

# DRBF Forum

Volume 17 Issue 2 June 2013



This is the second part of a two-part article about the interplay between Partnering and Dispute Review Boards. The first article explored issues raised by the use of both processes on construction projects. This article provides information on various ways that users of Partnering and DRBs are implementing the two processes.

## Optimizing the Use of Partnering and DRBs on Projects: Differing Approaches by User Agencies

By Kurt L. Dettman

### Introduction

As discussed in the first part of this article<sup>1</sup> some public agencies use both partnering and Dispute Review Boards (DRBs)<sup>2</sup> on projects. The challenge is how to cost effectively manage these distinct, but complementary, processes to achieve the “zero claims” goal of most project teams. Set out below are examples of how some agencies are handling this interplay, ranging from complete separation to complete integration.<sup>3</sup> It should be noted that these examples are not intended to be comprehensive descriptions of the programs, but rather simply highlight (and provoke discussion on) some unique or innovative features of how

these agencies are using both partnering and DRBs on some projects.

### Washington Department of Transportation (WDOT)

The Washington State Department of Transportation (WSDOT) is a long time user of both partnering and DRBs. WSDOT Specification Section 1-09.11 provides that DRBs may be established for a specific dispute or (preferably) they may be established in the contract as bid on projects \$10M and above. WSDOT views partnering and DRBs as two distinct processes.

Partnering is about communication,

*(continued on page 10)*

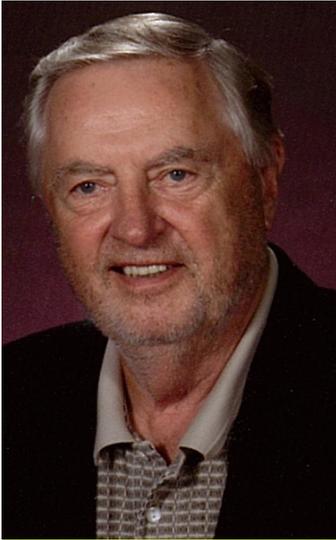
1 K. Dettman, Optimizing the Use of Partnering and DRBs on Projects, *DRBF Forum*, Vol. 17, Issue 1, March 2013.

2 This article focuses on the use of U.S.-style Dispute Review Boards, not on FIDIC, Multilateral Development Bank, or ICC Dispute Boards. However, readers using different Dispute Board approaches are encouraged to consider the role that partnering could play in other contexts.

3 The examples are drawn from interviews and email exchanges with representatives of Sound Transit (Joe Gildner and Jim Niemer), Caltrans (Andy Alvarado and Ken Solak), Washington State Department of Transportation (Craig McDaniel), Wisconsin Department of Transportation (Dennis Manney of Edward Kraemer and Sons and Ryan Luck), and Ohio Department of Transportation (Gary Angles, Pam Clawson, and Chase Wells). The author thanks those representatives for their time and input in assembling these examples.

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## President's Page



Roger Brown  
President  
DRBF Executive  
Board of Directors

"Obstacles are those frightful things you see when you take your eyes off the goal. "

Henry Ford  
(1863 - 1947)

DRBF Members, Supporters & Friends,

First I want to congratulate the team who put together this year's International Conference, including all the volunteers who spoke and sat on panels. I would also like to recognize the conference sponsors, which the DRBF thanks again for their support. The sessions were very informative, and I appreciated the opportunity to learn from attendees from all over the world. At one of the lunches I discovered there were 10 of us all from different countries sharing our common interests and goals. After the conference I took some time to do some sightseeing by driving to Burgundy, Colmar, Strasbourg and back to Paris through Verdun. What a beautiful part of the world. Was able to visit cathedrals, museums, chateaus, castles and medieval cities and of course sip some excellent French wines. Thanks to all those I met at the conference and the local French people who truly added to a wonderful life experience.

I was also very excited to hear a common theme during the entire program that I also addressed in my opening and closing remarks: the subject of Dispute Avoidance. DRBF members, owners, contractors and related organizations recognize that the greatest single value Dispute Board's bring to a project is dispute avoidance. The Boards regular presence at meetings during the life of a project gives them the opportunity to discuss potential issues with the project team and assist with early resolution between the parties long before they become hardened positions that would require a Board hearing. Almost all Board members today agree that a truly successful project is one that has never required a formal DB hearing.

Many of us have talked about expanding the DB process to new markets, and Region I has an outreach committee focusing on that task. I just received my *Engineering News Record* magazine with the annual Top 400 US Contractors listing along with a market analysis. It is interesting to note that the transportation sector represents only 15% of

total market revenue (where approximately 70% of all DRB boards in the US exist) while power and petroleum represent 25% and general building 40% of total market revenue, yet there is a very small percentage of Boards in these market sectors. We must work harder to penetrate these and other markets even though the majority of ownership is private and not public. Our outreach committee during the last three years has spoken about the DRB process at various organizations' annual meetings attended by attorneys, engineers and architects. The seeds have been planted. Now it is time to reach out directly to not only public agencies but private as well. I know many of you have experience in private work including power, petroleum and buildings. Your knowledge of these work sectors would greatly assist our Outreach Committee in finding ways to make contacts with key personnel who we could meet with and explain the benefits of the DRB concepts. If you are willing to assist please contact the DRBF Seattle office, Outreach Chair Deborah Mastin or myself. We could use your help!

As most of you have heard Steve Fox will be retiring next spring after faithfully serving the DRBF almost since it's inception 17 years ago. Ann McGough will be taking on more and more of his responsibilities as that date approaches. In addition our longtime treasurer Jim Donaldson is also "retiring" from that position and Tom Peterson from the Seattle area had taken on those responsibilities.

Several of you have volunteered to assist the Foundation by working on committees and other special projects. I appreciate your help and encourage others to do the same.

# DRBF Executive Board of Directors



**The members of the Executive Board of Directors are:**

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- Gwyn Owen, Past President
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The Executive Committee meets monthly. Recent topics have included:

- Feedback from members submitted to the Strategic Planning Committee.
- Revisions to the DRBF Bylaws.
- Identification of strategy and priorities for outreach efforts.

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](http://www.drb.org). Click on the Member Login button, and then click on DRBF Board of Directors.

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Executive Board of Directors

Meeting Schedule

June 17  
July 22  
August 19

The Board of Directors for each region meet on a regular basis. Questions or ideas for the Boards should be submitted to the Board President directly or to Ann McGough at [amcgough@drb.org](mailto:amcgough@drb.org).



## DRBF Returns to the City of Lights

By James Perry

The DRBF can be proud to have produced another, in what has become a long string of, world class international conferences. This year's event was held at the Hyatt Regency hotel in Paris, just a stone's throw away from the Arc de Triomphe and the Champs Elysées. The three packed days started with a well-appreciated workshop on the 2nd May, which featured a deeply experienced panel of dispute board trainers and experts and featured a special workshop put on by the International Chamber of Commerce (ICC) highlighting their Combined Dispute Board (CDB) provisions as found in their 2004 Rules. A special double session was held to discuss current issues in the international dispute board scene, and it is our intention to capitalize on the valuable input from all our members in order to help us define our goals and priorities for the next few years. Another new feature of the workshop this year was the introduction of a two-track system, one for those interested in discovering the mechanics of dispute board operations, and a second track for regular conference attendees who are looking for an opportunity to expand their know-how. Following the workshop, all the conference delegates and their spouses were invited to a very pleasant welcome cocktail held at the prestigious headquarters of the Fédération Nationale des Travaux Publics, just off the Champs Elysées.

The next morning it was back to work as we rolled up our sleeves for two fascinating days of presentations which were kicked-off by our keynote speaker, Jean Marc Kiviatkowski, General Counsel of Bouygues Construction Group, one of the largest contractors in the world. This was followed by the first session dealing

with the use of dispute boards in France and we were treated to exposés by experienced French dispute board members involved in projects dating back to the Eurotunnel in the early 1990s, to the modern day expansion of the French high-speed rail lines. The second session was one of our most successful sessions ever organized in collaboration with the major international financing institutions, including our greatly appreciated supporters at the Japan International Corporation Agency (JICA) and our friends at the World Bank. This year our panel was joined by a senior representative from the US based Millennium Challenge Corporation. We are very pleased to be able to say that the DRBF was able to deepen our links with these institutions and expand our plans for joint initiatives in the coming years during the conference.

In the afternoon of the first day we launched an experimental effort to offer a choice of tracks to our delegates and, like with the workshop, one track was dedicated to attendees who might be new to the dispute board system and a second track was dedicated to regular conference attendees and users. The afternoon's theme for the second track was comparative construction law issues on important topics such as global or total claims, and constructive acceleration. Leading British, American and Continental construction lawyers prepared two exceptional sessions, as well as submitting very fine academic papers on these subjects, which I am sure will be used as key reference papers by our delegates for years to come.

No DRBF conference would be complete without a spectacular gala dinner,



and this year was no exception. 130 diners enjoyed a wonderful evening feast of scallops and duck breast, well washed down with various varieties of grape libations France is so well-known for, not to mention the five piece ragtime band that amazed the audience by being able to play a great classic tune from every single country represented at the gala.

On Saturday morning, we continued with our two-track program, albeit a little worse for wear. Delegates choosing track A had the opportunity to listen to presentations by senior executives from major European contractors and international engineering firms discussing their views on the contribution of dispute boards to our industry, followed by a presentation from some of the most experienced engineers and lawyers working in Africa and the Middle East. For those who attended the track B sessions, they rolled up their sleeves to attack such weighty issues as dispute board member liability and ways on improving DAB decision enforcement. Again, both sessions were presented by leading international experts in their fields.

All the delegates were reunited in the afternoon of the last day for two plenary sessions, the first one, led by conference co-chair Marc Frilet was entitled "Initiatives for Better Dispute Resolution," which covered presentations from leading bank officials and dispute board practitioners who are working on the next generation of dispute board rules and other initiatives, in particular the integration of dispute boards into public private projects (PPP). Our final session, entitled "The Melting Pot," featured our first opportunity to hear a senior executive from a major Chinese construction

firm talking about their vast activities in Africa, along with a senior representative from a major European contractor discussing their experiences in Central Europe. This was capped off by a very interesting presentation talking about the dispute board's "decision" as viewed from the arbitrator's chair.

All in all, the 13th Annual International Conference was a rich and rewarding experience for those who could attend, and it certainly looked to me like everybody was making the most out of a weekend in the city of lights. One of our goals in the conference this year was not only to provide a program with content which we hoped would be of interest to our delegates and members, but we also wanted to use the opportunity to expand our interaction with our partners such as the international financing institutions, FIDIC and the ICC and, above all, our membership. The workshop in particular was designed to draw feedback from our membership and the conference program was designed to provide a platform for our strategic partners to address our membership and delegates. The conference generated a significant number of ideas, initiatives and volunteers. It's now up to the board of directors to put these ideas, and our members, to work. We are looking forward to a productive year and we hope to see a big turn-out for the 14th International Conference next May in Singapore.

James Perry is President of the DRBF Region 2 Board of Directors, and was Chair of the International Conference Planning Committee. He can be reached by email at [jperry@ps-consulting.fr](mailto:jperry@ps-consulting.fr).

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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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Jim Phillips  
Ph.D.  
Chair  
DRBF Ethics  
Committee

## Ethics in Today's World of DRBs: DRB Not Empanelled Until Over One Year After Notice to Proceed and Contractor Falling Significantly Behind Schedule

By James Phillips Ph.D.

The question posed for discussion in the previous *Forum* raises several issues with respect to the value of establishing the DRB early in the life of the construction project and the destructive consequences which are likely to follow. The question sets up the scenario where the DRB has not been set up until well after the work has begun and by the time the Board holds its first meeting, the relationships on the project have already soured to the point where the parties are barely speaking and a backlog of notices to file claims and requests for schedule updates have already backlogged.

The current edition of the Foundation's Practices and Procedures Manual devotes several comments to the issue of the most advantageous time to set up a DRB. Section 1.2.1 discusses this issue in some detail. "The DRB should be organized after the contract is executed and preferably before construction begins. Utilization of the DRB process from the very start of the project maximizes its benefits and value. Experience has shown that any delay reduces its effectiveness."

The above section of the Manual underscores the heart of the issue in the question posed. Because of the absence of the DRB on the project and because a major issue developed soon after the notice to proceed, whether the contractor had sufficient personnel to prosecute the work, the parties' relationships were significantly adversely affected. Had the DRB been established, both the owner and the

contractor would have had neutral construction experts provide an opinion as to whether there were sufficient personnel to stay up to date on the project schedule.

I am confident that many of us have heard both owner and contractors proclaim that there is little need for a DRB, or DAB, because "we don't expect there to be any problems on this project." Or how about "we've worked together before, we have never had any problems." These are not only famous last words, they also do not depict a responsible reflection of the contract documents.

The decision to place a DRB Specification on a construction contract is based on many factors including the owner's previous experience with disputes on construction projects and whether they have been involved in regular litigation, the personnel that will be assigned by the owner to administer the contract, the contract documents, including whether the technical specifications require state of the art methods and/or materials, whether the design is exceptionally complex and whether the contract requires innovative construction methods, the projected contractors who will bid and might be awarded the job, and the nature of the work itself, is exceptionally large and will there be milestones and completion dates that will be difficult to meet? See Section 1.4.1 of the DRBF Manual for a complete discussion of the factors contributing to the predictability of contract disputes and the efficacy of placing



a DRB specification on a project.

The point is that the mere action of placing a DRB specification on a project's contract documents indicates that the owner has determined that there is some degree of risk on this specific project that a DRB will be an effective conflict resolution tool. Moreover, if the contractor bids on the project with a DRB specification, he/she is indicating the willingness to participate in the process. Accordingly, the unwillingness to meet the requirements of the contract's DRB specifications, in my opinion, is mere foot dragging and contract avoidance that cannot be condoned. It is very rare that both parties avoid completely a contract requirement, and the question becomes: why should they be able to avoid setting up the DRB?

The Foundation's Manual suggests that the DRB be established no later than 90 days after the notice to proceed. In the question posed for this discussion, the Board did not meet until a year after the work began. The question clearly demonstrates the negative impact that an absence of a DRB presence can have in just a few months.

What should the Board do in the question posed? I would have to say that it should move quickly to establish clear lines of communication between the parties and to attempt to repair the relationships that appear to be on the verge of breaking, or have already broken down. Canon IV of the Code of Ethics provides that the Board shall conduct hearings and meetings in "an expeditious, diligent, orderly and impartial manner". The Board should also encourage the parties to schedule hearings or seek advisory opin-

ions on any unresolved notices that have already have been filed. This approach will send a message to both parties that the Board takes its responsibility seriously and that it will be impartial in its conduct and consideration of the disputes presented to it for an opinion or a recommendation.

Many DRBs on which I have participated schedule that lunch be served either during the middle of the day, after a morning meeting and before a project site visit, or during the middle of the day during a formal hearing. This is one method of building communications between the parties. Another might be, in situations where constructive communications have broken down completely, to have the parties agree, at least for a short term, that the DRB review all of the project correspondence to better ensure that accurate information is being exchanged in especially highly emotional contexts. This would enable the Board to more closely monitor the communications and request whether the parties would like a meeting to clarify project issues that may be in dispute. A caution here is that the DRB should not impose its wishes onto the parties or create any extra work. This also can serve to avoid disputes from occurring.

The DRB should be established with its members and Chair agreed to and under contract as early in the life of the project as possible, advisedly no later than 90 days after work has begun. The project that does not meet the DRB contract specifications and the sensitive issue of timeliness runs the risk that early disputes will arise and the absence of a sitting Board will result in unintended and negative consequences. *(continued)*

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## Next Ethics Challenge

Assume you are a member of a DRB that has been sitting on a project, holding regular meetings and hearings for over 3 years. Also assume that through no effort on the part of the Board, you have learned that the prime contractor is intending on filing for a Chapter 7 (Liquidation) as soon as the Project is complete. Moreover, you have also learned that the prime contractor plans on “financing” the remainder of the project to the extent possible with an abundance of change order requests, increasing the quantity of its pay items, and using the DRB process in any way that will force the owner to accept the job, while paying more to the contractor.

### What should the Board do?

#### Ethics Commentary or Question?

Please contact:  
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 DRBF Ethics Committee  
 P: +1-804-289-8192  
 E: [jphillip@richmond.edu](mailto:jphillip@richmond.edu)



## Call for Nominations: AI Mathews Award

The Dispute Resolution Board Foundation presents the prestigious AI 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 held September 20-21, 2013 in Miami, FL.

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  
 Email: [info@drb.org](mailto:info@drb.org) Re: AI Mathews Award

### **Nomination entries should be postmarked by July 15, 2013**

Distinguished list of past winners:

- |                  |                      |
|------------------|----------------------|
| AI Mathews       | Peter Chapman        |
| Robert Matyas    | Bill Baker           |
| Robert Smith     | Romano Allione       |
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| Carlos Ospina    | Richard Appuhn       |
| Pete Douglass    | Gwyn Owen            |
| Jim Donaldson    | Robert Rubin         |
| Steve Fox        | Graeme Peck          |
| Gordon L. Jaynes | James Brady          |
| John Nichols     | Toshihiko Omoto      |

## DRBF Offers DAB Training in Antwerp

By William Buyse, M.Sc.

The training workshop that took place on 30 and 31 May 2013 in Antwerp, the harbour town located in the North of Belgium, was held in the Dutch language so it could hence attract people from Belgium as well as from the Netherlands.

The success was perhaps not enormous when the number of attendants is taken into account – a total of 19 persons – but the involvement and high interaction between the speakers and the attendants was close to perfect. It was scheduled to have an open forum after each session, but the attendants intervened continuously during the sessions with pertinent questions, which resulted in a really interactive training course.

The training workshop was intentionally concentrated on the method of Dispute Adjudication Boards rather than the Dispute Resolution Boards, and did not address at all the general conditions of contract which is done during the FIDIC training courses. The training workshop was hence purely on Dispute Boards, the full explanation of the method, the necessary clauses to use in the bid documents, the three party agreement, the advantages of DBs, the areas where the method can be used, the costs involved and as closing sessions examples where DBs had been used followed by a rather extensive list of questions to be solved by the attendants.

The training workshop was organized by the DRBF in collaboration with KRID-KVIV, the chamber of Flemish engineer-experts. The speakers were ir. Pieter Beckers and ir. William Buyse, both members of the DRBF.

Most of the attendants were engineers

but there were also three lawyers present, and three attendees from the Netherlands. Governmental institutions had been contacted in order to bring them to the training but unfortunately only two persons were present. There is still a long way to go to convince governments of the positive results to use dispute boards and this although all government levels have to reduce expenditures. The main consultancy firms from the FIDIC organization (ORI in Belgium) had been invited but not one showed up.

At the end each of the attendants received a USB-stick containing all slides used during the presentations. On the website of KRID ([www.krid.be](http://www.krid.be)) the list of attendants will be published as persons who got the training needed to be appointed as members of Dispute Boards. It was stated from the information of the Dutch people that in the Netherlands Dispute Boards were installed for some important infrastructure works over the last years, of which we hope to receive the exact details later on.

At the end of the sessions the attendants expressed their belief in the positive results from using Dispute Boards for important construction projects, but information was also obtained that other areas were interested and that promotion would be made to spread the method at different levels of the governments, architects and engineering offices.

William Buyse, M.Sc., Country Representative for Belgium, can be reached by email at [buyse@cem-eao.be](mailto:buyse@cem-eao.be).



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*(continued from page 1)*

understanding each party's goals, alignment and concerns, etc. Partnering may elevate concerns with regard to value based requirements to the executive level, such as safety and quality issues. WSDOT prefers that the DRB's focus is on monitoring project progress and the behavior of the parties prior to a dispute and interpreting the contract in the event of a dispute. Therefore, WSDOT does not want the DRB participating in a mentoring type role, as would be done by a partnering facilitator. If issues get into contractor or WSDOT behavior (or misbehavior), or there are business decisions that have to be made on escalating disputes, those issues are better resolved directly by the parties using the partnering approach. In the case of WSDOT, HQ construction plays a role as issues get escalated and is in a position to make risk based decisions.

### **Sound Transit (ST)**

Sound Transit is a long time user of both partnering and DRBs for its heavy civil underground construction projects. ST's General Condition 11.04, Partnering, establishes the principles of project partnering and ST's Specification 01 27 00, Disputes Review Board, specifies the requirements for establishing and operating a DRB. ST views partnering and DRBs as complementary processes, but places most emphasis on a robust "executive partnering process."

ST starts its projects with a conventional partnering process with a professional partnering facilitator engaging key executives together with key project-level staff and third-party stakeholders to develop a partnering charter that sets out the project's overall goals and specific measurable objectives.

Once these goals and objectives are established the facilitator solicits regular feedback on the team's effectiveness in achieving these goals and objectives. The team also delineates the issues/risks that will likely occur in the prosecution of the work and this list is a dynamic tool that is reviewed/updated throughout the course of the contract. Another product of the partnering session is an agreement on an escalation ladder for the Contractor and Owner (and possibly stakeholders), identifying key personnel for each level of decision making. For example, typical levels include four tiers identified as project management, sponsor, executive, and senior executive. The ladder is supplemented with a resolution policy for issues and disputes that promotes partnering but does not supersede the Contract terms related to change orders, claims, and alternate dispute resolution.

ST's partnering program calls for project managers and sponsors to meet monthly, and Executive Partnering meetings are held quarterly. At each level open issues are discussed and the parties attempt to resolve them. ST expects the DRB members to take a proactive, probing role in assessing what issues are occurring on the project, but to respect and encourage the partnering process. The real "action" on resolving issues and disputes happens in the project manager/sponsor meetings and occasionally at the Executive Partnering sessions. ST's view is that most issues are resolved through the partnering process; the DRB is there if and when the project sponsors and executives are unable to resolve issues themselves.

### **Wisconsin Department of Transportation (WisDOT)**

The Wisconsin Department of Transpor-



tation uses both partnering and DRBs. WisDOT Standard Specification Sections 105.13.6.4 and 105.13.7.3 provides for referral of a claim to a DRB, under certain circumstances, as part of the administrative claims process.

Although the WisDOT specification on its face is a relatively conventional approach to partnering and DRBs, one of the more interesting uses of both processes was implemented on the Marquette Interchange Reconstruction Project Core and South Leg Projects (\$359M) in the heart of Milwaukee, Wisconsin. In summary, the project had the traditional partnering kick-off session to develop a partnering charter, etc. Likewise, a DRB was established to have regular quarterly site visits and be available to hear disputes. As the project evolved, the parties decided to have the DRB Chair “actively participate” in the partnering sessions, which dealt with a myriad of project management issues.<sup>4</sup> This participation included getting the DRB Chair’s opinion on how the DRB might view an issue, which was then used to facilitate resolution in the partnering sessions. In interviews representatives of the contractor and WisDOT also mentioned that there were executive level partnering meetings as well every two weeks. Ultimately, over the four years of the project there were 58 partnering meetings (vs. 12 planned, plus the kick-off) and 12 DRB meetings (vs. the 36 planned), and no disputes were referred to the DRB for hearings.

### **California Department of Transportation (Caltrans)**

Caltrans specifications provide for both

partnering and DRBs. Caltrans Standard Specification Section 5-1.09A-D requires partnering on projects over \$1M. Section 5-1.43E provides for the claim resolution process, including the use of Dispute Resolution Boards and Dispute Resolution Advisors (DRAs). One of the innovative features of the Caltrans program is Section 5-1.09A of the Standard Specifications for projects with DRBs. It permits the parties to have a facilitated partnering session or “facilitated dispute resolution” session before referring a matter to a DRB. The concept is to get the parties talking about the dispute and, if it is not resolved, to clarify and narrow the issues to those where the DRB’s non-binding recommendations can assist the parties in further negotiations. Caltrans encourages partnering to continue even after a claim is submitted to a DRB and a recommendation is received. Thus, a DRB recommendation is viewed as a tool to be used as part of the partnering process continuum—resolution of disputes can occur before, during and after the formal DRB process.

### **Ohio Department of Transportation (ODOT)**

ODOT uses both partnering and dispute resolution processes, including DRBs and, beginning in 2013, DRAs. While ODOT has had specifications for partnering and dispute resolution for years, in its 2013 Construction & Materials Specification Manual it included the dispute resolution processes in the Partnering section, in recognition that dispute resolution processes are partnering tools.

<sup>4</sup> Marquette Interchange Reconstruction Project DRB and Partnering Program is described in detail in: Whited, G. and Dolby, J., “DRB Enhanced Partnering on the Marquette Interchange: Case Study”, *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* (Vol. 3, No. 2, May 2011). See also WisDOT/FHWA Best Practices white paper: [http://www.fhwa.dot.gov/ipd/pdfs/project\\_delivery/best\\_pract\\_marquette\\_10\\_10\\_08.pdf](http://www.fhwa.dot.gov/ipd/pdfs/project_delivery/best_pract_marquette_10_10_08.pdf).



ODOT views partnering and DRBs/DRAs as distinct but complementary processes. On many of its largest projects ODOT has included provisions for both a Partnering Facilitator and a DRB or a DRA. The Cleveland Innerbelt Project is one such project. This 4 year \$287M design/build project constructs a new structure to carry Westbound I-90 over the Cuyahoga River Valley through Cleveland, Ohio. Tom Hyland, the Project Engineer of the project for ODOT explains the DRB handles the technical issues such as design, construction and the project schedule and Partnering “deals more with getting all of the personalities on the project to work together”. A half-day quarterly partnering session includes ODOT’s lead inspectors, the Contractor’s foremen, subcontractors and major suppliers, utilities and local agency representatives. During the partnering meetings the “worker bees” get “down in the weeds”, Tom explains, to find solutions to current and upcoming issues. Then “we’ve worked out all the issues before the DRB meets.”

In order to further enhance ODOT’s Partnering Program, a “Partnering Facilitator Standards and Expectations” manual was recently published. The manual acts as a guide throughout the Facilitated Partnering Process to help standardize and maintain consistency among Facilitators. ODOT feels it is the role of the Partnering Facilitator to provide detailed advice and coaching to project teams on issues/disputes relating to the day-to-day management of the project.

### **Recommended Partnering/DRB Checklist of Questions**

Based on the varied experience of these

user agencies, the following is a suggested checklist of questions that project teams may want to consider in order to implement both partnering and DRBs in the most cost effective manner:

1. What is the project’s “dispute risk profile” developed as part of the project risk identification/risk mitigation process? The dispute risk profile can include things such as:

- What types of delivery method is being used, and in particular how are risks allocated (for example, design-bid-build vs. CM/GC vs. design-build)?
- What types of disputes might occur (for example, differing site conditions, delay claims, performance specification requirements, etc.)?
- What are the anticipated complexity and frequency of potential disputes (for example, complex time claims vs. small, repetitive claims)?
- What process is in place for decision making and issue escalation (for example, is there a process for escalating management involvement on claims)?
- What type of third party assistance could help the parties in resolving disputes at the project level (for example, negotiation coaching vs. expert opinion)?
- What is the level of experience of the project team in managing the type of project at issue and in the project’s approach to management both at the field and executive levels (for example, have the owner and contractor teams worked a similar type of project delivery method; have they used partnering and/or DRBs)?



- Are there outside stakeholders that will have a big influence on the outcome of the project (for example, permitting agencies or railroads)? Do they need to have a role in the process either at the beginning or at certain project milestones?
  - Are there alternative dispute resolution processes that are available and, if so, how do they fit into the partnering/DRB process (for example, does the DRB lead to arbitration or litigation and what is the impact of the prior process on the follow-on processes)?<sup>5</sup>
2. What is the project’s approach to coordinating partnering and DRBs?
- Does the project plan to implement partnering that includes stakeholders other than the immediate project team?
  - What experience does the project team have in implementing both partnering and DRBs?
  - Will the partnering process be continuous throughout the course of the project?
  - Will the project implement the partnering itself or will it use a professional partnering facilitator?
  - How will the resources needed and costs of partnering and DRBs be shared?
  - Does the project team have a clear vision and objectives of what it wants to get from the partnering process?
    - What stakeholders will it cover?
    - What are the “partnered” topics or subject areas?
    - What impact will partnering have on project management issues and decisions?
  - How will partnering be implemented within the framework of the contract terms and allocation of risk?
  - Does the project team have a clear vision and objectives of what it wants to get from the DRB process?
    - Will the DRB be used for dispute avoidance as well as dispute resolution?
    - Will the DRB be available for advisory recommendations or just formal recommendations?
    - What is the effect of the DRB outcome on downstream processes if there is no resolution at the DRB level?
  - When will partnering sessions and DRB meetings be scheduled and how will they be coordinated?
  - If the project team plans to use both partnering and DRBs, have the parties discussed and mapped out specifically what role partnering will play *vis a vis* the DRB process?
- Conclusion**
- What is clear from the examples above is that there is not a “right or wrong way” to implement both partnering and DRB processes. There are different options available, each with a proven track record on construction projects or programs. However, the real lesson here is that, whichever approach is used, it should be done in a knowledgeable and transparent manner that supports overall project management objectives.
- Kurt L. Dettman is the DRBF Region 1 Director of Training, Chair of the DRBF Training Committee, Co-chair of the Region 1 Transportation and Energy Committees, and member of the Region 1 Board of Directors. He can be reached at [kdettman@c-adr.com](mailto:kdettman@c-adr.com).

<sup>5</sup> For an exploration of the relationship between partnering and alternative dispute resolution processes, see Dettman, K. and Bayer, R., Alignment Partnering: A Bridge to ADR Processes?, *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* (Vol. 5, No. 2, May 2013).

# DRBF Country Representatives

Interested in becoming a Country Representative for the DRBF in your country?

Contact Country Rep Coordinator Andy Griffiths at [andyg@goba.co.za](mailto:andyg@goba.co.za)

**Argentina**

Maria Laura Velazco

**Australia & New Zealand**

Graeme Maxwell Peck

**Austria**

Marcus Theil

**Belgium**

William Buyse

**Botswana**

Tsepo Letsunyane

**Brazil**

Gilberto José Vaz

**Bulgaria**

Adrianna Spassova

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**Ethiopia**

Michael Gunta

**France**

Marc Frilet

**Germany**

Helmut Koentges

**Iceland**

Johann Kroyer

**India**

Shri K. Subrahmanian

**Indonesia**

Sarwono Hardjomuljadi

**Ireland**

Nael G. Bunni

**Italy**

Andrea Del Grosso

**Japan**

Naoki Iguchi

**Libya**

Emhemmed Ghula

**Malaysia**

Sundra Rajoo

**Mauritius**

Kailash Dabeesingh

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Herfried Wöss

**Namibia**

Riaan de Witt

**Nepal**

Sanjeev Kiorala

**Netherlands**

Lyda Bier

**Pakistan**

Khalil-Ur-Rehman Khan

**Peru**

Emanuel Cardenas

**Phillippines**

Salvador P. Castro, Jr.

**Poland**

Krzysztof Woznicki

**Portugal**

Manuel Maria Agria

**Qatar**

Wayne Clark

**Republic of the Congo**

Florent Lager

**Romania**

Alina Oprea

**Saudi Arabia**

Nabil Abbas

**Singapore**

Gerlando Butera

**Southern Africa**

Anton van Langelaar

**Spain**

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**Sri Lanka**

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**Switzerland**

Michel Nardin

**Thailand**

Pratim Ghose

**Turkey**

Levent Irmak

**United Arab Emirates**

Ian Folds

**United Kingdom**

Murray Armes

Contact details for all Country Representatives are available on the DRBF website: [www.drbf.org](http://www.drbf.org)

## Executive and Region 1 Board of Directors Election



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. There are two open positions on the Executive Board, that of President Elect and Treasurer. The Region 1 Board has two open positions, President Elect and a general Board member position. 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. Only 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, fax (206-878-3338) or letter to:

**Dispute Resolution Board Foundation**  
Board of Directors Nomination  
19550 International Blvd. So Suite 314  
Seattle, Washington 98188 USA

**Nominations are due by July 15, 2013**  
**Ballots will be distributed in August**



## DRBF Committee Reports

### Finance Committee

Chair: Doug Holen

Members:

Jim Donaldson

Pete Douglass

Ron Finlay

Steve Fox

Ann McGough

Harold McKittrick

Jack Norton

Gwyn Owen

At the Annual Meeting in New York in September 2012, incoming Executive Board of Directors President Roger Brown established a Finance Committee to assist the Board in formulating policy and reviewing initiatives with respect to financial issues facing the Foundation.

A committee was formed that included: Jack Norton from Region One, Gwyn Owen from Region Two, Ron Finlay from Region Three and Pete Douglass and Hal McKittrick from the Annual Conference Fundraising Committee. Jim Donaldson, Treasurer, Ann McGough and Steve Fox were also appointed as members and Doug Holen was asked to chair the committee.

Since September, the committee has held several conference calls and has formulated recommendations for the Executive Board to review for policies governing the dues structure for members and for establishing appropriate levels of reserve funds for the Foundation.

In short, the committee recommended:

- In future years, the DRBF should cover all basic operating expenses

and maintain a satisfactory level of reserves with DRBF membership dues. Conferences, training and other activities should be self-sustaining unless the Executive Board expressly authorizes funds from the budget to support them.

- In order to keep pace with inflation and the ongoing increases for basic expenses, the DRBF staff would prepare a budget for basic expenses and a projection of receipts from membership dues for the following fiscal year in July of each year. The Board would review the estimate of basic expenses, the estimate of receipts from dues and the level of reserves each year at its August meeting and vote on increase in dues if necessary to cover basic expenses or replenish reserves.
- The Committee recommends that reserves should be maintained at a level sufficient to cover one year of operating costs (currently US \$300,000) and provide some insurance against known risks associated with funding the Annual Meeting and the International Conference (US \$60,000 – total for both events) for a total reserve of US\$360,000.00. This advice is consistent with the recommendation of the DRBF's accounting firm which recommended a level of \$350,000 for all regions.

Looking forward, the committee saw no need to change the dues structure in 2013. The committee recommends that the DRBF increase dues by 5% in 2014 and again by 5% in 2015 for all membership levels except government, emerging nation and students.



The committee recommends raising the Government Employee rate to \$100 in 2014 and the Emerging Nation rate to \$50 in 2014 and \$100 in 2015. The committee did not recommend any change in the Student rate at this time.

The committee recognizes that the Australian members already have an arrangement to increase their dues in 2013 and 2014. The committee recommends that this schedule be maintained and the Australian members have an increase in 2015 to bring them in line with all DRBF members.

Contact Committee Chair Doug Holen at [dholen@comcast.net](mailto:dholen@comcast.net) with any questions or comments for the committee.

## DRBF Communications

### Webinar Program

The DRBF now offers a one hour “Introduction to Dispute Boards” webinar, specifically designed for potential new users or employers interested in learning more about the unique dispute avoidance components of the process as well as the benefits of a properly implemented Board. Participants log on to a website to view a standard PowerPoint presentation, guided by a DRBF representative. Questions can be asked in real time, and content can be customized for specific audiences.

The webinar program is an extension of the standard materials available to any DRBF member for use when meeting with potential new users. Other tools include a standard PowerPoint presentation, brochures, and other support materials.

### Article Library

The DRBF is collecting articles about Dispute Boards and related issues to share with DRBF members within the member’s section of the website. Papers should be in electronic format and have proper attribution and approval for distribution as appropriate.

### Email Newsletters

The DRBF has recently started an occasional email newsletter to keep members informed about activities and programs within their region. If you have not received one in the past few months, please contact the DRBF to troubleshoot any delivery issues that may be occurring.

### Forum Newsletter Editorial Deadline

Our readers love to hear DRB success stories, challenges facing the process, and the latest industry news and events. If you have new information about DRBs, DRBF members, or an article to share, please tell us! Deadline for the September issue is August 1, 2013.

Contact Ann McGough at [amcgough@drb.org](mailto:amcgough@drb.org) for details on any of these programs.

# DAB Mentoring Programme

By Roger Ribeiro

## **Background**

FIDIC (Federation International des Ingenieurs Conseils) provides a useful pupilage mentoring guideline for those who want to become a Dispute Adjudication Board (DAB) member and do not have the experience as Adjudicators, but have experience on project construction, project management and dealing with contractual issues including potential and actual disputes.

This very useful and pragmatic DAB mentoring programme has been elaborated a few years ago by Mr. Gwyn Owen, Past President of the DRBF. Pupilage is a system of mentoring where an experienced DAB member takes a pupil for a period of time and provides a structured course of learning while giving him/her hand-on practical guidance and experience to be compounded with direct field experience.

Between September and December 2010, I contacted a few approved adjudicators from the FIDIC President's List, but just three of them, Mr. Gwyn Owen, Mr. Romano Allione, and Mr. Aaron Ben Arie, responded.

Between January and February 2011, Mr. Peter Boswell, former General Manager of FIDIC, reviewed my CV and informed possible mentors for the DAB mentoring.

This pupilage route started in April 2011 with Dr. Eng Romano Allione, an experienced international adjudicator / arbitrator as volunteer mentor. He is Past President of the DRBF, is included on the FIDIC's President's List of approved adjudicators, has ample experience in project management and adjudication and has accepted to give part of his time providing training and mentoring support. He accepted to help on this authorized FIDIC DAB mentoring programme. By the end of September 2012, the mentoring programme was successfully completed.

## **Mentoring Scheme Programme**

The mentoring programme has been performed over a period of 18 months and has been divided into face-to-face tutorials,

different modules, exercises, training workshops and direct involvement in real construction cases.

The modules and exercises were transmitted by email. Despite my huge day-to-day job, I had a reasonable fixed time to prepare homework. I spent time (after the daily normal working hours and during the week-ends) discovering new things and studying dispute resolution. What an amazing experience!!

The organization of the mentoring programme was as follows:

### **Face to face tutorial**

Tutorial 1: Introduction to pupilage,

description of mentoring, ADR

Tutorial 2: Dispute Boards / Role and functions

Tutorial 3: Arbitral proceedings

### **Modules**

Module 1: Understanding systems and source of materials

Module 2: Knowledge of contract

Module 3: Contracts administration and claims

Module 4: Procedural management and case management

Module 5: Construction dispute prevention

Module 6: DAB appointment and

Liability

Module 7: DAB hearings and decisions

### **Exercises**

Exercise 1: Operation of claim and DB provision

Exercise 2: Case study / DB decision

Due to the fact that I was directly involved in 6 construction disputes during the period of the programme, it has been considered that additional exercises were not required.

### **Training workshops**

Training workshop 1: This training workshop covered inter alia, the Disputes adjudication clauses and effects, Appointment of DAB members, Referrals hearing, decisions and Enforcement of the decisions.



Training workshop 2: This training workshop covered inter alia, the different Alternative Dispute Resolution and the benefits of Dispute Boards.

### **Analysis/Benefits**

By this mentoring programme, I acquired one strong understanding of the relevant aspects of the DAB having in mind how the disputes may be resolved. I also participated in DAB meetings/hearings as the Engineer's representative. This experience was for me very interesting and successful. During the amicable settlement procedures, I have also been involved in direct negotiations with the parties and I have drafted addenda to the contracts. Due to confidentiality, it's impossible for me to disclose additional information about this matter.

Based on my experience and the mentoring, I believe I am able to understand, describe and explain:

- The nature, rights and obligations of Dispute Boards.
- The limitations of a DAB's power and jurisdiction.
- The methods of initiating and processing a DAB.
- Application of the principles requirement set out in FIDIC books.
- Rules and arguments relevant to the conduct of a DAB.

The mentoring programme allows me to provide practical, fair and reasonable advisory services for the benefit of clients in procurement, contract administration and claim management, in particular when FIDIC contract conditions are chosen. In addition to this, the mentoring programme helps me to provide FIDIC training courses explaining claims, disputes, and DABs, for various Employers, Contractors, Engineers and Universities.

### **Improving Knowledge**

Mr. Alvin Toffler, an American writer and futurist quoted: "The illiterate of the 21st century will not be those who cannot read and write, but those who cannot learn, unlearn, and relearn".

The DRBF provides me excellent reading materials and strong information regarding dispute resolution. The Foundation is definitely a cornerstone to improve knowledge in dispute resolution matters.

To improve mentoring practice, my personal thoughts are as follows:

- The FIDIC organization may improve the communication about this free of charge mentoring programme.
- Nowadays just a few approved FIDIC international adjudicators are willing to help, train, monitor and support pupils interested in their professional development.
- All the DAB members appointed in the list of FIDIC President's approved adjudicator should have a pupil.
- The pupil should have 1 / 2 written closed book examinations in order to complete the programme. The eventual pass mark could be achieved in examinations and assignments/modules.

### **Acknowledgements**

My last words will go straight forward to Dr. Eng. Romano Allione who has been my mentor. He has demonstrated that he possesses excellent and huge infrastructure knowledge and good communication skills necessary to give reliable advices for such mentoring scheme programme. I express him all my gratitude and respect for his help, patience, time and support.

Mr. Gwyn Owen is also on my mind for his altruism. Thanks Gwyn for all!!

I would like to give thanks to FIDIC organization and especially Mr. Peter Boswell (former FIDIC general manager) who allowed me to proceed with this mentoring scheme programme.

One final thought: It better to give than to receive.....

Roger Ribeiro can be reached by email at [rri17@yahoo.com](mailto:rri17@yahoo.com)



## **DRBF 17th Annual Meeting & Conference James Royal Palm Hotel • Miami Beach, Florida**



### **Annual Meeting & Conference September 20 & 21, 2013**

#### **DRBs: Proactive Dispute Avoidance Through Communication & Collaboration**

Join the Dispute Resolution Board Foundation in Miami Beach for the 17th Annual Meeting & Conference. Experienced DRB users and practitioners as well as those new to the process will gather to discuss in-depth aspects of DRBs, with an emphasis on best practices, ethical considerations, and future prospects for expanding the process into new markets.

The conference is 1.5 days, with ample optional items to extend the networking and educational opportunities. The DRBF will host the first Golf Challenge on Wednesday morning, a social outing for conference delegates and guests. Three half-day workshops will be offered on Thursday, as well as a cocktail reception. Friday night is the Al Mathews Awards dinner for delegates and guests. The conference ends at noon on Saturday with a lunch, and optional events in the afternoon include a site tour of the Port of Miami Tunnel project, optional seminars on working as a DB practitioner in Latin America and improving communication skills.

#### **SCHEDULE OF EVENTS:**

Wednesday: Optional Golf Tournament

Thursday: Optional Workshops & Welcome Reception

Friday: Annual Meeting & Conference, Optional Awards Dinner

Saturday: Annual Meeting & Conference, Optional Seminars and Site Tour

#### **VENUE:**

The James Royal Palm Hotel • 1545 Collins Avenue • Miami, Florida 33139 USA  
Discounted group rates available

**For complete details and online registration,  
visit [www.drb.org](http://www.drb.org)**

## Training Workshops September 19, 2013

Three half-day workshops are offered: two will run concurrently in the morning from 8am - 12pm, and one in the afternoon from 1 - 5pm. All workshop participants will gather for lunch from 12 - 1pm, included with workshop registration.

### DRB Administration & Practice Workshop

The program provides basic skills training for people who are interested in working with or are using DRBs on all types of projects. It includes case study, lecture, demonstrations, exercises and the exchange of experiences and ideas for the effective use of the DRB process.

### DRB Advanced/Chairing Workshop

The workshop addresses the issues involved in chairing DRBs and is for practitioners who are interested in or are currently serving as DRB chairs. It includes case study, lecture, demonstrations, exercises, discussion of chairing issues and the exchange of experiences and suggestions for improving the DRB process for owners, contractors and DRB members. It is recommended that participants have taken the DRB Administration & Practice Workshop prior to attending this one.

### Introduction to International Dispute Board Practice

Focuses on international Dispute Board practice under FIDIC forms of contract and ICC DB Rules. Delegates will consider the powers, duties and procedures of the international DB and compare how these differ from the USA including working on multi-cultural projects. The workshop is aimed at construction professionals, owners and attorneys who wish to extend their practice abroad and at those wishing to be more familiar with dispute avoidance and resolution under FIDIC contracts.

## Golf Tournament September 18, 2013

Join the first DRBF Golf Challenge Day, a social outing for DRBF members and guests designed for maximum fun and a level playing field for all skill levels:

- 18 hole individual Stableford
- Full handicap (club registered – for any players with no club handicap please discuss with event organizer who will allocate a handicap for the day)
- Men's max handicap 28 / Ladies max handicap 36
- Mixed pairings

The outing will be at Crandon Golf at Key Biscayne, one of the top public golf courses in America. Surrounded by water, mangrove forests and lush tropical foliage, the course is one of the most beautiful and challenging par-72 courses in Florida. Learn more at Crandon Golf at Key Biscayne.

LIMITED TO 32 PARTICIPANTS  
EARLY REGISTRATION RECOMMENDED  
Questions? Contact Gwyn Owen  
(gwyn@easynet.co.uk) or  
Ann McGough (amcough@drb.org)





## Welcome to New DRBF Members Member Additions March 2013 – May 2013

Brian Ahern  
Deakin, ACT AUSTRALIA

Marlene Anglemyer  
Department of Enterprise Services  
Olympia, WA USA

David Armstrong  
Armstrong Consultancy Services (ACS)  
Billingham, NE UK

Robert Ashcroft  
Wellington, NEW ZEALAND

Shaun Bailey  
Corrs Chambers Westgarth  
Sydney, NSW AUSTRALIA

Paul Battrick  
Driver Trett  
Kenilworth, Warwickshire UK

Bob Bourg  
Department of Enterprise Services  
Olympia, WA USA

Stephen Callaghan  
Brisbane, QLD AUSTRALIA

Gustavo Paredes Carbajal  
Navarro Sologuren, Paredes,  
Gray Abogados  
Lima, PERU

Philip Cheesman  
Philip Cheesman & Associates  
Walkerville, SA AUSTRALIA

Andrew Chew  
Corrs Chambers Westgarth  
Sydney, NSW AUSTRALIA

Jaime Gray Chicchon  
Navarro Sologuren, Paredes,  
Gray Abogados  
Lima, PERU

Amanda Davidson  
Holding Redlich/Justice Services Pty Ltd  
Sydney, NSW AUSTRALIA

Mark Dempsey  
Barrister  
Sydney, NSW AUSTRALIA

Brian Dixon  
Garden Suburb, NSW AUSTRALIA

Bruce Embery  
Birkdale, QLD AUSTRALIA

Ian Douglass George  
Edmund Barton Chambers  
Sydney, NSW AUSTRALIA

Ronald Grant  
Nevada, MO USA

Dennis Green  
Project Resolution Associates  
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Richard Greenleaf  
Berg Hill Greenleaf & Ruscitti, LLP  
Boulder, CO USA

Alex Hartmann  
Baker & McKenzie  
Sydney, NSW AUSTRALIA

Owen Hayford  
Clayton Utz  
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John Henderson  
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John Wootton  
Timber Construction Solutions Ltd  
Auckland, NEW ZEALAND

Robert Zikmann  
Chalfont Chambers  
Sydney, NSW AUSTRALIA

Do you know someone interested in  
joining the DRBF?

***Help us expand by sharing information  
with your colleagues. Complete mem-  
bership information can be found on the  
DRBF web site ([www.drbf.org](http://www.drbf.org)) or contact  
the main office for details.***

## MAJOR MEMBERSHIP CONTRIBUTORS TO THE DRBF

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Peter Douglass  
Fenwick Elliott LLP  
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PS Consulting  
Salini Construction  
Sinohydro

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## DRBF Forum

Dispute Resolution Board Foundation  
19550 International Blvd. So. Suite 314  
Seattle, WA 98188 USA

## DRBF Calendar of Events

September 20-21, 2013

### **17th Annual Meeting & Conference**

September 18 - DRBF Golf Tournament

September 19 - Training Workshops

September 20 & 21 - Annual Meeting & Conference  
Miami, Florida

To be announced soon:

### **DRBF Regional Conference**

Johannesburg, South Africa

### **UK Member's Meeting**

London, UK

Visit [www.drb.org](http://www.drb.org) for complete event details and registration.