



Forum

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AUGUST 2008

DRBs in North America *Knowing and playing by the rules*

By Shani Wallis

“All disputes must be adjudicated in strict reference to the contract’s terms and conditions. If the contract is considered in anyway unfair, that’s too bad.”

So what are DRBs exactly? We all know the acronym, Dispute Review or Resolution Board, and we know the basics – a panel of three impartial professionals, one each nominated by the owner and the contractor and a third agreed by those two, who follow the contract diligently, from being appointed through construction, and consider the grievances or disputes presented and provide a non-binding recommendation that can be either accepted or rejected. If rejected, the deliberations and recommendations of the Board cannot be used as evidence in a subsequent arbitration or court case. That’s it in a nutshell, right?

But what are they really? The requirements of the Board members, the mechanics of preparing and presenting disputes, the process of arriving at recommendations, the capacity of the two parties to either accept or reject the recommendations, the consequences of having a DRB and not using it properly, the consequences of having a lousy DRB and what to do about that - all are pretty much open-ended discussions and especially when considering questions such as: Can the members of a DRB be truly impartial? Should recommendations

be unanimous and if not, what happens to the dissenting voice? Can the recommendations of experts really be dismissed if a dispute goes to court or arbitration? Can DRB members be sued?

These points were discussed (unfortunately with too little time to do justice to them all) at a daylong workshop held concurrent with the North American Tunneling conference (NAT) in San Francisco in June. The two tutors, Peter Douglass, Immediate Past President of the Dispute Resolution Board Foundation, and Joe Keating, a Foundation member, and both regular DRB panel members, moderated lively debate among a group of about 25 representing clients, contractors, consulting engineers – and the press. During the course of the discussions, it was evident that feelings run high about the good and bad of DRBs and that on several points even the two tutors had differing opinions on points of DRB conduct.

Fortunately, however, the common attitude towards DRBs (within the workshop group and in industry in general) is overwhelmingly positive. Clients now advertise appointment of a DRB to attract bidders for

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President's Page

Here is my fourth "President's Page" and possibly some of you may be reading this whilst on holiday somewhere. I do realise that most construction related people tend to think of holidays as something that only others have. However I am assured that if you have a few days away from all the dust and problems you will be better be able to focus.

The International Conference in Cape Town was a huge success – the best international conference yet – and the DRBF's congratulations go out to all the organisers led by Dick Appuhn and Andy Griffiths. Some delegates combined the conference with a safari holiday in Southern Africa and I trust that we did not lose any DRBF members and their families in the bush somewhere. The conference highlighted the problems and complexities with Dispute Resolution methods in emerging nations, particularly in Africa, and the need to be able to adapt our set procedures to meet the local needs, especially where local experience in first tier DB methods does not exist. In these areas there is also a need for local training to build up expertise within those regions and I would encourage DRBF members to get involved in these training programmes. I am also sure that any such involvement will ensure that those participants will then be at the forefront of any DB development in that country.

I can report that the Provisional President's List of DB members is now active and we have made a number of introductions for potential Dispute Boards in various parts of the world. We have assisted in the establishment of some 20 boards at the time of writing this article. The full nominations service is not yet finalised and it hoped that the Board of Directors will ratify the final programme at their meeting in Washington, DC in October.

We have now also started the Mentoring programme. Some people who have applied will have already been introduced to their mentors and within the next few weeks many others will have also started the programme. I would however wish to appeal for any volunteers from those more experienced DRBF members – if you have not already done so – to please consider taking on a mentoree. If you need more details of how to be a mentor before you commit yourself then please get in touch with me to discuss the concept.

I wish to encourage all readers of the Forum to participate and discuss any article which they may have read and express their opinions, particularly if they differ from the article author's own experiences. Such a dialogue will assist DRBF members to more fully develop the concepts which we are trying to establish and disseminate at the DRBF. Please contact the editor, Ann McGough (amcgough@drb.org), to have your views and comments published.

Through this page I wish to congratulate Bogdan Oprea the first Romanian national DRBF member to be appointed on to a Dispute Board in Romania. For those of you who may not be familiar with the region I can report that the Romanian Government has now adopted by law the FIDIC system and all new projects in the country from now on will be undertaken using Dispute Boards. For more details contact the DRBF's Romanian Country Representative, Alina Oprea.

As I mentioned in my last President's Page do not forget to mark your diary with the dates for the DRBF's 12th Annual Meeting and Conference in Washington, DC on 04 and 05 October. The city should be an exciting place to visit at that time as it will be locked into election fever, however I doubt that any DRBF involvement will resolve the differences between the political parties taking part. If you have never been to Washington then do not forget that not only visiting Washington itself is worthwhile, but the spectacular colors of the changing Fall leaves throughout the region is a once in a lifetime experience.

Gwyn Owen

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Board of Directors

New Board Members Elected: As part of the 10 Year Plan, the DRBF is moving to a new Board of Directors structure which includes an Executive Board of Directors and two regional Boards, the North America Board and Region 2. Nominees for each Board were presented to the full membership, and the votes have been tallied. The following directors will begin their terms at the conclusion of the next Board of Directors meeting.

Executive Board – James Brady, President; Romano Allione, President Elect; Gwyn Owen, Past President; William B. Baker, Secretary; and James P. Donaldson, Treasurer; John C. Norton, Director; and Volker Jurowich, Director.

North American Board – John C. Norton, President; Kerry Lawrence, President Elect; Roger Brown, Director; Doug Holen, Director; and Blasdel Reardon, Director.

Region 2 – Volker Jurowich, President; Nicholas Gould, President Elect; John Madden, Director; Richard Appuhn, Director; and James Perry, Director.

Board Report: The DRBF Board of Directors met May 2, 2008. Some of the items discussed include:

- Presentations on opportunities with FICA and the potential to expand into the offshore wind farm industry.
- Financial structure of the new regions created by the 10 Year Plan implementation.
- New training programs.

A summary of the discussion is available to all DRBF members on the DRBF web site. To access the **Board of Directors Meeting Minutes Summary**, go to www.drbf.org. Click on the **Member Login** button, and then click on **DRBF Board of Directors**.

Board of Directors 2008 Meeting Schedule:

Executive Committee: August 15 and September 12, 2008 by conference call

Board of Directors: October 3, 2008 in Washington, DC

Regional Conferences

DRBF UK Regional Meeting

September 8, 2008 from 2 - 6 p.m. in London, UK

Those interested in Dispute Board use in the UK are invited to attend the first DRBF UK Regional Meeting. In addition to an overview of the current DB climate in the region and upcoming changes to the DRBF structure, FIDIC President Peter Boswell will solicit input for changes to the FIDIC DAB Procedures. The session will wrap up with an interactive panel discussion about the principle and practice of DBs. Participants are invited to stay afterwards for drinks provided by Davies Arnold Cooper.

DRBF Northeast Regional Conference and Training Workshop October 15, 2008 from 7:30 - 5:30 in Waltham (Boston), MA

Join the DRBF for the first Northeast Regional Conference: **“Common Sense for Construction Conflicts: ADR Options, Success Stories, and Training.”** The program will address the practical application of the newest ADR tools, balanced with personal insight from owners and legal professionals who have first-hand experience. The lunch session includes construction ADR success stories from projects in New England, followed by the “DRBF Administration and Practice” training workshop. Early bird pricing until Sept. 15.

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their job, many US tunneling contractors won't bid a job unless there is a DRB, and regardless of the differences of opinion, the pros far outweigh the cons.

Since their introduction in the mid-70s in the United States, DRBs are enduring and their use on all types of construction projects the world over has increased dramatically. Their track record is also exemplary. The workshop was told that some 98% of disputes heard by DRBs (to end 2005 when the number of DRBs became too numerous for the DRB Foundation's comprehensive database to monitor and record) led to final resolution and so sidestepping the pain and expense of lengthy and contentious arbitration or litigation.

Perhaps auspiciously DRBs were conceived for tunneling, and still apply today to a large majority on tunneling contracts. Application on other civil engineering contracts including bridge and dam construction, highrise developments, and highway and railway projects has increased in recent years, but the geological unpredictability and uncertainty and the consequences on the terms and conditions of a contract, make tunnels particularly prone to claims and disputes. It was on the Eisenhower road tunnel in Colorado in 1974 that a DRB was first convened in the US. It heard three disputes, all of which were resolved - amicably. There are today more DRBs in North America than internationally, where non-binding DRBs are often substituted with binding DABs (Dispute Adjudication Boards), but this is growing rapidly and international application may soon overtake application in North America. The original Dispute Review Board name was changed to Dispute Resolution Board some years ago to encompass the concept also of Dispute Adjudication Boards and the applicability of one or the other to certain different forms of contract is a continuing discussion.

At the NAT workshop, tunnelling was the common profession for the attendees and the tutors, and it was admitted that a large percentage of disputes center on differing site conditions. In that regard it was

suggested that having a geotechnical engineer as one of a three-member board for a tunnelling project was a good idea. "Saves a lot of time and debate." It was also stated that most issues are brought by contractors with the assumption that most recommendations would therefore fall to the contractor's advantage. Setting the record straight, the tutors said that DRB recommendations split about 50/50 for each party. In separate conversation on a different occasion, a contractor confided that the contractor wouldn't spend the time or effort to prepare a claim unless it had fair expectation of being successful and then is more likely to live with the recommendation, saying "it's better than facing a judge."

Perhaps the most astounding of the revelations discussed at the workshop was confirmation by the tutors that the purpose of a DRB hearing is not to arrive at something that is fair and equitable. "All disputes must be adjudicated in strict reference to the contract's terms and conditions. If the contract is considered in anyway unfair, that's too bad. That is the document the client and the contractor signed and any dispute must be heard in that context. A DRB cannot rewrite the contract." There were nods of agreement among the attendees, particularly those representing the design engineering profession with hopes that that canon is emphasized at every opportunity.

Other wise words from the tutors at the workshop (to which *TunnelTalk* was permitted to sit in) included:

- Ensure that the position of each party to a dispute is well defined, and that the position papers are shared, before the issue goes to the Board. This exercise often illustrates that appreciation of the dispute by each party is wildly off the mark and that actually the differences are not as irreconcilable as previously considered;
- DRBs are not construction managers. Issues that can be resolved on site do not belong with the DRB;
- Be careful of attorneys as members of DRBs. They are confrontational experts. DRBs are not pits for adversarial

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

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- confrontation;
- Beware also of two representatives from one side of the fence (owner or contractor). It is difficult to see the other's point of view if you have no experience of it;
- Disputes are better presented to the Board as issues of 'merit' rather than as issues of 'quantum' or amount;
- A good board will see a problem brewing before a dispute is referred, the greatest benefit of a DRB is in avoiding a dispute in the first place;
- DRBs cannot give advice on performance of the work. If they do impartiality might be compromised;
- Advisory opinions are a new concept for DRBs and are offered only if both parties agree to this type of referral (one party can bring a dispute to the Board for a full hearing). Both parties present the case as they see it, the Board deliberates and presents a verbal opinion. Should the situation remain unresolved, the opinion is disregarded and the parties prepare for a full dispute hearing, at the request of either party; and
- The question about being sued? Wouldn't that be counterproductive? Isn't that the purpose of the DRB? To avoid litigation? Although there have been attempts to exclude the terms from the three party DRB agreements, most DRBF members decline invitations to be on a Board unless there is a 'quasi-judicial immunity' and 'hold harmless' clause.

In closing, the tutors explained that disputes commonly range from a few hundred thousand to several million dollars, smaller ones bundled into one hearing on occasion. The largest is a whopping quarter of a billion US\$! The cost of maintaining a DRB, it was said, is typically less than 1/2% of the contract value – an agreed bargain compared to the amorphous cost of arbitration or litigation.

In admitting that lip service is paid often to the appointment and use of a DRB, Pete Douglass said the message to all must be, "be true to the concept, adhere to the rules, keep communications absolutely confidential

during deliberations, and abide by your decisions when parties either accept or reject the recommendations. That is the way we can continue to best serve the industry."

All the rules and codes of conduct for being on and working with a DRB are explained chapter and verse in a manual that is updated regularly to reflect the continuing experience gained through the use of DRBs. Copies of the manual are available as a pdf download from the Foundation's website (www.drb.org).□

By Shani Wallis, Freelance Tunneling Journalist and Editor of TunnelTalk.com (currently under construction).

Industry Events

Co-sponsored by DRBF

August 26-27, 2008
**Practical Use of the 1999 FIDIC
Conditions of Contract**
Mandaluyong City, Philippines

August 28, 2008
**Forum on Experiences in the Use of
Dispute Boards, and the
Introduction of the JBIC New
Conditions of Contract**
Pasig City, Philippines

September 5-6, 2008
**3rd Biennial IBA Conference
on Construction Projects from
Conception to Completion**
Brussels, Belgium

November 16-17, 2008
International Contracts Course
Presented by DRBF, ECV, and FIDIC
Abu Dhabi, UAE

Learn more about each of these programs and link to their registrations sites by visiting the Calendar of Events on the DRBF website:

www.drb.org

Ethics in Today's World of DRBs: Disconnect Between Project Activity and the Utility of the DRB



By Jim Phillips Ph. D.

The question raised in the last edition of the Forum involved a project with a DRB where the parties were failing to bring potential disputes and issues to the Board for discussion and possible DRB recommendation at regularly quarterly meetings. Also, the question noted that in the correspondence between the parties, which was being copied to the DRB, there were a multitude of disputes arising on the project that were remaining unresolved.

Allen J. Thompson of NCI Construction Co., a reader from Miami, Florida wrote in again this month to comment on this question. Allen suggests that at the meeting the Board should begin raising the questions that they have been reading about in the correspondence. By doing so, Allen writes, the DRB will be doing its job of preventing small problems from turning into bigger ones. Thanks again for writing in, Allen.

I could not agree with Allen more. Chapter 1.1 of the DRBF Practice and Procedures Manual provides the background for the rise of the DRB process on construction projects and recites that the DRB is "... a board of impartial professionals formed at the beginning of the project to follow construction progress, encourage dispute avoidance, and assist in the resolution of disputes for the duration of the project." This suggests that dispute avoidance and resolution are to fundamental functions of the DRB process. If the parties are not willing to bring disputes to the DRB, then the fundamental purpose for convening a Board is being undermined.

Chapter 1.2.1 of the Manual goes on to provide that regular status meetings and site tours should be held so that the Board

members can become familiar with the job progress and be advised of potential problems **as they arise on the job site**. This early observation of the factual basis of potential problems, in my opinion, is critical to the avoidance of or early resolution of project disputes. When Board members are able to observe the work and site conditions that are giving rise to a potential dispute, and hear the parties' positions at the time the dispute is occurring, there is a much greater potential for a dispute to be resolved more quickly and informally, and from developing into a major issue which could potentially affect the overall progress of the work and timely completion of the project.

Chapter 1.3 of the Manual discusses the various benefits of having a DRB on a construction site. A primary benefit is claim avoidance. The Manual goes on to state that the "...very existence of a readily available dispute resolution processtends to promote agreement on problems that would otherwise be referred to arbitration or litigation after a long and acrimonious period of posturing." The point for this discussion is that the DRB is in place to serve several purposes, and if the parties are not availing themselves of its benefits, then the true value of having the Board in place is lost.

Other benefits include "... reduce[d] costs to the parties, such as legal and consultant fees, as well as the loss of productive project time for owners and contractors. [Moreover], the risks of long delays and substantial costs are significantly reduced[, as well as allows] an earlier start to the payment process for contract modifications..." The question then becomes for our discussion: should the DRB encourage the parties to bring disputes to it for informal discussion and/or recommendations?

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Chapter 3.4.1 of the Manual discusses the first DRB meeting with the parties at the outset of the project. Included in this discussion is a provision for the Chair and other DRB members to fully explain its role, and to emphasize dispute avoidance and resolution. This might be repeated at several of the early regular meetings of the DRB in order to ensure that all parties and their teams are on notice that when the DRB comes to the site for a regular meeting, the expectation is that potential challenges on the project will be discussed.

Chapter 3.4.3 provides that Board members should ask questions at the regular meetings “to ensure that they understand the construction methods being used, scheduling, and other project topics.” As discussed earlier, this chapter also encourages the Board members to ask “... questions to ensure that the DRB is informed as to the status of all disputes, or issues that may become disputes in the future.” Clearly, the DRB does have the affirmative responsibility to ask probative questions of the parties in order to bring disputes forward for discussion and possible timely resolution.

The failure of the either party to bring minor issues to the DRB may even be viewed as obstructive to the process. Chapter 3.4.6 lists this as a behavior that can obstruct the process, along with “[r]efusing to bring disputes to the DRB in a timely fashion and [l]etting disputes accumulate for a global settlement.” The issue of letting disputes accumulate for the purposes of global settlement will be discussed in a forthcoming column, but for now it is noted as a practice that potentially can undermine the entire DRB process.

As far as the ethical challenges to the question posed, Canon 4 of the DRB Code of Ethics provides that Board members should conduct meetings in “... an expeditious, diligent, orderly and impartial manner.” In my opinion, based on the question as posed, if the DRB members are reading the parties’ correspondence and are aware that issues and potential disputes are out there and not being discussed with the DRB, the Board, in

order to be diligent, does have a duty to question the parties at a meeting about what they are reading about in the correspondence. This will serve to promote possible dispute avoidance and early dispute resolution that we have earlier discussed.

Thanks again to Allen for writing in to me and posting his comments about this question in this Forum. The Foundation continues to encourage an interactive dialogue, not only on these questions posed in the column, but also to give the membership a resource to bring ethical issues forward for discussion and I would encourage any reader who has an ethical dilemma or challenge arising from their practice to call or to email me:

Jim Phillips, DRBF Ethics Committee Chair
Phone: 804 289-8192
Email: jphillip@richmond.edu

NEXT ETHICS CHALLENGE

Suppose the DRB panel of which you chair unanimously issues a decision recommending that the project owner pay the contractor \$500,000 on a specific claim for extras. At the next meeting of the panel with the parties the owner and contractor take you aside at the lunch break and tell you that they have been negotiating this issue and a couple of others and believe they are close to a resolution but need your help to get a couple of “minor sticking points” resolved. They want to try to resolve the issue during the lunch hour without saying anything to anyone else.

What would you do?

Note: This question was discussed during the DRBF Annual Meeting and Conference in San Diego last year.□



Dispute Resolution Board Foundation 12th Annual Meeting & Conference October 4-5, 2008 in Washington, DC

Challenges and Successes of Current DRB Practice

This year, the DRBF's Annual Meeting and Conference moves to the buzzing U.S. capital, Washington, DC. Highlights include:

- Kickoff address by **Senator James Webb of Virginia** and lunch address by **Al Sylvester** of Clark Construction
- Stimulating panel discussions on **enhancing the value of the Dispute Review Board process from the owner, contractor, and DRB practitioner perspectives**
- DRB practices on various state **Department of Transportation** and other **highway** projects
- Interactive session designed to explore **the Advisory Opinion process**
- **Worldwide expansion of the DRBF** with new leadership Boards and chapters and the **use of the DB process outside North America**
- Panel discussion on the DRB role in **dispute avoidance and prevention**, not just resolution

Saturday evening, delegates and guests will step aboard a dinner cruise down the Potomac River, enjoying a spectacular view of some of the city's most notable attractions. The impressive speakers and engaging agenda partnered with the excitement and convenience of Washington, DC make it the "must do" DRB event of the year!

Workshops

Make the most of your trip to the Annual Meeting and Conference by coming in a little early to participate in the training workshops on Thursday afternoon and Friday morning. These programs have been designed as half-day sessions so participants can enjoy more free time in the nation's capital. The **2008 Administration and Practice Workshop** will be Thursday, Oct. 2 from 1-5 pm, and the **2008 Advanced/Chairing Workshop** will be offered Friday, Oct. 3 from 9 am - 1 pm. These workshops are intensive skill development sessions for those who are serving on or wanting to serve on DRBs, and are also excellent for owners or contractors who want to implement a DRB program. A Practice and Procedures Manual is part of the workbook materials, and all participants receive a certification of completion. This is the only Chairing Workshop being offered in 2008, so don't miss this opportunity. Contact the DRBF office for additional details.

Registration and Reservations

The DRBF now offers secure online registration through our website, www.drbf.org. Click on the Events tab and select "Meetings & Conferences" from the drop down menu. Once there, click on any of the red links to view the invitation and enter the registration site. Payment can be made online through PayPal, or select "pay offline" and send a check to the DRBF office in Seattle. Any questions about the registration process should be directed to Ann McGough at amcgough@drbf.org or call Steve Fox in the Seattle office at 888-523-5208 or 206-878-3336.

	DRBF Members	Non-Members
Annual Meeting & Conference Registration	\$300	\$325
<u>Optional items:</u>		
Administration and Practice Workshop	\$275	\$295
Chairing Workshop	\$275	\$295
Save! Both workshops for a package price	\$500	\$540
Gala Dinner Cruise and Awards Dinner	\$100 per person	

Early Bird!
Register by
September 4
and save
\$25!

Host Hotel - Marriott Washington

The Marriott Washington offers a DRBF group rate of \$179 (single or double). Register online with the discount code already entered using the link on the DRBF website, or contact the Marriott by phone or fax. The discounted rate is available until Friday, September 12, 2008. A limited number of rooms have been reserved so make your reservations early!

Washington Marriott – 1221 22nd Street NW – Washington, DC 20037 – T: 800-228-9290 or 202-872-1500 – F: 202-872-1424

WELCOME TO NEW DRBF MEMBERS

MEMBER ADDITIONS APRIL 2008 THROUGH JUNE 2008

Major Membership Contributors to the DRBF

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CMC Di Ravenna

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Do you know someone who might be interested in joining the DRBF?

The DRBF attracts new members as the DRB process advances into new industries and regions throughout the world. Help us expand by sharing information with your colleagues.

Complete membership information, as well as conference and training details, can be found on our web site or contact the main office for details.

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Milestone Reached in Romania

First DAB composed exclusively of Romanian members set for expressway project

By Alina Oprea, DRBF Country Representative for Romania

I am happy and honored to announce a big success and a world premiere: the first Dispute Adjudication Board composed entirely of Romanian members has been established! This happened on 21 May 2008, on a 9 million Euro FIDIC 1999 works contract financed by the European Union through ISPA funds. The project is for the construction of a 4.5 km 2x2 lanes by-pass, part of the Bucharest – Giurgiu expressway on the route linking the capital of Romania with the capital of Bulgaria.

The nomination of DRBF member Bogdan Oprea as the single DAB on this contract is the result of many factors, including his participation as a pupil in the first DB mentoring program administered by Mr. Gwyn Owen, the active promotion of Dispute Boards in Romania, and Mr. Oprea's construction expertise in Romania.

Note: Bogdan Oprea can be reached at bogdan66@gmail.com and more about him is available online at <http://bogdan66.googlepages.com>.

The DRB and the New Standard Form Contract Documents



**Regional Rep:
Adrian L. Bastanielli III**

Standard form contract documents have long been a staple of the construction industry.

The American Institute of Architects (AIA) has been the leader in the field for over 100 years. The Engineers Joint Council on Contract Documents (EJCDC), the Associated General Contractors of America (AGC), and the Construction Owners Association of America (COAA) also have produced standard form documents. Each group has taken a slightly different approach to dispute resolution. However, none of the documents have specified a Dispute Resolution Board (DRB) or anything like it in the past.

Times have changed. AGC and COAA have folded their contract documents into a single set of documents referred to as the ConsensusDOCS, produced through a consensus process by twenty-one industry organizations. These new documents allow the parties to select between a DRB and mediation by checking a box on the standard form (“check-box approach”). The AIA also has produced new documents that provide for an Initial Decision Maker (“IDM”) in an effort to achieve impartial, real-time, cost-effective, on-site dispute resolution. The IDM process has some of the characteristics of a DRB and, with little effort, can be converted into one.

ConsensusDOCS

As noted above, the AGC and COAA have produced contract documents in the past that competed with the AIA documents. However, the AGC and COAA documents were perceived by some as having a bias in favor of their respective members. In an effort to cure this problem, the AGC organized a group of twenty other organizations from all sectors of the construction indus-

try to draft what they considered a fair and balanced set of documents using a consensus approach.

This group includes organizations that are composed of Designers, Owners, Contractors, and Sureties – hence the DOCS part of ConsensusDOCS. Specifically, ConsensusDOCS includes some of the following organizations: National Association of State Facilities Managers (NASFM), Construction Users Roundtable (CURT), Construction Owner Association of America (COAA), Associated General Contractors of America (AGC), Construction Industry Round Table (CIRT), American Subcontractors Association, Inc. (ASA), Associated Builders and Contractors, Inc. (ABC), Lean Construction Institute (LCI), Mechanical Contractors Association of America (MCAA), National Electrical Contractors Association (NECA), National Subcontractors Alliance (NSA), National Association of Surety Bond Producers (NASB), The Surety and Fidelity Association of America (SFAA).

The group produced seventy documents, including documents for general contracting, design-build, construction management, subcontracting, and program management. They also produced three-party collaborative documents that include the owner, contractor, and architect – a somewhat revolutionary approach. Now the AIA has come out with its own three-party collaborative documents. For simplicity purposes, this article focuses primarily on ConsensusDOCS 200, Owner/Contractor Standard form Agreement and General Conditions (Lump Sum).

The starting point for dispute resolution in the ConsensusDOCS is a two-step mandatory good-faith discussion process (1) between representatives of the contracting parties in the first instance and (2) if that is unsuccessful, between senior executives of the parties. This process must be concluded within fifteen business days of the first discussions.

If discussions do not resolve the dispute, the parties move to either “mitigation” or mediation. The ConsensusDOCS have a “checkbox” for two types of mitigation: (1) Project Neutral (PN) or (2) Dispute Resolution Board (DRB). For all intents and purposes the PN is a one person DRB. If neither box is checked then the default mechanism is mediation.

One of the key components to a successful DRB is the appointment process. It is critical that the DRB members be impartial, neutral, and well-qualified professionals, with whom both parties are entirely satisfied. The members should be appointed prior to the start of construction. The ConsensusDOCS state that the PN/DRB is to be selected and appointed by mutual agreement. This is a good start, but the documents go no further. They do not establish procedures for selecting the PN/DRB or discuss their qualifications, neutrality, or time of appointment. In negotiating the contract agreement, the parties should address each of these subjects. Without them the DRB could fail to serve its purpose.

The ConsensusDOCS provide that parties and the PN/DRB enter into a retainer agreement establishing the scope of the PN/DRB’s services, often referred to as a three-party agreement. The documents provide no guidance on this agreement, other than to require an agreement. The DRB members should take advantage of this agreement to supplement the terms of the ConsensusDOCS and cover topics not addressed in those documents. In addition, the DRB members should issue an agreed set of DRB operating procedures, which gives the DRB another opportunity to address issues not covered in the contract.

The ConsensusDOCS properly provide that the cost of the PN/DRB shall be shared equally between the parties, which provision is important to preserve the neutrality of the PN/DRB.

The ConsensusDOCS incorporate the cornerstone of the DRB process – regular site visits. Specifically Article 12.3.1 states that the PN/DRB “shall make regular visits to the

Project so as to maintain an up-to-date understanding of the Project progress and issues and to enable the Project Neutral/Dispute Review Board to address matters in dispute between the Parties promptly and knowledgeably.” In addition, the documents provide that the PN/DRB shall be available to either party, upon request, throughout the course of the project.

The PN/DRB is required to “issue nonbinding findings within five (5) days of referral of the matter to the Project Neutral, unless good cause is shown.”¹ Use of the word “findings,” rather than a report consisting of findings and recommendations, as suggested by the DRBF in its list of best practices, might be interpreted to limit the focus of the DRB to that of a fact finder as opposed to experts making recommendations for resolution of the dispute, but that distinction probably was not intended by the ConsensusDOCS group in drafting the documents. In any event, the DRB members and parties should make this clear in the three-party agreement and DRB operating procedures.

The ConsensusDOCS properly state that the findings of the PN/DRB are “nonbinding.” The documents do not address admissibility in the subsequent dispute resolution procedure.

The requirement that the DRB issue its findings within five business days of “referral” of the matter to the DRB could present problems. There is no definition of the term “referral” in the document. If referral means submission of the request by a party to have the DRB consider a matter, five business days generally will be impractical on jobs of any size. The more reasonable interpretation, at least in this author’s view, is that referral occurs at the conclusion of any hearings and submissions of the parties. Even after the hearings, five business days is a very short time to issue findings and conclusions on a complex dispute. However, it is clear that this time can be extended for good cause. In any event, the ConsensusDOCS as a whole

(continued on p. 12)

¹ Presumably, the Project Neutral as used at the end of the sentence also refers to the DRB.

(continued from p. 11)

make it plain that the entire dispute resolution process should be expeditious. The meaning of “referral” and other timing issues should be addressed by the DRB and parties in the DRB operating procedures.

If the matter remains unresolved after issuance of the PN/DRB findings or the PN/DRB fails to issue findings within five business days, the ConsensusDOCS state that the parties “shall” submit the matter to binding dispute resolution in accordance with Article 12.5. Query, what happens if the parties don’t do this?

Article 12.5 provides a check-box for the parties to select one of two forms of “binding dispute resolution:” (1) Arbitration under American Arbitration Association Construction Industry rules or (2) litigation in either a state or federal court in the location of the project. If neither box is checked, the default dispute resolution procedure is litigation. This is a clear change in preference. In the past, most standard form documents specified arbitration rather than litigation. The shift toward disputes being decided by judges and juries rather than arbitrators, who are experts in construction, is counter to the DRB concept, whose core is the use of experts acceptable to both parties to help resolve disputes.

The incorporation of the DRB process in the ConsensusDOCS, even in a check-box format, is a real step forward for the industry. However, in attempting to keep the contract provisions relatively concise, the documents have failed to address many critical issues. The parties to the contract must make sure that the DRB box is checked and that the DRB selection process is addressed. DRB members and the parties need to recognize that the contract does not contain a complete description of the DRB process and should address the open issues in the three-party agreement and DRB operating procedures. They should make sure that, at a minimum, the following issues are covered in some way:

- Specify that the DRB members are neutral and should avoid contacts with

the parties and other actions that might raise the appearance of impropriety.

- Designate the number of site visits and describe what is to be done at each visit.
- Establish hearing procedures that ensure non-adversarial, cost-effective, real-time proceedings.
- Describe the form of the findings, making sure they include recommendations for resolution of the dispute.
- Define the term “referral” and establish other time limits.
- Set out payment terms for the DRB members.
- Address termination of DRB members.

There are many other terms that need to be covered. The DRB members should refer to the best practices and forms contained on the DRB Foundation website, www.drb.org, for assistance in drafting these documents.

The New AIA Documents

The AIA has issued its 2007 edition of the A201, General Conditions Between the Owner and Contractor that contains new dispute resolution procedures. For over 100 years, the architect has been the initial decision maker on all disputes. This approach has long been criticized for many reasons, including: (1) in some cases the architect is deciding whether the architect’s own plans and specifications are defective or ambiguous, (2) the architect is paid by the owner and is perceived to be biased, and (3) the architect is put in an untenable position when she must decide against her client.

The AIA has recognized this problem and the new A201 requires that claims, with certain specified exceptions, must be submitted first to a person identified as the Initial Decision Maker (“IDM”). The claim procedures with the IDM are very similar to the former procedures using the architect to initially decide disputes as contained in the 1997 edition of the A201. For a good discussion of the changes to in the A201, *see* Charles M. Sink, A. Holt Gwyn,

James Duffy O'Connor, Dean B. Thompson, The 2007 A201 Deskbook (ABA Publications 2008).

The name of the IDM is entered by the parties in the A101, Agreement Between Owner and Contractor (Fixed Price). If no one is designated, the A201 states that the IDM shall be the architect, reverting back to the old procedure.

The AIA documents provide no information about the qualifications of the IDM, how the IDM is selected, or whether the IDM is to be neutral. Some of the individuals involved in the drafting of the new AIA documents have expressed their opinions on these issues. Generally, they expect the IDM to be a construction professional, not a lawyer. The IDM process is intended to be an impartial, cost-effective, real-time on-site method for initially deciding disputes.

The process contemplated by these AIA drafters is very much like a DRB without the site visits. It would not take much to convert the IDM into a DRB-like process by adding site visits, and the parties should consider changing or supplementing the document to do so. Obviously, the IDM and parties should address many of the same issues discussed above when negotiating the contract, three-party agreement, and/or operating procedures.

The A201 provides that the IDM's decision is final and binding subject to mediation and binding dispute resolution. Mediation in accordance with the rules of the AAA is a condition precedent to binding dispute resolution. The A201 generally takes the same check-box approach to binding dispute resolution as the ConsensusDOCS. The parties may check arbitration, litigation, or other. If no box is checked, litigation is the default procedure. Only time will tell what this shift toward litigation for resolving construction disputes will have on the industry.

Conclusion

The new standard form contract documents reinforce the growing acceptance of the DRB process and the merits of the process. The ConsensusDOCS do so by including the DRB as an option in the documents. After 100 years, the AIA documents also have moved towards an impartial, cost-effective, real-time, on-site dispute resolution process that has many similarities to the DRB process.

Regardless of which standard form document is used, the parties need to supplement or revise the document to address a number of fundamental issues not covered in the standard form document or they need to address those issues in a subsequent three-party agreement or operating procedures. In any event, the industry is better served by the dispute resolution processes in the new documents.

About the Author: Adrian Bastianelli is co-managing partner of the Washington, DC office of Peckar & Abramson, P.C., Chair-Elect of the ABA Forum on the Construction Industry, former Board of Governors member of the American College of Construction Lawyers, former President of the Washington Building Congress, and regional representative of the DRB Foundation. He can be reached by email at ABastianelli@pecklaw.com. □



Forum Editorial Deadline

Our readers love to hear DRB success stories, challenges facing the process, and the latest industry news and events. If you have new information about DRBs, DRBF members, or an article to share, please tell us! Contact Forum Editor Ann McGough by email at amcgough@drb.org.

Deadline for the November issue is

October 1, 2008

Trends of Alternative Dispute Resolution (ADR) in Germany

By Volker Jurowich and
Helmut Koentges

Discussion on Dispute Board concepts has increased in recent years in Germany. This paper reviews the present situation in Germany, highlights aspects of the introduction of the DB-concept including the role of engineers/architects as well as the need for their interdisciplinary education and skills.

Established ADR procedures in Germany

Some ADR procedures with the assistance of third parties already exist in Germany. These are little known, rarely used in construction disputes and normally applied to small disputes only.

Institutional Mediation (*Schlichtung*)

The most important and most used approach is a sort of institutional mediation (*Schlichtung*) in consumer disputes. Consumers with complaints of normally low value are free to apply to standing panels of trade chambers and professional associations. These procedures, however, cannot be enforced, except by agreement and do not have binding effect on subsequent court procedures.

Hearing at the Superior Authority (*Anhörung bei der vorgesetzten Behörde nach VOB-B § 18 Nr.2*)

This procedure is open to contractors in public works projects, whereby they can submit their dispute with their public employer to the higher level for decision and resolution. Objection to the decision of the Superior Authority can be raised within three months, failing which the decision becomes final and binding. This procedure is not really appreciated by contractors because of the assumed bias of the decider.

Expert Determination (*Schiedsgutachten*)

An independent expert, often nominated by

the court, issues an expertise on the special issue in dispute, normally purely technical or commercial questions only, on the basis of the facts and the contract. There is limited recourse against this expertise, only in the case of apparent mistake. Therefore the effect of the expertise is that the matters dealt with become binding upon the judge in subsequent court procedures on the legal issues.

Standard Non-Institutional Mediation

For all sorts of industry disputes the parties may agree on an independent “mediator” who presides over negotiations between the disputing parties. Various institutions provide procedural rules thereto. Although this procedure can be discontinued by a party at any time, the aim is an agreement between the parties, which becomes contractually binding upon them, although not necessarily based on the contract alone.

Mediation adapted for Construction Contracts

In the recent past, the Working Group for Private Construction Law of the German Lawyer’s Association (*ARGE Baurecht des Deutschen Anwalt Vereins*) has developed dispute resolution procedures exclusively to be used in construction contracts and normally run by lawyers only. Although these concepts can provide decisions, they include typical elements of mediation. They do not secure due process for the parties and therefore can be considered alternative mediation.

Standing Dispute Panels (*Bauschlichtungsstellen*)

During recent years several professional western organisations and/or federations have established standing adjudication or mediation panels for construction disputes (*Bauschlichtungsstellen*), which are acknowledged by the Ministry of Justice. These procedures are normally presided by a retired judge or a lawyer.

The procedures mentioned above can either

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be terminated unilaterally by one party before any decision has been made, do not require written and reasoned explanations in their decisions or do not secure due process, as f.e. they do allow separate discussions with one party. Thus these procedures do not satisfy the requirements of many users and therefore have not been successful in construction. This is also demonstrated in a scientific study of Dortmund University, which is mentioned below.

Recent considerations on Dispute Boards in Germany

Requirements of the construction market

The *Deutscher Baugerichtstag e.V.*, a German association of lawyers and other experts specialising in legal matters of the construction industry, has initiated a survey by Professor Gralla addressing all professionals involved in construction (employers, contractors, consultants, architects, lawyers, insurers, financial institutions etc.) entitled: "Requirements for Alternative Dispute Resolution procedures in private construction law."

The vast majority of approx. 70% of the respondents requested an alternative dispute resolution mechanism that is mandatory upon the request of one party. Elements considered most important were: strict time limit, joint appointment of the decider, due process and written reasons for decision.

Most users requested clear rules that would ensure objective procedures and high quality of the decision. The procedure should be immune against "boycott" of a party, the decision should be binding despite short duration of the procedure but recourse to court or arbitration should be possible in case of dissatisfaction with the decision. Public employers emphasized the importance of decisions being strictly based on the contracts, being transparent and reasoned in detail.

It was considered that all these requests or requirements can best be satisfied by the Dispute Adjudication Board concept (DAB).

Introduction of the DB concept in the German construction market

Today there is no jurisdiction in Germany for an ADR procedure providing for decision by independent interdisciplinary experts, as for example in the UK. Therefore all requirements by parties, for the time being, need to be established in their contract.

Following FIDIC dispute resolution procedures, the association to promote ADR in the construction industry (*ASIB*) developed a dispute resolution procedure together with a related form of agreement between parties and a form of agreement between parties and the decider.

At present a research program of University of Kassel aims at developing "guidelines for partnering between employers and contractors in infrastructure projects." The dispute resolution module included therein will follow the dispute board concept.

Independently, also the German Institution for Arbitration (*DIS*) is in the process of developing a dispute board concept, however not only restricted to construction.

A Task Force of the *Deutsche Baugerichtstag e.V.* mentioned already earlier, under the active contribution of both authors and on the basis of the mentioned scientific survey, has developed criteria for a Dispute Board concept that could be used in Germany. Subsequently a forum of more than 500 legal experts, employers, contractors, engineers, and lawyers has formulated a request to the legislative bodies to establish the legal environment for an adjudication concept in the construction industry, that:

- is condition precedent to a submission to civil court, if requested by one party;
- provides a decision by independent, interdisciplinary experts, selected by the parties within a limited, short delay;
- provides a reasoned decision, which is provisionally binding;
- allows an appeal in court, in case a party remains dissatisfied with the decision.

At present discussions are entertained with public employers to identify a project, on which to test such a concept. (continued on p.16)

(continued from p. 15)

Engineers/architects as deciders

The involvement of engineers/architects as deciders is little known in the procedures applied in Germany as noted above. Dispute resolution therein is considered to be by lawyers, often with qualification as judges.

In civil, building and plant construction engineers/architects plan (design) and construct the project. These professionals own competences that others do not have, namely the know-how for professional planning (designing) and executing projects.

When it comes to dispute resolution on these projects, same qualifications are helpful if not precondition for competent decisions, leading to final dispute resolution. It is therefore obvious that these professionals must have an important role in dispute resolution procedures. The role of the past as experts in procedures on limited specific subjects does not provide the optimum results.

In Germany professional education of engineers does not contain sufficient elements to qualify them as adjudicators. It is surely even questionable if such elements would distract the students from their original choice of study.

Also in the early years of their professional careers engineers are little involved in the problems of disputes and their resolution. It is normally only after years of professional experience and growing responsibilities that engineers get into contact with issues of law and their relevance to disputes.

Engineers regularly work as employees for authorities, engineering firms or industrial enterprises. Only as consulting engineers they work independently. This has to be considered when dealing with the matter of engineers as deciders.

For the acceptance of decisions by the parties to a dispute, the following basic requirements must be fulfilled by the decider, be it an engineer or a person of any other professional background: independence; competence; and integrity.

Any employed engineer is not independent, although he/she may be independent of the parties to a dispute. The employment will set limits to his/her liberty to dispose of his time according to the requirements of the parties. Only relatively few experts with contractors' background will be available because of that constraint.

It can be assumed that an engineer after many years of professional experience will have the required competence regarding the technical aspects of a dispute. He/she would also need to acquire competence in the interpretation of contracts, in dealing with disputing parties and with his colleagues in case of multi-member adjudication panels.

Lawyers have learned, as part of their education, that it is not only important for a decision to be right, but that it is also understood to be right. Engineers have to learn this important aspect. They therefore must understand that integrity is not only self-satisfaction in this regard, but that it must be visible to and accepted by the disputing parties, that may not always be well-disposed.

The need for training is evidently substantial. FIDIC through the German Federation of Consulting Engineers (*VBI*) has started recently to offer training and adjudicator assessment courses.

Present developments in Germany increasingly consider involvement of engineers and architects in ADR. For example the rules of the ASIB emphasize the interdisciplinary competence of an adjudication panel. Similarly the a.m. Task Force of the *Deutsche Baugerichtstag e.V.* considers engineers/architects and lawyers as adjudicators.

Pending legal issues

While there is no legal framework (jurisdiction) in Germany regarding DB procedures, the parties need to agree such procedures with their contract. As a rule, that is "spread over" the dispute clause of the construction contract, the rules and the

tripartite agreement between parties and adjudicator. If the parties do not find any rules which meet their requirements, they can and should establish the details as part of the dispute clause in their contract.

Such agreements will inevitably have to be extensive. Some legal issues can be solved easily: Mandatory proceedings upon request of one party, prescription, due process or fair hearing of all parties, short time frame, etc. On the other hand, for example, it is still under discussion whether a temporarily binding effect of a decision or its finally binding effect in case of no objection by a party can be agreed by law.

Also the question remains unanswered to date if the compliance with a decision could invoke liability for compensation, in case a decision is changed in subsequent proceedings.

However, it is considered that these pending issues can be resolved, considering that there is recourse to court or arbitration. Also, these issues have already been dealt with and resolved in other circumstances.

Concluding remarks

Disputes in construction projects are notorious worldwide for the time and cost spent for their resolution.

Dispute Boards, as a means of an out of court dispute resolution, are being used increasingly in international construction projects. This process provides expeditious and acceptable results at reasonable cost, while not excluding possible recourse to courts or arbitration for a dissatisfied party. The parties to the process rely on interdisciplinary competences and professional know-how of the adjudicators to arrive at these solutions.

Responses to recent surveys demonstrate the need to implement the dispute board concept also for the German construction market. Several working groups investigated the various aspects of introducing this concept to Germany, starting with the legal basis to concrete procedural rules.

Although some legal issues need to be resolved to prepare the ground for widespread application of the concept, the development appears to be beyond return.

It demands for substantial inclusion of the expertise of engineers/architects, of those working as consultants but in particular also of those with entrepreneurial background. Dispute Boards cannot do without their practical experience and input to arrive at decisions, from pricing to work planning, procedures and execution.

About the Authors: Volker Jurowich is a member of the DRBF Board of Directors. He can be reached by email at VJurowich@t-online.de. Dr. Helmut Koentges is the DRBF's Country Representative for Germany, and he can be reached by email at koentges.ipm@t-online.de. Both are members of the Working Group "Extra-judicial Dispute Resolution" of Deutscher Baugerichtstag e.V. □

FIDIC Assessment Panel for Adjudicators

One way to publicize your interest in serving on a Dispute Adjudication Board (DAB) is to gain admission to the FIDIC President's List of Approved Adjudicators. Nine qualification criteria are listed at www1.fidic.org/resources/contracts/adjudicators as is information on admission to the list. Special note should be taken of the requirement for successful completion of a three-day *Adjudicator's Assessment Workshop*. The program is typically done in two year intervals, and occurs only when a backlog of applicants has accumulated. An assessment is expected to be held in the final quarter of 2008 or in the first quarter of 2009.

If you are interested in international work and feel you meet the qualification criteria, contact FIDIC (fidic@fidic.org) to express your interest in being assessed, and immediately begin the steps required to be admitted to the forthcoming assessment workshop.

Interested in Politics?

By Gordon L. Jaynes

No, fellow members, this is not about the forthcoming USA election! Nor is about any national politics: it is about the existing DRBF procedures for nomination and election, and whether you think there are beneficial changes which could be made to those procedures.

The DRBF President, Gwyn Owen, has invited me to put forward for discussion by the DRBF membership at large (and eventual consideration by the DRBF Executive Board) suggestions for possible changes in the existing procedures. This invitation stemmed from my having offered a few suggestions for change during email discussions which followed expressions of dissatisfaction by some DRBF members regarding the current DRBF election.

Initially I was not inclined to accept the invitation, in part because the negative reaction to my initial suggestions made me doubt the effort would be worthwhile. However I then received a copy of a forthright email from DRBF Australia offering constructive criticisms and suggestions which I thought excellent and that prompted me to accept the invitation.

My first step is to write this piece for the Forum and invite all DRBF members who have criticisms of the existing nomination and election procedure, or suggestions for improvement, to share them with me at glj4law@aol.com.

Please take the time to assist me. Remember that our existing procedures were established at the outset of what then was a small national organization formed mainly from persons who knew one another. The Foundation now is a large international organization with members in many countries, most knowing each other mainly through Foundation Conferences and the Forum.

Also, the DRBF unfortunately loses a large number of members each year, some

indicating that they do not feel that our organizational operation is open and transparent, and that there is little prospect for eventual advancement to positions of leadership.

While such perceptions can be debated, it is more important that we assure that our procedures are seen to be fully open and transparent, and that it be clear that there are opportunities for advancement to positions of leadership without “friendships in high places.”

What improvements would you like to see?

To avoid possible misunderstandings, I have no intention to criticise any individual person who has been involved in operating the existing nomination and election procedure. My aim is to obtain constructive criticism, not personal complaints against any individual. Also, please understand that criticisms and suggestions which you express to me will be treated confidentially unless you give me permission to mention them in what I put forward to the DRBF membership (and even then, I would not propose to give name attribution).

In that ever-optimistic expression, “I look forward to hearing from you!”

Editor’s note: Briefly, the current procedure, which has now been in use for some 11 years, has been for the president to appoint a nominating committee in accordance with By Law Article IX, Section 2, which then recommends a slate of candidates.

The normal format is then for the committee to openly ask all members for nominations. This is done by both an advertisement in the Forum magazine and by an email sent to all DRBF members. The committee then draws up its draft slate of nominations. Thereafter those draft nominations are discussed by the full Board of Directors at its next face to face meeting. The Nominating Committee’s final slate is then published for the full membership to consider and decide upon.□



Dateline: Cape Town, South Africa

The 8th International Annual Conference was the first ever held on the African continent. Cape Town proved to be an exceptionally outstanding host city by treating the conference delegates and their companions to a multitude of attractions and to three days of pleasant fall weather experience of the Southern Cape. The programme for the 2008 Conference varied from the traditional two-day to a three-day format. This experiment was successful because it allowed the delegates afternoons free to explore region, visiting many popular attractions such as wine estates in Stellenbosch, Table Mountain, Robben Island and the Cape of Good Hope.

For the second year running the International Conference attracted more than 140 delegates representing world regions Africa (55), North America (11), South America and the Caribbean (2), Europe (60), the Middle East (1) and Asia (13). The attendance from Africa was predominantly from the southern region but it is particularly gratifying to note that there were 10 participants from French speaking West and North Africa. Sixteen Country Representatives from South Africa, Libya, Belgium, Germany, France, Poland, the UK, the United Arab Emirates, China, Singapore, Thailand, the Philippines, Japan, Australia, Brazil, and the Caribbean attended as well.

DRBF President Gwyn Owen opened the conference with a welcoming address introducing past presidents in attendance Bill Baker, Bob Ruben, and Hal McKittrick, president elect Jim Brady, and keynote speaker Mansoor Parker of the South African organizing committee for the 2010 FIFA World Cup and hosted by South Africa.

The conference got underway with a session led by Gordon Jaynes with presentations covering Dispute Board experience on a port construction contract that is part of a private mining development project in Madagascar and current the ICC developments in DB and Expertise practice. Volker Jurowich closed the first day proceedings with captivating presentations by speakers from the African Development Bank relating its experience with the FIDIC MDB Harmonized Construction Edition and the Cameroon Ministry of Justice that described encouraging prospects for the Dispute Board in conflict resolution processes in that country.

The second day included provocative sessions lead by Jim Perry and Andy Griffiths, the country representatives from France and South Africa. Jim's speakers explained the wide use of the coded form of contract widely used in French speaking countries and the dispute resolution measures envisaged. Andy's speakers illustrated Dispute Board applications on major projects in Anglophone African countries including the use of those boards on contracts that involve major subcontracts. These presentations generated very lively discussion from the floor. The third and final day was dedicated to five breakout sessions that were led by Nicholas Gould. The session chairs moved between groups of attendees so that everyone had the opportunity to participate in all of the group discussions.

I am pleased to report that the session moderators and speakers are to be unanimously congratulated for receiving top marks from those attending the conference. Many of the presentations are available in the member's only section of the DRBF website, www.drbf.org, for member's personal use.

The DRBF and the conference organizers owe a special thanks to the long list of sponsors that contributed both institutional and financial support to the Cape Town event. The conference was followed by a two-day workshop chaired by Toshihiko Omoto. The workshop concentrated on the 2006 FIDIC MDB Harmonized Edition construction contract that has recently been adopted by the major multi lateral development banks that provide funding for infrastructure contracts in developing countries. Special recognition is due to Toshihiko as well as to Gordon Jaynes, Jim Brady, Marianne Ramey, Bob Smith, Murray Armes and Andy Griffiths for the deft handling of the workshop event.

The Cape Town event followed in the footsteps of the previous International Conferences by setting new standards for these events.

See you next year in Dublin!

Dick Appuhn, Cape Town Conference Chairman



Several Board members and their spouses enjoy the Gala dinner at Moyo, an African theme venue which included tribal face painting.



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DRBF Annual Meeting and Conference • Washington, DC • Oct. 4-5, 2008

Join the DRBF for the AI Mathews Awards Dinner Aboard the Dandy Dinner Cruise

Washington, DC offers an impressive collection of notable tourist sites and national monuments. Conference attendees will experience the sights from a different point of view aboard the Dandy Restaurant Cruise, chartered just for DRBF guests.

The European style river boat is designed to cruise under the low-arched stone bridges of the Potomac. During a five course meal, expect to see the Washington Monument, the Kennedy Center, Jefferson and Lincoln Memorials, the Capital, Georgetown and more. After the AI Mathews Award presentation, enjoy music, dancing and conversation with DRBF delegates and their guests.

To register for the optional dinner cruise, visit the DRBF website:

www.drb.org

