



# Forum

VOLUME 16, ISSUE 3

AUGUST 2012

## Optimizing the Use of DRBs on Construction Manager/General Contractor and Design Build Projects

By Kurt Dettman and Chris Kane

### Introduction

Dispute Review Boards (DRBs) typically are used on Design Build Bid projects (DBB) to address disputes that may arise between the owner and the contractor. On DBB projects disputes often grow out of the nature of the DBB contractual relationships, where there are two separate contractual arrangements--one between the owner and the designer and another between the owner and the contractor. Most disputes brought to a DRB are directly between the owner and the contractor, and the designer often is not a direct participant in the DRB process.

The construction industry is now moving to alternative project delivery (APD) approaches including Construction Manager/

General Contractor and Design Build. These APD methods materially change the parties' contractual arrangements in a manner that results in: shifts of risk allocation; more direct involvement by the designer; and (if working correctly) greater collaboration among all the parties in project delivery. This article explores some of the implications of these different project delivery methods and the role of the DRB.

### Characteristics of Construction Manager/General Contractor Project Delivery Approach

Construction Manager/General Contractor (CM/GC)<sup>1</sup> is a method that expands the conventional role of the contractor into acting as both construction manager

*(continued on page 12)*

<sup>1</sup> The CM/GC delivery method is also called the Construction Manager At-Risk (CMAR) method by state law in some states.

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“As the construction industry increasingly uses APD methods, DRBs need to adapt as well to this changing environment. Fundamentally, the same projects with the same engineering, cost and schedule challenges will still be built, but the contractual and management landscape will change depending on the project delivery methods used.”



## President's Page

Dear Members, Supporters and Friends of the DRBF,

Let me start with congratulations and thanks to the organizers of the 12<sup>th</sup> Annual International Conference held in Sydney beginning of May. Besides the record breaking number of participants, the variety of the subjects presented, the quality of the presentations, the excellent conference facilities and a memorable gala dinner you had achieved to create an atmosphere of a family event, where all felt welcome and taken care of.

Those who had taken the opportunity to visit places in Australia may also have learnt something they didn't know before. For me it was most surprising to learn that Australia is not only the country of the kangaroos, dingoes and crocodiles, but also a country of 1.8 million wild camels. Also visiting Ayers Rock and Kings Canyon was worth every cent.

The further spreading of dispute avoidance and dispute resolution through the Dispute Board process Down Under is in competent hands. In acknowledgement of that the DRBF Executive Board and the DRBA Executive Board have agreed that Australia/New Zealand will become DRBF Region 3 starting 1<sup>st</sup> January 2013, which was announced at the conference. Final preparations are underway.

While we are still thinking of Australia we are not neglecting other parts of the world. The next upcoming events are:

London, UK: DRBF UK Member's Meeting September 14  
New York, NY: DRBF 16th Annual Meeting & Conference September 29-30  
Bucharest, Romania: Training Workshop in the Romanian language October 23-24  
Doha, Qatar: DRBF Regional Conference and Workshops November 5-7

The organizers of these events are as ambitious as those of the Sydney Conference. Therefore please support also their efforts in participating in these events.

The Executive Board has set itself an ambitious plan to establish a DRBF Policies & Administrative Procedures Handbook. This is for giving guidelines and rules for the administration of the DRBF. It is not to be confused with the DRBF Practices and Procedures Manual, which is for practitioners and users of the Dispute Board process. The ambitious aim is to complete this by the end of this year.

As this is the last time I address you this way, I would like to thank all of you for your assistance during my year of presidency. At the occasion of the Annual Meeting & Conference in New York I will hand over the presidency to Roger Brown. I look forward to seeing many of you there.

Until then,

A handwritten signature in black ink, appearing to read 'Volker Jurowich', written in a cursive style.

Volker Jurowich, President  
DRBF Executive Board of Directors

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The members of the Executive Board of Directors are:

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Doug Holen, Director and President, Region 1 Board  
Paul Taggart, Director and President, Region 2 Board  
Romano Allione, Past President  
James J. Brady, Past President  
Peter M. Douglass, Director, Past President  
Gwyn Owen, Director, Past President  
Joe Sperry, PE, Founder, Honorary Director

The Executive Committee meets monthly. Recent topics have included:

- Development of a DRBF Policies and Administrative Procedures Handbook
- Long term funding and strategic planning
- Support to project owners for identifying qualified DRB candidates

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**.

## Executive Board of Directors Meeting Schedule:

August 17, 2012 by conference call  
September 28, 2012 in New York  
October 19, 2012 by conference call

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

Dispute Resolution Board Foundation  
19550 International Blvd. So., Suite 314, Seattle, WA 98188  
Phone: 206-878-3336 Fax: 206-878-3338 Toll free (US only) 888-523-5208  
Email: [info@drb.org](mailto:info@drb.org) Web: [www.drb.org](http://www.drb.org)

### Region 1

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Doug Holen, President  
Deborah Mastin, President Elect  
Roger Brown, Past President  
Kurt Dettman  
Don Henderson  
Eric Kerness

### Region 2

#### Board of Directors

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James Perry, President Elect  
Richard Appuhn, Past President  
Murray Armes  
Andrew Griffiths  
Christopher Miers  
Alina Valentina Oprea

# US Agencies Seeking Qualified DRB Candidates

## MTA Capital Construction Company

The MTA Capital Construction Company (MTACC) acting as an agent of and on behalf of the Metropolitan Transportation Authority (MTA), is looking for candidates qualified in dispute resolution.

Interested candidates can send or email a detail resume of their qualifications and expertise to:

Mr. Everett McIndoe  
DRB Administrator  
MTA Capital Construction  
2 Broadway, Room A8.24  
New York, NY 10004  
Email: emcindoe@mtacc.info



## Michigan Department of Transportation

Michigan Department of Transportation (MDOT) has issued a Request for Qualifications for Construction Services in order to develop a pre-qualified application pool of candidates for MDOT's Dispute Review Board program.

Candidate qualifications are currently being accepted. This RFQ does not have a closure date, therefore applications may be submitted throughout the year. For complete details, please request a copy of the RFQ document.

Questions can be addressed to the MDOT Project Manager:

R. Jason Clark, P.E.  
8885 Ricks Rd  
PO Box 30049  
Lansing, MI 48909  
517-322-6630  
517-322-5664  
ClarkJ25@michigan.gov



### Forum Editor: Ann McGough

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

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

The *Forum* welcomes articles on all aspects of Dispute Resolution Boards, and members are encouraged to submit articles or topics to the DRBF, attn: Editor.

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Robert J. Smith P.E., Esq.  
Strabag, Inc.  
Techno Engineering  
The De Moya Group, Inc.  
Watt Tieder Hoffar &  
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***Thank you for  
your support!***

**Washington State Department of Transportation**

The Washington State Department of Transportation (WSDOT) is soliciting Statements of Qualifications from consultants who wish to be evaluated and considered for On-Call Disputes Review Board (DRB) Members (State and Third Party) for Transportation related construction projects.



**Washington State  
Department of Transportation**

To access the advertisements and complete information on the Project Description, Submittal Information, Evaluation Criteria, and other items, please go to the WSDOT Consultant Services web site at:

<http://www.wsdot.wa.gov/business/consulting>

The State and Third Party advertisements are separate listings under: Advertisements / Open Advertisements. If you do not have Internet access, please call 360-705-7104 to obtain a hard copy of the advertisement.

Dates of publication in the Seattle Daily Journal of Commerce: Friday, July 27, 2012 and Friday, August 3, 2012. Submittal Due Date: no sooner than September 13, 2012. OPEN UNTIL FURTHER NOTICE thereafter.

**DRBF 2012 Event Calendar**

September 14

**UK Member's Meeting**  
Charles Russell LLP  
London, UK

September 28

**Training Workshops:  
Administration & Practice  
Advanced/Chairing  
Introduction to International  
Practice**

Sheraton Hotel & Towers  
New York, New York, US

September 29-30

**DRBF 16th Annual Meeting  
and Conference**  
Sheraton Hotel & Towers  
New York, New York, US

October 23-24

**DRBF Training Workshop:  
Advantages of Using  
Dispute Boards**  
*Workshop offered in Romanian*  
Novotel Bucarest City Centre Hotel  
Bucharest, Romania

November 5-7

**DRBF Regional Conference  
& Workshop**  
InterContinental Hotel  
Doha, Qatar

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



## Ethics in Today's World of DRBs:

***During a project site visit by the DRB, the contractor complains that DRB Chair has been having ex parte telephone conversations with the owner about what the DRB's position would be on disputes should they be brought to a hearing***

By Jim Phillips Ph. D.

The question posed at the end of the last volume of the *Forum* prompted Allen Thompson to write in from Miami. I am delighted to hear from members and readers about questions posed because the purpose of this column to generate discussion and sharing of ideas so that better decisions regarding ethical issues can be reached in our practice. Please feel free to also write/call in with a question that you wish to be discussed here.

Allen's comment is, assuming these circumstances arose when all parties and the full DRB were present, he recommends placing the issue before the parties, the owner and contractor with the DRB present, and allow them discuss it and attempt to resolve it. At a minimum, Allen recommends replacing the Chair in the same manner he/she was named originally.

I totally agree with Allen's comment. The DRB Chair has lost her/his neutrality by having ex parte discussions with a party. Canon 2 of the Foundation's Code of Ethics specifically prohibits these types of communications. The circumstances in this question, in my opinion, go beyond the creation of **an appearance** of a conflict of interest. They clearly constitute one. If the DRB Chair has been providing "insider" advice or predictions to the owner about the projected DRB recommendations regarding ongoing disputes on the project, there is a loss of trust by the contractor for the integrity of the process. Moreover, the foundation of the DRB process, respected neutral construction industry professionals providing advisory recommendations for the early resolution of project disputes, has been shattered.

Moreover, the DRB process emphasizes project re-

lationships. At the beginning of each project on which a DRB is sitting, there is a certain amount of trust building required, especially for owners and contractors who are not familiar with the process. The integrity of these relationships is built on the premise that all parties hear the same information at the same time from the Board, so there is no appearance of a conflict of interest or favoritism by any Board member toward any of the parties. These circumstances do not pass the smell test for a conflict of interest.

Canon 5 of the Code of Ethics provides that the "DRB shall impartially consider all disputes referred to it." DRB recommendations are to be based solely on the parties' positions articulated at formal or informal hearings, the contract documents, and oral testimony and argument. The idea that there is no hearing by "ambush", and that each party has the opportunity to rebut and refute the other's interpretation of the contract documents and the events that transpired on the project. These circumstances belie the DRB process.

The DRBF's Practices and Procedures Manuel address the issue of the DRB chair communications with the parties between regular meetings. Section 3.4.5 envisions the Chair performing necessary administrative functions, such as drafting meeting agendas and corresponding with other Board members. However, it anticipates communications from the Chair, **to both parties simultaneously**.

There have been situations in my practice as a Chair where there is a need for telephone conversations with the parties for such tasks as scheduling hearing dates, resolving questions about the briefing schedule of the position papers and other legitimate questions that arise between regular meetings. I have very rarely, if ever, not held

conference calls with both parties in attendance to accomplish these tasks so there is no appearance of impropriety.

There may be circumstances where an ex parte communication may be warranted in health emergencies or project emergencies, but even then, content about disputes should never be discussed without all parties in attendance. If the discussion starts moving toward content the Chair should end the call immediately or make the effort to reach the other party and bring them into the call. If there are ex parte telephone calls, I immediately call the other party and explain the nature and purpose of the ex parte call. If the communication is by email, I advise forwarding the email to all parties immediately.

Again, the idea is to avoid ex parte communications entirely and the appearance of conflicts of interest and partiality. Full disclosure should occur if ex parte communications occur.

Thanks again to Allen for writing in.

## **NEXT ETHICS CHALLENGE**

Assume that you sat on a DRB and some time after the project has been completed and final payment has been made, the owner's Project Manager telephones you to request that you provide a recommendation for him/her for a new job with another owner or contractor.

### **How should you respond?**

### **Ethics Commentary or Question?**

**Please contact:**

Jim Phillips

DRBF Ethics Committee Chair

P: 804-289-8192

E: [jphillip@richmond.edu](mailto:jphillip@richmond.edu)

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# **Election: Executive & Region 1 Board of Directors**

The DRBF is holding elections for open positions on the Executive Board of Directors and the Region 1 Board of Directors. Ballots are available online and are distributed to all members by email or hardcopy.

All DRBF members are invited to vote for the position of President Elect for the Executive Board of Directors. The candidate is Graham Easton.

Region 1 members are invited to vote for the position of President Elect for the Region 1 Board of Directors. The candidates are Kurt Dettman and Don Henderson

Summary statements of each candidate's experience and approach to the position are distributed to all members with their ballot. New Board members will be installed at the DRBF Annual Meeting and Conference in New York.

**Ballots are due by September 10, 2012**

# Arbitral Awards Reinforce Effectiveness of Dispute Boards

By Alina Valentina Oprea

Dear friends, I want to share with you a new way of preventing/solving disputes using Dispute Boards that I witnessed recently.

This year, 2012, I have experienced some interesting developments with Dispute Boards. In Romania, we have some arbitral awards that confirm that the Dispute Adjudication Board decisions given in the FIDIC contracts should have been applied by the parties. Some arbitrators even gave partial awards not only stating that DAB decisions obtained years ago should have been applied, but also obliging the parties to put them into practice now.

The effect of this was that people started to understand that, after spending years and huge amounts of money, the arbitral awards are not different than the DAB decisions in essence. So, the consequences are that some of the employers and contractors are beginning to think:

Why spend time and money on arbitration when the DAB decisions will stand anyway – but also include compounding interest and the other party's cost, increasing the overall amount? Therefore, the DAB decisions on existing projects start to be applied without escalation to arbitration.

OR

The arbitral awards confirm the DAB decisions; the DAB decisions are based strictly on the documents and statements provided by the parties regarding a particular contract, and they are to be applied. The two parties may have many contracts together, and several claims and unsolved issues. So why not have an amicable settlement of all the unsolved issues rather than having one or more DAB decision(s) on one or more contracts, which cannot settle issues of all the contracts of the two parties?

In both such cases the DAB members were paid

according to their time spent contributing to the parties' amicable settlement of the disputes and issues – during the DAB process, exchanging documents, pleading at the hearing, answering the DAB's questions. The parties better understood the cases and their chances for a favourable decision, so the amicable settlement became possible and desirable.

I would like to read here in the *Forum* about ways in which Dispute Boards, in their various forms, contribute to the prevention and settlement of disputes that arise between the parties in contracts. Who will take the challenge?

*Alina Valentina Oprea can be reached by email at [alina.oprea.v@gmail.com](mailto:alina.oprea.v@gmail.com)*



## 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! Contact Forum Editor Ann McGough by email at [amcgough@drb.org](mailto:amcgough@drb.org).

*Deadline for the November issue is*

**October 1, 2012**

# DRBF Country Representatives

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**United Arab Emirates**

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Páll Ólafsson

**Phillippines**

Salvador P. Castro, Jr.

**United Kingdom**

Murray Armes

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

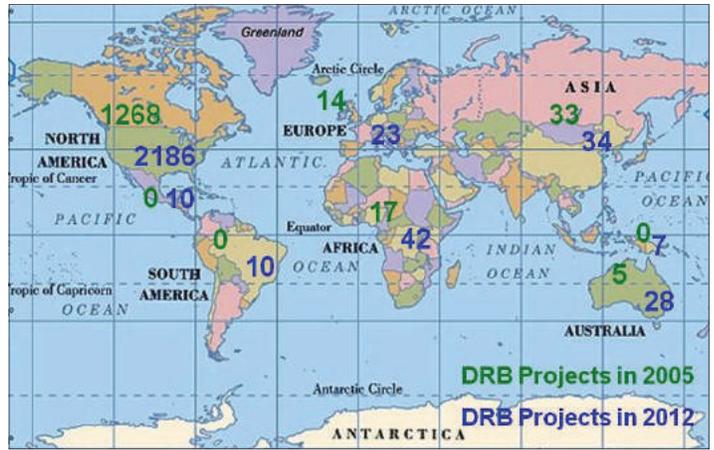
Interested in becoming a Country Representative?  
Contact Coordinator Andy Griffiths at [andyg@goba.co.za](mailto:andyg@goba.co.za)

# Reporting for DRBF Project Database Moves Online - Member Input Needed

By Roger Brown

Keeping track of and recording basic project information has been a challenge for the DRBF for many years. Beginning with the first project in 1979, Eisenhower Tunnel, until 1992 there were only a 100 projects that had Dispute Boards. There was little problem of tracking where they were, the type and size of the project, who served on the Boards, how many issues were heard, and other relevant data. However by the year 2000 some 100 Boards per year were being added, which meant the numbers now approached over 1,000 projects which needed tracking. Thanks primarily to Joe Sperry, the DRBF managed to collect data up until that time. Rapid expansion throughout the US made data collection increasingly difficult, not to mention growth of the process throughout the rest of the world, and one or two people could not collect the information as too many Board members simply failed to report the data (including yours truly).

Recently the DRBF was able to collect information for over 2200 projects thanks to the research efforts done primarily by DRBF member Kathleen Harmon and her staff. Many DRBF members and project owners replied to their e-mails and calls which got us much closer to having significant data which has been cataloged and sorted. This information is vital to the DRBF when it comes to train-



ing and marketing the process to potential new agencies and project owners. The statistical data convinces them that the process works in preventing disputes from going to costly litigation.

So why I am I telling you all of this? Very simply it is because we need a process to continue collecting new data as well as to fill in the gaps where projects were not reported at all or there was specific minimal data that was not reported. We have developed a website form that is easy for reporting. It requires some minimal data that must be recorded for the statistical information. After that if you can provide some of the additional information please do. I am asking everyone who is currently on a Board, typically the Board Chair, to take the time to fill out the form for the Board you are on. In the future let's make it a practice for the Board

Chair to fill out the data immediately after the first DRB meeting as the required data is available at that time.

The DRBF will send the form on a routine basis to solicit data from members. In addition,

Maps are samples of the kinds of materials the DRBF can use for promotional purposes. Image left shows US states with DRB projects as of 2012; world map image above shows DB projects by continent 2012. Images provided courtesy of Kathleen Harmon.



the form is available on the DRBF website (www.drb.org), and a copy can be obtained from the DRBF office.

*Roger Brown can be reached by email at roger@rbrowncg.com*

**DRBF  
Project Database  
Survey**

- Project Name\*
- Project Type\*
  - A - Airport
  - B - Building
  - H - Bridge & Highway
  - O - Other
  - R - Rail
  - T - Tunnel
- City
- State/Province\*
- Country\*
- Start Year\*
- Finish Year
- Owner\*
- Contractor\*
- Contract Value\*
- Owner's Project Number
- Number of Disputes Heard (Advisory and Formal)
- Number of Disputes to Binding Arbitration or Litigation
- Data Source
- Name of DRB/DB Chair
- Name(s) of DRB/DB Member(s)
- Comments

Only the most basic data readily available to the public is needed for tracking purposes. Additional details are helpful but not required, and should not interfere with any confidentiality requirements.

\*Required data

**Welcome to New DRBF Members**  
**MEMBER ADDITIONS APRIL - JUNE 2012**

Howard B. Borlack  
McCague Borlack LLP  
Toronto, ON CANADA

Yasemin Cetinel  
Cetinel Law Firm  
Istanbul, TURKEY

Souhail Chalouhi  
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Portland, OR USA

Sameh Ibrahim  
Property Development Systems Australia  
Double Bay, NSW AUSTRALIA

Karen Knowles  
Glen Esk, QLD AUSTRALIA

Phillip B. Lovell  
VP Turner Construction (Retired)  
Edmonds, WA USA

Alberto Marulanda  
INGETEC S.A.  
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David J. McCabe  
Lasco Engineering  
Lusaka, ZAMBIA

Bryan Pape  
Sydney, NSW AUSTRALIA

Levis E. Shiver  
Palm Harbor, FL USA

**Know someone interested in joining the DRBF?**

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

(continued from page 1)

and builder. Through a Guaranteed Maximum Price (GMP) or Lump Sum Price (LSP) approach, it creates a single source of responsibility for both construction cost and schedule risk, leading to more reliable construction pricing, more realistic schedules, and better project controls. By allowing an owner to engage a construction manager during the design process, the contractor is able to work closely with the designer and thus can provide constructability and value planning input, leading to a better defined scope and design on which the GMP or LSP is based.

The Construction Manager (CM) is generally selected on the basis of qualifications, past experience, and other “best-value” considerations, using a combination of weighting and evaluation factors. During the design phase, the CM works closely with the designer and provides input regarding design options, scheduling, pricing, means and methods, and other input that helps the designer design a more constructible and cost effective project. At approximately 60% to 90% of design completion, the owner and CM negotiate a GMP/LSP for construction and delivery of the project based on the defined design, scope and schedule. If this price is acceptable to both parties, they execute a contract for construction services, and the CM also becomes the General Contractor (GC).

### Characteristics of Design Build Project Delivery Approach

Design Build (DB) is a method of project delivery in which a contract is executed with a single entity (the DB contractor) providing both design/engineering and construction delivery services for a fixed price. The DB contractor is generally selected on a best value basis (qualifications, price and other factors). The contract in this approach typically progresses through two phases, 1) completion of a higher level of design (60%+) prior to 2) fixing the price and completing construction. However, a DB contractor can also be procured initially on a competitive bid basis of LSP, where the level of design could be as little as 10% (conceptual) or as much as 30% (preliminary engineering).



## CLAYTON UTZ

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For further information, contact:



**Doug Jones**  
Partner  
T +61 2 9353 4120  
djones@claytonutz.com

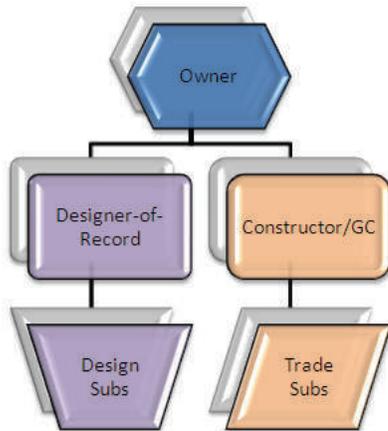
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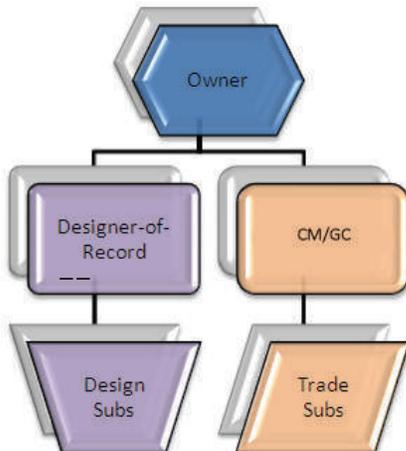
Owners benefit in DB from reductions in the cost and time to complete projects because design and construction can be fast tracked and sequenced in parallel so that materials/equipment procurement and construction work begin sooner. The owner also benefits from reduced procurement cycles that are typically required in selecting a designer and then preparing fully designed bidding packages. Furthermore, it has been demonstrated that contractors and designers, working as an integrated team, can produce less expensive and better designed structures and facilities. This also expands opportunities to use innovative construction technology, accelerated scheduling, and improved means and methods that are incorporated into the final design. Moreover, because the DB contractor is solely responsible for the completed project, the DB contractor also is motivated to advance a quality project throughout the design and construction process.

## Comparison of Contractual Structures

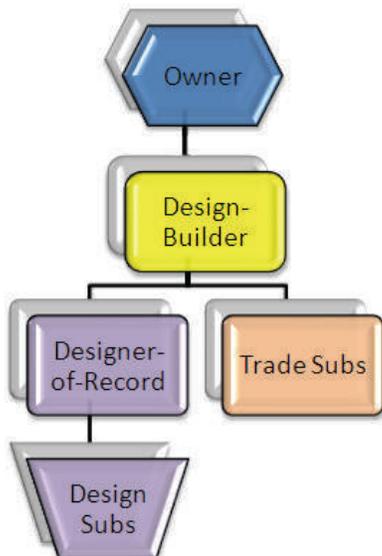
### Design – Bid - Build



### CM/GC



### Design-Build



## Is There A Different Role For The DRB On A CM/GC Project?

The short answer is no. In a CM/GC approach, the owner still has separate contracts with each of the designer and the CM/GC. The major difference, as noted above, is that the CM/GC will have had a role in providing constructibility, schedule and cost input to the designer in the final design process. In most CM/GC projects there will be extensive pre-construction services prior to finalizing the GMP/LSP, which involves the CM working closely the designer. Fundamentally, however, the owner will still maintain design responsibility under the *Spearin* Doctrine.<sup>2</sup> There are, however, some potential changes in the claim risk profile that may affect the number and types of disputes that the DRB may see. These include:

- The DRB will likely see fewer differing or changed conditions claims because the CM/GC, having been involved with the final design process, will have knowledge of (and some input into) the final design. The bottom line is that with a CM/GC approach, there are fewer “surprises” about the conditions under which the CM/GC will build the project.
- The DRB should see fewer constructibility (a/k/a design error and omissions) based claims because the CM/GC will have performed some level of constructibility reviews.
- The DRB may see claims that are cousins of DBB changed conditions claims, the “out of scope/GMP” claims. Under the typical CM/GC arrangement, the CM/GC at some point (usually close to or at final design) will give the owner a GMP that is based on many assumptions and exceptions that the CM/GC specifies as the basis of its pricing. Once construction gets under way, there may be disputes about what was inside/outside the GMP.
- Some GMPs include contingency allowances, and there are sometimes disputes over whether a particular event or circumstance (leading to delay

<sup>2</sup> Under the *Spearin* Doctrine, the owner warrants to the contractor that the design on which the bid is based is constructible if built in accordance with the plans and specifications. *United States v. Spearin*, 248 U.S. 132 (1918).

or extra cost) should be chargeable against the contingency.

- The DRB will still be expected to play its typical “dispute prevention” role since the conventional contractual silos with their attendant friction points will remain in place.

### Is There A Different Role For The DRB On Design Build Project?

The short answer is a qualified yes. The fundamental difference between DBB and CM/GC on the one hand, and DB on the other, is that under a DB approach there is “single point of responsibility” for both design and construction. The following are some of the types of disputes that DRBs may see:

- There should be a virtual elimination of constructibility (design error and omission) claims since the DB contractor is responsible for both accepting any preliminary design provided by the owner and delivering a final constructible design.
- The dispute landscape may shift in focus to arenas where the owner has retained responsibility under the DB approach; these can include potential liability areas such as: right of way, environmental remediation, utilities, permits, and force majeure-type events.
- Like CM/GC, disputes may also arise on the scope of the project that the DB bought in its bid price--that is, were there assumptions and understandings that went into the pricing the scope of the project that have changed during the course of the project?
- Another type of claim that may arise, especially with owners that are on a learning curve with the DB approach, is whether the owner has delayed or changed the final design through its approval (or lack of approval) processes. A cognate type of claim may arise with construction inspection/acceptance where owners have difficulty implementing a Quality Assurance approach rather than using the traditional owner Quality Control inspection for acceptance of the DB contractor’s work.
- A final potential area of disputes is where the owner has put in prescriptive specifications that limit the DB team’s discretion, thereby poten-

tially giving rise to a *Spearin* Doctrine-type claim that the owner ultimately dictated the final design and therefore still has responsibility if the design is not constructible or fails. Stated another way, the more discretion the DB contractor has, the more responsibility it will have; the less discretion it has, the more likely it will still have a claim against the owner if the final approved design fails.

- The DRB’s “dispute prevention” role may be more limited (in theory) since it will be focused only on the contractual friction point between the owner and the DB contractor, and not on design/construction issues as between the entities comprising the DB contractor team (designers, subcontractors and suppliers).

### Commentary on the Role of the DRB on APD Projects

As the construction industry increasingly uses APD methods, DRBs need to adapt as well to this changing environment. Fundamentally, the same projects with the same engineering, cost and schedule challenges will still be built, but the contractual and management landscape will change depending on the project delivery methods used. With this in mind, the authors suggest the following for the DRB community of practice to consider:

1. DRB members need to understand the basic structuring, contractual relationships and management programs that are in place for each type of project delivery. Understanding this changed landscape of risk allocation, responsibilities, and roles is fundamental for the DRB to function effectively within the applicable project framework. Stated another way, the DRB must be attuned to and adjust its role to fit with the changed contractual and management landscape under each of the delivery methods.
2. DRB members need to apply different dispute prevention techniques that can vary depending on the project delivery method. For example, in a DBB delivery method the designer may not be “at the table” in regular project meetings because the Owner “owns” the design that has already been

“set” in 100% plans. In contrast, on a DB project the designer of record will be part of the DB contractor team and will likely be at the regular meetings where design related issues may be on the agenda (especially early in the project as construction plans and drawings are being prepared). Having the designer “at the table” may increase opportunities for the DRB to encourage the parties to resolve design issues together in the best interests of the project.

3. DRB members will need to understand the different types of claims that may arise within the changed framework of contractual and management relationships. For example, traditional claims (e.g., defective plans and specifications) under a DBB delivery model will be materially changed under a DB delivery model. The corollary to this is that DRB members may not be able to apply traditional DBB analysis and outcomes to DB based claims (e.g., non- applicability of the *Spearin* Doctrine on projects where the DB Contractor owns the design).

4. DRB members also need to recognize (and embrace) the opportunities for applying more effective dispute prevention techniques. For example, in CM/GC project delivery it is assumed that the CM/GC will assist the designer in coming up with a better engineered design and in resolving engineering challenges before construction begins, and this ethos should carry forward to building the project as well. Likewise, on DB projects the designer will be more “visible” since the early phases of the project typically will involve a rolling design process to produce “release for construction” plans and drawings. The DRB can use these changed relationships as an opportunity to encourage the parties to work together to solve engineering challenges at the lowest cost rather than positioning themselves for the more typical “it’s your problem, so fix it” approach that DRBs often see on DBB projects.

5. In addition to the dispute prevention techniques mentioned above, the DRB may also have more flexibility in proposing the use of informal advisory opinions within the context of the more collab-

orative approach to project management under CM/GC and DB project delivery approaches. For example, advisory opinions could be a good option for disputes about “what is within the CM/GC GMP or what is within the DB price”, or “what design or construction responsibilities were assumed under the CM/GC or DB contract”?

### Conclusion

The fundamental role of the DRB is to prevent disputes, if possible, and help parties resolve them, if needed, at the project level. The move to APD approaches is an effort by the construction industry to try to get project participants to take a “best for project” approach to addressing challenges, avoiding disputes, and resolving claims. Greater collaboration between all the participants in the process is characteristic of APD. This is entirely consistent with the approach and philosophy of DRBs. BUT, DRBs need to reinforce these changes by understanding and embracing the new project deliver paradigms, while still maintaining the fundamental elements and integrity of the DRB process.

**Kurt Dettman** is the principal of Constructive Dispute Resolutions, an ADR practice specializing in dispute avoidance and resolution in the construction industry. Kurt is on the DRBF Region 1 Board of Directors, Co-chairs the DRBF Transportation and Energy Committees, and is the DRBF Region 1 Director of Training. He can be reached at [kdettman@c-adr.com](mailto:kdettman@c-adr.com).

**Chris Kane** is Vice President, Senior Counsel for Alternative Project Delivery for AECOM. Chris is both a licensed engineer and licensed attorney, and has been an arbitrator and a mediator for almost 20 years. He has advocated, proposed and structured DRBs on transportation and power plant construction projects. He can be reached at [christopher.kane@aecom.com](mailto:christopher.kane@aecom.com).

# Construction dispute?

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T 61 2 8281 4555  
F 61 2 8281 4567  
E [law@cbp.com.au](mailto:law@cbp.com.au)  
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# A Case History: DAB Use of Experts and Time Limits Under the FIDIC Rules

By Richard Appuhn

## Synopsis

The time allowed under the FIDIC Rules for a Dispute Board to give its decision or recommendation is 84 days<sup>1</sup> from the date that the presiding member receives a referral from a party. The parties invest in the Dispute Board wide discretionary powers under the rules<sup>2</sup> to adopt inquisitorial methods and to establish procedures including (i) conduct any hearing as it thinks fit, not being bound by any rules or procedures, (ii) take the initiative in ascertaining the facts. Depending on the nature of the referral the DAB must determine if it is able to decide the issue using its own expertise or whether it requires the use of experts for that purpose. It must adopt procedures suitable to the dispute and avoid any unnecessary delay.<sup>3</sup>

Subject to the time allowed to deliver its decision the Dispute Board must adopt procedures suitable to the dispute and avoiding unnecessary delay or expense. This requirement often raises questions in the mind of the Dispute Board when the amount or time involved in the dispute becomes a significant proportion of the contract amount or of the time for completion. It must weigh the significance of any decision it renders against what each party has at stake.

This article deals with an infrastructure project in an industrially developed country where the contractor contracted with a public entity under the FIDIC Red Book. The dispute arose out of unforeseeable physical conditions in respect of the source of embankment fill. The employer eventually varied the work to allow for the use of off-site borrows located at a significant distance from the site. The variation order paid the costs of the extra work, but in the mind of contractor did not compensate for what it alleged to be significant additional delay and disruption costs, approximately 15% of the original contract amount. The parties were not able to resolve the dispute, which was finally referred to the Dispute Board for a decision.

The Dispute Board weighed the significance of the

amount claimed against the time and costs for giving its decision and decided to avail itself of expert advice for delay analysis and quantum determination. The Board took significantly longer than 84 days to issue its decision, but the decision ended the dispute.

This significance of this case history is compared with that of the PGN v CRW JV Singapore case that currently so popular amongst the dispute resolution community.

The parties have kindly allowed their case history to be used for this article but preferred that it be done in a way that would not identify the project.

## The Contract

The contract was for transport infrastructure construction and involved earthmoving and significant structural work. It was an important project<sup>4</sup> based on the FIDIC General Conditions Contract for Construction for Building and Engineering Work Designed by the Employer (the Red Book). The works were to have been completed in 36 months and the defects notification period was 24 months. Four months of time extension was granted extending the contract period to 40 months.

The employer, a public entity, prepared the detailed design and carried out pre-contract ground investigations in order to identify sources of borrows for embankment material. The contract allocated responsibility to the contractor to decide how, if at all, it would use designated sources and required excavations. The contractor relied on the pre-contract information that suitable materials for embankment work would be available from on near the site.

## The Dispute

It became apparent early in the contract that material coming from required excavation and designated borrow pits near the site did not satisfy the technical requirements for permanent embankment work. It was also evident that suitable embankment material was available only at distances in the order of 40 km. Moreover, the nature of

<sup>1</sup> Sub-Clause 20.4 [Obtaining a Dispute Adjudication Board Decision], paragraph 4.

<sup>2</sup> Articles 7 and 8 of the Procedural Rules; Annex to the General Conditions of Contract

<sup>3</sup> Article 5 (b) of the Procedures.

<sup>4</sup> The contract price revalued to 2012 value was about €75 million (US\$100 million)

those materials was such to require different compaction methods for the permanent embankment. The impact on the economy of contract caused by this change was significant and there was delay in giving instructions to the contractor for the change.

The contractor duly noticed a claim both for the additional cost to supply material from the more distant source and place it in the permanent embankment work and for the time it would require to carry out the varied work. The employer agreed that there was additional cost of doing the work and negotiated a variation order over time with the contractor that was based on the actual costs incurred.

The parties did not agree on the additional time requested and the employer issued an instruction to the contractor to submit a revised programme that described the methods it proposed to adopt in order to expedite progress and comply with the time for completion. The contractor's claim for an extension of the time for completion was thereby rejected.

The contractor reacted to that instruction with a request for reimbursement for additional costs arising out of that instruction. The contractor claimed for the additional costs of equipment, material and human resources that were incurred because of the expedited work. As it turned out the employer later granted an extension of the time for completion for other concurrent varied work. The contractor completed the allegedly disputed work within the extended period but pursued its claim for additional costs.

The DRB was in place early for this the project. It conducted more than 13 regular visits to the site at about 5 month intervals. It witnessed the problems caused by non-availability of suitable fill materials as well as the difficulty to identify alternative sources. It assisted the parties through discussions and informal advice to reach the agreement on the variation order. It also assisted the parties through the use of advisory opinions and recommendations to set aside some 35 other disputes that arose on the contract. The completed contract amount increased by about 30% through additional work, variations and finally, claims that were settled amicably.

The contractor's claim for delay and disruption was another matter.

### **The Procedure Adopted by the Dispute Board**

#### *The Development of the Dispute*

The employer's issued the instruction to expedite the works just before the seventh periodic site visit, about two years into the project. The Dispute Board raised the matter

of the instruction and expressed its concern that it was likely to give rise to a significant claim from the contractor and urged the parties and the engineer (i) to conclude the outstanding issue of entitlements to an extension of the time for completion and (ii) to agree the method of analysis by which the as-built critical path could be determined along with other concurrent employer and contractor delays. It cautioned that without an agreed delay analysis it would be difficult to determine any cost or time entitlements if any that might accrue to the contractor.

The Dispute Board went on to say that if such agreement could not be reached, then the parties should consider the alternative to appoint a neutral delay expert to produce that analysis. If the parties could not agree on an expert the Dispute Board offered to recommend one to them. Given the potential significant amounts involved it also issued a cautionary warning to the parties; should the dispute be given to the Board as a formal referral it would likely use its authority to appoint its own expert (or experts) to determine the facts.

Despite repeated appeals by the Dispute Board during ensuing site visits, the parties refused to involve the Board in the claim and thereby allowed the dispute to drift forward until well into the Defects Notification period.

#### *The Referral*

The contractor referred the dispute to the Board during its last visit to the site and after the work was substantially completed. The relief sought by the contractor with this claim alone exceeded 15% of the original contract price.

The Dispute Board considered its obligation to (i) issue a decision on the referral within 84 days of the date on which the referral was received by the presiding member of the Board and (ii) limit the time and the costs to the parties in making its decision.

The Dispute Board recognized that it would not be able to render a suitably reasoned decision within the 84 days stipulated by the contract and it obtained written consent from the parties to extend that period as would be required by the procedures established by the Dispute Board. To have complied with the restrictive time allowed by FIDIC procedures meant that the Board would utilize its own costly and time-consuming expertise to (i) analyse the contractor delay analysis and (ii) separate the costs related to the contractor delay events. The work was done more effectively, with greater certainty and at less cost by its experts.

The sums involved in this dispute were important both to

the contractor and the employer. The Board decided to appoint two experts, a delay analyst and a quantum surveyor to review the claims. It obtained agreement from the parties to appoint experts and under its inquisitorial authority instructed that its experts meet with the parties in order to establish the facts.

It then conducted a hearing during which the parties gave oral and written submissions in support and in defense of their respective positions and responded to questions from the Board and its experts. At the hearing the Board issued instructions to the parties in respect of additional information and to conduct further consultations with the experts.

### **The Decision**

#### *The Time taken by the Dispute Board*

The decision was issued by the Dispute Board just over a year after the referral was made. During that period the parties (i) submitted two written submissions, (ii) conducted consultations with the Board's experts, (iii) participated in two days of oral hearings, and (iv) exchanged further written consultations with the Board experts.

The parties let this matter drift during the contract period and were in no hurry to expedite the inquisitorial process led by the Board experts. The time taken to reach a decision was essentially driven by the parties having asked and received several extensions for the presenting written submissions.

The decision was to award the contractor less than half of the amount it sought.

#### *The Cost of the Procedure*

The cost of the Dispute Board to review the submissions, conduct the hearings and issue its decision was 1.2 percent of the amount sought by the contractor with its referral and 2.6 percent of the amount awarded.

The cost for the experts was 1.5 percent of the amount claimed and 3.4 percent of the amount awarded.

#### *The Decision*

The decision was to award the contractor less than half of the amount it sought.

### **Conclusion**

The parties accepted the Board decision and the amount awarded was certified by the engineer and paid in the next

IPC.

Each year the ICC publishes statistics concerning the numbers and values of disputes that are submitted to its Court of Arbitration. The amount claimed in this example exceeds the average value of arbitration requests submitted to that body by several orders of magnitude. Had this dispute gone forward to international arbitration the parties would have incurred costs (and risk) in the order of magnitude of the referral amount and it would have taken more than three years to obtain an award.

Strong arguments can be made that the Dispute Board process is "rough justice" and that the Board should not exceed the 84 days allowed to it for issuing its decision.

The "rough justice" approach was apparently used by a sole-member Dispute Board in connection with a decision it gave in connection with the contract that gave rise to the PT Perusahaan Gas Negara v CRW Joint Operation<sup>5</sup> case that is object of considerable commentary that is circulating in the dispute resolution community these days. In that decision, the Board awarded US\$17,298,834.57 to the contractor. In the notice of dissatisfaction in the PGN case the employer observed amongst others that the decision, "was excessive in that it was for an amount greater than that claimed". The Dispute Board decision is not available and it is not known whether it relied on expert advice in make the decision. If it did not, then this may well be an instance where the use of expert(s) might have led to a decision that would have led to a settlement. It did not and the parties resorted to arbitration and subsequent appeals where (i) the arbitral award enforcing the DAB decision was overturned and (ii) the entitlement determined by the DAB for reimbursement of costs was eventually lost; all at probably considerable loss of time and money for the parties and probable damage to the contractor party.

In this case history example the entitlements were also a substantial proportion of the amount claimed by the contractor and the Dispute Board would not have been in a position to give a "reasoned" decision without the aid of the expert advice that it ordered and finally received. The parties apparently agreed with this assessment because the dispute was extinguished with immediate effect by the decision.

*This paper was presented at the DRBF International Conference in May 2012. Richard Appuhn can be reached by email at [dick@appuhn.us](mailto:dick@appuhn.us)*

<sup>5</sup> PT Perusahaan Gas Negara v CRW Joint Operation, SGHC 202 [2010].

# Upcoming Workshops & Meetings

## 5th UK Member's Meeting September 14, 2012 London, United Kingdom

Join the DRBF from 1:30-6:00 pm at the offices of Charles Russell, 5 Fleet Place, London for the UK Member's Meeting, an annual gathering of Dispute Board users and practitioners in the UK and surrounding countries. Keynote address by Gwyn Owen on "The Liability of DAB Members." Delegates will then be split into small groups to allow for in depth discussion led by experienced tutors on the following workshop topics:



- **The Dispute Resolution Provisions of the New FIDIC Subcontract**  
David Savage and Aisha Nadar
- **How to Increase Awareness and Use of Dispute Boards**  
Robert Silwinsky and Tony Canham
- **Uses for Dispute Boards Other Than in Construction**  
Michael Cover and Wolf von Kumberg

## DRBF Training Workshop October 23-24, 2012 Bucharest, Romania

**Avoiding Disputes in the Construction Industry - Dispute Board Best Practices**  
*Evitarea disputelor in constructii - Comisiile de solutionare a disputelor elemente de practica*

Offered in the Romanian language, this two-day workshop will cover the fundamentals of effective Dispute Board practice through lecture, case study, an interactive exercises. Participants will learn what DBs are, how and why they work and how they can be implemented on a project. The workshop will also cover current trends and methods of minimizing and managing construction claims and disputes through the use of Dispute Boards.

## Training Workshops Offered in Conjunction with the DRBF 16th Annual Meeting & Conference September 28, 2012 - Sheraton Hotel Towers - New York

**DRB Administration & Practice Workshop** - an intensive program designed to provide basic skills training for people interested in working with or using DRBs on all types of projects. Includes case study, lecture, interactive exercises and the exchange of experiences and ideas for the effective use of the DRB process.

**DRB Advanced/Chairing Workshop** - addresses the issues involved in chairing DRBs as well as the latest developments, trends and ethical issues facing DRB practitioners. It is recommended that participants have already completed the Administration & Practice Workshop.

**Introduction to International Dispute Board Practice** - an overview of international Dispute Board practice under FIDIC forms of contract and ICC DB Rules. Comparison to US practice and challenges of multi-cultural projects.

**Visit the Meetings & Conferences page of the DRBF website for updated information and registration for all events.**



# 16th Annual Meeting & Conference

## *DRBs: Proactive Dispute Avoidance*

### September 29-30, 2012 • New York

Hosted for the first time in New York City, the DRBF's **16th 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. Social functions including a welcome reception and a dinner cruise around the Manhattan skyline for the popular **Al Mathews Awards Dinner**, providing ample opportunity for interacting with conference participants, speakers and sponsors.

#### **AGENDA**

##### **September 28 - Training Workshops**

- ▶ DRBF Administration & Practice Workshop - introductory workshop on how DRBs function, roles of the parties, and key elements integral to a successful DRB process
- ▶ Advanced/Chairing Workshop - for advanced practitioners and those interested in serving as DRB Chair
- ▶ International Practice - an exploration of Dispute Board variations in other countries, with an introduction to FIDIC and ICC rules

##### **September 28 - Project Site Tours and Welcome Reception**

- ▶ Fulton Street Transit Center Site Tour - this MTA Capital Program is a \$1.4 billion project which will improve connections between and to six existing Lower Manhattan subway stations. Reservations required and limited to 20 persons

- ▶ World Trade Center Memorial - one of many popular attractions in NY, the DRBF has arranged two group tours of this memorial, one on Thursday and one on Friday. Reservations required
- ▶ Welcome reception for workshop and conference participants

##### **September 29 & 30 - Conference**

- ☒ Dispute Board application by DOTs and other public agencies, including project profiles and panel discussions
- ▶ Ethics in today's world of DRBs
- ▶ Practical tips for DRB practitioners, including writing effective decisions and an interactive mock DRB meeting
- ▶ Profiles from construction projects in the New York metropolitan area
- ▶ Dispute Board application around the globe, with a special look at experiences and innovations from Australia, UK, Canada and other regions

#### **REGISTRATION**

The DRBF offers secure online registration through our website, [www.drb.org](http://www.drb.org). Click on the Events tab and select Meeting & Conferences or the Calendar from the drop down menu, and then click on the link to access the conference website. Complete details about the agenda and optional activities are included on the site, as well as information about discounted rates at the host hotel, the **Sheraton Hotel & Towers**.

Any questions about the conference and workshops should be directed to DRBF Conference Organizer Ann McGough at [amcgough@drb.org](mailto:amcgough@drb.org) or Administrative Manager Steve Fox in the DRBF office at 888-523-5208 or 206-878-3336.

# DRBF International Conference

## Sydney, Australia Report

The DRBF has representatives in more than 40 countries around the world, and a number of different legal systems and cultures are represented in the membership base. The international conferences aim to bring together prominent speakers and delegates from all continents to compare approaches and results from the inevitable differences that arise in the concept application across numerous cultural and legal system differences.

Previous conferences have been held in London (twice), Paris, Rome, Berlin, Dubai, Budapest, Bucharest, Capetown, Istanbul, and Sao Paulo. The Australasian Chapter of the Dispute Resolution Board Foundation (DRBA) considered an international conference in Australia would provide a unique opportunity to educate the Australian industry (covering construction and other industry sectors involved with high risk commercial agreements) of the benefits available from wider adoption of the DRB concepts.

The conference proceedings were planned around a theme "THE BENEFITS OF DISPUTE BOARDS TO MAJOR PROJECTS - *Proactive Dispute Resolution*" and included eight sessions as below.

### May 4

- Session 1                      *Dispute Board Concepts Internationally - Divergence or Convergence*
- Session 2                      *Dispute Avoidance – What does a Dispute Board offer?*
- Session 3                      *Owners' Perspectives on Dispute Boards*
- Session 4                      *Future Opportunities for Dispute Boards*

### May 5

- Session 5                      *FIDIC's Experiences with Dispute Boards*
- Session 6                      *Key Legal Issues for Dispute Boards*
- Session 7                      *Recent Experiences with Dispute Boards*
- Session 8                      *Future of Dispute Boards in the Asia Pacific Region*

In accordance with long established practice, the conference was preceded by a workshop to provide training in the operation and use of DBs. The workshop was an "Advanced Training Workshop" comprising an intensive, interactive one day program designed for those considering use of a DB in their contract(s); those responsible for setting up contracts; potential contract participants who wish to gain a better understanding of how a DB assists interparty contract relationships, and practitioners who are currently serving on, or are interested in becoming a member of, DBs.

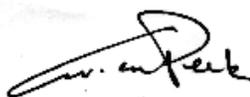
The actual number of registered delegates for the conference was 176. This exceeded the previous record of 168 set at the Istanbul conference in 2010. The workshop registrations had to be closed at 75 because of the practical limit imposed by the Organising Committee to ensure provision of a reasonably interactive workshop program. The distribution of delegates at both workshop and conference was particularly pleasing, and reflected the DRBA efforts to attract a balanced cross-section of industry participants and legal systems: 48% of conference delegates were from outside Australia and New Zealand and 19 separate countries were represented.

Keynote speakers at the conference included the former Australian Prime Minister Bob Hawke, former NSW premier Nick Greiner, and the current President of the International Federation of Consulting Engineers (FIDIC) Mr Geoff French. The conference proceedings were covered by journalists from a number of organisations. Post-conference reports have appeared in *The Australian*, *Lawyers Weekly* newsletter, *Civil Engineers Australia*, *The Chartered Institute of Arbitrators*, *The ADR Reporter* and *The ACICA News* (their six-page report on the conference can be viewed at <http://acica.org.au/news/the-acica-news-june-2012> pages 51 to 56).

Considerable effort was devoted to getting written papers from all speakers in advance of the conference. All registered delegates received a flash drive including all papers and presentations available at the closing date for inclusion (14 days prior to the conference). The full text of all papers and presentations (including the few that missed the closing date) was established on the DRBF website at (<http://www.drbfconferences.org>). All papers and presentations are also now available on the DRBA website library (<http://www.drba.com.au>). These documents provide an excellent record of the current status of Dispute Board practices internationally. An extensive photographic record of sessions, speakers, delegates and social events is also available on the DRBF's Flickr site (<http://www.flickr.com/photos/drbf/>).

The success of the conference and workshop was in no small way due to the generous support of the sponsor and supporting organisations. The Principal Sponsor was the Australian Constructors Association, and very generous support was provided by 14 other organisations representing government authorities and leading legal and consulting groups. The sponsorship range covered social functions, sessions and exhibits. Supporting organisations (25 in total) covered an extensive list of International and Australian organisations with an interest in minimisation of disputes in commercial contracts. The full listing of sponsors and supporters is available at [www.drba.com.au/conference/sponsors](http://www.drba.com.au/conference/sponsors) and [www.drba.com.au/conference/supporters](http://www.drba.com.au/conference/supporters).

There has been a marked increase in interest by client and legal groups in the adoption of DBs since the conference. One major State Government Road authority has not only finally decided to trial the concept use on two major road contracts, but has decided to change the name it is using to **Dispute Avoidance Board**. In all other respects, the current DB procedures as published on the DRBA website have been adopted. Indications are that at least one other significant current user may follow suit with the name change. This is a trend that DRBA is definitely encouraging.



Graeme Peck, Chair  
Conference Organising Committee



Networking at the conference (left): DRBA President Doug Jones, Former NSW Premier Nick Greiner, ACA President Peter Brecht and Conference Organising Committee Chair Graeme Peck  
Gala dinner address (top): The Hon Bob Hawke and DRBF Executive Board President Elect Roger Brown



*Save the Date!*

**DRBF 13th Annual International Conference  
2 - 4 May 2013 • Paris, France**

Reserve 2-4 May for the DRBF's 13th Annual International Conference in Paris, France. Day one offers a full day of practical case study in workshop format. For the first time, the two-day conference will offer split sessions on Friday afternoon and Saturday morning. Participants will have the choice between sessions on the mechanics and procedures of how Dispute Boards function or more advanced topics for experienced practitioners. Content will include an update on the use and financing of Dispute Boards by international financing institutions and the European Union; a look at best practice in public/private partnerships in international construction projects; and the impact of the ICC Dispute Board Center and FIDIC Conditions of Contract. Legal experts will explore the use of DBs in the civil law countries of France, Germany, Italy and Spain, and report on current development in enforcement and other matters. In addition, there will be an update on major projects using DBs from Latin America and France (TGV and ITER), and growth of the process in Asia and Africa. On Friday evening, delegates can enjoy dining in the elegant tradition of the Belle Epoque at Le Pavillion Dauphine.

The workshop and conference will be held at **Hotel Concorde La Fayette - Paris**, one of the largest luxury hotels in Paris with spectacular views of the Eiffel Tower and the Arc de Triomphe. A limited number of rooms have been blocked for out-of-town delegates at discounted rates, and early reservations are highly recommended.



The DRBF is grateful for the support of the conference sponsors:





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## FOUNDATION FORUM

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### FOUNDATION FORUM

Mark your calendar  
and plan to join us  
in the Big Apple!

**DRBF 16th Annual Meeting and Conference  
Training Workshops on September 28, 2012  
Conference on September 29-30, 2012  
Sheraton Hotel & Towers ~ New York, New York**

Hosted for the first time New York City, the DRBF's 16th 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 timely 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 practical exercises that deepen understanding of the successful implementation and use of Dispute Boards.

Social functions include a welcome reception and the popular Al Mathews Awards Dinner, providing ample opportunity for interacting with conference participants, speakers and sponsors.

**For more information, visit [www.drb.org](http://www.drb.org)**

