



Forum

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MAY 2011

Dispute Board on the Port of Ehoala Project in Madagascar

By Mr. Kiyotaka Arakawa
Overseas Branch
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“The DB has certainly a deterrent power to any useless dispute between the employers, the engineers and the contractors.”

Daiho Corporation experienced its first Dispute Board on the construction of a new port in Madagascar. It was a positive experience for the port construction project, and for the parties involved in the project.

Project Background

Port of Ehoala is situated in the south east of Madagascar near Fort Dauphin. It was newly constructed by Port of Ehoala S.A., a wholly owned subsidiary of QMM (QIT Madagascar Minerals) formed by Rio Tinto and the Madagascar government. This new port was planned mainly for export of ilmenite produced from the ilmenite mining site at which a plant and facilities were constructed at the same time by Rio Tinto QMM about 15km far from the port. The port is also a part of the rural development plan, the Anosy Integrated Growth Pole, a World Bank funded plan.

Pre-Qualification was conducted in November 2005 and Initial Technical Pro-

posals were submitted by prospective contractors in June 2006. After presentation by the candidates, tender was submitted and opened in August 2006, and Daiho Corporation was selected as contractor. Construction of the port was funded mainly by Rio Tinto, and The World Bank fund was also used in part. FIDIC MDB Harmonised Edition 2005 was adopted as general conditions of the contract. The engineer for the project was W.F. Baird & Associates (Wisconsin, USA).

Construction includes a berm stone breakwater (525m long), two groynes, quay access revetment and other stone structures, dredging (783,000 m³), reclamation and a quay. Interlocking steel tube pile quay structure with tie-back piles was the contractor’s design and it had berths. The primary berth was 275m long and 17.4m water deep. The quarry was developed for producing many weight-class types of stone materials, and the biggest armor stone used for the breakwater was 22 tons.

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President's Page



Dear DRBF Members,

I'm sitting at my computer trying to decide what to write in the president's letter for the upcoming issue of the *Forum*. Most important, I don't know if all of you have heard that our former president, Jim Brady, had a stroke in Vancouver, BC, Canada, while there serving on a DRB. Jim is now home in Charleston, and undergoing physical therapy, learning to walk and talk again. The prognosis for recovery is long and difficult, but Susie, his wife, tells us that Jim is very determined and works hard with his medical team, who are impressed with his efforts and progress. We all wish him the best.

Should I discuss the Dispute Resolution Board Foundation's 11th Annual International Conference in São Paulo, Brazil on May 14 – 15, 2011? The conference will offer the latest information and ideas about the growing use of the Dispute Board process around the world, with optional training workshops on the Thursday and Friday prior to the conference, and the optional Gala Dinner on Saturday evening. This dinner is always one of the highlights of the conference.

Or should I discuss the Bucharest conference for government officials in Romania where the process for DRB/DAB/DB has faced some problems, but due to the efforts of individuals in the area seems to be back on track? Continuing on the international scene there is a conference scheduled for November, in Brussels, focusing on the multinational development banks role in the expansion of the DRB/DAB/DB process throughout Europe. Staying with the international side of the organization we will be adding a new Region 3 in 2012 based in Australia.

Jumping back across the Pacific from Australia to the United States we will be holding the Dispute Resolution Board Foundation's Annual Meeting in Seattle, Washington on September 23 – 24, 2011. The theme will be vertical construction, but will also have some underground content with the possibility of a tour of a working tunnel on Sunday, September 25 if enough interest is shown by the conference attendees. The schedule this year is for the conference to begin on Friday and close after half a day on Saturday to allow for a site tour on Saturday afternoon, but this is still in the planning stage. There will be training offered prior to the conference as in prior years. Both the West Virginia and Wisconsin Departments of Transportation have requested training for their employees. West Virginia has had a training session, and that one went so well that they have asked if they could have another. That speaks well of the trainers who put on the initial training for the West Virginia Department of Transportation.

Thanks to the efforts of Kathleen Harmon the DRBF database has been brought up to date, but in order to keep it updated we need everyone to complete the new form found on the website concerning new or unreported DRBs, DABs or DBs and forward the information to Steve Fox at home@drb.org and he will distribute the information.

It appears that I have filled a column for my letter to the membership and just barely touched on the events and happenings around the world, but as you can see there is a lot going on. I hope to see all of you at either the International Conference in Brazil or the Annual Conference in Seattle.

A handwritten signature in black ink that reads "John C. Norton". The signature is written in a cursive, flowing style.

John C. Norton
President, DRBF Executive Board of Directors

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Joe Sperry, PE, Founder, Honorary Director

The Executive Committee meets monthly. Recent topics have included:

- DRBF Project Database
- Development of a Procedures Manual for the organization
- Workshop and conference planning in 2011 and beyond

Summaries of the Executive Board meetings are available to all DRBF members on the DRBF web site. To access the **Board of Directors Meeting Minutes Summary**, go to www.drb.org. Click on the **Member Login** button, and then click on **DRBF Board of Directors**.

Executive Board of Directors Meeting Schedule:

May 13, 2011 in São Paulo, Brazil
June 17, 2011 by conference call
July 15, 2011 by conference call

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James Perry

The Board of Regions 1 and 2 also meet on a monthly basis. Questions for the Executive or Regional Boards should be addressed to the Board President, care of:

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
Email: info@drb.org Web: www.drb.org

Call For Nominations: Executive and Region 1 Board of Directors

At the upcoming Annual Meeting and Conference in September, the Executive Board of Directors and the Region 1 Board of Directors will welcome new members. The DRBF Election Committee invites all DRBF members to propose candidates to serve on either of these Boards. Open positions on the Executive Board are President Elect, Secretary, and Treasurer. Open positions on the Region 1 Board are President Elect and general Board member. To be considered, candidates must meet the following criteria:

- a. Each candidate must have a proposer and a seconder. Candidate, proposer and seconder must be members of the DRBF at least 3 years.
- b. The candidate must be, or commit to become, a sustaining member of the DRBF.
- c. A candidate for the position of President Elect (other than regular Board Member) must provide, with his/her CV, demonstration of having participated actively in the organization of the DRBF (be it as Board member, committee member or other).
- d. All candidates must supply a statement to the members with a summary of their professional background, which will be distributed to the membership with the invitation to vote.
- e. All DRBF members have a vote for the Executive Board. All Region 1 members have a vote for the Region 1 Board.
- f. Voting is done by e-mail, in advance of the Annual Meeting and Conference.
- g. The Elections Committee is the organizing body of the election.
- h. The President Elect serves for 3 years: President Elect, President, Past President.
- i. Terms start and end at the Annual Meeting and Conference, usually held in the fall each year.

Proposals may be sent to the DRBF office by email (info@drb.org), fax (206-878-3338) or letter to:

DRBF
Board of Directors Elections Committee
19550 International Blvd. So Suite 314
Seattle, Washington 98188 USA

Nominations are due by July 1, 2011

Ballots will be distributed in August.

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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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***Thank you for
your support!***

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One challenge of the project was a short construction period. The port is located in a very remote area where mobilization was difficult. Daiho had to construct the new port within 1,000 days at the site of natural beach and reefs exposed to the Indian Ocean. Preparation works with initial quarry development were carried out by an early-work contractor, but site access hand-over to us was delayed at the beginning of the project. The contract includes six milestones with Delay Damages. The employer wanted earlier hand-over of some areas, including a part of the quay berth area, to accelerate the other contractors' works and expedite the first ilmenite shipment. The employer also asked for a stone foundation for the ilmenite shed building at the reclamation area. These issues were already being tackled when the first DB meeting was held.

The Dispute Board

First DB site visit and meeting was for three days in February 2007. In accordance with the contract, three DB members were appointed: Mr. Richard Appuhn, Mr. Toshihiko Omoto, and as Chair, Mr. Gordon Jaynes. While the agenda was provided in advance, honestly speaking we had no idea what to expect from a DB at that time. At the beginning they explained what a DB is, its purpose and operations. In turn, we explained the project and provided the DB with copies of the main part of the contract documents, construction program, early partial hand-over, additional work request, milestones, incentive milestones and so on were tabled for discussion. As construction activities had not really commenced yet, such concerns were agreed to be considered at a later time, as the work progressed.

Updated information such as monthly



(left to right) Dave Werren of W.F. Baird & Associates, Dick Appuhn, K. Tsuribe of Daiho Corporation, Toshihiko Omoto, Gordon L. Jaynes, Kiyotaka Arakawa of Daiho Corporation

progress reports, meeting minutes, revised programs, Engineer's instructions, variation orders, and progress photos had been uploaded onto an FTP site the engineer established, which allowed the DB members to review updated information through internet.

Second and third site visits and meetings were held in September 2007 and May 2008. The contract allowed for site visits to be conducted at intervals of not more than 140 days. The site visits were carried out every seven to eight months in order to inspect new stages of the works in a timely manner, and to coordinate the schedules of the DB members who had to travel to our site located in a very remote area. Items addressed and discussed in the meetings were overall construction progress, progress of each work, method statements (so many kinds had been produced corresponding to many new types of the works), milestones, incentive milestones, claims, engineer's instructions, variation orders, etc.

It was very fortunate that many issues and problems on the works and contract had been discussed and resolved timely among the employer, the engineer and the contractor, and as a result, no dispute was raised. The employer and Daiho mutually agreed and proposed to termi-

nate the DB, and with consent of the DB members, the DB was terminated in December 2008 with a condition that, if any dispute case would arise in the future, the DB could be called again. Fortunately, no dispute occurred to the end of the works. Construction was successfully completed on time in July 2009.

Summation

We thank the employer and the engineer for the quick and reasonable decisions they made during the entire project, and we never forget their sincere attitude in always encouraging us by saying that all parties were in the same boat.

At the same time the existence of the DB shall be acknowledged for preventing disputes. The DB has certainly a deterrent power to any useless disputes between the employers, the engineers and the contractors. All the parties must be conscious of the DB when they take actions and decisions, and we think such a deterrent effect of the DB must give benefit to both the contractors and the employers. The Port of Ehoala project may be a good example of this deterrent benefit.

We are confident that the DB can assist the contractors in keeping their contractual obligations, and we believe it is of benefit to the employers as well. For further spread of the DB, in addition to the cost issue (DB cost may be able to be reduced as it will be widely adopted), employer’s understanding must be essential on the benefits of the DB.

Lastly, it is worth noting that JICA (Japan International Cooperation Agency) has recently decided to use MDB Harmonised Edition as general conditions of the contract for Japan government loan aid projects, and they are recommending the DB. And for supporting globalization of Japanese contractors, the Ministry of Land, Infrastructure, Transport and Tourism of Japan (MLIT) is trying to apply MDB Harmonised Edition contract to some public works in Japan as trial, and MLIT is considering how the DB can be applied. We fortunately had a good experience with the DB in the Madagascar project, and as one of the contractors, we hope the DB will be widely adopted in the construction contracts also in Japan.



DRBF Promotes Dispute Board Benefits to Romanian Government Officials

By Alina Oprea, DRBF Country Representative for Romania and Director, DRBF Region 2 Board

In a country, far, far away, there were some people using FIDIC conditions of contracts. The international financial institutions imposed these contract conditions, and then the European Union lent them money with the condition to also use these conditions of contract.

People were complying with the rules and were using the conditions of contracts as they were, not changing a word. They were new and unknown to them, and those people were so wise to realize that if they would intervene, the contract mechanism would be affected, and it will not function properly.

The story, up to this point, can be recognized as being from many countries - but I will tell you about a country that I know better: Romania, and what we did to deal with the issues here.

But eventually there began to be a movement away from the established contracts. Some Romanian government officials began to modify the contracts, resulting in high risks for the contractor. Dispute Adjudication Boards (DAB) were also removed.

The consequences were obvious for those who fully understood the benefits of balanced contracts and effective dispute resolution mechanisms. Good, serious and experienced contractors evaluated their chances in competitions where all the contactors had full and unrestricted access, understood that the too high risks needed to be covered by too high tender prices that would make them non-competitive, and renounced to tender. Weak, non-experienced contractors were happy to be awarded the tenders, and soon after they could not run the contracts. Unfortunately, lots of contracts were terminated.

Why all these interventions in the conditions of contracts...? One could argue it is human nature - when someone knows a little, he can think he knows ALL. In reality, the more someone knows, the more he realizes how much he does not know.

So here in Romania, we faced failing projects and a lack of conviction about the benefits of Dispute Boards, despite the support of the financial institutions. I discussed my concerns with Nicholas Gould, then President of DRBF Region 2, about the worrying status of new Romanian contracts at that time – unbalanced, no DABs appointed, or DABs removed from the contracts and replaced with law courts only (despite the courts being desperately overloaded), and that in this way the Romanian projects are badly endangered. We very easily came to the conclusion that the method “Don’t know? Teach him!” must be applied. In less than 10 minutes the plan was done: in March 2011 we would host a DRBF event in Bucharest for only Romanian Government representatives, and where information about Dispute Boards would be presented.

Starting with that date, ideas were built bit by bit, people got involved in generating ideas, hotel was chosen and arrangements made, presentations were prepared, the relevant contact data were identified, invitations were issued and sent repeatedly by email and fax so that, one day before the event we had more than 100 participants that confirmed their participation, out of around 20 initially expected (I have to confess that I, being optimistic, estimated 30...) !!!

As a matter of urgency, because of the unexpected big number of participants, the most active DRBF EurAsia members from Bucharest were mobilized to come and be there, among the participants, to answer their questions, change views, explain the most difficult issues, if needed, during the breaks or even in the meeting room. Then, the starting hour... Some of the government representatives that

announced their participation were kept in their offices or in urgent and unforeseen actions, as always is possible for these people. Still, more than 70 people were present to find and to share knowledge and experience regarding Dispute Boards.

We began with lunch – for the people to be relaxed and receive easily the new information. There were three sessions about the way Dispute Boards work within the contracts, the benefits of having Dispute Boards in place related to prevention and quick and low cost settlement of disputes, and their advantages vs. other ways of solving the disputes. The “legal” session was of big interest, also, and especially the enforcement of the DAB decision issues: the participants found that – surprisingly for some of them – the legal counsellors within the Government entities have not to go up until the last possible instance with a case, but advise the decision makers of their organization about the status and chances in that case. Based on their advice, and taking into account the organization’s strategy, the decision will be made to accept the DAB decision, or to go further, to stop, or to negotiate with the other party.

Other Alternative Dispute Resolution methods were presented, also, to show to the government representatives that there a lot of other methods that could be used, as an alternative to the law court. The emphasis was to show that they are widely used around the world, together with the Dispute Board method, and all are perfectly suitable and more convenient for the parties than the law court.

The participants were very satisfied about the content of the DRBF conference designed especially for them, and about the quality of the speakers: Nicholas Gould, President of DRBF Region 2, Dick Appuhn, President Elect of DRBF Region 2, Nicolae Micu, President of ARIC (the Romanian FIDIC association), Volker Jurowich, President Elect of DRBF Executive Board and former Region 2 President, Alina Oprea, Director of DRBF Region 2, founder of DRBF EurAsia, Crenguta Leaua, Vice-President of the Romanian Court of International Arbitration, Zeno Sustac, Member of Mediation Council, Co-President of the National Mediation Union of Romania, Bogdan Oprea, Adjudicator, General Manager of AB Resolution SRL and Claudiu Ignat, Co-President of the National Mediation Union of Romania). Many of them signed up to receive future announcements of DRBF events and to receive information about Dispute Boards.

This interest – 20 people expected, around 70 participating, asking about future DRBF events – took even the most optimistic of us by surprise...! People are more in-

terested that we thought in Dispute Boards! I am sure that this is not only in Romania, and these kinds of events could be organized in other countries, too. What else has happened in Romania?

DABs are being appointed or re-included in contracts – I know of several such cases, and I can tell you that more people are, now, aware of Dispute Boards. In my organization, the Romanian National Company of Motorways and National Roads within the Ministry of Transport and Infrastructure (all the works contracts regarding the road, railway and water transport infrastructure run under the Ministry of Transport and Infrastructure are, mandatorily, FIDIC 1999 contracts, therefore include DAB provisions), a lot of people are able to tell you what is a DAB, how it functions, which is the difference between a standing DAB and an ad hoc one, why the standing DAB is better, that the DAB decision is perfectly enforceable, etc...

The more people are aware of these issues, the better the projects will be drafted and conducted, for the benefit of the countries and of the construction industry.

It was a long road in Romania to reach this point. It began with introducing FIDIC contracts in Romania by the loans and grants for developing the infrastructure, continued with the actions of people like Gordon Jaynes, ex-President of DRBF, then Peter Chapman, also ex-President of DRBF, that trusted that I would be able to undertake the Country Representative assignment, Gwyn Owen, President of DRBF at the time when he was the heart of organizing the DRBF Annual International DRBF Conference in May 2007 in Bucharest, Romania, then Volker Jurowich, the first DRBF Region 2 President, that invented, especially to accommodate the huge desire and need for Dispute Board events in Romania, the DRBF regional conferences, then Romano Allione, President, at that time, of DRBF, and Nicholas Gould, the President of DRBF Region 2, that agreed and developed the idea of involving Government people in DRBF events and designing special DRBF events for them, up to the 24 March 2011 DRBF event itself.

And we will not stop here: on 6 and 7 October 2011 we will have the 3rd DRBF Bucharest Regional Conference “How to Use Dispute Boards?” where all the interested people are invited and are very welcome – the readers of this article, including!

See you in Bucharest, on 6 and 7 October 2011...!

Alina Oprea can be reached by email at alina.oprea.v@gmail.com.

WELCOME TO NEW DRBF MEMBERS

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Ethics in Today's World of DRBs:

Contractor advises the DRB Chair that she/he and the owner wish for a Board Member to resign



By Jim Phillips Ph. D.

The issue presented in the last edition of the *Forum* is one that goes to the heart of several cornerstones of the DRB process: neutrality and its relationship to the integrity of the process. It therefore deserves discussion from a number of viewpoints.

Canon 1 of the DRBF's Board of Ethics requires each Board member to disclose "any interest or relationship that could possibly be viewed as affecting impartiality or that might create an appearance of partiality or bias." On its face, this is a very broad standard and one that all of us as practitioners should take seriously. Most of you with whom I have discussed this Canon agree, that if we are in doubt about disclosure, we should always disclose whatever connection we have to the parties however remote or innocent.

This full disclosure practice accomplishes several objectives. It removes the appearance of any impropriety, as Canon 2 of the Code of Ethics requires, and it also sends a message to the parties that this standard is one that is critical to the success of the DRB process, and one that the Board takes seriously. Especially for owners and contractors who may be new to the DRB process, this full disclosure allows them to satisfy themselves, upon review of the DRB candidate's disclosures, that if the candidate takes his/her Board member role this seriously, the process is one that they can trust to work as it is designed to.

Canon 1 also speaks to the issue of the

continuing duty to disclose. "This obligation to disclose is a continuing obligation throughout the life of the DRB." This duty is as equally important as the duty to disclose potential conflicts prior to being seated as a DRB board member. In today's business environment of mergers, acquisitions, and buy outs, corporate and business interests can change dramatically very quickly. What was once not a conflict with a party to a contract on which a DRB is sitting, can develop into one that sometimes even a DRB member is not fully aware of.

The Foundation's Practices and Procedures Manual, Section 3, "recommends evaluating past, current and future relationships with all parties to the contract, both direct and indirect," in the following categories:

- Direct employment
- Consulting engagements
- Financial ties
- Close personal or professional relationships
- DRB member on another project with one or more of the same parties

While the Canon's prescription does not, in my opinion, require a Board member to aggressively research whether his/her investments or previous and current employment, once not a conflict, have evolved into one, it's fair to say that once we have notice of a change in ownership or financial interest that affects our neutrality, or appears to affect our neutrality, we need to fully disclose it to the parties.

I have been on DRBs when this has occurred and usually the parties appreciate the disclosure, and typically, depending on

the nature of the interest, will waive any objection. This practice continues to set the right tone for the DRB and the project and protects the integrity of the process.

With respect to what the Chair of the DRB should do in this situation, in my opinion, the Chair should inquire as to the basis of the contractor's loss of confidence in the Board member's impartiality. This should be done privately with the full understanding beforehand that no matters of content about the prosecution of the work on the project will be discussed. See Section 3.4.1 of the Manual as to the responsibilities of the Chair of the DRB between DRB meetings and hearings.

Once the Chair understands the concern, she/he should convene the Board members to discuss the nature of the conflict and what the impacted member's options are. This is obviously a delicate subject, especially if the impacted Board member admits to the conflict and refuses to resign. Section 3.8 of the Foundation's Manual provides " [i]f the DRB concludes that one of the members is an obstacle to the dispute resolution process, the member in question should resign for the benefit of the project."

From speaking with some of you on this subject, typically a Board member will go ahead and resign if he/she feels her credibility with the parties has expired and he/she has become a detriment to the process. The Manual goes on to provide " [m]embers must carefully consider if their resignation will contribute to the success of the project and the process. They must resign if there's a chance it could help the parties resolve their disputes....".

The issue of neutrality lies at the core of a Board member's ability to serve the parties. As I said in my remarks in Charleston last Fall, the ethical obligations of a DRB member extends to his/her colleagues on the

Board, as well as to the parties. I will go into this further in a future column, but Board members have a duty, in my opinion, to act ethically with respect to their relationships with each other for the benefit of the Project, and if that is no longer being practiced, then the entire DRB process is at risk.

In this case, if the Board member does, in fact, have a conflict, and has, in fact, lost the confidence of the contractor, or any other party, the duty to resign is clear. However, the question states that the Formal Recommendations of this DRB have not been accepted by either party. Accordingly, if the contractor is claiming that a Board member has lost his/her impartiality for the sole purpose of replacing that Board member because he/she does not agree with the DRB Recommendations, that is a different question altogether which I will address in the next issue of the *Forum*.

NEXT ETHICS CHALLENGE

Assume the same facts as last time, but the parties want to replace a Board member, not because of a loss in confidence due to a conflict of interest, but because they do not like any of the DRB Recommendations to date on the project.

What should the DRB do?

Ethics Commentary or Question?

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DRBF Regional Conference - Vienna:

The Use of Dispute Boards in Europe: Expectations, Concerns, Experiences

By Marcus Theil, DRBF Country Representative for Austria

On April 8th and 9th the first DRBF Regional Conference in Vienna was held, in a part of the world where the use of Dispute Boards is not so common. Many disagreements in the past typically were solved here informally and on a low level, while unsolved disputes went to court. But in the last years the culture of dispute resolution in Central Europe has changed, and it will change further. Disputes must be solved increasingly by using formal ways, including Dispute Boards, before going into arbitration and litigation.

Nevertheless the anticipation of Dispute Boards in central Europe is not very enthusiastic. The tradition of conflict resolution is different from that in the United States or Great Britain. Employers are afraid to lose control over their own project. Contractors see more disadvantage than benefits and are reluctant to actively use this tool. So the DRBF Country Representatives for Germany (Helmut Köntges), Switzerland (Michel Nardin) and Austria (Marcus Theil) considered it to be time to discuss openly the expectations, concerns and experiences with the use of Dispute Boards in Europe.

The event tried to bring together DB professionals with DB users (or potential DB users), with a focus on the view of the users and “hands-on” experience. The discussion was focused on the three German speaking countries Austria, Germany and Switzerland, exemplary for the whole region (but not limited to the European experience, as many other regions in the world face a

similar environment).

The first session investigated the views of the users – employers, contractors, financing institutions and Engineers. Romano Alione as chair of this session gave an introduction into the DB process. Contractors were represented by Wolfgang Wiesner (Porr AG) and Volker Mahnken (Siemens AG), the financing institutions by Albert Stocker, a consultant of EBRD from Switzerland. Helmut Wenzel of Vienna Consulting Engineers pointed out that the environment is not yet ready for DBs in Europe, and adaptations may be required.

Session 2 was a short review over the utilization of Dispute Boards and similar instruments in the countries Germany, Switzerland and Austria. In all these countries the application of DB is poor to non-existent, and some successful exceptions are not repeated (e.g. Lötschberg-tunnel in Switzerland). The “Swiss Paradoxon” says that traditional big investments are made in insurances, but the investment into dispute prevention is poor. Attempts to develop their own tools in Austria and Germany are not widely adopted. While in Germany the history of ADR dates back to the 18th century, today courts are flooded with roughly 70.000 construction cases per year.

The afternoon of the first day was dedicated to an existing project. In order not to lose contact with the original subject of our business, we had a site visit to the Vienna Main Railway Station, currently the biggest project under construction in Vienna. The Project Director Heinz Gschnitzer from Austrian Federal Railways gave a brief

introduction to the project and answered questions about the project and claims management. There is no DB installed, but no major disputes have arisen so far, and also the acceptance in the public opinion is satisfying (compared the similar project in Stuttgart, Germany). About 100 claims could be settled amicably up to date (out of roughly 130 submitted so far). At windy but clear conditions we climbed the observation platform and enjoyed the overwhelming view.

The evening we spent in a cozy wine-tavern at the outskirts of Vienna with some interesting discussions and local food, wine and music (and some Italian “bel canto”).

The morning of the second day was the day of the lawyers. David Brown chaired the session titled “The Context of DB Procedures”. Jean-Baptiste Zufferey (University of Fribourg) presented the Legal Context, Andreas Reiner pointed out that Arbitration awards arrive in average 4 years after contractor has left site (which is definitely too late for real time assessment), while DB is of limited use after contractor has left site. Mediation is recommended after end of the contract. Nick Gould reported about enforceability of awards in countries with domestic adjudication laws (UK, AUS, NZ) and about the importance of the wording of the request to the DB (you get only what you ask for!). In Romania local law (“statute of limitation”) may require to start arbitration almost simultaneous with DB procedures (which is definitely not in the sense of the DB). Michael Halstenberg (Germany) underlined that public employers have to deal with many parties on their side (finance, controlling, ministries, etc.) and insurances will be reluctant to accept a DB decision. Pierre Genton, the only engineer on this panel, listed eight critical issues in the lifecycle of a DB. He also required a clear positioning of DRBF in the view of competing organisations.

The last session was again “hands-on” about major projects where Dispute Boards have been (or are still) applied. Levent Irmak reported about the Marmaray-Tunnel project (Istanbul), Walter Purrer from Innsbruck gave some interesting details about the famous CERN project in Geneva and Pierre Genton presented the Panama Canal project.

Jim Perry chaired the discussion and summarized the main issues of the conference. The essence of the DB is Time (real time assessment!), Informality and Forced Communication. Especially the latter, as lack of communication is the major reason for all disputes. The DB can facilitate the communication between the parties.

Repeatedly discussions arose about the issue of what professional background DB members should have (most speakers favored a combination of lawyers and engineers on the Board). Main concerns of users are enforceability, costs and compatibility with local laws.

It was an event with rough edges, with lively and sometimes controversial discussions, and maybe with some new aspects, which might push forward the development of Dispute Boards in Europe.

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Forum Newsletter Editorial Deadline

Our readers love to hear DRB success stories, new ideas, and the latest industry news and events. If you have information about DRBs, DRBF members, or an article to share, please tell us!

Contact Forum Editor Ann McGough by email at amcgough@drb.org.

**Deadline for the August issue
is July 1, 2011**

DRBF Survey Results: A Look at the Evolution of the Dispute Board Process

By William Edgerton

In the summer of 2010, the Manual Committee of the DRBF set out to gather information on the state of the Dispute Board (DB) process. The information gathered by survey would be used to identify lessons learned and develop recommendations for future use, formation and operation of Dispute Boards in the construction industry. While individual responses are confidential, a summary of the results was presented at the DRBF's 14th Annual Meeting and Conference held in Charleston, SC on October 1-3, 2010.

Survey Overview

Participants were asked to respond based on their experiences with all forms of Dispute Boards, including Dispute Review Boards, Dispute Resolution Boards, Dispute Adjudication Boards, and others. Topics included basic information about the respondent (for statistical purposes), questions regarding the use, formation, specification and operation of DBs, and questions about the DRBF.

Survey Results

Of 929 surveys distributed to DRBF members and other parties interested in the DB process, 116 were returned, a 12.5% response rate. Almost half (46%) were DB practitioners, with the majority representing the underground construction industry (40%) or highway and bridge construction (30%).

For the topic of DB member experience, the questionnaire explored several topical issues that have been debated among DRBF members, including the importance of training:

68% are in favor of all Board members completing training before appointment, and over 50% suggesting that all Board members must remain current. With respect to whether past employees should be allowed to serve on a DRB, 68% of the DB practitioners agreed, but only 41% of the non-DB practitioners felt that was acceptable. For the age-old question as to whether lawyers should be allowed to serve on DRBs, 63% agree they can serve if they also have construction experience, but over 25% thought that lawyers should "never" serve on DRBs. Nonetheless, over two-thirds of the respondents felt that DRBs should have no more than one lawyer.

Conflict of interest and the impartiality of Board members was a key topic in this questionnaire. Only 50% of the respondents said they had never witnessed a conflict of interest, with the remaining said that they had either witnessed a clear conflict (19%), and/or a perceived conflict (34%). Results were just as telling when asked if any had witnessed partiality in Board members: 27% reported that they had witnessed clear partiality, and 40% reported witnessing perceived partiality. Interestingly, only 15% of the owners' respondents had never witnessed any partiality.

On the issue of indemnification for Board members, 58% of respondents said their practice is only agree to serve on a DRB if the members are fully indemnified by the parties for personal or professional liabilities resulting from DRB activities.

Questions on formal dispute hearings showed split opinions on the issues of the

timing of dispute hearings, what material to include, and how to handle a party's refusal to participate. While 37% felt a dispute hearing should be held after a claim has been rejected but before it is appealed to the contracting officer, 28% believe it should occur after the contracting officer's final decision. Only 9% of the respondents felt that the hearing should be held before the claim was submitted. On the issue of what materials should be presented to a Board, 41% favor limiting materials to the established written positions and responses, while 51% feel it should be left to the DRB's judgment to determine, based on what will facilitate settlement of the dispute. When asked about how to handle the sensitive issue of a party's refusal to participate in a hearing, 44% agreed with proceeding without the absent party, while 22% supported cancelling the hearing and 21% favored re-scheduling to another date.

One of the most important factors in convincing the parties to settle is the quality of the DRB recommendations. When asked about their experience, over 50% of the owner, contractor and engineer respondents reported receiving recommendations of "mostly poor" or "mixed" quality. When asked how important it was that the DRB recommendations abide by the terms of the contract language and applicable contract law, 77% of the respondents thought that there should be no deviation at all, although 25% of the contractor respondents thought the contract language was not as important as getting the parties to settle.

The idea of the admissibility of DRB recommendations in subsequent dispute resolution methods has been a popular topic in the *Forum* and at the DRBF Annual Meeting. Of those surveyed, 52% felt they should 'always' be admissible, and 17% felt only upon the agreement of both parties; 15% felt they should only be admissible at the direction of a judge during litigation, and 11% felt they should never be admissible. Interestingly, a full 33% of the owner respondents felt that DRB recommendations should never be admissible.

The section of the survey that dealt with the termination of a DRB allowed for multiple answers. When asked about what circumstances should result in a

DRB ceasing to function, 66% felt it was appropriate when both parties agree, and 61% felt meetings could stop after all significant work items are complete, but that the Board should remain in place until final payment is made. Respondents were overwhelmingly in agreement that a Board member should resign if their status changes to indicate a possible challenge to their impartiality (97%), or suffer a loss of physical or mental capacity (96%), and 80% supported leaving the DRB if a member becomes too busy to promptly hear disputes and recommend settlements. But 50% of the respondents felt that a Board member should resign if either of the contracting parties believe them to be partial.

Informal Advisory Opinions are a growing trend in DRBs. While the survey respondents were split about 50-50 on their experience with them, 81% of those who had experience said their experience was positive. Only 8% reported that their experience was negative, or neutral.

About 72% of the respondents were DRBF members, and they were asked to provide their feedback on the value they receive from the Foundation on a number of different issues. Top areas of approval included the opportunity to increase the use of DRBs (77%), training workshops (73%), networking opportunities (69%), and the *Forum* newsletter (63%). 46% of the respondents felt that the DRBF should serve as a certifying body, for either competence or impartiality.

Conclusion

This survey provided information on how the DB member and the users of the DB process view some of the controversial issues related to Dispute Boards. This information will be used by the DRBF in developing and publishing best practices with the goal of furthering the successful use of the dispute board process.

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DRBF Event Calendar

Make plans today to join the DRBF for one of our educational workshops, conferences and member's meetings. Visit www.drb.org for details.

May 12-13

Training Workshops:

**Introduction to FIDIC and Dispute Boards in International Construction Contracts
Dealing with Conflict as a Dispute Board for Advanced Practitioners**
Renaissance São Paulo Hotel, São Paulo, Brazil

May 14-15

**11th Annual DRBF International Conference
Real Time Dispute Resolution in Infrastructure Contracts:
*Latest Developments and Advantages of Dispute Boards***
Renaissance São Paulo Hotel, São Paulo, Brazil

May 20

Northwest Regional Conference
Seattle, Washington

June 30

Introduction to International Adjudication
King's College, London, UK

September 13

4th UK Member's Meeting
London, UK

September 22

Training Workshops
Hyatt at Olive 8 Hotel, Seattle, Washington

September 23-24

15th Annual Meeting & Region 1 Conference
Hyatt at Olive 8 Hotel, Seattle, Washington

October 6-7

3rd DRBF Bucharest Regional Conference
Bucharest, Romania

November 17-18

DRBF European Conference
Marriott Hotel, Brussels, Belgium

May 3-5, 2012

12th Annual DRBF International Conference
Dockside Conference Center, Darling Harbour
Sydney, Australia



Dispute Resolution Board Foundation 11th Annual International Conference

Real Time Dispute Resolution in Infrastructure Contracts Latest Developments and the Advantages of Dispute Boards May 14-15, 2011 Renaissance Hotel, São Paulo, Brazil

The DRBF's 11th Annual International Conference offers the latest information and ideas about the growing use of the Dispute Board process around the world. Optional training workshops are offered prior to the conference for beginner and advanced practitioners.

Day 1 Revisiting the Fundamentals of Dispute Boards - Round table discussion of the fundamentals of successful Dispute Boards within the context of the Latin American construction market.

The Use of Dispute Boards in Brazil: Experiences and Perspectives – A discussion of the current use of Dispute Boards in the country as well as future prospects for the process. Discussion will include developments in alternative dispute resolution within Brazil.

Dispute Boards in Latin America – A discussion of experiences throughout Latin American countries, including accomplishments, challenges, and future potential.

Latest Developments on Resolving Controversies in Construction Projects in the World – Trends and issues regarding the methods of dispute resolution in construction projects around the world, and insight on how local perspective affects the process.

Day 2 Rules for Dispute Boards: Model Clauses and Institutional Procedures – An overview of the process in terms of institutional rules and model clauses, analyzing the advantages and problems of adopting them. Perspectives of the DRBF, ICC, FIDIC, CAM-CCBC and CAMARB.

Dispute Boards and Legal Systems – Analysis of this fundamental issue regarding the perspective of Dispute Boards in civil law countries in comparison to common law countries.

Visit the Meetings & Conferences page of the DRBF website for event registration and updated information regarding conferences and training workshops.

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The Potential Use of DRBs on Public Private Partnership Projects

By Kurt Dettman and Chris Kane

There is a funding crisis for transportation infrastructure in the United States due to the ever increasing costs of rehabilitating, replacing and upgrading these critical assets. At the same time the weak economy in the U.S. and shortage of public funds are stretching government budgets to the breaking point. Simply put, there is not enough public money to fund major infrastructure projects that are vital to the continued economic competitiveness of the nation.

This funding crisis is fostering a new importance for public private partnerships (“P3”) in the menu of project delivery options for public infrastructure projects. P3s can attract private sector funding sources and improve project delivery and timing by utilizing innovative financing and integrated contracting methods. P3s can range from completion of a facility under a design-build contract to privatization of a facility with long term operating obligations.

Dispute avoidance and dispute resolution in any new and complicated form of project delivery takes on greater importance due to the new and different contractual relationships that are formed, especially the intersection of public and private interests in what has traditionally been a government function. This article addresses some considerations for the potential use of Dispute Review Boards (“DRBs”) in the context of P3s. Transportation P3 projects, such as a toll road project or a rail transit project, are the focus since they are often more expensive and carry higher risks for all parties. For purposes of this article, the authors will assume a full P3 model that includes design, build, operate and maintain responsibilities over a 30 to 50 year period.

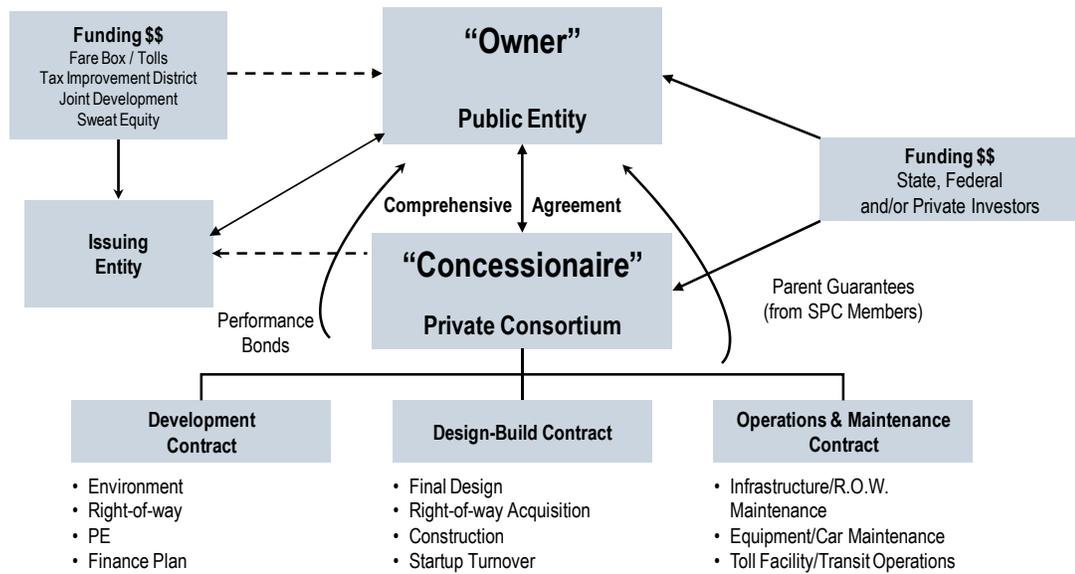
Background on P3s

To work best, P3s are structured to share risk and reward between the public partner and the private partners. A project structure must be established that integrates all the necessary elements of the project into one endeavor: planning, environmental permitting and compliance, financing, procurement, design, construction, user fee setting, operations, maintenance and capital asset replacement, and “hand back” requirements. A typical P3 will include a master agreement, referred to here as the comprehensive or concession agreement (“CA”), between the public partner (“owner”) and the private partner (“concessionaire”). Within the CA there may be one or more requirements for the Concessionaire to perform: project development; project financing; design-build delivery; operations and maintenance (“O&M”); and capital asset replacement.

FIGURE A indicates how a typical P3 is structured. The owner is best served working through a single, accountable “at risk” entity (the concessionaire) representing the interests of the entire project and delivering it with the optimum balance of planning, design development, construction costs, delivery schedule, operations, and life cycle costs. Underneath the concessionaire there are often major contracts and subcontracts with a design-build contractor, prime subcontractors, an operator and, possibly, a major equipment supplier. In addition there will be financial lenders that are backing the concessionaire—the financial lenders will have a direct interest in the costs and timing of delivery and operation of the facility since it provides the revenue stream financing the project construction and operational costs the lenders are underwriting.

FIGURE A

PPP Project Structure



Claim Risk Profile of a P3

In order to assess the utility of using DRBs, the development of a claim risk profile is helpful. The following are some potential types of claims that may arise under a P3 contractual arrangement:

The Owner—Concessionaire Interface: Although in the typical P3 most of the project delivery risk (and associated control) is allocated to the concessionaire and its team, there are still contractual issues that remain between the owner and concessionaire, especially with respect to (a) environmental permitting and compliance issues, (b) utility relocation and right of way acquisition, (c) force majeure events and (d) issues that require owner input or approval on design decisions and performance requirements. Sometimes financial issues also come into play, for example where fundamental assumptions on traffic, user rates and costs prove to be incorrect.¹ In this area of fundamental “deal points,” it is important to have dispute avoidance and resolution systems in place to maintain the commercial relationship between the owner and the concessionaire, particularly when dealing with 30 to 50 year CAs.

Within the Concessionaire Team: The team comprised of the concessionaire, the design-build contractor, prime subcontractors, and operator, together with their financial lenders, retains most of the risk: delivering and operating an infrastructure megaproject with all the challenges inherent in those types of projects. Here, typically the design-build contractor will own “traditional” claims exposure for delay, disruption, extra work, differing site conditions, etc. Avoidance and resolution of these types of claims becomes even more important where the concessionaire has guaranteed the owner a price and schedule for delivery of the project. There are typically liquidated damages for late delivery where untimely opening of the project to revenue operations may result in financial penalties owed to both the owner and the financial lenders. Ultimately, the concessionaire and its financial lenders are looking to the design-build team to resolve issues so that the concessionaire and its financial lenders will meet their economic goals, as well as deliver the quality product that the owner (and the public) will expect and require.

¹ For example, the operator of the South Bay Expressway filed for bankruptcy in 2010 due, in part, to lower than anticipated traffic volume caused by the recession which adversely impacted its ability to pay debt service on the project.

Current Practice in P3 CAs: Review of a few of the recent transportation CAs that have reached financial closing indicates a current trend for dispute resolution on these projects. Current practice appears to favor the use of an on-call arbitration panel, activated only if and when a dispute arises. Although these are sometimes denominated as “Dispute Boards,” they are not the standing panel associated with DRBs. Sometimes there are two types of panels identified in CAs, one for “technical issues” and one for “financial issues.” Typically the smaller amount dispute decisions are binding and the decisions on larger amount disputes may be subject to appeal in court. The distinction between technical and financial panels has some merit since finance is typically a critical aspect to these agreements.

Is There a Place for DRBs on P3s?

The first question that an owner will ask is whether the owner has less risk of “traditional” claims for additional time or money on P3 projects. Initially, one might conclude that P3s, from an owner’s perspective, are less risky than the traditional design—bid—build projects (DBB Projects) on which DRBs have been used with great success. The reason for this initial conclusion is that under P3 CAs, much of the traditional design risk (under the *Spearin* Doctrine²), coordination risk, and operational risk of the owner is now passed to the concessionaire. The concessionaire, in turn, passes that risk downstream to a design-build contractor, and thence to prime subcontractors, and later to an operator. In addition, many CAs severely limit the grounds on which the concessionaire can make claims against the owner to fundamental commercial “deal points,” as contrasted with typical DBB project changes and claims provisions (for example, constructability issues, differing site conditions, or delay events).

So, if there is a lower risk of claims against the owner for additional time or money from the concessionaire, does that obviate the need for dispute avoidance and resolution mechanisms like DRBs? The authors propose that although there may be differences in the type of claim risks to the owner on P3s, as contrasted with DBB projects, there are still fundamental commercial “deal point” claim risks that warrant consideration of the use of DRBs. In addition, the importance of maintaining a relationship of trust and confidence for 30 to 50 years or more makes the use of a DRB’s standing panel of neutrals even more important. However, as discussed below, the function and scope of the DRB process may need to be changed to some degree to fit the different contractual relationships within the P3 structure.

Another reason for owners to consider using DRBs is that many times owners are subject to public scrutiny as to whether the public’s interests are being protected when what would otherwise be a public project is, in essence, being privatized. The DRB, as an independent, expert, neutral panel can provide transparency and justification to the public for decisions that the owner makes on any claims brought by the concessionaire. Likewise, the concessionaire can use DRB reports as the basis for its decisions and concomitant justification to its financial lenders, as well as its design-build team and operator.

A final reason for the owner to consider using DRBs is that claims between the owner and concessionaire, focused as they often are on fundamental deal points, can presage default terminations³. Defaults on these types of projects have huge implications for the parties, the financial backers, and the public. The benefit of having expert, neutral opinions on these types of claims can assist both parties from engaging in what is the equivalent of “mutual assured destruction” arising from a contested default termination.

What Kinds Of DRBs Could Be Used?

It is helpful to further explore four potential friction points where claims can arise, in order to assess what type of DRB would fit best with the character of each type of potential claim risk profile.

² Generally, under the *Spearin* doctrine an owner impliedly warrants that the accuracy and constructability of plans and specifications that it furnishes to a contractor.

³ CAs often include both an owner- and a concessionaire-default provision, so the claims can run in both directions.

Friction Point One: Owner—Concessionaire Interface.

The first friction point is the owner - concessionaire interface. Here, as noted above, there will be fewer, but more fundamental, “deal point” claims that can be made. That said, “a claim is a claim,” regardless of its character. Having a DRB available to assist the parties in resolving “deal point” claims can be very helpful to preserving the working relationship, especially where the relationship between the owner and the concessionaire can span decades.

Given the different claim profile of the owner - concessionaire interface, however, there are some aspects of the character and role of the DRB that warrant consideration. First, since the typical project claims for time and money will arise much less frequently as between the owner and concessionaire, the DRB could be an “on-call” DRB similar to the Dispute Resolution Advisor model used by Caltrans⁴. Second, since the owner - concessionaire claims will not necessarily be grounded in the day to day work on the project, the DRB could be comprised of members with different skill sets than a typical engineering and construction management-centric DRB. Law and financial expertise are important skills to be considered, which are somewhat different than those required by traditional DRBs. Third, given the potentially decades-long P3 relationship, the owner and concessionaire might also consider having a DRB for the construction phase and then a different DRB for the operations phase as different types of claims might arise during these project phases.

Friction Point Two: Concessionaire—Design Build

The second friction point is the concessionaire—design-build contractor interface. This interface focuses on the contractual allocation of risk between the concessionaire and design-builder contractor. Under the typical design-build contract the concessionaire will try to mirror its design-build obligations and risks under the CA with the owner, that is, a shedding of design, constructability and delivery issues to its design-build contractor. The types of claims between the design-build contractor and the concessionaire less frequently will involve “deal points” akin to those between the concessionaire and owner. However, they will include more detailed claims issues regarding any limitation of liability that the design-builder may have been able to negotiate, as well as any integration and coordination risk that may exist for equipment operation, start-up and turn over. The same DRB considerations as those relating to concessionaire - owner claims would apply to this interface, i.e., the “on-call” approach with DRB members attuned to the type of claims permitted as between the concessionaire and design-builder contractor.

Friction Point Three: Design-Build Contractor Team

The third friction point lies within the design-build contractor team. The contractual relationship within the design-build contractor team (general contractor, designer/engineer, trade contractors, and suppliers) covers the actual construction and delivery of the project. This contractual interface will encompass the more typical claims that arise from project construction and delivery: design issues, extra work, constructability, delay, interference/disruption, etc. Here, the DRB model that has worked well on many heavy civil projects to prevent and resolve disputes can be used since issues within the design-build contractor team will need to be resolved in “real time” as that is where the work is being progressed and the money is being spent.

Given the more typical claim profile within the design-build contractor team, the more typical DRB could be used, i.e., formed at the beginning of the project, comprised of engineers/construction managers/construction lawyers, regular site visits, and the DRB claim hearing process.

Friction Point Four: Concessionaire—Operator

The fourth friction point is between the concessionaire and operator. The issues here will revolve around

⁴ In the Caltrans model, a Dispute Resolution Advisor is appointed at the beginning of a project, is given basic project information, and then is on-call to review and give non-binding findings and recommendation on disputes.

long term operations and maintenance and capital asset replacement requirements. This interface will raise some of the same considerations and the concessionaire—design-build contractor interface. Although the character of the potential claims may be different (operations vs. construction), the avoidance and resolution of claims would still be in the parties’ best interests. There also may be integration and coordination issues caused by the design-build contractor. Therefore, a DRB can still be helpful in avoiding and resolving claims, albeit the composition of the DRB would need to be calibrated to the character of the claims (operational vs. construction) and the degree of involvement could be less because of the lower frequency of claims that would arise out of routine O&M operations and asset replacement requirements.

Potential Options for P3 DRBs

Separate DRBs for Each Interface Friction Point

If one concludes that each of the friction points discussed above could benefit from the dispute avoidance and dispute resolution functions of a DRB, it would be possible to set up a DRB for one or more of the friction points. As noted above, the composition, duration, and role of the DRB would need to be tailored to the claim risk profile based the predictable type, size, and frequency of potential claims. Another option is to implement DRB(s) only for friction points where the parties agree that the additional carrying costs of the DRB(s) are justified.

Omnibus P3 DRB

Although one or more separate DRBs for each friction point is certainly feasible, it does raise some additional challenges to implementation: justifying additional cost (up to four DRBs), additional coordination that will be needed to tailor each DRB for that applicable contractual relationships, and the potential for different results from different DRBs on the same project. One way to address these challenges is to use an “omnibus” DRB that is set up to handle all issues arising on the P3 project, with the costs being shared on a pro rata basis depending on the user of the process. Thus, for example, if the owner and concessionaire did not feel the need for periodic site visits given the limited types of claims that could be brought under the CA or the concessionaire - design-build contractor agreements, the design-builder contractor (that presumably would like periodic site visits for the typical claims within the design-build contractor team) could pay for the periodic visits. Likewise, if there was a claim that was only between the concessionaire and the owner, the concessionaire and owner would pay for the hearing on that claim. Although more complex to administer than the typical DRB, this flexible approach would still be much less costly than the possibility of multiple claim paths and numerous potential arbitrations or litigations.

In addition to saving on transactional costs, the advantage of the omnibus P3 DRB is that it would have a holistic view of the entire project, allowing it to take all appropriate P3 factors into account and thus increasing the likelihood of uniformity and consistency in the DRB’s findings and recommendations across all contractual friction points. Given the broader scope of potential issues, the composition of this type of DRB could include members from a variety of backgrounds, for example finance, construction and legal. The parties could also permit the DRB to retain, with party approval, subject matter experts to assist the DRB if it had to deal with technical issues arising from one of the subsidiary contractual interfaces.

P3 DRB Pool

One question that deserves additional thought is how a P3 DRB would be selected. Since there at least four primary parties, there may be a benefit in having a pre-selected pool with designated, qualified DRB chairs and members. Panels could involve more than three members if, for example, there was an issue between the design-builder contractor and the operator, which could also involve the concessionaire (holding both of the contracts). Careful consideration would need to be given to: the mix of the pre-qualified DRB pool; how

DRBs would be selected (and replaced); and how the DRB pool could be kept apprised of (and to the extent necessary, involved in) the P3 project in order to provide dispute prevention services as well as dispute resolution services.

Conclusion

P3s involve high stakes and high risks for all parties to the deal as a whole regardless of the allocation of risk between particular participants. Although the types of claims may vary among the parties, there is still the same overall risk (indeed, predictability) that claims will arise. The track record of DRBs helping parties resolve claims on major infrastructure projects can be applied with equal force to P3 projects, albeit with thoughtful variation depending on the contractual relationship and potential claims that need to be addressed.



Kurt Dettman is the principal of Constructive Dispute Resolutions, an ADR practice specializing in all aspects of dispute avoidance and resolution in the construction industry. He has written extensively about DRBs and conducts training on DRB practice and administration. Kurt is on the DRBF President’s List and co-chairs the DRBF Transportation and Energy Committees. He can be reached by email at kdettman@c-adr.com.



Chris Kane is the President of P3 Collaborative LLC, a multi-disciplinary management advisory service to both the public and private sectors. He advises in project structuring, team building, contract negotiations, and consensus building for infrastructure P3s. Chris is an engineer and a lawyer with over 30 years of experience including 10 years as a vice president for project development at an ENR top 10 E&C company. He can be reached by email at chris.kane@p3collaborative.com.



Call for Nominations: The Al Mathews Award

The Dispute Resolution Board Foundation presents the prestigious Al Mathews Award each year to one or more DRBF members who have given exemplary service in advancing the use of the Dispute Resolution Board concepts and the DRBF. Nominations are solicited from the membership and by the president of the Executive Board of Directors. A framed proclamation and trophy will be presented to the recipient at the Dispute Resolution Board Foundation Annual Meeting and Region 1 Conference September 23-24, 2011 in Seattle, Washington.

Send your nomination, including an explanation of why the nominee is deserving of the award, to:
 Mail: Award Nominations/DRBF, 19550 International Blvd. So Suite 314, Seattle, WA 98188 USA
 E-mail to info@drb.org Subject: Al Mathews Award Nomination

Entries should be postmarked no later than July 15, 2011

The distinguished list of past winners includes:

- | | | | |
|-----------------------|-------------------------|-----------------------------|-----------------------|
| Al Mathews | Carlos Ospina | John Nichols | Jack Feller |
| Robert Matyas | Pete Douglass | Peter H.J. Chapman | Richard Appuhn |
| Robert Smith | Jim Donaldson | Bill Baker | Gwyn Owen |
| Joe Sperry | Steve Fox | Romano Allione | Robert Rubin |
| Jimmy Lairscey | Gordon L. Jaynes | Harold V. McKittrick | |



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Save the Date!

Dispute Resolution Board Foundation
15th Annual Meeting & Conference
September 23-24, 2011
Hyatt at Olive 8 • Seattle, Washington USA



Seattle's Space Needle & Pike Place Market

Join the DRBF in its home city of Seattle for the 15th Annual Meeting and Conference. In addition to presentations and panel discussions on best practices and ethical considerations, there will be interactive exercises and project tours to deepen the educational experience. Plus optional training workshops and group tours to some of Seattle's finest attractions. The annual Al Mathews Award dinner will be held at Tillicum Village on Blake Island in the Puget Sound, with an authentic salmon bake and Native American dance show for a unique cultural experience. Don't miss it!



Salmon bake at Tillicum Village on Blake Island

