



Forum

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WHEN IS FAIR NOT FAIR? Ethics in the DRB Process

By Jim Phillips, Ph. D.

One of the cornerstone values of the DRB process is fairness. When I refer to fairness I am specifically referring to the DRB procedures and protocol, not to the terms of the contract between the parties. The DRB is charged with issuing recommendations on disputes that arise under the terms of the parties' contract irrespective of the fairness of its terms and should not attempt to alter those terms based on the DRB's sense of what is fair.

Another value is the promotion and maintenance of good project relationships and the partnering process. At the core of both of these values is honesty and forthrightness. The DRB is a unique process which depends upon these values in order to accomplish its goal: the timely and equitable recommendations for the resolution of project disputes. If the parties are unwilling to incorporate these values into their interaction with each other, the work

of the DRB is much more difficult.

An example that illustrates this premise comes from a DRB proceeding for which I served as Chair. At the commencement of the project, the parties and the DRB agreed to a set of DRB procedures which would govern the conduct of formal hearings. While most of the emphasis in these procedures addressed by what manner the hearings would be held, an overlooked procedural guideline was the schedule and manner of exchanging position papers and information leading up to the hearing.

The procedures called for each party to exchange position papers and documentation 14 days prior to the date of the hearing, with rebuttals to these papers to be exchanged seven days in advance of the formal hearing. This particular project, as many DRB projects are, was very complicated and the parties agreed to a

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President's Page



The unexpected and untimely passing of our Executive Director, Larry Delmore, is a tragedy that weighs heavily on his family and on the Foundation. Larry was enthusiastic and dedicated to both and we were pleased to hear from his family that he loved working for the DRBF. His success over the past two years with the DRBF is readily visible in the increased awareness and adoption of the DRB process as well as the many new friends that he made. He will be missed by all of us!

The DRBF Board of Directors will be exploring the future of the Executive Director role at a mid-year meeting in April in Chicago. Until then, the DRBF is committed to making sure that Larry's efforts were not in vain. We have already assigned several Board members to specific agencies and geographic areas in an attempt to ensure that the bases are covered. However, Larry was working on so many fronts that we are concerned that we may not have identified all of the contacts and arrangements that he had committed to. If you are aware of anything that may have fallen through the cracks in this unexpected turn of events, please contact myself or Steve Fox as soon as possible. Larry would be sadly disappointed in us if we get off track – he would want us to continue the momentum of advancing the process that he so strongly believed in and worked so hard to advance.

Hence, turning to the issues at hand, as I read Jim Phillips' article entitled "When is Fair Not Fair" in this issue of the *Forum*, I recall the deliberations that the Manual Committee went through on this topic in our latest revisions to the DRBF Practices and Procedures Manual. Careful reading of the 2007 edition of the DRBF Manual (on the DRBF website @ drb.org or available in hard copy for \$30 plus postage through Steve Fox at the DRBF Seattle office) will find that the word "fair" has been eliminated from the text.

This change certainly does not mean that "fairness" is no longer a cornerstone value of the DRB process, but was driven instead by reports of DRB members taking this concept too far in their rulings. Contracts that I have seen often contain terms that I consider "unfair." However, I am unaware of any DRB that has been given the authority to "change the terms of the contract" under which it is working.

The terms of the contract, whether "fair" or "unfair," were accepted by the contractor in signing the contract. These contract terms were likely a serious consideration in preparing the bids for the work, both by the low bidder and the other bidders. For the DRB to change the terms of the contract would not only be "unfair" to the owners (who apparently were willing to pay the added cost for such provisions), but is also "unfair" to the other bidders that expended time and money in preparing their bids. Jim is right on point with his article that emphasizes the requirement that DRBs must be fair in their dealings with the parties.

The above is largely a matter of ethics, which is a critical issue for both users and DRB members. Some modifications exist in the new DRBF Manual directed at ensuring that a totally unbiased DRB is selected and continues throughout the duration of the assignment. Although contacting potential DRB users in pursuit of Board assignments is not considered a violation of the DRBF Code of Ethics, it is imperative that such contacts also make it entirely clear that, as a Board member, you would have absolutely no allegiance to either party to the contract.

Unfortunately, the DRBF does not have sufficient staff or money to enable the Foundation to provide ethics enforcement services. By making our Code of Ethics, contained in the DRBF Manual, available to all

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DRBF Board of Directors

At the DRBF Board of Directors meeting in October, the Board approved a ten year plan which restructured some of the functions of the Board. The Executive Committee now meets on a monthly basis by conference call, and holds primary responsibility for managing the routine tasks of the DRBF and its staff. The Executive Committee members are Romano Allione, Bill Baker, Jim Donaldson, Pete Douglass, Harold McKittrick, Jack Norton, and Gwyn Owen. The full Board of Directors now meets quarterly, two meetings by conference call and two meetings in person.

The DRBF Board of Directors met by conference call on January 5, 2007. The full Board was called together for a conference call on February 9 to discuss the continuity of DRBF business in the aftermath of the loss of our Executive Director, Larry Delmore. A complete review of the discussions and actions taken at these meetings can be found on the DRBF web site.

To Access the Board of Directors Meeting Minutes Summary:

- Go to www.drb.org
- Click the **Member Login** button
- Click on **DRBF Board of Directors**

Following is a brief overview of the actions taken:

- The 2007 budget was approved.
- The regional representatives are being provided with a kit of materials to assist in the promotion of DRBs on a local level.
- DRBF training workshops are expected to offer continuing education credits by mid-2007.
- The Executive Committee will meet every two weeks until the full Board meeting in April to follow through on DRBF business initiated by Larry Delmore.

All DRBF members are encouraged to read the summary minutes and submit any comments or suggestions to the president of the Board, Pete Douglass.

Board of Directors Meeting Schedule:

Executive Committee
February 23 by conference call
March 9 by conference call
March 23 by conference call
April 13 by conference call

Full Board of Directors
April 20-21 in Chicago, IL

Train the Trainer Workshop
April 22 in Chicago, IL

In Remembrance of Larry Delmore

It is with great sadness that we announce that Larry Delmore, the Executive Director of the Dispute Resolution Board Foundation, died unexpectedly on January 31, 2007.

Simply put, Larry put his heart and soul into the DRBF, and we cannot replace the enthusiasm, drive and spirit that he brought to his mission: promoting and fostering dispute resolution through the DRBF.

Born in 1948 in New London, Connecticut, Larry went on to graduate from Bates College in 1970. After college he spent a few years as a high school English teacher and claims analyst in the insurance industry. He then attended and graduated from Western New England Law School in 1975. After law school he entered the construction industry for what turned out to be his career calling. Larry spent several years with Ebasco Services, Inc. and Stone & Webster Engineering Company learning the construction management and administration business.



Larry Delmore with a delegate at the DRBF International Conference in Dubai.

From there he worked his way up to General Counsel of Chas. T Main, Inc., and then added to his experience through stints managing multi-million dollar construction claims at Ogden Projects, Inc. and Stone & Webster.

With these credentials and experience, Larry then embarked on one of the biggest challenges of his career—working on claims at the \$14.6 billion “Big Dig” project. This is where I first came into contact with Larry, who worked with me for several years. What struck me about Larry—besides his obvious skills in the construction arena—was his sense of humor. Larry always had a funny story to tell about some event or some person he had encountered in his career—never in a bad light, but with a wry, ironic view of the world. There was never a conversation I had with Larry that did not end with a smile.

For those of us who worked on the Big Dig, there was always the trepidation of answering the question “Where do you go after working on one of the biggest construction projects in the world?” Well, for Larry the answer was to go on to an even bigger challenge: becoming the Executive Director of the DRBF. When Larry joined the DRBF in 2005, it was at a crossroads—could it go beyond simply an organization of like-minded professionals to a new level of being a real force in promoting dispute resolution in the construction industry?

The answer was a resounding “Yes,” as I observed Larry blossoming into an inspirational leader in the use of Dispute Review Boards in the construction industry. Larry also became a great teacher, conducting numerous training sessions around the country. This established a new cadre of professionals that understands, uses and promotes DRBs as one of the most effective forms of dispute resolution in the construction industry.

Larry’s career evolution from one who brings and defends claims to one who helps resolve claims is one we should all try to follow. The solid foundation he laid is one that we can—and must—continue to build on and, in so doing, carry on Larry’s legacy to the construction industry. And as we do this, we should all have a smile for the last funny story we heard from Larry.

- Kurt Dettman

Letter to all DRBF Members from the Delmore Family

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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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Larry's warmth, laughter, and dedication touched the lives of many. We would like to tell you a little about how he touched our lives, and who Larry was for us, his immediate family: his wife, Judy; children Jonathan, Carrie, and Katherine; daughter-in-law Metta; and grandchildren Alexis and Ryan. We hope that, in turn, you will share with us some of your own warm memories of Larry.

Larry loved golf, and was fond of noting that even the best professional athletes from other sports (think Michael Jordan) were crushed in the face of its difficulty. He treasured the opportunities he had to share the game with his son, Jonathan.

He was an incredible storyteller and writer. Whether you were fortunate enough to receive a handwritten card, or an in-progress manuscript; whether you heard him deliver a professional presentation or a casual talk at a reunion; you knew that he had a gift with words that easily invoked laughter, tears, happiness, and inspiration.

Larry cherished – and was cherished by – his family. He shared almost 35 wonderful years of marriage with his wife Judy. Larry was a loving husband who brought great laughter, strength, and tenderness to even the most difficult moments. As a father, he was highly engaged and involved in his children's lives. He constantly cut articles out of newspapers and magazines for us. He would read them (to learn more about the topics that he knew interested us), give them to us, and converse with us about them. It was a wonderful way to share in our disparate interests; his folders of clippings were an eclectic mix of reports on NASCAR, the rate of scree accumulation in New Hampshire's Presidential Mountain range, and the nascent environmental movement amongst U.S. evangelicals.

He adored his grandchildren, which must have been obvious to you if you were lucky enough to hear him tell a humorous or touching story about them. Knowing how much they loved receiving mail, he started sending them postcards from every city to which he traveled for business - which could be as many as three in a single week!

There will be many things in the months and years to come that will reawaken within us the acute pain of his passing. We will take comfort in our memories of him, and use that which emphasizes his absence as an occasion to honor the love and greatness that he brought to this world. If you find yourself fondly remembering times you've spent with Larry, no matter how many years from now, please write and tell us about them. We would love to hear about Larry's presence in your own life, and the storytelling would be a fitting tribute and honor to him.

We may be reached at:
The Delmore Family
27 Tillotson Road
Needham, MA 02494
Or by email at: lfdelmorefamily@gmail.com

Sincerely,
The Delmore Family



A MESSAGE FROM THE EXECUTIVE DIRECTOR...

Editor's Note: *Larry Delmore submitted the following column for publication prior to his death on January 31, 2007. It shows his passion for the DRB process, love of his family, and the joy he took in the challenges of life and work. We will miss his unique perspective.*

"The shortest answer is doing."
-George Herbert

I received an e-mail today from the DRBF's *Data Compilation Committee*. After two requests, six members responded with DRB information. Twenty previously reported DRBs were updated and twenty-two North American and two Australian DRB projects were added. The DRBF database now contains a DRB contract value of \$US105 billion.

Surpassing \$US 100 billion in construction contract value for DRBs is an extraordinary achievement!

My travels and conversations lead me to the conclusion that we have passed the "tipping point" and 2007 will see significant expansion beyond interesting challenges into a long period of gratifying successes. These successes, however, while within sight, still are in the future. My father-in-law, if he were here, would be telling me now that I need to prove to you what I am saying.

My father-in-law was a MIT mechanical engineer, a true "engineer's engineer." An expert at plastics and packaging for Monsanto, he would not leave the house without his pocket knife, a white plastic

pen holder and a small book in the glove compartment with every purchase and its corresponding mileage for his car at the time. Home improvement projects at our house were extremely precise and lasted for an eternity. He paid attention to detail, he always was prepared for the task at hand and he knew what had to be done and he got it done, regardless of how long it took. He has been sorely missed in our family in the seven years since his passing.

One area where he and I differed, at least one that I will share with you, is that he always was asking me how I knew something he did not, especially if it was something in his field. I told him I read a lot, most days reading all of at least three newspapers. He never could understand how I could accept what I had read without having experienced it myself and therefore had the ability to prove or disprove what I had read. While I told him I accepted what I had read with the caveat it could be disproved later, our intellectual approaches in this regard never met.

When I say that we have reached the tipping point, I am sure many of you say to yourselves, "Delmore's gotta say stuff like that, it's his job!"

So, I present for your consideration the following empirical proof. When the DRBF Board of Directors contacted me in 2004 to inquire as to my interest in serving as the DRBF's first Executive Director, I Googled "Dispute Resolution Boards." My notes from that

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search show that there were approximately 760,000 entries. A minute ago I entered the same search and found that there were over 1.5 million entries.

Obviously, these all were not based in construction, but the DRB process now is being recognized by federal, state and municipal agencies; private developers; law firms; consultants; engineering firms; architects; contractors; and dispute resolution professionals. There is continued market pressure on the DRBF to move the DRB process in to other industries.

In the last two months I have been requested to write papers regarding the place of DRBs in the construction process of the next generation of nuclear power plants and the place of DRBs in BIM (Building Imaging Model). The number of contractors and developers of commercial vertical construction who have been inquiring about DRBs has been increasing each week, with several approaching the point of placing the requirement for a DRB in their specifications in 2007.

The two questions I hear all the time are, "Is the DRBF really going to grow?" and "When am I going to get an assignment?"

The quote above from an English poet almost 400 years ago is the perfect answer to both: "The shortest answer is doing."

Instead of spending the energy asking what will happen, become part of the process in making it happen. The DRBF Regional Representatives, under the direction of DRBF Director John Madden, are offering their time and energy in doing what is needed to make the DRBF reach the successes that are within sight. During my year end report to the DRBF Board of Directors, I asked each member of the Board of Directors to identify one new lead to me or the Regional Representatives that would be worth pursuing.

Now, I am asking you to provide the shortest answer to your questions about the future by doing: if each of you offers one lead to me or the Regional Representative, then we will make the future become the present much sooner, providing more opportunities to serve as a DRB panelist.

Hopefully, there will be more than six responses.

I take this opportunity to wish you a Happy New Year replete with interesting challenges and gratifying successes!

Lawrence F. DeImore

Interested in taking a DRBF training course?

Visit www.drb.org for the latest offerings and workshop schedule.

Spotlight on the DRBF's Representative in Ireland



Country Rep: Dr. Nael Bunni

The use of the dispute board mechanism for dispute resolution has been known in Ireland for at least twenty years, although perhaps under a different name, but essentially in a process providing a similar role to that of a Review Board or an Adjudication Board. It was, however, not until the introduction of the role of the Dispute Adjudication Board (DAB) by FIDIC in its Design - Build and Turnkey Conditions, the Orange Book, in 1995 and in its 1996 Supplement to the fourth edition of the Red Book that encouraged the users of public works contracts to widen the role of the DAB further in Ireland. The adoption of the DAB procedure in the 1999 FIDIC Suite of contracts for major works further increased the use of the DAB process in Ireland as many projects were initiated using the 1999 Yellow and Silver forms of contract. For the first time, we not only had in place a mechanism for dispute resolution, but also one for dispute avoidance. The mechanism for dispute avoidance in the FIDIC contracts is found via the possibility that the parties may ***“jointly refer a matter to the DAB for it to give its opinion”*** in an attempt to resolve a disagreement between the parties before it escalated into a dispute.

However, in the meantime during the 1990's, conciliation was seen in Ireland as the most important mechanism for

dispute resolution, as it provided savings in cost and time against arbitration. The Institution of Engineers of Ireland (as it was called then), introduced its Conciliation Procedure during the year 1995, which was later revised and improved in 2000. However, it was the idea of avoidance of a dispute that made the DAB procedure more attractive than conciliation to the users in Ireland.

The process was thus incorporated in many road and infra structure projects in Ireland using rules similar to those incorporated by FIDIC in its various conditions of contract. The role, however, was sometimes designated as one of a conciliator rather than a dispute board, but the conciliator was appointed at the commencement of the project for the whole duration of the construction and defects notification periods; his/her determination being temporarily binding; and to a large extent it was very similar to the role of a dispute review board or the DAB.

Dispute Boards have been extremely successful in Ireland and were to be incorporated in a new standard form of contract that was proposed for use in public works contracts by a task force specifically formed for the purpose of drafting a new set of contract conditions. With that in mind, the Institution of Engineers of Ireland (as it was called at the time), organised a very successful course in 2002 for training prospective dispute boards members. It was an intensive course comprising two days of specialist training and two days of oral

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and written assessment of relevant knowledge and experience of the candidates. This course yielded eighteen successful candidates who were fully trained for the work ahead. Unfortunately, this successful mechanism was cut in its prime when the Government here decided to adopt a different set of conditions of contract specifically written for public works contracts which eliminated the use of dispute boards from its dispute resolution clause. This new standard form of contract reverted back to conciliation as the first in a two step dispute resolution mechanism that ends in arbitration. The conciliator is only appointed after the occurrence of a dispute and within ten days of the referral of the dispute to conciliation by either party to the contract. Unless the dispute is resolved in that process by agreement of the parties, the conciliator, not acting as arbitrator, is required to give both parties a written Recommendation based on the parties' rights and obligations under the contract within forty-five days after appointment. If the Recommendation is accepted by both parties, it is then binding and conclusive. If the Recommendation is not accepted, either party may refer the dispute to arbitration within a further forty-five days. However, if the conciliator recommends a payment to be made, such payment should be made despite the dissatisfaction of one party, provided the recipient provides a bond that is acceptable to the party making payment.

Footnotes

¹The author was appointed in two projects in the mid 1980's as a standing dispute resolver from the commencement of the project.

²The Institution is now known as *Engineers Ireland*.

³Conciliation as against Mediation is the process practiced more widely in construction in Ireland, whereby the appointed Neutral would issue a Recommendation to resolve a dispute that has not been resolved by the parties within a certain period of time during the dispute resolution procedure.

It is unfortunate that the successful use of dispute board procedures should come to a sudden halt in Ireland, since most public driven construction work in this country is initiated by state and semi-state organisations, but it is hoped that this particular dispute resolution clause could be modified by enlightened and wise employers on a case by case basis. □

About the Author:

In 1996, Dr. Nael Bunni was appointed Visiting Professor at Trinity College, Dublin University, and he continues to hold that position. In 1999, he was elected a Fellow of the Irish Academy of Engineering and in March 2000, elected member of the International Council for Commercial Arbitration, ICCA.

Dr. Bunni has been involved in many civil and structural engineering projects in Ireland and abroad. He has won a number of professional awards for his work in engineering design and dispute resolution. He is past chairman of FIDIC's Standing Committee on Professional Liability and FIDIC's Task Committee on Construction, Insurance and Law.

Dr. Bunni has acted as dispute board member, conciliator/mediator, arbitrator or chairman of arbitral tribunals in numerous domestic and international disputes involving parties from over fifty jurisdictions. He is the author of numerous technical papers and three books: "Construction Insurance and the Irish Conditions of Contract," "Construction Insurance," now in its second edition under the title of "Risk & Insurance in Construction 2003;" and "The FIDIC Forms of Contract" published in its third edition in May 2005.

Dr. Nael Bunni can be reached by email at bunni@eircom.net.

Ethics in Today's World of DRBs

The Urstate Department of Education (Owner) entered into a \$155 million design-build contract with *Used to be a GC Construction Company* (Contractor) for a series of new campus buildings for The Community College of Money First/ Education Later. The construction site is on the reclaimed waterfront of Old Industrial City, Urstate, the former home to a brass smelter/mill and a coal fired power plant. Urstate's Department of Environmental Protection qualified the site for its accelerated permitting process, which approved the site for clearing and construction after a one month environmental inspection.

Contractor's contract contains a DRB provision that provides either the Owner or the Contractor can bring an action to the DRB. All three DRB members were selected and empanelled prior to Notice To Proceed. It is now 12 months into the scheduled 23 month contract duration. There have been four regularly scheduled DRB meetings, two Advisory Hearings and one Formal Hearing.

The Formal Hearing entailed a dispute as to the quality of the granite cladding panels on the library tower and its effect on the Contract Time and the Contract Price. The Owner, identified in the contract as both the Owner and the Engineer, brought the issue to the DRB for a determination of both merit and time.

The Owner and the Contractor agreed with the DRB to bifurcate the merit and time issues, with the DRB hearing the merit issue first. The DRB issued its *Findings and Recommendations* within the allotted time

constraints and found for the Owner. The day after receiving the DRB panel's *Recommendation*, the Contractor submitted to the Owner and each of the DRB members a one sentence letter, "Contractor respectfully rejects the DRB's opinion." The next day the Owner submitted to the Contractor and each of the DRB members a one sentence letter, "Owner respectfully accepts the DRB's opinion."

One week later, the Owner submits a letter to the Contractor and each of the DRB members a one sentence letter, "The Owner desires to go forward with the time portion of this dispute and requests of the DRB dates when this can commence."

In response to a DRB inquiry, the Owner and the Contractor agree that at the present time, the schedule in place and being used for construction is the 30th update on a CPM schedule that was abandoned some time ago.

Should the DRB go forward with the time portion of the dispute in order to save money for the Owner and the Contractor?

If the DRB hears the time portion of the dispute at this time, does the DRB become an advocate for the Owner in going forward, both with the DRB proceeding and any subsequent arbitration or litigation?

What do you do?

This problem is part of an ongoing series designed to engage a discussion among the DRBF membership about some of the challenges that occur during the DRB process. A committee of experienced DRB practitioners is being formed to offer ideas and opinions about the ethical dilemmas presented here.

Please send your thoughts on this issue, or problems faced by DRBs, to the DRBF office by email: home@drb.org or phone: 888-523-5208 or 206-878-3336.

WELCOME TO NEW DRBF MEMBERS

MEMBER ADDITIONS NOVEMBER 2006 THROUGH JANUARY 2007

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Redlands, CA USA

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Back issues of the Forum are also available in the
member's only section of the DRBF web site.**

**If you have news about DRBs, DRBF members, or
an article to share, please tell us!**



***Deadline for the
next issue of the Forum is
April 1, 2007***

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two step process: the first stage would address the entitlement issues, and the second stage would address the quantum issues. The days, if any, for the second stage would be determined after the DRB issued its recommendation on the first stage. The parties submitted their position papers and documentation on all issues prior to the hearing on the entitlement issues.

The DRB recommended entitlement on both issues and set the dates for the hearing on the second stage of issues, the quantum issues. During the telephone conference call that set out the time of the exchange of position papers leading up to the next hearings, the parties agreed not to submit any **new information, not previously submitted.**

The parties did, however, agree that exhibits and graphs **based on the previously submitted documentation for the first stage hearing would be allowed.** At the conclusion of the conference call, I sent to all participants of the call an email that memorialized our agreements.

Two weeks before the date of the hearing I received a call from one of the parties indicating they wished to have a conference call with the other party to discuss an issue that had come up. I will refer to the parties now as the calling party and the non-calling party. The calling party had determined that because the DRB had recommended entitlement, it now needed to employ new logic to analyze the other party's request for time. After a full discussion, I agreed to allow the calling party to present its "new" information and agreed to give the non-calling party more time to respond to it.

Toward the conclusion of the hearing, the non-calling party attempted to introduce a new document into the proceeding that contained new information as to costs. The calling party objected and made the argument that it had alerted the DRB and the other party by telephone call when it was faced with being in a position of wanting to submit documentation outside the scope of our agreement and the procedures.

I agreed and advised the parties that this looked like a last minute "ambush" that did not comport to the values of the DRB process. The non-calling party ultimately withdrew this new document.

This incident illustrates several key considerations. First, the DRB is not intended to be adversarial, with the concomitant approach of hearing by ambush. In order for the process to work, the parties are advised to honor their agreements and thereby promote a higher level of trust. This trust is not only important to the DRB process, but also to the ongoing prosecution of the work of the project. Second, what is fair in the DRB process at a given point in time may depend on the surrounding events. I may have allowed the non-calling party to submit its new document had it not been for the calling party's efforts to stay within the rules that we had agreed upon.

I mentioned at the outset that the DRB process places a premium on fairness and trust between the parties. These values not only ensure a more effective DRB process, but more importantly, go a long way toward promoting smoother working relations on project tasks. If the "smell test" is not being met in the DRB process, chances are it is not being achieved on the project site.

Disputes are more likely to be resolved by the parties or avoided completely if all parties employ practices that promote fairness and openness on the project location.

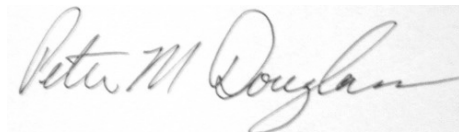
DRBF member Jim Phillips, Ph.D. can be reached by email at jdphilli@vcu.edu. □

(Continued from page 2)

parties involved in the DRB process, it is our intent to provide all parties with the necessary information to ensure ethical performance. Further, in my opinion, enforcement of the Code of Ethics falls to each DRB member, as well as to the parties. If everyone maintains a keen eye on ethical practice, both personally and by our colleagues, the success of the DRB process should continue unabated.

I would also like to take this opportunity to encourage all members to report to Steve Fox any new projects that have incorporated the DRB process. Starting with the next issue of the *Forum* we hope to include a regular updated summary that reflects the growth of the DRB process as the ADR method of choice in avoiding and resolving disputes.

Sincerely,



DRBF Committees

To get involved in a committee, please contact the committee chair directly. Contact information is available on the DRBF website, www.drb.org.

Annual Meeting and Awards

Harold McKittrick

Data Compilation

Joe Sperry

Best Practices & Other Publications

Marianne Ramey

DRBF Bylaw Revisions

Robert Smith

DRBF Chapters

John C. Norton

Practices and Procedures Manual

Joe Sperry

Education/Training USA

Kerry Lawrence

Education/Training Multinational

Gwyn Owen

Finance and Administration

James Donaldson

International

Gwyn Owen

Membership

Harold McKittrick

Nominations

Joe Sperry

Professional Conduct

Robert Smith

US Regional Chapter Coordinator

John Madden

Web Site

Ann McGough

World Bank Liaison

Gordon Jaynes and Bernard Becq



7th Annual International Conference Bucharest, Romania May 12-13, 2007

Dispute Boards in Practice

The Dispute Resolution Board Foundation (DRBF) will hold its 7th Annual International Conference May 12 and 13, 2007 in Bucharest, Romania. The conference will be conducted in English, and will focus on:

- The international use of Dispute Boards
- How users of Dispute Boards maximize the benefits of the system
- What employers and contractors want from Dispute Boards
- Perspectives of Dispute Boards on varying types and sizes of projects
- How to become a Dispute Board member

The distinguished panel of speakers includes the General Director of the Romanian Ministry of Public Finances who is in charge of all projects financed by the European Union through the ISPA program, government representatives from Ethiopia and Libya, and officials from FIDIC, ICC, ICE, RIBA, and The World Bank. There will also be presentations from major international contractors and leading lawyers specializing in Dispute Boards and FIDIC contracts, including Party advisors and advocates and experienced Dispute Board practitioners. Delegates will be encouraged to take an active part in the discussions and will be able to network and make new contacts.

Conference Program

Day 1: (full day)

- Introduction and an outline of the recent developments in DBs throughout the world
- What users look for in DBs
- Practical DB usage by contract participants and their advisers
- Costs in DBs
- DB perspectives in mega projects, standard projects and in design and build contracts

Day 2: (half day)

- How to be selected as a DB member
- How to be included on national and international lists
- Training and mentoring
- International organization of the DRBF

Day 1 will include lunch at the venue and light refreshments will be available at set intervals throughout the conference.

Who should attend the DRBF's International Conference?

- Employers organisations and public procurement bodies
- Contractors who undertake these types of works
- Consultants and engineers
- Finance authorities and EU officials
- Lawyers and advocates advising parties
- Claims consultants
- Dispute Board participants
- Professionals interested in serving on dispute boards

Costs and application:

The delegate fee of 350 Euro includes all conference sessions and materials, light refreshments, and lunch on the first day. Hotel accommodations and transport are not included. There is an optional Gala Dinner on Saturday evening at 50 Euro which includes a meal with a local flavour and entertainment. Romanian National residents are eligible for a 50% discount on the delegate fee.

Fees and dinner reservations are payable on application and are non refundable. All applications are to be made on the official application form, which can be found on the DRBF web site, www.drbf.org. Credit card payments can be accepted for American Express, Mastercard and Visa only.

Venue:

Sofitel Bucharest

World Trade Centre

10 Montreal Square, 11469 Bucharest, Romania

Tel: +40 21 318 30 00 Fax: +40 21 316 25 50

Email: sofitel@sofitel.ro or reservation@sofitel.com, also see www.sofitel.com

Sofitel Bucharest is a 4 star hotel ideally located within the World Trade Center complex in the commercial center of the city, only 5 minutes from downtown Bucharest and 15 minutes from the airport. 188 rooms and 15 suites. Delicious Mediterranean and international specialities and a large range of Romanian and Mediterranean wines in Les Oliviades restaurant. Piano bar. Fully equipped fitness centre with sauna, hammam, solarium and massage.

Delegates are welcome to choose their own hotel of which there are many in Bucharest.

Capacity

Delegates are accepted on a first come first served basis. The DRBF reserves the right to accept or reject applications at its own discretion.

Dispute Board Training

Two training courses are linked to this event and also being held at the Sofitel hotel details of which are available from the DRBF. See page 16 for more details.

**Visit www.drbf.org to download conference and hotel registration forms, and a copy of the program.
See you in Bucharest!**



International Contracts Training

The Responsibilities and Duties of Dispute Adjudication and Dispute Boards Under FIDIC (1999 Edition) and MDB Contracts

The 1999 FIDIC Conditions of Contract are being used increasingly by the international Construction industry throughout the world. In Europe they are used by the European Commission for all their projects throughout Central and Eastern Europe. The multilateral development banks (MDB), including The World Bank, Islamic Bank for Development and the Asian Development Bank, have adopted the 1999 FIDIC Conditions of Contract for Construction with modifications.

This practical training course explains and illustrates the procedures and application of the Dispute Adjudication requirements under these contracts. The course is designed for those wishing to work as dispute adjudicators as well as those who will use Dispute Adjudication Boards either as an employer, engineer, or contractor.



International Dispute Board Training

Chairing & Single Member DB Workshop

An intensive program designed to address the issues involved in chairing Dispute Boards for practitioners who are interested in or are currently serving as DB chairs. The workshop includes lecture and case study. The workshop also explores the procedure and challenges of the Single Member DB model.

Both training workshops will be held in at the Sofitel Hotel, World Trade Centre Bucharest, Romania prior to the DRBF International Conference

May 9-10: International Contracts Training Course, Fee: 300 Euro

May 11: International Dispute Board Chairing & Single Member DB Workshop, Fee: 200 Euro

Visit www.drb.org to download a copy of the complete program and workshop registration forms.

Wondering if you should sign up for the DRBF's International Conference? Here's what some of last year's participants had to say....

"I just wanted to say thank you for encouraging me to attend the conference. It was great to be immersed in a world of DRBs and FIDIC of which so far I have had little experience. It was also useful to put a face to so many names!"

"I am sure we are all agreed that it was a pleasure and a privilege, and some fun, too. If I may say so, you are to be congratulated on your hard work and the results of it. The conference was quite the most interesting and stimulating event I have been to for some time and I look forward to more."

"It was a rare privilege to meet and to listen to the most important personalities in the industry and of course to learn from their experience."

"Besides the welcoming, warm atmosphere, the positive attitude of the delegates made this conference truly enjoyable from all perspectives."

"This was my first DRBF conference and we are really pleased and thankful to you for having given us this interesting opportunity to participate in one of the most well organized conferences we have attended in a very long time."

"We look forward to many others and you can count on us to support the activities of the DRBF in the future."

"Many thanks for an excellent International Conference in Budapest. Very informative and a good balance between work and social. See you at next year's conference!"



**Save
the
Date!**

**Don't miss the DRBF's
11th Annual Meeting
and Conference
October 6-7, 2007
in beautiful
San Diego, California**

Stay tuned for more details....

Letters to the DRBF

Twenty Benefits of DRBF Membership

A few weeks before Christmas, I received my bill for the 2007 DRB Foundation annual dues. As I reviewed my own personal budget for next year's professional expenses, I asked myself what I was going to get for my \$200 annual dues. I thought back over the past year, and realized that I had, in fact, received many worthwhile benefits from my active participation in the Foundation. Twenty benefits come to mind:

1. Training in DRB Procedures: Keep abreast of the current "best practices" used by others in the Foundation in various other states and countries.
2. Training in DRB Procedures: Sharpen your skills in working as a team to focus on the issue(s) before the Board, to analyze facts, to reach a fair decision, and to produce the written documentation required for the record. How do we share the workload evenly?
3. Implementation of the DRB Concept: Learn how to effectively promote the use of DRB's during the course of construction before disputes arise.
4. Implementation of the DRB Concept: Learn how to establish and maintain credibility and respect before, during and after a Board hearing.
5. Ethics: Expand your mental horizon about what truly constitutes a "conflict of interest" and learn guidelines for when to decline service on a Board.
6. Ethics: Learn from the experience of others how to address and resolve a potential ethical breach by a co-member on your Board.
7. Ethics: Explore which past personal relationships taint our unbiased judgment. Has this happened to Foundation members you know? How was it resolved?
8. Expanding the DRB Concept: Learn how to introduce the DRB concept to other governmental agencies. Promotional/educational aids are available from the Foundation to help. How can we expand into the private sector? Learn from others who have done it.
9. Enlarging the Pool of Qualified DRB Members: Will repetitive service by the same DRB members in an area dampen owner's/contractor's enthusiasm for continued use of DRBs?
10. Mentoring: Receive suggestions on how to establish a mentoring program in your state/country. Learn how to promote the teaming of an "inexperienced" DRB member with two "veterans" to compose your Board.
11. Future Opportunities for Yourself: Become acquainted with others from neighboring states and other countries. Learn the differences/similarities of other "markets" and make known your availability to colleagues around the world.
12. Future Opportunities for Yourself: Learn methods and techniques of selling yourself. Find the keys to successful "self-marketing."
13. Become a Global Professional: I cannot think of a better way to meet, share, and discuss the issues, happenings, and role of DRBs around the globe than through participation in DRBF functions.
14. Learn the Viewpoints of Others: Attend Annual Conferences, read the *Forum*, and participate in Workshops. Don't become stale, always move forward.

15. The DRB Foundation: Established and publishes standards and common procedures for the use and operation of Boards.
16. The DRB Foundation: Maintains historical records of DRB results to aid in promoting the concept around the world.
17. The DRB Foundation: Documents, monitors and advocates for increased pay, travel expenses, and support costs for members serving on Boards. The Foundation provides “a common voice for mutual benefits.”
18. The DRB Foundation: Trains potential Board members and promulgates a database of DRBF members throughout the world who participate in continuing education courses.
19. The DRB Foundation: Helps to maintain a strong level of ethical conduct and behavior of all Foundation members.
20. The DRB Foundation: Watches trends, keeps an eye on where the industry is headed, and helps us adjust to new realities so we remain an effective, low-cost, and timely means of dispute resolution.

I’m sure that most of these benefits will come my way in 2007... some to a greater degree, others to a lesser degree, but all in some manner. I have learned over the years that the more I participate, the more I gain. I look forward to my continued membership in our DRB Foundation.

Sincerely,

Ken Fusch, P.E.
Amelia Island, Florida, USA

End-of-the-Contract Disputes

Kurt Dettman’s November 2006 article, “End of the Contract Claims: Tips for Handling Complex Disputes Before DRBs”, should be required reading for DRB members handling complex disputes. However, projects with timely established DRBs should not have end-of-the-contract disputes.

Projects with proper claim provisions, DRB specs, Three Party Agreements and owners and contractors who understand and follow the proper application of the DRB process should seldom be faced with end-of-the-contract disputes. These are certainly the worst of all possible disputes as the motivation for the parties to maintain a good relationship for the sake of the project is lost.

The DRB should encourage the parties to resolve issues themselves and, as soon as it is apparent that they are unable to do so, encourage them to bring the dispute to the DRB immediately. Experienced owners and contractors know the advantages of resolving disputes promptly, as they occur, before they become so entrenched in their positions that the project suffers and resolution becomes more difficult, and before more disputes arise.

Although the name doesn’t say it, Dispute Resolution Boards have a distinct advantage over other ADR methods in their success in dispute avoidance, and a truly successful DRB often doesn’t hear any disputes. The DRB should insist on receiving minutes of weekly meetings and holding regular DRB meetings with the parties as often as required to stay abreast of job progress and identify issues that may become disputes. The DRB can assess the situation and often open dialogue that leads to resolution of the issue without a hearing.

– Submitted by the Practice and Procedures Manual Committee



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FOUNDATION FORUM



Register Today for the 7th Annual DRBF International Conference in Bucharest, Romania

The DRBF's 7th Annual International Conference will be held in Bucharest, Romania on May 12-13, 2007. The conference is an excellent opportunity to network with others active in the Dispute Board (DB) community and to hear some of the top experts in the field discuss the international use of DBs, what the parties desire from DBs, different types and sizes of projects that employ DBs, new regions embracing DB programs, and how to be appointed as a DB member.

More information on the event can be found on pages 14-16 of this newsletter, and in the Meetings and Conferences section of the DRBF web site: www.drb.org. There will also be an International Dispute Board training workshop offered on May 9 and 10, and a Chairing and Single Member DB workshop on May 11. Registration forms for all events are available through the web site. Reserve your space today!