

Forum

The East Side Access Project – Changing the Paradigm for Disputes

by
Kathleen M. J. Harmon

Introduction

The Metropolitan Transportation authority (“MTA”) operates the largest transit and commuter rail transportation system in North America and one of the largest in the world. The MTA claims that no area of the country is more thoroughly integrated into its public transportation network than the New York City metropolitan region. As a result, the region’s economy and quality of life depends on the smooth daily operation of the MTA public transportation, bridge and tunnel network. The scope of benefits provided by the MTA consists of servicing two billion passengers each year and approximately eight million passengers each weekday (www.mta.nyc.ny.us/mta/cap2000-2004).

One of the most important activities

affecting the economy and well-being of this region is advancing the MTA five-year capital program for rebuilding the region’s mass transportation network and improving that network to achieve even greater reliability and enhanced service levels. The first five-year capital program was launched in 1982 in an effort to “reverse a near-complete breakdown of the New York City public transportation system” (www.mta.nyc.ny.us/mta/cap2000-2004). Over the period of ten years, a program of “sustained rescue and recovery work was implemented” (www.mta.nyc.ny.us/mta/cap2000-2004).

Necessary investments concentrated on the restoration and maintenance of the existing MTA network. As a result of these efforts, MTA agencies made major advances in bringing substantial portions of their assets into a state-of-good-

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President's Page

Our membership has voted, and by a huge margin, have approved our name change to **The Dispute Resolution Foundation**. For those members who didn't vote in favor of the name change, please take solace in the fact that the Association advocates **dispute resolution**, and that is what our board methodology facilitates.

We are now formally revising our charter credentials regarding our new name. The name change launches our Logo contest to accept design submissions from our membership. After the judging of the submitted design, the **WINNER** will receive a \$1000.00 CHECK from the Foundation.

Our website is slowly being enhanced. We have posted the latest Forum on it. Access is by a password, which current members can access. If you have not done so, email Steve Fox to get the code.

On the subject of Membership, our renewals and new member acquisitions are not occurring as fast as I would like to see. Larry Rogers, our Membership Director continues to put our National and Global Membership Acquisition network in place. You will be contacted shortly to 're-up' if you haven't done so already. We also need you to give us leads to possible new members. If we don't reach our membership goals, we will not have the income to continue adding to Membership Benefits!

On the good news side, Bill Baker, our loyal past President, and strong DRB supporter, has made a presentation to the 400 GSA Managers at their Annual Meeting in New York City on March 21st. The subject was "How Can a DRB Eliminate Claims on GSA Projects." The GSA is the builder of Federal courthouses, and Federal office buildings. They have been searching for ways to manage (and eliminate) claims. We have been working with their DC staff to consider the DRB process, and the 3/21 presentation was a golden opportunity to get our 'word' to them nationally. We are waiting for their reaction to our proposal.

If anyone knows of a new project that should use the DRB process, contact me, and we will find away to make a presentation.

We are quickly coming up to our May 25, International Meeting in Rome, Italy. If your are even thinking of going, I urge you to attend, to show that the Colonies fully support the International process. I have been assured the food will be superb!

See you in Rome.

Jack

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From the Editor

It has always been our intent that this publication serve as the leading source of information on DRBs. One of the challenges of editing a publication like the *Forum* is finding material that is current and deals with real issues that DRB practitioners are currently facing.

When we first started the *Forum* five and a half years ago, there seemed to be plenty of material for publication and there was always something in reserve for upcoming issues. We even got some good debates going in the Letters to the Editor section.

That is not the case now. Over the last year and a half unsolicited material has not been forthcoming at a sufficient level. Nor have we had any good debates going in the Letters section save the recent one about whether or not certification should be required of DRB practitioners.

It was suggested that we have a section on current problems facing practitioners, but when the person suggesting it was contacted, he had none to offer.

In an effort to generate more communication between members through the *Forum*, in the next issue, we will offer a new section on Current Challenges from those who are out there working as DRB members. Do you have anything to offer? Is there a challenge you are facing that you would like ideas from others out there?

Pete Douglass recently indicated that he is seeing more specs that specifically make the DRB's recommendation **not** admissible in subsequent proceedings. Are you seeing the same thing? Is it important to the process that recommendations be admissible?

Please let us know. □

Larry Rogers

Committee Reports

Training

We have had well attended training programs in Boise and Orlando, with four scheduled for Caltrans coming up in the near future as well as an Administrative and Practice Workshop and a Chaining Workshop in conjunction with the AUA conference in Seattle in May.

We offered a new workshop for the Idaho Transportation Department called the DRB Users Workshop for project people that will be working with DRBs. It was given to a group of both owner and contractor representatives and educated them about what DRBs are, how they are intended to work, how to effectively work with a DRB and how to make effective presentations to DRBs. The workshop was well received and we are offering it to others who are interested in educating project people about DRBs.

We have some interest from Florida and Texas about doing more of the Users workshops. Do you know of anyone that might be interested in one?

Larry Rogers

International Report

Preparations are well underway for the Second International Conference of the DRBF to be held in Rome, Italy on 25th May 2002. A varied programme of discussions has been devised, aimed at promoting dispute resolution boards as well as looking at their operation - pitfalls and pleasures - in the international context. Details of the conference and booking forms may be obtained from Peter Chapman by e-mail on disputeresolution@PeterHJChapman.com. Last year's international

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conference proved popular and enjoyable and the organisers hope the magic of Rome in May will ensure this year is even better. If sufficient demand is evident, a Chairing course may be run on the day before the conference.

The International Chamber of Commerce (in Paris) has recently approved a protocol on Dispute Boards. This was the first step by the ICC in supporting the concept. Further work is currently in hand to establish detailed procedures, tri-partite agreements and specimen contract clauses to be used by ICC members (and others) in their commercial contracts. This is a very exciting development and is likely to spread the DRB message far beyond its present boundaries and into areas other than construction. Several leading members of the DRBF serve on the ICC working group so the DRBF's interests are well served.

The DRBF's sister organisation in the UK, the Adjudication Society, continues to flourish. With approaching seven hundred members and six branches within the UK, regular meetings and workshops are held in addition to monthly e-newsletters. The first conference of the Society is planned for September 2002 in Birmingham.

In addition to the above activities, the international section continues to look for new members and to enlist country representatives to support and promote the DRBF around the world. □

Peter Chapman

CALL FOR PAPERS

The *Forum* welcomes learned articles for publication on all aspects of Dispute Review Boards. The article should not be under consideration by other publications.

Contact the Foundation *Forum* at:

**Dispute Review Board Foundation
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CALL FOR NOMINATIONS FOR THE AL MATTHEWS AWARD

The Dispute Resolution Board Foundation (DRBF) shall present annually the “Al Matthews Award” to a DRBF member who has given exemplary service in advancing the use of the dispute resolution board concepts, and the DRBF.

NOMINATIONS

Nominations shall be solicited from the membership in the April edition of the *Forum*, and by the President from the Board of Directors.

NOMINATING COMMITTEE

A nominating committee for the annual recipient of the Award shall be appointed by the President. The President shall serve as Chair, and shall appoint four additional members from the general DRBF membership.

The Nominating Committee shall present its recommendation to the Board for consideration at the June meeting of the Board of Directors.

THE AWARD

The Award will be presented to the recipient at the annual DRBF meeting and conference generally held in October.

The Award will consist of a framed proclamation and a trophy with the recipient’s name and date of award engraved thereon.

Send your nominations, including an explanation of why you think the nominee is deserving of the award to:

**Award Nominations
DRBF
6100 Southcenter Blvd.
Suite 115
Seattle, Washington 98188-2441**

Postmarked not later than 6/7/02.

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repair. The capital program for 1995-1999 period has been an astounding achievement and by the end of 1999 had commenced close to \$12 billion of work critical for the continued operation of MTA services. Including all of the investments made since 1982, approximately \$35 billion of work was completed or underway by the end of 2000 (www.mta.nyc.ny.us/mta/cap2000-2004).

In the 1990's the MTA's primary focus was the restoration of the system, but it had also enacted improvements that enhanced rider services. In addition in 1996, under New York's Governor George E. Pataki's Master Links program, the MTA began a planning effort to improve the regional transportation system. In this effort, the MTA agencies are cooperating with New York City and the Port Authority of New York and New Jersey the purpose of which is to establish a unified regional transportation system that will link important business centers, communities and airports with each other and the rest of the region. This effort focused on several projects: to provide Long Island commuters with access to the east side of Manhattan via Grand Central Terminal; to improve subway services on the east side of Manhattan with the construction of a new service along Second Avenue; to provide Metro-North riders direct access to the west side of Manhattan via Penn Station; and to provide direct rail access to LaGuardia and JFK airports (www.mta.nyc.ny.us/mta/cap2000-2004). The MTA's Capital Program for the 2000-2004 period totals over \$17 billion. Today, the final designs for the LIRR access to Grand Central Terminal are underway (www.mta.nyc.ny.us/mta/cap2000-2004).

East Side Access Project

The East Side Access project will improve access to Manhattan's East Side for commuters in the Long Island Transportation Corridor, which includes Manhattan, Brooklyn, Queens, and Nassau and Suffolk counties. The benefits of transportation improvements include expanded seat-

ing capacity on the Long Island Rail Road ("LIRR") system and a reduced number of standees on LIRR trains during peak hours, less train congestion at New York's Pennsylvania Station ("Penn Station") and a more balanced use of Manhattan's railroad terminals, and significantly reduced congestion on the regional highway network and East River crossings resulting in improved air quality (www.mta.nyc.ny.us/planning/esas/3description.htm).

The entire East Side Access ("ESA") project is the largest single construction program undertaken by the MTA in its entire history. The total capital construction cost of this project is \$3.7 billion. The tunnel engineering portion encompasses the construction of new soft-ground tunnels in Queens that will connect to the existing 63rd Street tunnel, and new hard-rock tunnels under Manhattan's west side leading to Grand Central Terminal, as well as a new station in Sunnyside, Queens and new yards and maintenance facilities. Bechtel/URS was engaged to assist the MTA in achieving its goal. Bechtel/URS's work involves program management of planning, preliminary and final design as well as construction phase services (www.mta.nyc.ny.us/planning/esas/3description.htm).

The LIRR is the busiest commuter railroad system in the country operating a train every 150 seconds into Penn Station, however, its only entry into Manhattan is Penn Station on the west side. Penn Station has reached its capacity and is constrained for future growth. The East Side Access project will ease congestion at Penn Station by offering direct service between Long Island and east Midtown Manhattan. Early studies determined that over one-half of the LIRR's customers work within Grand Central Terminal (GCT) area. Providing service to the terminal will save nearly 100,000 commuters more than 30 minutes commuting time each day (www.mta.nyc.ny.us/planning/esas).

The ESA project will be a complex construction effort. The overall route will connect both LIRR's Port Washington

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Construction Dispute Review Board Manual by Matyas, Mathews, Smith and Sperry

An essential reference for all construction professionals, this book shows you how to use Dispute Review Boards to solve construction disputes on the job, avoid claims and thereby reduce project costs. This definitive manual provides all the procedures required to employ the DRB process, and fully explains the benefits and pitfalls of DRBs. Whether you're an owner, contractor, construction manager, attorney or construction lender, this time- and money-saving sourcebook offers you the most complete guidance now available on the successful establishment and practice of a DRB during construction.

\$45.00 plus \$4 postage/handling. Contact the Foundation to order.

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Branch and Main Line to a new 8 track, four-platform, LIRR terminal beneath GCT's lower level. It will involve more than 20,000 linear feet of new hard-rock and soft-ground tunnels between Long Island City and Manhattan, including outfitting the lower-level of the existing 63rd Street-Queens Tunnel, which is part of the 63rd Street Subway line. The project also will involve a major reconfiguration of the west side of GCT's lower track level, construct a new passenger concourse for LIRR passengers, new access points at GCT, reconfiguration of New York City Transit's Lexington Avenue subway station to accommodate increased passenger traffic, a new commuter rail station at Sunnyside Yard in Long Island City, and a new railcar storage yard in Queens, as well as traction power, signals, and communications systems (www.mta.nyc.ny.us/planning/esas).

Two engineering options were examined for the Manhattan alignment. Engineering Option 1 has been shelved and Engineering Option 2, which was the preferred option, will create a new deeper terminal beneath GCT's lower level tracks. Several design schemes for the new platforms and tracks are currently under design review and options are being explored. The net result, each platform will have stairs and escalators rising to four mezzanine-level cross-passageways above and perpendicular to the platforms. From these common passageways, stairs and escalators will rise to a large concourse for the LIRR in the area currently occupied by Metro-North's Madison Yard.

The MTA selected the joint venture of Bechtel Infrastructure Inc. /URS, Inc. ("Bechtel/URS") as the project manager for this project in November 1998. The duration of the construction project is 2000 to 2010. The Bechtel/URS program management team serves as the LIRR's primary day-to-

day manager and will supervise the Tunnel Engineering and Systems Engineering Consultants as well as the Environmental Consultant. The program management team also recommends approaches to all design and construction requirements, promotes utilization of the most cost-effective design, conducts value engineering and constructibility reviews, prepares consultant scopes of work, manages construction and force account activities, and manage the project's budget and schedule.

Current Status

A Major Investment Study on the East Side Access project was completed in March 1998. In June 1998, the New York Metropolitan Transportation Council (NYMTC), the Metropolitan Planning Organization, passed a resolution endorsing the recommended extension of the LIRR into Grand Central Terminal. In September 1998, Federal Transit Administration approved preliminary engineering and preparation of an Environmental Impact Statement for the project which detailed the possible environmental effects of having LIRRR trains into GCT. The Draft Environmental Impact Statement was approved in May 2000; the Final Environmental Impact Statement approved in March 2001. In May 2001 the MTA received a Record of Decision from the Federal government which concluded that the East Side Access project was a worthy project and finalized the environmental mitigation effort to be required of the project. These approvals in addition to others will allow Federal funds to be released. These Federal funds are pending but letters of "No Prejudice" have been received by the MTA which allows the final design to go forward.

Shifting the Dispute Paradigm

All construction projects have conflicts, (Augustine, 1993; Clegg, 1992; Fenn, et al, 1997; Kane, 1992; McManamy, 1994; Stanley, 1989) but not all conflicts escalate into disputes. Many people confuse the terms of conflict and dispute and some

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Other News

Name Change Approved

As indicated in Jack Woolf's President's Page the change of name for the Foundation was approved. You will therefore see certain changes in the *Forum* including a change in the name of this publication. You will also see that in certain cases, the old name of the Foundation is still being used. Until the Articles of Incorporation are officially changed, some references to the old name will still be used for legal purposes.

Judge Upholds DRB Recommendation on Big Dig

A Superior Court judge in Boston has upheld a \$17.5-million recommendation issued by a DRB on the Boston Central Artery Project.

Judge Allan van Gestel issued an order in March confirming the recommendation while "sending a strong signal that the courts will not overturn decisions of 'dispute resolution boards'", according to an article in the March 26 issue of the *Boston Globe*.

The recommendation involved a claim by the joint venture of Perini/Kiewit/Cashman. Robert Brand, CEO of Perini Corp., the lead contractor on the job, while expressing concern that its initial request for \$55 million was reduced, said of the court's order that it "confirmed the process of the dispute resolution board."

Courts in the states of California, New York and Massachusetts have now ruled to uphold DRB provisions in contracts.

Regional Representatives Named

As mentioned in the last *Forum* the Foundation has established regional districts to provide members with better service. Regional representatives will provide members and prospective members with information about the Foundation's activities and assist everyone with efforts

to get the word out about DRBs and the Foundation.

Those who have agreed to represent the Foundation are:

- Blase Reardon—New England (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island)
- Kathleen Harmon—Northeast (Connecticut, New York, New Jersey, Pennsylvania)
- Adrian Bastianelli—Mid-Atlantic (Maryland, West Virginia, District of Columbia, Virginia, North Carolina, Delaware, Kentucky)
- Rammy Cone—Southeast (South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee)
- Sharon Daily—North Central (Ohio, Indiana, Michigan, Wisconsin, Minnesota, Iowa, Illinois, Missouri)
- Diane Gollhofer-Raines—South Central (Texas, Oklahoma, Kansas, Arkansas, Louisiana)
- Ray Henn—Rocky Mountain (Montana, North Dakota, South Dakota, Nebraska, Wyoming, Colorado, Utah, New Mexico)
- Jim Donaldson—Northwest (Alaska, Washington, Oregon, Idaho)
- John Nichols—Southwest

Regional Representatives

Blase Reardon

New England
(Maine, New Hampshire, Vermont, Massachusetts, Rhode Island)

Kathleen Harmon

Northeast
(Connecticut, New York, New Jersey, Pennsylvania)

Adrian Bastianelli

Mid-Atlantic
(Maryland, West Virginia, District of Columbia, Virginia, North Carolina, Delaware, Kentucky)

Rammy Cone

Southeast
(South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee)

Sharon Daily

North Central
(Ohio, Indiana, Michigan, Wisconsin, Minnesota, Iowa, Illinois, Missouri)

Diane Gollhofer-Raines

South Central
(Texas, Oklahoma, Kansas, Arkansas, Louisiana)

Ray Henn

Rocky Mountain
(Montana, North Dakota, South Dakota, Nebraska, Wyoming, Colorado, Utah, New Mexico)

Jim Donaldson

Northwest
(Alaska, Washington, Oregon, Idaho)

John Nichols

Southwest
(California, Nevada, Arizona, Hawaii)

If you've got something to say we'd like to hear it.

Deadline for the next issue is June 15, 2002.

New Country Representatives for India and Australia and New Zealand Announced

Board member and International Committee chair Peter Chapman has announced selection of new Country Representatives for India and Australia and New Zealand.

The new representative for India is Shri K. Subramanian. He replaces Jim Neville who has taken a new position in Paris.

Norman Reich has been named to replace T.J. "Max" McDougall as Country Representative for Australia and New Zealand.

The DRBF thanks Jim and Max for their hard work on behalf of the Foundation and wishes each of them well in their new endeavors. £

consider them one in the same. They are not (Harmon, 2001). A conflict is defined a legitimate disagreement between the parties and includes, but is not limited to, additional or extra work, specification requirements disagreeing with information contained on the contract drawings, lack of information causing project impacts, the proper method of performing an item of work, etc. A dispute is the escalation of a conflict to an emotional level and involves irrational behavior, which deteriorates the working relationship between the parties and inhibits the resolution of the conflict to the satisfaction of both parties.

Unresolved disputes occurring during the course of construction can result in significant out of pocket costs to both the contractor and owner in terms of legal fees, expert witness costs, and consultant fees. Other hidden financial costs result to both parties as well. These costs are the diversion of manpower from new work to prepare for depositions, bring the attorney and/or consultant up to speed concerning the problems of the project and nature of the work, and/or to be witnesses at the trial or arbitration. Moreover, there is the emotional cost in the loss of the relationship between the parties, as well as the price escalation of the conflict has on the construction process itself, in terms of job satisfaction by employees of both parties as well as the progress of the project itself.

Large complex projects such as the individual contracts being let for the ESA project, and in particular, the tunneling portions of the work can range in duration from 2 to 4 years or more, involve a number of significant resources from both the perspective of the Owner and the contractor such as equipment, material, labor, risk, and costs. Therefore, any viable means to reduce the incidence of conflicts or disputes should have a positive effect on the outcome of the project, in terms of actual and emotional costs. Moreover, unresolved conflicts and their resulting legal and consulting fees add no value to the project itself. Unfortunately, these costs are generally unrecoverable or at

best, though seldom partially recoverable.

Dispute Review Board for the ESA

One main preventative technique that the MTA considered for the ESA Project is the use of a contractually mandated Dispute Review Board (DRB). The DRB is a vehicle of the contract. Based on the published East Side Access General Terms & Conditions, a three-member panel of experienced industry neutrals will be formed by the parties at the start of each major construction contract, and will be kept informed of the construction process and ongoing issues via period joint meetings with the contractor and MTA representatives. The DRB's formation, make-up, and operation are detailed in the specifications. The DRB is empowered to provide recommendations on disputes brought to it by the parties.

Currently the MTA anticipates using DRBs on 14 of its contracts. These contracts will cover such work as major civil and structural work, including soft ground and hard rock tunnels, open cut excavation, as well as ventilation plants and structures. The Arch Street Yard Design/Build project, a negotiated procurement contract, also contains the DRB provisions. Proposals are currently being reviewed and considered for this work.

As any experienced industry professional will admit, the reality is that most disputes are not open-and-shut cases. Having a sitting DRB on these contracts for such vital work encourages the parties to recognize that legitimate differences of opinion will naturally arise during the course of any business transaction, particularly one that involves as many parties and complexities as does the East Side Access construction. In one sense, the presence of a venerable DRB is intended to encourage the parties to develop an interest-based, rather than position-based discussion to resolve their differences. Moreover, the presence of a DRB will encourage the MTA and contractors to change their philosophy concerning disagreements from adversarial to cooperative. The MTA, in

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its decision to choose the DRB process demonstrates that it emphasizes open communication, early identification of potential problems, and the timely resolution of these problems. The more the parties believe that conflicts can be resolved successfully, the greater the chance in pursuing resolution as a goal (Mayer, 2000).

By shifting from the current conflict resolution paradigm in New York City public infrastructure construction, which is recognized in the industry as fostering an adversarial dispute stance, to a new mutually cooperative paradigm utilizing the DRB process, the MTA should realize a reduction in the number and costs of disputes during the construction process. This should allow both the MTA and contractor's staff to concentrate on achieving the goal of a project delivered on time and within anticipated costs rather than taking hard and fast positions concerning disputes.

In addition, with a respected DRB panel, the parties will feel obligated to appear reasonable and responsible and will not put forth frivolous or marginal claims because they are more concerned about how the DRB panel of their choosing is evaluating them than how the opponent is (Denning 1993; Greenhalgh, 1999).

With the ESA project contracts, the DRB is not just a form of alternate dispute resolution, but it will function as a vehicle to avoiding disputes, not merely resolving them. The decisions of the DRB will not be binding on the parties. Furthermore, DRB decisions for these projects will not be admissible in any litigation should the dispute remain unresolved. Nevertheless, the combined wisdom of three figures respected in the industry will be compelling and may allow both parties to see their positions as others within the construction community will see them. With the historically significant success of other DRB projects, it is likely that the ESA project will realize the same success.

Nevertheless, having the DRB provision in the ESA contracts is not a panacea; it does not guarantee that there will be no

changes, claims, or conflicts, which are not resolved by the end of the project. Moreover, it does not require the parties give up any rights nor does it render any contractual provision meaningless. The preliminary contract changes and claims procedures will still be adhered to. Only when disputes remain unresolved after the contract claims procedure are the parties permitted to be brought to the DRB. If the parties chose not to accept the DRB's recommendation, whatever judicial relief that was available in the contract, is still available.

The DRB process in the ESA projects is a dispute resolution methodology which requires real efforts on the part of the parties to change their mind-set from the traditional us against them attitude to one of the win/win outcome of a collaborative problem solving approach. It can bring the issues of a conflict into better focus and refocus the lens through which the parties view the conflict.

Conclusion

Problems and disagreements are an inherent part of all construction projects. When Owner, contractors, and architect/engineers do not deal effectively and directly with these disputes, they often escalate into major conflicts. These major conflicts are counterproductive to the progress of the project. Unresolved disputes become costly and often force the contractor to finance the project. These disputes also have long term negative effects. The MTA is taking an unprecedented step towards shifting this paradigm and working away from a us verses them mentality to a more collaborative, even handed dispute resolution approach utilizing the DRB process.

Alternate Dispute Resolution ("ADR") in the construction industry (e.g., arbitration and mediation) has been around for decades. Unfortunately, what individuals fail to realize is that ADR is not a substitute for some basic dispute resolution techniques such as effective and timely communication, timely answers to queries, clear contract documents, competent and consistent construction management, and the like which should

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Logo Design Contest Submission Form

The Dispute Resolution Foundation, Inc.

We are changing our name, but we keep the same **DRBF** initials.

This form is to be used by current DRBF members to submit a design for our new logo. The idea is to tap the creativity of our Membership, and their immediate family. We are not expecting you to use professional advisors, unless they are part of your immediate family.

In the preparation of your design, please remember that the Foundation is Global in nature. Please experiment with how your design will copy, fax, email, enlarge, reduce, and transmit in black and white, etc. The sky's the limit to your imagination.

Design submittal shall be on a plain white 8 1/2" X 11" sheet of paper attached to this completed entry form, mailed to the Foundation's Seattle office, postmarked on or before June 15, 2002. The submitted Designs will become the property of the DRBF, and will not be returned, so retain your own copies.

Logo Design submitted by: _____
Current member's name

Design Created by: _____
Immediate family member of Member

Address: _____
Street/apt #

City State Zip Code Country

Phone # w/ area/country code Email address

Mail originals to: **Logo Contest**
DRBF
6100 Southcenter Blvd.
Suite 115
Seattle, Washington 98188-2441

Postmarked not later than 6/15/02.

Judges will be Officers and Board Members of the DRBF, and a graphic professional on the staff of our webmaster.

In the unlikely event of an artistic tie, the earlier postmark would prevail.

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be utilized during the course of the project. Moreover, these traditional ADR mechanisms are not timely in that they are generally utilized at or after project completion rather than contemporaneous with the dispute itself. Therefore, they do not address the party's needs of resolving the conflict, maintain the relationship, and keep the project moving.

The EAS project is a high profile project. NYC and vicinity is known throughout the contracting industry as a difficult work environment due to crowding, unknown subsurface conditions, etc. The MTA is testing the DRB process on this important project. Inasmuch as unresolved conflicts deteriorate the parties working relationship and create emotion and stress as well as financial costs, a contemporaneous dispute resolution process serves the interests of all the main parties (contractor, MTA and subsidiaries) as well as secondary parties (Federal government, etc). Projects which are not completed on time generally costs addition money not only in project costs, but also ancillary costs to resolve the dispute. Ancillary costs paid to attorneys, consultants, expert witnesses, etc. are an unrecoverable cost of a dispute. Money spent on ancillary costs to resolve the dispute only benefit those who are in the industry to resolve disputes, but do not add one cent of value to the project itself. Money spent on attorneys, etc. to resolve a dispute is money not available for capital improvements that serve the public as a whole. By using the DRB process to resolve disputes in a fair and even handed manner, the MTA is seeking to add value to its projects to benefit the traveling public.

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The Foundation needs your help!

The Board of Directors is seeking the names of those interested in serving on Foundation committees. Positions are open for the following committees:

Marketing

Data compilation

International

Membership

Newsletter

Please help the Foundation by volunteering for one of these committees.

Contact Jack Woolf or call Steve Fox. £

(Continued from page 12)

Jossey-Bass, Inc.

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(California, Nevada, Arizona, Hawaii)

Presentation Made to American Bar Association Dispute Resolution Conference

Past President Jim Donaldson and Larry Rogers made a presentation on DRBs to the Annual ABA Section of Dispute Resolution Conference in Seattle on April 5. The national conference covers all types of Alternative Dispute Resolution and was attended not only by attorneys from around the country, but by mediators, arbitrators and other ADR practitioners.

The presentation was entitled "Dispute Review Boards: Resolving Construction Disputes in the New Century," and introduced the concept behind DRBs, what they are, how they can be used in projects and why they are growing in popularity.

Baker Makes Presentation to GSA Group in New York

Past President Bill Baker was an invited speaker at the Federal GSA project managers conference in New York City on March 21.

There were about 200 people at the conference. He discussed the benefits of ADR in general, but most of his presentation focused on the DRB concept, how DRBs work, and the benefits and track record of those projects which have engaged in the DRB process over the last 20 years or so. He also discussed the availability and importance of training.

His remarks were well received, and it is hoped the GSA will consider incorporating the DRB concept into their contracts. £

Summaries of Board Meeting Conference Calls

Summary Minutes of the October 26, 2001 DRBF Board Meeting Conference Call

A DRBF Board meeting conference call with 13 Directors and Officers participating was conducted on October 26, 2001. Steve Fox, Administrative Manager, also participated. The following is a brief summary of the discussions and actions taken at the meeting.

2002 Budget

President, Jack Woolf suggested that we include membership acquisition duties (Manager of Regional/Global program) into the scope of services being outlined for Larry Rogers. With regard to available funds for this position, it was suggested that we defer bringing an Executive Director on board until after membership increases are realized. A motion was passed to revise the job description for Larry Rogers to combine the Training and Education and Membership duties.

Armando Auraujo noted that he felt the “emerging nations” membership category at \$25, based on e-mail correspondence from the DRBF, was a good idea. He further noted that DRBs are not well known within these countries and some of the people have a wrong perception of the process, fearing that it may provide yet another avenue for misappropriation of project funds. Therefore, training is desperately needed to improve the level of understanding of the DRB process in these nations.

Peter Chapman inquired if the World Bank has developed any definition for “emerging nations” that the DRBF could employ in establishing the criteria for membership under this category. Armando said that the World Bank does have such a classification system based on a “classification of economies” using

mainly gross income per capita, but also considering geographic regions and levels of external debt. Armando agreed to e-mail this information to Steve Fox.

Armando also noted that there is a seminar scheduled for February 2002 in New Zealand that the DRBF might want to send a representative to. Armando agreed to send information on this seminar to Steve Fox.

Peter Chapman noted that the mid year international conference in Rome is scheduled for May 25, 2002 and Peter agreed to send information to Larry Rogers for inclusion in the FORUM.

Annual Meeting 2002

Steve Fox reported that hotel rates and airfares for Orlando, FL appear reasonable for next year. It was suggested that we plan for the 1st weekend in October, with the Board meeting on Friday (10/4/02) and the Annual Meeting to be held on Saturday and Sunday (10/5 & 6/02).

Other Associations

Jack reported that he met with Tom Stepanowich (President of the Center for Public Research – CPR), through Kathleen Harmon, and he had agreed to work with Kathleen on pulling together the cost/benefit study.

Jack reported that he is still trying to get on the agenda for the April 2002 conference in Seattle.

Name Change

New names suggested for consideration included:

- Dispute Board Foundation (DBF)
- Construction Dispute Board Foundation (CDBF)
- Dispute Resolution Board Foundation (DRBF)

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Following some discussion on the matter, there seemed to be a preference for the latter of the three as it involves no change in the Foundations initials, which has some recognition already.

Armando Auraujo expressed that the name and the mission should go together. At the World Bank they use "Settlement of Disputes System".

The Board discussed steps to be taken to effect a name change, possibly including:

- Submission of a written proposal;
- Executive Committee could probably consider such a proposal and make a recommendation say at least 30 days prior to submitting it to a vote of the membership;
- Approval would require a 2/3 majority approval;
- The Articles of Incorporation would need to be amended to reflect the name change; and
- A special meeting could be called by the President under the By Laws, if necessary.

Peter Chapman noted that a new identity could be launched through the publication of a new brochure.

Armando stated that it would be helpful to accomplish any name change, if it is going to happen, within the next 6 months in order to coordinate it with the new system coming out of the World Bank.

It was agreed that action on this matter proceed down parallel paths with:

- Bob Smith working together with Steve Fox to identify what changes would need to be made to the Articles of Incorporation; and
- The Board members engage in dialogue through the e-mail in an effort to develop some consensus on whether a name change is really desirable and, if so, what it should be.

DRBF Membership Benefits

Jim Donaldson reported that he is drafting a form to be used by the membership in submitting their "bio" information to the DRBF.

Brison indicated that he is continuing to investigate the possibility of offering E&O insurance through the Foundation.

The next DRBF conference call Board meeting is scheduled for Friday, December 14, 2001 at 9:00 am PST (12 noon EST).

Summary Minutes of the December 14, 2001 DRBF Board Meeting Conference Call

A DRBF Board of Directors meeting was held by conference call on December 14, 2001 with 10 Directors and Officers participating, along with Steve Fox, Administrative Manager. The following is a brief summary of the discussions and actions taken at the meeting.

Brison Shipley reported that he had been exploring the issue of group professional liability insurance as a possible benefit available to members of the DRBF. He has explained to the underwriters what we do and they think such a group insurance could be done. Brison is setting up to meet with them and is checking into the rates for coverage.

Jim Donaldson had met with Larry Rogers on Membership and reported that:

- Efforts to set up Regional membership groups was coming along pretty good;
- Larry is checking with Peter Chapman on how to best proceed on the foreign front;
- Larry is considering setting up some competition between Regional groups; and
- Steve Fox had provided a breakdown on State by State current membership.

2002 Annual Meeting in Orlando

Steve Fox reported that he had talked with several hotels in Orlando including: the Universal Studios Radisson Twin Towers, the Disney Hotels and the Hilton. Jimmy Lairscey reported that the Radisson Twin Towers is about 15 minutes from Disney World and is about 10 years old, but is a nice hotel with good convention facilities. Steve reported that the Hilton is right at Disney World with meeting room

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facilities that would be low cost or complimentary. Jack Woolf noted that most of the major hotels would have shuttle service to Disney World.

Brison indicated that he is currently planning on a breakout session format similar to the 2001 Annual Meeting. Jack suggested that Steve negotiate with the hotels for 4 to 5 breakout rooms.

Webmaster

Jack reported that all of the responses on the proposal received from Craig Neff to set up and maintain the DRBF Web site for the next year were positive. Steve is currently getting the security information to Craig that he needs. (Jim Lairscey confirmed that Craig is the son of an ex-Florida DOT man). Jack reported that he was looking for the site to be up and running by January 2002.

Training / Membership Director

Jack reported that discussions were still ongoing with Larry Rogers regarding possible incentives for increased membership above and beyond the 2002 Budget target numbers.

Rome Conference

Peter Chapman reported that he will take the lead for this conference with help from Board member Igor Leto, who he will be meeting with in January while he is in Italy. Peter requested input from the Board on Program coverage. Peter hopes to have the details worked out by the next Board conference call and would like an announcement to be included in the FORUM. Jim Donaldson suggested that a 1-day chairing session workshop might be offered at the conference.

Relationships with Other Organizations

Jack asked Armando Araujo if there was some way to focus getting the word out to the World Bank membership. Also whether there were local World Bank members who could be considered to serve as training workshop leaders. Armando indicated that he would get the information

on the DRBF out to the World Bank membership and that he could organize a conference in DC for next year directed at inviting the World Bank membership.

Jack indicated that he would call Armando next week to try to identify the efforts in more detail. Armando also indicated that he would be attending the construction management seminar in New Zealand in February 2002 and they would be discussing the use of DRBs.

Jack reported that he is still trying to arrange a DRBF presentation at the Annual GSA meeting in New York in March 2002.

Bill Edgerton reported that he will try to work the DRBF into the AUA Regional meeting in New York scheduled for January 29, 2002.

Pete Douglass reported that arrangements have been made to offer two DRBF training workshops in conjunction with AUA's annual meeting (North American Tunneling 2002) that will be held in Seattle, WA May 18 – 22, 2002. AUA is providing the space and will include advertisement for the workshops in their flyers and publications, but the DRBF will handle their own registration. Short courses on Mechanical Excavation, Design Build and Submerged Floating Tunnels will also be offered with a common lunch buffet for all workshop/short course participants.

Jim Donaldson reported that the DRBF is on the Agenda for the ABA Conference on Dispute Resolution in Seattle scheduled for April 4 – 6, 2002 with Brison Shipley, Larry Rogers and Jim Donaldson each presenting papers.

Name Change/Procedure

A motion that the Board recommend to the membership that the name be changed to Dispute Resolution Board Foundation was passed by a unanimous vote of the participating Directors and Officers. This name change will need a vote by the membership that can be done by a special mail in ballot or possibly through the FORUM.

Jack reported that the Webmaster was going to look into a logo redesign to go

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Do you have a question or concerns about DRBs in general or the DRB you are working on? Consult with one of the Hotline Committee members:

Joe Sperry
Auburn, CA
530-878-7305

Daniel F. Meyer
Chicago, IL
847-295-9197

Jim Donaldson
Seattle, WA
206-525-5216

Bill Baker
Calistoga, CA
707-942-5886

Norman Nadel
New York, NY
914-279-5516

Ray Henn
Denver, CO
303-534-1100

Roger Brown
Portland, OR
503-628-1707

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with the name change although the acronym will not change.

Training

Jim Donaldson reported that the DRBF training workshop schedule for 2002 is firming up and is taking advantage of opportunities to dovetail with conventions and seminars. Currently planned workshops include:

- April 2002: 2 in Florida and 2 for Caltrans in California
- May 2002: 2 in conjunction with AUA's NAT 2002 conference in Seattle
- October 2002: 2 in conjunction with the DRBF Annual meeting in Orlando
- Plus 2 more planned in Idaho and 1 at the Univ. of Washington

Other

Jim Donaldson heard from Bob Matyas who indicated he is retired and just doing work that he wants. Bob is also associated with the Cancer Society at Mass. General Hospital (where Jack Woolf had his hip surgery). Bob's many friends on the DRBF Board were happy to hear that he is doing well and send their best. Bob, who is one of the co-authors of the DRB Manual, has been a tireless advocate of the DRB process and the Cancer Society is fortunate to have his assistance.

Jim Donaldson also noted that he would like to propose an Executive Club membership at a higher rate than any of the other membership categories but he is not yet ready with the details. Jack said that he has done a similar thing in other organizations with dues at \$1000/year.

The next DRBF Conference Call is set for Friday, February 15, 2002 at 9:00 am PST.

The meeting was adjourned at 9:50 am. □

**By Peter M. Douglass – Secretary/
Treasurer**

(Continued from page 18)

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WELCOME TO NEW FOUNDATION MEMBERS

MEMBER ADDITIONS JANUARY TO APRIL 2002

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The Dispute Review Board Workshops

Administration and Practice

April 22, 2002—San Diego

April 25, 2002—Sacramento

May 18, 2002—Seattle

October 3, 2002—Orlando

Chairing

April 23, 2002—San Diego

April 26, 2002—Sacramento

May 19, 2002—Seattle

October 4, 2002—Orlando

We recommend that attendees take the Administration and Practice workshop prior to attending the Chairing workshop. Registration fees include lunch and workshop materials. Each participant will also receive a Certificate of Completion from the Dispute Review Board Foundation. The cost for each workshop is \$395 for non-DRBF attendees and \$345 for DRBF members. To register call the Dispute Review Board Foundation (206) 248-6156, FAX (206) 248-6453 Toll free (US only) (888) 523-5208 E-mail: home@drb.org

Foundation Forum

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Seattle, WA 98188-2441

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Foundation Forum

In the next *Forum!*

Program Information and Registration

The Dispute Review Board Foundation
6th Annual Meeting and Conference

October 5 and 6, 2002

Renaissance Worldgate Hotel
Orlando, Florida