



# Forum

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MAY 2007

## International Conference Convenes in Bucharest

**Conference attracts diverse group of delegates  
to explore “Dispute Boards in Practice”**

By Gwyn Owen

The Dispute Resolution Board Foundation’s 7<sup>th</sup> International Conference was held at the World Trade Centre in Bucharest Romania 12 and 13 May. Before the conference the DRBF held a two day Dispute Board (DB) training workshop and a one day DB Chairing and single person workshop. The conference attracted 160 delegates from 28 different

countries and the training workshops attracted around 100 delegates between them. The conference was sponsored by Astaldi, CMC Ravenna, Luis Berger, the Search Corporation and Techno Engineering, and was supported by FIDIC. The DRBF is grateful for the support given by the sponsors and FIDIC who all collectively ensured that the event was a success.

*(continued on page 18)*

The DRBF would like to thank the sponsors of the 7th Annual International Conference:

**Astaldi  
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## President's Page



As the mid-term of my role as President of the DRBF passes, it is appropriate that we take a look at where we stand following our “face to face” meeting of the Board of Directors in Chicago on April 23, 2007. I am especially pleased to report that roughly 90% of the current Board members were in attendance in Chicago. Although the untimely death in January of our Executive Director Larry Delmore was a serious blow, I am pleased to report that the officers, Board members, and general membership stepped up to cover the bases with tremendous zeal. As a result, the DRBF is financially alive and well at this point, and our efforts to spread the DRB process to new users and train both party representatives and Board members continues to move in the right direction.

In particular, I see a strong commitment to improving the mutual understanding of DRBF operations on both sides of the “pond” (the Atlantic Ocean). Consistent with the objectives of the “DRBF 10 Year Plan” that was submitted last October by Hal McKittrick (DRBF Immediate Past President) and approved by the Board, the DRBF Board and members have recognized that our world is rapidly getting smaller (due largely to the increased speed of communications and accessibility of even remote locations). Recognizing this, we need to improve the integration of our US and International efforts in order to assume a leadership role in the implementation of this remarkable dispute resolution process throughout the world.

DRBF President Elect Gwyn Owen, together with other international Board and committee members, prepared another outstanding International DRBF Conference in Bucharest, Romania on May 12 and 13, 2007. Over half of the entire DRBF Board of Directors was in attendance, as well as our Administrative Manager Steve Fox, in order to enhance our mutual understanding of the DRB/DB process, underscore the worldwide commitment of the DRBF and ensure our Foundation’s smooth workings throughout the world. I attended the International DRBF Workshops held on May 9, 10 and 11 to gain a better understanding of applications of the process throughout the world and provide interaction regarding the North American DRB process.

Other particularly notable efforts include those of John Madden, chair of our US Regional Representatives Committee (who has offices on both sides of the “pond” and also participates in our committee assisting International Country Representatives and in our Executive Committee meetings); Kerry Lawrence, chair of our Education and Training Committee who, with Past President and current DRBF Treasurer Jim Donaldson, conducted a “Train the Trainers” Workshop in Chicago on April 24, 2007 directed at providing experienced and accessible regional DRBF Workshop trainers throughout the US; and Joe Sperry who led the Manual Committee in completing revisions to the DRBF Manual (available January 2007) and current chair of our Nominating Committee. Space precludes me from acknowledging all of those that have given generously of their time in meeting the needs of the DRBF, but rest assured, everyone on the Board and many of the general membership have stepped up to the plate to fill the void left by Larry Delmore, and we all greatly appreciate their efforts.

In closing I would like to add that Jim Phillips has been appointed as chair of our Ethics Committee and will be writing regular articles and responses to Ethics questions as a continuing feature of the Forum. Also, the Board approved the formation of three new “contributing” member classifications of Silver (\$1,000), Gold (\$2,000) and Platinum (\$5,000) for those DRBF members who contribute to the DRBF at these levels in support of our continuing efforts to accomplish the objectives of the Foundation. Those making such generous contributions will be recognized in the Forum and the DRBF Membership Directory. These donations are tax deductible, so I hope that when you review your charitable contributions plans you consider the fine work the DRBF does to change the nature of dispute resolution for the better.

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# DRBF Board of Directors

The DRBF Board of Directors met at the Hilton Hotel in Chicago, Illinois on April 21, 2007. The full-day meeting gave the Board the opportunity to discuss DRBF business in detail. A complete review of the discussions and actions taken at Board meetings can be found on the DRBF web site.

Following is a brief overview of the actions taken:

- The 2007 budget was revised to incorporate changes in the aftermath of the loss of an Executive Director.
- Training workshops are being scheduled for various regions, and new workshop topics are in development. New venues and delivery formats are being explored.
- The Board selected Cape Town, South Africa as the venue for the DRBF International Conference in Spring 2008.
- The DRBF is in Phase 1 of the Ten Year Plan approved in October 2006 by the Board of Directors. Former DRBF President Hal McKittrick is leading an effort to develop an action plan for Phase 2 which will be reviewed at the next Board meeting. A committee has also been formed to address the needs and actions required to establish the European region in accordance with the Ten Year Plan.

**To Access the Board of Directors Meeting Minutes Summary:**  
 →Go to [www.drb.org](http://www.drb.org)  
 →Click the **Member Login** button  
 →Click on **DRBF Board of Directors**

All DRBF members are encouraged to read the complete summary minutes and submit any comments or suggestions to the president of the Board, Pete Douglass. The Executive Committee meets on a monthly basis, and the next Board of Directors meeting will be held Friday, July 20, 2007 at 12 noon EST by conference call.

## Board of Directors Meeting Schedule:

**Executive Committee**  
**June 15 by conference call**  
**August 17 by conference call**  
**September 14 by conference call**

**Full Board of Directors**  
**July 20 by conference call**  
**October 5 in San Diego, California**

## Other News

### “CHERN ON DISPUTE BOARDS” BOOK AVAILABLE

Wiley-Blackwell Publishing has announced the publication of the book “Chern on Dispute Boards,” written by DRBF sustaining member Dr. Cyril Chern. The book deals exclusively with Dispute Boards (DB), their operations and procedures. The practical guidance and advice on the successful operation of all types of dispute boards both in the United States and Internationally stems from Dr. Chern’s experience serving on over 50 DBs, most as Chairman, as well as his background as an international lawyer and architect/engineer.

The book includes:

- analysis of the differences between Dispute Adjudication Boards, Dispute Resolution Boards and combined Dispute Boards
- in depth discussion of both the existing and historical international case law on DBs
- analysis of the differences between the various major standard forms of DB rules – FIDIC, International Chamber of Commerce, etc.
- analysis of how referrals are made to DBs and sample forms
- ethical requirements relating to DB members
- comparison of board selection techniques with guidelines for implementation and recommendations for the parties
- discussion of site visits, how they should be conducted and sample forms
- how to write a decision or recommendation with examples of actual DB decisions and recommendations
- disclosure forms, questionnaires for potential Board members, and comparison of Board member agreements and sample forms
- a discussion of how to effectively use witnesses and the preparation and presentation of witness statements in Dispute Board hearings
- forms of notice and procedural rules governing the operation of Dispute Boards
- the use of Dispute Boards in areas other than construction.

Further details about the book can be found at [www.blackwellpublishing.com](http://www.blackwellpublishing.com)

### BOB RUBIN HONORED BY ABA

DRBF Past President Robert A. Rubin received the prestigious **Cornerstone Award** from the American Bar Association, Forum on the Construction Industry. The award was presented at the organization’s Annual Meeting held in April 2007 in Puerto Rico. The Cornerstone Award is the organization’s highest honor, and is awarded for outstanding contributions to the field of Construction Law.

Congratulations Bob!

### FINAL ANALYSIS

The May 2003 issue of the Forum profiled the Ghazi Barotha Hydropower Project on the Indus River in Pakistan. The Dispute Board for the Power Complex Civil Works Contract on the project is pleased to report that all disputes have been settled amicably and no disputes are going to arbitration. Dispute Board members include Gordon Jaynes, Justice Khan, and Haji Abdul Majeed.

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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 E. ALGER ELECTED TO THE MOLES BOARD**

DRBF member Robert E. Alger was recently elected to the position of Second Vice President for The Moles, an organization of professionals from the underground and heavy construction industry. Mr. Alger is president and chief executive officer for The Lane Construction Corp.

Other elected officers include Salvatore Mancini, President; Alfred H. Brand, First Vice President; Joseph F. Malandro, Treasurer; Henry E. Adams, Secretary; and Joseph S. Finston, Sergeant-at-Arms. For more information, go to the Moles web site: [www.themoles.info](http://www.themoles.info).

**KING'S COLLEGE LONDON OFFERS NEW PROGRAM**

In September 2007, King's College London will begin offering an eight month program "Certificate in Construction Adjudication."

According to DRBF member Nicholas Gould, a large proportion of the course is related to contract law and the forms of construction and engineering contracts that one encounters. Adjudication will be considered not just in the UK but also in Singapore, Australia, New Zealand and Malaysia. DRBs, DABs and the FIDIC process will be reviewed. In addition, the course covers decision writing, and there will be a mock adjudication.

The lecture portion of the course will be provided in blocks over six week-ends, enabling students to fly in from other locations. For more information, contact Sue Hart at by email at [susan.hart@kcl.ac.uk](mailto:susan.hart@kcl.ac.uk).

**DRBF MEMBER SERVES AS AN EDITOR FOR NEW LAW PUBLICATION**

DRBF Member Edward Corbett co-chairs the International Construction Projects (ICP) committee of the International Bar Association (IBA). Recently, the committee started a quarterly publication, "Construction Law International," of which he serves as an editor. Mr. Corbett says the magazine regularly contains articles on Dispute Boards, citing such recent articles as:

"Decision or Uncertainty – Combined Dispute Boards under the ICC DB Rules" by Christopher Koch

"The Dutch DRB Rules" by Arent van Wassenae

"Dispute Boards – Dos and Dont's" by Dr. Nael Bunni

"Dispute Boards – Scope, tasks and authority" by Claus Lenz

"Construction Law International" is circulated to ICP members and magazine subscribers. For information about the publication, including article submissions or subscription, go to the publications page of the IBA web site: [www.iba-net.org](http://www.iba-net.org). □

**Training Workshops**

Whether you are new to the process or a seasoned DRB member, the DRBF offers a variety of training workshops to bring you up to date on DRB practice and procedure. Visit the Training section of the DRBF web site for complete details!

**[www.drb.org](http://www.drb.org)**

# Ethics in Today's World of DRBs

## The "Urstate" Dilemma Revisited: Bifurcated Hearings

By Jim Phillips Ph. D.

In the last issue of the Forum, the question was posed as to whether the DRB should proceed in a formal hearing on the issue of time after the Board had ruled on the issue of merit. In this scenario, the owner, contractor and the DRB had agreed to bifurcate the merit and time issues in separate hearings on the issue of granite cladding panels on the library tower of The Community College of Money First/Education Later.

The DRB had issued its recommendations on the issue of merit, finding for the owner. The contractor rejected the DRB's opinion, while owner responded by letter indicating it desired to go forward on the issue of time. The question was: **Should the DRB go forward with the time portion of the dispute?**

James R. Madison, from Menlo Park, California wrote in with a suggested response. Mr. Madison sees no reason why the DRB can not move forward. He frames it as a hypothetical context, that should the owner prevail on the merits, this would be the DRB's opinion as to the time. He also suggests that the DRB could, in the alternative, offer a determination as to time should the contractor prevail on the merits. Thanks James for writing in!

I agree with James' response, primarily because this exact scenario arose on one of the DRB's for which I serve as Chair. In the same fashion, the owner and the contractor agreed to bifurcate the issue of merit and time. The DRB issued a recommendation in favor of the

contractor on an issue, and the owner rejected the DRB's recommendation. At this point the contractor wanted to go forward as to time. Initially, the DRB believed it had no authority to proceed and I wrote a letter to the parties indicating same. As it turned out, the owner wrote back and indicated that it had rejected the DRB's recommendation because, under the contract, it was required to accept or reject the DRB's opinion within 30 days of its publication. The owner, in a subsequent conference telephone call with the DRB and the contractor, agreed to go forward in formal hearing as to time. The DRB did so, and ultimately, issued its recommendation.

As in the Urstate example, I can see the value of issuing a hypothetical or "in the alternative" type of recommendation. Because one of the DRB's purposes is the timely resolution of contract disputes, once the parties are primed for a formal hearing by investing the time and resources in preparation, in the interests of economy and efficiency it makes good sense to go forward. And as in my case, the parties may be merely reserving their contract rights by objecting to the DRB's recommendations.

Another more important reason for advocating this approach in these two step hearings is the very real possibility that even if one party has objected to the recommendation initially, events may transpire thereafter that could prompt them to ultimately accept the DRB's recommendation. For example, if the DRB came in with a subsequent

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mutually acceptable recommendation as to time, in the interests of putting this dispute behind them, the parties may, for different reasons, both decide to accept the DRB recommendations as to merit and time.

Often once the DRB has issued its recommendations, both parties may reconsider their positions as to whether to appeal to a different decision maker, be it administrative or judicial. Maybe other events or disputes on the project have overtaken the one in question. Maybe legal counsel has reconsidered their client's respective positions in view of the DRB recommendations.

For whatever reason, in a two step hearing process, completing the second time/money phase may ultimately save the parties money and may help to resolve a lingering counterproductive dispute. And, the evidence is always fresher at the DRB hearing stage than it is in later proceedings.

The way the Urstate question was posed raised the ethical question of whether by going forward on the issue of time, was the DRB slipping into an advocacy role for the owner. As long as the DRB acts in good faith, I see little chance for this to occur, especially in view of Mr. Madison's comments as to a hypothetical opinion. This approach is consistent with my experience that sometimes, in

the interests of putting the dispute behind them, parties may reverse themselves and accept the DRB recommendation.

This case raises another important point for all DRB practitioners: **If the DRB fully explains its rationale and provides the parties a grounded basis for its opinion, including reference to contract documents and testimony submitted at the hearing, the parties are much more likely to accept the recommendation.**

### **Ex Parte Communications**

Canon 2 of the DRBF Code of Ethics calls for no ex parte communications between the DRB and the parties. What would you do in the following scenario?

At the conclusion of a formal DRB hearing, the conversation drifts off from a discussion of the disputes/issues in the hearing to other issues ongoing on the project. People have started to leave the room and eventually there are only a few representatives from the contractor and a DRB member. The contractor approaches the Board member and asks him a question about another possible dispute and asks for his opinion. He prefaces the request by saying that this is informal and that he understands that this is not an official opinion of the DRB.

### **What should the DRB member do?**

#### **Ethics in Today's World of DRBs**

The problems presented here are part of an ongoing series designed to engage a discussion among the DRBF membership about some of the challenges that occur during the DRB process. A committee of experienced DRB practitioners led by Committee Chair Jim Phillips will review and share ideas and opinions about the ethical dilemmas presented here.

Please send your thoughts on this issue, or problems you have faced with a DRB, to the DRBF by email: [home@drb.org](mailto:home@drb.org) or phone: 888-523-5208 or 206-878-3336.

# Spotlight on the DRBF's Representative in Mexico



## Country Rep: Dr. Lic. Herfried Wöss

Dispute boards are a fairly recent institution in Mexico. In the light of the need for modern infrastructure, their breakthrough will hopefully occur during the present presidency. The first Mexican dispute board rules were drafted by the author for Société Générale de Surveillance (SGS) in 1999<sup>1</sup>, in order to solve a series of conflicts related to oil platforms of which the first one amounted to US\$200 million<sup>2</sup>. In 2002, based upon an initiative of the undersigned, the Mexican Arbitration Centre together with the World Bank organised the first Mexican seminar on dispute boards. Last year, the dispute board committee of ICC Mexico, which was responsible for the Spanish version of the ICC dispute board rules, held an international seminar on the ICC dispute board rules in Mexico City with Mr. Gwyn Owen as its key note speaker. Dispute boards will play an important role at the ICC Mexico/Mexican Arbitration Centre conference on “*Arbitration and Dispute Resolution in the Construction Industry*” which will take place in Mexico City on June 28, 2007. The fruits of such efforts are starting to be conceivable.

A typical dispute resolution clause in a Mexican public works contract would include a reference to a so-called “independent expert” or a “resident at site” with ample authority to resolve technical disputes. However, in some cases the independent expert or the resident at site would also resolve legal issues. Whereas the independent expert

is normally a nominating authority which may delay the appointment of the actual expert, the resident at site is in fact an employee of the owner of the works and not independent. The decision made by an independent expert is binding and may only be annulled in case of irregularities in the appointment of the expert, manifest error, fraud or bad faith and excess of jurisdiction of the expert. Excess of jurisdiction may already occur if the expert exceeds the term for the rendering of its decision or if it resolves legal questions without being expressly authorised to do so. Manifest error is a legal concept not actually known under Mexican law but serves to annul an expert opinion in case of incongruence or errors in the valuation of facts.

The borderline between technical dispute resolution and subsequent arbitration or court litigation is often not clearly defined and the result creates multiple uncertainties which may even affect the validity of an award. Apart from that, public works contracts contemplate a conciliation procedure administered by the Control Ministry (Ministry for Public Functioning) and not by an independent conciliator. All in all, the present system does not seem to meet the expectations of a cost efficient and modern dispute resolution system.

This seems to have been recognised by the federal government in the quite successful “*Hospital del Bajío - Public-Private Partnership (2005)*”<sup>3</sup> which established a dispute review board managed by an Expert Committee.



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The project consists of the construction and operation (without including medical services) of a public speciality hospital during 25 years. The Expert Committee has five members of which the investor and the Health Ministry select two members each. Of those two members, one has to be a construction expert and the other a hospital management expert. The four party appointed members select the president of the Expert Committee. The construction experts are “active members” during the construction phase of the project. Thereafter, the hospital management experts become such “active members.” In case of difficulties to appoint the experts, the ICC International Centre for Expertise acts as appointing authority.

The Expert Committee issues a non final and non binding recommendation. However, such recommendation is admitted as evidence in a subsequent judicial proceeding before the federal courts. Any law suit is being barred until the Expert Committee has rendered its recommendation.

The construction of the Hospital Bajío finished ahead of the contract schedule and the hospital has recently been taken into operation. No relevant conflicts occurred during the construction

phase. The inclusion of a dispute review board in such project will certainly mark the way for other dispute boards in other industrial sectors in Mexico such as in power production and oil projects.

One may only hope, that the dispute board in form of an Expert Committee gains further powers in order to issue even final and binding decisions, if necessary. □

**About the Author:**

Dr. Herfried Wöss is an attorney trained in Austria, Great Britain, Brussels (legal service of the EC-Commission) and Mexico, and counsel and arbitrator/panelist in arbitrations and pre-arbitral<sup>4</sup> dispute resolution procedures. He actively promotes dispute boards in Mexico and Latin America. Dr. Wöss is a “rapporteur” of the Dispute Resolution Subcommittee of the International Construction Projects Committee of the International Bar Association, a fellow of the Australian Centre for International Commercial Arbitration (ACICA), a member of the Chartered Institute of Arbitrators (MCI Arb.) and of the panel of international arbitrators of the International Centre for Dispute Resolution (ICDR), amongst others. He recently integrated a multi-disciplinary team together with an independent engineering firm in order to further engage in claim management, expert proceeding, dispute boards and complex arbitrations<sup>5</sup>. Dr. Wöss can be reached by email at [hwoess@woessetpartners.com](mailto:hwoess@woessetpartners.com).

**Footnotes**

<sup>1</sup>The author thanks Neil Kaplan and Peter Chapman for their help and suggestions back in 1999; the SGS rules were *ad hoc* dispute adjudication board rules based on the FIDIC 1999 rules.

<sup>2</sup>See: *Wöss, Herfried*, Panel de Adjudicación de Desavenencias, “Una Retrospectiva,” ICC Mexico, Pauta 50, junio 2006, p. 12-20.

<sup>3</sup>*Wöss, Herfried*, Long-term performance monitoring in public-private partnerships conference paper, IBA Construction Law Conference, Public-private-partnerships - the road ahead in Latin American construction projects, Mexico-City, May 2006.

<sup>4</sup>*Wöss, Herfried*, Enforceability of pre-arbitral procedures in international construction projects, conference paper, Arbitration and International Construction Projects Committees, IBA Chicago Conference, September 2006.

<sup>5</sup>*Wöss, Herfried*, “Consolidation of Arbitration Proceedings and Joinder of New Parties by the Respondent Under the ICC Rules,” IBA Legal Practice Division Arbitration Committee Newsletter, September 2005.

# Spotlight on the DRBF's Regional Representatives: DRBF - Texas Style



**Rep: J. Lynn McDonald**

On behalf of the Texas Chapter of the Dispute Resolution Board Foundation – Howdy!

As a construction mediator and arbitrator, I naturally was excited when I learned of the DRB concept. I was even more excited when I found the DRBF website in late 2005. The web site's reference to "Local DRBF Chapters" made me hope the DRB concept had already become a common tool for conflict management in Texas construction. My hope diminished when I found only one chapter (Florida) listed. I was surprised the "makes-sense" DRB concept had not taken hold enough to warrant a chapter in my home state of Texas.

Larry Delmore told me the DRBF wants to promote DRBs in Texas' vast construction market and that help is welcome. Larry noted that one challenge in Texas is the relatively few number of trained DRB professionals, posing a "chicken-and-egg" situation. Construction owners may be reluctant to embrace the DRB concept when local DRB resources are relatively scant. Alternatively, seasoned construction professionals may be reluctant to invest in training when there is seemingly little market for their services.

Borrowing from the build-it-and-they-will-come philosophy, I believe one way to advance DRBs in Texas is to establish a DRBF presence. John Mad-den and Larry Delmore supported my belief by arranging a conference call in December 2006 that included me, John, Larry, Mac Smith (Texas), and Jack Norton (Florida chapter). Jack helped by explaining how the Florida chapter started. The conference resulted in consensus that a Texas chapter is an important step in promoting DRB use in Texas.

A subsequent poll of about twenty known DRBF members in Texas yielded five professionals interested in starting a chapter. Chapter activities to date include:

- Creating a web site ([www.drbtn.org](http://www.drbtn.org)).
- Electing officers and developing a dues structure (\$20 per year similar to Florida's chapter dues).
- Identifying construction-related associations throughout Texas. So far, Houston-area associations have been offered presentations to their membership about DRBs.
- E-mailing information about DRBs to Construction Management Association of America (CMAA) members in Texas and to Associated General Contractors (AGC) members in Houston.



**Dispute Resolution Board Foundation Texas Chapter**

**Fostering Common Sense Dispute Resolution in Texas**

- Identifying construction directors at public entities throughout Texas, including major airports, cities, and counties; school districts; state agencies; transit authorities; and universities.

Future chapter activities will continue to focus on promoting the DRB process to Texas construction owners and contractors, and assisting owners and contractors with setting up their Dispute Resolution Boards. The chapter will also facilitate training in the DRB process for DRB professionals, owners, and contractors.

Chapter membership is open to members of the DRB Foundation. A “Friend of DRB” membership category has been suggested (subject to Board approval) to allow non-DRBF members to support the Texas chapter. If you are interested in joining the Texas Chapter, contact me at 281/812-2210 or [jlmcDonald@jlmcrs.com](mailto:jlmcDonald@jlmcrs.com). We also need ideas and leads for promoting the DRB concept.

**About the Author:**

J. Lynn McDonald has managed major commercial, institutional, and aviation construction projects for over thirty years and served as Assistant Professor of Construction Science and Construction Law Lecturer at Texas A&M University. Mr. McDonald began practicing as a mediator and arbitrator in 1992. He holds an M.S. degree in Construction Management from Texas A&M University and a Master of Business Administration degree from Chapman University. Mr. McDonald is president of the Texas Chapter of the DRBF. □

**DRBF U.S. Regional Representatives**

**New England**  
Blase Reardon

**Northeast**  
Kathleen Harmon

**Mid-Atlantic**  
Adrian Bastinelli

**Southeast**  
Jim Brady

**Florida**  
Ralph Ellis

**South Central**  
J. Lynn McDonald

**North Central**  
Larry Lenahan

**Rocky Mountain**  
Ed Wheeler

**Northwest**  
Jim Donaldson or Roger Brown

**Northern California**  
John Jacobs

**Southern California**  
Bill Carlson

**The Coordinator for the U.S. Regional Representatives is John Madden. He can be reached at [johnpmadden@cs.com](mailto:johnpmadden@cs.com).**

## Letters to the DRBF

Allow me to congratulate the DRBF and Romania on the success of the recently concluded DRBF International Conference.

Secondly, since the immediate thrust in my country and probably within Asia is on the awareness of the benefits of Dispute Adjudication Boards (DABs) in addition to training, I need the help of the DRBF members especially with experience:

a) to contact me, in advance, when they visit the World Bank or Asian Development Bank, so that,

b) I can arrange a small roundtable lunch or dinner with a few key construction stakeholders. This will allow them to share with us real life experiences on the use of DABs and its advantages.

What better testimonial than statements of experiences?

Thank you for the hospitality I experienced at the International Conference in Romania. I hope I can reciprocate when you all visit the Philippines.

More power to DRBF,

Salvador P. Castro, Jr.  
spcjr@spcastro.com

## DRBF Committees

### Annual Meeting and Awards

Harold McKittrick

### Data Compilation

Joe Sperry

### Best Practices & Other Publications

Marianne Ramey

### DRBF Bylaw Revisions

Robert Smith

### DRBF Chapters

John C. Norton

### Practices and Procedures Manual

Joe Sperry

### Education/Training USA

Kerry Lawrence

### Education/Training Multinational

Gwyn Owen

### Finance and Administration

James Donaldson

### International

Gwyn Owen

### Membership

Harold McKittrick

### Nominations

Joe Sperry

### Professional Conduct

Robert Smith

### US Regional Representative Coordinator

John Madden

### Web Site

Ann McGough

### World Bank Liaison

Gordon Jaynes and Bernard Becq

# WELCOME TO NEW DRBF MEMBERS

## MEMBER ADDITIONS FEBRUARY 2007 THROUGH APRIL 2007

Philip Adams  
Shadbolt & Co. LLP  
Reigate, Surrey UK

Ronald S. Majors  
Construction Control Dynamics, Inc.  
Atlanta, GA USA

John Boyd  
Parsons  
Nuevo, CA USA

H. Fielder Martin  
Shapiro Fussell Wedge & Martin, LLP  
Atlanta, GA USA

Stephen N.F. Brookhouse  
Aston Clinton, Bucks UK

Ben Mellors  
Shadbolt & Co. LLP  
Reigate, Surrey UK

Leslie C. Brown, P.E., C.S.I.  
Leslie C. Brown PE/Consulting Engineer  
Corte Madera, CA USA

Subbarao Moka  
Dept of Education and Science  
Tullamore, IRELAND

Julio Bueno  
Pinheiro Neto Advogados  
Sao Paulo, SP BRAZIL

Nelanie Neilhac  
ICC  
Paris, FRANCE

Jorge R. Cibran  
The Architectural Partnership, Inc.  
South Miami, FL USA

Jeffrey Poster  
Jeffrey Poster P.C.  
Arlington, TX USA

Alan Elias  
The Alan Elias Consultancy  
London, UK

Luca Puletti  
Astaldi SpA  
Rome, ITALY

Joseph Elsen  
Colorado Dept. of Transportation  
Glenwood Springs, CO USA

Francois Rohmer  
Bouygues Batiment International  
St. Quentin - Yvelines, FRANCE

Robert P. Galea  
Hal-Lija, MALTA

David Tiberi  
Athalye Consulting Engineering  
Services, Inc.  
Lake Forest, CA USA □

Richard MacGeorge  
Ridgway Capital Projects Ltd.  
Christchurch, NEW ZEALAND

### Get Involved!

There are many ways to become involved in the DRBF. Join a committee or become active in local efforts through a regional chapter or by contacting your regional or country representative. Complete contact information for all committees and representatives is available on the DRBF web site:

[www.drb.org](http://www.drb.org)

# Committee Reports

## Data Compilation & Manual

Use of DRBs is growing so fast and so widely that reliable data has become impossible to collect. In the future we will only report increasing diversity of use of DRBs: first time users of DRBs, DRBs on unique types of construction and exciting projects, and new variations to the DRB process. The Database section of the web has been revised as follows:

- Introduction has been rewritten.
- Summary Charts spreadsheet has been revised.
- Database and Database Sorts are unchanged.
- Reporting Forms have been deleted.

The last portion of Section 1, Chapter 3 of the Manual has been rewritten to update the use of DRBs as above and is on our web site. No additional changes are planned for the Manual this year. Comments on the Manual are encouraged so we can plan future improvements.

Joe Sperry

## International

### DRBF & the European Union

The DRBF representative in Belgium is currently opening up lines of communications with the European Union secretariat for the purposes of discussing the use of Dispute Boards on all major EU projects in general and particularly with regard to ensuring the costs of the DBs become part of the eligible funds of the executing agencies. The full scope of the DRBF and its range of members is also to be discussed and highlighted to the EU secretariat. These meetings are as yet in an early stage but it is hoped for some real progress by the end of the year.

### Germany

A Working Group has been set up by the German Association of Judges Specialising in Construction. Gwyn Owen has made a presentation to the group on DBs and the DRBF. The association has the aim of developing construction related law in Germany and to promote changes in this field

with legislative and other interested bodies. During 2006, seven working groups were set up dealing with such issues as construction law, tender law, experts and ADR. The latest Working Group is very focussed on the DB concept. The DRBF hopes to maintain an active participation with the group and provide support for the development of DBs in Germany.

### Australia & New Zealand

The new chapter in Australia & NZ is progressing quite well and has a new web site: [www.drba.com.au](http://www.drba.com.au). Local DRBF member Graham Easton is presently active on two Boards, one which was featured in the August 2006 Forum and the other a complex freeway interchange between Brisbane and the Gold Coast. For further information check out the web site or contact Graeme Peck at [gmp@gmpeck.com.au](mailto:gmp@gmpeck.com.au).

### New European Region Branch

The new DRBF plan approved at the 2006 Annual Meeting requires the establishment of two or three world regions during phase 2 (North America, Europe and possibly Australasia) with further expansion during phase 3. To get started, an ad hoc committee has formed to prepare for the establishment of the European region. Romano Allione is the coordinator, with Gwyn Owen, Nigel Lowe, Nicholas Gould, Volker Jurowich, William Buyse and John Madden as members. The committee will act as a "Shadow European Board" until a permanent board is established, and aims to prepare for the formalisation of the European region by October 2007. Initial objectives are: 1) identify the countries to be included in the region; 2) formalise terms of reference for all Country Representatives; 3) identify multinational training providers; and 4) prepare a Region Plan to present at the Annual Meeting.

For more information or to get involved, please contact Romano Allione by email at [romano.allione@tiscali.it](mailto:romano.allione@tiscali.it) or Gwyn Owen [gwyn@esy.net.co.uk](mailto:gwyn@esy.net.co.uk).

Gwyn Owen □



**CAPITAL CONSTRUCTION**

## **Request for Qualifications for Disputes Review Board Members and Chairpersons**

Metropolitan Transportation Authority Capital Construction (MTACC) for the state of New York seeks to establish an approved panel of potential Dispute Review Board (DRB) members and chairpersons who are qualified to serve and would be available to be selected and serve on Disputes Review Boards for individual large MTACC construction contracts. The approved panel will be selected from those who respond to a Request for Qualifications (RFQ). Selection Criteria and other details will be provided in the RFQ.

The RFQ will be available for downloading on or after June 12, 2007 at [http://www.mta.info/nyct/procure/cc\\_solicitations.htm](http://www.mta.info/nyct/procure/cc_solicitations.htm). If you have any questions, please email them to [MTACC.Procurement@nyct.com](mailto:MTACC.Procurement@nyct.com).

## **Forum Updates**

**Did you know you can now receive the Forum by email? If you prefer this method, let the DRBF know today. You'll save time, paper and production costs. Back issues of the Forum are also available in the member's only section of the DRBF web site.**

**If you have news about DRBs, DRBF members, or an article to share, please tell us!**



***Deadline for the next  
issue of the Forum is  
July 1, 2007***



# **Dispute Resolution Board Foundation Upcoming Conferences**

**June 25, 2007**

## **NW Regional Conference & Training Workshop Radisson Gateway Hotel, Seattle, Washington**

The DRBF Northwest Conference and DRBF Practice & Procedures Proficiency Update Training will be held at the Radisson Gateway Airport Hotel in Seattle, Washington. The morning will be devoted to the NW Conference with the popular Owner-Contractor-Subcontractor users panel format. The afternoon session will be the DRBF Practice & Procedures Proficiency Update Training. The update-training course fulfills the training requirements for certain DRBF membership grades that will begin in 2007.

The complete program and registration form are available on the DRBF web site. Registration fees are:

**NW Conference** (morning session) \$125

**DRBF Practice & Procedures Proficiency Update Training** (afternoon session) \$220

**Both NW Conference & Training** (full day save \$20) \$325

All conference and workshop materials are included with each session. Lunch is provided for all attendees at either session. To register, download a registration form from the DRBF web site and mail to the Seattle office, fax to (206) 878-3338 or e-mail to home7@mindspring.com. For hotel reservations contact 800-333-3333 and ask for the DRBF NW Conference group rate of \$139 per night plus tax.

**October 6-7, 2007**

## **11th Annual Meeting and Conference Hilton Hotel, San Diego, California**

***“The Future of DRBs in Infrastructure”***

The DRBF’s Annual Meeting and Conference offers lively and engaging presentations and discussions on the current and future state of DRBs. This year’s event will be held in sunny San Diego, California at the Hilton Hotel at Harbor Island. The program will feature presentations and panel discussions from public and private owners and contractors who use DRBs, skills training and mentoring, innovations in dispute resolution, and how the DRBF is changing to meet the growing needs of the dispute resolution worldwide. There will also be a look at Dispute Boards abroad, including an overview of training, national lists, and an American’s perspective on participating on DRBs outside of North America. There will be ample opportunity for networking, an optional tour of the USS Midway aircraft carrier, and the Al Mathews Award dinner on Saturday night. Participants can maximize their visit to San Diego by registering for several training courses planned for Thursday, Oct. 4 and Friday, Oct. 5.

Registration fees are: \$275 (\$300 for non-members) in advance or \$300 (\$325 for non-members) after September 6, 2007. To register, fax, e-mail or mail a registration form which can be obtained from the DRBF office or downloaded at [www.drbf.org](http://www.drbf.org). For hotel reservations, call the Hilton Hotel at 619-291-6700 and request the DRBF group rate of \$159 per night.

**Register today! Visit the Meetings & Conferences  
page of the DRBF website for updated information  
regarding conferences and training workshops.**



# **Dispute Resolution Board Foundation Training Updates**

## **Florida Chapter Training Focuses on Project Participants**

By Ralph Ellis

Many contractor and owner project personnel are not adequately prepared for working with a DRB. In most venues DRB members have received DRBF training. However, in the past there has been no training available for other project participants. Florida DRBF Chapter members have been often frustrated in witnessing project participants making mistakes in their dealings with the DRB. As a DRB member, you can not give advice.

Believing that the DRB process works best when all parties are trained and prepared, the Florida Chapter has developed a “Best Practices for Working with DRBs” workshop. The one-day program includes a course manual and is offered with CEU credits for participants. The training, which is presented by three experienced Florida DRB members, covers the following areas:

- DRB Principals
- FDOT DRB Procedures
- Best Practices for Participating in Project DRB Meetings
- Best Practices for Preparing a Position Paper
- Best Practices for Presenting a Position
- Most Common Mistakes Made by Project Participants

The class format is a mixture of instructor presentations, team assignments on cases, and open discussion. In the case assignments students are encourage to develop their opponent’s key position points along with their own position. An interesting outcome is that after seriously examining the oppositions points, most will agree that the issue should have been settled before being brought to the DRB.

## **DRBF Workshops Meet American Arbitration Association Training Requirements**

The American Arbitration Association (AAA) recently announced all training workshops administered by the DRBF will qualify as approved credit hours for their National Roster of Arbitrators and Mediators. AAA has a number of requirements to join the roster, including appropriate training in dispute resolution methods. For more information about AAA, visit [www.adr.org](http://www.adr.org). For information about DRBF training, visit [www.drb.org](http://www.drb.org).



*(continued from page 1)*

The theme of the conference this year was “Dispute Boards in Practice” and it was hoped that delegates were able to gain first hand knowledge directly from users of the DB system such as owners and contractors as well as party representatives such as engineers, lawyers and claims consultants. The conference was attended by representatives of various governments including Romania, Libya and the Sudan and major international contractors such as CMC Ravenna. The Institutions of FIDIC from Switzerland, ICC from Paris and the ICE from London were also represented.

DRBF President Pete Douglass opened the conference and welcomed all to Romania. He was followed by President Elect Gwyn Owen, who introduced the theme of the conference and also introduced delegates to past presidents of the DRBF in attendance and some other dignitaries. The first morning of the conference then proceeded with presentations by FIDIC, the ICC and ICE who each gave outlines of their own roles in the International DB arena, what functions they performed and how they were able to assist prospective DB members. The morning concluded under the session chairmanship of Dick Appuhn with presentations from representatives of the Romanian Government, construction lawyers from Fenwick Elliot, consultants from Techno Engineering and the joint chief executive of the international construction company CMC Ravenna. All these presentations were DB specific and outlined what users looked for in Dispute Boards – and stated what they did not want from DB members!! The chief executive of CMC was particularly interesting and from his own experience told the conference that he firmly believed that DBs helped in preventing disputes by providing an early warning of matters of concern and directly contributed to improving human relationships between parties. Over the lunch break a presentation was made by the Eastern Europe head of procurement for The World Bank from the resident mission in Romania.

The afternoon followed a similar theme under the chairmanship of Alina Oprea, the DRBF Country Representative for Romania, with practical presentations of experience given by representatives of the government of Libya, Ascot Engineering, and London based international construction lawyers Shadbolt Law and Corbett & Co.

*(cont.)*



**Would you like to be a  
Country Representative  
for the DRBF?**

Help give the DRBF a voice in your country by becoming a DRBF Country Representative. Responsibilities include working to raise the profile of DRBs, helping to increase DRBF membership, and possibly serving as a spokesperson for the Foundation. You may also be asked to help organize DRBF events within the country you represent. To qualify, you must be a member of the DRBF and live in the country you represent (you need not be a national). Terms are for a two year renewable period.

If interested, contact the DRBF office today: Phone: 206-878-3336;  
Fax: 206-878-3338; or Email: [home@drb.org](mailto:home@drb.org).

The afternoon sessions were rounded off with a presentation given by Hal McKittrick and Romano Allione on the proposed changes to the future structure of the DRBF.

During the day on Saturday the wives and partners who were not attending the conference but were brave enough went for a local tour which included a row boat trip on the Snagov Lake just outside Bucharest to visit the isolated monastery and burial place of Count Dracula. We can confirm that they all made it back in one piece and none have become vampires (as far as we know). Saturday evening was spent at McMoni's restaurant with local entertainment for the celebration of the Gala Dinner.

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The DRBF would like to thank the planning committee for the 2007 International Conference:

Dick Appuhn  
Murray Armes  
Mark Entwistle  
Gordon Jaynes  
Alina Oprea  
Bogdan Oprea  
and Gwyn Owen,  
Committee Chair.

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Sunday was a very hands-on practical day where, under the session chairmanship of Gordon Jaynes and Dick Appuhn, various DRBF members gave their impressions on how to become a DB member, training, mentoring and how to gain experience.

The conference was closed out by Gwyn Owen who announced the 8<sup>th</sup> International Conference will be held in Cape Town, South Africa in May 2008.

General overall impressions of the conference were that delegates wanted the funding institutions to become more proactive in supporting DBs and DB practitioners were to provide procedures which encouraged good communications and which assisted parties to reduce conflict. Feedback from delegates after the conference all seemed to agree that the networking opportunities at the conference were very good with delegates from so many different nationalities and backgrounds attending. It was interesting to note that owner organisations attending all had many new projects pending with overall values exceeding \$2B - each of which would be requiring new DBs to be established in the every near future.

All I can say to everyone who attended and were involved in the organisation – a big thank you – and for those who missed it - don't miss the next one!! □

**Gwyn Owen**

The DRBF International Conference offered interesting panel discussions and lively debate, as well as opportunities for networking and social interaction. More photos from the conference are available online at:  
<http://picasaweb.google.com/dabdrb/StarredPhotos>  
<http://picasaweb.google.co.uk/olteanugb/70512GalaDinner>





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19550 International Blvd. So., Suite 314  
Seattle, WA 98188

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### FOUNDATION FORUM

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## CALL FOR NOMINATIONS FOR THE AL MATTHEWS AWARD

The Dispute Resolution Board Foundation presents the Al Matthews Award each year to one or more DRBF members who have given exemplary service in advancing the use of the dispute resolution board concepts and the DRBF.

Nominations are solicited from the membership and by the president from the board of directors. A framed proclamation and trophy will be presented to the recipient at the Dispute Resolution Board Foundation Annual Meeting and Conference in October.

**Send your nomination, including an explanation of why the nominee is deserving of the award, to:**

**Award Nominations/DRBF**

**6100 Southcenter Blvd., Suite 115**

**Seattle, Washington 98188-2441**

**Or by e-mail to [home@drb.org](mailto:home@drb.org), subject: Al Matthews Award Nomination**

**Entries should be postmarked no later than 7/15/07**

The distinguished list of past winners includes:

**Al Matthews, Robert Matyas, Robert Smith, Joe Sperry,  
Jimmy Lairscey, Carlos Ospina, Pete Douglass, Jim Donaldson, Steve Fox,  
Gordon L. Jaynes, John Nichols, and Peter H.J. Chapman.**