



Forum

VOLUME 11, ISSUE 3

AUGUST 2007

Arranging and Paying DRB/DAB Members: Advantages and disadvantages of the FIDIC 1999 model solutions



By Adam Heine

“These are my 12 best suggestions, to be used by everybody caring for efficient and quick resolution of disputes arising from construction contracts which include FIDIC’s 1999 Conditions of Contract.”

My experience with Dispute Review Boards (DRBs) and Dispute Adjudication Boards (DABs) over the past decade

has led me to conclude a few key points about agreements between the parties to the contract with the members, including the chair, of the DRB/DAB. My perspective is derived from ten years of personal experience in drafting and applying agreements for Dispute Adjudication Boards in Poland, supported by FIDIC workshop training and DRBF training for members and chairmen of DRBs and participation in numerous DRBF Conferences and an International Chamber of Commerce Conference.

For starters, one has to note that the number of participants in any DRB/DAB (i.e. one or three members) shall be proportional to the value and complexity of the

contract. The preference for the three-member DRB/DAB is unlikely for contract values below US\$1 million, while in some cases the cost may be further reduced by agreeing with a sole member a lump sum retainer’s fee covering, say, three days at the beginning of execution (taking-over of site) and another three days shortly after taking-over of the works.

Quite often when drawing the agreements with DRB/DAB members, including their obligations and procedures, one or both parties to the contract consider themselves strictly bound by the text included in the “Red” or “Yellow” Book of FIDIC (as the case may be). There they are usually wrong, because when concluding a FIDIC based contract only a part of the published text, usually pages 1 through 63 of the related book, is considered as binding while the remaining

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President's Page



As we move into the final quarter of my presidency I am pleased to relay that the DRBF is doing well, thanks in large part to another very successful International DRBF Conference in Bucharest, Romania in May. With well over a hundred attendees from all over the world it served to underscore the recognition of the dispute board process as a truly valuable asset in avoiding and resolving disputes in the construction industry wherever it is employed. The three days of workshops regarding the DB process as used under the FIDIC and Multilateral Development Banks forms of contract that preceded the conference were also very well attended and enlightening. So much so, in fact, that we have arranged a half day workshop on this topic by the same presenters (ECV) at our Annual Meeting in San Diego this October. In our rapidly shrinking world it is important that we are all familiar with the DB processes employed throughout the world, not only for the opportunities it affords, but also to learn from the different approaches.

Consistent with this theme, and as discussed further in this issue of the Forum, the 10 Year Plan for the DRBF has been approved by the Board of Directors and is intended to facilitate the expansion of the leadership and direction of the Foundation throughout more distinct regions of the world. This is intended to recognize the specific needs of different areas without undermining the basic principles and procedures that make the process so successful.

Meanwhile, in North America the number of DRBF training workshops this year has dropped off considerably, especially without the promotional efforts of our Executive Director. The “train-the-trainers” workshop held in April was attended by roughly 20 DRBF members from around the country to ensure that experienced trainers are available for DRBF training workshops in all regions of the US, in order that qualified DRB candidates are locally available. The DRB process is also rapidly being incorporated in more contracts, resulting in a growing need for qualified DRB candidates in all aspects of the construction industry. As the application of the DRB process grows (originally in underground works, then highways, vertical construction and beyond) the increasing demand for qualified DRB candidates throughout the industry and the world is further exacerbated by the unrelenting attrition of experienced, aging DRB members. The recently revised DRBF manual incorporates the lessons we have learned over the past 10 years and the need for proper up to date training of both users and DRB candidates can't be overemphasized.

The DRBF recognizes the need for lists of qualified DRB candidates throughout the industry and throughout the world, especially since a single improperly executed DRB project can lead to apprehension of these and other parties in the future application of the process. To this end, the DRBF is pursuing the necessary funding to develop and implement an accreditation process that will enable the publishing of such lists to help to ensure that appropriate DRB members are selected for any given project.

Finally, I want to thank all of the membership, and the Officers and Directors in particular, for their support and willing assistance throughout my term as President of the DRB Foundation. It has been a challenging year and I trust that I leave office with the Foundation in as good condition as when I entered, hopefully better in some areas.

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Board of Directors

Elections

All DRBF members will be given the opportunity to vote for new members of the DRBF Board of Directors by paper or email ballot. There are two open positions: member and president elect. Following is a brief summary of the background and experience of each of the nominees.

President Elect: James Brady has over forty years of experience in construction and construction services, primarily with underground projects. Mr. Brady has long been proactive in the dispute resolution process going back over thirty years. He has served and currently serves on several Dispute Resolution Boards in the U.S. and Dispute Adjudication Boards throughout the world. On these projects Mr. Brady has been appointed by both the owner and the contractor almost equally, and on four occasions he has served as Chair. Mr. Brady has received formal training for serving on Dispute Review Boards and separate training for serving as DRB Chair. He is also active in the Dispute Adjudication process, and completed a four-day intensive Conciliation training with the Institution of Engineers of Ireland. He was a featured speaker at the DRBF International Conference in 2005. Mr. Brady became a member of the DRBF Board of Directors in 2006 and lives in Charleston, South Carolina, USA.

Board of Directors: Douglas Holen, a registered Civil Engineer, is retired from the US Navy Civil Engineer Corps and the Capital Projects office for the University of Washington. He has extensive experience with numerous DRBs from the owner's side of the table. He has a bachelor's in Civil Engineering from Iowa State University and a master's in Civil Engineering from University of Washington. Mr. Holen served for five year's as the Governor's appointee to the Alternate Public Works Oversight Committee advising the Washington State Legislature on public works law and contracting, spent two years as chair of the Northwest Construction Consumer Council, and is a member of the Construction Panel for the American Arbitration Association. Mr. Holen is 60 years old and lives in Santa Fe, New Mexico, USA.

The ballot is included as an insert to the *Forum*, and an electronic copy will be sent by email. Be a part of the process and return your ballot today!

DRBF Board of Directors Meetings

The DRBF Board of Directors met by conference call on July 20, 2007. A complete review of the discussions and actions taken at Board meetings can be found on the DRBF web site. Following is a brief overview of the actions taken:

- The Board approved the Ten Year Plan - Stage 2 Implementation Plan.
- The Board approved spending to pursue grants for new programs, including the development of a process to train and develop a list of qualified DRB candidates.

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

Board of Directors 2007 Meeting Schedule:

Executive Committee: By conference call August 17 and September 14

Board of Directors: October 5 in San Diego, California

Mentoring Pilot Program

By Alina Oprea

For ages, mentoring was the most used and the most efficient method of apprehending skills in different areas and activities. Observing, learning from, and working with a master or craftsmen was the first method ever for becoming skilled man, or even a craftsman him/herself.

It is well known that the metier is to be “stolen,” not “learned,” so mentoring seems to be the most appropriate and natural method of becoming a skilled person.

Training, courses, workshops... all were tried, but something was missing, something escaped, and something else should have been done to “put the dot on the i.”

Perhaps hazard (even we know that there is no hazard in what happens around us), or chance, who knows...? The fact is that, by a wonderful chance, six Romanians, active and interested in matters related to contracts, claims, and disputes, were selected to be part of a FIDIC pupilage mentoring program, the first of its kind – a pilot program. The fortune was even bigger: the mentor was to be Mr. Gwyn Owen, an extremely skilled person in such matters.

The pupils were either proposed by Mr. Nicolae Micu, the president of the Romanian Association of Consultant Engineers, who is in the process of issuing a Romanian national list of adjudicators, or known by Mr. Owen himself from his activity as adjudicator and trainer in Romania and other countries. In this way Mr. Bogdan Oprea, Mrs. Alina Valentina Oprea, Mr. Florin Niculescu, Mr. Emilian Traista, Mr. Cristian Becheru and Mr. Radu Baruta became the first pupils ever in a FIDIC pupilage mentoring program. Each came from different arenas and all were very eager to learn as much as possible about international contracts, claims, and disputes resolution from their mentor.

On the evening of 13 February 2006, the first meeting started, although not without some challenges to the pupils – one had just broken her leg, other just had a surgery, and even the mentor was coming off an extremely long and tiring DAB hearing day. But despite the obstructions, all the pupils were present to meet their mentor. When something very good is to happen, usually a lot of obstacles appear, but nothing discouraged us from fulfilling our mission: we had to be there! The determination of the pupils and of the mentor could be seen from the first day of the pupilage program.

Fast, but comprehensive, the program for the following 12 months was described. There were a lot of new and incredible things said there, a lot of unbelievable (for the new and non-experienced pupils) themes announced: arbitration, alternative dispute resolution methods, mediation, conciliation, facilitation, understanding the FIDIC clauses, adjudication, position papers, enforcement of dispute board decisions... We were frightened a little, but the confidence of the mentor was passed on to us little by little. We felt that, even though the program seemed to be about very difficult things, we were in good hands. Still, at the end of the meeting, with the mind full of un-guessed (by then) information and perspectives, and the hands full of books generously handed over (for free) by our mentor, none of the pupils could say many words. All of us were thoughtful. We were feeling that we were part of something important, that marvellous perspectives were opening in front of each of us, a magic and unknown world.

Then, our work started! Homework was assigned by email or during the meetings with our mentor (we wish we had at least 1 or 2 every month, to take advantage of every minute spent there...); we had a fixed period of time decided by Mr. Owen in order to complete and send in our homework. We received, also by email, a lot of articles and other materials in order to see how the problems are presented, treated, analysed, and decided in the field of international contracts, claims, and disputes. We were always

Forum Editor: Ann McGough

Editorial and subscription address:
Dispute Resolution Board Foundation,
19550 International Blvd. So., Suite 314,
Seattle, WA 98188
Phone: 206-878-3336
Fax: 206-878-3338
Toll free (US only)
888-523-5208
E-mail: home@drb.org
Web site: www.drb.org

The *Forum* is published quarterly by the Dispute Resolution Board Foundation (DRBF). Any opinions expressed are those of the authors and do not necessarily represent the opinions of the DRBF.

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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reminded when the deadline was coming, and encouraged to not lose tempo with the other pupils. Once our homework was turned in, each of us received feedback commenting on our individual work, with congratulations, general comments and detailed observations, suggestions, and lessons to be learned.

First, we had to be arbitrators and to write an arbitration award. Every element counted: the format of the award, the number of pages, the wording, the analysis of the jurisdiction, reasons and their logic, establishing the breaches of the contract, the accuracy in taking into account all the details given in the papers received from the parties, the calculation of the quantum decided... Tremendous work for beginners like us, but nobody wanted to disappoint him/herself and, especially, the mentor! The results, according to his feedback, were excellent!

Then, we had to define some of the Alternative Dispute Resolution methods. Mediation, conciliation, adjudication, arbitration, litigation, opinion, facilitation... all were discovered, studied and, finally, defined by each of us in our best way possible. A lot of research and thoughtful work!

Further, we had to put on adjudicator hats. Despite our day-to-day job as consultants, contractors or owners, we had to be independent and fair when analysing the case, giving directions to parties and making decisions. Finally, we succeeded in issuing (more or less) good decisions. We had our comments, observations, and lessons learned.

Then came the FIDIC clauses. All of the pupils use FIDIC in our jobs, and we had to demonstrate that we understand its clauses, (as well as those of any contracts we have disputes to face) in respect of the parties' responsibilities.

Working with disputes, but what exactly is a dispute in terms of FIDIC? This was the first question. We also discussed enforcement procedures within the FIDIC contract. Comments were received, as usual, from Mr. Owen, on our thoughts and understanding on these matters.

The next topic was to discuss and compare design liability under the various FIDIC forms of contract. We discovered a lot of things by studying deeply the FIDIC clauses, and others were revealed by our mentor.

Then, another difficult task: we had to be the contractor, then the employer/owner in a contract where the parties were in dispute. We learned a lot from trying to see things from each party's point of view and from drafting each one's position papers in order to get a dispute board decision. Our answers to this task were deeply analysed by our mentor and we received valuable comments and advice on each issue included in the position papers. Extremely useful for us!

Our minds were, more and more, opened to new things we found and the old things we already faced in our regular job, in relation to disputes in international contracts.

We had not only to listen to what our mentor was saying and teaching us, and to apply what we've just learned, but to receive important ideas and directions, to research and study a lot, to work hard by ourselves, and to think about the valuable observations, comments, and advice received.

The idea, very well put into practice by Mr. Owen, is not to keep giving fish to a poor and starved man, but to give him fish first, and then provide him a fishing rod and teach him to use it!

The time required to participate at the pupilage program was acceptable – in fact, when we felt that we were under pressure, we were thinking that in real life the pressure moments are much more numerous, and the stress derived from dealing with real cases is a lot bigger.

In my case, more stress came from organizing the DRBF's 7th Annual International Conference and participating at the mentoring program, together with doing my current job tasks even at home, after the normal working hours.

We all were amazed about the dedication of
(continued on page 13)

Ethics in Today's World of DRBs: Ex Parte Communications

By Jim Phillips Ph. D.

The issue of *ex parte* communications or communications between one DRB Board member and the parties, or one party and the DRB Board, or one DRB Board member and one party is one that is raised on a regular basis. In the last issue of the Forum, the question was posed whether one DRB Board member, at the conclusion of a formal DRB meeting after most of the parties have left the room, should answer an informal question of the contractor.

Canon 2 of the DRBF Code of Ethics provides that "Conduct of Board members should be above reproach. Even the appearance of a conflict of interest should be avoided." It goes on to state that "[t]here shall be no *ex parte* communication with the parties except as provided for in the DRB's Operating Procedures."

The DRBF Best Practices Manual in Section C states that "...[e]ach Board member must strive to maintain the confidence of the parties..." It also suggests that each Board member "...[r]emain neutral and avoid any behavior that could lead to the perception of bias."

A close reading of Canon 2 and the Manual suggests that the scenario of the contractor requesting from the DRB Board member an "informal" opinion would at least raise an appearance of impropriety, and at worst, create the impression for the owner that the contractor was bypassing the DRB process as required under the contract or that the DRB Board member had lost its

impartiality and neutrality by treating the parties differently. In either event, these alternative outcomes are not positive ones for the DRB process.

Two cornerstones of the DRB process are: first, neutrality and impartiality from which the second, trust, can develop. As Canon 2 provides, the DRB must be above reproach because if there is ever a doubt regarding the neutrality of the DRB or one of the members, the integrity of the process is lost and, in my experience, once lost, it is nearly impossible to regain. Once the integrity of the process is compromised, the DRB loses its ability to perform its obligations under the contract; namely to recommend the resolution of disputes and to avoid the filing of claims.

In the scenario posed, I would recommend that the DRB member decline to allow the contractor to ask the question. A quick response in the negative will avoid even the appearance of favoritism or a conflict of interest and keep the owner and the contractor on equal footing when it comes to DRB Board accessibility. The single DRB Board member who finds him/her self cornered by a party should move quickly to remove themselves from appearing to communicate with just one party.

However, there also should be an element of reasonableness to this standard. For example, many operating procedures set up by the DRB and agreed to by the parties provides for one Board member, typically the Chair, to be the contact person for the DRB Board.

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In several DRBs that I have served as chair, I on occasion have telephone and email contact with one or all parties. **However, this contact is solely on administrative and scheduling matters and never on issues of merit.** If a scheduling conversation starts leaking into one of merit, such as the scope of the dispute, I will always advise that we need to get the other party involved in the conversation. While the line between the two may be ambiguous, my advice is to always come down on the side of caution. When in doubt, have both parties in on the conversation.

Another example of when being reasonable is called for is during project site tours. Even when the DRB and the parties are careful in making sure the vehicle, when going to and returning from the site, has a representative of the contractor and the owner with the DRB member, there are occasions where one Board member may be standing around with only a contractor or only the owner. This typically occurs when there are questions being asked about what is being observed. Again, being reasonable is the watchword. I do not think that Canon 2 requires that on a site visit a DRB member can not ask a question to one of the parties. However, avoiding an appearance of impropriety should guide the protocol of the site visit as well.

The intent of Canon 2 is to preserve the integrity of the DRB process. Neutrality builds trust and confidence in the process by the parties. A DRB Board member should always be concerned with how his/her conduct will be interpreted and avoid those situations which might appear to be detrimental to the DRB process.

Next Challenge: Fees and Ethics

Assume that you are a DRB Board member on an ongoing project. As has been your practice, you submit an invoice for your services to the individual on the project who has been designated to process DRB member invoices. Assume that after submitting your invoice, you receive an email from the project official who reviews and approves the invoices challenging the time you billed for was actually worked. This official has actually edited your invoice and has deleted some of the time billed.

How would you respond?

Ethics in Today's World of DRBs

The problems presented here are 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 led by Committee Chair Jim Phillips will review and share ideas and opinions about the ethical dilemmas presented here.

Please send your thoughts on this issue, or problems you have faced with a DRB, to the DRBF:

Email: home@drb.org

Phone: 888-523-5208 or 206-878-3336

Spotlight on the DRBF's Representative in the Philippines



Country Rep:
Salvador P. Castro, Jr.

INTRODUCTION

The adoption of Alternative Dispute Resolution (ADR), in lieu of long-drawn court litigation, started to gain momentum with the recent developments in the Philippines, specifically when the Philippine Congress enacted into law Republic Act 9285, better known as the ADR Act of 2004. The full potential of the ADR system may soon be realized with the slow but sure movements spearheaded by various ADR proponents from different fronts towards a common objective, which is for the ADR system to become widely accepted by the various sectors of society as an effective mode of dispute resolution. To meet this objective, the proponents have to overcome a big challenge – a paradigm shift among the general public in resolving claims or disputes, from being court-oriented to ADR-oriented.

The concept of ADR has been enshrined in the Civil Code of the Philippines since 1949, with provisions on amicable settlement, compromises, and arbitration, all of which fall under the ambit of ADR. The Civil Code was later on strengthened by separate legislations - the Philippine Arbitration Law of 1953 (Republic Act No. 876), Executive Order No. 1008 or the Construction Industry Arbitration Law, and the latest was the enactment of the ADR Act of 2004.

The passage of the ADR Law was greatly influenced by the success of the construction arbitration system under the auspices of the Construction Industry Arbitration Commission (CIAC), a quasi-judicial body established in 1985 by virtue of E.O. No 1008 in answer to the clamor of industry constituents for an alternative process to court litigation in resolving construction disputes in a fair but

expeditious, efficient and economical manner.

On the other hand, the Mediation Chapter of the ADR Law was modeled after the successful implementation by the Supreme Court – Philippine Judicial Academy (PHILJA) of its “Court-annexed Mediation Program,” which is among the judicial reform initiatives being implemented to unclog the court dockets due to the inordinate length of time it takes for the courts to resolve cases, which, in some instances, even survive the litigants. The success of court-annexed mediation when implemented in several pilot areas was so impressive that it was later on institutionalized by the Supreme Court in 1999. At present, another variation called the “court-annexed arbitration” is being studied and fine-tuned by the Supreme Court - PHILJA. It must be emphasized, though, that the mediation process under the ADR Law and the court-annexed mediation of the Supreme Court are complementary processes but operate independently from each other.

In essence, the ADR Law paved the way for the adoption, development and promotion of ADR systems in the country, which include mediation, arbitration (domestic and international), construction arbitration, and other similar modes, such as mediation-arbitration, arbitration-mediation, early neutral evaluation, mini-trial, and the like.

PROSPECTS OF ADR IN THE CONSTRUCTION INDUSTRY

The distinct features of the ADR Law that are significant to CIAC are as follows: [1] the law affirms CIAC’s “original and exclusive” jurisdiction over all construction and construction-related disputes in the country; and [2] it expanded its jurisdiction to include project owners/ developers, contractors/ subcontractors, consultants, design professionals, project managers, fabricators,

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banking and financial institutions, surety companies.

With the ADR Law in place, CIAC has renewed its interest to develop mediation as another effective mode of dispute resolution in addition to arbitration, wherein CIAC has been remarkably successful in resolving construction disputes expeditiously such that most cases elevated before the Court of Appeals and Supreme Court for review were affirmed. Shortly after the enactment of the ADR Law, CIAC trained its new batch of mediators and promulgated separately its revised Rules on Arbitration and Mediation to conform and align certain provisions thereof with the law. The arbitration arm of CIAC, the Philippine Institute of Construction Arbitrators, Inc. (PICA), also changed its corporate name to PICAM - Philippine Institute of Construction Arbitrators and Mediators, Inc. to include mediation among the ADR services it offers. To further expand its reach, CIAC has now put in the pipeline a training program to include the adoption of other internationally accepted arbitration rules in arbitration, such as ICC and UNCITRAL, among others, which has now become necessary due to globalization.

The above developments, needless to say, are clear indications of the good outlook of ADR in the country.

PROSPECTS OF DISPUTE BOARD (DB) / DISPUTE ADJUDICATION BOARD (DAB) IN THE PHILIPPINES

Considering that most of the big and complex infrastructure projects of the Philippine Government are foreign-funded by either the World Bank, Asian Development Bank, Japan Bank of International Cooperation, Japan International Cooperation Agency, to name a few, and that the Contract Documents for such projects are based on the 1999 FIDIC Forms of Contract, especially the MDB Harmonized Conditions of Contract 1999, FIDIC Red and Yellow Books, where the provision of DB/DAB is expressly stipulated (note that

even ICC rules provides this mode of dispute resolution), the prospect of DB/DAB becoming part and parcel of contract administration procedures is not far-fetched, specially with the ADR Law providing the backbone for its development.

Although there are provisions for DB/DAB in the contracts, parties do not implement it or, in most cases, even delete it from the contract, especially in the Philippine Government's Procurement Guidelines, for two (2) possible reasons: [1] lack of knowledge about the roles of DB/DAB and its benefits; and [2] high cost in appointing DB/DAB, either as full term or *ad hoc*, since almost all of the FIDIC President's List of Adjudicators are from Europe and the Americas.

Taking this cue, the Dispute Resolution Board Foundation (DRBF), since the appointment of its Country Representative early last year, has taken a pro-active approach to promote the concept of DB / DAB in the country by coordinating with the two (2) national non-profit organizations, the Council of Engineering Consultants of the Philippines (CECOPHIL) and the Philippine Dispute Resolution Center, Inc. (PDRCI). CECOPHIL is a National Member Association of FIDIC while PDRCI is the arbitration Arm of the Philippine Chamber of Commerce and Industry.

To address the constraints in the use of DB/DAB, a 3-year Project was initiated by DRBF in collaboration with FIDIC/CECOPHIL/PDRCI, which includes: [1] Awareness campaign among industry stakeholders on DRB/DAB/DB and its benefits; [2] Training Modules on Practical Use of FIDIC Forms of Contract to include MDB Edition 2006, Claim and Resolutions of Disputes, Roles and Responsibilities of DAB/DB and Chairing of DAB/DB; [3] National Listing of Adjudicators, Arbitrators and Mediators.

The awareness campaign and the generation of local members of DRBF have already begun. Module 2 (Claims and Resolutions)

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will be held in October 2007 while Modules 1, 3 and 4 are scheduled in 2008. The development of a National Listing will be implemented by 2009. Preparations for the above activities are already under way. While the above program is geared more for the local participants, the invitation will be extended also to interested regional participants.

Given the foregoing background and prospects, it is clear that the use of ADR in the country is no longer considered a “wave of the future” but rather, it has now become a potent force whose time has finally come. □

About the Author: Salvador P. Castro, Jr. is the chairman and managing director of SPCastro & Associates, a project management and consultancy firm with operations in the Philippines and Brunei Darussalam. He is an accredited Mediator and Trainer of the Supreme Court of the Philippines-PHILJA on court-annexed cases; an accredited Construction Arbitrator and Mediator of

the Construction Industry Arbitration Commission; and a member of the Panel of Arbitrators and Panel of General Mediators of the Hong Kong International Arbitration Centre. He is a member of the Philippine Dispute Resolution Center, Inc.’s Board of Trustees and chair of the Mediation Committee, and vice president and chairman of the Mediation Committee of the Philippine Institute of Construction Arbitrators and Mediators, Inc. Mr. Castro is also a member of The Chartered Institute of Arbitrators, UK., and the International Panel of Mediators of the Singapore Mediation Centre as endorsed by the Association of Consulting Engineers Singapore (ACES). He was recently made a member of the International Mediation Institute (IMI) Advisory Council. Mr. Castro is a member of the Executive Committee of FIDIC Member Association in the Asia Pacific Region (ASPAC) and immediate past president of the Council of Engineering Consultants of the Philippines (Cecophil), which is the national member association of FIDIC. He can be reached by email at spcjr@spcastro.com.

Would you like to be a Country Representative for the DRBF?

Help give the DRBF a voice in your country by becoming a DRBF Country Representative. Responsibilities include working to raise the profile of DRBs, helping to increase DRBF membership, and possibly serving as a spokesperson for the Foundation. 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 two year renewable period.

If interested, contact the DRBF office today:
 P: 206.878.3336;
 F: 206.878.3338;
 or Email:
home@drb.org.



After many years of active service, the DRBF representative for Poland, Adam Heine (left), has now handed over the position and responsibility to Krzysztof (Chris) Woznicki (far right) during the International Conference. International Committee Chair Gwyn Owen (center) joins them to commemorate the event.

Spotlight on the DRBF's Northwest Representative

By Jim Donaldson

It is a pleasure to give a current report on the activities of the NORTHWEST REGION which includes Alaska, Washington, Oregon and Idaho.

One of the main activities of the Northwest Region is the yearly Conference and Training Workshop which was held June 25th at the Radisson Gateway Hotel in Seattle and included twenty five attendees from four states.

The all day program started with a regional report given by the "new" Northwest Representative, Roger Brown, a DRBF charter member and current member of the Board of Directors. This was followed with an Owner, Contractor, Subcontractor Panel with a discussion on how subcontractor disputes on major commercial building projects are handled by the Dispute Resolution Board process.

The owners were represented by Eric Smith, capital projects director for the University of Washington, and Jim Napolitano, director of Major Capital Projects for King County. The contractors were represented by Tom Gerlach of Turner Construction Company and Lyle Martin of Hoffman Construction Company. The subcontractors were represented by Mike Shinn of Shinn Mechanical, Inc. and Wayne Tyrrell of Prime Electric, Inc. Also on the panel were DRB practitioners Kerry Lawrence and Steve Goldblatt, who spoke for the DRB panel. It was an excellent program with good interaction from all attendees in the audience. Roger Brown acted as moderator.

The afternoon was devoted to the presentation of the DRBF Practice and Procedures Proficiency Update Training as presented by Kerry Lawrence and Roger Brown. Attendees received a copy of the currently

updated 2007 edition of the *DRBF Practice and Procedures Manual*. The trainers did a great job with the material and with involving all the attendees in the discussions on the various issues.

On a personal note, after having been involved in approximately one hundred trainings as a presenter, I finally received a "Certificate of Completion" for a training to prove that I am qualified to serve on a Dispute Board. I am going to frame it and hang it over my desk.

And finally I am writing this article for Roger Brown, our "new" Northwest Representative who is extremely busy with business (fishing for Salmon in Alaska). I expect some fresh salmon for my efforts in writing this article for him. □

For more information on the Northwest Region, contact Roger Brown roger@rbrowncg.com or Jim Donaldson jpdadr1934@aol.com.

The Coordinator for the U.S. Regional Representatives is John Madden. He can be reached by email at johnpmadden@cs.com.

Electronic Versions of the Forum Available to All Members

Did you know you can now receive the Forum by email? If you prefer this method, let the DRBF know today. You'll save time, paper and production costs. Back issues of the Forum are also available on the DRBF web site, www.drb.org.

If you have news about DRBs, DRBF members, or an article to share, please tell us! Deadline for the next issue is **October 1, 2007**

DRBF U.S. Regional Representatives

New England
Blase Reardon

Northeast
Kathleen Harmon

Mid-Atlantic
Adrian Bastinelli

Southeast
Jim Brady

Florida
Ralph Ellis

South Central
J. Lynn McDonald

North Central
Larry Lenahan

Rocky Mountain
Ed Wheeler

Northwest
Jim Donaldson or
Roger Brown

Northern California
John Jacobs

Southern California
Bill Carlson

(continued from page 1)

part of the publication is a model to be used as a canvass for properly drafted custom-made text. This includes the Appendix and Annex to the original. With due respect to the original model text, its verbatim transfer to the particular DRB/DAB agreement may be misleading. There the suggestions and opinions of the nominated candidates for the DRB/DAB members shall be considered as very useful.

Regarding payment to the DRB/DAB members, the following provisions should be considered:

1. A standing board shall be preferable over the *ad hoc* DRB/DAB, in particular when the contract is based on the Yellow Book.
2. The DRB/DAB should already be active when the design is presented by the contractor to the employer, because any disputes arising from errors or omissions in the design when not rectified at an early stage may lead to serious future problems.
3. The DRB/DAB of three members may be perceived to be more efficient and impartial than that of single member, but at the same time is much more expensive. For smaller contracts economic factors may well prevail.
4. The retainer fee is generally contested by the parties to the contract. It is swallowed much more smoothly when taken jointly with an obligation of the periodical site visit – no less than one every three months.
5. In the majority of cases the retainer fee shall be covered by the contractor, subsequently charging the employer with a half of the expenses. There are exceptions, described below.
6. When one DRB/DAB is arranged to cover several contracts into which the project is split and executed simultaneously, then an equitable arrangement

- may be for the retainer fee to be paid by the employer, who subsequently charges the contractors with half of the expenses, properly split between them, according to their share in the project.
7. A fee due to the referral and resolution of a specific dispute shall be wholly advance paid by the claiming party. The whole amount paid by the parties shall be subsequently a subject of the DRB/DAB Recommendation/Decision, to be split between parties *pro rata* as to the final evaluation of the claim.
 8. Regarding subcontracts, the appointment of the permanent DRB/DAB is possibly not justified, but in the case of a contractor/subcontractor dispute an *ad hoc* DRB/DAB shall be arranged.
 9. In cases when the contract provides for the appointment of a standing DRB/DAB but it is not executed, then the contractor shall pay back to the employer the sum, originally reserved for the retainer's fee, which was spared as result of its deletion from the contract.
 10. In any case, when the appointment of the DRB/DAB is delayed until the works are completed, or near to completion even if not taken-over, then appointment of the permanent DRB/DAB is unproductive, or at least unadvisable, unless the Dispute Board was used as a mechanism to facilitate resolution of any disputed issue before it escalated. Much more efficient would be to take advantage of sub-clause 20.8 of the *General Conditions of Contract* to pass over directly to arbitration. That action is in full accordance with the contract, and the possibility of hampering resolution by one party is limited.
 11. If the defendant shows any trace of cooperation, then he shall agree to appoint the Arbitration Tribunal composed exactly of the same members as would form the failed DRB/DAB.
 12. Only if the above proposal proves

¹ If at least one party to the contract shows an attitude of defense to the last trench, then appointment of the DRB/DAB after completion of works shall only help to defer final resolution of disputes. For that purpose it shall be enough for the defendant to hamper the appointment of the DRB/DAB, and subsequently to tamper with its proceedings by presenting successive motions, evidences, witnesses, to delay due payment, and finally to claim dissatisfaction with the DRB/DAB recommendation/decision (of course, on the very last day when it is permitted) then to reject any efforts of amicable settlement, to defer final (i. e. arbitral) settlement for many months, if not years.

unsuccessful, then the most appreciated candidate to the failed DRB/DAB shall be nominated as the first candidate to the Arbitration Tribunal.

(continued from page 5)

These are my 12 best suggestions, to be used by everybody caring for efficient and quick resolution of disputes arising from construction contracts which include FIDIC's 1999 Conditions of Contract.

There is also one controversial suggestion, included in FIDIC's Guide 2000 for the FIDIC 1999 Conditions of Contract. There is a note that the "DAB Members shall be chosen from different countries, and not the same as the Employer, the Contractor or the Engineer." Apart from the fact that selection of such candidates may be extremely difficult, it also leads to rejection (i.e. discrimination) of candidates on nationality basis, which is a practice considered unacceptable in the majority of civilized countries. □

DRBF member **Adam Heine** M. Sc., is a Consulting Engineer and a member of FIDIC, EFCA/SIDIR. He formerly served as DRBF Country Representative for Poland. He can be reached by email at Heine@poczta.fm.

our master in doing such new (in this field), altruistic and tremendous effort in training pupils without any reward other than his pupils' forever gratefulness. And the costs... nothing special from the pupils, although some were announced at the beginning, such as our transport, cost of meeting room, attending at least one two-day courses – we were travelling, anyway, a lot in relation to our day-to-day job, and we took advantage of free meeting rooms. Attending courses was, with or without this pupilage program, the intention of each of us, in order to gain more knowledge and experience in the international contracts and disputes field. We could not say the same about costs encountered by our mentor – he did not say anything, but we saw the huge volume of books and materials handed over to us (for free), not to mention his valuable time spent with us in preparing cases and themes, sending them to us, analysing and discussing our homework with us, meeting with us and answering all sort of sometimes strange questions related to these cases we had to solve. The world would be much better with more altruistic people such as him. □

Some thoughts from participants in the mentoring pilot program:

Bogdan Oprea, deputy Team Leader, Louis Berger consultancy company: "From Mr. Gwyn Owen I understand that if I want to become good, I have to realise, first, how wrong I am in my judgement. I am grateful for his effort in this mentoring scheme and I am sure that all six of us do not have enough English knowledge to express our gratitude to our mentor's effort. For all of us, Mr. Gwyn Owen is more than a teacher in front of his students, he is and he will remain our mentor."

Florin Niculescu, independent consultant: "Seeing a known 'world' from a different prospective, increasing degree of understanding and 'surgeon sharp' separation of essential matters, all doubled by an overwhelming responsibility to make decisions with serious consequences."

Emilian Traista, project manager, Search Corporation consultancy company: "Our mentor took us under his wing for more than one year and helped us understand how an adjudication process should be conducted. It was to me one of the most exciting professional experiences. It was more than a knowledge transfer; it was a lesson of how to use the knowledge in reaching the right decision."

Cristian Becheru, project manager, Astaldi construction company: "I am grateful to Mr. Gwyn Owen for this training. It helps me very much in my activity and offers to me valuable knowledge and experience in my career."

Radu Baruta, deputy resident engineer, JV Scetauroute – BCEOM consultancy company: "Before having the pupilage with our mentor, Mr. Gwyn Owen, we could see the world of the specific DRBF importance only from outside. Having this pupilage we can see and understand better what it is the benefit for all parties trying to achieve an agreement before to decide to go in arbitration. I am thankful to have the opportunity to work with Mr. Gwyn Owen and, in the same time, I am proud of this."

Alina Valentina Oprea, Dispute Adjudication Board contact person of ISPA Agency, within the Romanian National Company of Motorways and National Roads: "There are not enough words to thank to our mentor, Mr. Gwyn Owen, for his useful, tremendous and altruistic effort."

WELCOME TO NEW DRBF MEMBERS

MEMBER ADDITIONS MAY 2007 THROUGH JULY 2007

Roger G. Antonio
SPCastro & Associates, Inc.
Pasig City, PHILIPPINES

Daisy P. Arce
D.P. Arce Law Office
Makati City, PHILIPPINES

William A Bugge
Scottsdale, AZ USA

Eduardo R. Ceniza
Philippine Airlines, Inc.
Muntinlupa, PHILIPPINES

Suresh Chitrakar
Sinohydro Corporation
Kathmandu, NEPAL

Stefan Clobotarenco
Search Corporation
Clu – Napoca, ROMANIA

Davies Arnold Cooper
Rowan Planterose
London, UK

Peter M. Elliott
Thorne, UK

Esmeralda C. Fernandez
SPCastro & Associates, Inc.
Pasig City, PHILIPPINES

Ferdinand Fourie
Kiewit Corporation
Omaha, NE USA

Wilma A. Garcia
SPCastro & Associates, Inc.
Pasig City, PHILIPPINES

Emhemmed A. Ghula
Tripoli, LIBYA

David S. Glendinning
Gaborone, BOTSWANA

Jean-Luc Grard
Mons, BELGIUM

Patrick Hehenberger
Peg S.A.
Geneva, SWITZERLAND

Levent Irmak
GTZ International Services
Haydarpasa, Istanbul, TURKEY

Jyrki Keinanen
RIL Conciliation Ltd.
Helsinki, FINLAND

David Marberg
University of WA Capital Projects
Seattle, WA USA

Philip Martinson
Maryhurst, OR USA

Thelma C. Mauricio
Phillip's Technical Consulting Corp.
Manila, PHILIPPINES

Dorn C. McGrath III
Greenberg Traurig LLP
Washington, DC USA

Tricia T. Mendoza
F.F. Cruz & Co. Inc.
Q.C., Manila PHILIPPINES

Sanjeev Singh Miglani
Project Consultancy
Gaborone, BOTSWANA

Adrian Mihailescu
Bucharest, ROMANIA

Romeo M. Motol
SPCastro & Associates, Inc.
Pasig City, PHILIPPINES

Pedro Munilla
MCM Corp.
Miami, FL USA

Trevor Nielsen
Royal Haskoning
Nijmegen, THE NETHERLANDS

Patrick O'Connor
Providenciales, Turks & Caicos BWI

Claro Orlando V. Parlade
Parlade Hildawa Parlade Eco &
Pange Law Offices
Pasig City, Manila PHILIPPINES

Michael Roberto P. Reyes
DCCD Corp.
Pasig City, PHILIPPINES

Sergio Romano
Milan, ITALY

Maria Nora Zenaida C. Roxas
SPCastro & Associates, Inc.
Pasig City, PHILIPPINES

Albert R. Russell, AIA
Milton, VT USA

Pia C. Sare
SPCastro & Associates, Inc.
Pasig City, PHILIPPINES

Septembrie Consulting SRL
Radu Liliana Niculina
Bucharest, ROMANIA

Michael S. Stevenson
Stevenson Enterprises LLC
Missoula, MT USA

Dennis M. Strasser
Lane Powell PC
Seattle, WA USA

John Tomsuden
Postdesign Consulting Co., Inc.
Trinity, FL USA

Zhou Yuefeng
SinoHydro Corporation
Beijing, P.R.CHINA □



Construction Institute Regional Seminar in New York

In an effort to provide its members with informative, affordable seminars addressing national as well as regional issues, the Construction Institute will be having their CI Regional Seminar in New York that will include expert panels on Public Private Partnerships, Surety Issues, and Claims Avoidance. The meeting will also provide a forum for networking with individuals from all aspects of the construction industry.

The CI Regional Seminar will be held on January 29-30, 2008 in New York. Industry topics organized by the CI Claims Avoidance and Resolution committee will offer a comprehensive look at issues affecting the construction industry, including:

- Benefits of implementing a Project Management Procedure to manage the Request for Information (RFI) process on a project
- Examining various change order and claims resolution clauses to identify the key elements to include when drafting these clauses.
- Best practices regarding design documents
- Best practices in the area of notice requirements in contracts

Registration: The conference agenda and registration forms for the conference and training programs are available online at the Construction Institute's website, www.constructioninst.org, or by contacting the CI by phone at 703-295-6397 or by email at moey@asce.org.

Dispute Boards in Africa

The organizing committee of the 2008 DRBF International Conference, to be held in Cape Town, South Africa, wishes to contact all persons known to have served (or known to be serving) on Disputes Boards in Africa. If you have served or are serving on such a Board, please contact Gordon Jaynes at glj4law@aol.com. If you have not, but know someone who has, please send that person's name and email address (or other contact data).

Many thanks from the organizing committee!



Save the Date!
8th Annual International Conference
May 2-4, 2008
Cape Town, South Africa



Dispute Resolution Board Foundation 11th Annual Meeting & Conference October 6-7, 2007 in San Diego

The Future of DRBs in Infrastructure

The Dispute Resolution Board Foundation's 11th Annual Meeting and Conference offers lively and engaging presentations and discussions on the current and future state of DRBs. This year's event will be held in sunny San Diego, California at the Hilton Hotel at Harbor Island. There will be presentations and panel discussions from public and private owners and contractors who use DRBs, skills training and mentoring, innovations in dispute resolution, and how the DRBF is changing to meet the growing needs of the dispute resolution users worldwide. There will also be a look at Dispute Boards abroad, including an overview of training, national lists, and an American's perspective on participating on Dispute Boards outside of North America. Other highlights include an optional tour of the San Diego Aircraft Carrier Museum and the Al Mathews Award dinner on Saturday night.

Workshops

On Thursday, Oct. 4, the DRBF will be offering the **2007 Administration and Practice Workshop**. On Friday, Oct. 5, there will be two workshops offered: the **2007 Advanced/Chairing Workshop** in the morning and the **Introduction to International Contracts** course in the afternoon. These workshops are intensive skill development sessions for those who are serving on or wanting to serve on DRBs, and are also excellent for owners or contractors who want to implement a DRB program. Contact the DRBF office for additional details.

Registration and Reservations

Registration fees are: \$275 (\$300 for non-members) in advance or \$300 (\$325 for non-members) after September 6, 2007. Additional registrations (up to four from the same company) are \$190 each. To register, send in a registration form which can be obtained from the DRBF office or downloaded at www.drb.org. For hotel reservations, call the Hilton Hotel at 619-291-6700 and request the DRBF group rate of \$159 per night.

Conference Sessions Include:

Keynote Kickoff, Robert Pieplow, Construction Division Chief, California Department of Transportation (Caltrans)

San Diego Construction, Gary L. Gallegos, Executive Director, San Diego Association of Governments (SANDAG)

DRBs in California, Tom Holsman, Chief Executive Officer, Associated General Contractors (AGC) of California

Panel Discussion: Why We Use DRBs, Public owners discuss their use of the DRB process.

Dispute Review Administrator for Small Projects, Henry K. Wells, Alternative Dispute Resolution Program Manager for the Division of Construction, Caltrans

Maximizing the Value of DRBs, Ferdinand Fouri, Corporate Director, Contract and Claims Administration, Kiewit Corp.

The DRBF's Ten Year Plan, DRBF Past President Harold McKittrick

Keynote Address: William G. Dorey, President and Chief Executive Officer, Granite Construction

Mediation Skills on a DRB, Dr. Tom Stipanowich, Academic Director, Straus Institute for Dispute Resolution

Why the San Diego Water Authority Chose DRBs, J. Wade Griffiths, Construction Administrator, San Vicente to Second Aqueduct Pipeline Project San Diego County Water Authority

The City of San Francisco's Use of DRBs, Harvey Elwin, Deputy Director of the Water System Improvement Program and Acting Manager of the Construction Management Bureau, San Francisco Public Utility Commission

Panel Discussion: The Use of DRBs in the Buildings Industry, DRBF Director Bill Baker, DRBF Director Jim Donaldson, and the Executive Director of The J. David Gladstone Institutes, Richard Hille

An American's Perspective on International DRBs, DRBF Director Jim Brady and DRBF Director John Madden

Dispute Boards Worldwide, DRBF Director Romano Allione and Consulting Engineer Richard Appuhn

Mentoring, DRBF President Gwyn Owen

DRBF Ten Year Plan

Last year the DRB Foundation completed its first decade, and at its May, 2006 meeting in Chicago, the Board of Directors (BOD) of the DRBF directed the President to assemble a representative subcommittee of Past Presidents and Directors to develop a plan for the development of the DRB Foundation (DRBF) over the next decade. A subcommittee meeting (the Heathrow Meeting) was held in London in August 2006, and after several days of discussion a plan for the future development of the DRBF was agreed. The plan was circulated for further discussion by the Board of Directors, and at the Director’s meeting of October, 2006 in Orlando, FL the plan was approved.

The DRBF has fulfilled its initial mission of getting the DRB process accepted in the USA and the rest of the world. More than basic acceptance has resulted. In the USA, the state DOTs of California, Florida and Washington and other major purchasers of construction have implemented the DB¹ process in their basic contracts as well as international lending agencies such as The World Bank. In addition, FIDIC, the contract form used by the largest international lending institutions, incorporates the use of dispute boards in its contract documents. With the initial DRBF mission accomplished one had to be developed for the next decade, recognizing the many and different challenges facing the DRBF.

It was agreed there still is much to do to promote the acceptance and use of DBs. Only a few states in the USA, in addition to the ones referred to earlier, utilize DBs extensively; and while inclusion in FIDIC ensures the use of DBs on projects funded by international lending agencies and donors, there have been initiatives in some countries where the FIDIC DB has been used to introduce the use of Boards on projects funded by local governments. In all parts of the world there is great potential for the use of DBs on a much wider scale. As a consequence, the DRBF must be examined to determine if it is in the best possible position to capitalize on the available opportunities and ensure that there is the widest possible use of DBs worldwide.

The DRBF already has recognized that, in order to capitalize on and search out local opportunities it must have people on the ground. This has already started in the US with the appointment of a new Regional Representative Coordinator and reconfirmation or replacement of Regional Representatives. A similar effort has begun with Country Representatives in the rest of the world. However, taking full advantage of worldwide opportunities requires more than a single person in a state or a country; it requires the proper organizational structure. Does the DRBF have the proper organizational structure to meet the challenges of capitalizing on growing world wide opportunities? It was the conclusion of the Heathrow Meeting that it does not, and that we need a master plan for the next decade and a strategy to achieve it.

A Master Plan to be achieved by Year 2016 was discussed and agreed:

- a Establish Regional BODs for the management of the DRBF under the guidance of a worldwide unifying Executive Board of Directors. The regions would be Asia, Middle East, Africa, Australia and New Zealand, Europe, North America and Latin America.
- b The Regional BODs would promote training in the use and practice of DBs and would publish Best Practice Notes for adoption within each region.
- c The Regional BODs would encourage the users of DBs that their boards comprise trained members of the DRBF.

The plan will be realized in three phases. The resources needed for each phase were outlined but the method and means to obtain the necessary money was not. With the exception of Phase 1 of the plan that can be supported by the current DRBF budget, a business plan must be established to come up with the funding necessary for Phases 2 and 3. A committee or committees will be established to develop that once the overall Master Plan has been approved by the DRBF membership.

The first phase will occur immediately and will consist of a revision of the existing management structure to enable the DRBF to function more efficiently and prepare the way for a transition to Phase 2. Phase 1 will extend for two years. Phase 2 will consist of the establishment of the Executive Board of Directors and at least two and possibly three world regions, consisting of North America, Europe and possibly Australia and New Zealand. In ten years Phase 3 is to be fully realized wherein the structure of

PHASES	YEARS	RESOURCES
1 – REVISE EXISTING MANAGEMENT STRUCTURE	0 -2	USE EXISTING
2 – ESTABLISH FIRST REGION OUTSIDE USA	2 +	ADDITIONAL
3 – ACHIEVE MASTER PLAN	10	ADDITIONAL

(continued on page 18)

¹ For simplicity in this article the term DB will be used to refer to DRBs, DABs and similar forms of dispute boards.

(continued from page 17)

Phase 2 will be expanded to include the regions of Asia, Africa, Latin America and the Middle East.

Figure 1

OFFICERS (and Executive Committee)

PRESIDENT
PRESIDENT ELECT
PAST PRESIDENT
SECRETARY
TREASURER

11 DIRECTORS

DIRECTOR MEETINGS:
2 Face to Face - Annual Meeting in October and Interim in May

Telephonic (8 additional in 2005 – 2006)

PHASE 1 – MODIFY THE DRBF MANAGEMENT STRUCTURE

The DRBF management structure in August, 2006 was as noted in Figure 1.

The DRBF By Laws state that the “Board of Directors is the governing body of the Foundation. The Board has the authority to make rules or formulate policy for the Foundation.” and “The Executive Committee shall possess and may exercise all the powers delegated to it by the Board of Directors between meetings of the Board” and “At any meeting of the Board of Directors, its quorum for the transaction of business shall consist of a majority of Directors eligible to vote.”

With a full membership, a Board of Directors quorum is nine. For most of the '05-'06 term there were fifteen active members and the quorum was eight. Many of the Directors have ongoing professional commitments over far flung areas resulting in difficulty for them to participate in the many Board of Director’s meetings. A quorum was achieved at all meetings in 2005 and 2006, but at times just barely.

It is necessary to modify the management structure of the DRBF to enable it to be responsive to everyday needs and function efficiently. It has to run like a corporation, wherein the day to day operations are managed by an executive structure responsible to a Board of Directors who oversee it and set policy. Rather than from Board meeting to Board meeting, the Executive Committee’s authority will be ongoing and continuous. The Board will meet face to face twice per year but will be kept current by the Executive Committee and will always be in communication with the executive structure electronically or otherwise for issues of concern. The new Executive Committee is set forth in Figure 2.

Figure 2

PHASE 2 – ESTABLISH THE FIRST REGIONS

The first regions will be established under Phase 2. (North America, Europe and possibly Australia and New Zealand)

DRBF ORGANIZATION STRUCTURE PHASE 2

The first Regional Board will consist of North America, the second the rest of the world, with the possible exception of Australia and New Zealand that could comprise the third board. The support teams will range from the Executive Board’s full time employees and established office to minimal services required by regional boards. Those could consist of time sharing rental of office space; minimal secretarial and clerical support supplied by hourly providers,

PRESIDENT
PRESIDENT ELECT
PAST PRESIDENT
SECRETARY
TREASURER

2 MEMBERS (elected by Board of Directors)

EXECUTIVE DIRECTOR (ex-officio, non-voting)

The Board of Directors consists of:

PRESIDENT
PRESIDENT ELECT
PAST PRESIDENT
SECRETARY
TREASURER

11 DIRECTORS

The criteria for directors remains the same.

DIRECTOR MEETINGS
2 Face to Face - Annual Meeting in October and Interim in May
(On alternate years the interim meeting to be held outside the US to coincide with the International Conference.)

**Executive Board Of Directors
And Support Teams**

Regional Board 1
North America

Regional Board 2
Europe
Asia
Australia/NZ
Africa
Middle East
Latin America

Support Team
Office
Clerical
Consultants

Support Team
Office
Clerical
Consultants

consultants and accountants; and photocopying and office supply services. The region budget should include funds to support the regional president's travel to the Executive Board of Director's meetings.

DRBF BOARD COMPOSITION (Figure 3)

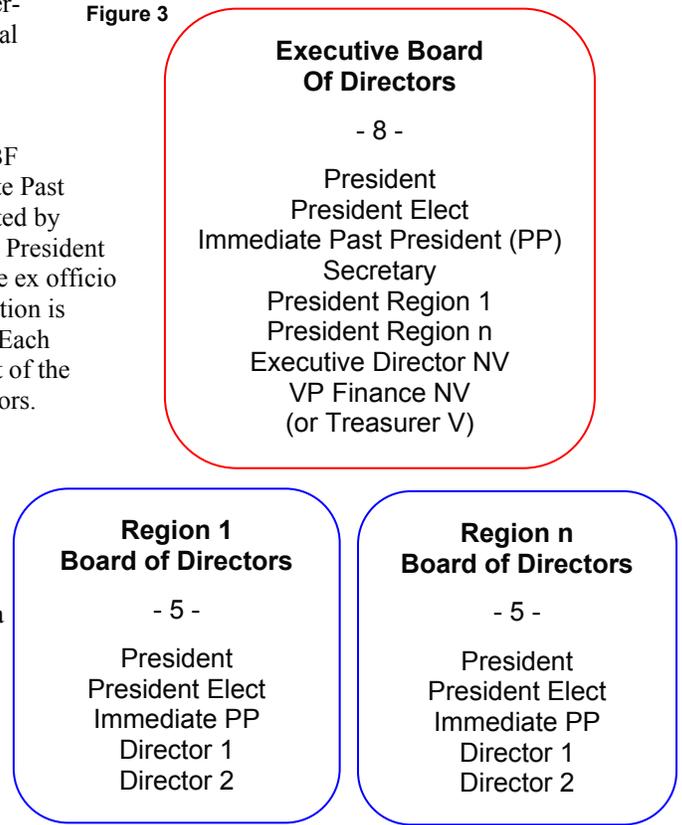
The Executive Board of Directors will be elected by the entire DRBF membership and consist of the President, President-Elect, Immediate Past President, Secretary and the Presidents of the existing regions (elected by members only of their regions). The Executive Director and a Vice President of Finance (a position to be created at fulfillment of Phase 3) will be ex officio and non voting members. (Until the Vice President of Finance position is created, an elected and voting Treasurer will occupy the position.) Each regional board, to be elected by regional members only, will consist of the President, President-Elect, Immediate Past President and two directors.

PHASE 3 – ESTABLISH REGIONS WORLDWIDE

The Master Plan to be achieved at full maturity in Year 2016 is shown in the last illustration. It represents a natural growth from Phase 2 as conditions warrant. At the end of 2006, the DRBF membership was 632 and was located in North America (437); Europe (118); Asia (25); Middle East (6); Africa (9); Latin America (7); and Australia and New Zealand (30). Clearly North America and Europe can sustain regions by 2008. Because of its remoteness and consequential independence Australia and New Zealand could be made a region in the near future as well.

At this time the others are far from a reality but the regionalization plan should promote their development

Figure 3



DRBF ORGANIZATION STRUCTURE PHASE 3



The Ten Year Plan was presented to the DRBF 7th International Conference in Bucharest, Romania in May of this year and favorably received by the delegates. The next steps include a presentation at the Annual Conference in San Diego in October of this year and the review and discussion of a draft implementation plan by the Board of Directors. An update of the Ten Year Plan progress including an implementation schedule will be published in the next issue of the Forum. In the interim, questions and comments on the plan can be sent to the Forum. □

About the Author: Harold V. McKittrick is a past president of the DRBF and currently serves as a member of the Board of Directors. He can be reached at hmckittr@cox.net.



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Seattle, WA 98188

FOUNDATION FORUM

Dispute Resolution Board Foundation 11th Annual Meeting and Conference Sails Into Sunny San Diego

This year's Dispute Resolution Board Foundation Annual Meeting and Conference will pull into the harbor of San Diego, California October 6-7, 2007. The agenda is packed with lively presentations and engaging discussion about the present and future state of DRBs, and the Foundation itself.

Conference attendees are encouraged to take full advantage of the amenities in the area. On Friday, consider joining the group tour of the San Diego Aircraft Carrier Museum, home to the USS Midway, the longest serving carrier in the history of the U.S. Navy. See page 16 for details.



**Make plans today to join
the DRBF in San Diego!**