digital presentation they contact Steve Fox at the DRBF office for approval of the executive committee. The Foundation is pleased that our members and so many non-members are spreading the word about the Foundation, but concerns have been raised about any use of the logo or title that seems to imply the DRBF has approved or sanctioned certain events, individuals or publications. If you do happen to observe questionable use of the DRBF logo or title, please contact Steve Fox.

Kerry Lawrence

Congratulations to our Internet Savvy Contest Winners: Brad Neff and Marianne Ramey

According to www.webopedia.com, an online dictionary of Internet related words, a **robot** is:

(1) A device that responds to sensory input. See under *robotics*.
(2) A program that runs automatically without human intervention. Typically, a robot is endowed with some artificial intelligence so that it can react to different situations it may encounter. Two common types of robots are *agents* and *spiders*.

And a **spider** is:
A program that automatically fetches Web pages. Spiders are used to feed pages to search engines. It's called a spider because it *crawls* over the Web. Another term for these programs is *webcrawler*.

Because most Web pages contain links to other pages, a spider can start almost anywhere. As soon as it sees a link to another page, it goes off and fetches it. Large search engines, like Alta Vista, have many spiders working in parallel.

A MESSAGE FROM THE EXECUTIVE DIRECTOR...

I sit writing this column looking out over the city of Dubai, UAE.

I have spoken with DRBF members from 19 nations.

Everyone is very excited not only about the DRB Foundation's Annual International Meeting here in Dubai but also about the future of DRBs and the DRBF.

There is a recognition that the DRB process holds great potential for growth wherever owners and contractors are given the chance to explore the benefits each can derive from this process.

After a series of meetings over the last two months, the Department of Public Works (which is responsible for all state building construction) and the Department of Transportation of the State of Connecticut both choose to require DRBs for their dispute resolution model.

Since that time I have been contacted by Federal and state agencies wanting to pursue the idea of utilizing DRBs in their dispute resolution model. I will be following up on those invitations.

After meetings with one of the major developers here in Dubai, this developer has stated that they will utilize an advisory, or informal, DRB process.

It is obvious from my first four months as the DRBF Executive Director that the next twelve months will find an extraordinary growth in opportunities for DRBs and the DRBF.

Success, however, never arrives without its own baggage replete with problems.

The success in Connecticut, and the obvious successes that soon will follow, shines a bright light on a DRBF "problem" that has been hidden in the dark until now.

Prior to this year, other than the Big Dig in Boston, the vast majority of DRBs have been located in Florida, California and Washington.

That fact is not a problem, in and of itself, but, rather, is a fact that should receive plaudits for all those DRBF members who worked so hard in those states to engender those successes.

I tip my hat to you – you began with a near blank slate and created a strong, vibrant DRB process that has benefited DRBF members in those states.

In some ways, my work has been made easier by your successes in those states. There now is a successful foundation of DRB utilization by state agencies to which those now considering making the change for their agencies can look to for actual experience.

So, in light of the prior successes and those now being achieved, what is this "problem" I referred to as being part of the baggage brought by success?

An increasing number of qualified DRB members!

There presently are not enough qualified DRB members to comfortably sustain the DRB panel requirements that will be coming on-line.

Here is what I am doing to confront this problem.

The Executive Committee of the DRBF Board has approved my plan to hold a series of breakfast meetings in the offices of construction professionals around the country over the next few months. Local executives, both active and retired, of engineering and construction companies will be invited to hear a discussion of the benefits of becoming a DRB member and go through DRBF training to support the new DRB programs that are coming on-line.

Two such meetings already have been set and others soon will be confirmed.

While that all may or may not be interesting to you where you live today, this "problem" eventually will affect you.

I want to include you in the solution.

I invite you to think of the number of construction professionals in your area, active or retired, who would be interested in meeting to discuss the benefits of becoming a DRBF member and actively entering the field of dispute resolution.

If you find that you know of a fair number of such individuals, contact me.

I will send them some written materials and, as my schedule solidifies, I will contact you when I am going to be in your area to see if you could invite them to join you and me for a discussion of the benefits of becoming a DRBF member, as well as a short discussion of some of the technical marvels that is Boston's Big Dig Project, if that holds out interest for those planning on attending.

I have been successful in generating new opportunities for the utilization of the DRB process and, by extension, for the DRBF.

I am confident I will be able to continue to generate such new opportunities while I serve as the Executive Director.

I continue to seek your assistance in finding these opportunities when you become aware of them.

I will continue to seek new DRBF members and I will be successful in adding new members each month.

I will continue to seek your assistance to find potential new members and to educate them concerning the benefits of being a DRBF member.

Remember, increased DRB opportunities drive increased DRBF membership.

The opportunities are arriving.

Will you help me to increase membership to support those opportunities?

According to my computer, it is 11:52 pm on Thursday.

My watch tells me it is 8:12 am on Sunday.

My watch tells me I should go to breakfast – my computer and my body tell me I should go to bed.

My decision has to be guided by where I am today.

The DRBF's need to grow both in opportunities and resultant membership has to be guided by today's construction market and the ability of the DRBF membership to participate in meeting those needs.

Think about who you know today.

Contact me tomorrow if you think they will make a good DRBF member.

Larry Delmore
Executive Director
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Cell: 617-650-4124
E-mail: lfdelmore.drb@comcast.net

COOPERATION AGREEMENT BETWEEN DRBF AND THE CONCILIATION CENTER OF THE CHINA COUNCIL

By Peter Chapman

China has a history of using dispute boards, starting with the Ertan High Dam and Hydroelectric Power Plant the DRB for which was established in 1991, and continuing to this day. China also has a cultural heritage that favours the settlement of commercial conflict by non-adversarial means. Hence it was a logical development for the DRBF to form a cooperative agreement with like-minded organisations within China.

With the assistance of Lu Chengji , Head of the Yellow River Water and Hydropower Development Corporation and a DRBF member, and Zhao Hongwei, from the Foreign Affairs Department of the Yellow River W&HDC (both of whom were involved in DRB matters during the construction of the Xiolangdi Multipurpose dam Project and who had become convinced of the value of DRBs to China's infrastructure development), the DRBF was introduced to the Conciliation Centre of China Council for the Promotion of International Trade (CCPIT) and the China Chamber of International Commerce.

After some long-distance discussion, a form of words was agreed that linked the DRBF and the Conciliation Centre with a common purpose to explore means by which the two organisations can exchange information, conduct research, provide technical assistance and technical publications and to co-operate in conferences, seminars and other professional meetings. The agreement was signed on behalf of the DRBF by Peter Chapman towards the end of his year as DRBF president and by Huang He, secretary general of the Conciliation Centre at the end of last year.

The real work of developing this landmark agreement has yet to begin and a trip to China in connection with other professional engagements may occur within the next few months.

With the building of the Beijing Olympic facilities now under way for the 2008 Games, it is an opportune time for dispute boards to show the benefits they can bring to the construction process.

If you are serving on a dispute board in China or have regular visits to Beijing and would be interested in joining a DRBF delegation, please let me know at the e-mail address noted. Unfortunately the DRBF is not in a position to assist with delegates' fares and hotel expenses.□

FIRST DISPUTE BOARD COURSE FOR THE 2004 ICC DISPUTE BOARD PROCEDURES

By Peter Chapman

Following from the work of the International Chamber of Commerce (ICC) task force for Dispute Boards, the ICC in 2004 published dispute board rules and documents that introduced the concept and operation of dispute boards into contracts promoted by the ICC. It should be noted that ICC 'contracts' extend well beyond the boundaries of civil engineering and building construction.

The details of the ICC rules and documents is not reported here (having been covered in previous articles in the *Forum*), however, at the London launch of the ICC rules and documents (October 2004) it became evident some form of training would be desirable. Accordingly, with the support of the ICC and the DRBF, a three-day course on the use of the ICC rules and documents was held in London in early May.

Those on the course, all of whom were highly experienced dispute resolvers, were taken through the new procedures and then required to perform a number of case studies – taking the part of the ICC dispute board – and thus applying the new procedures to the case studies scenarios.

The course proved very popular and could be repeated if sufficient demand exists. Those wishing to be kept informed if subsequent courses are scheduled, please let me know at the e-mail address noted.□

Contact Peter Chapman about either of these two projects at:

dispute.resolution @PeterHJChapman.com

9th Annual Meeting and Conference
October 7-9, 2005
Denver, Colorado

The DRBF Annual Meeting and Conference is open to anyone using or interested in furthering the use of the Dispute Resolution Board process. The event will offer educational meetings as well as interactive sessions designed to expand and guide the future of the DRB process and the Foundation's activities.

Conference Highlights

Friday October 7, 2005
Site tour of the T-Rex Project, a Colorado Department of Transportation design-build project rebuilding 17 miles of I-25 and installing 19 miles of new light rail track along with 13 new stations and 3 parking garages.

Saturday/Sunday October 8-9, 2005 Meeting and Conference
Overview of construction in the Rocky Mountain region and the status of DRBs in that area.
Guest speaker Tom Howell of Kiewit Construction.
Breakout sessions on the accomplishments and challenges of the new executive director, Larry Delmore; revisions to the *DRBF Practices and Procedures* Manual; and ICC Dispute Board Rules—a new frontier for DB appointments and for DRBF training.
Saturday night will feature a reception, dinner, and presentation of the Al Matthews Award.

Workshops

The DRBF will be offering the 2005Administration and Practice Workshop on October 5 and the 2005 Advanced/Chairing Workshop on October 6. These are intensive one-day skill development sessions for those who are serving on or wanting to serve on Dispute Resolution Boards. These workshops are also excellent for owners or contractors who want to implement a DRB program. Contact the DRBF office for additional details.

Registration and Reservations

Registration fees for members are $220 in advance or $250 after September 16, 2005. Non-member fees are $250 in advance and $280 after September 16, 2005. To register, fax, e-mail or mail a registration form which can be obtained from the DRBF office or downloaded at www.drb.org.

Registration is required for the optional T-Rex project tour, and space is limited. Sign up today to insure your space.

The Annual Conference will be held at the Embassy Suites in downtown Denver. Room reservations may be made by calling 800-733-3366 toll free in the US, or 303-297-8888. Be sure to request the DRB Foundation group rate of $109.00 per night when you make your reservation.

DRBF Board Meeting Summary Minutes

By Peter M. Douglass, Secretary/Treasurer

FEBRUARY 11, 2005 MEETING
A DRBF Board of Directors conference call was held on February 11, 2005 with 13 directors and officers participating. In addition, two past DRBF presidents participated; plus Larry Delmore (Executive Director), Steve Fox (Administrative Manager), and invited Committee Chairs Joe Sperry (DRB Manual Committee), Kerry Lawrence (Education and Training Committee) and Ann McGough (*Forum* editor and Website Committee). The following is a brief summary of the discussions and actions taken at the meeting.

Treasurer's Report:
The revenues and expenses as of the end of January 2005 were reported to be reasonably on target. Notable items included:

- Contributions for the executive director start-up funding totaled $1,500 to date;
- Membership numbers are slightly behind last year but revenues are ahead of last year due to the increase in membership rates; and
- Some 16 workshops are scheduled for 2005 resulting in a projected increase in net income over that budgeted for 2005.

Solicitation of Contributions:
108 names of individuals and companies to be contacted were distributed. The Board members will make phone calls to these individuals and companies following their receipt of a request letter from the president.

Membership Grades:
A brief recap of the primary changes that are being proposed in developing DRBF membership grades was presented to the Board. Such membership grades are directed at providing greater benefits to the membership at different levels that, in turn, are based at least in part on experience in the construction industry and prior service on Dispute Boards. A memo entitled "Proposed CRBF Membership Categories" and accompanying table had been distributed to the Board prior to the conference call. This topic of membership grades will be a priority discussion item at the upcoming face-to-face meeting of the Board in Chicago. Each Board member was asked to submit their thoughts, comments and suggestions on this matter prior to the Chicago meeting.

Education Committee:
Kerry Lawrence, the new committee chairman, gave a brief summary of his background followed by an outline of the education program as perceived by the committee:

- 16 training workshops are scheduled for 2005;
- Working on plans in conjunction with the 2005 Annual Meeting in Denver including:
  - An ICC (multi-national) speaker;
  - Workshop timing that the Board decided would be held on the Wednesday and Thursday preceding the Annual Meeting so that workshop participants could attend the free field trip offered on Friday from 9:00 am to 1:00 pm;
  - Need to decide whether to offer an "Updated Training" session or stay with the usual "Admin. and Practice" and "Chairing" workshops; and
- Develop a regular re-training workshop to be part of a continuing education program that prior workshop participants would take every 3 to 4 years.

President Bob Rubin noted that Education and Training will be another hot topic to be addressed in Chicago.

Executive Director:
Executive Director Larry Delmore reported that the ED tracking committee meets with Larry about every other week by conference call to keep abreast of his activities and offer suggestions.

Larry explained that his approach, in addition to spreading the word about the DRB process, is set in three parts with each part anticipated to be about one month in duration:
1. Pursue potential members in the corporate category;
2. Pursue engineers from engineering firms that would join as individual members; and
3. Meet with Connecticut government organizations as this group has expressed a strong interest in adopting the DRB process on their projects.

In addition to planned trips to the west coast over the next month, Larry is proposing a column in the *Forum* to encourage the use of the executive director as a single place/person to go to with any leads that need to be followed up.

Website:
Ann McGough explained that currently the "Chapter" sites cannot be accessed through the DRBF home page (DRB.org) on the web and that the Florida Chapter had requested that this be modified so that there are links to the individual Chapter through the home page. Following some discussion on the pros and cons, the Board voted to approve this change.

Joe Sperry noted that John Nichols is taking over the task of updating the database and that a lot of data is still missing (noted in pink on the spreadsheet). Members need to provide the needed information to complete the database.

Revised DRB Manual:
Joe Sperry reported that the Sections 1 and 2 of the revised manual is currently on the website and that Section 3 review comments have been received and that Section 3 should be on the website by the end of February. Joe noted that an indexing system has been added to Sections 1 and 2 to facilitate easy identification and referral to any part of the manual. Parties who copied an early version of Sections 1 & 2 may want to recopy this later version so as to incorporate this new indexing system.

Revisions to Sections 1, 2 & 3 of the manual are anticipated at regular intervals as additional comments are received that warrant such changes. Section 4 (Multi-National) is in the mill and will be added to the website as soon as it is completed.

Joe also noted that minor revisions to the Code of Ethics have been incorporated in the Revised Manual.

Following some discussion whether Section 3 should be made available to DRBF members only or to anyone accessing the website, it was agreed that this topic would be discussed more thoroughly at the Chicago meeting.

International Meeting:
Peter Chapman reported that the meeting is to be held in Dubai this year (May 9 & 10) and that he will be meeting with the on-site coordinator to finalize the speakers. Peter encouraged Board members to attend if at all possible.

Peter also noted that the DRBF has been added to the roster of speakers at the London Superconference and that he is recruiting speakers to fill slots that total slightly over one hour.

Annual Meeting:
Sam Guy reported that the plans for the Annual Meeting in Denver in October are coming together nicely and Ray Henn has done a great deal to assist in setting things up. Further discussion of the plans and

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decisions will be addressed at the Chicago BOD meeting. At present, a walking tour of historic sites is planned for the Friday preceding the meeting.

Best Practice Guidelines:
Bob Rubin noted that he and Hal McKittrick would be discussing suggested changes to the BPGs in the very near future.

The next meeting of the Board of Directors will be a "face to face meeting" on April 29 and 30, 2005 at the Hilton O'Hare Airport Hotel.

APRIL 29 & 30, 2005 MEETING
A DRBF Board of Directors meeting was held on April 29 and 30, 2005 in Chicago with 10 directors and officers participating. Gordon Jaynes participated by conference call during one segment on Saturday. Larry Delmore (executive director), Steve Fox, Joe Sperry (Revised Manual Committee chair) and Ann McGough (*Forum* editor and Website Committee chair) were also present by invitation. The following is a brief summary of the discussions and actions taken at the meeting.

Grades of Membership
Hal McKittrick distributed a document that detailed his team's proposal to establish membership grades. The philosophy behind the proposal is: (a) to enable users quick insight into the experience and qualifications of potential Board members, thereby also adding to the value of DRBF membership; (b) to minimize the current loss of DRBF members each year; (c) to enhance the pride in DRBF membership; (d) to provide Larry Delmore some added benefit to becoming new members; and to answer the question *Why should I be a member?* The new plan would stratify the DRBF membership based on experience and qualification requirements, while commensurately stratifying dues.

Regarding the issue of experience, it was noted that such membership grades should not be about serving on 20 Boards with the same owner, it is more important that you have diversity of experience – maybe 5 different owners, 5 different contractors. It was also suggested that diversity in types of projects may be important.

A motion was passed agreeing that it would be beneficial to have stratification in our membership categories. Discussion then centered on what should be the primary basis for stratification: qualifications, benefits (what you get for the money you pay), or what you want to pay (current system). The current proposal is a melding of all three. The majority voted for qualifications, with one vote for benefits and none for money.

A list of qualifications was established:
- Number of years in the industry
- Number of Boards the individual has sat on
- Number of different owners/ contractors, and types of construction
- Training
- Number of disputes heard

In the interest of time, the discussion was tabled until a subsequent meeting. It was agreed that the Board should lay out a proposal to the membership at the Annual Meeting, get feedback, and then the board of directors (or the membership) will take a final vote. It was noted that this proposal for the revised membership grades under consideration would be for 2006, allowing time for the membership to review the plans and make their opinions known.

Chapters Committee
There are four potential chapters: Florida (currently exists), DC metro, California, and the Pacific Northwest. Chapters would be on a regional basis, not on a discipline basis. Chapters are fostered from the ground up, so the national organization should be ready to embrace chapters and provide the framework if the membership within a given locale want to form a Chapter.

It was stated that the committee's mandate is to establish the rules and regulations for local chapters, bring it to the Board for

Board of Directors Meeting Schedule

The DRBF board of directors has scheduled meetings for the following dates:

June 10
August 12
September 9
October 7

If you have something you would like the board to discuss or consider, please notify Bob Rubin or one of the directors.

approval, and then proceed with implementation.

The question was raised whether regional reps should be a separate committee. The regional reps started as a mechanism to encourage membership, but they are now used as a local contact for the process.

A motion was carried for John Nichols and Jack Norton to establish a committee to handle both the chapter program and the regional rep program. The Florida chapter will be used as an initial model for creating the local chapter program.

Website

Ann McGough gave an overview of the sections of the website to be expanded before the DRBF Annual Meeting in October 2005. She then raised some concerns the committee has about copyright law as it relates to previously published materials that have been submitted for distribution through the library section of the site. President Bob Rubin agreed to put her in touch with an IP lawyer to review the proposed policy prior to implementation. The same was extended to Joe Sperry regarding copyright for the Manual.

Manual Revisions

Joe Sperry noted that, with regard to the DRB database, the problem remains that limited data comes in and there are clear gaps in the reporting. Bob Rubin offered to send a letter under his signature if it was thought that would help.

Originally, Section 3 of the Manual was going to be for members only. It was added to the website without requiring a membership login. The Manual Committee itself is now divided on whether the Manual should be available to anyone, or just members. There was extensive discussion on the pros and cons, with no conclusion determined at this time.

Treasurer's Report

Pete Douglass reviewed the budget information distributed to the Board, and expressed concerns about the DRBF being able to maintain a strong financial position in light of the expenses required to maintain the executive director (ED) position. Pete added that Larry Delmore has done an outstanding job of opening new doors and spreading the word on DRBs, but noted that the DRBF may not be able to maintain this position in 2006 unless added funds are forthcoming in the near future. Pete also noted that the request for one-time contributions to provide needed funds for the ED position in 2005 exceeded the target, in large part due to a very generous contribution from Lane Construction. (Our sincere thanks goes out to Lane Construction and the other 37 members who contributed generously to this cause.)

There was discussion about selling advertising in the Forum. It was agreed to run a pilot program in the May issue. It is anticipated that the advertiser pool would heavily skew towards claims consultants. Also, if advertising by contractors is high (due to their source of marketing funds), it could be balanced by running a list of owners currently using DRBs (a complimentary listing). Ann McGough will work with Larry Delmore to secure the trial advertising.

Other possible sources of increased funds that were discussed included restructuring of the training workshop delivery and increased membership anticipated to follow the ED's efforts.

The meeting closed at 9 p.m. sharp and reconvened at 8 a.m. the following day.

Executive Director's Report

A written report was provided to the Board members Friday night, and Larry Delmore presented a summary report.

When asked about near term revenue, Larry stated that we can expect a sizable increase in training and membership from Connecticut. He also said donations and support will come from contractors once they go through the process and see the benefit. *(continued on p. 15)*

2005 WORKSHOP CALENDAR

Attention: *There was an error in the last issue of the Forum. Please make a note of the revised schedule below.*

May 24 - 2005 Administration and Practice Workshop
May 25 - 2005 Advanced/Chairing Workshop
Location: Seattle, Washington

October 5 - 2005 Administration and Practice Workshop
October 6 - 2005 Advanced/Chairing Workshop
Location: Denver, Colorado

November 8 - 2005 Administration and Practice Workshop
November 9 - 2005 Advanced/Chairing Workshop
November 10 - 2005 Update Workshop
Location: Orlando, Florida

Attendees should take the Administration and Practice workshop prior to the Advanced/Chairing workshop. Registration fee includes lunch and workshop materials. Each participant will receive a Certificate of Completion from the Dispute Resolution Board Foundation.

To register for a workshop or learn more about the new programs, contact the Dispute Resolution Board Foundation by phone at 206-248-6156 or e-mail home@drb.org.

For the latest additions to the training schedule, visit www.drb.org.

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International Conference

Gordon Jaynes joined the meeting by telephone for this section of the agenda.

Budapest was approved unanimously as the location for the 2006 DRBF International Conference.

Gordon received Board approval to work with the ADR Center in Rome on a seminar regarding new ICC rules, carried out by DRBF-Rome members.

The Dubai program is finalized, and it looks to be a well planned, well attended event. Attendance figures are approaching the size of the US based Annual Conference.

Graham Peck (DRBF Australia) has requested copies of the training materials being used in Dubai.

2005 US Annual Conference

The proposed agenda was reviewed, including a site visit and the idea that committee meetings be held in suites to save money on meeting rooms.

It was suggested that we consider sending invitations to local owners to attend the conference free of charge. Pete is checking into the costs and a discussion topic at the next Board of Director's conference call will be whether this should include invitations to the entire conference, or only to the Banquet.

There will be an announcement of the conference in the May issue of the *Forum*, and Steve will provide the registration form to upload onto the website.

A motion was made to switch the ICC session to the reporting part of the agenda, and make the education and training session a breakout session. Bob Rubin said that the U.S. Center for International Business is the American arm of the ICC. The original goal was to provide something new and tangible to conference attendees. If the ICC initiative is successful, it could expand beyond engineering and construction into other fields. Eight members voted in favor of changing the agenda, however, a re-vote after hearing a more in depth discussion of the ICC opportunities resulted in restoring this topic to one of the break out sessions.

For the 2006 meeting, two venues were proposed: Pepperdine University and New York. It was suggested that NY has been unfairly eliminated in the past due to cost, yet when the meeting is held in other large cities (San Francisco and DC for example), the hotel is usually at the airport or outside of town. It could work financially if the meeting is held in outlying areas like Newark or Westchester.

A motion was carried unanimously to hold the meeting in NY/NJ in 2006 and to authorize Larry Delmore to get a hard proposal from Pepperdine for 2007.

Nominating Process/Bylaws Change

It was pointed out that we usually struggle to find suitable candidates for the board, and Sammy Guy outlined a new process to begin in 2006. A nominating committee would be appointed 60 days prior to the spring board of directors meeting. A notice would be placed in the *Forum* seeking candidates for consideration. The election would then be by mail (or email) ballot and the results reported to the candidates prior to the Annual Meeting. It was noted that such a change to the process could be implemented without changing the bylaws. The motion to implement the new program was carried unanimously.

ICC Seminar

This event will be held October 14 in NY City. The slate of presenters is top of the line, and this event gets the Foundation in the door as the likely educators of the ICC process in the US. This event is purely informational, not a training program.

As mentioned above, following a discussion of the pros and cons of several options, a re-vote on a prior motion

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OTHER NEWS

Subrahmanian Receives Prestigious Shiromani Institute Award

Shri K Subrahmanian, managing director for Afcons Infrastrcuture Ltd., in Mumbai,India, has been conferred with the Bharat Shiromani Award – 2004 by Shiromani Institute, New Delhi. He was recognized for his outstanding contributions in the field of construction and infrastructure industry and commitment to national progress and human welfare. The Honorable Ex-Prime Minister of India, Shri I K Gujral, presented the award in a colorful ceremony in Delhi on April 27, 2005.

This is the first time the Institute has honored a person in the field of construction industry. Bharat Shiromani Awards began in 1977 with the purpose of honoring men and women of Indian origin from all over the world as a gesture of popular recognition of their outstanding achievements in their chosen fields. The deserving personalities are chosen on the basis of their comparative merit, high caliber and commitment to national progress and human welfare. Some of the past recipients of this award include Mother Teresa, Shri Dalai Lama, Shri Russy Modi, Shri Ram Krishnan Bajaj, Shri T N Sehsan, and Justice P N Bhagwati.

Shri K Subrahmanian is a DRBF member and is the Foundation's Country Representative for India. The DRBF wishes him sincere congratulations on this achievement!

Leto Addresses Group in Malta

Igor Leto (DRBF Representative for Italy) held a well attended talk in Malta on March 15 and 16, 2005 on the FIDIC 1999 Conditions of Contract for Construction (new "Red Book"), with emphasis on Dispute Boards. In this context a comparison was made with DRBs, and DRBF literature (including Membership Application Forms) was distributed.

DRB Presentation to Ministries of the Central Government of Viet Nam

By Richard L. Francisco

On April 27 2005, a seminar on the merits of a World Bank-type Dispute Resolution Mechanism was held in the Ha Noi, Viet Nam. There were 42 attendees from the Ministries of Agriculture, Construction, Finance, Planning & Investment, and Transportation of the Central Government of Viet Nam.

The seminar included sessions on the DRBF, identifying the concept of the Dispute Resolution Mechanism as specified by the World Bank Standard Bidding Documents, a dissertation about the public announcements referring to excessive cost overruns, late completion, lack of transparency, graft & corruption, unqualified consultants and ineffective project managements involving the implementation throughout Viet Nam's IDA funded infrastructure projects, and how a properly implemented DRM could benefit Viet Nam, its Construction Industry and the Ministries of the Central Government of Viet Nam.

Mixed reactions came from the attendees during the question and answer session. Generally speaking the directors of the various departments, who are now required to answer the Prime Minister of Viet Nam's directive on providing a monthly status report on all state funded projects and how inefficient projects are being disciplined to avoid further concerns, had positive inputs. Surprisingly, others indicated that they did not want to see a change that included the World Bank required DRM's.

In closing, I remarked that a DRM is willing to cooperate with the Government in minimizing/eliminating cost overruns and delayed completion with a properly implemented DRM that would also provide a higher degree of transparency.

If you have news about DRBs, Foundation members, or an article to share, we'd like to hear about it.

Deadline for the next issue is July 1, 2005

WELCOME TO NEW DRBF MEMBERS

MEMBER ADDITIONS JANUARY THROUGH APRIL 2005

Michael E. Bienvenu
Cary, NC USA

Hank Burden
Burden & Burden
Dallas, TX USA

William Buyse
C.E.M. Consulting
Bocholt, BELGIUM

Dr. Cyril Chern
London, UK

Herman Claassens
National Ports Authority
Braamfontein
SOUTH AFRICA

Jerrell J. Cosby
Texas Mediation Group
Fort Worth, TX USA

Edward Curley
State of CT DPW
Hartford, CT USA

Michael Giaramita
Carter & Burgess, Inc.
New York, NY USA

Mahadeva Gopinath
Black & Veatch Africa
Johannesburg
SOUTH AFRICA

George Grant
Currie & Brown
Dubai, UAE

Mark Hardy
Greenfield Hardy
Cameron Park, CA USA

Volker Jurowich
JuCon International GmbH
Stuttgart, GERMANY

Dennis J. Kakol
ConTech Consultants
Paeonian Springs, VA USA

Tom Lanczi
Con-Serve Group Ltd.
Thornhill, ONT CANADA

Harald Leiendecker
CDM
Cleveland, SC USA

Roy S. Mitchell, Esq.
Mediator, Arbitrator & Neutral
Great Falls, VA USA

Martin Moorhead
Martin Moorhead Consulting
West Malling, Kent UK

K. Moinuddin
Associated Consulting Engineers
Karachi, PAKISTAN

Mike Myette
Kirkland, WA USA

Dwayne Nelson
Augusta, MT USA

Peter J. Nicholson
Boca Raton, FL USA

Michael P. Pappas, Ph.D., P.E.
Austin, TX USA

Jordan Peck
The Peck Group
Greensboro, NC USA

Kendall C. Reed
Redondo Beach, CA USA

Frank E. Riggs
Troutman Sanders LLP
Atlanta, GA USA

Eng. Abdul Rahman M. Shalaby
Imbaba, EGYPT

Rodney R. Shoulders
HR Gray & Associates
Rockbridge, OH USA

Eugene R. Shy
Caltrans
Sacramento, CA USA

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re-instated the ICC topic as a break out session at the Annual Meeting. The board felt they now had a better understanding of the urgency and the opportunities afforded the membership by the ICC and lengthier interaction on this topic was warranted.

It was suggested that an article about the ICC effort be included in the August issue of the Forum so conference attendees know in advance what the opportunities are.

The meeting went into executive session and concluded at 1:35 pm. The next board of directors meeting will be held by conference call on June 10, 2005.

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swing and the development projects underway or soon to be started are "mega" by any standards. How Dubai sustains such fabulous growth is a question for the economists, but for the construction dispute specialist Dubai and the other emirates hold enormous future potential.

The motivation behind the International Conference is to promote dispute boards in the country or region where the conference is held and this general theme was particularly appropriate in Dubai where the construction environment and contractual dynamics are undoubtedly changing and the need for a fast and effective construction dispute procedure appears to have great promise. Delegates at the conference were told that local developers and public works enterprises have hitherto been in a position to dictate the terms and conditions under which construction works are carried out and the manner that disputes are resolved but that this potentially one-sided situation was changing as more balanced contractual relationships emerged.

The conference began by introducing dispute boards to the delegates, a number of whom were new to the concept and of the background and operation of dispute boards. Peter Chapman (DRBF immediate past president), Robert Rubin (DRBF president), Gwyn Owen (DRBF International Committee chair) and Christopher Koch, under the watchful timing of Gordon Jaynes (DRBF director), outlined the alternative procedures that had been and were currently adopted for dispute boards throughout the world with particular emphasis on the World Bank Procedures, the FIDIC Procedures and the 2004 ICC DB Procedures. The speakers revealed that the new FIDIC 'harmonised' contracts were about to be released - standard contract forms that organisations borrowing from leading lending institutions (for example the World Bank) will be required to adopt and which contain mandatory dispute board provisions.

Session 2, "DRB Perspectives," was chaired by Romano Allione, a mechanical engineer and DRBF member from Milan who introduced DRBF Executive Director Larry Delmore, Dick Appuhn (a US civil engineer and DRBF member based in Italy), Jim Brady (a US civil engineer, tunnelling specialist and DRBF member) and Mohamed Abdul Aal (legal advisor to the Kuwait Fund), each of whom gave presentations of the DRB process from the perspectives of, respectively, the employer, contractor, DRB member and financial institutions who provide or facilitate funding for construction and development projects.

Session 3, chaired by Robert Knutson (a Canadian construction lawyer based in the UK), focused on the use of dispute boards within the UAE. John Arnold (a UK construction lawyer based in the Middle East), David May (a UK civil engineer who has worked at the highest levels with major contractors in Dubai and the region for a number of years) and Marwan Al Qamzi (who is head of procurement and contracts for the largest developer in Dubai) spoke about the way that dispute boards could be introduced into the local construction industry and it became evident that a soft-handed initial approach would likely be best, possibly with the dispute board acting in an informal capacity and emphasising the dispute avoidance benefits before becoming a more formal forum for dispute resolution. What is quite evident – in Dubai and elsewhere in the world – is that one size does not fit all and the DRBF needs to approach the promotion and development of dispute boards with a flexible, pragmatic and open mind.

The evening of the first day was memorable. The adventurous set off from the luxurious Fairmont Hotel in four-wheel drive 'dune bashers' and were driven across the Arabian sands at speed that Lawrence could hardly have imagined – speed freak that he was. Seat-belted and white-knuckled the delegates and some courageous partners put their lives in the hands of some very skilful drivers who seemed to know just how close to the edge on these enormous dunes they could go before the basher would overturn.

But what fun! The destination was a Bedouin encampment where a desert feast was prepared for the mouth-watering delight of the delegates as they strolled beneath the starlit sky and sat on cushions under primitive tents to eat, drink …. and watch a very shapely belly dancer gyrate to pulsating Arabian music. Now we know why the crusaders spent decades in the Holy Land! And those of you who were wondering why the shirt sleeves of delegates were firmly rolled down during the week following the conference need wonder no more – a tattoo artist was resident in the camp to adorn even the whitest of skin with elaborate designs – unfortunately she was unable to draw the DRBF logo so many settled for snakes, scorpions and butterflies. Shame.

Dune Bashing in Dubai

The forth business session was chaired by Peter Chapman whose panel, comprising Marianne Ramey (a US civil engineer who specialises as an expert in impact analysis), Cyril Chern (a UK barrister and architect and experienced DRB member), Toshihiko Omoto (a Japanese civil engineer and DRBF member with significant experience as an international contractor) and Peter Shaw (a UK construction lawyer and DRB member who is currently working in Dubai), outlined a number of practical aspects of dispute board activities after which followed a lively question and answer session. Marianne's explanation of the current trends in impact analysis and the use of experts in dispute board proceedings was particularly well received - although this might partly have been because of the power-point slides she had inserted into her presentation showing the previous night's entertainment!

The final session was chaired by DRBF President Bob Rubin, who told delegates of the current activities and publications of the DRBF before calling on Larry Delmore to speak on the future of the DRBF and Gwyn Owen to speak on the international activities of the DRBF. Delegates left the conference with a buzz of confidence on how the DRBF is making strides towards its stated objectives of fostering common-sense dispute resolution - worldwide.

After the conference a number of delegates took an afternoon excursion and cruise around the new 'Palm Island' and 'World' residential developments just off the costs of Dubai where mini-towns of luxury residential units are being constructed on man-made islands – apparently all sold to celebs such as David Beckham and Michael Schumaker – well we didn't want one anyway!

The Dubai conference was a great success and was truly memorable – much thanks to one person who almost single-handedly masterminded the conference arrangements (which were superb), approached and cajoled speakers and planned the event - including the social calendar - such that it all ran like well-oiled clockwork. The DRFB Representative for the UAE, Hamish Macdonald, did a fantastic job and deserves our wholehearted recognition for his organisational ability and management skills. Well done and thanks Hamish, tremendous job!

Thanks are also due to all the speakers at the conference, to Hamish's wife Jackie for her efficient and competent front-of-house duties, to Knowles Middle East for their kind and generous sponsorship of the conference lunches and the desert dinner drinks, to Daniel Alcon, one of the delegates and a member of Knowles Middle East, for ably assisting with audio-visual matters and to other staff of Knowles Middle East for their help and support.

Next year, the 6th International Conference will be in Budapest and the planning has begun already so that the high standards set for the DRBF international conferences can be maintained. Hope to see you there.

Peter Chapman can be reached by e-mail at phjchapman@btinternet.com

FOUNDATION FORUM

Dispute Resolution Board Foundation
6100 Southcenter Blvd., Suite 115
Seattle, WA 98188-2441

CALL FOR NOMINATIONS FOR THE AL MATTHEWS AWARD

The Dispute Resolution Board Foundation presents the Al Matthews Award each year to one or more DRBF members who have given exemplary service in advancing the use of the dispute resolution board concepts and the DRBF.

Nominations are solicited from the membership and by the president from the board of directors. A framed proclamation and trophy will be presented to the recipient at the Dispute Resolution Board Foundation Annual Meeting and Conference in October.

Send your nomination, including an explanation of why the nominee is deserving of the award, to:

Award Nominations/DRBF
6100 Southcenter Blvd., Suite 115
Seattle, Washington 98188-2441
Or by e-mail to home@drb.org, subject: Al Matthews Award Nomination
Entries should be postmarked no later than 7/15/05

The distinguished list of past winners includes:

Al Matthews, Robert Matyas, Robert Smith, Joe Sperry, Jimmy Lairscey, Carlos Ospina, Pete Douglass, Jim Donaldson, and Steve Fox.