



# **The Dispute Resolution Board Foundation**

Fostering common-sense dispute resolution worldwide

## **Summary Minutes of the DRBF Board of Directors Meeting Friday, May 19 and Saturday May 20, 2006**

A DRBF Board of Directors meeting was held May 19 and 20, 2006 in Chicago with the following participating: Peter M. Douglass (V), William W. Edgerton (V), Harold V. McKittrick (V), Daniel F. Meyer, John Norton (V), Robert A. Rubin (V), Robert J. Smith (V) and Jack J. Woolf. Larry Delmore, Steve Fox, and Ann McGough participated by invitation. The following BOD members were unable to participate: Romano Allione, Armando Araujo, William B. Baker, Bernard Becq, Peter Chapman, Jim Donaldson, Gordon L. Jaynes, Jack Feller, John W. Nichols, Gwyn Owen, and Marianne Ramey.

Note: (V) represents voting Board members.

In opening, President Hal McKittrick noted the success of the Budapest conference and that the Board should be thinking about ways to improve the agenda and attendance at the Annual Meeting and Conference. He asked the Board to consider utilizing a professional meeting planner for future conferences (which was very successful for the Budapest conference), and for upcoming training workshops.

### **Financial Report**

Steve Fox presented the financial report, which was distributed to all members in their packets. He noted an addition to the format, a Year To Date (YTD) column which is now included.

Steve pointed out that the number of sustaining members is down but that the other categories of membership are holding steady. Some of the drop can be attributed to death or a drop in level when a member moves off the Board. Overall, our attrition rate is 15%, the same as past years. Current membership is at 549, and is expected to be 649 by year end.

The workshop figures are on target. To stay on budget through the end of the year, the DRBF must hold 11 more workshops, and seven have already been booked.

Overall, projections show the DRBF to be on target to meet our goals. Bill Edgerton requested a copy of the balance sheet and profit/loss statement, which was distributed to the full Board.

### **International Conference**

Peter Chapman distributed a complete report on the conference to the Board prior to the meeting. Hal McKittrick stated that the conference was very well run and the programs were interesting. He noted a major difference with the US conference is that there is no DRBF business; the focus of the entire agenda is on DBs and the user's perspective. He liked the focus on promoting the success of the process, with no bias towards the US model or the International model.

Hal shared a quote from a Romanian transportation representative: "I've had four disputes on four of seven contracts. We lost all four in hearings before the DRBs but I continue as a big supporter of the DRB process. This enabled us to identify what we are doing wrong and fix it." Larry Delmore said he thinks Caltrans shares that same philosophy.

There was some discussion that the US conference needs to cut back on the "internal focus." This concept was well received by the Board, who generally felt that we have focused internally too much lately.



# **The Dispute Resolution Board Foundation**

**Fostering common-sense dispute resolution worldwide**

It was noted that the upcoming Northwest Conference is being driven by a “User’s Panel,” which is consistent with the International Conference approach. Hal also noted that the partially-scripted “window into a DRB” was a very popular segment.

## **Education/Training**

Larry Delmore gave an overview of recent training sessions. He noted that the first Update Training workshop will be rolled out at the Northwest Conference.

Larry noted that he has only had co-trainers in California for the Caltrans workshops, and that was very successful. Feedback indicated that the participants liked having a seasoned DRB member to answer questions. Larry said he would be happy to have co-trainers for the other workshops, but that he had not received any information about participants being lined up. In past BOD meetings, it had been decided that the Education Committee would review potential co-trainers and prepare a schedule for co-training. It was agreed that ideally we would schedule training with enough advance notice to line up a co-trainer, but that in the short term we wouldn’t pass up a training opportunity if we couldn’t set up a co-trainer. The Board directed Steve to send a memo to Kerry Lawrence to compile a list of co-trainers for the Board’s information.

## **Multinational Training**

Hal McKittrick expressed his original intent that the Multinational Training Committee be independent of the U.S. committee but that the two interface so as not to reinvent the wheel. Gwyn Owen and his committee are suggesting cooperating with a university to provide training which would offer approved CE credits. It was noted that this is done in Florida by the University of Florida.

Hal McKittrick distributed a copy of the email from Gwyn Owen outlining his early ideas so that the Board could better understand the direction he is heading, even though it is still a work in progress and not meant to be a final recommendation.

## **Executive Director’s Report**

Larry Delmore presented several potential training opportunities that may come through this year, as well as some new opportunities on the horizon. He reported that AGC in California wants to create a joint DRBF-AGC training session. There has also been renewed interest in DRBs in San Francisco. Larry recently met the in-house general counsel for The World Bank, who expressed an interest in scheduling in-house training for their executives.

Larry said the education organization Center for Public Resources (CPR) would like to offer their clients the DRB process and would rather work through us than re-invent the wheel. The organization has a large membership base of major corporations (Fortune 500 level) and law firms that extends beyond construction. They offer very high-end arbitration and all members have a strong commitment not to go to litigation. Larry also shared some information about a contact who is considering DRBs for all their outsourcing contracts.

It was suggested that both of these opportunities require attracting people from outside construction. Larry said that they would provide the industry expert, and our role is to bring DRB experience. The two would then work together to create an appropriate training program.

Larry noted that things look good with the Construction Institute, and that once the Memorandum of Understanding is signed there will be a number of revenue producing projects underway, notably in training.



# **The Dispute Resolution Board Foundation**

**Fostering common-sense dispute resolution worldwide**

Larry also shared with the Board that the University of Illinois is using the DRBF Database and other outside data to prove the cost-saving of DRBs (3 ½ - 5%). The lead professor then intends to write a series of articles for major law publications. Larry feels this will be a strong selling point to lending institutions, who may be inclined to mandate DRB use if the numbers are compelling.

Ann McGough was asked to take on the responsibility of providing support to Larry Delmore for all training workshops (scheduling, certificates, etc.).

## **Florida Chapter**

Jack Norton noted that a new president for the Florida chapter came on board last spring. Jack shared some details about the training program he created with Florida Regional Representative Ralph Ellis from the University of Florida titled “How to Present to a DRB.” The training does provide continuing education credits (CEUs). The manual for this training program has been sent to Kerry Lawrence for review by the Education Committee.

## **Adhoc Subcontractor**

Dan Meyer gave a brief overview of the adhoc subcontractor issue he was asked to review previously by the Board. There are two issues: the subcontractor presenting its own claim against the owner personally to the DRB and addressing general contractor/ subcontractor issues through the DRB. The question then arises as to who pays – the sub or prime? How do they select a neutral party that all agree on?

Dan surveyed 25 DRBF members. None had experienced problems in subcontractor participation. Most felt subs should be allowed to participate to the extent of their involvement in the issue as long as it was a pass through issue to the owner. The group did not think general/subcontractor issues should be brought to the DRB. Lastly, they felt it is up to the prime and sub to abide by their contract and settle their own problems.

It was argued that this conclusion does not solve the problem that has been identified. It was suggested that a one-man DRB could be assigned, perhaps through a subcontractor association.

After some discussion, the Board elected not to pursue the issue and it was dropped.

## **Regional Reps**

Because the committee chair, John Nichols, is facing some health problems and is not yet back to work, President Hal McKittrick has decided to appoint John Madden as an Assistant Coordinator of the Regional Representatives. John Madden is a civil engineer who spent his career in construction. He has not served on a DRB, and primarily works as a mediator. His job will be to assist John Nichols and Larry Delmore in coordinating the regional meetings and doing follow up with the Regional Reps.

## **DRB Manual**

The Manual Committee had distributed revisions to chapters 1, 2 and 4 for review by the Board. Hal McKittrick raised some concern about the speed of revisions. It was noted that respected organizations like AIA and EJCDC revise specifications no earlier than three and up to ten years. This allows time to let the specification information get out and be used for a time to see that it works.

Specification (manual) work continues with committee meetings and proposal of changes but they are put into affect only after a certain time period (3 year minimum) and with careful review and approval by a governing body.



# **The Dispute Resolution Board Foundation**

**Fostering common-sense dispute resolution worldwide**

There were many proposed Manual changes to be reviewed by the BOD in a very short time. The Manual is the “best foot forward” of the DRBF and states official policy of the DRBF and must not be rushed.

The BOD concluded that the Manual should be revised no sooner than three year intervals and the changes with explanations should be provided 6 months earlier to the BOD for their consideration and input. The 2004 Manual will continue to be used for training courses.

## **Nominations**

There are at least three director positions coming open in October: Armando Araujo, Gordon Jaynes, and Bill Edgerton. John Nichols had previously expressed an interest in continuing to serve as long as his health is good. In light of his recent health, Jack Woolf intends to talk with him again about his plans.

A list is being put together of potential nominees. Potential nominees are asked to be a sustaining member, participate in the monthly conference calls and face-to-face meetings, and participate in committee work. It was noted that the Bylaws need to be changed on the attendance issue. It was indicated that the preferred wording is that at a maximum, a Board member can miss one face-to-face meeting and three conference calls.

## **Bylaw Revisions**

Bob Smith noted a few areas of the Bylaws that need reviewing, including: changing wording from “Dispute Review Board” to “Dispute Resolution Board” or “Dispute Boards”; Secretary and Treasurer details; new membership grades; DRB as an “appointing authority”; and BOD attendance. He also noted that he would like to review with Steve Fox the procedures for reincorporating in Washington State, to be consistent with the location of the administrative offices. Bob agreed to work on some drafts to present at the next BOD meeting.

## **Annual Meeting**

Bob Rubin and Jack Norton reported on the details currently in place, including the plans for a plenary session that offers a comparative study of DRB success in a couple of jurisdictions. For an optional side tour, he proposed “Nasa Up Close” at Cape Kennedy, which the Board supported.

The Board then brainstormed on potential items for the conference program. Again, the International Conference in Budapest was held up as a model: a variety of speakers, particularly owners, interspersed with mock presentations or working sessions to reinforce the primary theme of “successful DRBs.”

It was noted that it would be desirable to have a strong speaker representing the international perspective, although this may be difficult because they would expect the DRBF to pay expenses, at a minimum. However, the BOD is willing to do this. Possibilities discussed were satisfied users from Romania, England, etc. Our international members will be polled for suggestions. It was noted that Peter Boswell with FIDIC was a great catch for the International Conference. The suggestion was made to approach the general counsel from The World Bank who had recently expressed so much interest in the DRBF.

The idea of a User’s Panel with representatives from FDOT, Caltrans, Wash DOT and others was suggested. Other ideas included the seminar “How to Present to a DRB” and/or a mock presentation (similar to International Conference).

## **Future Annual Meeting Sites**



# **The Dispute Resolution Board Foundation**

**Fostering common-sense dispute resolution worldwide**

Larry Delmore recently met with a high-end meeting planner in Boston, who offered some thoughts about our program format. He felt Orlando was a great choice for our group. He recommended thinking of vacation destinations, because people like to plan family trips around annual meetings. With firm dates in place, people could plan in advance and the DRBF could take advantage of the long lead time to secure desirable properties. The planner also encouraged the DRBF to give away premium items with the DRBF logo at each event. The DRBF could offer a catalog of items available with the logo for people to purchase, extending the marketing effort and name recognition.

Another idea Larry Delmore offered is to have a “for a fee” meet and greet marketing event the day before the conference, where construction executives could meet with some top executives from owners.

It was noted that the Annual Meeting needs a professional meeting planner to manage promotions and logistics. Ann McGough was asked to work with the planning committee to assist with the conference materials, promotion, and follow up for the 2006 meeting. Steve Fox will continue to manage registrations and the hotel contract/arrangements that are already in place. In the future, Ann McGough may be asked to serve as the meeting planner for the event, or an outside planner could be hired.

## **DRBF and FIDIC Relationship**

Hal McKittrick brought the BOD’s attention to the report Gordon Jaynes had provided about his discussions with FIDIC. Bob Smith noted that if Gordon is handling the negotiations, it is in very good hands.

## **Appointing Authority**

Peter Chapman distributed an opinion about the Appointing Authority issue prior to the meeting. In summary, he feels that the DRBF is not in a position to be an appointing authority, and should revisit the issue in five years.

There are proponents on the Board – their position is that if we don’t do it, someone else will.

Bob Smith noted it is a compliment that someone wants us to be an Appointing Authority, because it means they perceive we have the knowledge and experience required. However, he feels that although the need is there, the Foundation is not yet equipped to handle it.

It was agreed that when someone approaches the DRBF with a request to serve as an Appointing Authority, we will agree to it on an ad hoc basis as long as they will sign an indemnity clause. Bob Smith and Bob Rubin will be asked to provide the necessary paperwork should the need arise. If a lot of requests come in, the DRBF can then look at formalizing the program.

## **Communication Update**

Ann McGough gave a brief overview of planned changes to the web site, primarily adding a new drop down toolbar to go directly to the database. This section would also include a form to submit new data through the site.

Ann McGough also gave an overview of the growing need to formalize the preferred language used by the DRBF in all formal publications and presentations. Because of her involvement in the web site, Manual, newsletter, and now training programs, Ann was asked to be responsible for this effort and to only bump up to the BOD those of a controversial or delicate nature.



# **The Dispute Resolution Board Foundation**

**Fostering common-sense dispute resolution worldwide**

## **Other Business**

Bob Smith reported that Doug Johnson, a former DRBF president, is ill with terminal cancer. At the Board's request, he agreed to coordinate having a plant or some token sent to him on behalf of the DRBF with our best wishes for him.

**The meeting concluded at 12:00 noon Saturday. The next meeting is scheduled for Friday, June 23, 2006 by conference call beginning at 12:00 noon EST.**

**Meeting Minutes submitted by Ann McGough.**