



Forum

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The Dispute Resolution Board Process: A Report Card

By Harold V. McKittrick, P.E.

The Dispute Resolution Board Foundation (DRBF) annual conference in San Francisco featured an opening interactive session on how Dispute Resolution Boards (DRB) have worked, from the perspective of an owner, an owner’s agent and a contractor. The views of the panelists and the eighty attendees generally were consistent with formal and informal surveys recently conducted by the DRBF, but some new perspectives also were presented.

The panel was chaired by the writer and comprised: Mr. Tom Horton, group manager for BART’s Earthquake Safety Program, Mr. Jack Chiaverini, retired senior vice president of Perini Corporation and presently a consultant, arbitrator and member of a number of DRBs and Mr. William Edgerton, Jacobs Associates, currently project manager for the final design of the Brightwater conveyance System in King County, Wash. and a construction manager for a number of other owners.

The consensus was that the principal benefits

of DRBs are the avoidance of litigation (and cost) and the possible establishment of contract principles that could be used in later disputes without having to go back to the DRB. The DRB process not only presents the most economical approach to dispute resolution but exposes the dispute to people with a great deal of hands on construction experience at an early stage. A DRB recommendation was viewed as an asset in helping to sell the resolution to upper level decision makers and in advancing the partnering concept with the contractor. There was some discussion about disadvantages. One was the difficulty of changing the mindset of bureaucracies, used to dealing with disputes in long prescribed ways, to accept the DRB process. Another was the perception in some cases that Boards are biased toward one of the parties. This demonstrated how important it is for both parties to give careful consideration and scrutiny to the selection of Board members and the chairperson so the parties could be confident in their impartiality.

(continued on page 18)

“The DRB process not only presents the most economical approach to dispute resolution but exposes the dispute to people with a great deal of hands on construction experience at an early stage.”

In this issue of the *Forum*

THE DISPUTE RESOLUTION BOARD PROCESS: A REPORT CARD	1
SPOTLIGHT ON UNITED ARAB EMIRATE’S COUNTRY REPRESENTATIVE	8
IS ANYONE SURFING OUR SITE?	13
INTERNATIONAL CONFERENCE DETAILS	16



President's Page

“The times they are a changin’!”

A musician from Minnesota wrote those words over forty years ago. As I look back over my own forty year career in construction, the vast majority of which was spent assisting owners and contractors with dispute resolution, there probably never was a time that the “times” were not changing.

Look at the changes that have occurred in dispute resolution in the construction industry over the last forty years. Construction industry dispute resolution has moved from owners and contractors pursuing litigation to both espousing arbitration to both relatively recently moving into alternative dispute resolution.

Each stage of this forty year progression has been marked by both parties to the contract seeking a means by which third parties could bring their wisdom and practicality, provide a dispassionate look at the dispute and, ultimately, offer a resolution that satisfied both. Each stage of this progression has been marked by both parties seeking a new and better means for third party resolution of their construction disputes.

The DRBF now approaches the end of its first decade. While the DRB process has been alive much longer, it is the insight and the wisdom of the DRBF founders that allowed the organization to achieve its present level of national and international success. The founders of the DRBF were construction professionals who embraced change, who saw the need to offer something new and better in construction dispute resolution.

The DRBF provides a uniquely successful dispute resolution tool, and the facts and figures representing these successes are abundant. The DRB process is a valued commodity – to those who have heard our message.

We must work together to sustain the challenge of the DRBF founders, to keep alive their insight and wisdom, and to grow the successes of the DRBF. Each of us can pick up the challenge laid down by the DRBF founders by

- seeking out new users of the DRB process, ideally before dispute resolution models are incorporated into contract documents
- seeking out new individual members for the DRBF, identifying construction professionals from various disciplines who exhibit the experience and professionalism that has been the hallmark of DRBF members
- seeking out new corporate and institutional members, identifying those who would benefit from a closer relationship with the premier independent professional dispute resolution organization that is the DRBF.

I encourage you to read the column later in this issue of the *Forum* written by our new executive director, Larry Delmore. There is excitement in the summary of his actions and an optimism for increased DRBF successes that each of us should take into our own efforts on behalf of the DRBF. I also encourage you to contact Larry when you have any ideas or potential contacts that would benefit the DRBF. Larry is a tremendous resource that becomes even more beneficial with the input of the DRBF membership.

(continued on page 4)

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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.

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Best Practice

There has been no committee activity recently while awaiting the formal comments back from the Manual Committee to resolve what the Manual Committee indicates are certain inconsistencies between the Manual and the Draft BPGs.

The stated goal of the Board of Directors of DRBF (October, 2004) is to resolve these issues and go forward with the next steps for BPG by May, 2005.

Harold McKittrick

World Bank Liaison Committee

The committee has been working closely with the International Development Law Organisation, headquartered in Rome, to organize an initial audio-visual distance-learning program regarding dispute boards. A tentative outline has been established and is currently awaiting approval.

Planned for June 16, 2005, the target audience is World Bank field operation officers and selected borrower countries' officials responsible for procurement of major construction contracts. The overall objective is to establish common understanding about the minimum procedural requirements for establishing and operating a Dispute Resolution Board for a major construction project, and the targeted beneficiary countries are Vietnam, China, and Thailand. Program topics may include:

- Examine typical past mistakes and how to avoid them in the future;
- Examine the need for scheduled visits and the impact of their use to avoid disputes;
- Examine the "value for money" from a properly compensated board;
- Discuss sources of foreign Dispute Board members;
- Develop borrower countries' own nationals to serve on DRBs.

Gordon Jaynes
and Armand Araujo

Manual

Section 1, Concept, and Section 2, User Guide, are on the web site. We hope you have printed these out and filed them in a 3-ring binder with the cover inserts and tab sheets sent by Steve last April. Let Steve know if you didn't receive an email notification when Section 2 was posted on the web in October.

We also hope that you have carefully read these sections. Please let us have your suggestions on how to improve them. 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. In fact, after we get Section 3 on the web, we plan to revise two chapters in Section 1 and a chapter in Section 2 and add several appendices to Section 2. You'll get e-mail notifications of all revisions.

Section 3, the DRB Member Guide, is nearly complete. Comments from twenty reviewers have been received and are being considered and incorporated. It should be on the web in March. Watch for the e-mail from Steve.

Section 4, Multi-National Practice, is almost complete. It will be on the web soon.

We have revised the tabulation of DRBs to a database format, added missing data, and corrected some data. The tabulation is on the web as an Excel file in Appendix A of Section 1. Anyone can download and sort this. Please download and sort to see if all your projects are included.

John Nichols is now heading up the data collection effort. There are reporting instructions on the Report Form spreadsheet included in the Excel file in Section 1, Appendix A. The old forms may still be used, but the form included in the Excel file should be easier.

Joe Sperry
(continued on page 4)

(continued from page 3)

Education/Training

In December, the BOD discussion focused on the opportunities and challenges that the committee faces (see BOD minutes on p. 10). Shortly afterwards, Bart Bartholomew resigned as chair of the committee. Just before this issue of the *Forum* went to press, I agreed to serve as chairman of the Education and Training Committee. I have had initial discussions with Jim Donaldson; and very shortly will be contacting Bill Baker, Dan Meyer, Gwyn Owen and Bob Rubin. The details of the committee's efforts will be shared in the next issue of the *Forum*.

Kerry Lawrence

International

The International Committee meeting scheduled for January has been delayed until February due to various work commitments and as such a full report will only appear in the next edition of the *Forum*. I would urge country representatives to contact their regional IC member in order to appraise the committee of what is required in your country or region to further the cause of the Foundation. Certainly more regional meetings are required and assistance is at hand for individual country reps to set up meetings and events in their own country.

DRB and DAB activities are now becoming more common throughout the world where the use of multilateral bank funding is utilised. The preferred form of contract outside the US for such projects is the FIDIC form. Those wishing to find out more about FIDIC should contact the relevant web site at www.fidic.org. The 1999 edition of the FIDIC form of contract is in the process of being updated and is expected to be republished during 2005 to bring the international clauses in line with current multilateral bank policies, particularly those regarding labour issues.

I look forward to meeting some of you at the forthcoming Annual Meeting in Dubai where some lively debates are promised.

Gwyn Owen

Web Site

The Web Site Committee has begun assessing the site's current status and user statistics (see the article on page 13), and developing plans for Phase 2 of the site's development. This will involve engaging other committees and board of directors members to provide content on existing pages within the site, and developing new tools like the member's only online chat.

DRBF members are encouraged to join this committee. All work is done via email or the occasional phone call. If you are interested in participating, please email me at amcgough@triad.rr.com.

Ann McGough □

(continued from page 2)

While it is true today that, "the times they are a changin'," it also is true that the DRBF is changing to meet these times - the position of executive director, the new initiatives in education and membership levels and the new associations with national and international organizations speak loudly to the efforts of the DRBF to adapt to the times.

Please join in meeting the exciting challenges facing the DRBF, both today and tomorrow, and, in the process, let our joint efforts honor the wisdom and insight of the DRBF founders. Together we can make DRBs the national and international first choice for dispute resolution!

Sincerely,

Other News

Leto Makes Presentation at Bocconi

On November 10, 2004, a four hour DRB presentation was made at the Bocconi University of Milano, Italy's most prestigious Economics school. Igor Leto (the DRBF's representative for Italy), worked with DRBF members Romano Allione and Gianni Arrigoni on the presentation on DB's (with particular emphasis on the DRBF) as part of a post-graduate course. Igor Leto repeated the session on November 26 at the same venue, within the frame-work of a 2-day seminar on Economic Engineering.

DRBF Hosts Session at International Construction Superconference

May 19 and 20, 2005, former DRBF President Peter Chapman will be conducting a session at the International Construction Superconference in London entitled "Dispute Boards - A New Force to be Reckoned with in International Construction." The International Construction Superconference has become the meeting place of the international construction development and financing community. You may wish to consider attending and can call up the conference program by going to www.andrewsconferences.com.

ICC Dispute Board Training

Many of you will know that the ICC (International Chamber of Commerce) has recently established dispute board procedures.

A training course for these new ICC dispute boards is to be held in London on 2,3 and 4th May. This course is supported by the ICC and the DRBF. Those wishing to attend can find details on www.dbtraining.org. □



WELCOME TO NEW DRBF MEMBERS

MEMBER ADDITIONS OCTOBER THROUGH DECEMBER 2004

Bruce Azzariti
Bechtel
Pembroke, MA USA

Nick Castorina
CPR Group, Inc.
Kennewick, WA USA

L. John Chaifetz
Chaifetz Consulting Inc.
Marietta, GA USA

Anthony X. Chin
AIM Engineering &
Surveying, Inc.
Fort Myers, FL USA

Edward S. Cox
Morrison, Clinage & Cox,
PLLC
Arlington, TX USA

Chris Flinn
Thu Duc, HCMC, VIETNAM

J. Bert Grandoff
Allen Dell, P.A.
Tampa, FL USA

Philip Helmes
Charles River Associates
Boston, MA USA

James G. Houston
Stanislaw Ashbaugh LLP
Seattle, WA USA

Sumeet Kachwaha
Kachwaha & Partners
New Delhi, INDIA

Malcolm Kelly
Ilminster, UK

Paul W. Masten, P.E.
BlueRidge Associates
Lynnwood, WA USA

Joe Peck
Charles River Associates
Boston, MA USA

Christopher Redfearn
Commercial Solutions
International Ltd.
Bangkok, THAILAND

Donald K. Struckmann
Roseville, CA USA

Paul Thompson
West Bay Builders, Inc.
Novato, CA USA

Steve Varela
City of Reno
Reno, NV USA □



A MESSAGE FROM THE EXECUTIVE DIRECTOR...

As I write this column, I now have been the DRB Foundation's Executive Director for exactly 18 business days.

Not a very long time.

Yet, during those days, while I have traveled to Washington, DC, New York, Pennsylvania, New Jersey and within Massachusetts, and have spoken to construction professionals in another 15 states, I am amazed at two very distinct, but contradictory, responses.

First, construction professionals have been very responsive to the DRB Foundation and the benefits it brings to the construction industry. As a result of these initial contacts, I can assure you

1. Corporate memberships will increase in the very near future and, in conjunction therewith, individual memberships likewise will increase.
2. Commitments have been made for DRB Foundation exposure at national industry meetings.
3. Regional and national industry publications have been contacted in order to place DRB Foundation articles.
4. Decision-makers on the state level have requested meetings to hear about the benefits of the DRB process for their upcoming major projects.
5. Discussions continue regarding joint efforts at obtaining non-membership revenue funds through construction industry grants.

These successes will continue to grow each week.

The second type of response, and this is what appears to be contradictory to me, reflects that almost as many construction professionals have said they not only know very little about the DRB process, but many have never heard of the DRB Foundation!

One wonders how that can be.

All of us know how beneficial the DRB process is to the construction industry.

What happened to those who profess a lack of knowledge about a process in which each of us hold strong beliefs as to its inherent value to the construction industry?

Maybe, just maybe, all that has been missing is the ability to find these people!

The DRB Foundation is rightfully proud of its successes relying, as it has, on a volunteer army.

As executive director, I will continue to seek those who will join individually and corporately and those who will choose the DRB process, expanding both the membership and the opportunities for the membership to sit on DRB panels.

From my initial 18 business days as your Executive Director, I am heartened by the responses of so many with whom I have spoken. There is no doubt that these efforts will yield the successes expected by the DRBF Board when they entrusted me with the position of executive director.

I honestly need your help, however.

FOUNDERS OF THE DISPUTE RESOLUTION BOARD FOUNDATION

R. M. Matyas
A.A. Mathews
R.J. Smith
P.E. Sperry

CHARTER MEMBERS OF THE DRB FOUNDATION

Jack Alkire, Esq.
Romano Allione
Rodney D. Aschenbrenner
Balfour Beatty Construction, Inc.
S.H. Bartholomew, Inc.
John Beyer
Roger Brown
William C. Charvat AIA
Frank Coluccio Construction Co.
Dillingham Construction, Inc.
Raymond J. Dodson, Inc.
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Paul Eller & Associates
Frontier-Kemper Constructors, Inc.
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Granite Construction, Inc.
Guy F. Atkinson Co. of California
Greg M. Harris, Esq.
Paul R. Heather
Impregilo SPA
Gordon L. Jaynes, Esq.
Al Johnson Construction Co.
Keating Associates
Thomas R. Kuesel
Kerry C. Lawrence
Kellogg, LLC
Kiewit Construction Group Inc.
Lemley & Associates, Inc.
Al Mathews Corporation
McNally Tunneling Corporation
Mechanical Contractors Association of Western Washington
Meyer Construction Consulting
Mole Constructors, Inc.
Nadel Associates
Stephen J. Navin
John W. Nichols, P.E.
Parsons Brinckerhoff Quade & Douglas, Inc.
Pease & Sons
Edward W. Peterson
H. Ray Poulsen Jr.
Quadrant II Inc.
John Reilly Associates
Arthur B. Rounds
Seifer Yeats & Mills L.L.P.
Shannon & Wilson, Inc.
J.F. Shea Co., Inc.
Patrick A. Sullivan, Esq.
Traylor Brothers, Inc.
Underground Technology Research Council
Watt, Tieder & Hoffer, L.L.P.
James L. Wilton
Woodward-Clyde Consultants
Ed Zublin AG

You can be my eyes and ears in the regions in which you live and work.

You may hear about projects that today may be nothing more than a conceptual idea. Yet, that is the perfect time to approach the applicable decision-makers to discuss requiring DRBs in their dispute resolution model for their upcoming project.

You may read a regional construction industry publication with a negative article regarding DRBs that may have arisen either from a poorly established DRB panel or from one person's bad experience. This is the perfect opportunity for the DRBF to write a letter to the editor – not only correcting the negative impression but also providing an opportunity for the DRBF to reach more potential members and users in a positive manner.

The more construction industry information and access you provide me, from whatever region, the more successful the DRBF can become in responding to the needs of the industry and, in the process, the more successful the DRBF becomes for its membership.

The response of many of you has been wonderful and extremely helpful. Let's continue and expand that effort for the benefit of the DRBF and its membership.

My e-mail address and telephone number are set out below.

Give me a call or send me an e-mail and let's truly use this plus 600 member volunteer army to its fullest advantage.

Together, we can make the DRB Foundation the primary dispute resolution model in the world.

Larry Delmore
Executive Director
Tele: 781-400-1024
Fax: 781-400-1024
E-mail: lfdelmore.drb@comcast.net

DRBF Committees

If you have comments for any committee chairs or would like to get involved in their efforts, please get in touch the committee chairs directly. Their contact information is available on the DRBF website, www.drb.org.

Annual Meeting and Awards
Sammie D. Guy

Data Compilation
John Nichols

DRBF Best Practices and Other Publications
Harold V. McKittrick

DRBF Bylaw Revisions
Sammie D. Guy

DRBF Manual
Joe Sperry

Education/Training
Kerry Lawrence

Finance and Administration
Peter Douglass

Fund Raising and Corporate Patronage
Harold V. McKittrick

Hotline
Brison Shipley

International
Gwyn Owen

Marketing/Membership
Robert A. Rubin

Professional Conduct
Brison S. Shipley

Strategic Plan
Daniel F. Meyer

US Regional Chapter Coordination
John W. Nichols

Web Site and Advertising
Ann McGough

World Bank Liaison
Gordon Jaynes and Armando Araujo

Spotlight on the United Arab Emirates' Country Representative



Country Rep: Hamish F. Macdonald

The UAE, and particularly Dubai, is probably the fastest developing country in the world.

The major developments currently under construction or on the drawing board in Dubai alone include the 3 Palm Islands, totalling nearly US\$ 10 billion in construction value and creating over 250 kilometres of new beach front property; The World, an island residential development which replicates a map of the globe; the US\$ 1 billion Burj Dubai, which when finished will be the tallest building in the world at a rumoured height of over 800 metres; a brand new US\$ 3 billion metro railway project; a US\$ 4 billion expansion to the existing Dubai International Airport; a brand new US\$ 2 billion new international/cargo airport; numerous major residential and commercial developments including the Jumeriah Beach Residence development, which at US\$ 2 billion is the largest single phase residential and commercial project in the world; a US\$ 5 billion theme park, sports city, residential and retail development called Dubailand; a new US\$ billion Dubai International Financial Centre and Downtown Business Centre; an underwater hotel; the worlds largest ski dome, etc., etc. And that does not include the massive expansion projects of the oil and gas industry in Abu Dhabi, the capital city of the UAE, and the necessary expansion of the country's infrastructure and energy sectors to facilitate all of the above developments.

With all of this intense construction activity, it is inevitable that there will be many

construction contract related disputes that will need resolving.

The most common dispute resolution process currently employed in Dubai is typically based on the FIDIC 1987 4th Edition of the Red Book, i.e. a Clause 67 Engineer's Decision, followed by an attempt at amicable settlement and then by arbitration under either the local Municipality or Dubai Chamber of Commerce and Industry Rules of Arbitration or, occasionally on private sector developments, the ICC Rules of Arbitration. However, arbitrations in Dubai have over recent years become extremely complicated, lengthy and expensive and there is a clear need for a speedier and more cost effective alternative dispute resolution process. Mediation or conciliation are the alternatives normally considered but there is a slowly growing awareness and interest in Dispute Boards.

In a region where "the engineer" under the contract is quite often a direct employee of "the employer," it is understandable that the impartiality of the engineer in rendering a Clause 67 Decision is often questioned by the contractors!

In Abu Dhabi, the situation differs slightly as the ultimate dispute resolution process on all government projects is referral to the Abu Dhabi courts. Understandably most contractors, particularly the local ones, are reluctant to take the government to court. The oil, gas, and private sectors do incorporate arbitration provisions in their contracts but these are currently seldom used.

I believe that the contractors in the region will strongly support the introduction of Dispute Boards into the dispute resolution process. The challenge will be to convince the employer organisations that the process

DRBF Country Representatives

Austria
Maria Theresa Trofaier

Australia and New Zealand
Norman Reich

Bahamas
Colin Arthur Marshall

Brazil
Gilberto José Vaz

Canada
Robert W. McLean

Columbia
Dr. Carlos Ospina

France
James Perry

Germany
Dr. Helmut Koentges

Iceland
Páll Ólafsson

India
Shri K. Subrahmanian

Ireland
Dr. Nael G. Bunni

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Jordan
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Malaysia
Sundra Rajoo

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United Kingdom
Peter H.J. Chapman

Vietnam
Richard L. Francisco

offers tremendous advantages to them in the relatively low cost and speedy resolution of disputes without having to resort to expensive and lengthy arbitration or litigation proceedings.

The 5th Annual International Conference of the Dispute Board Resolution Foundation in Dubai on 7th and 8th May 2005, and the two-day Training Workshop that we hope to organise after the conference, are excellent opportunities to introduce and further promote the use of Dispute Boards to the government, oil and gas, and private sector employer organisations in the United Arab Emirates.

Note: Hamish Macdonald holds UK qualifications in quantity surveying and arbitration and has over 25 years experience in the international construction industry, nearly 20 years of which have been spent in the UAE. Hamish is a Fellow of the Royal Institute of Chartered Surveyors and of the Chartered Institute of Arbitrators. He is also included on the FIDIC President's List of Approved Dispute Adjudicators.

Hamish first visited the UAE in 1980 when he was assigned for one year as senior site

quantity surveyor on the New Abu Dhabi International Airport. He subsequently spent five years in Indonesia working on the New Jakarta Airport before returning to the UAE in 1986, where he has resided ever since. For 15 years Hamish held the position of senior claims consultant to the Government of Abu Dhabi Claims Committee where he assisted them in resolving over 200 claims totalling over US\$ 2 billion in claims value relating to the Abu Dhabi infrastructure development programme.

Hamish is currently an executive director of Knowles Middle East and is responsible for providing contractual advice, dispute resolution and arbitration support services to employer organisations, contractors and subcontractors throughout the Middle East region. He has worked in the UAE, Qatar, Saudi Arabia, Kuwait, Bahrain, Oman and Egypt during the past five years. Hamish is currently serving as a party appointed arbitrator on an international arbitration in Dubai and has previously been appointed as Technical Expert for the Abu Dhabi Courts. You may contact him at hamish.macdonald@jrknowles.com. □



Would You Like to Be a Country Rep. for the DRBF?

Help give the DRBF a voice in your country by becoming a Country Representative. You may be called upon to act as a spokesperson, and should be interested in raising the profile of DRBs and increasing membership. You may also be asked to help organize DRBF events within the country you represent.

To qualify, you must be a member of the DRBF and live in the country you represent (you need not be a national). Terms are for a 3 year renewable period.

If interested, contact the DRBF office today: Phone 206-248-6156, Fax 206-248-6453, or e-mail home@drb.org.

DRBF Board Meeting

Summary Minutes

**By Peter M. Douglass,
Secretary/Treasurer**

DECEMBER 10, 2004 MEETING

A DRBF board of directors conference call was held on December 10, 2004 with 11 directors and officers participating. In addition, three past DRBF presidents participated; plus Executive Director Larry Delmore, Administrative Manager Steve Fox, and invited Committee Chairs Joe Sperry (DRB Manual Committee) and Bart Bartholomew (Education and Training Committee). The following is a brief summary of the discussions and actions taken at the meeting.

Treasurer's Report:

Revenues were reported to be less than anticipated in the 2004 budget with membership at 612 members versus the 640 budgeted. The projected income from workshops was also less than budgeted with 8 workshops in 2004 rather than the 10 budgeted. Main revenue shortfalls remain in the areas of corporate grants and the new DRB manual. Offsetting reductions in expenses resulted in roughly a 65% greater growth in the DRBF reserve fund than was anticipated. This growth in the reserve fund was largely the result of not hiring an executive director again in 2004, although funds continued to be budgeted for this additional staff.

A draft of the revised 2005 budget was transmitted to the board by e-mail prior to the conference call and questions by the board were answered by Mr. Douglass. The draft 2005 budget was approved unanimously by the board.

General:

President Bob Rubin welcomed Larry Delmore as our new executive director and encouraged everyone to interact with Larry in the coming months, noting that

Larry will be on board effective January 4, 2005. It was also noted that the following two committees have been formed to assist and track the new executive director (ED) position:

- An ED Management Committee to assist with and track Larry's efforts; and
- An ED Finance Committee directed at securing funding for the new position during the initial start up period before the ED's efforts begin to bring in needed additional revenues for the position to become self-funding.

DRB Manual: (Joe Sperry – Chair)

A written report was distributed to the board prior to the meeting. Joe noted that Sections 1 and 2 of the revised Manual are on the DRBF website and that Section 3 (for members) would go online in February. Work on Section 4 (the multi-national section) is also on-going.

Joe also reported the DRB tabulation had been updated to the extent possible and transmitted to the board. He requested that each board member go through the current tabulation and advise him of any corrections or updates to the current information. Gwyn Owen agreed to update the tabulation on international DRBs.

It was noted that the Manual Committee still needs to provide their position on the Best Practice Guidelines issues discussed in October in order to reconcile any differences. It was agreed that the DRBF President would be kept in the loop on this matter.

Education and Training Committee:

(Bart Bartholomew – Chair)

President Bob Rubin introduced Bart noting that this committee has a full plate

with new materials that need to be prepared and in bringing together the domestic and international efforts in this area.

Bart referred everyone to the eight point summary that had been distributed to the Board earlier, noting that the central “umbrella point,” in his opinion, was that although vast differences exist between US DRBs and international DRBs, the primary focus needed to be in the US where there are a number of differences in the way Boards operate. Formulation of training materials should be tailored to the needs of each area in the US and it is up for discussion amongst the Board as to who and how this effort should be tackled.

It was noted that there is a raging demand (and market) right now for training throughout the world, but that we need to separate this from the long term direction of the committee. It was cautioned that multi-national training done under the DRBF name needs careful oversight and agreement on the basics.

It was expressed that:

- The existing training materials need to be updated;
- The subject of workshop trainers needs to be further explored;
- Concern has been expressed by some contractors that the DRB process is not serving the intended purpose; and
- There are considerable differences in the way the process is practiced in different areas of the country, as well as elsewhere in the world.

It was agreed that, although differences exist, the underlying concepts are and should be the same. It was suggested that the DRBF needs to set the “boilerplate” for DRB training workshops and then individual differences in the particular operations within the US and internationally can be worked out.

Following further discussion on the matter, Bob Rubin noted that he envisioned an overall committee with two subcommittees, US and Multi-national, emphasizing that the committees:

- Need to move fast;
- Need agreement on the training materials;
- Need agreement on the trainers; and
- Need direction.

It was also noted that the DRBF board has been discussing the possibility of establishing different levels of membership tied to experience and the level of training/ continuing education that individual members obtain.

Bart advised that he would need a few days to think about all the input and ideas that he had received at this meeting. (Mr. Bartholomew has since resigned as chair of the Education and Training Committee and the new chairman is Kerry Lawrence.)

Other:

The Chicago “face to face” board of directors meeting in April is intended to focus on the Education and Training Committee’s efforts and the possible connection of continuing education to grades of DRBF membership. Hal McKittrick will head up a committee on this latter issue.

Sammie Guy, Ray Henn and Steve Fox are working on the 2005 Annual Meeting and expect it will be held at a downtown hotel in Denver, due primarily to the remoteness of the Denver airport. It was suggested the committee consider the Brown Hotel.

One time member contributions are being sought for initial funding to support the executive director position. A list of Corporate and Sustaining members has been distributed to the board of directors for each of them to identify those persons that they would feel comfortable in contacting to request a contribution. It was suggested, and generally agreed to, that each of the board of directors make a \$500 contribution to underscore the board’s decision to

(continued on page 12)

(continued from page 11)

hire an executive director at this time and to aid in obtaining like contributions from other Sustaining and Corporate members committed to the expanded use of the DRB process.

A new Web Site Committee chair is needed now that John Bradshaw has moved to a project outside of the country. It was suggested that his right hand person on Web site work, namely Ann McGough, would be great. President Bob Rubin agreed to request an estimate of the level of effort and cost to the DRBF for Ann to assume this role.

The next Board of Directors meeting will be held by conference call on Friday, February 11, 2005 at 9:00 AM, Pacific Standard Time.

Board of Directors Meeting Schedule

The board has scheduled a meeting by conference call for February 11, 2005.

The board will meet in Chicago April 29-30, 2005.

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



PUT THE DRBF WEBSITE TO WORK FOR YOU!

When someone accesses the DRBF Member Resume Database or Membership Directory, will they be able to find you? Here's how to insure you are taking advantage of this dynamic communication tool:

To update your contact information in the DRBF Membership Directory:

Go to **www.drb.org** and login to the Member's Only Section

Click on
Update Your Profile

Make necessary changes
and click on
Update Information

As a member, you can post a short resume on the DRBF website. Let others know that you are interested in serving on DRBs!

To post your resume online:

Follow the same instructions as above for updating your profile, and complete the resume field.

Click on
Update Information
and your resume will be added to the database

Is Anybody Surfing Our Site?

Looking Beyond “Hits” and “Spiders” at Some of The People and Ideas Driving the DRBF Web Site



By Ann McGough

Throughout 2004, the Web Site Committee worked with various members of the DRBF to redesign and add new content to our Web site, www.drb.org. The response to the new site has been favorable, and our website statistics continue to show an increase in traffic as members seek information at their fingertips and new prospects visit the site to learn more about the DRB process. Comparing web site “hits” in January 2005 (48,886) to January 2004 (19,262), we see the numbers have more than doubled, and visitors are spending more time within the site (20.24 hits per visit in 2005 vs. 17.43 in 2004).

Hits – A connection made to a website over the Internet or another network.
Source: dictionary.com

Looking behind the scenes at the Web site statistics gives an interesting picture of who is visiting the Web site and why. This information can be used to insure that we stay focused on the needs of the users, as well as identify gaps in the information we are providing. While the US Government ranks high as a user of the site, we had numerous visits from people around the globe in places like Australia, the Netherlands, and the Seychelles.

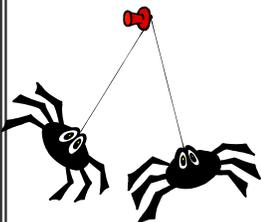
Although the calendar of events and Manual rank high in popularity, it is exciting to see that the “results” page from searches of the resume database is in the top five, namely the Heavy Construction and Building Construction searches. Another eye-opener is the list of links to our site from an external page (other sites besides a search engine). The Florida Chapter tops this list, but other interesting sites include The Blue Book of Building and Construction and Project Services Company of Tempe, Arizona.

The statistics show us the Top 25 keywords used in search engines. We anticipate “DRB” and “Dispute Review Boards” to top the list, and they do. It is encouraging to see the number of search phrases that use words like “email addresses for...” or “contact for...” This shows us that people are using the site to identify companies and individuals affiliated with the Dispute Resolution Board Foundation, and the DRB process. This interaction can be the beginning of a dialog that connects like minded, dispute resolution practitioners around the world.

There is much work to be done in the year ahead. There are sections of the current site that are still under construction,

(continued on page 19)

Show off your Internet savvy — and win \$50!



The spider “LinkWalker” visited the DRB website 1,277 times in 2004. Do you know what a “robot” or “spider” visitor is? E-mail the correct answer to info@drb.org and receive \$50. Responses must be received by March 31, 2005, and prizes are limited to the first five respondents.

2005 WORKSHOP CALENDAR

May 24 - Administration and Practice II Workshop
May 25 - Advanced Chairing Workshop
Location: Denver, Colorado

October 6 - Administration and Practice II Workshop
October 7 - Advanced Chairing Workshop
Location: Seattle, Washington

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

Attendees should take the Administration and Practice II 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.

DRBF INTERNATIONAL TRAINING WORKSHOP “THE EFFECTIVE USE OF DISPUTE BOARDS”

**Dubai, United Arab Emirates
May 9 & 10, 2005**

In conjunction with the 5th Annual DRBF International Conference to be held in Dubai on 7th & 8th May 2005, the DRBF is offering a two-day workshop on “**The Effective Use of Dispute Boards.**” This workshop will be held at The Fairmont Dubai on 9th & 10th May 2005 and is open to members and non-members of the DRBF whether or not they are attending the conference.

The workshop is intended for persons currently involved in the use of Dispute Boards or who anticipate being so involved, whether as employer, employer’s representative (also known as “the engineer”), contractor or individual Dispute Board member. As the workshop will encourage interaction between attendees and faculty and the content coverage will be extensive, the numbers of attendees will be limited.

The content coverage of the workshop will include:

- Dispute Boards as used in projects financed by The World Bank and other development lenders;
- Dispute Boards as established by the 1999 editions of the FIDIC Conditions of Contract;
- Dispute Boards as established by the 2004 International Chamber of Commerce (ICC) rules and documents.

In discussion of the above versions of Dispute Boards, the workshop will explore the practical steps for organisation and operation of such Boards, the advantages and disadvantages of the different systems and the “pitfalls” which can arise from misuse of what has been developed for each of the three alternative systems.

The workshop faculty will be comprised of DRBF members with extensive experience in using Dispute Boards and of serving as Dispute Board members on some of the world’s largest international construction projects.

More details of this workshop can be obtained from the DRBF website www.drb.org. Early registration is recommended to avoid disappointment, and required no later than 31 March 2005.

Dispute Resolution Board Foundation

5th Annual International Conference

Saturday, 7th May and Sunday, 8th May 2005

Dubai, United Arab Emirates

The Fifth Annual International DRBF Conference is to be held in Dubai, United Arab Emirates, on 7/8th May 2005. The venue for the conference is The Fairmont Dubai at the heart of the rapidly developing new downtown and financial district which includes the *Burj Dubai*, planned to be the tallest building in the world at a predicted height of approximately 800 metres!

Just down the coast are the world renowned Palm Island developments which are jointly creating more than 250 kilometres of new beachfront property. It is hoped to arrange an optional coach tour to one of the Palm Islands on the second afternoon of the conference.

The Desert Dinner on Saturday evening will take you from the bustle of Dubai city to the tranquil solitude of a Bedouin Village in the heartland of the Arabian desert. Experience breathtaking views of a golden sun setting over red sand dunes followed by (optional) rides on a "ship of the desert," freshly made Arabic sweets and coffee and an evening of wonder under a million stars. Enjoy an Arabian BBQ buffet dinner with grilled specialities and be entertained by a belly dancer swaying to the rhythms of Arabian music. Dress is casual with shorts optional and partners are welcome. Pre-dinner "Dune Bashing" in luxury 4WD landcruisers can be arranged for the adventurous and/or the young at heart.

In addition to the above, the DRBF is planning a two-day training workshop at The Fairmont Dubai on Monday, 9th and Tuesday, 10th May 2005. The workshop will be open to both members and non-members of the DRBF and the number of attendees will be limited to allow effective interaction between attendees and the workshop faculty. More details of this workshop including the course content, members of the faculty and price can be obtained from the DRBF website www.drb.org. Registration for the workshop should be made as early as possible to avoid disappointment, but in any event no later than 31 March 2005.

The charge for the conference is US\$ 250. The price for the Desert Dinner is US\$ 75.00 per person. The appropriate amount will be debited from your credit card account by the DRBF upon receipt of your application. The price for the optional Palm Island Tour will be nominal and can be paid at the conference.

Delegates will need to make their own arrangements for transport to and from Dubai and hotel accommodation arrangements in Dubai. The Fairmont Dubai has agreed a preferential room rate of UAE Dhs 650.00 per night (excl. 20% tax/service charge), and a list of other hotels in the area is available on the DRBF website. Visit visas (where required in advance) and transportation to and from airport can be arranged by the hotels. Dubai gets incredibly busy at this time of the year and it is advised that hotel reservations are made as early as possible.

Registration forms have been distributed by mail, and can be downloaded from the DRBF website. Fax to Steve Fox at +206-248-6453 or send by e-mail to home@drb.org. Application forms are due by 8th April 2005 at the very latest.

**Visit www.drb.org to download a registration form,
copy of the program, and hotel information.**

International Conference Program

*The conference sessions will be chaired by experienced members of the DRBF.
The conference is presented in association with FIDIC and the ICC
The conference will be conducted in English.*

Saturday, 7th May 2005

8.30 – 9.30 AM	Registration and refreshments
9.30 – 9.45 AM	Opening remarks by DRBF President Robert Rubin
9.45 – 11.00 AM	Session 1 – DRBs - Effective Dispute Resolution in the UAE? Background of DRBs internationally Current dispute resolution procedures in the UAE Applicability of DRBs in the UAE Possible future use of DRB's in the UAE Open discussion and questions [Chair: Peter Chapman]
11.00 – 11.30 AM	Refreshments and networking
11.30 – 12.30 PM	Session 2 – Alternative DRB Procedures FIDIC procedures ICC procedures World Bank procedures Open discussion and questions [Chair: Gordon Jaynes]
12.30 – 2.00 PM	Lunch
2.00 – 3.30 PM	Session 3 – DRB Participant's Perspectives Employer's perspective Contractor's perspective DRB member's perspective Lending bank's perspective Open discussion and questions [Chair: Larry Delmore]
4.30 PM	Coaches depart from The Fairmont for Desert Dinner (price of US\$ 75.00 not included in conference fee, and partners are welcome). Coaches return to The Fairmont approx. 10.00 PM

Sunday, 8th May 2005

9.00 – 9.30 AM	Refreshments
9.30 – 11.00 AM	Session 4 – Effective Use of DRBs Appointing DRBs Members of DRBs Chairing a DRB Site visits/hearings Dispute avoidance Non-binding recommendations v. binding determinations Burdens and benefits Open discussion and questions [Chair: Gwyn Owen]
11.00 – 11.30 AM	Refreshments and networking
11.30 – 12.30 PM	Session 5 – Dispute Resolution Board Foundation History of DRBF Current activities of DRBF Publications of DRBF Future of DRBF Promoting DRBF internationally
12.30 – 1.00 PM	Open forum panel [Chair: Robert Rubin]
1.00 – 1.15 PM	Closing remarks by DRBF President Robert Rubin
1.30 PM	Lunch and close of conference
3.00 – 5.00 PM	Optional tour of the Palm Island Jumeirah (nominal charge to be determined)

(continued from page 1)

There was considerable disagreement over the selection of Board members previously employed by one of the parties. BART does not prohibit this but does look very hard at the candidate and tends to reject such candidates. It was recognized that this tends to eliminate a lot of qualified people many of whom have worked for major contractors at times in their careers. Other participants noted that there was a tendency of some Board members to favor their former public agency regardless of the merits of certain issues, not because of agency pressure but self imposed pressure. Repeated selection of the same candidate by a party was not viewed as a fatal flaw, particularly since both parties have to agree, in most selection scenarios on the nominees. There was a minority opinion expressed that this could encourage bias in that it could be construed as an endorsement of one's past performance. However, the vast majority of attendees did not support this point of view.

There also was a range of opinion with respect to the selection of Board members based on their profession. BART generally prefers engineers on the theory that they will better understand contract management issues and won't become overly legalistic. On the other hand, BART's legal department believes that at least one lawyer on the panel helps to avoid recommendations that are in conflict with existing law, as well as being a resource to navigate through complex contractual issues. It was indicated that a number of other owners prefer a member of the Board be an attorney in that it helps to sell the Board's recommendations to the owner's upper management and legal department. It was emphasized that selection of attorneys should be limited to those with an engineering or construction background. There were some views expressed that lawyers should not be on panels at all, but the consensus of the conference was that this was not a reasonable position in light of the past

and ongoing contributions of our attorney members to the DRB process and the DRBF. Several of the attendees observed that this particular view had been aired extensively in the past, had been thoroughly discussed in past conferences and should be put to bed.

It was agreed that the drafters of the contract documents should not put obstacles in the path of speedy use of the DRB process such as requiring "engineer's final decisions" (and a considerable time period) before a dispute could be brought before a Board. The panelists cautioned that the parties still were obligated to define the issues, prepare proposals and discuss entitlement, and make serious efforts at negotiation and resolution prior to going to the Board. It was noted that there is considerable time pressure on the parties with respect to the procedural time frames for submittal of DRB hearing documents. It was observed that one way of getting expeditious hearings on issues was for the parties to agree to the use of informal hearings resulting in advisory opinions. Informal hearings still require structure in that the parties' positions are articulated in a brief position package of several pages with a few key exhibits. Although not widely used they have been successful although one person cautioned that the informal hearing has been most effective when limited to single well defined issues.

Contractual attempts to limit the DRB's scope of work also are an issue. The consensus was that the DRB should not be restricted by specification from hearing any issue at dispute between the parties arising out of their construction contract. Users of the process are urged to utilize the DRBF Guide Specification and Three Party Agreement as outlined in the DRBF Manual without alteration.

Different views were expressed with respect to split recommendations by a panel. One school of thought was that the dissenting opinion should be made

part of the Board's recommendation and the dissenting member remain anonymous since identification could affect that individual's effectiveness in subsequent Board activity. Another view was that anonymity could encourage continued obstinacy with respect to majority opinions by that Board member on future issues. An additional was expressed that minority opinions not be allowed at all, effectively forcing the Board to reach agreement on whatever recommendations are set forth in the report, under the theory that split recommendations do not encourage acceptance by the non prevailing party.

Finally the reasonableness of one party to unilaterally terminate its nominee was explored. The consensus was that one party should not be able to terminate its nominee without cause and that both parties had to agree to do this. Otherwise a party could terminate its nominee in retaliation for a Board recommendation unfavorable to that party.

Most attendees agreed that the panel discussion and open exchange of opinion on hot DRB issues was informative and worthwhile and could be a part of future conferences. Readers with comments or hot topics for future conference discussions are encouraged to contact the editor of the *Forum*.

Note: Author Harold V. McKittrick is president elect of the DRBF. He can be reached at hmckittr@ix.netcom.com. □

(continued from page 13)

awaiting content from various members of the DRBF. There are expanded services we intend to offer, such as the member's only chat room and searchable library of DRB related articles. You can be a part of this effort by sending ideas, recommendations or corrections to the Web Site Committee, care of Committee Chair Ann McGough (amcgough@triad.rr.com). Your use of the website will provide valuable feedback that will keep the site focused and useful. □

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



Deadline for the next issue is April 1, 2005



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Ahlan wa Sahlan Welcome to Dubai....

The 5th Annual International Conference will be held in the fascinating city of Dubai, United Arab Emirates on the 7th and 8th of May, 2005. The program will feature an overview of the state of DRBs in the UAE, alternative DRB procedures, DRB participant's perspectives, the effective use of DRBs and more. Attendees will also be able to enjoy the hospitality of the host country and experience a magical dinner in the desert, complete with local cuisine and entertainment, and an optional tour of the impressive Palm Islands. Turn to pages 16-17 for more information.

**Ahlan wa Sahlan is a common Arabic greeting, and translates literally as "peace be upon you."*