

DRBF Forum

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Dispute Boards: Counting the Cost

Murray Armes
DRBF Region 2
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Founder, Sense Studio

“The costs of litigation, and by implication, arbitration, also have a wider impact (some say they do actual economic harm) to society as a whole as a larger part of company budgets, resources and productivity are invested in litigation rather than productively in research, capital investment and market development.”

Litigation has always been expensive but the signs are that it is becoming increasingly so. A survey conducted by the US Chamber Institute for Legal Reform and others¹ showed that costs were increasing at a faster rate than increases in hourly rates. In the UK cost budgeting introduced by the Jackson Reforms has made participants more aware of the need to control costs but it is too early to say whether this has reduced them². Things are little better with international arbitration where both delay and costs appear to be rising³. The costs of litigation, and by implication, arbitration, also have a wider impact (some say they do actual economic harm) to society as a whole as a larger part of company budgets, resources and productivity are invested in litigation rather than productively in research, capital investment and mar-

ket development⁴. Anything that might help to reduce both the actual and consequential costs of disputes must be beneficial.

The way to reduce the cost of disputes is to try to avoid them in the first place and I have written previously about how that can be achieved⁵, namely by the use of Dispute Boards (DBs). If Dispute Boards offers such advantages why are they not more widely used, and surely the DB process itself must involve costs?

There are a number of barriers to the wider use of DBs:

- Lack of knowledge of the process
- Lack of knowledge about effectiveness
- Lack of locally available DB members

(continued on page 10)

¹ Litigation Cost Survey of Major Companies, by Lawyers for Civil Justice, The Civil Justice Reform Group and the U.S. Chamber Institute for Legal Reform, 2010.

² Litigation Trends-The Jackson Effect, Revolutionary Road, New Law Journal, 2013.

³ CIArb Costs of International Arbitration Survey 2011, The Chartered Institute of Arbitrators and International Arbitration Research based report on perceptions of document production in the arbitration process, by Berwin Leighton Paisner, 2013.

⁴ Excessive Private Litigation: The Impact on Business and Consumers, EU Private Litigation Paper, International Bar Association, 2005.

⁵ Everybody Has Won and All Must Have Prizes, by Murray Armes, Construction Law Journal, November 2011 and The Concept of Dispute Avoidance, by Murray Armes, paper given at the Kings College Annual Conference 2011 and published in the DRBF “Forum” in December 2011.

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President's Page



Paul Taggart
 President
 DRBF Executive
 Board of Directors

Dear Members, Supporters and Friends of the DRBF,

This year marks an important year in the history of DRBs, the 40th anniversary of the establishment of the first DRB. Many of you will be aware that the State of Colorado Eisenhower Tunnel Project in the USA played first host to this important debut in 1975. That event represented a fundamental milestone in construction dispute resolution and laid the foundations for the advent of Dispute Review Boards initially in the USA, but then also internationally.

Next year too sees an important milestone for the DRBF being the 20th anniversary of the establishment of the DRBF itself (1996). Those of the DRBF founding group who played an important role in the Eisenhower Tunnel project should be given full credit for their vision, as the application of Dispute Boards has since then been of considerable benefit to the construction industry worldwide.

The importance of the contribution of the DB system to dispute resolution in construction was subsequently recognised by a very large group of internationally acclaimed users starting with FIDIC (the premier international Consulting Engineer's Association), the World Bank, and the Asian Development Bank, amongst others.

The International Chamber of Commerce were next to recognise the contribution and importance of the system in 2004 when they introduced a set of DB rules for cross-industry application. As you will know the ICC represents the business community at large so the step of endorsing the system and providing rules for application beyond construction was rather significant. In 2014 the UK's Chartered Institution of Arbitrators, another institution of global significance, weighed in with its own set of DB rules, which were again for wider usage.

I am pleased to say that DRBF elected officers and members have been at the very heart of those developments, contributing their experience and knowledge and giving leadership. Thus from the Eisenhower Tunnel application, the initial contribution of the DRBF founding group should not be looked at simply in the context of construction but in the context of the wider contribution made to dispute resolution mechanisms as a whole, not forgetting its "real-time" advantage.

As an organisation, the DRBF DNA demands that we continue to lead and give guidance in the use of Dispute Boards. This will be our continuing challenge.

In practice DB's still face resistance and problems be they at the adoption stage or during operations, particularly in the international arena. However, I am pleased to note some recent additions to jurisprudence in support. The famous Persero cases quite recently decided in the Singapore High Court are noteworthy with regard to the enforceability of binding Dispute Board decisions. In this regard the second High Court decision rendered on 16 July 2014 ("Persero II", CRW Joint Operation vs. PT Perusahaan Gas Negara (Persero) TBK) approved an interim arbitral award



for the interim enforcement of a DAB decision emphasizing that “nothing in its interim award precludes the same tribunal from determining the primary dispute on its merits and with finality in future” (Persero II, paragraph 115).

Alongside the cases on enforceability of the decisions, enforceability of the Dispute Board provisions in a contract has also recently been elaborated. Here the Swiss Supreme Court in a decision dated 7 July 2014 (Case no. 4A 124/2014) decided that FIDIC Clause 20 established the Dispute Board as a mandatory step before arbitration so that even the absence of a time limit to appoint the Dispute Board did not change its mandatory nature.

Similarly, the Technology and Construction Court of the English High Court decided on 10 October 2014 (Peterborough City Council vs Enterprise Managed Services Ltd [2014 EWHC 3193 (TCC)]) that “in the absence of any agreement to the contrary, the [DAA] is to be in the form set out in the Appendix to Conditions[...].” (paragraph 28) and that even the signing of the dispute adjudication agreement should not be an imposed obligation given that “if a party without good reason refused to sign the agreement, I cannot see why it could not be compelled to do so by an order for specific performance at the suit of one or more of the other parties” (paragraph 31).

More importantly a body of DB jurisprudence giving support to Boards and the interim enforcement of DB decisions is accumulating which is dispelling any early fragility concerns. Those developments give gravitas to the system putting its place in dispute resolution beyond question. So onwards and upwards as they say!

That brings me to more recent events and my thanks go to Ann McGough and Paul Karekezi, our DRBF Representative for Kenya, for a wonderful DRBF Regional Conference in Nairobi, Kenya where the system is just getting off the ground. This follows on from our Regional Conference in Johannesburg last year which was also a success. The African continent is currently the Klondike of infrastructure investment and exciting times lie ahead for the development of Dispute Boards in that region. You will find a full report on the conference inside this edition.

Further events are due shortly and I would like to invite you all to the next events of interest which comprise our 15th Annual International Conference, this year held in the historical port city of Genoa, Italy (21 – 23 May 2015) and to our Northwest Regional Conference in Seattle, Washington (5 June 2015).

Once again my thanks to you all for your continued support and efforts.

A Conversation with... Gordon Jaynes



Gordon L. Jaynes
Recipient of the
Al Mathews Award
for Dispute Board
Excellence (2005)

Q You are a Charter Member of the Dispute Resolution Board Foundation: What prompted you to “sign on” with this new enterprise back in 1996?

A I had been involved in dispute resolution in engineering and construction contracts for some 35 years when the DRBF was “born”. I had witnessed a lot of the damage and waste which results from adversarial resolution of such disputes, and was drawn to the Board concept and technique -- or perhaps Board work is as much an “art” as a “technique” because so much depends upon persuading others.

Q You are from Washington State, were you practicing there when you became a Charter Member?

A No, I was born and reared in Washington State, and first admitted to law practice there in 1953. However, when the DRBF was founded I had already been based in England for 27 years. Five of those years I had served Kaiser Engineers & Constructors Inc. as Counsel for its projects in Europe, Africa, and the Middle East. I left Kaiser and returned to private practice in 1974, still based in England, and I continue that base today.

Q What triggered your decision to be a DRBF Charter Member?

A In 1993/4, I assisted The World Bank on its inclusion of the use of DRBs in a new edition of its Standard Bidding Document, “Procurement of Works”, which was published in January 1995. Later that year, FIDIC published its “Orange Book” (Design and Build Turkey Conditions) and included its DAB, closely paralleling The World Bank DRB provisions. The following year, FIDIC published a Supplement to its Red Book, enabling the use of a DAB under that set of Conditions, and it was clear that there would be a significant increase in the use of Dispute Boards outside the USA. When I learned of the founding of the DRBF, I became a Charter Member in July, 1996.

Q Were there any DRBF activities in England or elsewhere outside the USA at that time?

A Not to my knowledge. The DRBF was just starting, and it had no presence or activities outside the USA. However, the Charter Members could see that there were going to be many Dispute Boards on projects throughout the world. As I already had the experience of organizing the then International Construction Projects Committee of the International Bar Association, and was active in engineering and construction projects in several countries, I was invited to join the first DRBF Board of Directors and agreed to try to develop international membership and activities.

Q Do you think DRBF membership led to your being invited to serve on Boards?

A Truly, I do not know, because I have never asked a contract party why it has invited me to serve on its Dispute Board. If the contract party is an entity that I do not already know, I may ask how it came to know my name and background, but I’m not inclined to ask more than that.

However, I am confident that being an active DRBF member is an advantage when contract parties are searching for suitable Board members.

Let me add, though, that I think it is a mistake to join the DRBF on the assumption that membership will bring you Board appointments. Over the years we have had DRBF members drop their memberships, with the explanation that they are quitting because membership hasn’t brought any Board appointments. When we examine such a member’s period of membership we often find that the person did little, if anything, as a member except pay the membership subscription.

In contrast, if you study the members who become active as Board members you see



that they “invest” far more than the subscription: they volunteer to assist in arranging DRBF activities, both in their country of residence and internationally; they assist with DRBF “outreach” activities toward other organizations in the engineering and construction industry; they have “flown the DRBF flag” when appearing in events held by other organizations in our industry; they have written for publication on topics relevant to Dispute Boards. So, DRBF membership is helpful, but it is only the beginning of the development effort required to build a “profile” apt to lead to Board appointments. And building a successful profile takes time: it is not the work of a year or two!

Q You have chaired some Dispute Boards for major projects. What “tips” can you offer from that experience?

A Well, we could fill the entire issue of the *Forum* with such tips, but to restrict myself to just a few, I would say Tip 1 is “Don’t overcommit”. Don’t accept so many assignments that you are unable to give a contract the amount of time and care it deserves. Prevention of disputes requires discussion, thought, and comfortable personal relationships, both during and between site visits. Prevention is not possible if Board members are under pressures of other commitments.

Tip 2 is related to Tip 1: Never leave the site without having delivered the site visit report. Delivery before departure requires allowing adequate time when planning the visit, especially if the language of the contract is not the language of the country. An example: in Romania, a very successful Dispute Board distributed its site visit reports in draft form to the parties and the engineer, arranging a meeting with all recipients the next day to review the draft. The review was for correction of any factual misunderstandings of the Board, to confirmation that the wording of the draft was fully understood and there were no questions – I emphasize: “questions” – not arguments!

The review also highlighted any further information from the parties or the engineer which the Board was requesting in advance of the next site visit. The result was that the final signed version was a valuable record for future reference by the parties, the engineer and the Board, and it also provided each party and the engineer with an immediate written record of the visit which could be shared with others in the respective organizations of each party and the engineer.

Tip 3 is to make use of the time between scheduled site visits to stay abreast of events relevant to the project which have capability to give rise to claims. This requires arranging for the Board to receive documents which will enable the Board to follow the progress of the project and monitor events which have potential to cause claims and to monitor progress on actual claims submitted. Members should engage with one another and, through the Chair, arrange forthwith receipt of any desired additional information. In appropriate situations, use modern media such as Skype to enable “live” contact between the Board and the site between visits.

Tip 4 is to be creative to avoid your Board becoming dysfunctional. For example, if despite the contract requirements, the Board is not established until a significant and complex dispute has arisen which the parties eventually decide to refer to the Board, do not be trapped by time limits written into the FIDIC’s Clause 20 or the ICC Dispute Board Rules. Instead, persuade the parties to agree to change a time limit if the original limit is not realistically achievable. Example: instead of having the decision “deadline” linked to an amount of time measured from the date of the referral, have a shorter time limit run from the conclusion of the hearing and any post-hearing written submission allowed or requested by the Board. If several such disputes have accumulated, agree with the parties on a schedule of referrals so that a group of disputes do not reach the Board simultaneously.

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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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Q What do you see as the coming challenges to the future of Dispute Boards on international projects?

A Some of the big challenges are here already. Statutory adjudication may expand its scope to include significant areas of dispute besides payment of sums due, because of the comparative ease of enforcement of the decision of a statutory adjudicator. For Boards which make binding (even if not final) decisions, we need to develop faster effective enforcement than international commercial arbitration.

Budgets for, and the financing of, international projects should include the costs of the Board. This includes projects financed by the Multilateral Development Banks and the so-called International Financial Institutions. Even within a given bank or institution too often there is a lack of consistent policy on financing this cost.

Much more “sales effort” is needed in persuading employers/owners that a Board is a good financial investment for their projects. A comparable “sales effort” is needed to persuade project financiers to structure the project contracts to assure that Boards are in place from the outset of the contract and thereby able to help prevent disputes. The so-called ad hoc Board is a misnomer: it may or may not be more desirable than proceeding directly to arbitration but by definition it certainly cannot be a true Dispute Board which aims to prevent disputes.

I should stop, but please allow me to add one more challenge: the growth of “over-lawyering” of Boards and their operations, especially the almost fungal growth of procedural complexities, and the use of lawyers as Board members (even as sole members!) to resolve technical engineering and construction disputes.

Q Are you saying that lawyers should not serve on Dispute Boards?

A No, but I feel there is much wisdom in the reply to that question which was the favorite of the DRBF’s late Founder, Al Mathews: “Being a lawyer is not necessarily a disqualification for Board service.”

The likely nature of the contract disputes should inform selection of the qualifications of your Board. Especially on single person Boards, this point should be the major guide.

Q Are there any Dispute Boards on your “Bucket List”?

A Yes, there is one. I would like to chair a Board for a contract using FIDIC Conditions, with the Board established at the outset of the contract, paid no monthly fee but a daily fee for all work done, and empowered to make Recommendations but no binding decisions and with the parties free to arbitrate if no amicable settlement emerges within a stipulated time after receipt of the Recommendations. All costs of this “Bucket List Board” would be in the contract budget and eligible for financing.

This would run counter to FIDIC’s tradition of always having some entity in the contract with the power to make binding decisions, even if alterable in arbitration. But I believe the non-binding Recommendations system could work equally well – perhaps even better – under FIDIC Conditions than the present adjudication system.

Q For your Bucket List Board, which color would you pick from the FIDIC Conditions “Rainbow”?

A Ah, that’s easy -- The Gold Book! Except the changes to Clause 20 would have to include enabling the me to serve not only during Design and Build, but also throughout Operation, because that way I would be “guaranteed” a nice long run in the most interesting and satisfying work available – dispute prevention!

Gordon Jaynes can be reached by email at glj4law@aol.com.

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Executive Board of Directors Meeting Schedule

May 21
 in Genoa
 and
 June 15
 by conference call

Meeting notes from the Executive Board meetings are available to all members upon request.

The Board of Directors for each region also 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.



Ethics in Today's World of DRBs

Ethics Panel Discussion at the DRBF Annual Meeting and Conference in Toronto: Continuing Discussion of the Ethic Panel's Questions



Jim Phillips Ph.D.
Chair
DRBF Ethics
Committee

As I was drafting the title of this article, I started to use the terms “final discussion” but realized that our discussions at conferences and the discussions in this column are ongoing ones, in that we all, in my opinion, should be constantly open to revisit the discussion of ethical issues and seek out our colleagues for feedback and insight when we are faced with an ethical dilemma.

Several years ago at the DRBF Annual Meeting in Houston, Texas, I introduced a model of one approach to ethical decision-making. At its center was the practice of seeking feedback and insights from colleagues and trusted coworkers. The premise being ethical decision-making is best done in the light of day with the guidance and ideas of others. Those decisions made alone and not discussed with anyone are often not the best we could make.

Moving on to the Toronto conference, Roger Brown introduced a question of a DRB chair sitting as the Chair on several projects for the same owner, and on a difficult project behind schedule, the Chair engages in ex parte discussions with both principals from both parties between monthly meetings with everyone's knowledge. Moreover, the full Board and the principals meet before DRB meetings and reach decisions on issues that are then announced at the meeting.

My first comment is that Canon 2 of the DRBF Code of Ethics states that ex parte communications between the Board and either party should not occur. Whether the fact that all parties have knowledge that these communications are ongoing operates to mitigate its effect is an open question. My preference is that these types of communications be avoided completely.

On first review, this practice as described in Roger's issue looks expedient and effective, in part because, as I read it, everyone knows about the ex parte discussions and the between-regular-meeting meetings. Also, I would add that any analysis has to take into consideration the terms of the operating procedures adopted at the Board's installation on the project. If these practices were agreed to at the time of the DRB's inception, I would have to conclude that these procedures appear to look consistent with DRBF Canons of Ethics except for the ex parte communications discussed above.

However, as the question suggests, there may be dangers lurking ahead. One would be in the event the decisions under these practices are not satisfactory to the contractor, there could be a claim of bias, partiality and impropriety by the DRB toward the owner, since it could be argued that the DRB is the owner's DRB. Another potential issue is the absence of DRB recommendations, as it



appears that this is a negotiation process and not a dispute resolution process.

The reason that this may be an issue is, depending on the contract specifications and the relevant legal statute, either or both parties may be jeopardizing their rights to an administrative process in an appeal of the DRB's recommendations. Some might argue that it is a very positive outcome if there are no disputes to resolve during the course of the project and that all issues are resolved by negotiation. One problem here would be if an issue arose late in project, the facts suggest the project is behind schedule, that impacted the critical path and one of the parties realized that they had negotiated away their contractual rights, a friendly DRB could transform into a heated battle.

Roger does not reveal whether there was a record kept of all the negotiations and agreements, and if there was, at least there would be a record of the issues and how they were resolved. So, again, at first glance, this practice looks expedient and practical, but at the same time, dangers may lurk ahead.

I will address the ethics questions addressed by Bob Rubin and Chris Miers in the next issue of the *Forum*. If a reader has an opinion about my comments above, please feel free to email me.

**ETHICS:
FOR NEXT TIME**

Assume you are a newly minted engineer with a P.E. but no practical experience. Also assume that you have heard about the DB process and would like to participate on a Board in your area. You contact the Dispute Resolution Board Foundation and discover that typically the Foundation recommends that you have training in DB practices before you serve as a Board member. You do not wish to wait for the next training and decide to call your old friend who is the owner of ABC Construction Co. You explain the situation and request that he "have you appointed to the next DRB" his company has on one of its projects.

Sure enough, this owner calls his Board member recently selected to sit on a DRB as the owner's selection and lobbies heavily that you be appointed Chair. You even offer to pay this owner a third of all the fees you will be paid on the project. The owner agrees, and through intense lobbying, gets you appointed Chair.

Prior to the first meeting of the DRB you are asked to disclose any relationships that may affect your impartiality.

What should you do?

Ethics Commentary or Question?

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(continued from page 1)

- Suspicion about another layer of dispute resolution
- Employer had previous adverse decisions
- Not final and binding
- Enforceability
- Concerns about the costs

There are a number of organisations which are working to address most of the list above (including the DRBF), and this article is concerned with the last item on the list: costs. For anyone concerned with costs and faced with the choice of using a DB a few questions might arise:

- What does a Dispute Board cost?
- Why do I need one before any disputes arise?
- It must be expensive to have three members?
- It must be expensive for them to travel?
- Why should I not stick with arbitration or litigation?
- What is the cost of a DB compared to the alternatives?

Whether exponents of DBs like it or not, DBs are perceived to be expensive. Firstly the DB is constituted at the beginning of the contract, before any disputes have arisen. Secondly, DBs, especially for larger projects, comprise three or, sometimes, more members⁶. Sometimes Board members might have not been appointed from the local area, meaning travel and accommodation costs are a significant part of the cost of the process. This has been because experienced DB members were simply not available in some parts of the world (although DRBF training programmes are changing this) and there may also have been concerns about the impartiality of local members in a market that in some countries can be very small. This can lead to members being recruited from abroad and often from countries where the costs of living and therefore incomes were higher. Thirdly, parties

might be concerned that the costs of the DB are incurred, even if there are no disputes. Of course, the fact the Board is in place might be the reason that was the case!

Figures have been cited for years that have suggested the costs of a typical DB was around 0.1%-0.25% of the total construction costs of a project. The typical cost of a DB can be calculated by reference to past experience. For instance, in Florida member rates are typically \$1500-\$3000 per day. In order to control costs some public bodies only allow half-day meetings. Study time (for contract documents and site visit reports) of about four hours per month is allowed in addition. Assuming a daily rate of \$2000, and a three-person Board, each meeting costs \$6000, twelve meetings per year cost \$72,000. Taking account of study time, travel⁷ and writing of decisions, the annual cost is about \$75,000. The authorities report that the cost is about the same despite the size of the project, so clearly the DB will be more cost effective on larger projects. The Florida Department of Transportation has used DBs on about 750 projects, typically of \$15m and above. The total value of the projects is about \$17bn and the cost of DRBs to date amounts to about \$17.5m, or, on average, about 0.1% of the construction cost of each project.

For a DB the costs amount to:

- Daily fees for Board members for site visits
- Retainer fee (or hourly/daily rate for reviewing documents and keeping up to date)
- Daily fees for Board members for hearings
- Cost of producing the decision
- Travel and accommodation costs

Added to this are the costs for each party of representation and the costs of the venue for hearings. Site visits usually take place using facilities already available on site. A study of the costs of international DBs published in

⁶ Most international arbitration tribunals also comprise three arbitrators.

⁷ Most public bodies in the US use locally available members and place limitations on the distance between where the DB member resides and the project, or place limitations on the amount of travel cost which is reimbursable.



the Journal of Management and Engineering in 2010⁸ suggested that for most projects site visits were carried out 3-4 times per year; that disputes were referred in 0-51% of projects; the cost of site visits assuming a DB of three members with fees of \$3000 per day (on the high side) was \$81,000 per annum. The cost of the retainer, assuming one day per month at \$3000 for each DB member was \$108,000 per year. The cost of the DB per annum, assuming no disputes, was therefore \$189,000. It was suggested each dispute would cost about \$54,000⁹. It was estimated that for a project with a value of \$100m-\$400m lasting four years the total cost with no disputes amounted to \$756,000, the cost of, say, five disputes would be \$270,000, so the total cost of the DB was \$1,026,000 amounting to 0.2-0.04% of the cost of the project. For comparison, a single ICC arbitration with a value of \$5,000,000 would cost in the region of \$300,000¹⁰.

In Australia¹¹ research has shown that the cost of a typical three member DB is around 0.15% for an A\$300m contract, falling to about 0.09% for a project larger than A\$400m. One member DBs work out on average to be about 0.09% of the cost of a project below A\$100m.

This all points to the costs of the DB being insignificant compared to the cost of the project itself, and very good value when compared with the costs of international arbitration. Even so, there are times when DBs are still difficult to afford. For instance most international development banks will not include the cost of the DB as part of the loan for projects in developing countries. Such coun-

tries may simply be unable to afford the DB and may have insufficient foreign exchange to pay the DB even if it were affordable. Although most banks classify the DB process as “litigation”, one does allow the borrower to include the costs within its loan and also provides the means by which the costs can be estimated. That bank is the Japan International Co-Operation Agency (JICA) which in 2012 published its enormously influential JICA Dispute Board Manual¹². The pro forma used to calculate DB costs includes two examples, the first for a single person DB:

- DB member is a resident in the country.
- Daily fee is US\$2,000/day and retainer fee is US\$2,000/month.
- Construction term: 2 years
- Number of DB members: 1
- Frequency of site visits: 3 (6 total in 2 years)
- Termination: at expiry of Defects Notification Period and 1 year after TOC, fee is two thirds daily rate
- Assume 2 referrals to DB during construction.

The total cost was calculated to be \$145,000.

For the three person DB, JICA assumed:

- DB members are from foreign countries.
- Daily fee is US\$3,000/day and retainer fee is US\$3,000/month.
- Construction term: 4 years
- Number of DB members: 3
- Site visit: 3 days and average travel time: 3 days
- Frequency of site visits: 3 (9 total in 3 years)
- Termination: at expiry of Defects Notification Period and 1 year after TOC, fee is two thirds daily rate

CHARTER MEMBERS CONTINUED

Mechanical Contractors Association of Western Washington
Meyer Construction Consulting
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James L. Wilton
Ed Zublin AG

⁸ “Analysis of Dispute Review Board Application in US Construction Projects from 1975-2007” by Carol Menassa and Feniosky Pena-Mora, 2010.

⁹ Allowing for 6 days including travel, site visit and hearing and decision; note that depending on the complexity this may under estimate the time required to produce the decision.

¹⁰ ICC Arbitration Cost Calculator: <http://www.iccwbo.org/products-and-services/arbitration-and-adr/arbitration/cost-and-payment/cost-calculator/>

¹¹ The Benefit/Cost Equation for Dispute Boards-Australian Experience, paper given by Graeme Peck at the DRBF International Conference, May 2014.

¹² JICA Dispute Board Manual, March 2012, available from: http://www.jica.go.jp/activities/schemes/finance_co/procedure/guideline/pdf/DisputeBoardManual_201203_e.pdf



- Assume 3 referrals to DB during construction

In this case the total cost was calculated to be \$1,368,000.

Clearly the project where the three-member Board was appointed would have been much larger than that with the single person. Assuming the costs were about 0.1% of the project costs the values would have been about \$14.5m and \$137m respectively. Evidence suggests that 60% of disputes have a value of 0-10% of the project cost¹³. For the two examples this amounts to disputes worth \$725,000 and \$6.85m assuming the value is 5% of the construction cost. For the two-member Board we have assumed two referrals of \$725,000, which the ICC costs calculator predicts would each cost about \$50,000 in arbitrators and administrative costs (for a one person arbitration tribunal), so about \$100k in total. For the three-member Board, three disputes valued at \$6.85m would cost about \$340,000 each, a total of \$1,020,000 in arbitrator's fees and administrative costs (assuming a three person arbitration tribunal).

Although both scenarios work out to be less than the fees for the DB, remember they do not include the costs to the parties for representation and the internal management time need to deal with the disputes. This adds a large amount to the costs of arbitration and means the costs of the DB are less than the alternative. The DB process has the added benefit that it is usually much quicker to resolve disputes than arbitration, and the real reason the DB is used is to prevent the disputes, and the costs and disruption they entail, from crystallising in the first place.

Although the proponents of DBs claim they are good value, just like in litigation, with the Jackson Reforms in the UK, there is pressure to keep costs down. So, how can

DBs be made to be cheaper? Firstly, a single person DB is cheaper than three persons but the parties should always remember what type of expertise and the range required to deal with dispute avoidance and resolution for complex projects. Sometimes a single person is a poor investment. Secondly, the use of locally based members reduces travel and accommodation costs and if local living costs are lower then savings can be made on the fees charged by foreign DB members. It should be remembered though that properly trained and high quality and neutral DB members are not always (or at least not yet) readily available in some parts of the world. The DB can assist by ensuring the DB processes, whether dispute avoidance or dispute resolution, are not too legalistic and do not require an army of lawyers and legal advisors.

One of the real sticking points to the wider use of DBs though, and one often quoted by the development banks, is the retainer fee. This evolved from a provision in the World Bank 1995 edition of its "Procurement of Works" document in which the DB members were required to be available at seven calendar days' notice. The original fee to compensate for that availability was three times the daily rate, which based on International Centre for Settlement of Investment Disputes (ICSID) rates of the time was about \$750. However, since then the requirement to be available at very short notice has been relaxed, but at the same time the daily fees for ICSID arbitrators, which were the basis for DB fees, increased dramatically to \$3000 per day. For a three person DB the retainer fees alone could amount to \$27,000 per month, which for a three year project amounts to almost \$1m, and that is without daily fees, which for three site visits per year would amount to about \$567,000. Those figures do not include travel and accommodation which are seldom insignificant.

¹³ The Benefit/Cost Equation for Dispute Boards-Australian Experience, paper given by Graeme Peck at the 14th Annual DRBF International Conference, Singapore, May 2014.



So, should DB members consider dropping the retainer fee? There are arguments both for and against. There is no doubt the members will have to keep up to date with the project and preparatory work is required if the site visits are to run smoothly. But should such substantial amounts be paid regardless of whether the DB members actually do any work in any particular month? If the DB has a substantial amount of work to do each month the fixed \$9000 per month could be seen as good value but not all months are going to be busy. My own view is that a better approach would be charge for what the DB members actually do by applying an agreed hourly rate for work done outside site visits and hearings.

Despite the apparent pressure from employers for retainer fees to be dispensed with, the recent overhaul of the ICC Dispute Board Rules have kept them intact, except they are termed “Monthly Management Fees” rather than retainers. Although the DB will carry out some management, that is primarily the role of the Chair and the individual members may not be called upon to do very much. There is no doubt that all the DB members will have to stay up to date but its arguable whether an agreed time charge would not be a better, fairer and more transparent way of charging for time away from the site.

If retainer fees were excluded from the two examples above from the JICA Manual the costs would be reduced by \$63,600 for the single member Board and \$504,000 for the three member Board, or 43% for the one member and 37% for the three member Board. Although something would be added back for time charges for work outside the regular site visits and hearings, the psychological effect this might have on potential users might persuade them that DBs are very good value after all. Dispensing with retainer fees also makes the DB process much more cost favourable when comparing the process to ICC arbitration, something which employers are going to notice.

It has been suggested that DBs are rather like an insurance policy against the cost of traditional methods of dispute resolution. Potential users though have to be persuaded the insurance cost is good value when comparing it with the alternative. In this article so far I have looked purely at financial costs. Research carried out in Australia suggests that the use of DBs has a beneficial effect in reducing delays and cost overruns, not just in reducing the costs of disputes which in many projects do not arise. The figures are startling. The research suggests that the chance of an “industry norm project running late is 2.3 times greater on projects that do not have a DB and the chance of such a project running more than three months late is 6.5 times greater than projects with a DB and that there is a greater than 80% chance that a project with a DB will be completed at, or shortly after, the contract date for Practical Completion, compared to less than 50% for the industry norm.” The research also suggests that final contract cost of a project with a DB is 3-5% lower than a project without a DB in place.

The research done to date suggests that DBs really can provide excellent value for money with savings both directly and indirectly in time and money, not only in reducing disputes, but in actual savings in time and money of the project itself. It just remains for DB members to change their approach to fees so that retainer fees are replaced by transparent hourly rates to make the whole package as attractive as possible for potential users.

Murray Armes is DRBF Region 2 Treasurer and Founder of Sense Studio, a leading architectural practice specialising in dispute resolution and avoidance for the construction industry around the world. He can be reached by email at murray@sensestudio.co.uk.

Using a Claim Risk Profile to Determine DRB Usage



By Kurt Dettman and Sid Scott

Background

Some owners that have used or are considering using Dispute Boards (DBs) have at times asked the DRBF for guidance in establishing criteria for the use of DBs. This article describes how use of a Claim Risk Profile supporting Dispute Systems Design can be used to make decisions on DB usage.

Step 1: Development of Claim Risk Profile

Project risk management processes have been widely used to identify and manage project risks and assist project teams to more effectively manage uncertainties that may affect project cost and schedule. Experienced claims professionals employ similar tools in developing claims avoidance, management, and resolution processes and capacity.

As a first step in the claim risk analysis process, a claims professional will facilitate the project team (in a workshop setting) to identify and prioritize of the top potential claim risk issues for a given project. The team will qualitatively rate claim risks based on (1) the highest likelihood of occurrence for various categories of claims, and (2) the cost and schedule impacts of the potential claims on the project. Figure 1 illustrates a typical matrix that can be used in ranking claim risk factors. Probability is measured with a scale of 1 (improbable) to 5 (very probable); severity is measured with a scale of 1 (minor) to 5 (catastrophic). The product of severity and probability will be used to rate the risk factor. Depending on the value of this rating, a mitigation strategy may be adopted or further refinement may be needed.

If further refinement of the top rated claim risks is need to better distinguish their priority, a sensitivity analysis can be performed using a range of cost or schedule values (minimum, maximum, and most likely) for potential cost and schedule impacts as shown in Figure 2.

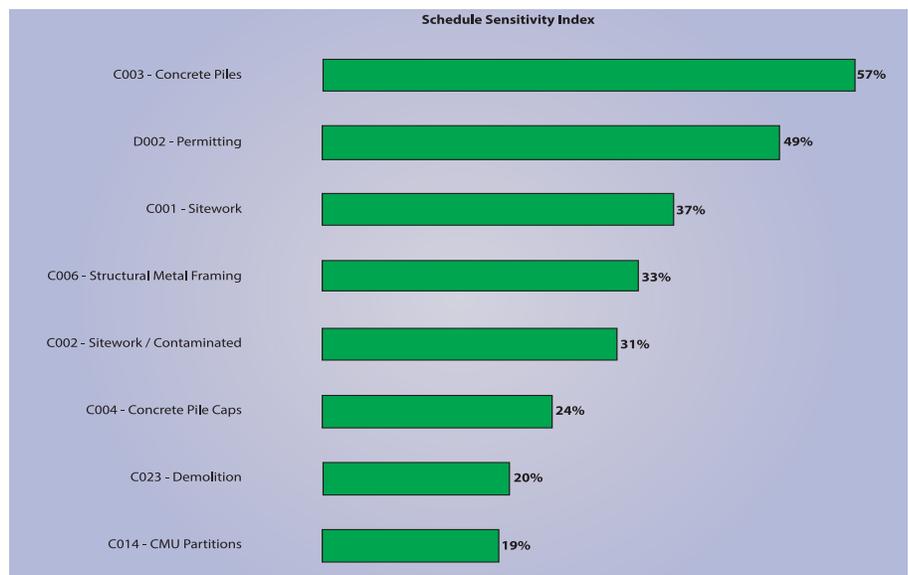


Figure 1: Qualitative Risk Matrix

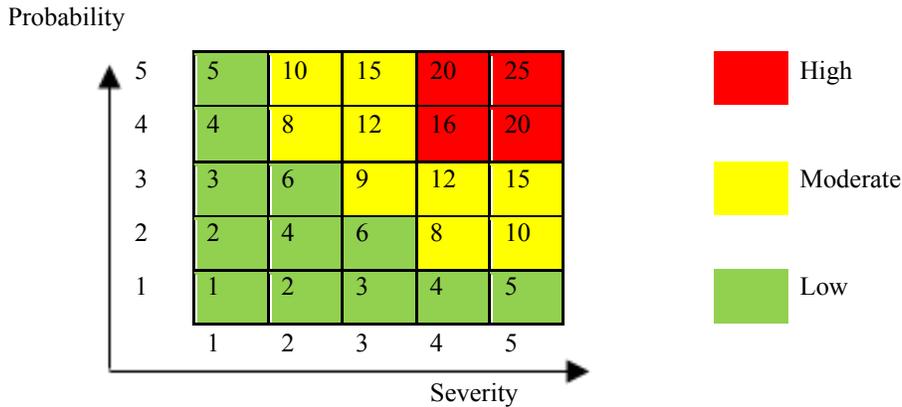


Figure 2: Example of a Sensitivity Analysis for Schedule Risks

As a final step, the team can then develop a mitigation/management plan focusing on the top 10 claim risks. These strategies may include contract risk allocation and suggested language in the contract, heightened documentation requirements, accelerated change management, alternative dispute resolution processes, or other mitigation or management strategies based on the priority of each potential claim. This process can be further refined later, if justified, with a quantitative assessment using statistical cost/schedule distributions and a Monte Carlo analysis.

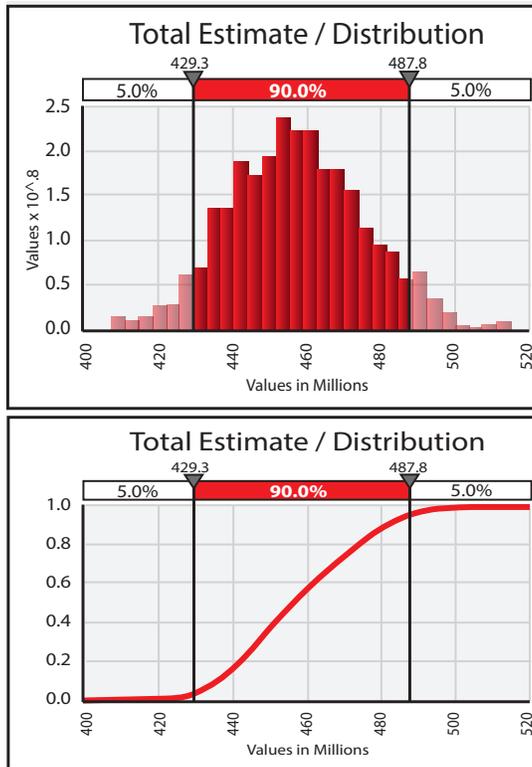
The example risk registers shown in Figure 3 below can be adapted to develop a claims risk profile (top 10 claim risks ordered by likelihood and impact), and proposed mitigation/avoidance strategies. If the team performed a quantitative analysis as shown in Figure 4, it could then overlay potential claim cost/schedule risks over the proposed budget (cash flow curve) to determine both magnitude and timing of potential claim cost and schedule impacts (claim risk profile) for purposes of establishing prioritization, contingencies, etc.

ID	Risk/Opportunity	Estimated Risk Impact (Expected Value)	Proposed Risk Mitigation	Mitigation Benefits				Expected Value of Mitigation		Cost to Implement
				Cost		Duration		Cost	Duration	
				Prob. Of Success	Distribution	Prob. Of Success	Distribution			
Risk #7	Possibility of hazardous material in earthwork excavation that can drive up bids	WBS#: \$2.8 m; 4 mons	<ul style="list-style-type: none"> Develop new geotechnical investigation plan; Get more data; Consider unit price for hazardous vs. regular material 	75%	Triangular; \$0.7m, \$1.2 m, \$1.6 m	75%	Uniform; 1 mon, 3 mons	\$1.17 m	2 mons	\$0.25 m
Risk #3	Utility locations uncertain	WBS#: \$4.7 m; 5 mons	<ul style="list-style-type: none"> Hire subconsultants to map and locate existing utilities; Consider bidding utility work separate from the main contract; Coordinate with utility companies by signing MOUs 	80%	Triangular; \$0.5m, \$0.8 m, \$1.2 m	80%	Triangular; 1 mon, 3 mons, 4 mons	\$0.83 m	2.7 mons	\$0.5 m
Risk							

Figure 3: Example Risk Register



Cost Risk Simulation/Output



Activities	Estimated Cost	Minimum	Most Likely	Maximum	Distribution
A. Design permits	\$ 31,500,000	\$ 25,200,000	\$ 31,500,000	\$ 39,375,000	
B. Approvals	\$ 4,500,000	\$ 3,600,000	\$ 4,500,000	\$ 5,625,000	
C. Station Construction	\$ 90,000,000	\$ 72,000,000	\$ 90,000,000	\$ 112,500,000	
D. Transit Construction	\$ 117,000,000	\$ 93,600,000	\$ 117,000,000	\$ 146,250,000	
E. Vehicle Design	\$ 13,500,000	\$ 10,800,000	\$ 13,500,000	\$ 16,875,000	
F. Systems Install	\$ 90,000,000	\$ 72,000,000	\$ 90,000,000	\$ 112,500,000	
G. Vehicle Manufacture	\$ 90,000,000	\$ 72,000,000	\$ 90,000,000	\$ 112,500,000	
H. Testing	\$ 13,500,000	\$ 10,800,000	\$ 13,500,000	\$ 16,875,000	
Total Estimate	\$ 450,000,000	\$ 360,000,000	\$ 450,000,000	\$ 562,500,000	

Summary Statistics for Total Estimate / Distribution				
Statistics			Percentile	
Minimum	\$	407,482,015	5%	\$ 429,288,018
Maximum	\$	514,910,058	10%	\$ 435,214,183
Mean	\$	457,497,979	15%	\$ 438,662,352
Std Dev	\$	17,851,384	20%	\$ 442,195,028
Variance	3.18672E+14		25%	\$ 444,789,936
Skewness	0.088383195		30%	\$ 447,695,132
Kurtosis	2.889020491		35%	\$ 450,178,762
Median	\$	457,217,770	40%	\$ 452,809,795
Mode	\$	454,356,628	45%	\$ 454,793,173
Left X	\$	429,288,018	50%	\$ 457,217,770
Left P	5%		55%	\$ 459,177,134
Right X	\$	487,823,661	60%	\$ 461,552,958
Right P	95%		65%	\$ 464,230,735
Diff X	\$	58,535,643	70%	\$ 466,667,077
Diff P	90%		75%	\$ 469,302,335
#Errors	0		80%	\$ 472,744,853
Filter Min	Off		85%	\$ 476,092,907
Filter Max	Off		90%	\$ 481,342,935
#Filtered	0		95%	\$ 487,823,661

Figure 4: A Quantitative Analysis Histogram and Cumulative Distribution for Total Project Duration



Step 2: Dispute Systems Design

After development of the Claim Risk Profile, the project team then moves to Dispute Systems Design, where it assesses what types of dispute avoidance/dispute resolution techniques would work most effectively. The Dispute Systems Design analysis will take into account: the types and frequency of claims predicted; the type of contract risk allocation; the types of players involved; and (provisionally) the most suitable techniques to bring the matter to closure, with the goal being to do so at the project level using a “best for project” standard. An example of dispute prevention and resolution approaches is summarized at a high level in Figure 5, where the factors of time, cost, and control are compared.

Based on that assessment, the team would develop a “claim flow chart” and then critically assess, at each step of the process, whether the provisionally selected technique was most suitable for that step in the process. The cost of the process (both external and internal) would be only one of the measurement criteria, and efficacy of the process to meet the project goals for dispute avoidance/resolution would be the primary criteria. Here, for example, the efficacy of a DRB process to prevent and resolve disputes at the project level could be assessed based on the type, frequency, etc., of potential disputes and claims.

Step 3: Reconciliation with Remainder of Risk Assessment/Risk Mitigation Program

The final step would be to compare the results of the Claim Risk Profile/Dispute Systems Design process for compatibility with the overall project risk mitigation strategy, with appropriate adjustments made as needed. The key point is that the Dispute Systems Design should fit into the overall approach to risk management, not just be a “cut and paste” add-on to the contract terms as is often done on projects.

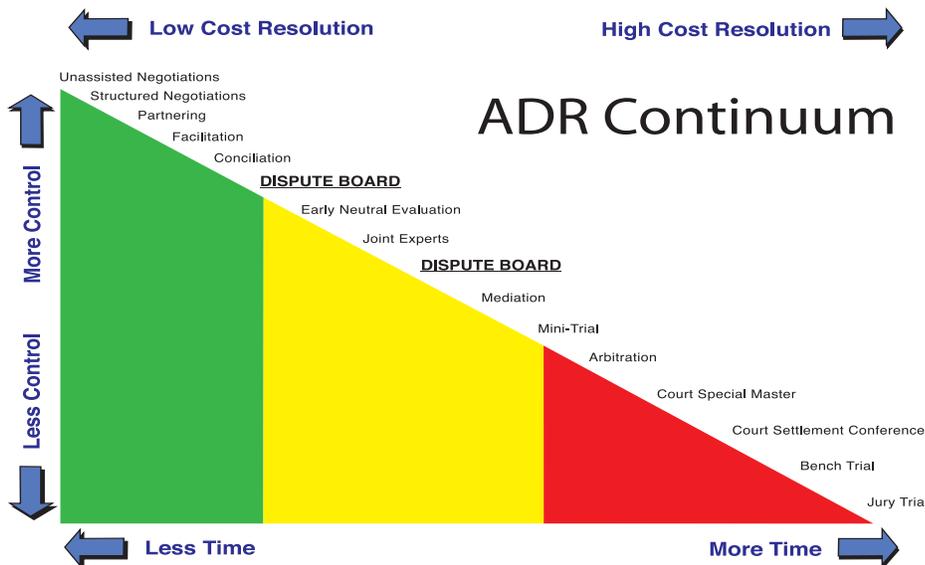


Figure 5: ADR Continuum



Step 4: Analysis of DRB Options

The scope of this article is not to explore all aspects of Dispute Systems Design, but the authors have attached a comparison chart that could be used as a basis of comparing factors in Dispute Systems Design. For purposes of this article, the authors will assume that there is a project level use of partnering and/or a stepped resolution process to resolve disputes at the project level. However, for those disputes that may result in formal claims, the DB process could be considered if the following criteria are part of the Claim Risk Profile:

- High risk engineering or construction challenges that may result in constructability or differing site conditions claims.
- Claims that may involve higher dollars or time impacts (typically this would be on projects US\$75M or greater or 24 months or more).
- Longer term, phased projects where maintaining good management relationships will help maintain project progress.
- Alternative project delivery approaches that have different risk allocations, different phases, and multiple players.

DBs are well suited to deal with projects that fit this risk profile since they have a high probability of generating significant, complex claims. Initially, DBs assist the parties in preventing disputes and claims by the regular on-site visits where issues are discussed and often resolved based on questioning by the DB. In addition, the DB can head off incipient claims with the use of Advisory Opinions. But, these preventative measures alone may not be enough to justify, in many owner's minds, the carrying costs of DBs.

So, if one shifts the focus to formal claims, the DB can provide a cost-effective way to resolve claims, and even more so when compared to other alternative dispute resolution techniques and/or litigation. The DB, being neutral project-knowledgeable construction industry experts, can rapidly and relatively inexpensively provide an informal, but thorough, hearing process to analyze the merits of claims. By way of example, claims can be divided into entitlement first, with cost and time coming back to the DB only if the parties cannot agree. The DB's detailed analysis and findings and recommendations give the parties a roadmap to resolution, either by acceptance of the DB's recommendations (or decision where appropriate) or through further negotiations to a settlement. This process is much cheaper and faster than other alternatives such as arbitration, and is certainly "faster, better and cheaper" than years of litigation with the inevitable "settlement on the courthouse steps." In addition, if there is a scalability issue, a single person Dispute Resolution Advisor can be used instead of a three person Dispute Board so that the basic DB process is preserved, but the carrying costs are less.

Conclusion

The authors propose a two-step process to decide on DB usage. First, development of a Claim Risk Profile to predict in a rigorous process the type and frequency of



claims. Second, use of a Dispute Systems Design process to analyze what dispute prevention and dispute resolution techniques would work most effectively based on the Claim Risk Profile. Within the context of this analytical approach, the project team can analyze whether the potential type and frequency of claims warrants the use of the Dispute Board process.

Kurt Dettman is President of DRBF Region 1 Board of Directors and can be reached at kdettman@c-adr.com. Sid Scott is Senior Vice President at Hill International and can be reached at SidScott@hillintl.com.

DRBF Regional Conference & Workshop

June 5, 2015 • Seattle, Washington

The DRBF's Northwest Regional Conference is an annual gathering of DRB users and practitioners in the Northwest Region who meet to discuss best practices, ethics, challenges and solutions. This year participants will take an in-depth look at the considerations that owners and contractors need to weigh when selecting DRB members, and review some recent case studies from the region. In addition, participants will complete the DRB Administration & Practice Workshop, essential training for anyone serving on or using DRBs for a project.

Registration begins at 7:30 am with continental breakfast served. The event starts at 8:00 am and lasts until 4:30 pm, with morning and afternoon breaks and catered lunch from 12:30 - 1:30 pm for all participants. This full-day workshop qualifies for Mandatory Continuing Legal Education (MCLE) credits from the Washington State Bar Association.

Register today at www.drb.org

DRBF East Africa Regional Conference in Nairobi

Paul Karekezi
Conference Chair
and DRBF
Representative
for Kenya

The DRBF held the first East African Regional Conference in Nairobi, Kenya on 26-27 February 2015. Nearly 100 delegates representing employers and public agencies, engineers, contractors, funding institutions, legal professionals, and Dispute Board practitioners gathered to explore “Real-Time Dispute Avoidance and Resolution for Construction Projects.”

Delegates split into two groups on the first day, with the majority participating in an Introduction to Dispute Boards Workshop led by DRBF Region 2 Director of Training Simon Fegen, Region 2 Board Member Mark Entwistle, and experienced trainer Malcolm Kelley, with support from DRBF Country Representative for Kenya Paul Karekezi providing context for the East African audience. An Advanced Workshop was also offered for delegates already serving on Dispute Boards. DRBF Region 2 President Elect Andy Griffiths and DRBF Representative for South Africa Anton van Langelaar challenged participants with interactive exercises and discussion of ethical issues and the fine points of DB proceedings.

The Honourable Attorney General of Kenya, Professor Githu Muigai, EGH, SC delivered a keynote address to the conference on day two. With an emphasis on the importance of ADR in Kenya, he offered his view on the future of Dispute Boards in the country.

“The need for Dispute Boards is bound to increase in the region soon following the

recent discovery of oil, gas, coal and mineral reserves all over the region,” said Professor Muigai. “Investors, financiers and governments will be wise to mitigate the litigation and work stoppage risks through Dispute Boards.”

Conference sessions explored diverse topics such as the unique challenges and opportunities for Public Private Partnership projects, enforcement under FIDIC and the law, and case studies and experiences from projects throughout Africa. There was also a presentation on the application of Dispute Boards within a Statutory Adjudication environment, in anticipation of new legislation under consideration within Kenya.

Conference delegates enjoyed a Welcome Cocktail Reception sponsored by Intex Construction. The DRBF is also grateful for the generous support of sponsors GIBB International, H Young & Co. (East Africa) Ltd., and Probyn Miers, and the promotional support of the Centre for Alternative Dispute Resolution, Chartered Institute of Arbitrators of Kenya, the Institution of Engineers of Kenya, Roads and Civil Engineering Contractors Association and the Uganda Association of Consulting Engineers.

The DRBF East Africa Regional Conference and Training Workshops built enthusiasm and enhanced knowledge of the successful use of Dispute Boards for projects throughout the region.



DRBF Region 2 Board member and tutor Mark Entwistle addresses delegates of the Introductory Workshop.

FIDIC/ARIC/EFCA Regional Infrastructure Conference 12-13 March 2015 in Bucharest

The Dispute Resolution Board Foundation was a sponsor of the first Federation Internationale des Ingenieurs Conseils (FIDIC) conference in Romania, held 12 and 13 March 2015 in Bucharest together with European Federation of Engineering Consultancy Associations (EFCA) and, Romanian Association of Consulting Engineers, (ARIC).

“Romania is the logical choice for this unique conference; a country in the centre of Europe, eager to develop, utilising the resources available through membership of the European Union, and keen to adopt international best practice”, said Mr. Enrico Vink, FIDIC Managing Director.”

Indeed, Romania proved to be the country in Central and Eastern Europe that most uses FIDIC contracts and the Dispute Board method to prevent and settle disputes in construction and design-build contracts.

More than 100 representatives of construction companies, engineers, designers, and authorities as well as representatives of public bodies in Romania, representatives of European institutions, international financing institutions, professional organizations from Romania, Bulgaria, Moldova, Poland, Check Republic, Hungary, all gathered together to discuss and share their experience. They discussed good things and things which need to be improved through increasing the awareness at all levels and using the existing legal possibilities or improving the legal regulations. They are more or less the same, maybe at different scale, and can be solved through common actions.

The participants gave witness that the construction industry is more and more aware of good and reliable construction and dispute resolution methods. It is already a more mature market, that reacts whenever abnormal procedures – like using unbalanced conditions of contract, awarding contracts to the lowest tender – are encountered, and sanctions these procedures often having, in most cases, bad results.

The Dispute Boards are seen – and this was one of the items thoroughly discussed at the conference – as a valuable asset and a good instrument towards a correct contractual behaviour and a guarantee, in the financier’s view, of an effective implementation providing good value for money within the contracts in which they invest. Now much more than before, the financial institutions showed that they not only care, but support the use of balanced contracts and especially, Dispute Boards.

As the DRBF Representative for Romania, a member of the Boards of Directors of DRBF Region 2, and a supporter of the use of correct and balanced contracts like FIDIC contracts are, I could not be more delighted. I wish the professionals from all countries have this satisfaction, of seeing the industry in which they work functioning well, with good professionals, aware of the correct way to do the things.

The DRBF is happy that it was a sponsor of this professional event and that it had the honour to have as guests at the dinner it offered in the first day of the conference important officials from FIDIC, ARIC, EFCA, and DRBF members from Romania and from other countries, as well as people interested in the values DRBF, FIDIC, EFCA and ARIC promote.

The FIDIC/ARIC/EFCA Regional Infrastructure Conference of 12-13 March 2015, in Bucharest was a good conference that showed the status of the construction industry in Romania and pointed the aspects that need improvement in a growing Romanian and Central and Eastern European market. Attending this conference we got the confirmation that the actors in the construction industry are increasingly aware of how things should function, of how things can be improved and that the market got from its childhood and teenage towards its maturity and that the dispute boards are an active part of it.



Alina Oprea
Member, DRBF
Region 2 Board of
Directors and
DRBF Representative
for Romania

New DRBF Representative for The Netherlands: Arent van Wassenauer



Arent van Wassenauer
DRBF Representative for The Netherlands

The DRBF is pleased to welcome the following newly appointed DRBF Representative for The Netherlands, Arent van Wassenauer.

Mr. van Wassenauer has been a private practitioner since graduating from Groningen University in 1983. Prior to joining Allen & Overy LLP he worked with Houthoff Buruma and Norton Rose. He advises both the private and the public sector in construction and procurement related issues. He has written numerous books and articles on construction and procurement law related issues. Mr. van Wassenauer was a co-chair of the International Bar Association's (IBA) International Construction Projects Committee from 2003-2005 and he was the Chair of the IBA's Section on Energy, Environmental, Natural Resources and Infrastructure Law from 2011 – 2013. He is chairman of the editorial board of Construction Law International. Recently, he has been voted in as fellow in the International Academy for Construction Lawyers. He is also the chairman of the Dutch council of the International Project Finance Association.

In his practice Mr. van Wassenauer does transactional and contentious work, the latter both as counsel and as third party neutral. He has been involved in the drafting of the first Dutch standard DB-FM-contract and accompanying tender guidelines. He has furthermore advised the Dutch government on its first infrastructure alliance project. Internationally, he has advised in alliancing projects in Australia, Brazil and Mexico.

Being a trained mediator, his focus for some time has been on preventing disputes and making projects a success. Successful projects being defined as

projects completed within time, within everyone's budget, according to the employer's objectives, with no hindrance to the environment, with happy stakeholders and with no disputes. In fact this is a kind of "mantra" where everyone has or should have parallel interests.

He has written many articles on this topic, both in such magazines as Construction Law International, the International Construction Law Review and the Dutch legal press. In 2008, together with his then colleague Coen Thomas, he wrote a book on exactly that topic: "www.werkinuitvoering21.com - interactively to a new generation of building contracts". The new model-building contract which was part of that book was applied in numerous building projects which subsequently were completed in accordance with the mantra just mentioned. An important part of that, obviously, is having in place an efficient escalation / de-escalation process including the appointment of a DB. In 2005, as a member of a working group including all major Dutch building and dispute resolution organisations, he was co-responsible for a completely new set of DRB regulations (also discussed previously in the DRBF newsletter).

Mr. van Wassenauer is a firm believer of the DB concept. In all major building contracts he has advised in, he has made sure that a standing DB was appointed. He also believes that an ad-hoc DB, however attractive it may seem for the parties involved from a cost perspective, does not do justice to projects to be completed within the scope of the mantra. He said he has sat on ad-hoc DBs in which it took parties too long to agree on the scope of the dispute and on the DB members. Thus, such DBs ended up function-



ing as a form of informal arbitral tribunal which is not very helpful. Besides acting as a substitute judge in the Court of Appeals Arnhem-Leeuwarden and often sitting as arbitrator, he has sat on numerous standing DBs in major Dutch projects. His contribution to the DRBF, hopefully, will be to further spread the word, thus resulting attract more Dutch DRBF members and the widespread use of DBs for Dutch projects.

Arent van Wassenae can be reached by email at Arent.vanWassenaer@AllenOverly.com.

Upcoming DRBF Events

May 21 - 23
15th Annual International Conference
Genoa, Italy

June 5
Northwest Regional Conference
Seattle, Washington

October 1 - 3
19th Annual Meeting & Conference
San Francisco, California

November 19 - 20
DRBF Regional Conference
Istanbul, Turkey

Register today at www.drb.org

Welcome to New DRBF Members

Member Additions December 2014 - February 2015



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Help us expand by sharing information with your colleagues. Complete membership information can be found on the DRBF web site (www.drbf.org) or contact the main office for details.

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Save the Date!
DRBF 19th Annual Meeting & Conference

October 1-3, 2015

Marriott Union Square San Francisco, California

The **DRBF 19th Annual Meeting and Conference** will integrate practical experience shared by users of the DRB process with in-depth analysis of this evolving dispute resolution process. With an emphasis on the DRB's unique role in dispute avoidance as well as resolution, conference delegates will explore ethical and legal issues, lessons learned from existing DRB programs, and future expansion of the process. Participants will also engage in interactive discussions that deepen understanding of the successful implementation and use of Dispute Boards worldwide.

The event kicks off with a full day of optional workshops on Oct. 1, followed by the two-day conference Oct. 2 & 3. The popular Al Mathews Awards dinner will be held on the evening of October 2. The hotel registration website is accepting reservations, so book your room today! Conference registration will open soon.

**Mark your calendar
 and plan to join us!**

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Forum Newsletter Editorial Deadline

Our readers love to hear Dispute Board success stories, challenges facing the process, and the latest industry news and events.

If you have new information about Dispute Boards, DRBF members, or an article to share, please let us know!

Contact
Forum Editor
Ann McGough
at amcgough@drb.org

Deadline for
the next issue:

June 1, 2015

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Contact details for
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on the DRBF
website:
www.drb.org



DRBF 15th Annual International Conference

Dispute Boards: The Continental Approach

May 21 - 23, 2015
Genoa, Italy

The DRBF's annual International Conference attracts the top Dispute Board practitioners, employers, funding institutions, contractors, legal professionals and consultants all active in alternative dispute resolution. In 2015, the conference will be hosted for the second time in Italy, in the historic city of Genoa. Day one offers full-day interactive training, with an introductory level workshop for those new to the process, and an advanced level workshop for experienced Dispute Board practitioners. The two-day conference features engaging presentations and lively panel discussions about the latest developments and issues facing the alternative dispute resolution community worldwide, with an emphasis on the application of the Dispute Boards process under Civil Law jurisdictions.

- May 21 **Dispute Board Workshops** - A full-day introductory workshop or practical case study workshop for advanced practitioners. Earn CPD credits!
- May 22 & 23 **International Conference** - Presentations and panel discussions from funding organizations, employers, engineers, legal professionals, and DB practitioners, plus interactive discussion and networking.
- May 22 **Gala Dinner** - Enjoy socializing with conference delegates, speakers and guests at the popular Gala Dinner to be held at Via Garibaldi 5.

The workshop will be held at **The Bristol Palace Hotel** and the conference will be held at **Palazzo Ducale**, a historical building in the heart of Genoa. Details on travel and tourism, hotel options, and more are available on the conference website.

Visit www.drb.org for details and registration



DRBF Forum

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

DRBF International Conference: Gala Dinner

Via Garibaldi 5 • Genoa

Join conference delegates, speakers and guests on Friday, 22 May for an elegant four-course dinner featuring traditional Genovese cuisine and live music in the style of Genoa's famous violinist and composer, Niccolò Paganini. The venue is Via Garibaldi 5, a palace on Genoa's popular Via Garibaldi, a street lined with palaces dating back to 1550. Located in the central historic district, within walking distance of the host hotel and conference venue.

Dinner tickets are \$130 per person, inclusive of Italian wine, and guests have the option to select a menu of Meat, Fish or Vegetarian options, all emphasizing seasonal specialties. Cocktail attire.

