



Forum

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DRB Evaluation of Delays on Large Complex Projects

By Thomas J. Burke, PE



INTRODUCTION

Schedule delays on large complex projects can produce large complex disputes and massive cost overruns. Many methodologies are available for determining the responsibility and the resulting costs for such delays.

Delay claims may be evaluated during a project by predicting the future impacts of delay events or after project completion by forensically evaluating the actual impacts of delay events. The predictive approach resolves issues now but may not be accurate. The forensic approach deals with actual delays but leaves issues unresolved until completion. Which approach should be used?

Each methodology has strengths and weaknesses. The favored approach is usually based on the purpose for which the evaluation is being made and the information which is available for the evaluation.

When delay impacts are being evaluated to determine the time dependent costs of a proposed change order, a predictive methodology must be used because the actual impacts have not yet materialized. When, on the other

hand, delay impacts are being evaluated to settle delay claims after project completion, the actual impacts provide the best evidence for establishing the damages associated with claimed delay events.

Unfortunately, the most appropriate methodology with respect to the purpose of the evaluation will not be possible if the information required to support that methodology is not available when the analysis is performed.

For example, predicting future impacts of change orders during a project requires a functioning CPM schedule which has been updated to reflect actual “as built” data, and which calculates a modeled “as planned” schedule to complete. If the project CPM schedule has not been properly maintained, it cannot be used to evaluate change order impacts or delay claims.

Evaluating delay damages based on actual delay impacts involves a retrospective forensic approach. The forensic approach requires that the “as built” schedule be maintained at a level of detail which will reveal the delay events, the causal links to the consequences of those delay events, the duration

(continued on page 16)

One of the less obvious benefits of a DRB is its ability to ensure that adequate documentation will be available to properly analyze future claims. This is particularly true in the case of delay claims on a large, complex project. The author describes an improved methodology for analyzing complex delays which would be feasible if a DRB or other independent party was overseeing the preparation and updating of CPM schedule forecasts and the recording of actual schedule events.

In this Issue of the Forum	
DRB EVALUATION OF DELAYS ON LARGE COMPLEX PROJECTS	1
POTENTIAL USE OF DISPUTE REVIEW BOARDS OUTSIDE THE CONSTRUCTION INDUSTRY	4
ETHICS IN TODAY'S WORLD OF DRBs: OWNER BUNDLING HEARINGS UNTIL END OF PROJECT	10
DRBF EURASIA - THE BEGINNING...	12

DRBF EurAsia – The Beginning...

By Alina Valentina Oprea, DRBF Country Representative for Romania

Foreword

People started to use FIDIC conditions of contract in Romania in around the middle of the '90s. Then, the use of dispute boards within these contracts expanded in Romania and in the surrounding region: in that period began, in Romania, big infrastructure projects (especially in road construction) financed by IBRD, EBRD, EIB – rehabilitation of over 2,500 km of national roads using, initially, conditions of contracts FIDIC 4th edition, then FIDIC 1999 (having foreseen dispute boards). Immediately after, the European Union granted funds, through ISPA and PHARE, to the countries in Central and Eastern Europe for big infrastructure projects (roads, railways, environment, cross border program, etc.). The conditions of contract were FIDIC 1999, and dispute boards – dispute adjudication boards - were implemented.

Then, things accelerated in this view: before, but especially after 2003, more and more training courses regarding claims and disputes were organized in the region – they proved to be insufficient, and more of them, over the initial planning, were organized. By chance, people in Romania found that in Berlin, Germany, was to be held the DRBF Annual International Conference. Besides the DRBF members and sympathizers, a little group of Romanian people attended, surprisingly finding that there are a lot of interesting actions related to dispute boards.

The next DRBF Annual International Conference was held in a location not so easy to reach by people in Romania, but the May 2006 DRBF conference from Budapest, Hungary, proved to be a “Romanian conference”: many participants from Romania, and the main theme was about using dispute boards in Romania! It was very clear that the interest in dispute boards in Romania was starting to be huge!

That was an important moment for the dispute

boards in the region: the dispute board concept was better understood and appreciated, many people became DRBF members, and DRBF country representatives were nominated or received new energy.

In the countries of the region, the FIDIC 1999 conditions of contracts started to be translated in the national languages, including the dispute board provisions. The first remarkable result of these actions was that, starting in July 2008, the FIDIC 1999 conditions of contract were translated into Romanian, together with a set of particular conditions meant to ensure the interface with the Romanian Law, which became mandatory conditions of contract in Romania – the use of dispute boards included! A lot of FIDIC and dispute boards sympathizers in Romania contributed to this – Romanian Ministry of Public Finances, ARIC (the Romanian Association of Consultant Engineers) public authorities, contractors, engineers and dedicated individuals.

The DRBF International Conference in May 2007 was organized in Bucharest, Romania, with a record audience – the biggest number of participants ever. More and more people understood the advantages of using dispute boards in solving disputes, and people started feeling that the DRBF is present in Romania.

The Beginning

The adepts of dispute board concept decided to form a group to promote the concept in Romania and in the region – the problems were more or less similar in all the Eastern European countries. The best solution was found in forming a DRBF chapter for this region.

The next step was that FIDIC and dispute boards training courses increased in Romania, and the dispute boards advantages became even more known; the concept attracted even more people.

The other side of the story started to develop,

also, as the dispute board concept gained new sympathizers. A new tendency occurred, *against* using of FIDIC conditions of contract and dispute boards for solving the disputes within the construction contracts. *Both* tendencies had fans and enemies...

This led to a bigger need to make properly known the dispute board concept, through presentations made by DRBF members and by pupils of Mr. Gwyn Owen (in the frame of the dispute boards mentoring scheme, 2006-2007, which it was presented in the previous editions of the DRBF Forum), training courses of FIDIC 1999 and dispute boards, which were held in Romanian language, in order to overpass the language barrier and to spread the word to as many people as possible. The result was that the dispute board concept got more and more fans.

The DRBF group for this region realized that as big this group is, as easier will be to promote the dispute board concept. It was decided that the group will be called DAB-DRB Eastern Europe. But, since people from countries of entire Europe and from Asia expressed their adhesions to this idea, the name turned into **DRBF EurAsia**.

In view of offering useful information and links for dispute board users and dispute board members, a web site for DRBF EurAsia has been created:

<http://dabdrb.googlepages.com>

On 28 July 2008, people in Romania, Europe and all over the world were told of the new web site and about the dispute board sympathizers group to whom they were anxious to join. Adhesions to the group started to come and they keep coming, first from Romania, then from United Kingdom, Germany, Italy, Turkey, Singapore, etc. Other people, from other countries expressed their willingness to send adhesions, as well, and we are 43 enthusiastic people now...

We are writing now the next pages of our story, and new people are awaited to join, since there is a huge appetite and huge need

for using dispute boards in this region, therefore correct information on dispute boards, through many voices, are more than welcome.

Let's promote together good and fair contractual relationship, as well as the use of dispute boards for preventing the problems in the contracts to develop into disputes and for solving the disputes, in view of creating a proper environment for developing the infrastructure!□

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Best Use of Dispute Boards
Presentations to Dispute Boards
Dispute Board Hearing Exercise

October 31: Regional Conference
Balanced Contracts
Why to Use Dispute Boards
Best & Worst Application of Dispute Boards
Successful Use of Dispute Boards in Various Countries

Conference concludes with a gala dinner with Romanian flavor

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